LIAISON COMMITTEE

The Review of Investigative and Scrutiny Committees

Written evidence

Contents

Lord Alton of Liverpool – Written evidence (RIS0002) ................................................................. 1
Lord Alton of Liverpool – Supplementary written evidence (RIS0078) ........................................... 2
Elizabeth Arbon-Stuckle - Written evidence (RIS0017) ................................................................... 3
Association of British Insurers – Written evidence (RIS0051) ....................................................... 4
Australian Senate – Written evidence (RIS0059) ............................................................................ 8
Lord Balfe – Written evidence (RIS0052) .......................................................................................... 16
Anouk Berthier and Hugh Bochel - Written evidence (RIS0014) .................................................... 17
Lord Best - Written submission (RIS0007) ....................................................................................... 22
Lord Best, Lord Kirkwood of Kirkhope, Lord Porter of Spalding and Baroness Warwick of Undercliffe – Written evidence (RIS0069) ........................................................................................................... 23
Biochemical Society – Written evidence (RIS0018) ....................................................................... 24
Bishop of Birmingham and the Convenor of the Lords Spiritual – Written evidence (RIS0066) .............................................................................................................................................. 25
Lord Birt – Written evidence (RIS0037) ............................................................................................ 27
Eirik Bjorge, Arabella Lang and Ewan Smith – Written evidence (RIS0034) ....................................... 28
The Rt Hon the Lord Blencathra – Written evidence (RIS0009) ....................................................... 39
Lord Blunkett – Written evidence (RIS0004) .................................................................................. 65
Dr Catherine Bochel – Written evidence (RIS0016) ........................................................................ 68
Hugh Bochel and Anouk Berthier - Written evidence (RIS0014) .................................................... 71
Baroness Brown of Cambridge - Written evidence (RIS0025) .......................................................... 72

Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071) ......................................................................................................................... 73

Lord Butler of Brockwell, Lord Bruce of Bennachie, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071) ......................................................................................................... 75
Canadian Senate – Written evidence (RIS0057) .......................................................................................... 76
Lord Cavendish of Furness, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071) .......................................................................................... 79
Thomas Caygill, Doctoral Candidate in the School of Geography, Politics and Sociology, Newcastle University – Written evidence (RIS0008) ......................................................................................................................... 80
Lord Clement-Jones – Supplementary written evidence (RIS0061) ............................................................... 85
Lord Cormack – Written evidence (RIS0045) .................................................................................................. 89
Bruce Crawford MSP – Written evidence (RIS0076) ....................................................................................... 90
Lord Curry of Kirkharle and Lord Trees – Written evidence (RIS0080) ......................................................... 92
Lord de Mauley, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071) .......................................................................................... 93
Baroness Deech – Written evidence (RIS0024) .............................................................................................. 94
Baroness Deech – Supplementary written evidence (RIS0062) ...................................................................... 95
Lord Desai, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071) .......................................................................................... 96
Lord Dholakia – Written evidence (RIS0081) .................................................................................................. 97
Doteveryone – Written evidence (RIS0021) .................................................................................................. 98
The Earl of Dundee and John Howell MP – Written evidence (RIS0075) ...................................................... 105
Lord Empey – Written evidence (RIS0043) .................................................................................................... 107
Alun Evans and Lord Stern of Brentford – Written evidence (RIS0039) ....................................................... 108
Baroness Falkner of Margravine, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071) .......................................................................................... 109
The Rt Hon Frank Field MP – Supplementary written evidence (RIS0067) ................................................... 110
Professor Matthew Flinders – Written evidence (RIS0005) ......................................................................... 114
Professor Matthew Flinders – Supplementary written evidence (RIS0060) ................................................ 118
Baroness Fookes – Written evidence (RIS0031) ............................................................................................. 119
Lord Forsyth of Drumlean – Written evidence (RIS0053) .......................................................................... 123
Lord Forsyth of Drumlean – Supplementary written evidence (RIS0063) ................................................... 127
Foundation for Democracy and Sustainable Development (FDSD) - Written evidence (RIS0019) ............ 128
Lord Giddens, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Baroness Liddell of Coatdyke, The Earl of Lindsay,
<table>
<thead>
<tr>
<th>Source</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baroness Neville-Rolfe, Lord Thomas of Cwmgieddd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)</td>
<td>133</td>
</tr>
<tr>
<td>Hansard Society – Written evidence (RIS0048)</td>
<td>134</td>
</tr>
<tr>
<td>Lord Harris of Haringey – Written evidence (RIS0027)</td>
<td>144</td>
</tr>
<tr>
<td>Lord Hodgson of Astley Abbots – Supplementary written evidence (RIS0070)</td>
<td>145</td>
</tr>
<tr>
<td>Lord Hollick – Written evidence (RIS0047)</td>
<td>147</td>
</tr>
<tr>
<td>House of Commons Petitions Committee – Written evidence (RIS0074)</td>
<td>148</td>
</tr>
<tr>
<td>House of Lords European Union Committee - Written evidence (RIS0012)</td>
<td>160</td>
</tr>
<tr>
<td>Houses of Parliament Education and Engagement Service – Written evidence (RIS0003)</td>
<td>168</td>
</tr>
<tr>
<td>Lord Howell of Guildford – Written evidence (RIS0038)</td>
<td>174</td>
</tr>
<tr>
<td>Lord Howell of Guildford – Supplementary evidence (RIS0060)</td>
<td>177</td>
</tr>
<tr>
<td>John Howell MP and the Earl of Dundee – Written evidence (RIS0075)</td>
<td>178</td>
</tr>
<tr>
<td>Lord Inglewood - Written evidence (RIS0026)</td>
<td>179</td>
</tr>
<tr>
<td>Lord Inglewood – Supplementary written evidence (RIS0068)</td>
<td>180</td>
</tr>
<tr>
<td>Involve – Written evidence (RIS0072)</td>
<td>181</td>
</tr>
<tr>
<td>Baroness Kidron – Written evidence (RIS0040)</td>
<td>192</td>
</tr>
<tr>
<td>Mr Thomas King – Written evidence (RIS0020)</td>
<td>196</td>
</tr>
<tr>
<td>Earl of Kinnoull – Written evidence (RIS0029)</td>
<td>201</td>
</tr>
<tr>
<td>Lord Kirkwood of Kirkhope, Lord Porter of Spalding, Lord Best and Baroness Warwick of Undercliffe – Written evidence (RIS0069)</td>
<td>202</td>
</tr>
<tr>
<td>Arabella Land, Eirik Bjorge and Ewan Smith – Written evidence (RIS0034)</td>
<td>203</td>
</tr>
<tr>
<td>Law Commission of England and Wales – Written evidence (RIS0049)</td>
<td>204</td>
</tr>
<tr>
<td>Law Society of Scotland – Written evidence (RIS0032)</td>
<td>212</td>
</tr>
<tr>
<td>Professor Cristina Leston-Bandeira, University of Leeds - Written Evidence (RIS0011)</td>
<td>224</td>
</tr>
<tr>
<td>Baroness Liddell of Coatdyke, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Lord Giddens, Baroness Falkner of Margravine, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgieddd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)</td>
<td>229</td>
</tr>
<tr>
<td>Lord Lipsey – Written evidence (RIS0035)</td>
<td>230</td>
</tr>
<tr>
<td>The Earl of Lindsay, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, Baroness Neville-Rolfe, Lord Thomas of Cwmgieddd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)</td>
<td>232</td>
</tr>
<tr>
<td>Lord Lisvane – Written evidence (RIS0036)</td>
<td>233</td>
</tr>
<tr>
<td>Baroness McIntosh of Pickering – Supplementary written evidence (RIS0065)</td>
<td>234</td>
</tr>
<tr>
<td>Professor Sir Anton Muscatelli – Written evidence (RIS0046)</td>
<td>237</td>
</tr>
<tr>
<td>National Assembly for Wales – Written evidence (RIS0054)</td>
<td>240</td>
</tr>
<tr>
<td>Source</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>National Diet of Japan – Written evidence (RIS0058)</td>
<td>251</td>
</tr>
<tr>
<td>Baroness Neville-Rolfe, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)</td>
<td>252</td>
</tr>
<tr>
<td>New Zealand House of Representatives – Written evidence (RIS0055)</td>
<td>253</td>
</tr>
<tr>
<td>Baroness Nicholson of Winterbourne – Written evidence (RIS0050)</td>
<td>259</td>
</tr>
<tr>
<td>Lord Norton of Louth – Written evidence (RIS0023)</td>
<td>260</td>
</tr>
<tr>
<td>Lord Norton of Louth – Supplementary written evidence (RIS0079)</td>
<td>268</td>
</tr>
<tr>
<td>Parliamentary Office of Science and Technology (POST) - Written evidence (RIS0015)</td>
<td>278</td>
</tr>
<tr>
<td>Lord Porter of Spalding, Baroness Warwick of Undercliffe, Lord Kirkwood of Kirkhope and Lord Best - Written evidence (RIS0069)</td>
<td>287</td>
</tr>
<tr>
<td>The Rt Hon Lord Rooker - Written evidence (RIS0010)</td>
<td>288</td>
</tr>
<tr>
<td>The Earl of Sandwich – Written evidence (RIS0030)</td>
<td>291</td>
</tr>
<tr>
<td>Ewan Smith, Eirik Bjorge and Arabella Land – Written evidence (RIS0034)</td>
<td>293</td>
</tr>
<tr>
<td>Lord Soley – Written evidence (RIS0006)</td>
<td>294</td>
</tr>
<tr>
<td>Lord Stern of Brentford and Alun Evans – Written evidence (RIS0039)</td>
<td>295</td>
</tr>
<tr>
<td>Lord Thomas of Cymgeidd – Written evidence (RIS0042)</td>
<td>297</td>
</tr>
<tr>
<td>Lord Thomas of Cwmgiedd Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)</td>
<td>300</td>
</tr>
<tr>
<td>Baroness Thomas of Winchester – Written evidence (RIS0041)</td>
<td>301</td>
</tr>
<tr>
<td>Trade Justice Movement – Written evidence (RIS0073)</td>
<td>302</td>
</tr>
<tr>
<td>Lord Trees and Lord Curry of Kirkharle– Written evidence (RIS0080)</td>
<td>307</td>
</tr>
<tr>
<td>Lord Trefgarne – Supplementary written evidence (RIS0064)</td>
<td>308</td>
</tr>
<tr>
<td>Baroness Tyler of Enfield – Written evidence (RIS0044)</td>
<td>309</td>
</tr>
<tr>
<td>Baroness Tyler of Enfield – Supplementary evidence (RIS0077)</td>
<td>312</td>
</tr>
<tr>
<td>Lord Wakeham – Written evidence (RIS0001)</td>
<td>315</td>
</tr>
<tr>
<td>Baroness Warwick of Undercliffe, Lord Best, Lord Kirkwood of Kirkhope and Lord Porter of Spalding – Written evidence (RIS0069)</td>
<td>316</td>
</tr>
<tr>
<td>Lord Whitty – Written evidence (RIS0028)</td>
<td>319</td>
</tr>
<tr>
<td>Dr Wollaston MP – Written evidence (RIS0033)</td>
<td>329</td>
</tr>
<tr>
<td>Lord Vaux of Harrowden Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe and Lord Thomas of Cwmgiedd and: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)</td>
<td>332</td>
</tr>
</tbody>
</table>
While the present arrangements for the selection of subject matter prevails House Committee decisions appear opaque and give little confidence that outcomes are based on the merit of arguments. It might partially rectify this if the proceedings and votes cast at such meetings were transparent and published.

January 2018
During last week’s exchanges on the floor of the House you invited a formal submission about ways in which members of the House might be involved in the selection of *Ad Hoc* Committees of Inquiry. This followed the concerns raised by Lord Campbell-Savours.

I would like to suggest that, once the initial sifting of applications by the Liaison Committee has been completed, a short-list of six should be put forward.

This short-list could then be offered to the whole House for consideration and be decided by an electronic ballot.

Those proposing the successful short-listed subjects for consideration should be offered the chance to provide a brief written summary of why their proposal should be accepted.

A similar approach is already adopted by Crossbench Peers when they choose subjects for debate in the House and it is administered without expense or difficulty (and a lot less cumbersome than, for instance, the by-elections for hereditary Peers’ vacancies).

This would help to address Lord Campbell-Savours’ concern but, even more importantly, it would also enable all Peers to be involved and create even further interest in this important aspect of the work of the House.

I will look forward to hearing the response of the Liaison Committee.

*April 2019*
This is a personal response to the request for submissions.

Response to the question: How can House of Lords Committees develop a national conversation to complement their inquiries?

Requests for submissions from the general public should be advertised. They could be advertised through social media, in the press and on TV.

The process for submitting evidence or ideas to an inquiry should be as simple as possible. Most of this could be done through the website. The current process of submitting evidence through the parliamentary website is not as straightforward as it could be and the majority of the public are completely unaware that this process exists.

To compliment the collection of evidence through the parliamentary website, some subjects would benefit from holding information gathering seminars throughout the country. These groups would not be restricted to the large cities but held in church halls and community centres around Britain, including in the smaller towns and rural communities. These events would need to be advertised in the local press and I would suggest a ticket allocation system be used to control numbers. These events would be free and could take the form of a discussion with a representative from the House of Lords keeping notes of any points raised.

March 2018
Introduction
1. The Association of British Insurers is the voice of the UK’s world leading insurance and long-term savings industry. A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation.

2. The ABI welcomes the opportunity to submit evidence to the Liaison Committee inquiry on scrutiny committees. A concern for the insurance industry is the parliamentary scrutiny of future statutory instruments post-Brexit. Consequently, our submission will be focusing on one fundamental question: What changes are needed to select committee structures in the wake of Brexit?

3. We also put forward a proposed model to assist select committee’s scrutinise technical policy changes to financial delegated legislation to ensure there is no democratic deficiency.

Summary of issue
4. The European Union (Withdrawal) Bill allows Ministers to establish new public bodies in the UK to fulfil many of the existing functions of EU institutions. The Government has made clear its intention that no new public body will be established for financial services. Consequently, existing regulatory bodies must be equipped with sufficient powers and responsibility to provide a stable regulatory environment post-Brexit.

5. Currently in the EU system, regulatory authorities possess a significant number of responsibilities to review the regulatory framework and propose changes to it. They also have the power to maintain existing frameworks through regular decisions. Crucially though, the system builds in political oversight of these changes through both the Council of Ministers and the European Parliament.

6. Thus, the question arises – how to maintain existing regulation and ensure it remains up to date and fit for purpose after the UK has left the EU? We fear the Government has underestimated the scale of the challenge.

7. There are some practical benefits to handing these EU functions to the UK regulators, as this will give them the powers and flexibility to make timely changes when required and is less likely to get frozen by political logjam or inertia.
8. However, there are some serious downsides:

- Places a great deal of additional power in the hands of the UK regulators, without line by line scrutiny that the European Commission and European Parliament used to provide.
- Pressure on the resources needed at Westminster for effective political oversight
- Concentration of expertise and authority with the regulators
- Little consideration of the broader societal effects of sectoral regulation

**Role of regulators**

9. Regulators are independent within a framework agreed at political level, and they need a degree of political oversight because their objectives as set out in legislation are limited. For example, the insurance objectives of the Prudential Regulatory Authority (PRA) are financial stability and policyholder protection. Both are necessary objectives for a regulator, but the impact of insurance regulation goes much wider than that, including impact of insurers as long-term investors.

10. The issue of amending rules is of particular concern to insurers because, unlike other financial services sectors such as banking, there are no international standards for insurers which provide the foundation for national regimes.

**Differences between EU and UK policymaking**

11. Most delegated legislation (Level 2 Technical Standards) appears on the UK Statute Book in the form of Statutory Instruments (SIs). SIs can be amended by a proposal from the relevant Government Department (in the case of financial services, the Treasury).

12. The remainder (Level 3 and 4 Regulatory Guidance) would need to be amended through the regulators’ handbooks, with no democratic process at all.

13. Contrast this with the same legislation in the EU, where a proposal by the Commission would be formulated on the basis of advice produced by the regulatory body and would have to be approved by both Council of Ministers – prepared by working groups of experts from each member state – and the European Parliament – prepared by a knowledgeable rapporteur and a sectoral Committee.

**Future Parliamentary scrutiny**

14. We make no comment on the relative strengths of the legislative processes of the EU and the UK. The EU process is by no means perfect but
there are some important issues of accountability that it does address, and the UK could learn from.

15. The positives of the EU process are:
   a) that the EU devotes more resource to the scrutiny of amendments to regulation than the Government intends to devote to the amendment of the British regulatory regime when we leave the EU;
   b) that the EU process involves a greater number of institutions, encouraging the development of differing views, conducive to an open debate.


   "Westminster will need to increase commensurately the resources available to support a similar level of scrutiny [to the EU]...It is clear, however, that financial services will require increased scrutiny and resources in relation to domestic, EU and international level regulatory standards, and that burden will necessarily fall upon Parliament."

What we propose

17. We would propose an alternative model for scrutinising future SIs to enhance democratic accountability; and ensure relevant expertise on technical and operational detail that is vital to the work of the financial services sector:

18. The Joint Committee on Statutory Instruments (JCSI) and Secondary Legislation Scrutiny Committee (SLSC) should retain oversight of all SIs. To help both committees scrutinise the SIs, Government departments and regulators should be encouraged to pro-actively report to Parliament when changes to existing policy are being made through an SI.

19. Once an SI has been laid in draft or laid after making, external stakeholders have an x number of days to raise their concerns with JCSI and SLSC.

20. If external stakeholders express an issue with an SI, the JCSI and SLSC could assign the Treasury Select Committee (TSC) the power to scrutinise and recommend amendment to the SI.

21. While departmental select committees would not usually be involved in the formal scrutiny process of secondary or delegated legislation, we believe the specialist knowledge of the TSC must be utilised when regulators are proposing to exercise their powers in a way that could have a significant market impact. Effectively scrutinising this requires an understanding of a
regulator’s broader remit and, in addition, if the TSC felt too many proposals needed to be escalated in this way, they can call regulators to account for how they introduce new rules.

22. Acknowledging constrained Parliamentary resources, we propose that Parliament creates an independent advisory panel to scrutinise financial services SIs. This advisory panel would report directly into the TSC and undertake the detailed and technical scrutiny of SIs created by regulators. The membership of the advisory panel could include experts who have experience in law, policy, consumer advocacy, and so forth. The creation of an advisory panel would reduce pressure on the TSC to scrutinise an onslaught of SIs in addition to their existing work load.

23. Within a set timeframe, the Chair of the advisory panel would be required to give evidence to the TSC on the concerns raised on the SI. The TSC would have the power to recommend an amendment to the SI where they believe is necessary.

24. A similar model for scrutiny of delegated legislation is currently in practice today as evidenced by the Social Security Advisory Committee (SSAC). The SSAC is an independent statutory body that scrutinises most of the complex delegated legislation that underpins the social scrutiny system. The Committee meets monthly and reports directly into the Department of Work and Pensions.

25. We believe that a similar model to the SSAC for financial services enhances Parliamentary sovereignty and accountability post-Brexit, as regulators would be directly answerable to Government and Parliament. The process of filtering financial services SIs to the TSC would place less resource pressure on the JCSI and create a manageable system for triggering policy issues in SIs where they arise.

May 2018
Australian Senate – Written evidence (RIS0059)

SUBMISSION BY THE DEPARTMENT OF THE SENATE

REVIEW OF HOUSE OF LORDS INVESTIGATIVE AND SCRUTINY COMMITTEES
HOUSE OF LORDS LIAISON COMMITTEE

Introduction

The Senate Department welcomes the opportunity to contribute to the review being conducted by the House of Lords Liaison Committee into House of Lords Investigative and Scrutiny Committees.

Committees are an integral part of the parliamentary process, and because each legislature develops its own procedures and culture, there is no one, unchanging model for effective committees.

Nonetheless, history has shown that parliaments can learn from each other. So the Senate Department is happy to offer comments on best practice in Senate committees.

The committee system of the Australian Senate has been evolving since the first select committee (into steamship communication with Tasmania) was established in July 1901, and indeed it continues to develop as illustrated by recent procedural changes which strengthened the rights of individual senators to question the executive at estimates hearings (and which are discussed below).

On the other hand, the large number of inquiries being undertaken simultaneously – a total of 63 in June 2018 which had peaked at 83 in February 2016 – presents new challenges to senators and the parliamentary staff who support them. While modest additional resources have been provided to the Senate Department in recent budgets, the number of senators remains constant and this has been reflected in difficulties in scheduling hearings and clearing draft reports. In addition to the number of references, the complexity of various inquiries has also posed challenges.

The Department makes no comment about the House of Lords Investigative and Scrutiny Committees or the direction they should take. On the question of whether there is scope to incorporate aspects of the Senate committee system, it may be useful to provide specific responses to some of the issues that are of interest to your review, including:

- current structure of Senate committees;
- scrutiny of legislation;
- Budget estimates: procedural changes; and
- best practice generally: community engagement, outreach and use of online surveys.

Senate legislative and general purpose committees—brief history, overview and salient features
Initially Senate committees were considered fact-finding bodies which generally undertook inquiries into significant policy areas and operated on a largely bipartisan basis. Perhaps as committees were not considered primarily forums for the pursuit of partisan political issues, chairs were generally government members (apart from the chairs of select committees). However, from the early 1990’s there was pressure for a proportion of chairs of the standing committees to be allocated to nongovernment senators. In 1994 a bifurcated system of standing committees was established which reflected the composition of the chamber through allocation of chairs of the legislation committees to government senators while non-government senators held the chairs of reference committees. This system was also intended to reflect the composition of the chamber through differing membership of legislation committees, which effectively had a government majority, and references committees, which had a majority of non-government senators. This is the current system of Senate legislative and general purpose standing committees.

For a brief period from 2006 to 2009, when the government held a majority in the Senate, the Senate reverted to a system of single standing committees, all with government chairs. During this period, new inquiries on matters of policy or accountability certainly declined. However, the bill inquiries conducted during this time demonstrate that there is not a rigid connection between committee membership and chairing arrangements, and the capacity of committees to perform their critical role of scrutinising proposed legislation. For example, committees chaired by government senators still presented reports recommending amendment of government bills.

The main features of the current system are follows:

- eight pairs of committees are established under standing order 25 with a references committee and a legislation committee in each subject area;
- references committees inquire into matters referred to them by the Senate, other than matters to be referred to legislation committees;
- legislation committees inquire into bills, estimates, annual reports and the performance of agencies;
- each pair of committees is allocated a group of government departments and agencies;
- each committee has six members, with the government party having the chairs and majorities on legislation committees and nongovernment parties having the chairs and majorities on references committees;
- six of eight references committees have opposition chairs and two are from the largest minority party; allocation of these chairs is determined by agreement between the opposition and the largest minority party and, in the absence of agreement, is determined by the Senate;
- committees with government party chairs elect non-government deputy chairs and those with non-government chairs elect government deputy chairs; the chair, or the deputy chair when acting as chair, may appoint another member of a committee to act as chair during the temporary absence of both the chair and deputy chair from a meeting;
• chairs have a casting vote when the votes are equally divided, as do
  deputy chairs when acting as chairs;
• the chair, or the deputy chair when acting as chair, may appoint another
  member of a committee to act as chair during the temporary absence of
  both the chair and deputy chair from a meeting;
• senators may also be appointed as substitute members, replacing other
  senators on committees for specific purposes, or as participating
  members, who have all the rights of members except the right to vote;
• if a majority of members of a committee is not present, participating
  members may be counted for the purpose of forming a quorum;
• provisions authorise other senators who are not members of committees
  to attend and participate in all estimates hearings;
• committees may appoint subcommittees with a minimum of three
  members;
• subcommittees have the same powers as the full committees, including
  the power to send for persons and documents, travel from place to place
  and meet in public or in private and notwithstanding any prorogation of
  Parliament or dissolution of the House of Representatives;
• the pairs of committees may confer together to coordinate their work, and
  the chairs of these and any select committees form the Chairs’
  Committee, which meets with the Deputy President in the chair, to
  consider and report to the Senate on any matter affecting the operations
  of the committees;
• each pair of committees is supported by a single secretariat unit.

The committees therefore have the capacity to perform any of the Senate’s roles
on its behalf.

The system allows a great deal of flexibility, particularly through the use of
participating members. The price of greater flexibility, however, is a loss of the
kind of committee cohesion that was evident in past decades when committees
had a very stable membership and were more likely to operate in a largely non-
partisan manner in the expectation of producing a unanimous report. With
regular membership changes and a floating population of participating members,
the loss of some cohesion is evident in the incidence of dissenting or minority
reports.

It would also be fair to say that the system is under pressure from its success. A
Senate committee inquiry is often regarded as a remedy of first resort, with the
result that the incidence of referrals reached record levels in 2016 and remains
high to this day. Committees must prioritise their work and seek extensions of
time in order to deal with the large number of inquiries being fielded
simultaneously (in excess of a dozen per committee at some times, and as high
as 18 in one case).

**Scrutiny of legislation**

A critical role of the Senate legislation committees is to scrutinise proposed
legislation and recommend to the Senate whether a bill should be passed and, if
so, whether there should be any amendments to the bill. Approximately 40 per
cent of all bills (including government bills and private senators' bills) are referred to legislation committees for inquiry.

Bill inquiries often serve to identify technical problems with bills and regularly lead to amendments to bills. Another key function of bill inquiries is to examine whether bills will deliver the stated policy aims. One recent example of this is the Legal and Constitutional Affairs Legislation Committee inquiry into a private senator’s bill, introduced by former Senator Xenophon, to amend the Criminal Code Act 1995 (Criminal Code) in order to extend the retrospective operation of provisions that make it an offence to harm Australians overseas. While the committee report generally endorsed the stated aim of the bill, the committee also expressed concern about practical difficulties associated with prosecutions under the proposed provisions and recommended further consultation occur in relation to the bill before its consideration by the Senate.¹ A bill to achieve similar policy aims was subsequently introduced jointly by the Attorney-General and Senator Xenophon and passed by both Houses in November 2015.²

The inquiry process is particularly important if there has been a truncated consultation process with respect to the proposed legislation. Moreover, a bill inquiry can help to identify amendments to the bill or changes to the policies and administrative practices underpinning the legislation which may make the bill acceptable to a majority of the chamber.

**Examination of bills and delegated legislation by legislative scrutiny committees**

In addition to these specific bill inquiries, three legislative scrutiny committees examine all bills and delegated legislation introduced into the Parliament:

- the **Senate Regulations and Ordinances Committee** examines all disallowable delegated legislation against principles relating to personal rights and parliamentary propriety;
- the **Senate Scrutiny of Bills Committee** examines all bills against a set of accountability standards to assist the Parliament in undertaking its legislative function (these standards focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary scrutiny)³; and
- the **Parliamentary Joint Committee on Human Rights** which considers the compatibility of all bills and delegated legislation with seven human rights treaties to which Australia is a party.

An important contribution of these committees has been to increase awareness and consideration of fundamental principles of good legislating and human rights by ministers and departments who have carriage of most of the legislation considered by the Parliament.

---

¹ Legal and Constitutional Affairs Legislation Committee, Criminal Code Amendment (Harming Australians) Bill 2013, 13 August 2015.
² Crimes Legislation Amendment (Harming Australians) Bill 2015.
³ Further information about the work of the Scrutiny of Bills Committee is contained in the committee’s annual reports.
The work of the legislation committees on bill inquiries links closely to the work of the Scrutiny of Bills Committee. Indeed there is now an explicit requirement for legislation committees to consider the comments of the Scrutiny of Bills Committee with respect to bills referred to them (Standing Order 25(2A)). Legislation committees also routinely consider any views expressed by the Parliamentary Joint Committee on Human Rights. The Regulations and Ordinances Committee also draws matters to the attention of relevant portfolio committees where this may assist their deliberations.\(^4\)

**Budget estimates**

The examination of executive expenditure by parliamentarians is a key accountability mechanism and a central role for any parliamentary house of review. Nonetheless, there will always be a tension between the practicalities of parliamentary scheduling, the desire and ability of individual members to inquire into the details of government programs and expenditure, and the executive’s desire to limit questioning. (In fact, a major challenge for all parliamentarians is how to understand increasingly complex and technical executive programs and the associated resourcing so that the right questions can be posed.)

A number of procedural changes in the Australian Senate agreed in June 2014 have increased the capacity of individual senators to question Ministers and officials and so hold the government of the day to account.

It should be noted that the adoption of a program and the time allocated to individual senators to question and probe areas of particular interest will always be a matter of negotiation for each committee. However, under changes to orders of continuing effect agreed in 2014, provision was made for further hearings for estimates committees. In particular, Standing Order 26(4) was amended so that

...If a senator has further explanations to seek, items of expenditure shall not be closed for examination unless the senator has agreed to submit written questions or the committee has agreed to schedule additional hearings for that purpose.

Furthermore, under a procedural order of continuing effect:

...an additional hearing of a legislation committee considering estimates is taken to be required if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet for that purpose, including for a specified period of time.\(^5\)

There are usually approximately 70 estimates hearings each financial year. However, in the 2016–17 year, 77 hearings were held and in the 2017-18 year, 83 hearings were held which demonstrates a gradual increase under the new order.

---


\(^5\) 25/06/2014, Journals of the Senate, p.1005.
Several senators expressed reservations about the new procedures when they were introduced, on the basis that they created greater uncertainty about the timetabling of estimates hearings. However, in more recent estimates rounds most scheduling issues have been resolved by agreement within the particular committee. The new orders have therefore contributed to the “enforced reasonableness” which underpins the operation of committees in a multi-party chamber.

**Community engagement and outreach**

While the key role of a parliamentary committee is to gather information and undertake the inquiry function delegated by the chamber, participation in this process by community members serves a range of useful purposes. In the first place, while parliamentarians have long had to deal reactively with lobbyists, committees can seek evidence from a variety of interested and disinterested witnesses with expertise and experience such as government officials, academics and community groups. In addition to gathering information, many committee inquiries also allow individuals and groups in the community, who might otherwise be very unlikely to influence policy or legislative changes, a chance to be heard. For some marginalised groups in the community, this process of being heard by parliamentarians may be almost as important as the more tangible outcomes of inquiries.

For the financial year 2016–17, a total of 7,143 witnesses assisted Senate committees undertaking estimates, bill inquiries and other references. Committee secretariats have developed expertise in maintaining databases of key officials, subject matter experts, advocates and community groups. In the past, the main means of raising awareness about committee inquiries was newspaper advertising, and while still used in a more targeted fashion, the main communication medium used nowadays are committee web pages.

The Senate has adopted more innovative community engagement practices such as round table discussions with key witnesses, online surveys and use of social media to publicise inquiries. Committees in recent years have also had an increased focus on addressing barriers to participation in inquiries facing people with disabilities. This has been reflected in increasing use of Auslan interpreters and the translation of some key inquiry information into Easy English by the Community Affairs References Committee to facilitate participation in inquiries by people with intellectual disabilities.

No doubt the issue of how best to use scarce resources to support committees confronts all parliaments. Parliaments should also be conscious of the demands inquiries place upon submitters and witnesses. In particular, there are risks in imposing too great a burden, particularly on non-government organisations, through repeated requests to participate in inquiries especially if timeframes for the inquiry are short (as they often are for bill inquiries).

Perhaps even more important is that committees manage the expectations inquiries may generate. Inquiries are rarely an effective vehicle for providing individual redress, yet that is precisely what many submitters expect.
Understandably, a report which recommends legislative or policy action may be cold comfort to submitters who have suffered personal or financial harm.

There is also the question of the “shallow” engagement which new technology enables versus engagement that actually supports committees and parliamentarians to perform their functions. Arguably, the mass email campaigns that accompany contentious inquiries or the consideration of controversial bills do little to inform parliamentarians particularly in proportion to the administrative burden they generate. For example, it is probably no surprise to parliamentarians that views about euthanasia are sharply divided and passionately held on both sides of the debate. For committees, community engagement is not an end in and of itself. The key questions are surely, “What is the purpose of community engagement through the committee process?” and “How does it support parliamentarians, and ultimately the chamber, to perform their roles?”

Several committees have adopted resolutions in response to mass email campaigns which improve the capacity of the committee to manage large volumes of correspondence to inquiries. For example, committees have resolved to publish only a sample of form emails received sometimes with an indication of the total numbers received by the committee.6

**Role of the secretariat**

Senate Committee Office staff are generalists and while officers are attached to particular secretariats, the uneven workload between secretariats has meant that staff regularly assist other committees. It is also common, because of workload pressures, for an inquiry of one committee to be entirely managed from a different committee secretariat. In addition, variations in the usual workload of different committees have meant that the usual staffing of secretariats varies significantly.

Experts have been used sparingly by Senate committees and, as committees cover such large and diverse portfolios, it would not be possible to engage experts in all of the fields their inquiries traverse. In truth, the expertise committees require to perform their roles effectively comes from submitters and witnesses. Having said that, there have been some highly technical areas where committees have engaged consultants or seconded specialist staff during the inquiry to good effect. Recent examples include:

- the Economics References Committee inquiry into Australia’s innovation system where the committee engaged an expert consultant; and
- the Rural and Regional Affairs and Transport References Committee inquiry into aviation accident investigations where an expert from the

---

7 Economics References Committee, Australia’s Innovation System, 3 December 2015, report, p.2.
Department of Defence was briefly seconded to the committee secretariat.

One exception to the sparing use of expert advisors by Senate committees is the work of the legislative scrutiny committees (the Regulations and Ordinances Committee, the Scrutiny of Bills Committee and the Parliamentary Joint Committee on Human Rights) which have all retained specialist legal advisors. This reflects the technical legislative scrutiny remit of these three committees and the largely non-partisan approach these committees have traditionally taken in performing that role.

The issue of committees traversing such wide intellectual territory that no single content expert could cover the required ground is a perennial one. For example in 1972, soon after the establishment of the system of Senate standing committees, the Select Committee on Foreign Ownership and Control noted that:

> The committee have considered the appointment of a permanent adviser. It has been agreed that the terms of reference could not adequately be covered by such an adviser and it has therefore been agreed that advisers will be sought from Industry, Government or the Universities on a short-term basis as each area is investigated.\(^9\)

Instead, the expertise that permanent committee secretariat staff provides relates to their ability to support committees, to develop the procedural knowledge to be effective committee clerks, to distil the key viewpoints presented to inquiries and to prepare reports that inform legislators.

**July 2018**

---

\(^8\) Rural and Regional Affairs and Transport References Committee, Aviation Accident Investigations, 23 May 2013, report, p.2.

When we met recently I made some observations about the committee structure of the House and you invited me to put them in writing, my suggestions are as follows.

Firstly, we should allocate the chairs of committees in the same way as they do in the House of Commons, that is between parties on an agreed formula worked out in the usual channels. My view is however that like the House of Commons they should be constituted for a full parliamentary term and that the chair and membership of these committees should also serve for the full parliamentary term.

Secondly, I believe that some sort of system similar to the Commons should be introduced whereby the chairperson and members of committees are elected within the House and should not be an object of patronage by the Whips. In my view both of these reforms represent us coming to terms with the spirit of the age.

Thirdly, my view of Question Time is that it is increasingly becoming a very unpleasant display of bad manners, if it were left to me I would ask that the Speaker be given some power of who should speak. The present rather undignified scene of virtually the same people shouting over each other is not conducive to anything at all other than giving us a bad name. I would certainly like a review of how we conduct Question time.

Fourthly, I would like to see a small committee set up, not of senior members of the House but of ordinary members, to look at the way in which the rules for members of the House of Commons and those for the Lords have drifted apart over the years with a view to recommending to the Lord Speaker's committee any changes that might be desirable in bringing the two sets of rules more closely into line, or of modifying the rules in the light of developments and experience since they were last reviewed.

May 2018
Anouk Berthier and Hugh Bochel - Written evidence (RIS0014)

Hugh Bochel is Professor of Public Policy at the University of Lincoln.

Anouk Berthier is a Senior Researcher in the Scottish Parliament Information Centre.

This evidence is presented in a personal capacity.

Summary

1. Interest in the characteristics and social representativeness of legislatures has generally primarily focused on their members, but appears more recently to be spreading to a broader consideration of how and to what extent they engage with and relate to wider society. Where committees are concerned, while their membership is likely to be one area of interest, perhaps just as important may be the voices that they hear from when collecting evidence, including in oral evidence sessions.

2. Research across the UK’s legislatures suggests that in many respects committee witnesses are far from representative of wider society. There may sometimes be good reasons for that. The priority for committees is, understandably, likely to be a concern with accessing the best evidence available to them, although there may be less agreement on what might constitute that. However, at a minimum, it may be appropriate for legislatures themselves to be aware of the characteristics of witnesses, and potentially to seek, where appropriate, to hear from different voices. It is possible that, done well, such developments can enhance both scrutiny and legitimacy.

3. The Liaison Committee might wish to consider monitoring the characteristics of witnesses and how committees might potentially expand the range of witnesses from whom they receive oral evidence.

Evidence

4. This submission is primarily concerned with the ways in which committees operate in terms of engagement and the collection of evidence, and in particular oral evidence from witnesses. It may therefore be seen as contributing to the ‘key questions’ on developing a national conversation and maximising the impact of House of Lords committees, and to the ‘detailed questions’ on engagement with the public, and potentially to committee effectiveness. It draws upon a variety of sources, but in particular on work commissioned by the Scottish Parliament on the diversity of committee witnesses,[1] and gender in particular, published in February 2018.

5. Parliaments are themselves arguably under considerable scrutiny in a number of respects, including the quality and impact of their own scrutiny of governments’ actions and legislation, the degree to which they are representative of society (for example, in terms of gender or ethnicity), and the means by which they engage with wider society and the extent to which they do so. Recently, there has also been a particular focus on how elected
representatives and officials behave in respect of their cultures, and the treatment of those working in legislatures, particularly women. Perhaps unsurprisingly given these concerns, and others, such as over political disengagement, recent years have seen a variety of attempts to open up legislatures and parliamentary processes, including through enhanced outreach activities, the introduction of new petitions systems, more open calls for evidence, and greater use of technology, although, clearly, these are not unproblematic for legislatures or the public. For example, there may be, firstly, infrastructural constraints to this. For instance, the Scottish Parliament has only one committee room with video-conferencing facilities, which limits the use of such means of engagement. Secondly, on a conceptual level, while initiatives such as social media may arguably provide views from a wider range of voices, perhaps in particular in the early stages of evidence gathering, or even in setting committee agendas, concerns have been raised about the representativeness and reliability of such engagement, particularly when it is through potentially anonymous means, such as online idea-generating platforms where people may contribute without providing any information about themselves. In the Scottish Parliament, for instance, among both MSPs and officers, questions were raised about both the real value and the different possible uses of information technology and social media for evidence collection, although its potential was not dismissed, and in particular it was widely seen as helpful in allowing committees to provide information to different publics. While the costs may be relatively low, and the reach relatively high, concerns such as appealing primarily to a subset of people from a particular demographic, and/or with particular interests, and the risk that such methods may at present be less useful for deep engagement, mean that there is arguably a need to further explore the strengths and weaknesses of such initiatives for committees before using them more widely. Thirdly, as with other initiatives that seek to involve the public it is important that the parameters be clear and that the processes are clear and transparent. And fourthly, there are likely to be tensions that arise from attempts to bring together more participative mechanisms and traditional representative democracy.

6. There are potential benefits to parliaments and to committees in achieving a greater diversity of written and oral evidence. For example, it may: enhance participation and the extent to which parliaments are seen as engaging with and representing society; offer different and valuable perspectives on the actions of governments and the actual and potential impacts of policies, including from those who may not be well represented in parliaments, and those who have to implement and who are affected by, government policies and legislation; provide additional external voices to enhance the scrutiny of policy and legislation; and potentially lead to improved outcomes and increased legitimacy.

7. Where committees are concerned, in some of the United Kingdom’s legislatures considerable attempts have been made, certainly by some committees, to engage more with the public, to use different methods of collecting evidence, and to access and gain the views of harder-to-reach groups. There are now many examples of good practice, although the extent to which this is consistently shared and disseminated within institutions perhaps at times leaves something to be desired.
8. As noted above, there has been growing interest in the characteristics of those giving oral evidence to parliamentary committees, including among academics and in parliaments. There are clearly challenges in identifying the social characteristics of those giving oral evidence to committees, and in particular in doing so retrospectively. However, some work has been done in this area. The evidence suggests that in the United Kingdom’s devolved legislatures women are considerably less likely than men to appear as committee witnesses (with more than 60 per cent of witnesses in the Scottish Parliament being male, for example).[6] In the Scottish Parliament there are also significant differences in the gender of witnesses associated with different types of organisation, with not-for-profit bodies tending to provide significant proportions of witnesses who are women, while the Scottish Government, trade unions, local authorities, private companies and Police Scotland have tended to send more men.[7] Research also shows that significant use is made of bodies that have some sort of representative mandate,[8] or stakeholder groups,[9] as opposed to members of the public. While the extensive use of such organisations can bring real benefits, including in hearing from bodies that represent a range of interests and increasing efficiency, it can also risk excluding other interests and voices, as well as portraying a somewhat exclusive picture of who legislatures hear from and listen to.

9. At Westminster, similar patterns have been identified, with Pedersen et al. finding that ‘institutions’ (among which they included governmental bodies, individual corporations, local authorities, universities and such like) and interest groups provided more than 80 per cent of oral evidence from 1 August 2010 to 31 July 2011,[10] while, examining the 2013/14 session, Geddes noted a considerable reliance on charities and/or campaign groups, business and/or trade associations and professional associations by House of Commons select committees.[11]

10. The Sessional Returns for the House of Commons have shown that around three-quarters of witnesses to select committees have been male.[12] Less information appears to be available on the House of Lords, but Berry and Kippin found that from 8 October to 7 November 2013, 73 per cent of select committee witnesses were male.[13] Berry and Kippin also noted the propensity of House of Lords committees to have parliamentarians as witnesses, and that academic witnesses at Westminster are drawn disproportionately from London. In addition, an examination for this submission of witnesses to House of Lords select committees, for the admittedly short period of January and February 2018, suggests that just over one-quarter were women.

11. Most research on witnesses recognises that committees do not have a completely free hand, for example, being driven by the needs of each inquiry and affected by the requirement to call on witnesses who may sometimes be ‘non-discretionary’ (such as ministers or heads of public bodies accountable to Parliament). However, it is noteworthy that very few committees in any of the UK legislatures hear from more female than male witnesses, while for some committees the proportion of women witnesses actually falls when ‘non-discretionary’ witnesses are excluded from the figures.[14] In addition, across the UK legislatures there also appear to be considerable differences in the proportions of female and male witnesses appearing before committees.
considering different subject areas, with women more likely to appear before committees looking at fields such as education, health and social care and equalities, and less likely to appear in front of committees dealing with topics such as agriculture, transport or finance.[15] This may have implications not only for the type of evidence heard by committees, but may also be important symbolically, with one interviewee for research in the Scottish Parliament noting that, ‘If we start to get greater diversity of witnesses this sends out a message that we don’t just hear from “men in grey suits”’, while another highlighted this with the question, ‘if the Finance Committee is men hearing from men, what does that say about the way that we see women?’[16].

Conclusions and potential recommendations

12. Clearly, for committees the priority will be that the most appropriate people provide the evidence required for a given inquiry. Nevertheless, particularly given the increased interest in how parliaments behave and look, there are a number of things that might be done to monitor and perhaps respond to this situation. Until relatively recently, information about the characteristics of committee witnesses has been, and sometimes remains, largely opaque. It may be appropriate for the House of Lords to record and monitor the characteristics of witnesses to its committees, perhaps initially focusing on protected characteristics and other important data, such as whether witnesses are ‘discretionary’ or ‘non-discretionary’ (although care would have to be taken on the exact meaning of ‘non-discretionary’, so that all committees record the same data), which would serve both to inform the House and provide more outward-facing information about who it hears from. That would increase transparency and perhaps contribute to further consideration of the nature of witnesses collectively. It would also allow the House to take action if a lack of witness diversity or gaps in representation were identified. For instance, on the demand side, it may be appropriate for committees to consider the full range of evidence that they need to acquire at the onset of an inquiry, and what this may mean for the collection of both written and oral evidence, including outreach work. The Scottish Parliament, for instance, is currently in the process of setting up a Committee Engagement Unit to assist committees in broadening the means by which they engage with the public in a manner that is tailored to each inquiry. On the supply side, as noted above, it may be useful to record where witnesses are effectively ‘discretionary’. In addition, where a particular perspective or a wider range of insights are being sought, it could be made clear to those who are invited to provide oral evidence that the House is seeking to hear from witnesses that are more representative of wider society, and that this should be borne in mind in the identification of witnesses. Similarly, activities designed to develop, support and provide feedback to (in particular first-time) witnesses may be valuable.

March 2018

Anouk Berthier and Hugh Bochel - Written evidence (RIS0014)


I served as the Chairman of the Select Committee on Communications for three years to June 2017. (I was previously a Member of the Economic Affairs Committee for four years and Chaired the Audit Committee for five years.) My submission concerns a single issue: the length of time Peers serve on Investigative and Scrutiny Committees. While I believe Committees do immensely good work which, with a bit more investment in dissemination could be even more highly influential, the current three-year term does not optimise the Members’ capacity to really understand the context and intricacies of their role. This applies particularly in respect of those who chair Committees since these need to engage with the networks relating to the relevant sectors, the key civil servants, as well as the relevant parliamentarians in the Commons. My recommendation would be for four-year terms for Members and five-year terms for Chairs of Committees.

March 2018
Lord Best, Lord Kirkwood of Kirkhope, Lord Porter of Spalding and Baroness Warwick of Undercliffe – Written evidence (RIS0069)

Lord Best, Lord Kirkwood of Kirkhope, Lord Porter of Spalding and Baroness Warwick of Undercliffe – Written evidence (RIS0069)

Submission to be found under “Baroness Warwick of Undercliffe, Lord Best, Lord Kirkwood of Kirkhope and Lord Porter of Spalding – Written evidence (RIS0069)". 
I am writing to you in your capacity as Chair of the House of Lords Liaison Committee, and leader of the review of House of Lords investigative and scrutiny committees, to express the Biochemical Society’s support for the work undertaken by the Science and Technology Committee and sub-committee. The House of Lords Science and Technology Committee and subcommittee play a fundamental role in ensuring that matters relating to science and technology remain high on the agenda of both Houses. The recent inquiries into Life Sciences and the Industrial Strategy and EU membership and UK science after the referendum highlight the Committee’s important role in scrutinizing Government policy and informing future strategy. It is imperative that robust scientific evidence remains at the heart of Government policy, to foster an environment where research and innovation can continue to flourish. Brexit will undoubtedly pose some very real challenges for the UK’s Science and Technology sector and it is vital that the House of Lords Science and Technology Committee continues to support this foundation of our economy.

March 2018
Re: Review of investigative and scrutiny committees’ inquiry

As Convenor of the Lords Spiritual I am happy to offer some general thoughts that I hope will be of use to you and to the Liaison Committee in its review of investigative and scrutiny committees.

In recent years bishops have increased their work on committees. In addition to the Communications Committee, on which bishops have served successively since its creation, Lords Spiritual have served on ad-hoc committees on Artificial Intelligence, NHS Sustainability, Financial Exclusion, and the new committee on Regenerating Seaside Towns. Ad-hoc committees tend to work better as far as bishops are concerned, given that they are for defined periods of time (so easier to plan involvement with) and are focused exercises on a topic that the serving bishop has either a formal role within the church or a developed interest in relation to. I would expect that this applies similarly for other members of the House who have significant and competing external responsibilities. One of my colleagues on the Bishops' Benches who has served on an ad-hoc committee told me that it made a valuable contribution to the work of the House by being able to receive a large volume of evidence (oral and written) and discuss it in a manageable group, meaning that the ensuing report went way beyond what could have been achieved through a debate alone.

I have few remarks to make about the process of committee selection and governance, except to observe that the criteria for membership of committees, for those outside the usual channels, does seem a little opaque. The assumption often made that bishops should use places allocated otherwise for the crossbench does also need to be looked at.

One of the advantages of Lords committees has always seemed to be their distinctiveness from the committee system in operation in the Commons. Their emphasis on subject areas that cut across departments ensures that the Lords complements the work of the Commons, instead of competes with it. In any re-evaluation of the role of Lords committees I would hope that this principle is guarded.

I must also stress the great opportunities afforded by Lords committees for performing outreach functions for Parliament as a whole and for the Lords specifically. Committee visits to parts of the country far from Westminster, to take evidence and meet with young people and with communities not often represented or invited to engage with our Parliamentary processes, is an area that could do with some greater attention. Alongside but complementary to that is the need to up the game for the Lords on the media and communications front. I concur with the view expressed by some others who have given evidence to your inquiry, that reports and findings from Lords committees, especially the ad-hoc ones, don't quite get the coverage that their quality often merits.
To me the key function that Lords committees can perform is to provide a platform and a forum by which the big-picture, forward-facing and nonpartisan issues can be explored. We have seen some of this work in the ad-hoc committees that have been created to date. A committee system that encapsulates in its function and focus what is the fundamental essence of the Lords’ offer, namely expert, non-partisan, independent scrutiny of issues not determined solely by an election cycle, would be a system that is faithful to our guiding principles and embodies the greatest integrity.

**July 2018**
May I propose a committee to examine the issues that arise from the dominance of global Internet players like Google, Facebook and Amazon; and how they might be regulated. I have in mind a range of issues -- taxation; fair competition; paedophilia; terrorism; fake news

March 2018
Summary

This submission concerns Committees’ role in scrutinising international treaties, and is based on the outcomes of a recent conference on Treaties, Brexit and the Constitution.

Brexit brings a new range of treaty challenges. As the UK withdraws from one body of treaties and seeks to conclude new ones, rights will be lost and gained, regulation will be altered, and foreign policy issues such as trade and fisheries addressed at a domestic level for the first time in decades. This will largely be done by the UK Government with little formal involvement from Parliament.

Currently, for most non-EU treaties, Parliament is notified only when treaties are signed, and then has the power only to object to the UK proceeding to be bound by them (ratification), and to pass any legislation needed to implement them. The Government has no obligation to inform Parliament or the public when it starts negotiations, or to provide updates, let alone take into account any views expressed by Parliament. And Parliament has few structures or processes for scrutinising the Government’s treaty actions. Yet the Government’s action in concluding a treaty results in binding international obligations for the UK, which may be applied by UK courts.

Many people believe legislatures are inherently ill-suited to detailed engagement in the process of treaty negotiation, ratification and revision, since each participant government has to negotiate a single text on which they agree, and post-negotiation amendment is difficult. However, legislatures such as the Australian, Canadian and European Parliaments have demonstrated that it is possible to combine democratic accountability with sufficient flexibility to allow the Government to strike deals.

Through the European scrutiny process, the UK Parliament holds the Government to account without tying its hands. Yet Brexit will mean losing the limited democratic scrutiny currently provided by the European scrutiny system
for EU external agreements, as well as that provided by the European Parliament.

We conclude that it would be a step backwards if there were to be less accountability after Brexit for treaties dealing, in a large part, with exactly the same issues handled through this process.

We therefore make recommendations here which we hope will enable Parliament to retain a similar level of control to that which it currently enjoys over these crucial areas of public policy.

- Parliament should consider creating new mechanisms to scrutinise the Government’s proposed treaty actions – whether simply a specialised secretariat to advise the relevant committees, or additionally a new Treaty Committee in either House or as a Joint Committee.
- Negotiating, approving, enacting and implementing treaty obligations could all be taken into account, as well as issuing reservations and derogations and withdrawing from treaties.
- Parliament should also consider requiring the Government to keep it informed at key stages in the process.

We also consider whether reform might enable a more determined recognition of the devolved nature of the UK under its current constitutional arrangements and how interested parties could contribute to Parliament’s deliberations. Further to the Inquiry’s terms of reference, we consider the scope for inter-parliamentary dialogue, and the potential to develop a national conversation on Britain’s treaty obligations.

Whilst there has historically been little appetite for treaty scrutiny in Parliament, there are signs that Brexit is increasing that appetite. We believe that the opportunity presented by the Lords’ review of its committee system is an ideal moment to meet the challenge that Treaties will soon present.
Introduction

1. This submission concerns Committees’ potential future role in scrutinising international treaties. It is based on the outcomes of a conference on Treaties, Brexit and the Constitution held at Jesus College, Oxford, on 23 March 2018. The authors are hugely indebted to the distinguished academics, practitioners and parliamentary staff who contributed to that conference, but we submit this evidence in our personal capacity, and bear full responsibility for any errors or omissions it might contain.

2. Brexit is a treaty problem. The UK will withdraw from one body of treaties and, it hopes, conclude new ones.

3. Brexit is intended to give UK lawmakers a greater measure of control over laws which are currently made by the European Union. Issues such as agriculture, fisheries and trade are currently closely regulated by European laws, which apply in the UK. After Brexit, in order to regulate international issues like fisheries and trade, the UK Government will need to conclude treaties, instead of relying on EU law-making processes.

4. Treaties often have a direct impact upon often individuals and businesses. They embody important policy choices that may affect the regulatory environment in which individuals and businesses operate. Some treaties create direct individual rights or obligations. The UK has a dualist system of treaty reception. This means, in general, treaty obligations only take effect in domestic law in the UK when legislation is passed to implement them.

5. However, treaties can affect the rights and duties of UK citizens, regardless of whether Parliament incorporates them in legislation. Where possible, judges interpret legislation so as to make it consistent with the UK’s international obligations[2], including treaty obligations. The same principle guides the development the common law.[3] Parliament’s omission to give domestic effect to treaties also affects UK citizens, who do not enjoy the rights that their government has secured for them. Such an omission also potentially places the UK in breach of its international obligations and thus affects the UK’s international relations.

6. Over the last 46 years, the UK’s membership of the European Union has relieved pressure on Parliament’s treaty procedures. Foreign policy problems in areas of EU competence, such as trade and fisheries, were addressed either by EU law, within EU member states, or by the EU concluding treaties with third States and then legislating to implement. The UK itself did not need its own treaties. Although Parliament carefully scrutinised EU powers, non-EU treaties attracted far less attention.

7. The Brexit negotiations have brought Parliament’s treaty powers back into the foreground. The process has also drawn an unfavourable comparison between Parliament’s powers and those of the European Parliament. Although Parliament ultimately decides whether to change...
domestic law to implement a treaty, it has limited access to information, and limited input into treaty negotiation or approval.

8. It is government practice not to ratify a treaty unless it has already secured any necessary implementing legislation. Hence, Parliament can effectively stop ratification by refusing to pass legislation. However, this only applies to treaties that require implementing legislation, and by then would be too late to change the terms of the treaty. Parliament is therefore left with decisions only on the 'how', not the 'why' or the 'what', of treaty obligations.

9. The new statutory treaty procedures in the Constitutional Reform and Governance Act 2010 take only minimal steps to improve this, and Parliament has never used these powers.

10. The politics of the Brexit negotiations suggest growing support for greater Parliamentary involvement in treaty behaviour. The Miller[4] case reaffirmed the principle that only Parliament has the constitutional authority to authorise treaty changes in domestic law that bear on existing legal rights. Resolutions or votes cannot change domestic law, nor amend existing rights. Since then, the Government’s European Union (Withdrawal) Bill has been amended to require Parliament to pass a statute approving the final terms of the UK’s withdrawal from the EU before Ministers could use their power to make delegated legislation to implement a withdrawal agreement.

11. Since the UK joined the EU, it has made significant changes to its own constitution. In 1972 the UK was a unitary state and fisheries, for example, were the responsibility of the Minister of Agriculture, Fisheries and Food in London. Today, issues such as agriculture and fisheries are divided between London, Cardiff, Belfast and Edinburgh. At present, the Joint Ministerial Committee (JMC) on EU Negotiations and the Joint Ministerial Committee on Europe provide scope for the devolved governments to provide input on UK treaty matters. The devolved governments have expressed a desire to strengthen the machinery of the JMC, particularly in the aftermath of the EU referendum. There is no comparable institution which enables devolved legislatures to participate in treaty scrutiny, perhaps in cooperation with Westminster.

12. Brexit will increase the pressure on Parliament’s treaty procedures. A greater number of treaties will require more exacting scrutiny and those treaties will include politically controversial matters. Governments already face challenges in persuading the public that compromise is needed to achieve foreign policy goals. If people are not satisfied by the compromises embodied in the Treaty of the EU, there is little reason to suppose that they will be satisfied by the presence of chlorinated chicken in supermarkets, or the need to grant freer movement of people in return for market access. Unless the Government can convince other states that it can translate international obligations into domestic law, it will find it harder to persuade them to conclude treaties.
13. Accordingly, there is a growing body of opinion that Parliament should create new mechanisms to scrutinise the Government’s proposed treaty actions. This could be simply providing a specialised secretariat to monitor and advise on treaties and inform the relevant committees; or it could involve establishing a new Treaty committee in either House or as a Joint Committee, to sift and/or scrutinise, inquire into and report on proposed treaties.

Problems

14. Ultimately, we face two kinds of problems – problems of democratic accountability and problems of foreign policy. Each problem presents opportunities for reform.

15. First, the constitutional problem we face is a problem of democratic accountability to Parliament. As we repatriate EU competences, we will increasingly need to make policy by treaty. In turn, litigation in our courts will increasingly be framed by treaties, rather than by EU law. It is important that Parliament’s procedures for scrutinising these new rules employ the same exacting care we apply to legislation. For reasons we set out over the next twelve paragraphs, we do not believe our current structure is equal to the task.

16. A connected problem of democratic accountability is the highly centralised procedure for treaty scrutiny in the UK. It is common for regions to have formal input into treaty negotiation and accession. Our present treaty procedures were devised before Britain devolved power to the regions. The devolved administrations are currently demanding a more formal and substantive role in shaping international agreements that affect them. But the devolved legislatures will also have an interest, though mechanisms for them to be involved are even further from being fully explored.

17. Second, if we will fail to manage the politics of issues such as trade, food safety and ecology then we will face foreign policy problems. We will find it harder to negotiate treaties, and their terms will be less favourable to us. If the terms of a treaty prove unacceptable to the general public, Parliament may simply decide not to enact legislation to implement the treaty. That could leave the government unable to ratify the treaty, or, if it had already done so, it could leave the UK in breach of its international obligations. Public outcry might also persuade Parliament to try to unpick the provisions of a treaty that has already been implemented, as in our first Case Study, below. Unless the UK’s international partners know the Government has the full faith and confidence of Parliament when it negotiates agreements, and unless that confidence is reasonably durable, our international negotiations are going to get harder.

18. Behind these two challenges lies a deeper problem of engagement. We hear unanimous reports that there has historically been a lack of appetite in Parliament for scrutinising treaties. Perhaps international
agreements are considered to be in the domain of the Government. Perhaps Parliament’s having the final say breeds complacency. Because Parliament ultimately decides whether to embody treaty obligations in legislation, perhaps it does not feel the need to engage with the front-end of that process. Furthermore, when the Government initiates a debate on a treaty, it is usually because implementing legislation is required. This means the debate is focussed on the Bill and not on the treaty itself. For these reasons, and others too, there is a sense that Parliament has already been able to engage with treaties when it wishes to.

19. Further, we hear unanimous reports that parliamentarians are not generally familiar with the treaty process. For example, terms such as “approval” and “ratification” are used interchangeably. This lack of information can lead to apathy.

20. A final problem is that treaties are coming to the fore at a time of acute political sensitivity over Parliament’s powers in respect of one set of treaties in particular. Britain’s withdrawal from the European Union Treaties is of the greatest importance. However, the way Britain negotiates, signs, ratifies and implements future treaties could be just as important. It is a broader and deeper issue than that litigated in Miller[5]. We ought to be able to consider this issue dispassionately, without rehashing that debate.

Case Study 1: UK-US Extradition Treaty of 2003

21. The UK–US extradition treaty was signed on 31 March 2003 and came into force in April 2007, following ratification by the Senate. It was laid under the Ponsonby Rule, and legislation was passed to implement the UK’s obligations under the treaty, but it was only when extraditions began that Parliament seriously responded to arguments that the treaty created asymmetrical obligations. Four years after the treaty came into force, and more than seven years after signature, the Home Secretary commissioned an independent inquiry into the Treaty’s provisions.[6] Thereafter, the Joint Committee on Human Rights recommended that the Government urgently renegotiate this article “to exclude the possibility that extradition is... granted in cases such... where the UK ... authorities have ... made a decision not to charge ... an individual on the same evidence adduced by the US authorities”[7] among other concerns.

The Constitutional Reform and Governance Act 2010 – An Inadequate Solution

22. A veto on the final form of implementing legislation is not the same as scrutiny of treaty-making. Negotiation, signature, withdrawal, derogation; and issuing reservations and interpretive declarations could all potentially require parliamentary scrutiny. Indeed, this may be required
by the decision of the Supreme Court in *Miller and Dos Santos v. Secretary of State for Leaving the European Union*[^8]. The decision *not* to sign a multilateral trade or climate treaty, for example, might also demand parliamentary scrutiny.

23. Our current procedures for scrutiny are based on a constitutional convention laid down in the 1920s. The Ponsonby Rule is a constitutional convention that dictates that international treaties normally have to be laid before Parliament before ratification. The Constitutional Reform and Governance Act 2010 (CRAG) gave the convention the force of law. The treaty provisions of the CRAG Bill did not attract widespread or acute interest. There were 11 responses to the Public Consultation on the Bill, of which several were former FCO legal advisers. Debates on this part were poorly attended: between 12 and 24 Members were present at any one time. The Bill then went into wash-up before the 2010 general election; most of its clauses were never properly debated.

24. The final form of the Act reflects that contemporary lack of interest. Section 20 of CRAG empowers Parliament to prevent the ratification of a treaty by affirmative resolution. However, no resolution has ever been tabled under CRAG. No meaningful debate has ever taken place during the s.20 period. CRAG does not even contain the power to table a motion against ratifying a treaty. It grants parliament no very limited information about the treaty. Section 24 requires government to lay an Explanatory Memorandum. However, Parliament has never specified what the memorandum must contain and they are often no more than two sides of paper. In sharp contrast to the templates for secondary legislation, the explanatory memoranda for treaties are often no more than two sides of paper. CRAG contains no right to a debate on treaty provisions and the Government has no obligation to provide parliamentary time. Even if a motion could be secured, this would give Parliament the choice of taking the treaty or leaving it. And even then, CRAG does not apply to all treaties[^9].
Case Study 2 – UK-Colombia Bilateral Agreement for the Promotion and Protection of Investments of 2014

25. This treaty was laid in accordance with CRAG. Following a House of Lords Secondary Legislation Scrutiny Committee report, Lord Stevenson of Balmacara tabled a Motion to Take Note of the Treaty, which was debated on 30 July 2014. The debate reflected the input of civil society groups. But, because the motion did not contain a resolution that the treaty should not be ratified, the treaty was duly ratified, in compliance with CRAG, on the 10 July 2014, three weeks before it could be debated. Lord Stevenson noted “we are in a situation that is slightly perverse in the sense that the treaty has already been enacted and we are not in the position of asking the Government to reconsider it”.

Case Study 3: UK–Libya Prisoner Transfer Agreement of 2008

26. This treaty was laid before Parliament for the full Ponsonby period. However, due to what has been described as a clerical oversight by both governmental and parliamentary officials, the treaty came to the attention of the Joint Committee on Human Rights well into the 21-sitting-day period. The JCHR complained to the FCO in writing, but the Government did not extend that period. For this reason, the treaty was not properly scrutinised by the JCHR.

Case Study 4: Protocol 15 to the European Convention of Human Rights

27. In this case, the JCHR received the explanatory memorandum for the treaty in good time and prepared a report. The report recommended that the UK should ratify the treaty, and commended the Government on a negotiation which successfully amended the Preamble to the Convention. Nevertheless, it stressed that, in view of the importance of the Protocol, Parliament ought to debate the matter. The Government refused to provide government time for a debate, and responded that it was for the Committee to propose a motion and secure time for a debate on it. It appears that the Government was not necessarily unwilling to debate the treaty (which the JCHR was not opposed to in principle) but it was not willing to use its own time for Treaty business.

Recommendation: New Mechanisms for Parliamentary Scrutiny
28. Parliamentary Committees could potentially play a vital role in addressing the problems outlined above.

29. At present, no single Committee has responsibility for monitoring or scrutinising the Government’s treaty actions. This is not least because treaties are handled by many different government departments – not only the FCO. Several Committees have, however, taken an interest in specific treaties or types of treaty, including notably the Joint Committee on Human Rights.

30. Nor is there extensive expertise on international law and treaties in the staff of either House. A specialised Treaty Secretariat could support existing Committees by monitoring, analysing and advising on proposed treaties. Experience from other countries, such as Australia, shows that secretariats of this kind build up knowledge and expertise over time, as well as constructive relations with government officials.

31. Additionally, Parliament could establish ad hoc committees for particularly important or controversial treaties.

32. Or it could set up a new Treaty Committee in either House or as a Joint Committee, to sift and/or scrutinise, inquire into and report on proposed treaties. A Commons Committee would have greater perceived democratic legitimacy; a Lords Committee might be more able to find time on the floor of the House, and might contain greater expertise. There could be both; or a Joint Committee could combine these respective advantages, and our evidence suggests that the Joint Committee is the generally preferred approach.

33. Different categories of treaty would need different procedures, according to how important and/or controversial they are. For example, it would be counter-productive for Parliament to have to scrutinise every ‘template’ treaty on social security, mutual taxation or mutual legal assistance. The EU Act 2011 is a salutary example: it requires Parliament to pass an Act wherever more powers are to be granted to the EU; but this results in Parliamentary time being taken up with mundane matters such as archives. In any scenario, the risk would be that greater scrutiny would be seen as interfering with the Government’s proper role and result in delays.

34. A vital component is access to information. The European Parliament, for example, has gradually increased the requirement for the other EU institutions to provide it with timely information throughout the treaty-making process, and this is what makes its democratic scrutiny possible. In the UK, the only obligation is to provide an Explanatory Memorandum for every signed treaty laid before Parliament. There is no template for what these should cover, and they can be very brief.

35. Should a Treaty Committee simply sift treaties and send them to the relevant specialist Committees for scrutiny, or should it be able to conduct inquiries and make recommendations itself? The former would
‘mainstream’ treaties and take advantage of specialist subject knowledge; the latter would build up expertise in and awareness of treaties generally. Or there could be a hybrid model, in which a Treaty Committee sifted all treaties and sent as many as possible to specialist Committees, but handled some treaties itself, such as overarching treaties or those without a clearly responsible Committee.

36. Should a Treaty Committee have a ‘scrutiny reserve’ for treaties? At present, UK ministers in the EU Council are not supposed to agree to the EU opening negotiations on, or signing, an international agreement unless the scrutiny committees in both Houses have released the relevant documents from the scrutiny reserve. There could be a post-Brexit replacement for the scrutiny reserve, to apply to new UK international agreements, potentially giving Parliament some additional formal role more towards the opening phases of the negotiations.

37. One way for the views of the devolved legislatures on treaties to be taken into account would be for them to be connected to a new UK Treaty Committee. Federal states such as Australia provide some models as to how the consequences of entering into treaties for sub-state entities are raised in the national Parliament. Such a committee would also provide a focal point for interested parties to lobby their representatives on treaty matters (see Case Study 2 and Footnote 13.) A UK Treaty Committee has the potential to promote inter-parliamentary dialogue on treaty matters and to develop the national conversation on Britain’s treaty obligations.

Conclusions

38. This submission has set out some proposals for how Parliamentary Committees might deal with the treaty problems of Brexit. According to our evidence, the best option is a new Joint Treaty Committee, with the following features:

- a specialised secretariat
- an obligation on the Government to provide information at key stages of the treaty negotiation process.
- a remit covering all treaty actions including negotiating, concluding, issuing reservations and declarations, derogations, and withdrawing, at least for certain categories of treaty
- the power both to sift treaty actions for other Committees to scrutinise and to conduct inquiries and make recommendations itself, and
- links to the devolved legislatures

As we have set out, there are of course many other options and variations. And there may be concerns that any increased scrutiny is inappropriate and would risk delay. However, in our view the most important thing is that Parliament is aware of the treaty issues of Brexit, and seriously considers options for democratic scrutiny of treaties to replace and perhaps expand on those that will be lost with Brexit.
April 2018

[1] The authors do not claim to speak for Bristol University, Oxford University, or the House of Commons Library.


[8] Note 4 above

[9] See s 23, which exempts treaties under certain statutory regimes.


[12] Note 9 above at GC644

Executive Summary

My submission states that if we were not leaving the E.U. then I would have very few recommendations for changes to our committee structures, which work extremely well. Whilst it is the case that the work of our committees and the excellent reports we publish do not get the attention they deserve there is little we can do about that and we should concentrate our efforts on those things, which we might be able to change. Most of my submission relates to proposed committee changes after we leave the E.U.

When we leave the E.U. our 6 E.U. Sub-committees scrutinising proposed E.U. legislation will have nothing to do. All Statutory Instruments will be UK made and all of them will be then subject to judicial review because they have not received proper parliamentary scrutiny, unlike primary legislation. I argue that it is wrong for the courts to overturn an S.I. passed by Parliament and if the justification for doing so is because we have failed to scrutinise it properly, then we should change our scrutiny procedures so that the courts no longer have that justification.

I propose that the S.L.S.C. be given a sifting power to look at all S.I.s and select those for greater scrutiny. Those selected would then be subject to possible amendment and a vote. I outline ways to stop this power being abused by opposition parties to grind Government business to a halt and I suggest voting procedures to cope with the increased number of votes.

I suggest that those S.I.s not selected be "certificated" by the S.L.S.C. (and its equivalent in the Commons) that the S.I.s had received the appropriate level of parliamentary scrutiny and were then not subject to judicial review. It might require an Act of Parliament to make the procedure invulnerable to legal challenge.

This is a radical proposal which, unless there was a proper check, would give too much power to the Lords. I therefore propose that if any amendments were made in the Lords or the S.I. was voted down, then a single vote in the Commons, in a Committee, would be the final say. There would be no ping-pong as with primary legislation.

I argue that the whole judicial review industry is gearing up to challenge all UK made S.I.s and whilst the Government might not like Parliament having this new authority, making changes in Parliament is better than having the S.I. overturned in court. It would be in the Government’s interest to agree this procedure.

But I go back further in the S.I. formation process and suggest that we create some small specialist joint committees who would work with Government departments on preparing the S.I.s in the first place. This would really utilise the
experience and specialist skills of Peers and I envisage it working like a draft bill committee except that, instead of a draft S.I., the committee and the departmental officials would have a memorandum of the aims and purpose of the S.I. I argue that this informal input would not tie the hands of Peers (and MPs) who participated since they would be free to speak and vote against the final S.I. which emerged.

I make a number of other recommendations on creating small Enquiry Panels to undertake certain public enquiry roles, similar to Hybrid Bill Committees and the Hillsborough Independent Panel, doing more Consolidation Bills and a lot more Post-legislative Scrutiny, jointly with MPs because that might get us better buy-in for any proposed changes.

Finally I suggest that we should get polling or focus group experts to conduct a study to see if our contributions to Facebook, Twitter and other so-called social media actually enhance the reputation of Parliament or if we are merely adding ourselves to the “fake news” and “celebrity scandal” muck heap.
Summary of Recommendations

1. Leaving the E.U. gives the Lords (and the Commons) a golden opportunity to do things differently as far as scrutiny of secondary legislation is concerned and create new and different select committees. This is a once in a lifetime opportunity and we must plan to be ready to implement change by the end of 2018. *(Paragraphs 1-15)*

2. The answer to the 1st question is not that the committee structure "should" be changed but that it must be changed since six of our most important E.U. Scrutiny Sub-Committees and the Select Committee will have absolutely nothing to do at some point after March 2019. *(Paragraphs 16 – 20)*

3. We should change our Parliamentary scrutiny procedures for Statutory Instruments so that the courts do not overturn them on judicial review applications on the grounds that Parliament has failed to scrutinise them properly. *(Paragraphs 21 – 30)*

4. An enhanced Secondary Legislation Scrutiny Committee, or Committees, should be given power, post Brexit, to certify that certain S.I.s had received adequate Parliamentary scrutiny and had the status of primary legislation in that their legitimacy could not be challenged in the courts under judicial review, but that other S.I.s must receive further scrutiny where they could be subject to amendment and a vote. *(Paralaphs 31 – 35)*

5. For those S.I.s selected for scrutiny, including possible amendment and a vote, that the amendments should be debated in The Grand Committee and that the voting be by Deferred Divisions the following Wednesday, adopting the same procedure as the Commons. *(Paragraphs 36 – 42)*

6. If the Lords is given the power to amend and vote on selected S.I.s then the Commons must be given the power, in a committee if necessary, to overturn any Lords decision and that Commons decision is final without any further debate in either House. *(Paragraphs 43 – 46)*

7. We should create about six specialist committees to work with the Government departments which produce the most S.I.s and assist the departments with the initial formation of these S.I.s similar to a draft bill committee but getting involved at an even earlier stage. *(Paragraphs 47 – 54)*

8. We should retain the E.U. Select Committee to do the same task for the E.U. as the International Relations Committee does for the rest of the world. In addition we may need a couple of technical sub-committees to scrutinise those E.U. Agencies where we will still play a part. *(Paragraphs 55 – 56)*
9. We should consider providing for Enquiry Panels composed of 5 – 7 Peers, Peers and MPs or Peers, MPs and lay members to conduct enquiries where a full-scale public enquiry is neither necessary nor appropriate but some sort of enquiry is needed and we should be guided by the Hillsborough Independent Panel model. (Paragraphs 57 – 63)

10. We should cease to use the term “Ad-Hoc Committees” and substitute instead “Special Enquiry Committees.” (Paragraphs 69 – 71)

11. We should not get hung up on the balance between ad-hoc and sessional committees and how long they should run. All that matters is that we have the resources both in terms of Peers and staff to service the committees. We should have as many as there are appropriate matters to consider and resources to cope. (Paragraphs 74 – 75)

12. We should do much more post-legislative scrutiny and possibly have joint committees with the Commons in order to get MP buy-in and therefore a greater chance of the final report being implemented. (Paragraphs 76 – 78)

13. We should, in co-operation with the Law Commission, do one Consolidation Bill per annum. (Paragraphs 79 – 80)

14. We should conduct a study into whether our Parliamentary contributions to Twitter, Flickr, You Tube, Facebook and Instagram actually enhance Parliaments’ reputation amongst those who see it and if they encourage people of all ages to be more engaged with democracy. (Paragraphs 81 – 82)

15. No committee should be larger than 13; 7 is the maximum effective size for an investigative Committee but that we should be flexible and not set standard or arbitrary sizes for our committees. (Paragraphs 85 – 89)
**Personal Parliamentary Background.**

1. I was elected to the House of Commons in 1983. I have served on a Commons Select Committee, was a junior whip and Lord Commissioner of The Treasury driving through primary and secondary legislation. I served as a minister in three departments until leaving Government in 1987. As Opposition Chief Whip I was involved in scrutinising legislation from the Opposition's point of view. In my last five years in the Commons until I retired in 2010 I was Chairman of the Joint Committee on Statutory Instruments.

2. I joined the Lords in 2011 and shortly thereafter was made Chairman of the Joint Committee on the Draft Data Communications Bill (The so-called "Snoopers' Charter") I served for two years on Lords Committee E.U.(F) scrutinising Home Affairs and Health. I am currently Chairman of the Delegated Powers and Regulatory Reform Committee. I am making this submission in my personal capacity and not as Chairman of the DPRRC.

**Some Past Observations of the Work of the Lords.**

*My View as An M.P.*

3. Like most MPs, we did not pay too much attention to the House of Lords except when something big or out of the ordinary crossed our radar. We knew that the Lords did good work tidying up badly drafted bills which received inadequate scrutiny in the Commons. When I was a whip in 1987-89 The Leader of the House would not move a motion for a guillotine on a bill unless we had done 100 hours in Committee and had at least one all night sitting. I did that a few times. After 1997 and with a change in House of Commons sitting times all bills are now routinely guillotined, or "timetabled" to use the proper euphemism.

4. It was also common from 2000 on for ministers to tell the Commons that they would move hundreds of amendments in the Lords, so not to worry that the bill was a shambles. In Session 2005-06 the Government moved, in the Lords, 827 amendments on the Companies Bill. In 2006-07 it moved 689 on the Legal Services Bill and in 2010-12, 514 on the Localism Bill, all in the Lords. These are just three examples out of the hundreds of Government amendments moved in the Lords every session because the Commons did not have the time to scrutinise them or the Commons or the Government had found flaws which they could correct in the Lords.

5. The only times Members of the Commons focused on the work of the Lords was when the Lords defeated an item in a Government Bill and we entered "ping-pong." That would excite us for a few days. Interest in the legislative work of the Lords which lasted more than a few days was the Lords defeat of the Hunting Bill and the War Crimes Act where many of us in the Commons thought that the Lords were on the right track.

6. As MPs we were aware that the Lords had various committees which we did not really understand but they had a reputation for researching and publishing very authoritative reports largely based on the extraordinary
expertise of Peers. However these reports never got traction in the media. As a departmental minister I worried about Peers, especially legal ones, amending parts of my bills but never about a report which may have been highly critical of my policy since no-one in the media paid much attention to them.

My View As a New Peer.

7. As most former Members of the Commons now in the Lords will admit, the working methods of the Lords come as a shock and takes some understanding. At least it requires one to drop some misconceptions which one had as an MP.

8. After a few weeks I concluded that the Lords works extremely well and was greatly underestimated as a Chamber. The correction of flawed bills and detailed scrutiny is superlative. Without straying into a different debate one has to ask, if the Lords did not exist or was full of only elected politicians, who would make those thousands of amendments which the Lords makes every Session?

9. I had the privilege of serving on E.U.(F) brilliantly Chaired by Lord Hannay. The quality of the reports, as with all Lords Select Committee Reports, was first class but did not receive the media, nor House of Commons, attention they deserved. That is still my perception.

10. I had no idea that the Lords did so much E.U. scrutiny work and was surprised to find six specialist sub-committees heavily engaged in it as well as the E.U. Select Committee.

11. I was not aware of the work of the Lords Secondary Legislation Scrutiny Committee although I had known of its existence. Nor did I really know what the DPRRC did before joining it. As an MP I had never heard of it. That ignorance was not unique to me. The DPRRC took the innovative step in September 2017 of sending our report on the delegated powers in the E.U. Withdrawal Bill to Members in the Commons. Since the Committee’s inauguration in 1992 reports were for Peers only. MPs were so impressed with the detailed quality of the Committee’s report on the E.U.W. Bill that the DPRRC has received requests from MPs and Commons’ committee chairs for similar reports on other bills. This is not to suggest that the DPRRC does a better job than any other Lords’ committee; it is just that when a Lords’ committee report crosses their radar, then MPs are impressed with the quality and relevance of it to their deliberations.

12. I found the Lords’ Ad-Hoc and Post-legislative Scrutiny Committees to be odd beasts since they have no Commons’ equivalent. However after seeing them in action and reading their reports I think that they are a vital part of overall Parliamentary scrutiny and as important as Commons Select Committees. The pressure on MPs is to deal with the crises of the present. They have no time, and there is no political mileage, in reviewing the decisions of the past.

13. I do not suggest it as an alternative since there would be unjustified accusations of bias but, perhaps, if special Lords Committees had been set
up to investigate BSE, the Iraq War and the Bristol Royal Infirmary, to
give just three examples, then they would have reported within 12
months, been just as thorough and cost a fraction of the price. The recent
Hillsborough enquiry was not a public enquiry but a “panel” and the
conclusion was sound, speedy and cheap. As we have seen in two public
enquiries recently there is disgraceful hounding of enquiry chairs whom
one side or another does not consider to be independent enough.
Therefore whilst there is scope for special Ad-hoc Lords Committees to do
some work which may have been the province of public enquiries, I accept
that some issues are perceived to be too contentious not to have the
normal public enquiry formula. I will comment on this in more detail later.

14. My conclusion in this section after 35 years experience as a
Parliamentarian in the Commons and Lords is that there is nothing much
wrong with how the Lords operates at the moment in its role of
scrutinising primary and secondary legislation including proposed E.U.
legislation and, if we were not leaving the E.U., then I would have very
few recommendations for change.

Recommendation

15. We are leaving the E.U. and that gives the Lords (and indeed the
Commons) a golden opportunity to do things differently as far as
scrutiny of secondary legislation is concerned and create new and
different Select Committees. For the first time in 40 years we will
have the chance to influence and possibly change many S.I.s
hitherto fore denied to us. This is, like leaving the E.U., is a once in
a lifetime opportunity and we must plan to be ready to implement
change by the end of 2018.

A Golden Opportunity To Do Things Differently Following Brexit.

Q.1 Should the current committee structure be changed?

16. My submission is predicated on the assumption that the UK will leave the
E.U. on 29th March 2019 or some Government functions will leave then
with the remainder being out after an implementation or transition period.
It may be that during the transition period the UK may be implementing
new E.U. laws in which case there will be a role for some scrutiny of E.U.
legislation. If we stay in some bodies like Euratom or Air Safety and
others then there may be a role for a committee to scrutinise those
aspects. However at some point in the near future there will be absolutely
nothing for Lords’ six E.U. scrutiny committees to do. The 72 Peers who
serve on these committees are incredibly knowledgeable on E.U. matters
and we need to harness that experience now for the new legislation, which
will originate only from the UK. Therefore the rest of this submission will
focus on how we can change our committees to do that different scrutiny
and suggestions for more ad-hoc and select committees.

17. I see no need to make changes to the way we scrutinise primary
legislation. There may be contentious issues in bills including Henry VIII
clauses but these are policy issues which can be debated and voted on
and do not require us to change our procedures.
18. What will the Lords do after Brexit to use our incredible expertise currently working on E.U. Scrutiny? The six sub-committees are all doing incredibly worthy work but with the frustration that we cannot change one comma of any E.U. regulations. We can slap the Minister’s wrist for being late with a memorandum or failing to take a negotiation line we suggested but otherwise we are powerless to change anything.

19. The special reports our six sub committees do are exemplary in their analysis and conclusions but rarely change anything either. They are superb pieces of Parliamentary material but they require Commons backing or a lot of public and media support for them to influence or change Government policy. Like it or not, MPs and the media do not pay much attention to Lords’ Committee reports.

Recommendation

20. I recommend that the answer to the 1st question is not that the committee structure “should” be changed but that is must be changed since six of our most important E.U. Scrutiny Sub-Committees and the Select Committee will have absolutely nothing to do at some point after March 2019.

Q.2. What changes are needed in the wake of Brexit? Are committees needed to scrutinise the UK E.U. relationship in future, and if so how?

21. This is a tremendous challenge and an opportunity. The main challenge will be for the Government and it will need Parliamentary help, especially from the Lords if it is to succeed in not having all its secondary legislation challenged.

The Challenge for the Government

22. At the moment most E.U. secondary legislation made under the 1972 Act, is protected from judicial review on the basis that it is not a UK Government Minister exercising his discretion but merely enacting exactly what the E.U. demands. There is no point in individuals or lobby groups seeking judicial review since it cannot be overturned. That will all change. Every new S.I. made after the 29th March 2019 will be made under powers in the E.U. Withdrawal Bill, retained E.U. legislation or other current Acts of Parliament or new ones such as a Fishing Act, Farming Act, International Trade Act and others we may pass before we leave. Already the whole judicial review industry is gearing up to challenge everything it dislikes, on perfectly valid legal grounds, of course.

23. There are a number of grounds for mounting a judicial review challenge. These are: (a) illegality, which is usually ultra vires; (b) fairness; and (c) irrationality and proportionality. As far as the making of Statutory Instruments is concerned a common judicial review complaint is that the minister acted outwith his powers, ultra vires, or failed to consult properly.
24. The latest legal position is set out by Lord Neuberger in *R v The Lord Chancellor* [2016] UK Supreme Court.

The Lord Chancellor had sought to introduce by way of secondary legislation a residence test for eligibility for legal aid. Entitlement to legal aid is determined under the framework set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Lord Neuberger first distinguished between primary and secondary legislation. Primary legislation, by virtue of the principle of Parliamentary supremacy, is immune from challenge in the courts ("subject to arguable extreme exceptions, which I hope and expect will never have to be tested in practice", at para. 20), on the basis that it is "subject to detailed scrutiny, discussion, and amendment in Parliament before being formally enacted..." (at para. 20). The rules are different for secondary legislation, regardless of whether it has to be affirmatively approved by Parliament or is subject to the negative resolution procedure whereby it takes effect a short time after being laid before Parliament unless it is voted down:

"Although they can be said to have been approved by Parliament, draft statutory instruments, even those subject to the affirmative resolution procedure, are not subject to the same legislative scrutiny as bills; and, unlike bills, they cannot be amended by Parliament. Accordingly, it is well established that, unlike statutes, the lawfulness of statutory instruments (like other subordinate legislation) can be challenged in court" (at para. 22).

Lord Neuberger also noted that "[w]hen a court is considering the validity of a statutory instrument made under a Henry VIII power, its role in upholding Parliamentary supremacy is particularly striking, as the statutory instrument will be purporting to vary primary legislation passed into law by Parliament" (at para. 25) and warned that such powers will be interpreted restrictively "if there is any doubt about the scope of the power”.

We have seen that the E.U. Withdrawal Bill and all other Brexit Bills have substantial Henry VIII powers. Indeed bills which have nothing to do with Brexit are now routinely having Henry VIII powers attached as departments seem to have suddenly realised that this is a good ploy to make major statutory changes in future without the time consuming bother of primary legislation. We all accept that with the volume of primary legislation which will have to be amended that Henry VIII powers are essential. It is just the number of them and degree of scrutiny which is in question.

25. The Lord Neuberger judgement from the Supreme Court is binding on all inferior courts and is unlikely to be changed in the foreseeable future. The Government faces the problem that although many of the Henry VIII clauses seem to give incredibly wide scope for ministers to amend primary legislation, in theory narrowing the scope for an ultra vires challenge, it is likely that the courts will interpret the use of these powers very strictly.
26. Lord Neuberger’s comment about S.I.s is particularly interesting for our purposes,

"Although they can be said to have been approved by Parliament, draft statutory instruments are not subject to the same legislative scrutiny as bills; and, unlike bills, they cannot be amended by Parliament. Accordingly, it is well established that, unlike statutes, the lawfulness of statutory instruments (like other subordinate legislation) can be challenged in court."

Lord Neuberger does not say and I cannot speculate, but what is it about Statutory Instruments which make it a valid and well established rule that they can be challenged? Is it the fact that they are "not subject to the same legislative scrutiny as bills," or that "they cannot be amended by Parliament?" Perhaps it is both. So it is a legitimate hypothetical question to ask, if Parliament did scrutinise S.I.s and had the power to amend them would the courts take the view that they were then of the status of primary legislation or, at least, were not subject to challenge? Possibly not but it would be bound to influence the court decision. It may be relatively easy to argue that a minister acted irrationally or ultra vires or not as Parliament intended, but much more difficult to argue that Parliament did so.

27. Therefore I suggest that the Government might find it convenient, if not essential, to have the defence of proper Parliamentary scrutiny, as a bulwark against judicial review of all S.I.s when the UK is responsible for all legislation outside the E.U.

The Opportunity for the Lords and Commons

28. Paragraphs 22 – 27 above describe the challenge for the Government. The opportunity is that it gives the Commons and the Lords a real chance to participate properly in the formation, scrutiny and possible amendment of secondary legislation. We could simply continue with our present procedures and the excellent work which the S.L.S.C. (Secondary Legislation Scrutiny Committee) does but we have the chance to invent a whole new S.I. scrutiny and approval system which will benefit the Government, Parliament and all those to whom the regulations would apply. The only people who may not benefit would be judicial review lawyers who may see their work reduced considerably.

29. I make no apologies for that. I find it reprehensible that courts should overturn Statutory Instruments approved by Parliament. However if the justification for that by the judiciary is because Parliament did not scrutinise them adequately and did not have the power to amend them, then the answer is in our own hands; we should change our systems so that we have the power to amend and scrutinise. I have no objection to a court interpreting law where it may be unclear – that has been the traditional role of our courts but we should change our systems so that courts can no longer overturn a law because we in Parliament have failed to do our job properly.

Recommendation.
30. **I recommend that we change our Parliamentary scrutiny procedures for Statutory Instruments so that the courts do not overturn them on judicial review applications on the grounds that Parliament has failed to scrutinise them properly.**

**Scrutinising and Amending S.I.s. A New System.**

31. I suggest that we build on this mechanism in the future. S.I. scrutiny committees of both Houses should look at all S.I.s and recommend those for debate and that would include the possibility of amendment. Each House may come to different conclusions. If the scrutiny committees studied an S.I. and concluded that it did not warrant further debate or amendment, then that S.I. would be certified as having being properly scrutinised by each House and would be immune from judicial review. It may require an Act of Parliament to set out this procedure and ensure that the new certification procedure would prevent S.I.s made under it from being judicially reviewed. It would not be acceptable for the courts to say that Parliament had failed to scrutinise it properly if each House certified that they had scrutinised it in their Committee and there was no justification for further scrutiny on the Floor of the House, The Moses Room or S.I. Committee and that the S.I. was not one which should be subject to possible amendment. That certification by the Committee on the validity of the S.I. would not be subject to any court review, as with primary legislation. This is a quite separate position from a minister using his powers under an S.I. to make a decision, which may be regarded as ultra vires, irrational or did not follow due process. These would continue to be subject to judicial review. It is just the S.I. itself which would be exempt.

32. Two questions arise from my suggestion in 32 above. Would this pass the Lord Neuberger test as set out in *R. v. The Lord Chancellor* and why would the Government sign up to a system whereby every S.I. could be amended by the Commons and Lords? I think the procedure in 32 would satisfy the Lord Neuberger test or at least it would be a very powerful Government defence in any judicial review of the S.I. in question. This suggestion is not set in concrete; if the Supreme Court, in any future case, suggested that the procedures I have suggested were still inadequate in Parliamentary scrutiny terms than we could tweak them again with further or greater scrutiny, whilst still retaining the efficiency of secondary legislation.

33. The Government should not be afraid of this proposal because scrutinising and amending S.I.s in Parliament is better than losing them in court. Second, neither House will have the stomach for scrutinising and amending every or even most S.I.s. The best guess on the 1,000 S.I.s which will come through in the Brexit legislation is that 200 at most will get detailed scrutiny. Most S.I.s are boring, technical instruments which do not require political scrutiny. The J.C.S.I. (Joint Committee on Statutory Instruments) does a superb job of rooting out those which are technically flawed or ultra vires and that should continue and the S.L.S.C. does an equally superb job of looking at the merits. I am simply suggesting that we trust the S.L.S.C., expanded to two or more
committees if necessary, to scrutinise and sift those that deserve further scrutiny by the House and possible amendment. It is therefore likely that there will be a self denying ordinance since most Peers and MPs will not want to waste hours in committee debating routine, non-controversial instruments.

**Recommendation**

34. I recommend that an enhanced Secondary Legislation Scrutiny Committee, or Committees, be given power post Brexit, to certify that certain S.I.s had received adequate Parliamentary scrutiny and had the status of primary legislation in that their legitimacy could not be challenged in the courts under judicial review, but that other S.I.s must receive further scrutiny where they could be subject to amendment and a vote.

**Coping with Extra Debates and Possible Lords’ “vexatious” Votes.**

35. My proposals would mean more Parliamentary scrutiny and debate for those S.I.s which the enhanced S.L.S.C. Committee(s) and the Commons equivalent deemed appropriate. Some of these would be controversial and the opposition would want to vote against them. The Government might be afraid that this would be abused by vexatious votes in the Lords on a range of spurious issues. We can look at the Strathclyde Review for guidance on this. The House of Commons must be supreme. If the Lords amended an S.I. or voted it down then it would return to the Commons for the Commons to have the final say. No ping-pong. Nor need it be debated on the Floor of the Commons. It could be done in any number of Commons secondary legislation scrutiny committees with the vote being on the Deferred Voting System on the pink ballot papers in the “No” Lobby as usual. Handling voting of S.I.s in the Commons causes no special problems.

36. There would be more work for junior ministers but we have a record number of junior ministers in the Commons, probably 30% more than in 1990 with no increase in the overall workload. If we debated many more S.I.s in the Lords then we could overload Lords’ ministers. If that were to happen then the Government would have to make some ministerial adjustments.

37. Of greater importance is how would the Lords handle voting on those S.I.s, which were selected for scrutiny? There is no voting in the Grand Committee and that should not change. Would it be acceptable for Peers to vote on measures, which had not been discussed in the Chamber? The concern must be that if there had to be a debate, even for an hour on those S.I.s undergoing full scrutiny then the Government Business Managers could lose control of the programme. Opposition parties in the sifting committee (the S.L.S.C.) could demand that too many regulations be given the full treatment and that could block the Chamber so that the Government had less time to get through primary legislation. Could a mechanism be invented which permitted legitimate debate and voting on S.I.s, which could not be exploited to grind to a halt Government business?
Option 1. Self Restraint
38. I propose two options. First we could have a system that operated through our usual way of self-denying restraint. If Peers insisted in debating and voting on an excessive number of regulations then the debates on Thursday may have to be sacrificed to make way for them. Some of these debates, which could be sacrificed, would be opposition day debates. That is one way but I am certain that parties and the Usual Channels in the Lords would be able to work out systems so that important regulations got the time they required and that the opportunity to vote down legislation was not abused. Of course there would be a big increase, initially, in S.I.s voted down in the Lords but the Commons could easily reverse those and the votes in the Commons would be decisive and final.

Option 2. Deferred Divisions
39. The second option is to adopt the Commons Deferred Divisions paper voting system for S.I.s. Before the Deferred Divisions’ system was introduced votes on S.I.s debated “after the moment of interruption” in the Commons which was usually after 10 pm and now after 7 pm would be voted on at the end of the debate. There were therefore divisions sometimes very late into the evening and required large numbers of Government supporters to be present even though only a handful of MPs had participated in the debate. The Government therefore introduced the Deferred Division system so that votes on these debates would be postponed to the following Wednesday and done on a ballot paper instead of the usual acclamation and moving through the lobbies. The Ballot is held in the “No” Lobby and is open from 12.30 to 14.00. Names are not recorded, only the numbers voting. Those of us who liked the old system, and may have been involved in keeping the Government up late at night debating spurious issues and forcing votes, were outraged at the change but not one MP would go back to the old system now. Deferred Divisions very quickly became the accepted way of voting on S.I.s.

40. So how could this work in the Lords? If the S.L.S.C. recommended an S.I. for detailed scrutiny and amendment then it would be debated in the Moses Room as usual. Peers would be entitled to seek to amend them. If Peers insisted on their amendment being voted on then the vote would be kept back for deferred voting on a Wednesday, say between two and six p.m., Peers would have a ballot paper listing the amendments and would have a chance to vote on them. The following Wednesday they would have a ballot paper to vote on the S.I. as amended or not. There would be some important S.I.s, as at present, where agreement between the Usual Channels would mean a debate and vote on the Floor of the House.

Recommendation
41. I recommend that for those S.I.s selected for scrutiny, including possible amendment and a vote, that the amendments be debated in The Grand Committee and that the voting be by Deferred Divisions the next Wednesday, adopting the same format as the Commons.
The SLSC recommendation for Detailed Scrutiny would Automatically Mean the Possibility of Amendment and a Vote.

42. Where I said in paragraphs 32 to 42 that the S.I. Scrutiny Committees (SLSC in the Lords) would look at all regulations to suggest those for debate “and possible amendment” I did not mean that the Committees would be making any decision themselves that the S.I. required amending in the Committees’ opinion. The Committees’ only decision would be whether the S.I. should be debated. It would automatically follow that any selected for debate could be amended and voted on.

43. Nor do I intend any change to the normal rules that the Government can make negative instruments immediately, subject only to the 40-day annulment procedure. If within the 40 day period the S.I. Scrutiny Committees decided that an S.I. required further scrutiny then the proposals above would apply and the S.I. would have to be replaced if the Lords amended or rejected it and the Commons agreed.

44. Clearly this is a radical change from what we do at present but some radical changes are coming for the Government and Parliament following Brexit. The Government and many Peers will initially be appalled at the prospect of potentially amending and voting on S.I.s. They will fear that this will be exploited by opposition parties to wreck havoc with the Government programme and create additional embarrassment for the Government that the Lords voted down an S.I. The Lords voting down the Tax Credits Regulations of 2015 caused a small constitutional crisis. The Lords very rarely vote down an S.I. and the Strathclyde Review was commissioned. I am recommending here his third option that the Lords have power to vote on S.I.s with the Commons having the final say. The restraint on Lords overuse of this power is that the Commons would be able easily to reverse Lords amendments and votes making it rather pointless to make spurious changes and have pointless votes.

Recommendation

45. I recommend that if the Lords is given the power to amend and vote on selected S.I.s that the Commons be given the power, in a committee if necessary, to overturn any Lords decision and that Commons decision is final without any further debate in either House.

Getting Involved in S.I. Formation

46. But amending and voting down already formulated and published S.I.s does not nearly realise that potential the Lords has to offer. We need to go further back in the S.I. creation process and this is where I see a new role for our six E.U. scrutiny sub-committees. I suggest that we use some of our 72 spare Peers and an equal number of MPs to create some new joint committees, which would work with Government in the creation and formation of new S.I.s. I do not mean looking at draft affirmatives written exclusively by the Government but involved as early as possible when the Government has the idea that a regulation is necessary. Of course there are occasions when the Government must move very quickly and pass a
rapid order and some made under the Sanctions and Anti-terrorism legislation would be but two examples. However most S.I.s are a long time in the gestation process and that is where the expertise of the Lords can be exploited once again.

47. This system would require a degree of trust between Government Departments and legislators. It is unfortunately the case that within hours of a department telling a Parliamentary committee that it wants an S.I. on x then it will be in the press next day if not on Twitter within the hour. Government would be afraid that the single-issue lobby groups will mobilise to kill it even before it is written. However it is those same lobby groups which will mobilise to kill it on judicial review. Thus there are downsides but the benefits of Parliamentarians being involved at this stage far outweigh the disadvantages.

48. There could be about six specialist joint committees. Some of the current Lords E.U. Committees A – F would be a good starting point for the division of responsibilities but the committees need to mirror the departments producing the most S.I.s. These seem to be, at the moment, the Departments of Transport, Local Government, Treasury, BEIS, DEFRA, DWP and Home Office. However that list must not be set in stone and the Commons and Lords need the flexibility to rapidly change them if a rash of S.I.s on a subject are required. For example, after we leave the E.U. the UK will have to make completely new farming and fishing policies and that will require many S.I.s, initially at least.

49. Nor should we get hung up on the size, the mix of Peers and MPs, which House the Chair is from and the Government having a majority. These committees should be able to co-opt other colleagues depending on the item under consideration. That is because the role I envisage is holding quite speedy enquiries on the issue, taking evidence from expert groups, with the departmental civil servants sitting in and listening. It would be similar to scrutiny of draft bills except that there would not be a detailed regulation to study but rather an explanatory memorandum of the issue to be regulated, the options if known and the aims the Government wanted to achieve.

50. The role of these committees would be to feed in views and have dialogue with the drafters. I do not see the committees having a finished version of the S.I. for them to study or vote on. They would be an expert panel giving opinions to the department and those opinions could be accepted or rejected. Of course the Government must retain the right to draft whatever it wants and reject advice from the committee. In due course when the S.I. was published the members of the committees would be free to comment on them and vote as they thought fit. This would not tie the hands of Parliamentarians who participated in the formation process and they would not be Government stooges. All colleagues would have the absolute right to criticise, amend or vote down S.I.s even if they had been involved in the Committee assisting with formation.

51. What is in this for the Government? First everyone now acknowledges that scrutiny of draft primary legislation works very well, engages stakeholders
and often neutralises potential opponents. The Government, Parliament and people get better legislation. If that works well with draft primary legislation which will then go on to full 1st, 2nd Reading, Committee, Report and 3rd Reading in both Houses how much better would it work for legislation which will get nowhere near that level of scrutiny even if my proposals on detailed scrutiny above were adopted.

52. Second, it utilises the skills and experience of Parliamentarians, especially Peers, and gives colleagues with immense experience in their particular field a chance to use it productively rather than, at present, merely have the power to say that the legislation is badly drafted, misses the point and why did the Government not consult some experts before drafting it. This is a role tailor-made for the Lords post Brexit. These committees could develop a helping working relationship with the Government then we could be seen as part of the solution. I am not suggesting being a Government stooge and we will still have the right to slam the Government if we think that they have got it wrong and vote down those S.I.s selected for amendment and voting. This would not damage our principal role of acting as a check on the Executive. Indeed if we adopt my proposals to be able to amend and vote on some S.I.s then that would be a greatly enhanced check on the Executive. Permitting a number of peers with special expertise to assist the Government make better law is good for Parliament and democracy.

Recommendation

53. I recommend that we create about six specialist committees to work with the Government departments which produce the most S.I.s and assist the departments with the initial formation of these S.I.s similar to a draft bill committee but getting involved at an even earlier stage.

Is an E.U. Committee Required Post Brexit?

54. The final part of Question 2 asks whether or not some committee is required to scrutinise the E.U. post Brexit. The answer is undoubtedly yes. Just as we have an International Relations Committee so we should keep the E.U. Select Committee. Even if we leave all E.U. institutions there would still be merit in monitoring the E.U. as a distinct entity from all other foreign countries. However since it is likely that we will remain in some E.U. organisations or have close relationships with them then we will still need an E.U. Select Committee. We may also need a couple of technical sub-committees to monitor those specialist areas such a new Euratom agreement, Medicines Agency, arrest warrant or any other things where we will be working hand in glove with the E.U.

Recommendation

55. I recommend that we retain the E.U. Select Committee to do the same task for the E.U. as the International Relations Committee does for the rest of the world. In addition we may need a couple of technical sub-committees to scrutinise those E.U. Agencies where we will still play a part.

Creating “Public Enquiry” type Committees.
56. We already have these in both Houses but they are called Hybrid Bill Committees where a small select committee of MPs and then Peers conduct a public enquiry into a major planning issue. The latest example was the High Speed Rail (London – West Midlands) Bill. The Commons appointed a Select Committee of 5 MPs who sat for a mammoth 160 days of sittings over almost two years and considered 2,568 petitions. The Lords Select Committee had 7 colleagues who considered 300 substantive petitions during 101 public meetings on 64 sitting days. That was a mammoth task for both Houses and the Commons is now moving on to consideration of the next phase which is a bill to consider the railway line from the West Midlands to Crewe.

57. The Commons Committee made many recommendations on improving the process of hybrid bills, at the same time as a review was undertaken by the Private Bill Offices of both Houses. Those recommendations have been implemented and they help only the petitioners by making it easier to submit electronic petitions and remove archaic language or Latin legal terms. There is no change to the fact that the committees may have to sit for a long time, conduct many public hearings and get to grips with highly complex proposals. The HS2 Bill was highly controversial but all the evidence seems to be that objectors were satisfied that they had a fair hearing and could state their case. The Lords committee was more selective in those from whom it heard evidence but there has been no suggestion of bias or unfairness.

58. I therefore suggest that this is a model upon which we can build. I am not suggesting that MPs and Peers should do more planning enquiries. That is a punishment we do not deserve. We are involved only because the bills are a mix of public law, which affect private rights. However I do suggest that there may be subjects, other than planning issues, where MPs and Lords in particular could conduct public enquiries. Whilst I am certain that a committee of 5 or 7 Peers would be perfectly capable of conducting a Grenfell type enquiry, I acknowledge that in the current climate that would not be acceptable and there would be even more baseless allegations of establishment cover-up. Therefore one can rule out some politically contentious enquiries. However the best recent example of an exemplary enquiry, which did not follow the standard public enquiry formula, was the Hillsborough Independent Panel.

**The Hillsborough Independent Panel Model**

59. The Hillsborough Independent Panel was set up by the Home Secretary in 2009 and had 7 members. The Rt. Reverend James Jones, the Bishop of Liverpool, and a Member of the House of Lords from 2003 – 2013 chaired it. He reported in 2012 and the report was regarded as masterful. In 2017 he was awarded the K.B.E. and the citation reads as follows:-

"The Right Reverend James Jones, lately Bishop of Liverpool, as Chair of the Hillsborough Independent Panel led what is widely recognised as the most successful inquiry of its type in recent times. His Report led to the quashing of the original inquests, fresh criminal investigations, and the largest ever investigation into the police. He developed a ground-breaking
new forum for engaging bereaved families, making them part of the criminal investigations process while not prejudicing outcomes.

60. The panel did not get bogged down in endless arguments from Q.C.s on all sides but nor did it skip over any vital evidence. Of course Hillsborough was highly controversial and politically contentious, so how did this committee have credibility? First, although it was chaired by a Peer it was a Bishop and Bishops might be regarded as even more neutral than Crossbenchers. Second it had independent members from a range of organisations. This begs the question, would a panel composed only of Peers and MPs have credibility? In the case of Hillsborough, certainly not because of stances some former Members of Parliament had taken in relation to Hillsborough in the past. It would have been regarded as the establishment judging the former establishment.

61. This leads me to the further question, are there circumstances where a panel composed solely or with a majority of Peers or MPs would be acceptable? I believe that there may be non-politically contentious issues where such a panel would be helpful.

62. I cannot compose a hypothetical list and of course most demands for enquiries come about because something big, and possibly contentious, has occurred. I am merely flagging up that I can see merit in Peers, solely or with MPs and lay members, making up some Enquiry Panels where a full public enquiry is not necessary but the matter is such that some sort of enquiry is called for. I particularly hate historical enquiries looking at issues, which occurred many years ago, but if these are to happen then my suggestion for Enquiry Panels as outlined above would be better than some of the past mammoth enquiries we have had.

Recommendation

63. I recommend that we consider providing for Enquiry Panels composed of 5 – 7 Peers, Peers and MPs or Peers, MPs and lay members to conduct enquiries where a full scale public enquiry is not necessary nor appropriate but some sort of enquiry is needed and we should be guided by the Hillsborough Independent Panel model.

Q.3. To what extent does it remain desirable to avoid overlap with the House of Commons?

64. There should be no unnecessary overlap. Therefore only the House of Commons should have Departmental Select Committees. My proposals in answer to Question 2 suggest that each House should have an enhanced Secondary Legislation Scrutiny Committee. They need to be separate since each House will have different views on what is politically exciting and requires scrutiny. My proposals in paragraphs 47 – 52 for S.I. formative committees are for joint ones since it would be a time consuming waste to have two committees and there would not be enough Peers and M.P.s to service them. My proposals for Enquiry Panels in
paragraphs 57 – 63 are for possibly joint ones in some cases. I also suggest that some or all post-legislative scrutiny committees should be joint ones just to get Commons buy in and therefore a greater chance that proposals for change will be acted upon. Apart from these observations I would not seek to change the operation of other committees.

Q.4. What is the best balance between ad-hoc committees and sessional committees?

65. There is no perfect balance and it does not matter so long as we have the numbers, and staff resources, to service the sessional and the ad-hoc committees. All that matters is that the work of both types of committee remain of a high standard and is not diluted by having so many that there are not enough experts, both Peers and Clerks to go round.

Q.5. What is the best balance between short and long inquiries?

66. There is no ideal balance but the default option should be for short on the basis that politicians and public want faster answers these days. It is not entirely irrelevant to point to some big public enquiries which became discredited, not because of the quality of the final report, but because they dragged on indefinitely. We are not in that situation but we should not undertake an enquiry, which is so large or complicated that it takes more, then one year to take evidence and report.

67. The Lords Report on the operation of the 2010 Equalities Act was a massive and authoritative piece of work under the brilliant chairing of Baroness Deetch. They issued a call for evidence on 25th June 2015 and published the report on 24th March 2016, a mere 9 months later. That is just one example of the Lords at its best. Other committees reporting on smaller scale issues can report in a shorter timescale. All that matters is quality and ensuring that we do not undertake an enquiry, which we cannot report on authoritatively within 12 months.

Q.6. What should be the duration of most committees (eg a two or three year term)?

68. I have no view on this.

Q.7. Are the present criteria for examining proposals for ad-hoc committees the right ones?

69. I think that those criteria are excellent and have stood the test of time. All I would add is that the enquiry should be politically, or rather currently relevant although that may be self-selecting. I do not suppose any colleagues will ask for an enquiry into the use of carbide lamps on horse drawn carriages in the Highways Act of 1835 and the Liaison Committee would be unlikely to grant it. However a more intriguing hypothetical question would be whether the Committee might be minded to grant a request for post-legislative scrutiny of Section 72 of the 1835 Act which states,

“If any person shall wilfully ride upon any footpath or causeway by
the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle or carriage of any description, or any truck or sledge, upon any such footpath or causeway; or shall tether any horse, ass, mule, swine, or cattle, on any highway, so as to suffer or permit the tethered animal to be thereon., shall be guilty of an offence"

This is the law which bans cycling on the pavement and some of us think that it maybe long overdue for review or, at least, enforcement. However, on reflection, the test of current and relevant can be left to the discretion of the Liaison Committee.

**The Term Ad-Hoc Should be Changed**

70. I do not like the term ad-hoc. We know that it means “for a specific purpose” but my Thesaurus also suggests, inter alia, opportune, improvised, made up, stopgap and slapdash. Therefore, even selecting the most generous synonyms, there is still a perception that ad-hoc committees are inferior to sessional committees and that their work may be of a poorer quality or less important. We know that is not the case but I suggest that we look for new terminology for ad-hoc committees perhaps along the lines of Special Enquiry Committee or something similar.

**Recommendation**

71. **I recommend that we cease to use the term “Ad-Hoc Committees and substitute instead “Special Enquiry Committees.”**

**Q.8. Are the current arrangements for following-up committee reports (especially those of ad-hoc committees) appropriate?**

72. The arrangements are adequate but they are not effective. However that is not the fault of the House but rather the Government. The Lords Select Committee Report on Post-legislative Scrutiny of the Equalities Act 2010 was regarded by all outside agencies and by Peers as an authoritative masterpiece. The report was sent to the Government and it was debated in the Chamber. The response from the Equalities Department was a disgrace since it ignored most of the points and misrepresented others. Of course as a disabled person I may not be impartial but I was not the only one who though that the official response, just like their evidence to the Committee, was arrogant and complacent.

73. And there the matter rests. A masterful Lords report, a full debate in the Chamber and ignored by the Government. I do not know what can be done to “follow-up” on that. What can the Lords do to give more attention to it and force some action? Perhaps if the Commons were to take it up then that could get more traction.

**Q. 9. What is the correct balance between the flexibility of having new committees each year and more sessional committees?**
74. My answer here is essentially the same as for Question 4; the balance does not matter so long as we have the Peers and the staff to service both types of committees. If there are 10 good ideas one year for ad-hoc committees and we have the people and resources to service them then let us do it rather than be constrained by a view that that is out of balance with the number of sessional committees. Practicality and resources should be the deciding factor rather than a set view of the correct ratio of ad-hoc committees to sessional ones.

Recommendation

75. I recommend that we do not get hung up on the balance between ad-hoc and sessional committees and how long they should run. All that matters is that we have the resources both in terms of Peers and staff to service the committees. We should have as many as there are appropriate matters to consider and the resources to cope.

Q.10. How should the work of post-legislative scrutiny committees be developed?

76. This is a very important question and the short answer is that we should do a lot more of it. I have already commented on the post-legislative scrutiny of the Equalities Act 2010. By the time this consultation is complete I expect that we will see the report by Lord Cameron on the workings of the Natural Environment and Rural Communities Act of 2006. I have read all the evidence presented to that Committee and I am impressed both by the quality of most of the evidence and the questions of colleagues serving on the Committee. I am certain that the report of this Committee will also be a masterpiece and I suspect that it will have some sensible suggestions for legislative changes to up-date the Act. From reading the evidence of the Ministers I am also certain that the findings of the report will be given infinitely more respect than was given to the Equalities Act report.

77. Post-legislative scrutiny is essential and there are a host of major acts which should get this treatment. However there is no point doing it if it gets ignored or the Commons does not engage with it. Therefore I think that this could be an area for joint committees, not because the Lords is incapable of doing it on our own but because it gets MP and Commons’ buy in. A report produced by the Commons and Lords has a much greater chance of influencing Government policy than one produced by the Lords alone.

Recommendation

78. I recommend that we should do much more post-legislative scrutiny and possibly have joint committees with the Commons in order to get MP buy-in and therefore a greater chance of the final report being implemented.

Consolidation of Bills
79. Related to this is consolidation of bills. We do not do nearly enough of this and the Statute Book is a mess. I know that it can be boring, time consuming work but we have colleagues in both Houses who like boring, time consuming work. Of course counsel and lawyers do a lot of the work with Parliamentarians being more of a rubber stamp giving Parliamentary authority to the work done by the Law Commission. I cannot find any major consolidation work done in the last 10 years, nor work in progress on the Law Commission web site. I cannot believe that the Statute Book is so perfect that it does not need more consolidating. Some departments like the Home Office and Department of Work and Pensions are constantly tweaking the law and we should consolidate it. I suggest that the Liaison Committee ask the Law Commission to use their best endeavours to give us at least one consolidation bill per annum.

**Recommendation**

80. **We should in co-operation with the Law Commission do one Consolidation Bill per annum.**

**Q. 11 – 14 Engagement with the public and media.**

81. I have no substantive answers on these questions except to say that I have never been on Facebook or Twitter. I consider these media things to be anti-social and doing enormous damage to young people, as well as providing unregulated platform for paedophiles and terrorists. I hope that we have conducted studies into whether our “reaching out” through these channels is enhancing the reputation of Parliament or are we getting into the gutter with all the “fake news” and rubbish these social media things mass produce. Just because young people are on them does not mean that we get credibility by being on it as well. If it works and young people, or everyone for that matter, think better of Parliament, the work we do and are energised to vote and get involved, then let us do it. But let us analyse its effectiveness and not try to be trendy and relevant for the sake of it. The only thing worse than middle-aged men trying to be trendy with grey, unshaven stubble is a mature Parliament trying to be hip and failing.

**Recommendation**

82. **I recommend that we conduct a study into whether our Parliamentary contributions to Twitter, Flickr, You Tube, Facebook and Instagram actually enhance Parliaments’ reputation amongst those who see it and if they encourage people of all ages to be more engaged with democracy.**

**Q.15 Are the current arrangements for the appointment of Committee Chairmen and members satisfactory, including the “rotation rule”?**

83. I have no reason to believe that they are unsatisfactory. I believe that in accordance with our self-regulating ethos all those who want to be chairmen, and deserve to be chairmen because they are suitable for the task are appointed. The 11 colleagues from all sides of the House on the Selection Committee who make these appointments know who is best placed to take on the roles. They know very well the Peers in their own
group and know enough about Peers in other groups to make informed decisions. We do not need nor want elections for everything since that would bring in unnecessary politics. I prefer the judgement of 11 senior Peers in the Committee of Selection to the uninformed opinion of all Peers in secret ballots.

84. The rotation rule seems to work well also. Whilst it always seems a pity that an excellent chair has to step down that is better than someone hogging the post for some considerable time and depriving others of the chance to serve. Thus, unless there are overwhelming reasons for change, of which I am not aware, then I would not change this system.

Q.16. **What is the ideal number of members for investigative and scrutiny committees?**

85. There is no ideal number and flexibility is the key. I personally think that a committee of 13 is unwieldy and not the best size for an investigative committee. However committees such as International Relations and Economic Affairs attract many Peers with first class knowledge of the subject and having a large committee to accommodate them provides an outlet for their knowledge. I am not suggesting that Committees of 13 are ineffective but they could be just as effective with 11 say. However there is no harm in having 13 as the maximum size. No doubt the Procedure Committee with 19 Members works well but does it need to be so large?

86. The Delegated Powers and Regulatory Reform Committee, which I am privileged to chair, has 10 members. It is my personal opinion that the Committee is as effective as it can be and would not be any more effective if it had more members. The Privileges and Conduct Sub-Committee has 5 members and that is the perfect size for a committee performing that role.

87. Generally I take the view that “ad-hoc” or investigative committees should be smaller, sometimes much smaller, than sessional committees. Trying to question witnesses in a large committee is unwieldy. Just as a peer is getting somewhere with a line of questioning it is time to hand over to another peer who goes off on a different line of questioning. As stated earlier, I would do more post-legislative scrutiny and, depending on the legislation under consideration, I would have committees of between 5 and 11 Peers.

88. Finally in this section I note that the question asks about “investigative committees.” If that means “ad-hoc” committees then I draw attention to my comments in paragraphs 70 and 71 that I believe that the term “ad-hoc” should be replaced with “Special Investigative Committees.”

**Recommendation**

89. **I recommend that no committee should be larger than 13; that 7 is the maximum effective size for an investigative Committee but that we should be flexible and not set standard or arbitrary sizes for our committees.**
Q.17. Should there be a written role description for Committee chairmen and members to clarify expectations from the outset?

90. No. Not necessary and we want Chairmen to take different approaches and do things differently. A written job description would be far too prescriptive for colleagues who should know the job before they are appointed. We are not talking here about someone who has never served in the Commons or Lords previously suddenly being parachuted into the Lords and chairing a committee. Every chairman will have served on a committee in some capacity before the Committee of Selection appoints him or her to the role. They are not naïve strangers and we need to trust the Committee of Selection to pick those who are capable. As I look at current committee chairmen I cannot fault the Selection Committee decisions. The final point is this; what would the job description say? If this idea is pursued then I suggest that a clerk be invited to draft a sample job description and then we would see just how silly and “motherhood and apple pie” it is. I am not suggesting that any of our clerks are silly but that a job description for a chairman of a committee would merely state the obvious – rely heavily on your clerk for advice, know the agenda thoroughly, have a pre-brief with your clerk and advisors, be on time, stick to the agenda, treat witnesses courteously, give everyone a say whilst keeping to time, summarise and set out next steps.

Q. 18. Is there anything committee staff could do to support chairmen and members to be more effective in their committee work?

91. I have chaired the Joint Committee on Statutory Instruments, The Draft Data Communications Bill (a joint committee) and now the DPRRC. In all cases the back-up and support from clerks, officials and lawyers in both Houses was and is superb. It was exactly like the service I got from Private Office Staff and senior officials when I was a minister. In some ways it reminds me of the Army where young officers with one year’s service have greater rank than the Sergeant Major who has 20 years service. However all young officers are advised to rely heavily on the advice of their Sgt Majors. All Clerks and staff seem to work on the assumption that the chairman may not have focussed fully on the papers, may be otherwise distracted, have other things to do, needs it explained in simple language and that he needs his hand holding. They do not deliberately give that impression of course; it is subliminal. But it is an excellent modus operandi because no matter how good we think we may be, the past experience and the authority we may have, we are nevertheless inexperienced, at least initially, in comparison to our clerks and officials who have done the role for years. The current system works – do not change it and do not attempt to write it down in job descriptions or guidance.

Q. 19. How can the timeliness and content of Government responses be improved?
92. We are not in control of this and have very few levers to pull to get the Government to respond faster and more fully. Our only carrot is praise for a response, which takes on board what one of our committees has said, and more praise if the Government says that it is going to implement the report. The stick must be criticism for being slow in responding and strong criticism for rejecting the report or most of its findings. I take again the example of the Lords Select Committee report on the operation of the Equalities Act 2010 as far as disabled people were concerned. The Equalities Department response was disgraceful. We held a debate, which drew attention to the report and that was all that happened. Perhaps we should have a follow up debate one year later to deplore the lack of action but even that would not make the Department change its mind. Unless House of Lords reports can create public traction and demands for action then all Governments can and will ignore them.

Conclusion

93. I began this submission with my personal observations of the Lords from my viewpoint as an elected Member of Parliament and then my first impression in the Lords. I conclude with an observation of the current state of Parliament or, rather Parliamentarians and it is this; the vast majority of Parliamentarians in the Commons and Lords have not woken up to the fact that Parliament can be in complete control of our laws once again and exercise proper control of the Executive, once we leave the E.U.

94. The majority still seem to be in the mind-set that we will still have or need some extra-territorial body or authority to keep the Government in check. One only has to look at many of the amendments to the E.U. Withdrawal to see the desire to still have the E.C.J. or E.U. Environment Agency or some other external bodies keeping the Government in order. A minority of these may be attempts to prevent a full Brexit but many are from colleagues on all sides who have accepted that the UK will leave the E.U. but are still looking for an external supervisor to keep the Executive on the straight and narrow. Even the Government is consulting on creating an overarching environmental body to keep it in check.

95. But that is the role of Parliament. That is the principal job of Commons Departmental Select Committees and Lords with our Select Committees. However since the European Communities Act of 1972 all governments have pushed through 20,000 E.U. laws without any parliamentary scrutiny. Tens of thousands of other S.I.s have been made without adequate scrutiny also and after 45 years of that, it is little wonder that we Parliamentarians have brainwashed ourselves into thinking that we have no power except to be mute cat’s paws endorsing all legislation and not able to control the Government. Also since the Government has to report to the E.U. Commission and the E.C.J. has had the power to compel the Government to do things or change policy we have become accustomed to an external body having more control over our UK Government than Parliament has.
96. All that will change when we leave. We will no longer have external bodies holding the British Government to account and we do not need to create others. They already exist. They are our Commons and Lords Committees but they now need to have the confidence to take the new powers they need to hold the Government to account. If we do not do it someone else will. I want the Government amending and changing policy because a proper democratic committee of either House has consulted, considered and then set out a better way. I do not want it driven by unelected, single-issue pressure groups which have wound up a mob on Twitter.

97. Soon there will be a vacuum in holding the Government to account and it is our duty, either as elected Members or appointed Peers to rise to that challenge and change our systems so that we can fulfil once again the role our predecessors have performed over the centuries that the Government of the United Kingdom is answerable to the Parliament of the United Kingdom.

98. In this submission I have set out some ideas which may be considered radical but that is only because we have moved so far away from the powers we had and the roles we performed prior to joining the E.U. Now that we are leaving the E.U. Parliament has this golden opportunity to recover our confidence that we are capable of holding to account our own United Kingdom Government and there is nothing to be afraid of if we take the powers to do it. That would be good for Parliament, good for the Government and fundamentally good for democracy.

End.
March 2018
I’m offering some very brief thoughts of my own. Brief because after 2 1/2 years I’m still learning about the procedures and ways of the House of Lords and the best way of how to make the maximum benefit both to our democratic practices and engagement and to the effectiveness of the House itself.

**Question 1**

There are on a weekly basis examples of how committees (both standing select committees and ad hoc committees) add to the scrutiny function of the House. Long-standing members will be able to pick out their own favoured examples but I would cite the committee established during the passage of the Trade Union Bill as a case in point. There is always a challenge in terms of the juxtaposition of what is being deliberated within select committees and bodies on the floor of the House (or potentially will be coming to the House of Lords as part the legislative programme). Ad hoc committees before as well as during the passage (of substantial legislation) can clearly help. I make no mention in relation to Brexit as the review will be inundated with thoughts on this matter.

**Question 2**

Outreach and engagement is critical. It strikes me that as we move towards the implementation of the decision taken by both Houses to decant for the restoration and refurbishment programme, we have an opportunity to “design for democracy”. As I said in my very brief speech on the floor of the House, this will give an opportunity to link into and expand the activities of the outreach work and the staff undertaking this role, using the best of new technology and electronic communication providing a link to and linkage from those committed in the areas and deliberation, from around the country. It would be possible to start experimenting with existing facilities, and therefore to have pilot programmes for more ambitious work. This should not be at the expense of members visiting the regions and nations of the UK – talking to people face-to-face and experiencing the reality of life outside metropolitan London.

**Question 3**

Strengths and weaknesses - the obvious strengths are that it allows the enormous breadth and depth of experience and expertise in the House to be drawn together and brought to bear on key issues. The format (and this is true of the House of Commons) is considerably outdated, and the nature of evidence taken almost by definition, tends to be from “the usual contacts and sources”. A great deal more imagination and creativity could be brought to bear on how evidence is gathered, the expertise around the table (and not just the voices of those who have given evidence) and the relationship of a paper review of existing in-depth research with the oral and contemporary written evidence submitted.

As with the answers above, new opportunities will arise with both the redesign and the technological possibilities of the years ahead. As was said wisely in the debate in the House on the restoration and renewal, this should be a forward look
for the best and most advanced futuristic possibilities rather than the entrenchment of the here and now.

Question 4

As far as impact is concerned, I think from my own limited experience, it is important that more time is given to ad hoc committees, perhaps reducing the number of standing committees, and that they are not only debated on the floor of the House but that Government have to indicate when they will bring back (for debate on the floor of the House) their substantive response, recommendations and report on how those recommendations have been implemented (or otherwise). In other words, as standing committees have the opportunity to continue building on their work, and reviewing government responses, so ad hoc committees should have the opportunity of returning to the issues raised rather than seeing them disappear into the ether.

Question 5

As far as inter-parliamentary contact is concerned, I believe that following the restoration and renewal, the technological facilities will allow for much greater interchange but again this should not be at the expense of people meeting and talking – it will be important post Brexit to keep closely in touch with European colleagues, as we may have left the European Union but as so often is said, “we have not left Europe”!

Detailed Questions

On the broader questions I have in the above brief commentary answered some of the questions that are raised in the overarching review.

I would merely add that it is very difficult not to avoid some overlap with committees in the House of Commons. Where joint committees have been formed (for instance on the Investigatory Powers Bill), I think they are most effective. More joint working would be valuable but would need to be streamlined and focused on specific topics. Obviously standing committees of joint membership (the Human Rights committee, and the Intelligence Committee) are obvious examples.

There is no reason why where short reviews have been undertaken by standing committees, that their work should not be picked up and built on by either of the other houses. In other words, to take the evidence, the interim conclusions and then build on them.

Account will clearly have to be taken in relation to the number and size of committees, when and if the Burns committee proposals are implemented.

Equally, the decanting process will have to be taken account of albeit that this is some six or seven years away. Looking at how committee investigations can continue effectively in the decant period, will be something that is worth reviewing now rather than later.
Under the wider review, on question 7 and 8, I think that there is room for real improvement. Where there has been a very clear groundswell of opinion within the House (and it is possible to monitor and judge this rationally), then account should be taken of this in determining which ad hoc committee proposals are taken forward. How judgements are made on which particular topics drawdown best on expertise and experience of members, might be reviewed!

From question 10 onwards I’d merely observe that there is an enormous amount we could still endeavour to provide prior to the refurbishment, which would improve the situation.

I mention above the possibilities of better communication and online outreach. This has to be underpinned by the excellent work that is being done to promote the work of the House of Lords and a greater understanding of its function by people going into schools and colleges.

This is also true of committee visits – where there needs to be a link with the communication staff to actually promote such visits, to undertake interviews with (old as well as) new media outlets, for the chair of the committee or appropriate members – with articles both in print and online put up before the visit takes place, interviews with the local radio stations and where appropriate, feedback to the locality or the specialist audience, from the visit.

It should be made easier not harder, more rewarding (in every sense) not less, for committees leaving the parameters of the M25! This broader point would be enhanced if in the implementation of the Burns committee, the political groupings took account of the fact that the House of Lords should reflect the whole of the United Kingdom in both background and main residency. All of this would be a major bulwark against ill thought through and therefore politically inept proposals in respect of the reconstitution of the House of Lords as a Senate.

I have commented above on other aspects of the questions raised. Other than to say that I think that the staff serving the committee I’m currently engaged on, have been excellent.

Joining with my own support, to ensure that I had access to otherwise inaccessible material. I’m very grateful to them personally.

February 2018
Dr Catherine Bochel – Written evidence (RIS0016)

This evidence is presented in a personal capacity.

1. This submission seeks to broadly address the issue of engagement with the public, and question 11 in particular:

How can Lords committees engage more effectively with the public and media to encourage a national conversation?

Background

2. I am currently a House of Commons Academic Fellow, undertaking research into Parliament’s engagement with the public and the extent to which this is underpinned by a procedural justice framework – essentially a fair process. This work has developed from my research into petitions systems in the UK (Bochel, 2016), which illustrates that procedural justice, defined as ‘the fairness of the process by which decisions are made, and the role participants may have in this’ (Bochel, 2016, p. 371), potentially provides a useful tool from which representative political institutions who wish to engage with the public can learn. Given that the vast majority of people who engage with Parliament are unlikely to get what they ask for, it is important that when they come into contact with Parliament their treatment and experience of the process of engagement is as positive as possible, reinforcing the view that ‘the political process may be as important as policy outcomes’ (Fox, 2009, p. 682). The first stage of the research involved looking at the nature and extent of Parliament’s engagement with the public, and is intended to be published as a House of Commons Library Briefing. The second stage is focusing on a number of forms of engagement, one of which is select committees.

Findings

3. The initial findings of the second stage seek to set out where elements of select committee work are underpinned by a procedural justice framework, and identify areas where this might be improved, in order to help devise ‘good processes’ for select committee engagement with the public. It is, of course, important to recognise that committees work differently and mechanisms that suit one committee, or even one inquiry, may not be appropriate for another. The findings illustrate important considerations: the degree of voice and participation that are enabled by select committee engagement; the extent to which the public have input into the decision-making process; the nature of the decision-making process – is the process consistent, is it impartial?; and the transparency of each element of the process.

4. There are, perhaps, three broad stages around select committees’ engagement with the public. These might be viewed as pre-engagement, engagement and post-engagement.

4.1 Pre-engagement - good processes might consider questions such as:
Which groups does the committee wish to engage with and why? What might be the most appropriate mechanism or mechanisms to do this?
Is it clear to the public why they are being asked to engage with a select committee? What can they get out of engaging with select committees? Are the limits to their influence made clear?

Is any information provided to the public on how they might engage with select committees?

How will the evidence collected be used?

What feedback will be provided to the public and what form will it take? If a committee considers such questions at the beginning of an inquiry, then there may be more potential for the public’s engagement be underpinned by elements of procedural justice.

4.2 Engagement

Committees engage with the public in a wide range of often innovative ways, including visits outside Westminster, informal meetings in Westminster, Twitter Q&As, seeking the views of the public on future programmes of work via written submissions and videos tweeted to a committee hashtag, using Easy Read calls for evidence, asking for suggestions for questions to put to Ministers via Twitter, and working with partner organisations such as thestudentroom.co.uk and moneysavingexpert.com. Different methods may help to encourage different groups to participate and can help to make the process more open and accessible, but consideration clearly needs to be given to what is appropriate for each inquiry. Some may also give participants the opportunity for additional voice and participation, for example, if they can be involved in some sort of dialogue with the committee. These can reflect elements of a fair process.

However, what happens to the evidence once it has been collected is also important from a procedural justice perspective. There are clear processes for formal written and oral evidence. It is possible to see from written submissions and the inquiry report where the evidence of an individual has fed into an inquiry, to what extent it has been listened to and whether it has helped to contribute to the inquiry recommendations. The processes for recognising informal evidence may be less clear. This raises questions, such as how informal evidence is incorporated into committees’ deliberations and into the final report? Notes taken at informal sessions may guide committees’ decisions. The clerks read the evidence and put it before the committee. It may contribute to committees’ thinking in forming their recommendations. But the processes by which this happens appear to be more ad hoc and are not necessarily transparent.

4.3 Post-engagement

As noted above, where committees do engage with the public, it is important that they have considered what feedback is appropriate and what form might this take. This might entail a link to a traditional report, or perhaps to a more interactive report. It is important that the public can see how and to what extent their input has influenced a committee and its report.

Select committees should also evaluate the public’s experiences of engagement, not only in terms of the numbers who engage, but also the quality of the processes and their perceptions of the activity. The results of such evaluations can then be fed back to inform future development.

Conclusions
5. ‘Good processes’ for select committee engagement with the public are likely to be circular in nature. There will be a number of pre-engagement considerations including committees setting out why they wish to engage with the public, and in particular why they wish to engage with specific groups or the public as a whole, and identifying the appropriate mechanisms to achieve their aims.

Select committees currently engage with the public in a wide variety of innovative ways and some aspects of their work can be seen to be underpinned by elements of a fair process. One area that would benefit from further consideration is around the processes for demonstrating how informal evidence has been used, so that those who have contributed informal evidence can see to what extent this has been incorporated committees’ deliberations and into the final report.

It is important that all committee processes for engaging with the public should be transparent, consistent and fair, and they should, for example, include what involvement might consist of, the limits of any influence, and the feedback that they will receive.

References


18 March 2018
Hugh Bochel and Anouk Berthier - Written evidence (RIS0014)

Submission to be found under “Anouk Berthier and Hugh Bochel – Written evidence (RIS0014)”.
Use of (Crossbench) expertise. With the strict proportional representation on Committees, we are in danger of missing the opportunity to exploit the considerable specialist expertise amongst Peers, especially, but clearly not limited to, Crossbench Peers. Committees take, in my view and experience, rather limited evidence in preparing for their reports. Whilst witnesses are often very good (well done to the staff who put a lot of effort into finding them) we then prepare reports on the evidence of a small number of people – not the way academic research would be done – leaving us in danger of missing key evidence or opinions. With my background in engineering, transport and climate change, I have noticed some occasions where Committees have heard evidence that I felt was partial or gave a less than complete picture about something where I have expertise. I am sure others will have had similar experiences. So I would like to suggest that we find a better way to use more of the expertise we have - in addition to our expert witnesses – on relevant Committee enquiries. Could models be explored where Committees have a ‘balanced’ core membership and recruit/co-opt experts from around the House for particular enquiries? Or could enquiries have an option for an evidence session/discussion session with Peers who have relevant experience? Or might there be an option for Peers with relevant experience to act as specialist reviewers – perhaps in a closed session – of draft reports, then leaving the Committee to make a final decision on its report? I am sure there are many possible models. I would like to see us making the most effective use of the knowledge and expertise available in the House, and providing opportunities for people to get more involved at the same time.

March 2018
We are writing to you as individual members of the EU Financial Affairs SubCommittee to register an issue we feel ought to be addressed by the Liaison Committee in its review of investigative and scrutiny committees. In the EU Financial Affairs Sub-Committee's previous inquiry, Brexit: the future of financial regulation and supervision, published 27 January this year, we noted the Liaison Committee's review and its potential to bear on questions of Parliamentary scrutiny of financial services legislation.

During the course of our inquiry, witnesses were primarily concerned about two issues: difficulties involved in transposing EU legislation into primary or secondary legislation in the UK and the increased powers of regulators.

On the first issue, many told us that the UK's legislative processes, as currently configured, would be unsuitable for this. Some of this turned on the degree of parliamentary scrutiny made possible by the committee structures in the European Parliament. Dr Kay Swinburne MEP was especially clear on this, telling us that:

"As a member of a committee in the European Parliament ... I have resources that allow me to do impact assessments if we feel that the Commission’s impact assessments are not good enough. We have a policy unit that supports our work ... We have external consultancies on our books that we can call upon to do external studies for us at any point, and we can call hearings and workshops on any topic that the committee decides to investigate. We have a very comprehensive set of tools at our disposal, with significant financial resources to make sure that, as non-experts, we have experts advising us at every stage."

On the second issue, to the extent that technical rule-making will be in the hands of the Bank of England and the Financial Conduct Authority, proper scrutiny of their activities will be paramount. These organisations stand to acquire vastly greater powers post-Brexit and there is a danger of a lack of accountability should Parliament not have the capacity to scrutinise their exercise of those powers.

Accordingly, we recommended that Parliament will need to reconfigure its scrutiny processes to enable it to properly scrutinise legislation. This need is perhaps greater in financial services than in many other legislative spheres in
virtue of the detailed and technical nature of the EU rules and because of the substantial powers that will likely be granted to domestic regulators.

This recommendation is properly addressed to Parliament, rather than the Government, and so the Government response to our report did not address this matter, merely noting that "Parliament may wish to consider its future approach to scrutiny of financial services regulation". Nor did the Minister, Lord Bates, touch on this issue in the debate on the report on 6 June.

Finally, whatever the mechanisms selected to transfer the acquis, given the debates about mutual market access for financial services there is a question about scrutiny of post-March 2019 legislation. And if the UK commits to some form of mirroring of EU rules, post-2020 incoming EU legislation will also need scrutinising. Our main concern is that, in the absence of the scrutiny reserve, we will lose a main tool for informing ourselves of legislative developments. The requirement for the Government to deposit EU documents in Parliament and submit associated Explanatory Memoranda is a valuable tool in allowing Parliament to stay abreast of developments.

It seems to us that a properly supported select committee mechanism will continue to be necessary to deal with these matters. We therefore wish to bring them to the attention of the Liaison Committee as it considers the future shape of select committee activity and would welcome an opportunity to speak to the Committee on these matters.

Baroness Falkner of Margravine

Lord Butler of Brockwell

Lord Giddens

Lord Desai

Lord de Mauley

Lord Cavendish of Furness

Lord Thomas of Cwmgiedd

Baroness Liddell of Coatdyke

Lord Bruce of Bennachie

Lord Vaux of Harrowden

The Earl of Lindsay Baroness Neville-Rolfe

July 2018
Lord Butler of Brockwell, Lord Bruce of Bennachie, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)”
RESPONSE ON CANADIAN SENATE COMMITTEES TO THE QUESTIONS FROM THE CALL FOR EVIDENCE

The Liaison Committee has agreed the following key questions to be addressed by the review.

How can Committees add most value to the scrutiny work of the House of Lords as a second chamber?

Senate Committees do so in three ways:

- Legislative Review: by examining legislation in detail and taking care to note technical writing flaws, problems in concordance between the two official languages, and by protecting the interests of groups potentially unfairly treated by proposed legislative changes
- Budget review: thorough examination of the annual Estimates by the Standing Committee on National Finance ensures that all senators have a comprehensive account of the provisions in the annual Estimates process, and the committee conducts intensive examinations of areas of particular emphasis.
- Special Studies: public policy issues are explored and detailed reports provide a narrative background on the issues involved, what the committee heard and a set of conclusions/recommendations that inform public understanding and debate on the topic. Reports on special studies have contributed significantly to public debate and understanding of important public policy issues, like euthanasia, illegal drugs and mental health, to name a few, and committees can move to have government responses to their reports.

How can House of Lords Committees develop a national conversation to complement their inquiry and scrutiny work?

- Senate committees have long used permission to adjourn their proceedings to locations outside the National Capital Region in order to hold public hearings in communities all over the country, in particular targeting communities directly involved in or impacted by public policy issues.
- Public hearings allow committees to carry on a dialogue that is both formal and informal and attract the interest of Canadians not normally directly involved in the parliamentary process. In addition to formal public hearings, committees also conduct less formal fact finding visits to facilities and locations relevant to their work where they can have informal conversations as well.
- Social Media tools, like Twitter, FaceBook and Instagram have proven to be valuable means to engage communities of interest in the discussion around individual hearings as well as final reports. Through the establishment of hashtags and the cooperation of senators and witnesses, these conversations can be far reaching and provide immediate feedback.
opportunities for ideas, suggestions and even provide inspiration for questions to be posed.

**What are the strengths and weaknesses of the current House of Lords Committee structure and what should change?**

- Senators are currently asking themselves this very question as part of the mandate of the Special Committee on Senate Modernization. This phase of its work is not yet formally structured, but anecdotal evidence would suggest that senators want to determine the ideal number of committees a senator can properly serve; the ideal number of senators on each committee to ensure that issues are profoundly explored while not being so numerous that individual senators are prevented from active participation; an appropriate range of committee mandates that respect the jurisdictional powers of the federal parliament, reflect modern issues facing the country, and do not overlap with other committees too much.

**How can House of Lords Committees maximize their impact inside and outside the House?**

- Senate committees make use of the opportunity provided for debate in the Senate of reports on special studies of public policies, resources for publicizing the work of committees, provisions for requiring government responses to committee reports, when desired, and the means to engage through social media.

**How can House of Lords Committees promote inter-parliamentary dialogue both within and outside the UK?**

- Senate committees do not have a formal program of interparliamentary activity. However, it is common for them to meet with visiting delegations/committees/parliamentary individuals and to arrange to meet with parliamentary committees when they conduct fact-finding visits internationally.
- Senators and MPs do belong to interparliamentary associations – both bilateral and multilateral – that allow them to pursue issues that can touch upon public policy questions related to their committee work.

**Subject matter and structure**

**To what extent does it remain desirable to avoid overlap with the House of Commons?**

- Senate committees provide an alternative perspective to their work, in part, by organizing along general public issue lines, rather than government department lines, as in the House of Commons.

**What is the best balance between ad hoc committees and sessional committees?**

- Most Senate Committees are Standing Committees, which are reconstituted under the same mandates every session/parliament.

Unusually, the Senate currently has three special committees, whose mandates only last sessionally. Special Committees allow for studies that are either
specialized or where the mandate crosses over into several other committee mandates. Adding special committees does have impacts on senators’ ability to cover their usual assignments by adding to their workload, and on resources used to support committees.

Engagement with the public

How can Lords committees engage more effectively with the public and media to encourage a national conversation?

• See above

What has been successful in increasing the levels of engagement on social media, and what more could be done?

• See above

How should committees engage with stakeholders in evaluating their activity?

• Senate committee clerks are required to send a short survey to each witness in order to evaluate their experience. It includes questions about logistical arrangements to appear and more subjective evaluations of their appearance. A copy of the survey has been included.

Chairmen and members

What is the ideal number of members for investigative and scrutiny committees?

• Recently, the Senate made an ad hoc accommodation of a significant change in party/group ratios by adding seats to each committee in order to balance respective party/group membership. The results, while being a good compromise to satisfy proper ratios, meant that senators were unable to participate effectively or to their satisfaction, due to increased competition for time. It was generally agreed that returning to the status quo of 12 or 9 members was preferable.

Should there be a written role description for Committee chairmen and members to clarify expectations from the outset?

• The Senate has a guide for Committee Chairs (included) to help new chairs in their responsibilities.

July 2018
Lord Cavendish of Furness, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)”
1. This submission will address question 8 and question 10 of the detailed questions under the ad hoc committee section, in so doing it focuses upon the post-legislative scrutiny undertaken by the House since 2012.

2. The submission is informed by my doctoral research on post-legislative scrutiny in the UK Parliament. The research involved the coding of post-legislative scrutiny committee recommendations and the corresponding government responses as well as interviews with Clerks and Chairs involved in post-legislative scrutiny inquiries.

3. In relation to the undertaking of post-legislative scrutiny in the House of Lords, all interviewees agreed that it is an important task for the House of Lords to undertake through ad hoc committees, as inquiries are much more in depth than committees in the House of Commons can provide. As such I recommend that the Liaison Committee should continue to appoint at least one ad hoc committee per session to undertake post-legislative scrutiny and where there is capacity, appoint additional committees. There was also agreement that the format works well, as it has been used many times. However while the format is generally seen to work well, there are changes that could be trialled or made to ensure the process improves further.

Question 8: Are the current arrangements for following up committee reports (especially those of ad hoc committees) appropriate?

4. The fact that ad hoc committees dissolve after the publication of their report is seen as one of the weaknesses, if not the main weaknesses of House of Lords ad hoc committees. This severely limits the ability to do follow up, which is in sharp contrast to a sessional committee.

5. There are a number of downsides that come with the Liaison Committee’s chosen method of following up inquiries through written correspondence. The first is that requiring ad hoc committees to highlight the most important recommendations might signal to the government that there are going to be certain recommendations that the committee won’t follow up on and as such create an incentive for inaction in these areas. Secondly the Liaison Committee secretariat does not have the civil service contacts and relationships that Chairs and the secretariat of the ad hoc committees build up during a nine month inquiry.

6. It was noted in interviews that while some formal follow up is better than none, there is a belief that following-up in writing doesn’t make a great difference. That being said the Committee should be praised for its ingenuity in attempting to find a solution to this problem.

7. My wider research into post-legislative scrutiny, including in the House of Commons found that, follow up rarely goes beyond routine
questioning of Ministers at an annual oral evidence session or written correspondence.

8. It was also noted that former committee and secretariat members are meeting informally after a government response is received. One Clerk noted that they circulated the government’s response to Members and that although they were no longer Clerk of that particular committee they did still retain an interest in the issue. So there is clearly an informal process going on here but they do not have the powers of a committee. While it is positive that Members can organise and apply pressure themselves, the lack of being able to reconvene as a committee following the government’s response (and potentially later to follow up) is seen as a major failure of post-legislative scrutiny in the Lords. It has been suggested that Committees should be reconvened around one year after the government responds to a report. I concur with such suggestions and recommend that the Liaison Committee consider trialling the reconvening of ad hoc committees one year after the government responds to inquiries.

9. In relation to the debates on ad hoc committee reports that take place following the publication of the government’s response, it was noted that this process doesn’t necessarily take a report any further forward in terms of getting the government to agree to recommendations, unless you get a direct commitment from Ministers. Floor time in the House brings publicity both within and outside the House, but how much it brings is questionable. Indeed one Chair acknowledged that it gave added publicity, but said it didn’t really do anything to further the recommendations. Another noted that one of the downsides of debates is that there isn’t always a specific Minister available to respond to departmental points (unlike the Commons). That being said there is more debate in the House of Lords on the contents of reports, especially in terms of post-legislative scrutiny, than there is in the House of Commons and I recommend that ad hoc committee reports should continue to be put forward for debate, after the government has responded.

Question 10: How should the work of post-legislative scrutiny committees be developed?

10. The response to this question is informed by the following key themes; the selection of legislation and post-legislative review memoranda

Selection of legislation

11. With regards to the selection of legislation for post-legislative scrutiny it was noted that on top of asking Members for ideas the committee office also does research to see what legislation is suitable for post-legislative scrutiny. While having a wide choice is important, it is worth highlighting that recently the Scottish Parliament’s Public Audit and Post-Legislative Scrutiny Committee invited views from stakeholders and members of the public on which Acts the Committee should examine. They used a checklist[1] and shortlisted five Acts to form part of their work
programme. The trialling of such a scheme would not only help widen the choice facing the Committee but also ensure there is an element of public engagement in the process. **I recommend that the Liaison Committee liaise with the Public Audit and Post-Legislative Scrutiny Committee of the Scottish Parliament with the aim of trialling such a scheme.** It is my understanding that so far such innovation has not been tried at Westminster.

12. In relation to the research undertaken by the Liaison Committee secretariat it was noted that the most central single source they have is the House of Commons Library memo on post-legislative scrutiny, the second is through contacting individual House of Commons Committee Clerks and the third is through Google searches. This isn’t necessarily the most productive way of finding out what Acts have and have not been scrutinised. **I recommend that the Liaison Committee request that copies of government post-legislative review memoranda, that are currently send to departmental select committees in the House of Commons, are also copied to the committee.** This is to ensure that the committee is up to date with which Acts have received departmental review. The House of Commons should be given first refusal, due to its primacy, but if Commons committees do not intend to undertake an inquiry it should be open to the House of Lords to select that legislation for scrutiny, taking into account the current selection criteria.

13. One final issue worth raising in relation to the selection of legislation is that my doctoral research has shown that there tends to be a party political bias in both Houses in terms of the Acts selected. Currently the House of Lords has not undertaken any post-legislative scrutiny on legislation passed by the 2010-2015 Coalition Government, despite some of that legislation now being on the statute books for seven years. While interviews noted the longer term view the House of Lords takes in relation to post-legislative scrutiny, there is currently a gap in scrutiny here.

**Post-legislative review memoranda**

14. While it was generally believed that government post-legislative memoranda, prepared at the request of an ad hoc committee, are useful especially in helping committees to plan their inquiries and to get an overview of the government’s position. The main issue with them appears to be the time it takes for such memoranda to arrive after being requested. It was noted that it would be useful if committees received such memorandum before the call for evidence is sent out. Therefore there may be a need to view post-legislative scrutiny committees in a different light to the other ad hoc committees based upon the time it takes to set up the committees on top of the time it takes to request and receive an updated memorandum from the relevant government department. **I therefore recommend that the Liaison Committee trial making decisions on what post-legislative scrutiny committee(s) it is going to establish,**
earlier, so that necessary documents can be requested and received from the government departments earlier.

Outcome of post-legislative scrutiny in the House of Lords

15. In asking how the work of post-legislative scrutiny committees should develop I believe it is important to briefly summarise the outcomes of post-legislative scrutiny in the House of Lords.

16. Since 2012 and the submission of this evidence, the House of Lords has undertaken six post-legislative scrutiny inquiries. These inquiries on average have made forty-one recommendations per report in comparison to nineteen in the House of Commons. The tables below show the aggregate data on the recommendations that those six inquiries have made, in terms of the types of recommendations that have been made and whether they have been accepted by the government.

17. The tables show that most recommendations produced by ad hoc committees undertaking post-legislative scrutiny in the House of Lords call for policy change or action related to legislation (mostly changes to secondary legislation) and also for further research to be undertaken. Forty-two percent of those recommendations produced by committees went on to be accepted (either in full or in part) while thirty-nine percent of recommendations were rejected (either in full or in part). The data from this same research also showed that there is a strong relationship between the strength of a recommendation and its acceptance by the government, with recommendations calling for stronger actions (such as legislative change) being more likely to be rejected by the government.

Table 1: Type of Recommendations made by the House of Lords

<table>
<thead>
<tr>
<th>Type of Recommendation</th>
<th>House of Lords</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
</tr>
<tr>
<td>Policy and Practice</td>
<td>111</td>
</tr>
<tr>
<td>Related to legislation</td>
<td>49</td>
</tr>
<tr>
<td>Research/Review</td>
<td>25</td>
</tr>
<tr>
<td>Disclosure</td>
<td>14</td>
</tr>
<tr>
<td>Guidance</td>
<td>15</td>
</tr>
<tr>
<td>Funding and resources</td>
<td>5</td>
</tr>
<tr>
<td>Campaigns/Public information</td>
<td>5</td>
</tr>
<tr>
<td>Recommendations from other bodies</td>
<td>3</td>
</tr>
<tr>
<td>Co-operation</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>231</strong></td>
</tr>
</tbody>
</table>

Table 2: Government acceptance of recommendations made by the House of Lords

<table>
<thead>
<tr>
<th>Acceptance of Recommendations</th>
<th>House of Lords</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>House of Lords</td>
</tr>
</tbody>
</table>
18. It has been noted by academics such as Meg Russell, Megan Benton and Malcolm Aldons that parliamentary committees may deploy a strategy of producing weaker recommendations that the government is more likely to accept and as a result make committees appear more influential. A number of interviewees noted that there is an attempt to avoid recommendations that will cost a lot of money or call for major legislative change as the government is likely to reject them. The focus is instead upon recommendations that are likely to make a difference. While this does not prove that a deliberate strategy is at play, at least in terms of trying to boost perceived influence, it does highlight the weakness of Parliament in terms of being able to influence and change government policy.

19. As such any changes that the Committee can make in terms of attempting to boost the influence of committees and Parliament is important.

<table>
<thead>
<tr>
<th></th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>13</td>
<td>5</td>
</tr>
<tr>
<td>Reject outright</td>
<td>68</td>
<td>28</td>
</tr>
<tr>
<td>Reject partly</td>
<td>26</td>
<td>11</td>
</tr>
<tr>
<td>Neither accept nor reject</td>
<td>35</td>
<td>14</td>
</tr>
<tr>
<td>Accept partly</td>
<td>41</td>
<td>17</td>
</tr>
<tr>
<td>Accept outright</td>
<td>61</td>
<td>25</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>244</td>
<td>100</td>
</tr>
</tbody>
</table>

8th March 2018
Timing

Artificial intelligence was a broad topic, and could have been almost impossible to complete within the time limit dictated by the House. The unexpected election was a mercy, as it allowed staff to spend time talking to stakeholders in the sector working out where a committee could be most effective, and informing their advice from the outset.

This indicated to me that the current timing of ad hocs is flawed. Appointing committees so that calls for evidence have to run over the summer recess makes it difficult to get good, quality responses to calls for evidence. This is because organisations have lower staff presence, and decision makers are usually away in August, delaying responses until they have been able to consider them internally. Alternatively, it can mean rushed responses, which are usually of lower quality.

We should therefore change the timing of ad hoc committee appointments and allowing them to run across Sessions. For example, to avoid the long summer break shortly after appointment, they could be appointed in January and asked to report in December.

However ad hoc committees should have set deadlines. A deadline is a great incentive to get the job done. Committees will always want to find more evidence, to write more thorough reports and to speak to more witnesses. It cannot be the solution to not seeking internal compromise, and the deadline is a useful tool to encourage agreement. It can also assist in ensuring the Committee sticks to its remit. That being said, the deadlines should take into account disruptive events such as general elections, extended sessions or expansive remits given to ad hocs.

Selection of topics/Subject Matter

My experience of the AI Committee is that one can take a range of members from across the political spectrum and pull them together to form conclusions and recommendations which are based on evidence and unanimous: the Liaison Committee should not be afraid to pick controversial topics with the fear that committees will not be able to reach a shared view. The committee process has great advantages in that regard.

The system of ad hoc committees allows inquiries to be conducted on issues that do not fall in the remit of the sessional committees or the EU Committee and its subcommittees, such as domestic health and agriculture policy.

While gaps such as these remain in the patchwork of remits of Lords committees, the creation of ad hoc committees responds effectively to the interests of the House and its Members. The current system serve the interests
of the House more effectively and it does not and should not mirror the Commons’ Committees.

As regards suggestions that the process of selecting topics for ad hoc committees should be made more transparent, I do not agree that with allowing Members of the House to vote for the final topics, as opposed to the Liaison Committee deciding, as this will lead to less innovation in the choice of subjects.

I do agree however with:

- Re-writing the criteria which the Liaison Committee uses in order to decide on topics. For example, the Liaison Committee could invite topics in particular subject areas each year, or require a certain level of detail / minimum number of signatories, etc.

- Enabling the public to suggest possible topics, in order to encourage greater engagement and dialogue between the House and wider society.

- Allowing committee staff to suggest possible topics, or to provide honest opinions on whether suggested proposals are likely to work as ad hoc committee inquiries.

- Using different terminology instead of “ad hoc” committees, such as “Special Enquiry”

As regards the choice of AI as the subject for our Select Committee we were to some extent running to catch up with the Government and developments in policy in the area, but I and the Committee welcomed being in the swim. The pace of developments was a real spur to our work.

**Staffing, structure and follow-up**

In terms of resources, the current system works extremely well with the staffing model we have but depends on an enormous amount of hard work the teams. A clerk, policy analyst and committee assistant plus external policy adviser are able to provide good support to an ad hoc committee that has a clear idea of its remit. I would however be in favour of reallocating some existing committee staff resourcing to the post report period.

There are a number of other relevant suggestions which I support to make up for the fact that government departments may not take an ad hoc committee’s recommendations seriously. This can be seen in the quality of the responses given to ad hoc committees compared to sessional committees. The Government might be inclined to treat ad hoc committees more seriously if they know that scrutiny of their policy response will be ongoing.

- Once a report is published, having private meetings with ministers to explain the report’s recommendations and to let them put it in context of their own thinking/constraints, to help inform a response from the Government.
• Holding a hearing with Ministers once the response has been received with the original committee (or with the Liaison Committee co-opting former members of the relevant ad hoc).

• A debate on the report to happen after the Government response has been received, and also one year from the date of publication.

• Government departments should also be required to provide a memorandum on progress against implementing recommendations annually for three years after the publication of a report, unless agreed by the Liaison Committee it is not required.

• In addition a dedicated team, and committee, (?the Liaison Committee?) once a Parliament, following up ad hoc reports of previous sessions or Parliaments could have great advantages.

**Communication Support**

The staff of the AI Select Committee had to spend a lot of time working on press activity, and amending proposed press notices and strategies from press officers (this is because press officers are not as familiar with inquiries as the staff of a committee).

This lack of familiarity also leads to the staff of a committee having to become PR experts in what can be a new field, and having to work out who and how to communicate the work of a committee effectively. This is done in addition to their core roles running and supporting inquiries.

Innovative approaches, using social media, reflective of a committee’s inquiry (such as with AI and the general tone of the tech sector), are not adopted or considered. Staff to committees have to do this work themselves, and there is little support from the dedicated digital communications team for the production or identification of novel approaches to explaining and communicating the work of a committee.

If a committee has its own twitter account (which can work very effectively, if the inquiry is appropriate), staff are left to their own devices. The Select Committee on Artificial Intelligence was fine, as they had staff who were happy to work at finding innovative approaches to interacting with the public.

In addition, if Committees need additional research completing to inform their work, then this should be much more straightforward than it proved to be. POST are slow in response and not in sync with the time pressures of committees, and although the Committee did appoint a specific special adviser to conduct historical research, the process of doing so and getting agreement from the administration was difficult.

I understand that Lord Forsyth has proposed a model whereby media officers are based within the Committee Office, with responsibility for one committee (perhaps two at stretch) and under the auspice of the Clerk to the Committee. I support this.

*July 2018*
Lord Cormack – Written evidence (RIS0045)

When we had that extremely helpful talk about Select Committees some months ago you invited me to make a submission to your Committee before it concluded its deliberations at the end of this month. I really have one major point to make and it is this. I believe that, as in the House of Commons, the Chairman and Members of Select Committees in the House of Lords should not be appointed through the usual channels but by their peers and by election and I warmly commend this suggestion to you and your colleagues.

19th March 2018
Thank you very much for inviting me to speak with your Committee in relation to its Review of Investigative and Legislative Committees. My apologies again for having to cancel my appearance at your Committee but welcome the opportunity to set out some comments in writing to the Committee.

When I was first elected to the Scottish Parliament in 1999 if powers weren’t reserved to Westminster under Schedule 5 of the Scotland Act, then it was clear they were devolved. This is no longer the case. With the introduction of a number of shared powers, the operation of the fiscal framework and the possibility of a number of other common frameworks post-Brexit, devolution is now significantly more complex. Crucially, for all of us parliamentarians and for Committee scrutiny, devolution is also much more dependent on effective intergovernmental working, much of which understandably is confidential. So, where does that leave parliamentary scrutiny and accountability as well as the need to ensure public confidence in the effectiveness of our constitutional arrangements? The need to allow governments a legitimate space to negotiate in private, while ensuring effective scrutiny and accountability, is not an easy circle to square. But it does emphasise the need for effective interparliamentary working across the UK.

The Interparliamentary Forum on Brexit is one of the ways that Parliaments have evolved to work together more effectively. This informal group has provided members of devolved and UK Parliaments a neutral environment in which the crossparty concerns of the devolved and UK Parliaments could be raised and which can then help shape some of the thinking in key committee reports. It also provides a positive opportunity to discuss those areas of our work where there is a mutual interest as well as those where our perspectives are different and to build trust and relationships which enable more collegiate and collaborative working in future. It also facilitates discussion of work our Committees are undertaking in shared policy areas such as Intergovernmental relations and common frameworks. These are areas where the forum can play a collective role in seeking improvements across all the Governments in terms of greater transparency and engagement with Parliaments as well as with stakeholders. The Forum’s recent letter to the Rt Honourable David Lidington MP demonstrates that collective will.

The strength of the Forum flows from its informal nature. One lesson learned from the Finance and Constitution Committee visit to Brussels to discuss Common Frameworks was that strong, well supported, agreements are best delivered when all parties enter into discussions early on, with trust and good will but crucially all seeking to deliver the best outcomes. That should be how the Forum operates.

As I comment above, Common Frameworks are one area where scrutiny by Parliamentary Committees will be both necessary and challenging. This newly
emerging shared policy area has been a focus for the Finance and Constitution Committee more recently and we are now well underway with our inquiry. Whilst all our work is available online, a key theme emerging from our work is that if meaningful engagement is undertaken early on and throughout the process then disputes are less likely. This theme emphasises to me the importance of Parliamentary Committees being able to scrutinise not only the delivery of common frameworks but also their earlier negotiation and agreement. This scrutiny function is equally important in relation to trade agreements and international treaties as we recognise in our recent report on the Trade Bill Legislative Consent Motion.

Finally this year has seen the first year of our new budget process whereby budget scrutiny becomes a year round approach for Parliamentary Committees. As part of this new process, we have taken on board the Commission on Parliamentary Reform recommendations and successfully delivered a number of interactive sessions for Members, and staff on the new budget process. Facilitated by Committee and External Staff, these well attended sessions provided a valuable opportunity to ask questions and discuss what the new process means in practice.

I look forward to reading your Committee’s final report and if I can provide any further information then please do not hesitate to contact me.

November 2018
Lord Curry of Kirkharle and Lord Trees – Written evidence (RIS0080)

The House of Lords is facing an unprecedented volume of legislation - especially secondary legislation - a challenge that has frequently been mentioned in recent Crossbench meetings and elsewhere in the House. But the way we constitute committees has not reflected the new and serious challenges we face.

Appointed through the Appointments Commission route, we are committed to the work of this House. In our own areas of interest and expertise, we confess a feeling of frustration having had to demit from the EU Sub-Committee on Energy and Environment after three years - yet DEFRA has arguably the biggest legislative challenge of any government department over the immediate future (although Don has enjoyed being on the ad-hoc Rural Economy Committee which has almost concluded its business).

We fully understand that time-limited appointments to committees are an attempt to enable more peers to have a chance to serve on committees. But in most spheres of activity one would compose committees to include those individuals who might best contribute to the specific remit of a given committee. I realise that there must be political balance on parliamentary committees but in the House of Lords we have the unique cadre of non-partisan Crossbench Peers, specifically appointed to bring expertise to parliamentary scrutiny.

Putting aside our personal situations, there are many more peers, particularly on the Crossbenches who are also unable to contribute to legislative scrutiny. At this unique time can we ask that there be serious and immediate consideration to institute a more flexible, pragmatic and needs-must approach to the constitution of committees in order to ensure all available expertise can be harnessed for the public good to ensure optimal scrutiny of legislation.

We would be pleased to discuss this with you and others if possible. Thank you for your attention to this matter.

January 2019
Lord de Mauley, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)”
Baroness Deech – Written evidence (RIS0024)

I was fortunate to serve as chair of a committee, on the Equality Act and Disability, and it was an enriching and very worthwhile experience. The support from the clerks was outstanding and all went well. I concluded however that the termination of the membership at the moment of publication was premature, since many inquiries and actions remained, and were addressed to me or other members, and we were left without any support. Fortunately Mr Collon went beyond his duty and did give some help. But it seems to me that committees who make a series of recommendations for action need at least a little ongoing clerical support.

The progress of the recommendations also needs attention. We were grateful for your letter of 6 November inquiring about progress, but I believe committees need more assistance to achieve that progress after the report has been published. We were fortunate too in that the Commons Women and Equalities Committee remains in existence, covers some of the same ground and remained in contact with me; but that was pure coincidence. In brief, committees are cut off and their recommendations may languish once the period of existence has come to an end. There needs to be more post-report action. I know this has been taken on board by the Liaison Committee and just wish to add my voice to the project.

Ad hoc Select Committees. As you may know, the recent choice of four has met with some disappointment. It is not clear what the strategy is in choosing them. It seems almost as if the selected 3 (not the Bribery Act one) were chosen because the topics amount to no more than general debating issues eg intergenerational fairness, regenerating seaside communities. It is hard to see how they can produce recommendations that will make a difference in the short term. They are not controversial or substantial issues (someone said "motherhood and apple pie"!) The impression given is that anything more important and pressing like mental health or financial services might detract from the weighty and time consuming Brexit business. I do not believe that we cannot cope with both.

It is suggested that topics put forward for ad hoc committees should be voted on by the whole House.

In sum - committees need post-publication support to get recommendations implemented Ad hoc committees' topics should be selected with more transparency and wider input.

28 March 2018
At the end of our witness session on 11 July, at which we discussed the mechanics of post-legislative scrutiny, committee membership and the choice of topics to scrutinise, you suggested that I could write to you further about issues I raised. There were two that may have been novel.

1. The choice of members of committees. I have looked at the membership of the EU Select Committee and its six subcommittees. In so far as one can deduce from comments reported in Hansard, only about 3 of the approximately 70 members involved were avowed “leavers”, while many more were outspoken “remainers”. Some had never expressed reported views on withdrawal. In such an important area, it seems to me that alongside proportionate party membership, there should be representatives of both sides of the withdrawal debate. It is after all a division that goes deeper than and cuts across party affiliation. If there is no input from leavers, as must be the case in many reports from those committees, then inevitably the reports’ conclusions will be reflective only of the “withdrawal is a catastrophe” school of thought.

2. Private members’ bills. The subjects of those bills for the most part represent interesting and topical issues that are fairly limited in scope. A ballot is an unsatisfactory way of choosing between them, given the limitations on legislative time. Under the present system, topics that might seem to be less important than others or, for whatever reason, have little hope of success may win the highest positions. It would make more sense for a committee or even the Whips’ Office to choose a top half dozen bills from the submissions and help them on their way. Better still would be the possibility of peers’ voting to select the few most meritorious ones. Then there could be drafting assistance for those bills. A private member, without organisational backing, has no resources for accessing professional drafting by counsel.

July 2018
Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)”
During last week's exchanges on the floor of the House you invited a formal submission about ways in which members of the House might be involved in the selection of Ad Hoc Committees of Inquiry. This followed the concerns raised by Lord Campbell-Savours.

We are very much in support of the method suggested by Lord Alton of Liverpool.

We would like to suggest that, once the initial sifting of applications by the Liaison Committee has been completed, a short-list of six should be put forward.

This short-list could then be offered to the whole House for consideration and be decided by an electronic ballot.

Those proposing the successful short-listed subjects for consideration should be offered the chance to provide a brief written summary of why their proposal should be accepted.

A similar approach is already adopted by Crossbench Peers when they choose subjects for debate in the House and it is administered without expense or difficulty (and a lot less cumbersome than, for instance, the by-elections for hereditary Peers' vacancies).

This would help to address Lord Campbell-Savours' concern but, even more importantly, it would also enable all Peers to be involved and create even further interest in this important aspect of the work of the House.

We will look forward to hearing the response of the Liaison Committee.

April 2019
Summary

Changes in approach to the collection and use of evidence, and collaboration with the public around the design of inquiries, can improve the output and efficacy of committee inquiries. Early adopters are employing sophisticated and multi-dimensional platforms in an effort to improve dialogue between government and the public in a way that is of relevance to the work of Parliamentary Committees in the UK.

- Engagement with the public could be improved if people are able to have more influence on the Committees’ agendas. Agendas can be ‘living’ and develop iteratively, allowing questions to be reframed and under-represented groups proactively targeted.
- Two particularly relevant examples are the Brazilian portal “eDemocracia”, and French platform “Parlement et Citoyens”.

Creating Public Forums

- Submitted evidence can be used to enhance engagement if it is communicated in a way that surfaces key information and allows people to reflect on and respond publicly to the content.
- Using social media to publicise, share and discuss submissions is a simple initial step toward developing a national conversation.
- The process of submission and debate could be improved with an online platform that allows access to a consolidated and easily navigable array of the content previously submitted.

Committee effectiveness: Developing institutional memory

- There is potential for AI to identify and analyse specific portions of content within evidence documents, sort them into more narrow-focussed, inquiry-relevant topical categories and perform semantic analysis with regard to the writer’s intent and sentiment.
- The construction of a centralised database of committee work and previous inquiry evidence submitted, accessible to committees across both Houses, would improve knowledge transfer. Via effective sharing mechanisms, a committee could begin its work with the relevant knowledge of previous committees already at its disposal.

Social Media

- Live tweet oral evidence discussion to prompt replies and retweets, and foster conversation via Twitter.
- Use social media as a tool for identifying communities of interest, and guide people towards more in-depth engagement and towards living agenda engagement.
**Introduction**

1. Doteveryone is a think tank which champions responsible technology for the good of everyone in society. We welcome the opportunity to submit evidence to the House of Lords Liaison Committee review of investigative and scrutiny committees and endorse the remit of the review in helping align the work of the Lords Committees with a changing political and public environment. It is essential that the committees system acknowledges and responds to the role of digital technologies in today’s society and that this review take advantage of the opportunities these technologies present.

2. There is a precursor to any effective adoption of digital means - digital understanding. As our founder, Baroness Lane-Fox of Soho previously moved in the House parliamentarians, “must ask [themselves] whether [they] have the digital understanding to provide the leadership needed in this time of technological change”, and stressed how vital it is to “absorb and engage with the realities of how digital technologies work”. We urge the committees to lead in this field.

3. Doteveryone’s 2016 *Digital MPs* project partnered four cross-party MPs with leaders from the digital sector to introduce new digital methods for citizen engagement and improve the effectiveness of the MP’s Parliamentary work. From software for tracking and managing caseload and streamlining work processes, to social media for increasing engagement with constituents, the programme taught MPs how digital technology can allow them and their staff to work more efficiently, and be used to foster a better mutual understanding between them and their constituents (such as through the use of live broadcast tools to interact with constituents).

4. Following this work, the Parliamentary Digital Service (PDS) approached Doteveryone to review the effectiveness of the current parliamentary committee system in regard to information capture, knowledge transfer and expert and public engagement. This review will also inform the scoping of a digital prototype for use by the European Statutory Instruments Committee to help the Committee address the challenges of scrutinising the statutory instruments arising from the European Repeal Bill, and a report will be published in May 2018. This work is informed by consultations with Committee Clerks and Chairs, civil servants, civil society organisations, journalists and Members of both Houses, and our learnings are relevant to the themes of public engagement and committee effectiveness in this inquiry. This submission distills the key findings from this report and our previous work in building digital understanding and skills in parliament.

5. Changes in approach to the collection and use of evidence, and collaboration with the public around the design of committee inquiries, can improve the efficacy and outputs of committees by tapping into the value of collective intelligence and citizen participation. With this submission, as with our upcoming work with the House of Commons (to examine how best to implement digital ways of working to improve the efficacy of the EU Statutory Instruments
Committee), and our previous work to mentor digital MPs, we maintain our thinking that digital is not something that organisations do but something they are. To explicate - to digitalise isn’t merely to adopt particular digital instruments for communication or engagement. These instruments are means, and the increases in efficiency in which they result are the outcome of digitalisation as a change in the thinking and values that underlie how an organisation behaves - the kind of digital values that make organisations responsive, open and efficient.

**Engagement with the public: Encouraging a national conversation**

*Lowering Barriers to participation*

6. Efforts are already being made to lower the barriers to participating in consultations. The House of Commons Web and Publications Unit has trialled new digital ways of running external consultations such as Web Forums. But there are early adopters worldwide who are employing sophisticated and multi-dimensional platforms in an effort to improve dialogue between government and the public that are of relevance to the work of Parliamentary Committees in the UK.

7. Public communities of interest vary depending on the subject and remit of the committee or inquiry. When selecting an appropriate public engagement tool, consideration should be given as to how best to encourage these specific stakeholder groups to contribute.

8. Many experts submit evidence, but involvement is open to individual members of the public too, and as those with lived experience of whatever evolving social issue is of concern to the committee, they can offer perspective of great value. Individual, concerned members of the public can commit less time and resources than organisations but their input is valuable, so the aim may be only to understand their surface-level views, have them support a topic for scrutiny during an inquiry or make a short proposal for a policy solution. There are existing tools designed for both quick and in-depth citizen engagement, a selection are covered in the section ‘Living Agendas’ below.

9. The appropriate tool may often not be digital, and part of good digital leadership is recognising when this is the case. In our ongoing work on public engagement (around complex internet issues) we are testing various engagement methodologies to understand the most effective tools for exploring public opinion around modern technology. Would we do better by using modern methods and modern tech to engage around modern technologies? In addition to utilising social media (paragraphs 22-24), we recommend working with the groups who have pre-existing networks and are working to protect the section of the public you wish to engage.

*Living Agendas*
10. Inquiries are often necessarily framed by questions that are narrow in scope. Whilst many invite participants to submit any other relevant information that is broadly relevant to the terms of the Inquiry, engagement with the public could be improved if they are able to have more influence on the agenda of committees. In this way a Committee’s agenda can be ‘living’ and develop iteratively, whereby questions are reframed and under-represented groups are proactively targeted in light of gaps identified following the initial engagement.

11. As part of our ongoing work on public engagement around the Internet and associated moral dilemmas, we have conducted research into existing digital tools for public engagement. Two examples that we think are particularly relevant in this context are the Brazilian portal “eDemocracia”, and French platform “Parlement et Citoyens”.

12. The eDemocracia portal, which has been used by the Brazilian Chamber of Deputies, has been designed to “broaden social participation in the legislative process and bring citizens and their representatives closer together through digital interaction”. The Audiencias Interativas function enables audiences to live-stream hearings (similar to Lords oral evidence sessions) and participate by submitting questions to be asked live during the session. Online participants are also able to vote for questions submitted by others with the most voted for questions forwarded to the committee to be put to the witnesses. This platform also includes Wikilegis, via which citizens can review draft legal documentation and contribute proposals for redrafting the articles and paragraphs. Citizens can vote in support of or objection to proposals, provide comments, propose amendments and motion for a resolution with respect to any article in the draft law. In 2016, a draft bill for the protection of personal data drew 452 crowdsourced proposals for amendments.

13. The Parlement et Citoyens platform used the French Parliament allows Citizens to participate in lawmaking prior to Bills being laid by contributing arguments and proposals about policy issues. The process typically begins with an explanatory video in which an MP outlines a Bill or policy proposal. Citizens are then able to vote on the actions proposed, contribute to forum discussions on the proposal, add relevant resources for other users, make counter-proposals and also vote on other participant’s contributions. The consultation closes and the various contributions for and against a proposition are synthesised and displayed in a clear array. The relevant MP and public participants (who have been randomly selected or chosen by vote) then participate in a live online debate, during which the MP will explicitly respond to the comments/proposals that have generated the most engagement in earlier phases of the consultation. To conclude the process the MP submits a publicly-accessible video in which they present the relevant final proposal or Bill submitted to the National Assembly or the Senate, explaining their decisions. A recent consultation on data policy attracted 456 participants, who made 569 contributions and 2363 votes.

Creating public forums
14. The @UKHouseofLords Twitter account is relatively active. There are simple ways the platform could be used to increase the volume of and engagement with submitted evidence. Tweeting when evidence is submitted by one organisation, would attract the attention of others in same field and encourage them to submit too. Publishing submissions via social media and allowing them to be shared and discussed is a simple initial step toward encouraging submission and developing a national conversation.

15. The evidence received can be used to enhance public and expert engagement if it is communicated in a way that surfaces the key information and allows people to reflect on and respond publicly to the content. At present, submitted evidence can be accessed, but responding to the points made is difficult - it is not currently possible to gauge the key themes of the issue. To encourage this dialogue it would be useful for the public, those drafting submissions and Committee Staff to be able to see the landscape of evidence submitted on an open and accessible online workspace.

16. The process of submission and debate could be improved by establishing a forum that allows those seeking to engage with the submitted evidence to access a consolidated and easily navigable array of the content previously submitted. Allowing the public and expert contributors to express support, opposition, and provide supplementary evidence to existing submissions would also improve engagement.

Committee effectiveness: Developing institutional memory

17. Digital tools have the potential to significantly streamline the evidence review process. Software such as NVivo is currently used by some Committees to filter written evidence based on key themes. But use of this software is also beneficial as a primer for future uptake of more technologically advanced solutions like learning algorithms designed for text analysis. Application of this kind of solution might not be immediately viable because of factors like uptake fatigue, but the technology can be a means to greater increases in efficiency within the medium term future.

18. Artificial Intelligence (AI) can be used to increase the efficiency of analysing evidence submissions through topic modelling, automated text classification and sentiment analysis. Machine learning algorithms can classify raw text data into broad topics very effectively, but there is potential for AI to identify and analyse specific portions of content within the evidence documents, sort them into more narrow-focussed, inquiry-relevant topical categories and perform semantic analysis with regard to the writer’s intent and sentiment. For example, among the those working in this area, one company has proposed artificial intelligence to monitor public communication over social media and analyse for things such as panic, with the intention that this could form part of a more effective emergency response system. Sentiment analysis and topic modeling have also been used in political contexts, with the methods applied to tweets in order to
read economic positivity and negativity with regard to economic concerns during the 2012 Presidential election in the US.

19. The construction of a centralised database of committee work and previous inquiry evidence submitted, accessible to committees across both Houses would improve knowledge transfer, allowing a committee to begin its work with the relevant knowledge of previous committees already at its disposal.

20. Finally, building on the success of the above changes in approach to collecting and using evidence, it would be valuable to publicise how the evidence, and the public’s engagement with it, has changed the activity of the committees and the subsequent next stages. This would provide an incentive to future respondents.

21. Digital tools can also be used in committee publications to increase engagement and efficacy. With software like Adobe Spark or Shorthand Social (used for a recent publication by the Commons Environmental Audit Committee), the impact of public engagement can be conveyed in a report that is seamlessly navigable, visually beautiful and likely to increase public access and sharing.

**Social Media**

*Communicate opportunities for engagement, and identify communities of interest*

22. Live tweeting during oral evidence sessions will result in a brief account of the session online on an accessible platform that millions of people use. Quotes or narrative can be tweeted during the sessions, and after the session videos of significant portions could be uploaded too. At present, tweets just go out as reminders that sessions are about to start and who will be giving evidence. In order to reflect on the content of the session, people who don’t have time to watch the stream only have the transcript to turn to. Tweeting significant excerpts from the discussion will prompt replies and retweets, and thus foster conversation via Twitter.

23. Though Twitter is a communicative platform, in this context its value is as a tool for identifying communities of interest, drawing attention to significant excerpts of the discussion and thereby initiating debate around the content, but not as the digital tool for public engagement to democratise committee work. The aim should be to attract those people active in relevant discussion from Twitter to more purpose built platforms. Twitter is not designed for depth of conversation, this is why the platform features little in our recommendations around fostering public engagement. Platforms of a similar kind to those mentioned under ‘Living Agendas’ are built to make access inclusive and navigation easy, while accommodating for the citizen contributions that are more in-depth, and reaction can be measured to determine the democratic support that a particular contribution enjoys.
24. The EU Withdrawal Bill video tweeted on February 1st is an example of digital media about a complex process that is clear and accessible. Well-designed digital media offers an alternative way to understand a complex issue or process that doesn’t require time spent wading through documentation. Videos explaining the progression of inquiries along the stages should be tweeted out as they happen, including summaries of each session. Use these videos on social media to present the agendas as ‘living’ and something for which the evolution and final outcome is undetermined and open to influence by the public via digital tools.

April 2018
The Earl of Dundee and John Howell MP – Written evidence (RIS0075)

We thought it a good idea to drop you a short note to confirm that our idea for a joint House of Commons and House of Lords Select Committee to cover institutions such as the Council of Europe, NATO, and the OSCE has been run past the appropriate people in the House of Commons, namely the Chief Whip and the leader of the Council of Europe delegation.

They are keen for us to proceed with this, which we are happy to let you know about. John Howell OBE MP Member of Parliament for Henley Earl of Dundee

Joint working – House of Lords/House of Commons Select Committee on institutions and their overseas parliaments whose membership include UK delegations of Peers and MPs

There is already joint working between the House of Lords and the House of Commons in relation to the Council of Europe, NATO and OSCE parliamentary assemblies, where members of each House attend meetings together and work as one group. Yet there is no joint working to provide input from Parliament: or to discuss issues arising: or to give an opinion on current matters which may affect the UK: these emerging from time to time: such as the readmission of Russia to full membership of the Council of Europe. All three organisations have common and overlapping interests: therefore, it seems sensible to look at one select committee reflecting their shared focus.

Given that all three contain members of both Houses of Parliament, it would also be well worth while to create a select committee of both Houses to examine what is relevant. Joint working would be most valuable in conducting enquiries to help inform the delegations of attitudes in Parliament rather than having to rely solely upon views put forward by the Permanent Representatives to these organisations or upon those of the Foreign Office. Among many others, a topical matter in need of assessment, for example, is the current situation in Ukraine.

Taking into account as well that the affiliation of the Council of Europe (47 states) is far larger than that of the European Union (28 states) as also are those of the OSCE and the NATO Parliamentary Assemblies.

For these reasons there is a strong case for the present HL review of select committees to cause a new one to be instituted this year, 2019, as indicated above (thus a joint HL/HC select committee in relation to the Council of Europe, NATO and OSCE parliamentary assemblies); and for this to be recommended within the first part of the present HL select committee review.

Whilst on balance it is suggested that a committee examining the work of all three international assemblies might be preferable, it would, of course, be possible to set up a committee to look at any one of them.

I declare my interest as a member of the Parliamentary Assembly of the Council of Europe. In preparing this submission to the Review of Committees, I have...
been grateful for discussions with other members of the UK/ COE Parliamentary Assembly: including in the first place its leader, Roger Gale MP, the leader of the Labour Party delegation, Angela Smith MP, Lord Foulkes (Labour) and John Howell MP (Conservative).

Earl of Dundee

January 2019
Since I became a Member of the House in 2011, I have been privileged to serve on four Ad Hoc Select Committees. I found them to be well serviced by House staff and outside advisors/experts appointed for the various remits. The one point I want to make is that the consistency of service from House staff does not extend to the follow up that the Committee Members expect. This appears to vary greatly from subject to subject and from Government Department to Department.

Government is taking much too long to respond, and a single debate on the Committee's in the House is insufficient to ensure that real notice is taken of the Committee's work.

Members put a lot of time and effort into Committee Reports, yet there appears to be a tendency on the part of Government to only pay lip service to the recommendations contained in the various Reports.

Maybe my experience is different to other Members, but I feel that there is much good done that could improve the governance of this country and positively inform Ministers on the development of policies should they be minded to pay attention to this work.

March 2018
Alun Evans and Lord Stern of Brentford – Written evidence (RIS0039)

Submission to be found under “Lord Stern of Brentford and Alun Evans – Written evidence (RIS0039).
Baroness Falkner of Margravine, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)”
Thank you for inviting me to give evidence to your Committee’s inquiry into the review of investigative and scrutiny committees, and your subsequent letter. I too found it an extremely stimulating discussion and have given further thought to a few of the issues we covered.

Committee Bills

Baroness Garden of Frognal asked me to explain how I envisaged committees’ possible role in the legislative process. As mentioned, the Work and Pensions joint report, A framework for modern employment, had a draft Bill appended to it, demonstrating how the Committees’ recommendations might be implemented in practice. The Government was supportive of the Committees’ recommendations, but introduction of the necessary legislation has been frustrated by parliamentary timetabling.

Our report shows the effective way committees can use the inquiry process to produce cross-party, evidence-based legislative proposals. But without any means to influence the legislative timetable, or introduce legislation on our own accord, such a valuable output is lost. Creating a procedure to allow committees to introduce legislation would be a positive extension of parliament’s increasingly successful Select Committee system. As I said to Baroness Hayter of Kentish Town, involving their Lordships in this process would only strengthen the credibility and quality of legislative proposals.

Following our exchange, I thought Baroness Garden of Frognal, and other members of the Committee, might be interested to see the letter I have sent to the Chair of the Procedure Committee on this matter (appended).

Video evidence

One particularly interesting idea that you raised during the session was accepting videos as evidence, be they recorded and submitted by individuals, or obtained by the committee getting out and about. While this is not something the Work and Pensions Committee has done, I think it is an excellent idea, particularly as we attach such great importance to making the inputs to our work, as well as our reports, as accessible as possible. For example, our recent report on assistive technology was published in six different formats: a traditional PDF, an audio file, a video in British Sign Language, Easy Read, large print, and as a Word document compatible with assistive technologies such as screen readers.

I understand that when it has been done in the past, for example during the Business, Innovation and Skills Committee’s inquiry into adult literacy and numeracy, videos have been transcribed. It is then the transcript that gets reported to the House and constitutes evidence to the Committee. There would therefore be challenges if the video conveyed information that could not be captured by transcribing the dialogue. Perhaps the question we need to ask is:
does everything received in the course a committee’s work need to be treated as formal evidence? Committees already make very effective use of informal engagement activities, which complement formal evidence taking. A more flexible approach, and reducing the barriers to engagement, would be a very positive innovation indeed.

*Use of technology*

Since our meeting I have read with interest the evidence from Lord Mendelsohn and I agree whole-heartedly with his views on the need to keep pace with advancing technologies. As Lord Mendelsohn said, technology is enabling us to shift away from the one-way streets of us receiving evidence and sending back a report. We can, and should, be using technology to create an ongoing dialogue in which the public and stakeholders have their voices heard. In turn, their contributions need to be reflected in a timeframe and format that is aligned with the fast-paced digital world in which we live.

The Work and Pensions Committee’s web forum for its inquiry into PIP and ESA assessments showed the power of such forms of engagement. As I said when giving evidence, the forum received over 3,000 submissions, which formed the basis of a report dedicated to claimant experiences. I agree with Lord Mendelsohn that we need to ensure there is in-house capability to enhance our use of technology. The Work and Pensions Committee’s experience suggests that we can do this well, but we must not become complacent. The world of technology is only moving in one direction and we must ensure we stay hot on its heels.

*Regulators*

I was very interested in the suggestion made by Baroness Hayter of Kentish Town of establishing a committee to look specifically at regulators. I very much support this idea. The lack of scrutiny of these bodies is an important issue that needs addressing. In fact, I have recently written to the Chair of the Commons Liaison Committee on this very subject. While arm’s length bodies’ formal accountability to Parliament is often defined in legislation, the reality of how this relationship works in practice is, in my experience, at best mixed, and at worst, unconstructive. I have asked the Chair, Sarah Wollaston MP, for her views on how we might encourage arm’s length bodies to engage more constructively with Select Committees to ensure effective scrutiny. I am therefore very interested to see what conclusions the Lords Liaison Committee will reach on this issue.

*Joint inquiries*

I thought it might be helpful for me to clarify joint working between the Work and Pensions and BEIS Committees to inquire first, into the collapse of BHS, and second, that of Carillion.

In 2016 the Work and Pensions Committee launched an inquiry in the Pension Protection Fund and Pensions Regulator, and the then Business Innovation and Skills Committee launched an inquiry into the sale and acquisition of BHS. It was in the context of these respective inquiries that the committees came together to take evidence on BHS. As you said, this was a coincidence of mutual interest and
benefit. Procedurally speaking, however, we did not form a sub-committee and each evidence session, as well as the final report consideration, were formally separate, but concurrent, meetings of the two committees.

The only difference with our investigation into Carillion was that the committees agreed joint terms of reference for the inquiry. Again, our evidence taking and deliberations were simply concurrent meetings of the two committees. An important next step might be if Committees of one House were able to draw members from the other for particular inquiries.

Annex
From the Chair
28 June 2018
Charles Walker MP
Chair, Procedure Committee
House of Commons SW1A 0AA

Dear Charles,

Committee Bills
The Work and Pensions Committee’s joint report, A framework for modern employment, included draft text for a Bill, demonstrating to Government how our recommendations could be implemented. The Government was supportive of our recommendations, but introduction of the necessary legislation has been frustrated by Parliamentary timetabling.

Our report showed the effective way Committees can use the inquiry process to produce cross-party, evidence-based legislative proposals. But without any means to influence the legislative timetable, or introduce legislation on our own accord, such a valuable output is lost.

With this in mind, might your Committee please consider the merits of introducing a procedure for “Committee Bills”?

I would imagine such a procedure could be quite straightforward. A set number of days within the parliamentary calendar could be assigned “Committee Bill days”, akin to the existing 13 Private Members’ Bill Fridays. Committees could pitch their Bill perhaps to BBCom, PBL or Liaison Committee, who in turn would assess the credibility of proposals and decide which Committees are allocated time for debate on a Committee Bill day. From this point, the procedure could match that for a Private Members’ Bill, with a nominated member of the relevant Committee acting as the “member in charge”. Of course, a Bill backed by a Select Committee report would in all likelihood already have demonstrated cross-party support.

Select Committees’ inquiry process of evidence gathering, public engagement, and rigorous analysis resulting in cross-party conclusions, is Parliament at its best. Translating this work into the legislative process, not beholden to the Government’s own busy agenda, would surely be a positive extension of Parliament’s increasingly successful and credible Select Committee system.

Best wishes and I look forward to hearing from you,
Rt Hon Frank Field MP Chair, Work and Pensions Committee

June 2018
1. Over the past two decades I have worked as a special adviser to select committees in both the House of Commons and House of Lords, most recently to the House of Lords Select Committee on Citizenship and Civic Participation. I have also supported the Houses of Parliament in relation to a number of projects concerned with promoting public engagement, utilising digital technology, developing new educational activities and (currently) preparing for the Restoration and Renewal of the Palace of Westminster. The main argument of this submission is that the House of Lords investigative and scrutiny committees undertake an incredibly valuable role to the very highest standards but their work generally remains hidden to the wider public. This is a great shame because in a historical period that is almost defined by political apathy and democratic disillusionment the work of committees could play a valuable role in terms of promoting public understanding and, through this, facilitating greater engagement and, through this, further increasing the standard of scrutiny and investigation (i.e. a virtuous scrutiny cycle).

2. It is critical that committees in the House of Lords do not evolve towards a simple duplication of the role, approach or aims of those within the House of Commons. The central strengths of reports published by the House of Lords is that they tend to be longer, more authoritative, infused with expert knowledge and in terms of their final recommendations arguably slightly more considered when compared to those emerging from Commons. This flows into the issue of ‘overlap’ with the Commons in the sense that irrespective of the topic or theme the actual nature of Lords committee-based scrutiny will always be to some extent ‘different’ due to the tone, texture, length and depth of their inquiries.

3. In terms of considering if the current committee structure in the House of Lords needs to be changed it is really necessary to step-back for a moment in order to ask the more basic question of ‘What are committees attempting to achieve?’ Once a coherent answer to this question has been agreed upon then assessing the current structure and making reform-linked recommendations should be easier. As a first step to answering this question I would suggest that where the Lords committees can really add value to the scrutiny and investigatory work already undertaken in the Commons lies in relation to their flexibility and depth. The former in relation to its combination of ad hoc committees and thematic committees; the latter in relation to the length of committees and the dedication of members and staff.

4. I would suggest that the balance between ad hoc committees and standing committees is broadly appropriate but that some thought might be dedicated to the need to refresh the focus and approach of some of the standing committees. There will clearly be some need to restructure the European Union Committee (and sub-committees) in the post-Brexit era but this should be interpreted as a positive opportunity to re-fresh the committee system in toto.
5. The requirement for *ad hoc* committees to only select topics that can be completed within one-year seems unnecessarily restrictive. I can fully appreciate the rationale for keeping the *ad hoc* committees within a fairly narrow timescale as a general position but I would question the need to unnecessarily curtail the potential flexibility for an *ad hoc* inquiry to last longer than twelve months. The *ad hoc* post-legislative scrutiny committees perform an incredibly important role that could potentially be developed. **Having examined the impact of introducing elections for select committee chairs in the House of Commons I would not recommend copying this in the House of Lords.** It might, however, be worth increasing the transparency *vis-à-vis* how committee chairs are appointed in the Lords.

6. The key issue in relation to the *ad hoc* committees appears to be the lack of any formal procedure to monitor the government’s subsequent actions after the committee has ceased to exist. It strikes me that this is a real scrutiny-gap that urgently needs to be filled, possibly by the Liaison Committee (or a sub-committee or some other mechanism) formally assuming responsibility for follow-up and subsequent investigation. Another issue revolves around the selection of topics for *ad hoc* committees to examine. It might, for example, be appropriate to include an emphasis on *issues of particular public concern* that warrant in-depth analysis’ as an additional yardstick. These might be issues that for one reason or another are not being examined by the House of Commons or they could be issues that are being examined from a specific but quite narrow perspective in the Commons due to the departmentally related nature of their select committees. Put slightly differently, the House of Lords has a refreshing capacity to examine issues ‘in the round’ that should be cherished, protected and arguably developed.

7. It would be possible, if members of the House of Lords felt it appropriate, to be slightly more radical in the sense of inviting members of the public to suggest ideas for *ad hoc* committees. Several select committees have invited the public to invite suggestions for inquiry topics and this process can sometimes generate valuable ideas that would not have otherwise been considered. I am personally somewhat unconvinced about this idea but it might be an initiative that deserves discussion and possibly implementing on a trial basis.

8. In relation to engaging with the public I cannot help but think that this is where the most work needs to be done and also where there is the most benefit to be gained. **Although there have certainly been a number of interesting experiments in terms of public engagement the House of Lords arguably needs to ‘lift and shift’ in this area.** My sense is that there is a major emphasis on the exploitation of fairly passive social media techniques (tweets, emails, existing contact lists, etc.) by committees but very little in terms of creative pro-active engagement. Members of the Liaison Committee might be interested to examine some of the public engagement recommendations that were contained within the First Special Report of the House of Commons Liaison Committee, ‘Building Public Engagement: Options for developing select committee outreach’, (2015-2016, HC 470). There are a lot of low-cost high-gain techniques that
committees can use to innovate and reach-out to hard to reach groups; there are also lots of ways that evidence sessions can be organised to maximise engagement and to make contributors feel welcome and at ease. Some of these techniques are incredibly simple and revolve around the layout of the rooms, the clothes that committee members where, the location of the event and even the language that is used.

9. There are, of course, procedures and protocols that must be followed but I cannot help but feel that sometimes these suffocate the nature and form of committee activity, especially when attempting to engage with the public. The work of select committees has to evolve and keep pace with the changing needs and expectations of the public. On many occasions - and in both Houses – I have made recommendations that sought to respond to a public engagement challenge that has been acknowledged by a committee only to be told that the recommendation cannot be taken forward as there is no ‘precedent’ for such a departure from normal practice. And yet this clearly creates a paradoxical ‘double-bind’ (i.e. if no reform can be enacted because there is no precedent). In many ways this points to is the need for a shift in relation to the institutional culture of the House of Lords towards a more ambitious and pro-active stance.

10. One element of this more ambitious and pro-active stance might be a focus on translational skills and ‘engaging with multiple publics in multiple ways’. The primary output of most scrutiny or investigatory inquiries is a report that tends to be fairly formal in tone, esoteric in language, lengthy in size and legalistic in style. It would, however, be possible to think slightly more creatively in terms of translating those full reports into a number of shorter and more accessible outputs in order to engage with a much larger organisation. This may not be appropriate for some of the more specialist inquires but in a lot of cases it will be possible to produce shorter documents that sections of the public will be interested in (schools, students, charities, older people, businesspeople, etc.). The problem is that (a) the main scrutiny outputs from the House of Lords are not made available in an accessible form; and (b) mass access dissemination platforms are not utilised to maximise ‘reach’.

11. ‘Lifting and shifting’ in relation to public engagement will clearly have resource as well as cultural implications but my argument is really that it is a false economy not to be maximising the public value of that scrutiny and engagement work that is already being undertaken in the House of Lords. I would not, however, suggest that the ‘Easy Reads’ that have already been produced on a number of occasions provide a model to follow. From the limited examples I have seen of these ‘Easy Reads’ I think the tone and style risks appearing patronising (i.e. ‘dumbing down’) when what is really needed is the clear, sharp and engaging translation of complex issues and facts into a vibrant and imaginative form.

12. Take, for example, the issue of experimenting with non-text based outputs. It is now very cheap and easy to produce short, accessible and attractive informatic videos that could easily provide a précis of a committee report. These could then be utilised by other elements of the Houses of Parliament (Visitor Centre, Parliamentary Outreach, Educational
Services, etc.) to promote the public understanding of politics. Once made these videos could be located on a number of mass access platforms and through this maximise usage while reducing costs.[1] The intention is that for the general viewer these videos would provide some insight into what peers actually do (as opposed to media promoted characterisations), and for the specialist viewer they would provide a gateway through which the full report could be downloaded. Digital footprints could also be mapped, tracked and assessed in ways that are simply not happening at the moment in relation to written reports.

13. The point I am making is not that the House of Lords should immediately translate all of their committee reports into short informatics videos but simply that it might usefully consider demonstrating greater vigour, ambition and gumption in relation to maximising the public impact of its investigative and scrutiny work.

February 2018

Further to my oral evidence to the Committee I am writing with two further thoughts about building low-cost high-gain capacity in the Lords committee system:

1. In terms of following-up on the impact of ad hoc committees it would be very easy and quite innovative to commission academics to do this work on the basis of an agreed template. As you know, academics are very keen to generate 'impact' case studies and so taking on a small role for the House of Lords like this would be perfect. It would need to be made absolutely clear that the aim was not to launch a new investigation but simply to assess the degree to which the government had (or had not) followed-through on recommendations. I think this would be completely sensible, it could bring bright new scholars within the ambit of parliament, and it would give the Lords a valuable positive win-win resource. I would be happy to help to pilot this proposal should the Committee so wish.

2. One of the most obvious 'gaps' at the moment in relation to the Lords committees is their ability to translate and promote their reports to the public. As a result, the House of Lords does a huge amount of brilliant work that rarely gets acknowledged beyond SW1, and certainly does little in terms of promoting the public understanding of politics. However, I am working with a team of computational scientists and big data specialists who think they might be able to design an algorithm through which reports and debates could be automatically recorded and translated into accessible forms for a public audience. So this would be a more sophisticated form of Hansard that could be tailored for different sections of the public. I have no idea if this can actually work but they are very confident and I just thought it might inject some valuable capacity for engaging with the public into the House of Lords. I could send you some details if you would like - we could even test it on a couple of case studies if you wanted.

July 2018
INTRODUCTION

1. I welcome the opportunity to answer some of the points raised in detailed questions but before I do so I should like to make some short observations as they will colour the answers that I give.

2. One of the shortcomings of our democratic system is that both Members of the House of Commons and Governments are tempted to think short term. It is difficult to think beyond the next General Election which is a maximum of five years though many policies need to be developed over a much longer period of time. Whilst the Civil Service is permanent and ought to be able to think strategically I suspect that many civil servants do not stay sufficiently long in one role in order to oversee long term projects. They must also be influenced to some extent by the preoccupation of Ministers with what is happening right now.

3. By contrast the House of Lords as an appointed chamber does not have to worry directly about its own position when the next election comes. Furthermore many peers are older and less preoccupied with thoughts of promotion. Some have vast experience not only of public life but many other professions and occupations. These factors make it easier to think strategically.

4. Indeed I believe that the ability of the House of Lords to take the long view is unique in our current constitutional arrangements and is invaluable in informing the work of the Select Committees.

ANSWERS TO DETAILED QUESTIONS.

SUBJECT MATTER AND STRUCTURE.

5. I see no reason why the current committee structure should be changed fundamentally.

6. Clearly the European Union Select Committee with its six sub-committees will shortly become obsolete in its current form. However, given the possibility of a transition period to the end of 2020, there is likely to be a significant amount of EU related work until the end of that period. There may well be a case for a re-modelled EU Committee with its six sub committees. In the longer term I favour the idea of extending the remit of the International Relations Committee to include relations with the European Union, possibly as a Sub-committee of that body.

7. I believe that it is desirable to avoid overlap with the work of the House of Commons Select Committees. While there is nothing inherently wrong in overlapping in practice it seems to me a waste of effort to have the two Houses occupying the same territory so to speak. There is also a very practical point in that one is asking civil servants, experts and those with a strong interest in the subject matter to produce evidence and it adds to their burdens if they give evidence to two enquiries.
8. I do not believe that there is an easy answer in striving for the best balance between ad-hoc committees and sessional committees. However I think that the bulk of the work should be undertaken by sessional committees for the reasons I gave in my opening observations. It is very important that there should, in many cases, be a follow-up to work and reports already undertaken. This is part of what I regard as the long view. It also complements the work of the Commons whose Select Committees tend to engage in shorter enquiries.

9. Whilst there is no correct answer as to the best balance between short and long enquiries I am inclined, for the reasons given above, to say that the majority of enquiries should be long.

10. Sessional committees should last for the duration of a Parliament unless there are good reasons for not doing so.

AD-HOC COMMITTEES

11. I accept the criteria the Liaison Committee uses save that I have doubts about requiring an activity to be completed in one year. I think there should be some sensible flexibility especially when considering the House’s calendar in sitting days and recesses.

12. I am not aware that there are any settled current arrangements for following up committee reports. I had always presumed in the case of sessional committees that it was up to the Chairman and committee to make decisions on these matters. In the case of ad-hoc committees I had assumed that it was not possible to follow up if they were only in existence for a short time.

13. The emphasis should always be on the work of sessional committees and I feel that the balance of having around four new short term committees about right.

14. I believe that a lot more could be done to look at the effects of legislation particularly as many Acts of Parliament are, relatively speaking, rushed through and in any case it is not always possible to anticipate what the results of any proposed legislation might actually be. I believe that this is a field where the House of Lords could play an increasingly valuable role. There seems to me to be various possibilities. Either one could set up an ad-hoc committee to look at a particular piece of legislation or it could come within the remit of the appropriate sessional committee or both. A further possibility is a joint committee with the House of Commons. It is certainly a matter which I would urge the Liaison Committee to look at closely.

15. I foresee a greatly increased workload for the Secondary Legislation Scrutiny Committee in the wake of Brexit. If it is to fulfil its duties effectively I am sure it will be necessary to form one or more sub-committees to distribute the load. Of equal importance will be the addition of more clerical and advisory staff.

ENGAGEMENT WITH THE PUBLIC.

16. I do not feel sufficiently well qualified to answer these issues beyond making the general observation that the Liaison Committee needs to look at the target
audiences and see what means of communication they respond to and gear their actions accordingly.

**CHAIRMAN AND MEMBERS**

17. Though I am broadly satisfied with the current arrangements for the appointment of committee chairmen and members I think there are improvements that could be made. There ought to be a standardised procedure for informing Peers particularly, new Peers, of the opportunities to serve on select committees when there are vacancies and also how to register an interest on serving on one or more committees should vacancies arise. It may be that there is such a procedure but it does not seem to be particularly well known if that is the case. So far as the appointment of chairmen is concerned the system seems to work well though I can see that some may query appointment as opposed to election as happens in the House of Commons.

18. I am less happy with the “rotation rule” as I feel the Chairman coming fresh to a committee needs time to settle into the role and also needs time to oversee whether there is any requirement for follow-up work after committee reports have been published. Consideration should be given to appointing a new chairman from a member of the Committee rather than ‘parachuting’ in someone unfamiliar with the work of the particular committee. I should prefer a Chairman to be in place for four years. The same goes for members of the committee subject to a comment I make later. I have vivid recollections of the idiotic situation that arose when a decision was made to reduce the length of service on a committee apparently to give more peers a chance to be on one as a result of which the Communications Committee found itself with a new Chairman and seemingly more new members than old ones!

19. Ideally I would expect there to be no less than 12 and no more than 15 on the various committees.

20. I warmly support the idea of a written role description for Committee Chairmen and members to clarify expectations from the outset. This should include the expectation that members of the committee should attend every meeting from the beginning to the end unless there are cogent reasons for absence. I accept of course that the illness of a peer or pressing domestic circumstances might make it impossible but in those circumstances a member should tender his or her resignation. If, as we are led to believe, there are always more peers wishing to join a select committee than there are places available then it is not just that someone should occupy a seat at a committee without attending on a very regular basis.

21. In my experience committee staff are brilliant in supporting Chairmen and members already and I am not sure what more they could do.

22. Trying to improve the timeliness and content of government responses is an easy question to pose but remarkably difficult to answer. Initially I think it should be the task of the committee itself to make the relevant government department aware if they are too slow in coming back with their response and the same if the content is unsatisfactory and they should not pull their punches! An added incentive could be to extend the concept of ‘name and shame’ akin to the way Departments which have not answered Questions for Written Answers within the ten days are named and shamed. This I would
regard as being part of taking the longer view. Secondly, I think committees making such complaints should also inform the Liaison Committee so that the latter can build up a data base of information and see whether there is any department which is more or less efficient. The Liaison Committee itself should have the power to support an individual committee in making representations to government departments or ministers.

17th March 2018.
Lord Forsyth of Drumlean – Written evidence (RIS0053)

REVIEW OF INVESTIGATIVE AND SCRUTINY COMMITTEES

Recommendations for change

1. Committees are well-served by the small staff teams which support them. However, the changing media environment means that committee staff must work ever harder to keep pace with the expectations of members of the House and the general public in how the work of committees is communicated.

2. Members and staff invest significant time and energy in conducting inquiries and preparing reports. This investment in resource and time can go to waste due to the constraints in the support offered to communicate the work of a committee during an inquiry, and at the end of one.

3. The UK’s departure from the European Union, and the subsequent changes to the European Union Committee which will follow, present an opportunity to reflect on how the overall resourcing of committees in the House of Lords can be redeployed to meet the changing expectations while not increasing the House’s overall resourcing of committees unnecessarily.

Communicating the work of a committee

4. The current model of press and communications support constrains the ability of a committee to promote themselves effectively. The burden is increasingly being placed on the core staff of a committee (the clerk, policy analyst and committee assistant) to implement ideas by members, or generate their own ideas, whenever they have capacity alongside their day job. To generate attention and interest requires more effort for busy committee staff than should be necessary.

5. The press officers working with committee staff are not expert in the work of the committees they are assigned to, and are spread thinly across multiple committees. Further, there is little evidence that time is spent cultivating relationships with the press lobby, or with specialist correspondents who cover the subject area of the inquiry of a committee.

6. A more appropriate model could be to assign media officers within the Committee Office, with responsibility for one or two committees. Such a role would involve:

- preparing communications strategies for each inquiry, and for the committee overall on a sessional basis,
- running social media for committees (where they have accounts),
- identifying newsworthy aspects of written or oral evidence (and promoting these promptly to journalists),
- developing relationships with the press lobby and specialist journalists and newspapers,
- dealing with queries about the work of the committee,
planning alternative means of promoting the work of a committee internally and externally (from videos and pamphlets through to more creative, cutting edge ideas), and looking for opportunities to promote the work of a committee externally (and not just when a report is coming out), as well as preparing press notices about evidence sessions and reports.

7. The media officers could become a core part of committee staff, sat alongside the team on a day-to-day basis, and their work managed by the clerk to the committee. This change gives them a chance to understand the work of the inquiry, and better familiarise themselves with the priorities of the chairman and committee.

8. Such a change to committee practice would enable the tailoring and professionalisation of all our communications activity, and increase the awareness of the House’s work beyond the Chamber.

Internal communications

9. It is easy for members of the House not to realise a report from a select committee has been published until there is a debate on it months later. Presently, efforts to directly contact members with information about a report from a committee have to be made by members of the Committee themselves. When this has taken place, members of the House not on Committees welcome being made aware of the work of a committee. Unfortunately, there is not a suitable conduit for facilitating this beyond emailing members directly, member-to-member.

10. A solution to this problem needs to be found, and it should be made easier for committees to share their reports with all members of the House on the day of (or even prior to) publication.

Redeployment of the expertise of the House

11. The inevitable winding up of the EU Select Committee’s sub-committees necessitates that there could be fewer committees upon which members of the House can serve. The EU Financial Affairs and EU Internal Market Sub-Committees have 24 members (or spaces for members) and look at similar areas of inquiry as the Economic Affairs Committee.

12. The Economic Affairs Committee has the power to appoint sub-committees, which it uses only to appoint a sub-committee to consider the Finance Bill most years. The Committee has many potential lines of inquiry, and the House has members with significant experience of economic affairs. It stands to reason that the Economic Affairs Committee could also, therefore, appoint sub-committees to conduct inquiries, and to offer members of the House an opportunity to participate in committee work and for the House to take advantage of the expertise available to it. There could, for example, be a sub-committee on trade, which should have much to focus on once the UK leaves the European Union.
13. The only restraint on not using the power to appoint a sub-committee more frequently is the capacity of the main Committee’s staff to deliver the high-level of support expected to more than one Committee. If it was found to be desirable for the Committee to make more regular use of sub-committees to fill the void left by the cessation of the EU Committee’s sub-committees, it would have to be ensured that the staff of the Committee felt they were properly supported and resourced to undertake the additional workload.

**Additional thematic investigation area**

14. In addition to the possible restructuring of committee activity, as above, the House could be well served by a permanent committee considering educational issues. This would sit alongside the existing sessional committees, who all have their distinct thematic areas.

15. There have been many reports by select committees of the House which have considered education in some aspect (not least of all the recent report from the Economic Affairs Committee, *Treating Students Fairly: The Economics of Post-School Education*) in recent years. This demonstrates the desire by the House for scrutiny of the area, and given that there are many members with an educational background (be it teachers, academics or ministers), the Committee would be able to take advantage of the expertise of colleagues.

**Committee attendance**

16. A potential reduction in the number of available committee places for members to take makes membership of a committee even more valuable. Members should be encouraged to attend as frequently as they can. One mechanism for incentivising this could be to publish annual, or sessional, attendance statistics for each committee.

17. These statistics could be used as a basis for discussions about ongoing membership of a committee with any member who, for example, has not been able to attend more than 50 per cent of meetings. This should be a conversation in the first instance between the Chairman and that member. There are, of course, members who cannot attend for extenuating circumstances but still add tremendous value when present, and this should be considered when considering attendance overall.

18. The Guide to Financial Support for Members advises that only the reduced daily allowance may be claimed for each day of a formal committee visit. It is difficult to see the justification for reducing the allowance by half for a day spent out of Westminster by Committee members on inquiries. Committees should be encouraged to conduct visits so as to be seen to be engaging with real issues affecting people beyond Westminster.

**Summary**

---

10 See for example, the reports of the [Select Committee on Digital Skills](https://www.parliament.uk/), the [Social Mobility Committee](https://www.parliament.uk/), or the [Select Committee on Artificial Intelligence](https://www.parliament.uk/).
19. **Recommendations:**
   - Media officers should be assigned to one or two committees, and be embedded into the core teams supporting committees.
   - It should be made easier for committees to share their reports with all members.
   - The Economic Affairs Committee should utilise its power to appoint sub-committees to replace the EU Financial Affairs and Internal Market sub-committees, and to be properly resourced to do so.
   - A permanent committee considering educational issues should be established.
   - Attendance statistics for each committee should be published on a regular basis.
   - Members should be able to claim the full daily allowance if they are participating on a committee visit.

18 June 2018
Thank you for the opportunity to give evidence to your review of investigative and scrutiny committees today. During the evidence session I raised the difference in the number of officials supporting the Treasury Select Committee in the House of Commons and those supporting the Economic Affairs Committee.

Having reviewed the number of staff detailed on the Treasury Select Committee’s website (https://www.parliament.uk/business/committees/committees-az/commons-select/treasury-committee/contact-us/) before our session, I wanted to clarify that they do indeed have many more staff than any Lords committee. Having spoken to the staff of the Treasury Select Committee since our session this morning, it transpires that they have more staff than advertised on their website.

The staff complement compromises of at least 14 staff: one Clerk, one Second Clerk, one lead Senior Economist, two further Senior Economists, one senior Committee Support Assistant, another Committee Support Assistant, one Chief Policy Adviser, five Committee Specialists (seconded from HM Revenue & Customs, the Bank of England, Financial Conduct Authority, the National Audit Office and the Prudential Regulation Authority), and a Senior Media and Policy Officer.

While I do not think that committees in the House of Lords require staffing on the same scale as the House of Commons, I hope this example provokes consideration by the Liaison Committee of how to evolve our own staffing model to meet the expectations of members and the general public, and to ensure our existing staff are properly supported in their work.

I would be grateful if this information could be shared with all members of the Liaison Committee.

November 2018
1. The Foundation for Democracy and Sustainable Development (FDSD) is a charity that explores the links between democracy and sustainable development, using evidence, advocacy and dialogue so that society can thrive today and in the future. We have a particular interest in how political systems can better incorporate long-term thinking and take into account the interests of future generations.

2. We propose the creation of a House of Lords Committee for Future Generations that would be able to conduct reviews and scrutinise upcoming legislation to assess long-term impacts and consider the interests of future generations. Full details of the proposal are provided in paragraphs 10 to 19.

3. The problem of ‘short-termism’ in politics, and its implications, are well known – for example, in relation to rapid technological development, inter-generational economic opportunity, welfare and social care provision and environmental challenges. Additionally, such issues tend to be dealt with individually, reinforcing a siloed approach to the policy process.

4. The role and composition of the House of Lords means that it is well placed to think long term, and consider the interests of future generations. The proposed Committee for Future Generations would generate a strategic capacity for such thinking and related activities within Parliament. It would take advantage of the expertise present in the House of Lords, supplementing existing scrutiny and review activities in both Houses of Parliament. No single body in either House has this particular set of critical responsibilities.

5. In early March 2018, we sent the proposal to peers for whom we had contact details, and held a number of conversations. With only a few exceptions, the peers that responded were in favour of our approach. The following 33 peers formally endorsed the proposal for a Committee for Future Generations:

   The Rt Hon the Lord Adonis
   The Lord Berkeley OBE
   The Baroness Berridge
   The Lord Bishop of Norwich
   The Baroness Brown of Cambridge DBE
   The Lord Crisp KCB
   The Lord Dubs
   The Baroness Eaton DBE DL
   The Lord Filkin CBE
   The Lord Glasman
   The Baroness Harris of Richmond DL
   The Baroness Healy of Primrose Hill
6. We also have informal support from the All-Party Parliamentary Group on Future Generations.

7. We believe that this proposal for a Committee for Future Generations responds to three of the main questions driving the Liaison Committee’s review of investigative and scrutiny committees, namely:

7.1 How can Committees add more value to the scrutiny work of the House of Lords as a second chamber? A Committee for Future Generations would bring strategic capacity and a systematic perspective on the long-term implications of policy into scrutiny and review procedures;

7.2 How can House of Lords Committees develop a national conversation to complement their inquiry and scrutiny work? A Committee for Future Generations would be well placed to lead a public conversation, using different approaches to engagement on the long-term challenges and opportunities facing the UK post-Brexit;

7.3 How can House of Lords Committees maximise their impact inside and outside the House? A Committee for Future Generations would improve Parliament’s capacity to consider systematically the long term, not only through ongoing scrutiny and reviews, but also potentially through the regular publication (perhaps annually) of future trends across a range of policy areas. The Committee would be well placed to work with other future generations institutions around the world to share good practice and promote consideration of future generations internationally.

8. The proposal for a House of Lords Committee for Future Generations responds to other specific questions in the review document, namely:
8.1 **Should the current committee structure be changed?** We believe a Committee for Future Generations would be a substantial addition to the committee structure, strengthening the role of the House of Lords in taking a long-term view, in a way that supplements existing scrutiny and review functions across both Houses of Parliament.

8.2 **What changes are needed in the wake of Brexit?** Brexit will naturally take up a lot of parliamentary time in both the House of Lords and House of Commons. A Committee for Future Generations in the House of Lords could be an ideal space in which to consider the UK’s long-term opportunities and challenges, and engage the public in national conversations on these themes.

8.3 **How can Lords committees engage more effectively with the public and media to encourage a national conversation?** Other institutions established around the world to promote the interests of future generations have succeeded in engaging the public in many different ways, both offline and online. Evidence from Wales – both in the development of the Well-being of Future Generations (Wales) Act and the more recent activities of the Future Generations Commissioner – show that there is appetite for public engagement in this area.

9 We would be delighted to provide further evidence to the Liaison Committee to support the review process.

**The Proposal for a Committee on Future Generations**

10 A frequent criticism of the political process in the UK and around the world is that it is too preoccupied with short-term considerations. There will always be short-term pressures from, for example, the electorate and markets. These are an important part of a functioning democracy. But many of the most important challenges of our time are long-term. These challenges include the implications of new and emerging technologies, pensions and social care provision, infrastructure, inter-generational standards of living and employment opportunities, as well as environmental concerns.

11 The House of Lords Liaison Committee is reviewing the structure and function of committees. **We propose that the House of Lords creates a Committee for Future Generations, to bring ‘long-term thinking’ more systematically into the workings of Parliament.**

12 The House of Lords has always provided a partial counter-balance to the excessive focus on the short-term, because it is relatively insulated from electoral cycles and can take a longer-term perspective. The continuity that it represents stretches back into the nation’s past but also forwards into the future and a concern for the generations to come.

13 We believe that this ability to consider the long term could be strengthened through a Committee for Future Generations that is charged with reviewing
future challenges, as well as scrutinising existing and proposed legislation for its long-term impact.

14 The problem of ‘short-termism’ in politics was explored in detail by the international Oxford Martin Commission for Future Generations in its 2013 report, *Now for the Long Term*. The Commission recommended investing in “innovative institutions… independent of the short-term pressures facing governments of the day but appropriately accountable to the political system in question.” Such institutions “should be charged with conducting systematic reviews and analysis of longer-term issues.”

15 There are several examples of political institutions and arrangements that address the long term (see [www.fdsd.org/ways-forward/political-institutions-and-policy-making/](http://www.fdsd.org/ways-forward/political-institutions-and-policy-making/) for further details). The one that is most like our proposal is the Committee for the Future that forms part of the Finnish Parliament. Other countries have established Commissioners or Ombudsmen for Future Generations. Hungary has the longest established ombudsman; Wales has the most recent one, established under the Well-being of Future Generations (Wales) Act 2015. Within Whitehall, the Prime Minister’s Strategy Unit used to play a role in long-term thinking, while the Government Office for Science’s Foresight Projects has a horizon-scanning and future planning function. There are also examples of long-term planning in the private sector, including the well-known scenario approach by Shell. Organisations such as McKinsey and the Economist Intelligence Unit are much in demand for the advice and insight they can provide on long-term trends. Experience from these various institutions would inform the workings of the House of Lords Committee for Future Generations.

16 We envisage three functions for the Committee:

16.1 The Committee should be able to select, from current and draft legislation, bills that it would scrutinise with a long-term perspective, considering the impact on future generations, and then suggest amendments to protect future generations’ interests. These amendments would then be considered by the House at Committee Stage;

16.2 The Committee should also conduct its own reviews, in the manner of a select committee inquiry. It should focus on topics that it believes are not being properly addressed elsewhere in Parliament. Again, it would provide a long-term perspective and consider the interests of future generations;

16.3 The Committee should produce an annual report on long-term trends, with recommendations for how Parliament and Government should respond, in terms of both policies and processes for investigation, assessment and decision making. This report would be debated in both Houses of Parliament.

17 In undertaking these functions, the Committee for Future Generations would be well placed to instigate much needed public engagement and national
conversations on critical issues with long-term impacts that are fundamental to creating a post-Brexit vision for the UK.

18 **Composition:** The Committee’s membership should be determined in the same way as any other committee of the House. As well as political balance, the Committee should also include a balance of expertise.

19 **Timings:** We propose that the Liaison Committee incorporate the Committee for Future Generations into forthcoming recommendations for revising the House of Lords committee structures.

10 April 2018
Lord Giddens, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee: Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee: Written evidence (RIS0071)”
Hansard Society – Written evidence (RIS0048)

Summary

This submission covers:

- Strengths and weaknesses of the current House of Lords committee structure
- Possible changes to the current structure, focusing on: the quality of the legislative process; devolution; and policy foresight/horizon-scanning
- Brexit-related considerations
- Trade policy
- Public engagement

We recommend:

- On the quality of the legislative process: the creation of a Legislative Standards Committee and a Post-Legislative Scrutiny Committee, and that the remit of the Delegated Powers and Regulatory Reform Committee be amended
- On devolution, the creation of a new permanent committee
- On policy foresight/horizon-scanning, the creation of a new ‘Future Forum’ or Committee
- On Brexit-related matters, that the European Union Committee will need to continue to operate during any post-Brexit transition period as provided for in the draft UK-EU Withdrawal Agreement
- On trade policy, that the Lords committee structure will need to change to accommodate scrutiny of this new policy area, and that the House will need to develop a view, ideally sooner rather than later, on how this might best be effected, in cooperation with the Commons.

Submission

Strengths and weaknesses of the current House of Lords committee structure

1. The House of Lords committee structure has a number of important strengths that should be retained in any reformed system:

- It is more flexible than the Commons’ system: the fact that the committee structure is not tied to the shadowing of government departments allows the Upper House more discretion. And the mix of ad hoc and sessional committees allows the House to combine timely one-off investigation of particular issues - particularly ones that might otherwise be overlooked - with ongoing scrutiny of policy areas.

- The current committee structure also more easily accommodates and encourages scrutiny of cross-departmental topics than its counterpart in the Commons, where ‘silied’ scrutiny has been a perennial weakness (although one which Commons select committees appear increasingly inclined to address).
2. These strengths of the current structure are augmented by other features of the Lords committee system, and of the Upper House more generally:

- House of Lords committees are reliably up and running after general elections more quickly than their Commons counterparts. This reduces the risk of scrutiny gaps.\(^1\) (For example, the Commons European Scrutiny Committee met for the first time after the general election on 8 June 2017 on 1 November 2017; the Lords European Union Committee was nominated on 27 June and was already working in early July.) The Lords’ speedier process reflects the facts that committees are not nominated exclusively on a party basis, chairs are not elected and Peers control the timetable for business on the floor of the House.

- Many members of the House of Lords bring specialist expertise and experience to select committee work and, in the absence of constituency commitments, are able to devote time to the detailed reading and scrutiny involved in its effective discharge. It is a strength that the less partisan nature of the House, and the absence of any need to appeal to particular constituencies and audiences, means that committees are less likely to focus on short-term headline-grabbing inquiries (although this of course makes them less attractive for media coverage and public engagement).

- The quality and rigour of their inquiries means that House of Lords committees are respected and listened to by government and other stakeholders. Several permanent committees – particularly the Constitution and Delegated Powers committees – are important sources of persuasion and pressure. Their reputation is such that government is mindful of them as policy is formulated, and their advice, expectations and requirements are set out in Whitehall guidance documents. They have what Professor Meg Russell describes in her research on committee scrutiny as the ‘power of anticipated reaction’, and are often cited as examples of best practice in committee scrutiny in other jurisdictions.

- Compared to their Commons counterparts, House of Lords committees have easier access to time on the floor of the House for their reports to be debated. This gives committee reports greater visibility and impact, at least within the House.

3. The current House of Lords committee system also has some weaknesses:

- The current system of rotation for committee membership risks losing expertise in select committee work, and wastes experience (although there are also arguments in favour of rotation, such as the risk of ‘groupthink’ or unchallenged ‘ways of doing things’ arising on committees with unchanging membership; or of members - however unwittingly - potentially being ‘captured’ by relevant government department(s) or other stakeholders). Rules governing the membership of committees have been influenced over time by the increasing size of the House and the desire to ensure that, of Members who wish to participate in committee

---

\(^1\) “A summer without select committees - and why it must never happen again”, Hansard Society blog, 3 September 2017, https://www.hansardsociety.org.uk/blog/a-summer-without-select-committees-and-why-it-must-never-happen-again
Legislative Standards Committee could question the Leaders of both Houses about their role in preparing a bill and hold them to account for it. It would incentivise ministers to pay more attention to development and innovation. Legislative standards would provide a forum for ongoing debate about the issues and provide for a range of stakeholders from the academic, legal, and civil society sectors. It would be a partner in the process of setting the standards of what constitutes a well-prepared piece of legislation. A committee charged with permanent oversight of legislative standards would provide a forum for ongoing debate about the issues and engage a range of stakeholders from the academic, legal, and civil society sectors. It would incentivise ministers to pay more attention to the standards agenda and hold them to account for it. In addition to calling a minister to answer questions about the preparation of a bill for which s/he is responsible, a Legislative Standards Committee could question the Leaders of both Houses.

There are three shortcomings in the current operation of *ad hoc* committees which could usefully be addressed:

- It is unclear how the selection list of subjects for possible *ad hoc* inquiries is developed. Greater transparency would be advisable.
- Because *ad hoc* committees are disbanded on publication of the inquiry report, it is more difficult to follow up their recommendations (although we are aware that this is an issue on which the Liaison Committee has previously been engaged).
- The welcome flexibility to pursue one-off investigations which is offered by *ad hoc* committees arises only once a year. The system might benefit from even greater flexibility, to enable the House to respond quickly to unforeseen developments of public importance that are not picked up by House of Commons select committee scrutiny but where an inquiry is warranted. This would enable the House to contribute to the national conversation in a timely way at a time of maximum attention and engagement.

**Subject matter and structure: possible changes to the architecture of the current system**

4. To build on the strengths of the current committee system, we suggest that attention could usefully focus on three areas: quality of the legislative process; devolution; and policy foresight/horizon-scanning. The extent to which any changes can be resource-neutral, *i.e.* achieved through the redeployment of resources, will depend heavily on decisions about the future scrutiny of Brexit and post-Brexit EU-related matters.

**Quality of the legislative process**

*Legislative Standards Committee*

5. The Hansard Society has long been an advocate of a Legislative Standards Committee. The proposal has, in recent years, been endorsed by the House of Commons Political and Constitutional Reform Committee (PCRC), the House of Lords Leader’s Group on Working Practices and the Constitution Committee.

6. As we stated in our evidence to the PCRC in 2013, ‘Parliament should at least be a partner in the process of setting the standards of what constitutes a well-prepared piece of legislation’. A committee charged with permanent oversight of legislative standards would provide a forum for ongoing debate about the issues and engage a range of stakeholders from the academic, legal, and civil society sectors. It would incentivise ministers to pay more attention to the standards agenda and hold them to account for it. In addition to calling a minister to answer questions about the preparation of a bill for which s/he is responsible, a Legislative Standards Committee could question the Leaders of both Houses.
about standards, the legislative programme and linked issues such as the use of parliamentary time. By shining a light on both good and bad practice and holding ministers to account for both, a committee would provide a focal point to encourage more of the former and less of the latter. It would also enable thinking about what constitutes legislative standards to be refined over time, in response to the changing legal, political, regulatory and technological landscape.

7. Ideally, a Legislative Standards Committee would be set up on a joint basis with the House of Commons. However, MPs have shown little or no interest in having such a Committee, and did not act on the PCRC’s recommendation in favour of one in 2013. The House of Lords should therefore fill this important gap in the legislative scrutiny landscape.

**Post-Legislative Scrutiny Committee**

8. The potential value of post-legislative scrutiny is widely accepted but the practice has not been widely adopted. It is a core task of House of Commons departmental select committees but is rarely undertaken. Most of the post-legislative review that has taken place has been undertaken by Lords ad hoc committees. However, the process for choosing the pieces of legislation that should be subject to review by such committees does not appear to be systematic. In addition, the number of Acts looked at, via one committee each session, is necessarily limited.

9. A permanent committee tasked with scrutiny of the departmental reviews of Acts (published three to five years after Royal Assent) would contribute to the ‘circle of learning’ about policy development and the legislative process. A new Post-Legislative Scrutiny Committee could have sub-committees to enable it to consider more than one Act at a time.

10. Any new Legislative Standards Committee and Post-Legislative Scrutiny Committee would have to liaise closely with the Constitution Committee (which has hitherto taken a lead on legislative standards) and the Delegated Powers and Secondary Legislation Scrutiny committees. Indeed, there might be occasions when a joint inquiry might helpfully explore and pursue issues of common concern.

**Delegated Powers and Regulatory Reform Committee (DPRRC): expanded remit**

11. We have previously recommended that the DPRRC’s remit should be changed so that the Committee could report on bills when they begin their parliamentary passage, whether that be in the Commons or the Lords, rather than wait until Commons-first bills reach the Upper House.¹²

12. This reform would push at the commonly-understood boundaries of bicameral scrutiny. It would also require an increase in DPRRC resources. However, it would ensure that the House of Commons is better advised on the nature of delegated powers in bills than is generally the case at present. The DPRRC’s decision to report on the EU (Withdrawal) Bill and Taxation (Cross-

---

border Trade) Bill when they were introduced into the Commons has been extremely helpful to MPs in their deliberations on the powers contained in this legislation. The precedent has been set and should be built upon.

**Devolution/Inter-parliamentary relations**

13. Devolution-related matters are currently dealt with largely by the Constitution Committee. However, with issues relating to devolution and relations between the nations of the Union taking on ever-increasing importance, there is a case for a new permanent committee on devolution. Any such committee should have a sub-committee structure modelled on that of the EU Committee but with one sub-committee for each of the nations.

14. As well as improving awareness and scrutiny of devolution-related issues at Westminster, such a committee could help strengthen relations among the UK’s legislatures by acting as a focal point and perhaps exercising convening power. The Inter-parliamentary Forum on Brexit could act as a precedent in this regard.

**Future Forum: Policy foresight/horizon-scanning**

15. Various House of Lords ad hoc committees have addressed long-term, cross-cutting policy issues such as social mobility, long-term sustainability of the NHS, and citizenship and civic engagement. We see value in the creation of a permanent committee where such issues could be discussed, not only by politicians, officials and civil society representatives but also by citizens. Such an initiative would be innovative in the Westminster context.

16. A permanent committee which could undertake a wide range of future-focused scrutiny on an ongoing basis might obviate the need for more ad hoc committees. It might also ensure that important recommendations are followed up more effectively than at present.

17. Subject to the breadth of the remit of any such new committee, the existing Communications and Science and Technology Committees could potentially be subsumed into this new body, addressing the ongoing concern that the latter is duplicative of work already undertaken in the House of Commons.

18. This new Committee could also be a laboratory for innovation in public engagement and consultation. A number of Lords committees – Constitution, Delegated Powers, Economic Affairs, and potentially Legislative Standards, if such a Committee were established – have subject matter which does not readily lend itself to broad audiences and media interest; generally speaking, outside Westminster, the work of such committees is of interest largely to expert stakeholders. By contrast, the issues that a new ‘Future Forum’ or Committee might investigate would lend themselves to potentially much broader public interest. In terms of public engagement and consultation, a number of other parliaments around the world have models that would be worth looking at. Historically, the leader in this field was the Committee for the Future (Tulevaisuusvaliokunta) (TVK) in the Eduskunta in Finland.

**Brexit-related considerations**


19. Brexit will almost certainly require that the current House of Lords committee structure be changed. For the long term, the scrutiny committee systems in both Houses will need to accommodate:

i) scrutiny of policy areas in which the UK gains substantially expanded (e.g. agriculture) or new (e.g. trade) exclusive policy competences as a result of leaving the EU; and

ii) scrutiny of future UK-EU relations, whether this is via some special body/bodies/procedure(s) or absorbed into broader processes for scrutinising the UK’s international political and economic relations.

20. The two Houses’ current European scrutiny systems are likely to become redundant, or at least substantially reduced in scope. This will have implications for their associated committees and the resources – at Westminster and in Brussels, in the shape of the National Parliament Office – that support them.

21. The Lords committee system is more directly implicated in these changes than its Commons counterpart, because of the greater extent to which the Lords EU Committee conducts policy inquiries as well as document-based European scrutiny, compared to the House of Commons European Scrutiny Committee; and because of the more central position that the EU Committee and its sub-committees hold in the overall system of Lords scrutiny committees.

22. As of early May 2018, almost all relevant aspects of Brexit remain uncertain, constraining the extent to which decisions about Brexit-related scrutiny changes could be taken or implemented now. It is to be hoped that much of this uncertainty will have been eliminated by the time that the Liaison Committee reports on its current review before the end of 2018.

**Post-Brexit transition period**

23. If there is a UK-EU Withdrawal Agreement as per the draft published on 19 March 2018, we have identified three specific scrutiny tasks for Parliament that would arise:  

**‘Standstill’ transition period**

i) Parliament would continue to need to monitor new EU law and policy, inasmuch as the UK would be obliged under the Withdrawal Agreement to take on new EU law coming into force during the transition. The considerations about when such scrutiny could ‘safely’ lapse (because all further new EU law would come into force only after the UK was no longer obliged to apply it) would replicate those that applied with respect to ‘Brexit day’ in the early part of the post-EU referendum period, before a ‘standstill’ post-Brexit transition became the most likely scenario. However, depending on the nature of the post-transition UK-EU relationship, new EU law coming into force after the end of the transition might continue to have relevance for the UK.

---

ii) Parliament would continue to need to scrutinise the actions of the UK government at EU level, even though these would be radically more limited than they are with the UK as a Member State. The draft Withdrawal Agreement provides for the UK to have some limited consultation rights (Articles 123(5) and (7), 124(2) and (5)); to decline to be bound by some EU CFSP decisions where it would have had a veto as a Member State (Article 124(6)); and to continue to be able to opt in to new justice and home affairs law where that amends law to which the UK has already opted-in (Article 122(5)).

These - i) and ii) - are tasks which are already carried out through the European scrutiny system, as operated in the Lords by the EU Committee. This would suggest that during any transition the EU Committee should continue with this aspect of its work essentially as now. (With the UK outside the EU, there would be less need for the Committee’s traditional inquiry work into EU policy areas.)

However, the informational and institutional underpinnings of the European scrutiny system rest on the UK’s position as a Member State: the system is triggered when the UK government deposits in Parliament documents which it receives from the EU institutions as a Member State government – but it appears that it will not receive such documents during transition; and scrutiny is tied to UK ministers’ actions in the EU Council, but ministers will not be members of the Council after the UK leaves the EU. Our reading of the draft Withdrawal Agreement (Article 123(2)) is that the UK Parliament will continue to be sent some EU documents by the EU institutions. This could provide the basis for some monitoring work. Nevertheless, as soon as any ‘standstill’ transition became certain, the government and the European scrutiny committees in the two Houses would need to agree new arrangements for transition-period government accountability in the absence of UK membership of the EU Council.

Withdrawal Agreement Joint Committee

iii) Parliament would need to exercise oversight of the UK-EU Joint Committee provided for in the draft Withdrawal Agreement. We commend the EU Committee for already starting to press the government on its plans in this respect,14 and the EU Committee would again seem to be the appropriate body to take this forward for the Lords. When considering appropriate parliamentary oversight, it should be borne in mind that the Withdrawal Agreement Joint Committee is intended to outlast the transition period; and that, post-Brexit, such bilateral Joint Committees could become a more frequent feature of the UK’s international relations.

UK-EU negotiations

24. Negotiations between the UK and the EU on an agreement or agreements to govern their post-transition relationship are likely to continue during the transition period. These negotiations will continue to require scrutiny. Given that the EU Committee and its sub-committees are already devoting their inquiry work almost entirely to Brexit negotiation issues, the need for ongoing Brexit-

---

related negotiation scrutiny could constrain the extent to which exit from the EU in March 2019 in itself reduces the demands on the EU Committee system.

**Post-transition: the long-term UK-EU relationship**

25. The appropriate form of parliamentary scrutiny for the post-transition UK-EU relationship will be determined by the nature of that relationship. The options lie on a spectrum from, on one extreme, the EU relationship being ‘just another’ UK international relationship that may be scrutinised as part of broader international affairs arrangements; to, on the other, a uniquely close relationship that potentially requires a dedicated scrutiny body and/or process. One key issue will be the UK’s relationship with new EU law - whether there is any UK commitment, or option, to take on new EU law as it comes into force. If so, dedicated scrutiny arrangements are more likely to be appropriate. Current scrutiny arrangements for the UK’s JHA opt-in decisions could be relevant, for example. Another issue will be whether UK ministers or officials will participate in any kind of joint governance structures with EU counterparts, in which case, again, the activities of the executive in such structures will require parliamentary scrutiny. Pending greater clarity about the post-transition UK-EU relationship, the Liaison Committee - perhaps in concert with the Commons, via the Brexit Liaison Group - could usefully gather information on scrutiny arrangements employed by countries with parliamentary systems but differing relationships with the EU.

**Inter-parliamentary relations in the EU**

26. Both during any standstill transition period and - depending on the nature of the UK-EU relationship - potentially afterwards, inter-parliamentary contacts within the EU could play a useful role as a source of information on EU developments and a contribution to a positive relationship. Lords committees and their members have often been active on this front. Our understanding is that the UK Parliament’s post-Brexit status has not figured largely in the formal proceedings of EU inter-parliamentary bodies since the UK referendum. Given the uncertainty over, but intended shortness of, the transition period, there may be a reluctance to expend significant energy creating formal rules for a ‘departing state’ status in such bodies akin to candidate state status.\(^\text{15}\) The Lords EU Committee could usefully explore with relevant Commons counterparts whether the UK Parliament would wish to be an invitee to EU inter-parliamentary meetings during any transition. In the longer term, it should be noted that EU relationships with many third countries involve an inter-parliamentary body constituted by the European Parliament and the relevant national parliament.

**Trade policy**

27. Among policy areas which are being repatriated to the UK, the Hansard Society is focusing in particular on trade policy, especially trade agreements, because of the importance of the political, policy and constitutional issues involved. The Lords committee structure will need to accommodate scrutiny of this new policy area. The Lords committee system is potentially in a strong position to make a valuable contribution, given the knowledge built up through

\(^{15}\) We have outlined current provisions on non-Member State parliaments in the rules of EU inter-parliamentary bodies in “Brexit: Parliament’s Five Transition Tasks”, Hansard Society, April 2018, https://www.hansardsociety.org.uk/publications/briefings/brexit-parliament's-five-transition-tasks
the various EU Committee sub-committees that have worked on EU external trade over the years, the relevant knowledge and experience available among Members of the Upper House, and the relative ease with which Lords committees can scrutinise issues which cross departmental boundaries, of which trade policy will be one. However, the role of Lords committees would, as ever, have to be balanced against the political position of the elected House.

28. As is the case for other international agreements, Parliament’s role in trade agreements is constitutionally challenging because it engages the Royal Prerogative. Given the impending new salience of trade agreements, one of the questions that Parliament may wish to consider is whether to return to the issue of its role in UK treaty-making in general, or whether instead to focus exclusively on developing arrangements to scrutinise the making of trade agreements.

29. There are strong grounds for the view that the UK’s default arrangements for Parliament’s role in treaty-making will be inadequate for post-Brexit trade agreements. In particular, current arrangements weight Parliament’s role towards the end of the treaty process, after international agreements have been signed and when they may need implementing legislation to be passed and/or consent granted for ratification. An effective process for making international trade agreements is likely to need parliamentary engagement at earlier stages of the process, before and during negotiations and before signature of any agreement.

30. The government has indicated that it proposes to implement trade agreements which are covered by the Trade Bill by using negative delegated powers, subject to little parliamentary scrutiny, partly because these agreements have already been subject to UK parliamentary scrutiny through the European scrutiny system. This potentially opens the way politically to a scrutiny system for other UK trade agreements which parallels the relatively early engagement and scrutiny reserve involved in the European scrutiny system. In any such system, a select committee scrutiny and reporting process would seem to be an appropriate and necessary part of the process. For effective select committee scrutiny of trade negotiations and trade agreements, there would be a premium on the accumulation of experience and the availability of legal and technical advice.

31. Whatever parliamentary scrutiny arrangements are developed for post-Brexit trade agreements, their effective operation will depend on the government and Parliament having a common understanding of the documentation and information the government will automatically provide to Parliament, when it will do so, and how the material may be used; on this understanding encompassing all appropriate material; and on both sides sticking to the understanding reached. Document deposit via the European scrutiny system is an obvious precedent. So far, the record of the Brexit process on these matters is not encouraging.

32. The government’s plans for Parliament’s formal involvement in trade agreements not covered by the Trade Bill are unclear. Parliament could usefully

---

take the initiative now in developing its own proposals. In this context, we welcome the inquiry into 'UK Trade Policy Transparency and Scrutiny' announced by the Commons International Trade Committee on 11 May. Give that this is the first select committee inquiry into this issue, the matter is increasingly urgent and cross-House cooperation on the issue is unavoidable, we urge Lords select committees - perhaps through the Liaison Committee - to engage with this Commons inquiry.

Public engagement

33. Any public engagement strategy has to define clear objectives. What do committees want to achieve? For example: widen the range of evidence submissions beyond the ‘usual suspects’? Raise the profile of the committee and its inquiries? Garner more media coverage? Raise public awareness of Peers’ work? Tackle negative public perceptions of an unelected House? The desired objective(s) would shape the public engagement strategy.

34. Based on our recent research into public attitudes to Parliament, current barriers to public engagement include:

- **Language**: the public struggle with what they see as the use of ‘jargon’ by politicians, rather than ‘plain language’. Basic terminology confuses and frustrates those outside. For example, for those facing cost-of-living pressures, a ‘bill’ is something they struggle to pay each month. They do not understand the word in relation to legislation.
- **‘Broadcasting’ rather than feedback**: In addition to using plain language, the public want communications to convey milestones. Strongly conditioned by the idea that ‘nothing ever changes’, the public want to see clear demonstrations of progress. Much engagement by parliamentary committees is entirely in ‘broadcast’ mode, when what the public generally say they want is a ‘feedback’ loop.
- **Mis-prioritisation of communication channels**: Twitter is often used by committees and is a good way of reaching the Westminster political bubble and expert and stakeholder groups beyond. But for the general public, Facebook is a far more popular social media channel; our research suggests that Twitter barely figures. And, in any case, as our latest Audit of Political Engagement illustrates, traditional print media and broadcasting channels remain by some distance the most popular way in which people access news and information about politics.

**May 2018**
Lord Harris of Haringey – Written evidence (RIS0027)

Some while back you asked my views on the future shape of Lords’ Committees going forward. I appreciate that time has elapsed since then and that the Liaison Committee’s Review is now drawing to a close. However, if it is not too late, may I throw out the following ideas as a contribution to the discussion?

I would suggest that Lords’ Select Committee works should be grouped into two main areas: current issues and longer-term horizon-scanning work. This might be achieved by having two over-arching committees, each with the ability to form a number of sub-committees to undertake inquiries that might in some instances be fairly short and concise to others which might last a full session (or conceivably longer). The committees would set a work programme at the beginning of each year identifying the subjects they wished to cover matching them to the committee resources available. They would, however, have the flexibility to conduct some additional one-off hearings on particular topics if the need arose during the year. They could invite members of the House not on the Committee to serve on particular inquiries so as to make the best use of the House’s expertise.

The two over-arching committees I envisage would be:
- Policy and Legislation Review Committee - this would look at the effectiveness or otherwise of existing legislation or policy
- Future Trends Committee - this would look at emerging trends and the opportunities or threats posed by them.

The Policy and Legislation Committee might look at such topics as: the workings of immigration policy; the effectiveness of counter-extremism policies; matching skills requirements to the school curriculum and the offerings of further and higher education institutions; food policy and the health of the nation etc (to give some random suggestions).

The Future Trends Committee might look at such topics as: demographic trends (balance of older people to younger) and the implications for employment and welfare expenditure; impact of climate change on global population movements and the implications of this for security; investment requirements in critical infrastructure (looking at replacement of ageing plant, building in resilience and new requirements); societal impact of communications technology etc.

The aim of both Committees would be to maximise the use of the expertise available amongst the members of the House and contribute a cross-cutting analysis spanning multiple Government departments.

I don’t know if any of this is helpful, but I would be happy to come in and discuss in more detail if that would be useful.

11 March 2018
Thank you very much for giving Committee Chairmen a chance to appear before your Committee last week.

I am writing now to confirm and amplify some of the points I mentioned at the meeting but also to bring to your attention some other issues which time prevented me raising then.

1) Structure

In my view, 'Ad hoc' (possibly in future to be called 'Special'!) Committees march to the beat of a different drum to Post Legislative 'Scrutiny' (possibly in future to be called Post Legislative 'Investigative'!) Committees.

The former need a full session to gather the required evidence and prepare a Report but the latter do not necessarily require as long. I am currently a member of the committee undertaking the Post Legislative Scrutiny of the Bribery Act - in my view, there are a handful of key points to be reviewed and a limited number of interested parties to be consulted. We could, therefore in my view, be done and dusted by Christmas.

It follows that the Post Legislative Scrutiny Committee could usefully be a permanent committee - with its reviews of individual Acts being of varying length and its membership changing in line with the practice of the other permanent committee. The specific Acts to be investigated would be determined by the usual channels.

2) Selection of Topics for Ad Hoc Committees

As at present all members of the House would be invited to send in topics. The Liaison Committee would conduct a first sift. It would be empowered to rule out topics for a range of reasons (e.g. duplication of work going on in the House of Commons, having been recently examined etc) but would give their reasons publicly.

The winners from the resulting reduced list would be chosen by a ballot of all members of the House.

3) Other Changes as regards Topics

Those who propose a topic which is chosen should be able to serve on the Committee – but not chair it.

Topics should be focussed to increase impact.

Every school which has been the subject of a visit as part of the Lord's Speakers Outreach Programme should be asked if they would like to submit a topic for a Special Committee to consider.

4) Evidence to Committee

Greater effort needs to be taken to reach past 'the usual suspects' when seeking people to give evidence to Committees. Well established London based sources are fine but there is a world outside the M25 even if it can be challenging to access it!!

5) Ad Hoc Reports follow up

Too often one can see the relief on the Minister's face as he/she comes to the end of a reply speech on a debate on an Ad hoc
Committee Report - the finishing tape has been reached! - so some formal further follow up would be very worthwhile.

To achieve this will require the setting up of some organisational framework - it is unrealistic to think that individual committee chairman can be effective on a case by case basis.

So I would argue for the establishment of a new subcommittee (‘The Monitoring Committee’) of the Liaison Committee. It would be tasked with following up progress, (or lack of it), on Government commitments/suggestions given in responses to Committee Reports. It would produce a quarterly/six monthly report to the whole House outlining success and failures.

It would work in conjunction with the relevant Committee Chairman. Its monitoring of Government responses to individual committee reports would continue until it was agreed that there was no practical value in further monitoring. In extremis it would have the power to recall the relevant Committee and require Ministers to explain their actions or inactions to the Committee. At a lower level, it would work with the relevant Committee Chairman to agree a programme of prodding the Government by means of PQ's, QSD's etc.

Finally, I know that your Committee is very busy so I hope you will forgive me if I respectfully suggest that hearing seven witnesses simultaneously inevitably leads to a rather 'bitty' discussion- perhaps a maximum of four witnesses at a time would provide a more useful result for your Committee.

**July 2018**
Industry Committee

I am writing to recommend that following the publication of the Government's Industrial Strategy in December 2017 the House of Lords should set up a standing committee on industry. The committee's remit will be to consider in detail all aspects of the Industrial Strategy in the light of the challenges of implementation, developments in industry and the economy generally and to make recommendations.

The Government's Industrial Strategy offers a persuasive analysis of the many areas where change and investment are needed and recommends a range of significant initiatives and interventions to boost the UK's economic performance, to lift productivity and to deliver a high wage economy. Its analysis is consistent with industrial strategies adopted by previous Governments which have too often foundered as a result of poor implementation and a lack of flexibility in the face of changing circumstances. An Industry Committee which monitors progress across a broad range of sectors through the lens of skills, investment, infrastructure, innovation and productivity will provide Parliament with an informed analysis of the progress of implementation and the continuing merits of policies being pursued and can recommend additional measures.

The debate in the House in January on the Industrial Strategy attracted more than 30 speakers who brought an impressive depth of experience to bear in their remarks on the strategy and policy recommendations. There was a broad acknowledgement of the merits of the analysis and many of the policy proposals put forward but widespread concern that poor implementation and a lack of flexibility in the face of change may undermine the success of the strategy as has happened in the past.

An Industry Committee would play to the acknowledged strengths of the House of Lords which can muster Peers from government, academia and business with deep experience of industry and the formulation and implementation of industrial policy. Many of the Peers who spoke in the debate are enthusiastic in their support for an Industry Committee which will place the House of Lords at the forefront of one of the most crucial questions facing the country and of immediate concerns to many of our citizens; what is the Government doing to improve the UK's industrial performance?

April 2018
House of Commons Petitions Committee – Written evidence (RIS0074)

The House of Commons Petitions Committee welcomes the opportunity to contribute to the House of Lords Liaison Committee’s inquiry: Review of investigative and scrutiny committees’ publications.

As requested, this written evidence highlights the range of public engagement activities undertaken by the Petitions Committee.

Background

The UK Parliament e-Petitions system is the most popular Parliamentary site of its type in the world.

Petitions have been started or signed by over 14 million unique users. The largest petition had over 4 million signatures.

In this Parliament alone, 29,309 petitions have been created, leading to almost 200 government responses and 32 debates.

At the start of the Parliament, the Petitions Committee agreed the following objectives:

- The petitions system should be an effective way for petitioners to have their voices heard by Parliament and Government;
- The petitions system should increase and enhance public engagement with Parliament and Government, especially among people from disengaged groups; and
- The petitions system should connect petitioners with parliamentary business and increase Parliament’s awareness of petitioners’ concerns.

Methods

The Committee has experimented with different types of public engagement to inform its inquires and the petition debates that it schedules. This has included:

- Surveys (both quantitative and qualitative);
- Web threads on the Parliament website;
- Discussions on existing forums, such as Mumsnet and Money Saving Expert;
- “Digital debates”, which include discussions between the public and MPs on Twitter and House of Commons Facebook page;
- Informal evidence sessions with members of the public; and
- Round table discussions.

Examples

Almost all petitions debates are preceded by some kind of public engagement. Below are detailed examples of how the different public engagement methods have worked in practice.

Surveys
Quantitative surveys have proven particularly useful for hearing from very large numbers of signatories to petitions in a manageable way. A 20% response rate to a request for information on a petition can lead to tens of thousands of answers. The use of quantitative surveys mean that we can hear from large numbers of signatories to petitions without significant extra resources.

Qualitative surveys require more staff resources, but allow more scope for signatories to petitions to express their views.

Survey: Open book GCSE English Literature exam

The Committee received a petition asking to “Change the GCSE English Literature exam from closed book to open book.” The Committee agreed to schedule this petition for debate on 26 March 2018

Method

A quantitative survey was chosen to allow the Committee to hear from a large number of those who signed the petition. There were also concerns that many signatories of the petition were under 18 and it would not be appropriate to encourage them to share their concerns in a public forum. A survey allowed all the information to be reviewed and summarised by staff without being made public.

To design the survey, the Committee worked with Parliament’s Education Service on a focus group with year eleven students.

The survey was sent to over 165,000 people who had signed the petition.

The survey allowed respondents to identify themselves as current students, former students, parents and carers, or teachers. Only teachers were directed to a free text box to allow them to make more detailed comments.

Result

The survey received 16,376 responses. 93% of respondents were taking their GCSE exams that year.

Answers were analysed by staff and summarised into a briefing for the Chair of the Committee, who was leading the debate. The Chair used both statistics and quotes from the survey and the focus group during her speech.

The public engagement added more detailed statistical information about why people had signed the petition. The Member leading the debate was also able to use quotes from teachers to illustrate the data gathered from students. Committee staff would not have been able to analyse 16,376 responses without using a quantitative survey.

The debate is currently the second most watched debate on parliamentlive.tv this Parliament with just under 103,000 views.

Survey: Debate on the cost of car insurance for young people
The Committee received a petition asking to “Put a max of £1200 on car insurance for 18-25 year olds”. The petition had been signed by over 185,000 people.

The Committee scheduled a debate on this petition on 20 March 2017,

The Committee decided to take formal oral evidence on this petition from insurance companies and experts to help inform the debate. It worked jointly with the Transport Committee to do so.

The Committee also decided to find out more from those who had signed the petition, to help inform the debate and its questioning during the formal oral evidence session.

Method

The survey was designed with both quantitative and qualitative questions about young drivers and car insurance.

The Committee also held an informal meeting with the petition creator, Rhys, to find out more about why he started the petition and how the issue affected him.

Result

The survey received 20,498 responses.

The Committee used the information from the survey and informal meeting with Rhys during the formal oral evidence session.

The oral evidence was published and made available to MPs taking part in the petition debate.

The survey showed that 49% of young people in rural areas could not get to work without a car and 31% could not get to education or training. Some respondents were young carers, who told the Committee about how their caring responsibilities made a car was essential.

Through the public engagement, what could have been a debate about whether young people were bad drivers became a debate about access to work and education and the experiences of young carers.

Web threads on the Parliamentary website and discussions on existing forums.

Web threads have proven to be particularly useful in hearing people’s experiences in a more accessible and informal way than asking people to submit written evidence.

Web threads can be resource intensive as they require staff to carefully check all comments before publishing them on the Parliament website. They do not have the same protection from privilege as formal written evidence, which is reported to the House.

Web thread: the closure of retail stores on Boxing Day

The Committee received a petition “Close all retail on Boxing Day, retail isn’t needed on Boxing Day!” which had over 148,000 signatures.
The Committee scheduled this petition for a debate on 12 December 2016.

To help inform the debate, the Committee decided to hear the views of signatories to the petition and the wider public. It invited people to share their personal experiences of boxing day shopping and working in retail on a web thread on the Parliament website.

A link to the web thread was emailed to everyone who had signed the petition. It was also promoted on Parliament’s social media channels.

Result

The web thread received over 8,000 comments from retail workers, their families, store owners and shoppers. All comments were read by staff, summarised and made available to Members.

The Chair of the Committee led the debate and used quotes from the web thread during her speech.

The public engagement helped to balance out the economic arguments expressed during the debate by bringing in some of the personal experiences of those affected.

The public engagement and debate helped to drive a large amount of media coverage on the issue.

Web thread and informal meetings for the Petitions Committee’s inquiry into funding for research into brain tumours

Fund more research into brain tumours, the biggest cancer killer of under 40s

This petition had been started by Maria Lester in August 2015 on the anniversary of the death of her brother, Stephen, from a brain tumour. Stephen died when he was just 26. Maria’s petition called for more funding for brain tumour research.

The Committee decided to launch an inquiry into this petition in October 2015. This was the Committee’s first ever inquiry. When the Committee made its decision, the petition had just under 14,000 signatures and had received a response from the Government. The Committee was surprised to see that, in spite of the excellent work done by the All Party Parliamentary Group on Brain Tumours, there had not been any recent debates on brain tumours. The Government’s response to the petition also did not give the Committee confidence that the Department for Health had grasped the seriousness of the concerns highlighted by the petition. The Committee therefore decided—having first consulted the Health Committee—to start its own inquiry.

The Committee published its report in March 2016 (during brain tumour awareness month) and scheduled a debate on this petition on 18 April 2016.

Method
The Committee opened a web forum on which people affected by brain tumours could share their views and experiences. There were 1,100 contributions in just five days—at the time, a record for a select committee web thread.

Some of those who responded were invited to attend a private informal round table event with the Committee. This enabled Committee Members to hear in more detail from those affected by brain tumours and for Members to meet some of the people behind the stories. Their stories are included in the Committee’s final report.

Many of those who participated became ambassadors for the Committee’s inquiry, doing local press about their experience and promoting its final report. The Committee also held two oral evidence sessions, including taking evidence from the petition’s creator, Maria Lester, and her parents. This oral evidence was done in the usual formal way, but the Committee had previously met the family informally and staff spent a lot of time helping to prepare the family. The Committee also allowed Maria to read an opening speech at her request, which helped her say everything she wanted to.

In March 2016 the Committee published its report. Within the report, the personal experiences of patients and their families are recounted in depth, often in their own words, and includes photographs of people lost to brain tumours far too young. This helped create a powerful report.

The report concluded that brain tumour research funding was inadequate and not given sufficient priority. It called for the Government to give a clear statement of whether it believed that current levels of funding were adequate, and if not, asked what it would do to ensure that funding for brain tumour research increases.

The Committee launched the report at an event in Parliament where the petitioner and those who had contributed to the web thread and Committee’s inquiry were invited to attend. This helped gather support behind the Committee’s report and recommendations.

The report was positively received not just by campaigners, but also by oncologists and brain surgeons.

Result

It was standing room only in Westminster Hall for MPs and the public when the petition was debated on 18 April. The community that had gathered around the petition and inquiry were excellent campaigners and lobbied their MPs to attend. Many MPs shared stories of their constituents during the debate, adding to the stories already cited in the report.

In response to the debate and the Committee’s report, the Minister announced that the Government [now] accepted that it needed to do more to increase the amount of funding for brain tumour research, and announced that he would set up a Department of Health working group of clinicians, charities and officials to work out how to do that.
The Government’s response to the debate and to the Committee’s report was a huge change from its initial response to the Committee. When Maria and her family came out of the gallery they told staff, “we feel like we’ve all finally been heard.”

Peter Realf, Maria and Stephen’s father, was invited to take part in the working group to be the representative of families affected by brain tumours.

The working group report was published on 22 February 2018. Its publication was accompanied by a joint press notice from the Government and Cancer Research UK announcing an extra £45 million of funding for research into brain tumours. The Government has since released another press announcement on 13 May 2018 announcing a “Tessa Jowell Brain Cancer Research Mission” which the Committee understands will be overseeing the funding and implementation of the recommendations made by the Department of Health’s working group. The Committee continues to follow up on this work.

Peter Realf has been heavily involved in promoting the work of the Petitions Committee and sharing his experience with those representing “disengaged” groups to help encourage more people to understand and use petitions as one way to help get their voices heard.

Web thread and formal oral evidence session with contributors: inquiry into high heels and workplace dress codes

Make it illegal for a company to require women to wear high heels at work

This petition was started by Nicola Thorp after she was sent home from work for refusing to wear high heels. She said that she had googled ‘how to change the law’ and saw a link to start a petition on the UK Government and Parliament petitions site.

The Committee, working jointly with the Women and Equalities Committee, decided to conduct an inquiry into this petition in June 2016. The aim of the Committee’s inquiry was to gain a clear understanding of what the current law says about this issue and how it is affecting people in the UK.

The Committee published its joint report with the Women and Equalities Committee in January 2017.

Method

The Committee first wanted to know how widespread the issue was by conducting some public engagement. It opened a web thread on the Parliament website and invited comments from anyone who had been affected by the issue. It received over 700 responses.

Through Parliament’s Digital Outreach Team, the Committee also worked with Mumsnet, an online parenting forum, who hosted a thread in which women were invited to share their experiences.
The comments received highlighted to the Committee that there were certain industries where the practice of requiring women to wear high heels was rife, particularly the hospitality and retail sectors.

The Committee, working with the Women and Equalities Committee, decided to hear from experts on the issue as well as Nicola and two women who had commented on its web thread. Although they had never been to Parliament before, they gave excellent evidence to the Committee. However, it was with regret that the Committee learnt that one of the witnesses who was invited to give evidence after commenting on the web thread, had received some online abuse as a result. (This is something all Committees should consider when dealing with non-expert witnesses on certain types of inquiries that can attract negative attention).

The public engagement along with the oral evidence highlighted that this was a serious problem affecting mainly women in insecure jobs, highlighting an issue that the Government had not been aware of.

The Committees published a joint report which called for the Government to take urgent action to improve the effectiveness of the Equality Act. It recommended that the Government look carefully at the current law and, if necessary, to ask Parliament to amend it – to make it clearer.

The report also called for more effective deterrents for employers such as financial penalties and an awareness campaign directed at employers, workers and students, to improve their understanding of the law and workers’ rights.

**Result**

The company who had been responsible for the dress code which had affected Nicola Thorp apologised to the Committee and changed their workplace dress codes.

The Equality and Human Rights Commission ran a social media campaign aimed at young women to promote awareness of the law, following the petition and the Committees’ inquiry.

The Government has produced guidance on work place dress codes which it published on 17 May 2018. The Chair of the Committee did a joint press briefing with Nicola in Manchester on 23 July to raise the profile of this new guidance and the success of Nicola’s petition.

**Digital debates**

The Committee staff work closely with Parliament’s Digital Outreach Team who facilitate digital debates on Parliament’s social media channels and on other existing online forums.

**Foreign aid spending digital debate**

Stop spending a fixed 0.7 per cent slice of our national wealth on Foreign Aid
The Committee scheduled this petition for a debate on 13 June 2016. The Committee agreed to work with the International Development Committee on a live Twitter chat, to help inform the debate.

Method

Steve Double MP, the Member of the Petitions Committee who led the debate, and Stephen Twigg MP, Chair of the International Development Committee, both took part in a one-hour Twitter chat and asked the public a set of prepared questions about international aid. At the time, it was the first House of Commons digital debate with more than one Member taking part.

Result

Out of all the House of Commons digital debates held so far, #ukaiddebate was the:

- 1st highest in number of original tweets (1,400)
- 2nd highest in reach (number of twitter account feeds it appeared in) (7,715,203)
- 3rd for retweets in general (3,414)

During the digital and Westminster Hall debate, #UKAidDebate was trending in the UK. Comments made by the public were referred to during the Westminster Hall debate.

Fireworks digital debate

Change the laws governing the use of fireworks to include a ban on public use

The Committee scheduled this petition for debate on 29 January 2018.

Method

A Facebook discussion card was posted on the House of Commons Facebook page to hear the public's opinions on the petition.

The UK Fireworks Forum, a forum for firework enthusiasts, also posted a thread so that the Committee could hear the opposing view to the petition.

Result

The Facebook post was seen by 10,853 accounts between 19 and 24 January 2018. There were 932 clicks on the post and 246 engagements which include comments, reactions (such as likes etc.) and shares. The forum received 16 detailed comments.

Both the Facebook and forum comments were used by Susan Elan Jones MP, the Member of the Petitions Committee who led the debate, in her opening speech.

Consulting on draft Committee recommendations through surveys, Facebook and informal round table events: Committee inquiry into online abuse and the experiences of disabled people. (Ongoing)

Make online abuse a specific criminal offence and create a register of offenders
The Petitions Committee agreed to conduct an inquiry into online abuse, specifically focusing on the experiences of disabled people.

This petition was started by Katie Price following the online abuse directed at her son, Harvey, who has complex disabilities.

The Committee specifically wanted to hear from disabled people themselves. The inquiry began with an informal session with disabled people to hear about their views and experiences.

Although there was scope for digital engagement, the Committee recognised the sensitivities around the topic. There were concerns that open public engagement could encourage people to make public accusations of crime or potentially direct abuse back on to the petitioner. The Committee were also mindful of the capacity for staff to deal with potential disclosures of abuse.

The Committee decided that it would consult with disabled people and other members of the public on a set of draft recommendations towards the end of the inquiry, before finalising its recommendations in a final report.

The consultation encouraged public involvement, but reduced the potential risks associated with engaging on such sensitive topics.

**Method**

The Committee published its draft recommendations in a Special Report which has also been produced in Easy Read and Brail versions.

The Committee has held informal round table discussion events with disabled people in Scotland, Northern Ireland, north-east England (and will hold similar events in London and Wales this October) to discuss the recommendations in detail and hear the views of disabled people.

The Committee also produced an online survey, which has been shared widely with charities and groups representing disabled people. The House of Commons Facebook page has also hosted a discussion thread on the recommendations.

This appears to be the first time a House of Commons Select Committee has consulted on its draft recommendations, before producing a final report.

**Oral evidence in an informal layout**

The Committee has experimented with different layouts for taking oral evidence sessions with signatories of a petition and members of the public, to help make them more comfortable and feel less intimidated. For example, instead of sitting at the traditional witness table, witnesses have been invited to sit around the horse shoe with MPs following a precedent set by the Environmental Audit Committee.

**Oral evidence session families: Meningitis B vaccine**

Give the Meningitis B vaccine to ALL children, not just newborn babies.
This petition was started in September 2015 by a concerned parent, Lee Booth, after he was told that his six-month-old daughter was too old to receive the vaccination.

The petition grew rapidly and gained over 800,000 signatures the following February after the parents of Faye Burdett who had contracted meningitis B shared photos of their daughter seriously ill in hospital. Faye tragically died on 14 February 2016.

The Committee scheduled a debate on this petition on 25 April 2016.

The Committee decided to work jointly with the Health Committee to hear oral evidence on this issue to help inform the debate.

The Committee invited the Burdett family, the petition creator and other families who had been directly affected by meningitis B to give oral evidence. This enabled them to share their stories and have their voices heard. It was obviously a very sensitive issue and the Committee were able to make it as informal as possible by enabling the families to sit around the horseshoe with them.

Result

During the debate the Minister announced an awareness campaign of the symptoms of meningitis B.

The Government also committed to publishing a report on how the cost-effectiveness of vaccines was calculated. Following an oral evidence session with the Minister in February 2018 to pressure the Government to make good its commitment to publish this report, the Government agreed to launch an accessible consultation on the method for calculating the cost-effectiveness of vaccines for the public to contribute to.

Emailing signatories of petitions to promote the work of the House

The House of Commons Procedure Committee report, which recommended the setting up of the jointly run petitions site and the Petitions Committee, said that one of the roles of the Petitions Committee staff team would be:

“[...] keeping petitioners and signatories who have opted in to receiving further information informed of the progress of their petition, and (subject to the volume of petitions received and the resources available) informing them of other Parliamentary developments or activity touching the subject of their petition, and making such information available on the e-petitions website”

It said: “the establishment of a Petitions Committee with its own team of staff has the potential to produce a significant improvement in the information which is available to petitioners about what the House of Commons does and the many ways in which Members of Parliament use the opportunities the House offers them to respond to the public’s concerns.”
In the first two years of the site being open, staff sent just under 200 emails to signatories of petitions about the following types of work which were directly related to the issue of their petition:

- Other debates in the House of Commons e.g. adjournment debates; Opposition Day Debates; Government Debates and Urgent Questions; and House of Commons Select Committee work e.g. web threads or opportunities to contribute to relevant inquiries; oral evidence sessions; and the publication of reports.

The Procedure Committee report was clear that this work would be done "subject to the volume of petitions received and the resources available”. In practice, the volume of petitions to check has vastly exceeded expectations.

**Result**

Emails notifying signatories of a debate include links to the Hansard transcript and parlamentlive.tv. The emails sent to signatories have led to an increase of over 300% of readership of Hansard and 900% of viewing of Westminster Hall debates.

Petitions debates or debates that the Committee team have emailed signatories to petitions about were the most viewed or read debates every week since the Committee was re-established at beginning of the 2017 Parliament. In any given week, they receive an average of 87% more readers than the second most popular item of Parliamentary business.

Emailing signatories about relevant Select Committee inquiries has had a particularly significant impact.

For example, some 86% of people who visited the recent PACAC forum on Devolution and Brexit went there following an email from the Petitions Committee team. The largest petition involved had only 3,079 signatures, but drove nearly 8,000 people to the forum, suggesting that emails to signatories are widely shared.

Emails to signatories also seem to have diversified the people contributing to inquiries. For example, following an email to signatories of a petition about changes to the Royal Marines, a significant number of submissions to a Defence Committee inquiry came former Marines and Navy personnel, who do not generally engage with Select Committee inquiries. They were directly affected by the topic of the inquiry and displayed expertise and understanding of the issues.

The House of Commons Committee Office Web and Publications team have begun to track the impact of emailing signatories with calls to evidence, so that more detailed evidence of impact can be tracked.

One of the first emails which Petitions Committee staff sent, was to approximately 30,000 people who had signed a petition to “Allow transgender people to self-define their legal gender”. The Women and Equality Committee received 85 of its 253 pieces of evidence were from from people who had signed the petition. The evidence included very personal stories, which were described as “a really valuable part of the inquiry.”
Attached you will find an interim submission from the European Union Committee to the Liaison Committee review of investigative and scrutiny committees. This was agreed by the Select Committee at its meeting on 13 March 2018. It reflects our emerging understanding of the way in which Brexit will unfold, and of the implications of Brexit for committee work, both during any transition period and in the longer term.

This is an interim submission, because negotiations themselves are incomplete. The terms of the Withdrawal Agreement could well change between now and the end of the year, with implications for committee work. We will continue to monitor developments, and may make a further submission later in the year.

I hope you will find our submission useful. I would of course be happy to discuss the issues further, if you have any questions.

March 2018
European Union Committee: interim submission to the Liaison Committee review of investigative and scrutiny committees

Introduction

1. This submission was agreed by the European Union Select Committee at its meeting on 13 March 2018, but has been updated where necessary to reflect the agreement reached by UK and EU negotiators on 19 March.

2. The European Union Committee is appointed to “consider European documents … and other matters relating to the European Union”; to “assist the House in relation to the procedure for the submission of Reasoned Opinions”; and to “represent the House as appropriate in interparliamentary cooperation within the European Union”.

3. This submission reflects the limits of our remit, focusing on Question 2 in the list of detailed questions: “What changes are needed in the wake of Brexit? Are committees needed to scrutinise the UK-EU relationship in future, and if so how?” Given our responsibility for representing the House in interparliamentary cooperation within the EU, we have also addressed the question, “How can House of Lords Committees promote inter-parliamentary dialogue both within and outside the UK?”

4. This submission reflects our current understanding of the likely shape and timing of Brexit, based on our continuing scrutiny of the process, which began in the weeks following the June 2016 referendum. Brexit is, however, still subject to profound uncertainties, some of which we briefly explain in this note. Our views are thus provisional, and our central conclusion is that it is too early to decide definitively on the changes that will need to be made in the wake of Brexit. Assuming that a Withdrawal Agreement is finalised, pending parliamentary votes, in October 2018, the Liaison Committee will be better placed to take final decisions towards the end of the year.

5. A further key consideration is the nature and duration of a post-Brexit transition period. The UK will cease to be an EU Member State on 29 March 2019, but the UK and EU have now agreed the terms of a transition or implementation period, lasting until the end of 2020. In other words, ‘Brexit’, rather than being a single event, will be a phased process. It follows that changes to the House’s committee structure, rather than taking place all at once in spring 2019, may also need to be phased. One model may be appropriate for transition, and another for 2021 onwards.

Transition: March 2019–December 2020

Scrutiny of EU laws during transition

6. The draft transition agreement, incorporated as Articles 121–126 of the draft withdrawal agreement published by the European Commission on 28 February, and agreed by the UK and EU negotiators on 19 March, will mean EU laws continuing to apply in full in the UK throughout transition. As Article
122 states: “Union law shall be applicable to and in the United Kingdom during the transition period”.

7. There are some exceptions to this general principle. Article 123 of the draft agreement, for instance, states that during transition “the parliament of the United Kingdom shall not be considered to be a national parliament of a Member State”. It follows that the EU Committee’s current role in relation to the submission of Reasoned Opinions will lapse in March 2019.

8. More important, though, is the fact that UK Ministers will not attend or vote in meetings of the Council, and the UK will cease to elect Members of the European Parliament—there will be no opportunity for the UK’s elected representatives to participate in the adoption or review of EU laws, even though those laws will continue to apply. Transition could thus lead to a significant, if short-term, ‘democratic deficit’.

9. We, along with colleagues in the House of Commons and in Government, have begun reflecting on this issue. The Secretary of State for Exiting the EU, David Davis MP, in a letter to Lord Boswell dated 21 February, outlined the Government’s proposal that the joint committee established to oversee the Withdrawal Agreement should, during the transition period, be tasked with ensuring “mutual good faith”. In evidence to the House of Commons European Scrutiny Committee the following day, DExEU Minister Robin Walker MP developed the point, arguing for “a mechanism for raising UK concerns through a joint system”. He saw a role for a continuing scrutiny process that would “feed into that”; he said that he would “come back to the [European Scrutiny] Committee and indeed to the Lords EU Committee to discuss how that scrutiny relationship could work during the implementation period”.[1]

10. We have yet to receive firm proposals from the Government, and Mr Walker acknowledged that “it is for Parliament, rather than Government, to determine the scrutiny process”. But we note that the latest text of the transition agreement, agreed on 19 March, provides that, even though the United Kingdom Parliament will not be considered as a “national parliament of a Member State”, it will continue to be treated as such for the purpose of Articles 1 and 2 of the Protocol (No 1) on the role of national parliaments in the European Union— with the result that draft legislative acts will continue to be forwarded to the UK Parliament, as at present. The regular supply of draft legislation is a prerequisite for effective scrutiny, and we welcome the Government’s success in including this provision in the Agreement.

11. We note also that the current system of parliamentary scrutiny is underpinned by the Scrutiny Reserve Resolution, according to which Ministers are not to agree in the Council of Ministers to any proposal that is being held under scrutiny by one or other scrutiny committee. Given that UK Ministers will no longer have voting rights after exit day, the Scrutiny Reserve Resolution will cease to have effect. Depending on how negotiations and our own discussions with Government progress, we may in due course make proposals to the Procedure Committee for replacing or amending the Resolution, so as to support scrutiny during transition.
12. **In summary, it is now clear that during the transition period the UK will continue to be bound by EU laws, including new laws as they come into force. We therefore believe that some form of continuing parliamentary scrutiny of those laws will be essential.** One objective of this scrutiny could be, as the Government has suggested, to raise concerns over EU proposals, which Ministers will then raise through the UK-EU joint committee—this would be analogous to the current ‘reasoned opinion’ procedure, but without the same force in EU law. More broadly, scrutiny committees would contribute to transparency, reporting significant changes and developments to the House and helping to inform the wider public. Depending on what domestic legislative process is adopted for giving effect to EU laws during transition, scrutiny committees could also have a role in contributing to parliamentary scrutiny of those domestic laws (while respecting the existing role of the Secondary Legislation Scrutiny Committee).

**Scrutiny of ongoing UK-EU negotiations**

13. Since the 2016 referendum the EU Committee has sought to scrutinise the Government’s conduct of the Brexit negotiations. We are grateful to Mr Davis, who has appeared before the EU Select Committee approximately quarterly, and acknowledge that, as the UK’s chief negotiator, he faces a heavy burden in supporting parliamentary scrutiny.

14. But notwithstanding Mr Davis’ appearances, the Government has been slow to share confidential material with Committees—it only shared its sectoral assessments, and more recently its leaked economic analysis, after motions calling for the documents to be released had been agreed by the House of Commons. Nor have officials been available to meet the Committee, either on or off the record. This reluctance to engage with committees contrasts with the steady flow of information and briefing provided by the European Commission to the European Parliament’s Brexit Steering Group, creating, in effect, an ‘inequality of arms’ between the Westminster and Brussels parliaments. This has made it difficult for us to undertake structured and informed scrutiny.

15. Hitherto the negotiations have focused on ‘withdrawal issues’, the most important being citizens’ rights, the financial settlement, and the UK-Irish border issue. But during transition they will turn to long-term future relations, covering such issues as trade (covering not just tariffs, but the arrangements for ongoing regulatory alignment, which reach deep into domestic policy), internal and external security, and ongoing cooperation in areas such as aviation or data protection. We assume (although it is too early to confirm) that rather than being conducted by the Secretary of State for Exiting the EU, the negotiations during transition will be made up of many strands, with departmental ministers playing a more direct role.

16. These negotiations will have significant long-term implications for the United Kingdom, and we therefore, notwithstanding the difficulties we have encountered thus far, reaffirm the conclusion reached in our October 2016 report *Brexit: parliamentary scrutiny*: 
“Parliament, while respecting the Government’s need to retain room for manoeuvre, should be able both to monitor the Government’s conduct of the negotiations, and to comment on the substance of the Government’s negotiating objectives as they develop. Only if these principles are accepted will Parliament be able to play a constructive part in helping the Government to secure the best outcome for the United Kingdom.”

17. We therefore hope that the Liaison Committee, in considering the House’s committee structure during the transition period, will prioritise effective committee scrutiny of the negotiations with the EU.

Trade negotiations with third countries

18. The Government will also use the transition period to begin negotiations with third countries, both those with whom the UK, as an EU Member State, has already concluded agreements, all of which will have to be renegotiated post-Brexit, and those with whom the UK may wish to conclude agreements on trade or other matters in future. These negotiations will in due course give rise to numerous treaties—though they are unlikely to come into force until after transition, once the UK is no longer bound by EU law.

19. Hitherto the negotiation of many international agreements, including trade agreements, has been an exclusive EU competence. In other words, the European Commission, represented in most cases by the EU Trade Commissioner, has negotiated treaties on behalf of the United Kingdom, following guidelines adopted by the European Council. Such negotiations are conducted under Article 218 of the Treaty on the Functioning of the European Union (TFEU).

20. Article 218(10) TFEU provides that “The European Parliament shall be immediately and fully informed at all stages of the procedure”, and in recent years the European Parliament has played an increasingly influential and active part in monitoring trade negotiations. The detailed arrangements are set out in a binding 2010 Framework Agreement on relations between the European Parliament and the European Commission, according to which the Parliament “shall be immediately and fully informed at all stages of the negotiation and conclusion of international agreements”. This allows enough time for the Parliament “to express its point of view if appropriate, and for the Commission to be able to take Parliament’s views as far as possible into account”.

21. In other words, an elaborate system of parliamentary oversight of the conduct of negotiations on international agreements now exists in Brussels—and UK MEPs play an important part. There is thus a risk that this layer of democratic oversight and accountability could be lost post-Brexit.

22. It follows that the question of parliamentary scrutiny of treaty-making powers, debated many times over the last 20 years, will acquire new urgency from March 2019. At the moment parliamentary oversight of treaties is limited to the process of ratification, where, under the procedures set out in the Constitutional Reform and Governance Act 2010, parliamentary votes are
possible. In the House of Lords, the Secondary Legislation Scrutiny Committee may report on treaties falling within the terms of the CRAG Act, but in practice has rarely done so.

23. But by the ratification stage treaties are a ‘done deal’. There is an argument that Parliament should have much earlier input, scrutinising and commenting on negotiating objectives and guidelines, so as to bring a measure of democratic accountability and transparency to the whole process. This issue falls outside the remit of the EU Committee, but we hope that the Liaison Committee will make it a priority in considering committee work during transition and beyond.

Interparliamentary relations during transition

24. As we have noted, the EU Committee is charged with representing the House in interparliamentary cooperation within the EU. This task will, we believe, be more important than ever during the transition period. If UK Ministers are not able to vote on EU laws in the Council, and the UK has no MEPs, then the exercise of ‘soft power’ will be crucial. Indeed, it will be all the more important, once the UK longer has a formal voice in the EU institutions, that we nurture relationships with EU institutions and with the remaining EU Member States.

Summary: committee work during transition

25. As we indicated at the outset, the Brexit negotiations are subject to significant uncertainties. It is therefore too early to confirm exactly what kind of committee structure will be appropriate to scrutinise the UK-EU relationship during transition, let alone in the longer term. But with that important qualification, we believe that, if a transition agreement is concluded, a committee or committees will be needed—

- To monitor and report on significant changes in EU law, and to make recommendations to Ministers on when to make representations on or object to such changes;
- To scrutinise the ongoing negotiations with the EU, and to report on any draft agreements that emerge from those negotiations, so as to inform debates or votes in the House;
- To scrutinise negotiations with third countries, and to report on any draft agreements that emerge from those negotiations;
- To represent the House in interparliamentary fora within the EU, with a particular view to developing the structures for ongoing UK-EU interparliamentary cooperation.

26. These are significant tasks, and the Liaison Committee may wish to reflect on what level of resource they will require. In our view, the tasks we have outlined, if all undertaken by one committee, would demand a structure comparable to that of the existing EU Committee—namely, a Select Committee supported by a number of Sub-Committees with sectoral remits. This does not necessarily mean six sub-committees, nor does it mean that the remits of those sub-committees would be those of the existing EU sub-committees. It would also be possible to divide the tasks between
committees, for instance with one committee focusing on EU-related matters, and another on negotiations with third countries.

27. We note, however, that the Members and staff of the EU Committees possess substantial expertise and experience, well-established working practices, and a wide range of networks and contacts. The Liaison Committee may therefore conclude that there would be benefit in a phased approach, drawing on existing structures during the transition period, rather than undertaking a disruptive reorganisation in 2019 for a period that is unlikely to last more than two years.

Committee work in the long term

28. It is too early to come to firm conclusions on committee scrutiny of the post-transition UK-EU relationship. The Prime Minister set out her position in her Mansion House speech on 2 March, and the European Council (EU 27) is likely to adopt negotiating guidelines in late March. But these are high-level documents, and our expectation is that when the Withdrawal Agreement is finalised in October 2018, it will be accompanied only by a political declaration describing in broad terms the relationship that the two sides are committed to implementing. That relationship could be ‘deep and special’, entailing continuing close cooperation on trade, internal security and foreign policy, or it could be relatively detached.

29. Detailed negotiations will begin in earnest after October—possibly not until after 29 March 2019, when the UK will become a ‘third country’ under EU law, enabling the European Council to adopt a negotiating mandate, probably under Article 217 or 218 TFEU. Those negotiations could then continue until at least the end of 2020, and only then will the final terms of the UK-EU relationship be confirmed.

30. The Liaison Committee may therefore conclude that a further ‘mini-review’ would be useful in or around 2020, as negotiations with the EU approach their conclusion, to inform further changes to the committee structure. But with that caveat in mind, we offer the following observations:

- The scrutiny of negotiations on international agreements, already touched on, will remain a key issue.
- It is already apparent that Brexit will lead to an expansion of what might be called the UK’s ‘regulatory state’—many functions of the European Commission, in upholding and enforcing EU rules, and of EU regulators and agencies, will be replicated domestically. Hitherto these EU bodies have been scrutinised by the European Parliament, which is formidably well-resourced. The Westminster Parliament does not possess comparable resources, and the Liaison Committee may therefore wish to begin a process of reflection on how the House of Lords, through its committees, can contribute to ensuring the accountability of regulators and rule-makers in the post-Brexit UK.
- The Government is seeking agreement with the devolved administrations on UK-wide ‘frameworks’. These will replace the binding rules of the EU Single Market, and ensure long-term consistency within the UK’s own internal market, preventing damaging divergence of
regulatory standards across the nations and regions. Those frameworks will cut across reserved and devolved competences; they will also presumably be dynamic, not static. The over-riding priority at present is for the Government and the devolved administrations to reach agreement, so as to avoid a damaging stand-off. But in the longer term, assuming agreement is reached, the Liaison Committee may wish to consider how such UK-wide frameworks will be scrutinised. The EU Committee, with the support of the Senior Deputy Speaker, has taken the lead in organising the first two meetings of a new 'Interparliamentary Forum on Brexit', within which chairs and convenors of committees with an interest in Brexit from across the UK can come together to discuss issues of common concern. But this dialogue needs to be developed further: in a post-Brexit world, without the EU to hold the ring between devolved and reserved competences, there may be a case for enhanced committee scrutiny of UK-wide frameworks, feeding in turn into closer intra-UK dialogue.

There is also a long-term question over external interparliamentary relations. The EU Committee currently represents the House "in interparliamentary cooperation within the EU", and Members routinely attend conferences and take part in bilateral meetings with other EU parliaments; the UK’s National Parliament Office in Brussels also falls within the EU Committee team. Assuming that the UK-EU relationship remains close in the long term, a Select Committee with specific responsibility for monitoring and, at an interparliamentary level, nurturing UK-EU relations may still be needed post-transition; this could be supplemented by an ongoing NPO function based in Brussels. In reflecting on this question, the precedents from non-EU national parliaments with a close relationship with the EU (such as Switzerland, Norway, Iceland, Turkey or Ukraine) may be useful.

31. These questions extend beyond the EU Committee’s current remit, and other committees across both Houses—not to mention the Government—will have an interest. Nevertheless, we plan to begin consideration of the last of these issues—the ongoing UK-EU relationship, and its parliamentary dimension—in coming months, and we will of course share our findings with the Liaison Committee.

Houses of Parliament Education and Engagement Service – Written evidence (RIS0003)

1. **Background**

1.1 The Houses of Parliament’s bicameral Participation Team submitted written evidence to the House of Lords Citizenship and Civic Engagement Committee in October 2017. This gives a good overview of the work we do.[1]

1.2 Within the Participation team, the Select Committee Engagement Team delivers events around the UK for the public to informally engage with select committee inquiries.

1.3 Our main aim with these events is to reach groups that the committee wants to hear from but know they won’t via the formal routes of written and oral evidence.

1.4 Our indicators of success in this programme of work are:

- 60% or more of participants agree that by attending an event they feel their views will shape the inquiry
- 90% or more rate the event as good or excellent
- 40% or more will never have engaged with a select committee before
- 85% or more events will be held outside of Westminster

1.5 From November 2016-November 2017, we delivered three engagement events with three House of Lords committees (Charities, Citizenship and Civic Engagement, and Economic Affairs). Two were held in Westminster and one in Clacton-on-Sea, Essex. Across the three events, an average of 90% of attendees agreed or strongly agreed that as a result of attending they felt their views would help shape the respective inquiries.

2. **How can House of Lords Committees develop a national conversation to complement their inquiry and scrutiny work?**

2.1 We have nine methods to informally engage the public with the work of select committees:

- **General promotion of inquiries**
  We can use our extensive databases to promote inquiries to people in specific geographical areas or with relevant interest areas.

- **Go-To Democracy**
  A process where committee members go to where participants already meet. E.g. parent toddler groups

- **Deliberative workshop**
  Facilitated group discussion that gives an opportunity to exchange views, ideas and experiences.
• **Open Space**
  An event that enables participants to discuss the issues they think are most important under a broad theme.

• **Conversation or World Café**
  Intended to allow participants to build on the ideas of one another, thereby exploring issues deeply.

• **Filmed or photographic evidence via semi-structured interviews**
  Members of staff go to where participants are to conduct interviews and film or photograph them.

• **Early-career academic receptions**
  A networking event to widen the field of experts that know about your committee.

• **Distributed Dialogue**
  Involves creating a dialogue pack which existing networks can use to get feedback from the people with whom they work.

• **Pyramid Events**
  A process of initial events outside of Westminster, with a final event held in Westminster with committee members.

2.2 All three events delivered for the House of Lords between November 2016 and November 2017 followed the deliberative workshop format where committee staff framed the discussion questions before the event. One of the key advantages of the deliberative workshop method is its flexibility. Deliberative workshops can be of very different lengths, styles and feels due to each one being put together from thousands of possible exercises. They can be used to achieve many different aims and engage a wide range of potential participants.

2.3 There is clearly, however, much more scope for using different methods for House of Lords committee engagement work, as well as the capacity to deliver more events. The Select Committee Engagement Team is well placed to deliver these events to support House of Lords Committees develop a national conversation to complement their inquiry and scrutiny work.

3. How can House of Lords Committees increase their impact inside and outside the House?

3.1 Planning for public engagement

3.1.1 To diversify the range of people engaging in inquiries, it would be beneficial for committees to take a joined-up approach to planning. This should involve a meeting of the House of Lords digital and press teams, as well as the Select Committee Engagement Team, to explore all communication and engagement options at the outset, or even before an inquiry is launched. A shortlist of public engagement opportunities could then be presented to the committee to make a decision about what public engagement activities they would like to undertake.

3.2 Accessibility and terms of reference

3.2.1 The use accessible language is a challenge face by all public organisations. If an inquiry has the goal of engaging people beyond the usual suspects then the
style or format of its language can be a barrier.

3.2.2 We would recommend an audit of all committee documents to assess their accessibility and a move away from relying on PDF documents due to their accessibility issues.

3.2.3 We would recommend that a statement is added to committee documents that states “If you require this information in an alternative format – such as audio, large print or Braille – please contact us.” This would allow for the committee to produce accessible communication formats/alternative formats based on user need.

3.3 Event facilitation

3.3.1 To help ensure committees get the most out of events with the public, we need to prepare Members properly for these interactions and ensure they are able to make the public feel engaged and listened to.

3.3.2 Good facilitation is key to all our events, and when members are in attendance this role sits with them. In a recent evidence review published by What Works Scotland (a collaboration between The Scottish Government, the Economic and Social Research Council, The University of Edinburgh and the University of Glasgow) about promoting equality in community engagement, it was noted that:

3.3.3 Support and training should be available for organisers and facilitators who play a crucial role in driving, shaping and supporting community processes. The skillset facilitators need has widened beyond steering participation and chairing meetings to encompass different approaches to collaboration and interaction (see Bynner et al. 2017; Escobar 2011). Facilitators need to: be flexible, responsive and sensitive to the needs of participants, manage time and contribution, and support participants towards constructive dialogue (Escobar 2011: 48). Facilitators can make the difference between good design and bad; between citizens finding the participatory process a positive experience and not; and can help to empower citizens to make changes for their communities (Bynner et al. 2017).[2]

3.3.4 If we desire effective engagement at our events, facilitation needs to be recognised as an important skill, and something that most Members will need support with. Our team will need support to deliver this message and any subsequent training to committee staff and members.

3.4 Recognition for attendance

3.4.1 Due to members’ time constraints, events usually happen during a week day. None of the participants are reimbursed for their time spent at these events, so unless they are attending on behalf of their organisation and therefore attending as part of their working day, they are volunteering their time.
3.4.2 One of the main criticisms of volunteering is that “socioeconomic resources and status are the principle determinant”[3]. We are thus automatically excluding the marginalised groups who we claim we want to hear from.

3.4.3 In the What Works Scotland Evidence Review they conclude that financial incentives go a long way in supporting certain groups to participate:

There is evidence, particularly from deliberative processes, to suggest that providing compensation and/or incentives can help young people, single parents, carers and those suffering from financial problems to get involved (Fishkin 2009:114; Ryfe and Stalsburg 2012:51; Roberts and Escobar 2015: 34-35, 201-202). Offering financial or other incentives is important to compensate people for taking the time to participate and to cover expenses which may incur as a result of taking part such as child care, transportation, and wage replacement (Muir and McMahon 2015; Roberts and Escobar 2015:34-35). This will go some way to enabling people facing socio-economic challenges to take part and thus correct the over-representation of advantaged groups (Ryfe and Stalsburg 2012). There is also merit in considering how social innovations such as the Universal Basic Income may contribute to enhance democratic citizenship and community engagement (Bregman 2017).[4]

3.4.4 In line with the House of Lords strategy point to provide more opportunities to engage with the work of the House of Lords, we hope to trial reimbursing people for any loss of earnings or additional expenses incurred as a result of attending our events.

**3.5 Innovation pilots for Ad Hoc Committees**

3.5.1 The structure and length of House of Lords Ad Hoc Committees allows for opportunities to trial and test engagement activities. It also would give the House of Lords Committee Office the opportunity to be at the forefront of innovation in public engagement through piloting different ways to engage the public.

3.5.2 As we head towards the next round of Ad Hoc Committees for 2018/19 we have the opportunity to pilot with each committee some innovation in public engagement. This could include the methods outlined in point 2.1, or something different as agreed in collaboration with communication and committee teams.

**3.6 People’s Panels**

3.6.1 To help diversify witnesses and bring the user voice directly to committee sessions, the addition of people’s panels would ensure that committees go beyond the usual suspects (academics and charities) and hears directly from people. This would involve one evidence session panel guaranteed for people who have direct experience of the policy area under discussion.

**3.7 Co-creation of inquiries**

3.7.1 One of the most effective ways to deeply engage marginalised groups in the work of House of Lords committees would be to co-create inquiries with the
groups that are affected. This would involve identifying groups who would be most affected by the inquiry area and working with them in scoping, planning, calling for and receiving evidence, and reporting. Listening to these communities in this way would be seen as very good practice, as suggested in the What Works Scotland evidence review:

3.7.2 Organisers must be prepared to listen to communities, hear what they think might be an effective way to get people involved and discuss the barriers they face. Young people in particular like to forge their own spaces and want to be heard on issues that affect their future. People with disabilities or older people are best equipped to provide guidance on what will make their involvement easier. Organisers of these events can share information and stories so that the most effective elements of participation is recognised.[5]

3.7.3 The Select Committee Engagement Team would be very keen to trial this approach with House of Lords committees.

4. Conclusion

4.1 There is scope for using different methods for House of Lords committee engagement work, as well as the capacity to deliver more.

4.2 This can be achieved by:

- Earlier joined-up planning
- Accessible language and formatting of documents
- Support for event facilitation
- Reimbursement for loss of earnings for participants
- Using Ad Hoc Committees as innovation pilots
- Allocation of People’s Panels
- Co-creation of inquiries or engagement activities with relevant groups

This evidence is submitted on behalf of the UK Parliament Education and Engagement Service.

March 2018

This submission is concerned with Lords investigative committees, sessional and ad-hoc, and does not address the issue of pre- and post legislative committees, joint committees, procedure and management committees, scrutiny or delegated legislation committees (although the latter will certainly need major expansion in the light of Brexit, as I understand is already accepted).

**Preamble:**
We are entering a new era. The global context has changed radically, and within it the United Kingdom’s relative position is changing and so are its overseas interests and priorities. This transforming process was in train well before Brexit, and affects almost every aspect of our lives and of public affairs, both international and domestic. But the decision to leave the main European Union treaties has accelerated it and is defining new national goals.

This paper directly addresses the detailed questions posed in the Call for Evidence.

1. **Should the current committee structure be changed?**
   Yes. A new structure of investigate committees is required, both dealing with external issues and, to a lesser extent, with internal domestic policy areas – although there is considerable overlap between the two.

2. **What changes are needed?**
   We have moved into a world defined as much through networks as by regions and states, with far greater fluidity of issues and relationships than in the past. It is going to be difficult to identify and segregate the precise subjects for investigation. But the following is a first suggested draft of what is going to be needed, primarily in the external and overseas areas:

   i) The existing EU six-committee structure of course goes, but an **EU withdrawal** committee will continue to be needed for an indefinite time ahead to deal with the immense complexities of our disengagement and their implications, possible with subject-related and ad-hoc sub-committees. The areas covered by the six EU sub-committees will have to be reallocated – e.g. justice, environment, home affairs etc.

   ii) For foreign and international affairs a number of vital new areas will need to be addressed by Committee work. These might best be organized under an overseeing **Foreign, Commonwealth and Soft Power** committee, with sub-committees (on the same pattern as the existing EU group of sub-committees and the existing Economic Affairs sub-committees) looking at the following:

   iii) First, a new European Committee will be required to monitor and report on the evolution of our **new (‘deep and special’) relations** with our European neighbours and institutions, both within the EU and beyond, as well as our relations with the European dimensions of Russia.

   iv) Second, a new and sharper focus will be needed on Indian, African, S.E. Asian, Pacific and American spheres of growing British
influence and interest, as well as at soft power deployments of all kinds.

v) Third, with the greater part of world economic growth, and more gradually, political power and technological prowess, moving to the Indo-Pacific and Asia-Pacific regions, and to Central Asia, we shall need a committee or sub-committee to focus on these areas, especially China and Japan -the second and third biggest industrial nations- where chief UK interests will increasingly need to be pursued.

vi) Fourth a UK-Atlantic-USA committee will be needed to uphold and monitor continuing vital interests and alliances both with the USA and North America, and with the new Latin America

vii) UK-Middle East-Africa relations will become increasingly important and complex, and require a committee focus

viii) Defence, Intelligence and cyber-security are all areas where thinking is currently being revolutionised, with new alliances and partnerships being contemplated. The Defence and Security Committee will need substantial strengthening to address conditions that have changed almost beyond recognition and will require a new Committee focus

ix) The Science and Technology Committee may also need expanding. New technology has unravelled the international order, as well as disrupting domestic economic and social patterns, and will require a high-expertise committee focus.

x) A new global latticework of multilateral and international institutions is replacing the 20th century pattern. British access to and involvement and membership of these will need close committee monitoring.

Existing committees all of course do excellent work on economics, industry, energy and social affairs. All of them have an increasing international and global dimension which will need to be factored into their work programmes.

3. Avoiding Overlap with the House of Commons.
This can be almost entirely avoided. Commons committees have a different orientation (and I have sat on both for many years). Commons committees are focused on Departments. Indeed, the original conception for the expansion of Select Committees (in which I played a part in the 1970 government) was that they should have influence not only over policy -a major advance from the previous Estimates Committees - but also over budgets, on American Congressional lines. This ‘Expenditure committee and sub-committee’ structure, (first established 1970) then evolved nine years later (1979) into the Commons Select Cttees we have today. (My pamphlet circa 1970 ‘A New Style of Government’ outlined this new -and at that time novel – change).

By contrast with the Commons, Lords investigatory Committees are concerned with issues, strategies and major developing trends – indeed, to some extent with the future – and with matters that may well extend across Departments and Agencies and actually reach outside Government altogether, and into which they can go far more deeply.
4. **Best balance between ad-hoc and sessional committees?**
Ad-hoc committees give flexibility to focus on new and priority issues. Sessional committees should cover the main broad areas – Economics and Industry, International Relations, European and Neighbourhood Affairs, Trade, technology, Defence and Security, Social and Health Policy, Community Relations etc, but possibly given authority to propose ad-hoc sub-committees as exigencies and new aspects arise.

5. **Balance between short and long-term enquiries?**
Committees should **interweave** their longer term enquiries with short reports based on one or two hearings, and linked to current issues and events. This gives the right balance between being ‘in touch’ and giving the long-term perspective which so many aspects of public policy badly need.

6. **Engagement with the public and promotion of Reports.**
This is a long-standing issue where there has been considerable improvement in recent years. For example, the March 2014 Lords Report on soft power, entitled ‘Persuasion and Power in the Modern World’, had world-wide resonance and was referred to at conferences as far away as Japan, the Middle East and the USA. Follow-up events can be organised and youth forums arranged, as have been successfully done already. More can always be done (at a cost) but I believe that reforms are already on the right track.

*The Broader House of Lords Context 2018*
A broader issue is how we successfully depict the overall work and character of the House of Lords, and the way in which its members are ‘networked’ in a hive of activity, not only in Lords Committees, and not only in a myriad of other parliamentary groups and interests, but in the wider network of civil society through countless individual links and connections. This makes the Lords, condemned by critics as backward-aligned, in fact a body uniquely suited to the digital modern and future age of high connectivity and a unique bridge between the necessary central institutions of governance and legislation, and the public – in a manner found nowhere else in the world.

It is this intense pattern of both committee activity, and of links and ties across the nation, which makes the Lords today so very much ‘a platform for the future’ – although how this reality is to be explained, and how the misleading image of the Lords as an overcrowded, ermine-robed care home can be set aside, is, of course, a broader story and another challenge. But this is the better framework we need to construct within which the excellent work of Lords Committees can be best assessed and developed.

*24.03.2018*
Simultaneous interpretation to support the House’s international engagement

As you may be aware, the International Relations Committee is continually asked to meet foreign parliamentary delegations, invitations which we are pleased to accept in order to strengthen the House’s international links and exchange views with our counterparts. Some of these delegations come to us directly, and some via bodies such as the Inter-Parliamentary Union.

For example, in recent weeks we have meet with delegations from the parliaments of Finland and Uruguay, and as of now we have forthcoming meeting with parliamentarians from Austria and Pakistan. We expect a further steady stream of requests.

Many of these visiting delegations are able to conduct meetings in English, but many others cannot. Sequential translation wastes much time and often meaning suffers. In the context of the Liaison Committee’s review of investigative and scrutiny committees, I and members of this committee I chair would suggest that it would be of significant value for the House to invest in standing facilities to allow for simultaneous interpretation for meetings hosted by the House and/or in response to the frequent requests described above. We note that many other parliaments have such an established facility, the provision of which would greatly benefit this House in its international engagement.

22 June 2018
John Howell MP and the Earl of Dundee – Written evidence (RIS0075)

Submission to be found under “The Earl of Dundee and John Howell MP – Written evidence (RIS0075)”
In responding to the call for Evidence for Review of the House of Lords’ Committees I shall confine myself to three points.

First. Ad hoc Committees only endure for a short period. Since it happens that in respect of some, but not all of them, there is political activity which is ongoing once they have ceased to be, it ought to be possible to reconvene them in response to Government Initiatives to follow up new developments. This should include cross examining ministers and writing a supplementary report if appropriate. If Members have left the House, died, or otherwise are unavailable they could be replaced. The House could then debate a successor report as now, after which it could return to suspended animation.

Secondly. Since the nature of a post Brexit World, which may, or may not include provisions about ‘Equivalence’, is so unclear, it is difficult to comment at this stage about how the House might respond to such changed circumstances. It may be that by the time the Committee reports matters will have changed.

Thirdly. The composition of the House’s Committees is controlled by the Party machines. While contemporary politics is unavoidably tied in with party politics, I believe, the Parties and their Whips Offices have too big a rôle in determining the composition of the House’s Committees and that steps should be taken to reduce this since it can lead to an inefficient use of the House’s expertise. The same is true of the rules relating to rotation.

What has happened in the House of Commons and perhaps more widely elsewhere should be examined, even though they may turn out not to be helpful precedents.

Please be in touch if you have any questions.

14 March 2018
Lord Inglewood – Supplementary written evidence (RIS0068)

I am writing as promised when we spoke briefly in the corridor earlier today when I raised the predicament of Non Affiliated Members of the House who appear to have no champion when Committee places are allocated. This seemed to me to be discriminatory and inherently unfair.

Secondly the reality of the way in which the whips offices use committee places as a form of patronage may mean certain members are de facto are always going to be excluded. This too seems equally unfair. I wondered whether a number, say 20% of members might be elected by the Whole House.

The effect of the way the present arrangements works may be that the House is denied access to real expertise which might be of considerable help in the deliberations of Committees.

July 2018
Involve – Written evidence (RIS0072)

1. About Involve

1.1 The Involve Foundation (‘Involve’) is the UK’s leading public participation charity, on a mission to put people at the heart of decision-making. It supports people and decision-makers to work together to solve our biggest challenges. www.involve.org.uk

1.2 In recent years Involve has undertaken considerable work on public participation and engagement for the UK’s parliaments. This includes:

• Delivering all aspects of the Citizens’ Assembly on Social Care for the House of Commons’ Health and Social Care Select Committee and Housing, Communities and Local Government Committee. These two committees commissioned the Assembly as part of their inquiry into the long-term funding of adult social care in England. The Assembly brought together a representative sample of the English public eligible to vote in general elections (in terms of age, gender, ethnicity, place of residence and social class, as well as attitudes towards a large/small state). Over two weekends Assembly Members learned about the issue of social care funding and the different options for its future, deliberated on this evidence with one another and arrived at a set of conclusions about how they thought social care should be funded long-term. The Committees found these conclusions very useful in its own deliberations and reflected many of the Assembly’s preferences in its own report.

“If we are to ensure that the social care system of the future is sustainably funded and provides the high quality care that people deserve, then any proposals must command not only a political consensus but also the support of the public. The views of those that took part in our Citizens’ Assembly have been vital in informing our thinking and the model also provides a possible route for further public engagement and building the support that any reforms will need.” Clive Betts, Chair of the Housing, Communities and Local Government Committee

• Writing the report ‘Innovations for select committee engagement’ commissioned by the UK Parliament’s Education and Engagement Service. Our understanding is that the Education and Engagement Service’s current offer to committees draws heavily on this report. Seven of the nine methods it offers (according to paragraph 2.1 of its written evidence to this review) come from the report (all except ‘General promotion of inquiries’ and ‘Early career academic receptions’). It is also our understanding that the Service draws significantly on the report when delivering its section of Committee Office School training.

• Providing informal advice and formal training for Education and Engagement Service officials at the UK Parliament, the participation
team at the National Assembly for Wales, and participation and committee officials at the Scottish Parliament. In Northern Ireland we are about to conduct public engagement training for attendees including parliamentary officials.

2. Review questions

2.1 Our evidence to the House of Lords Liaison Committee review of investigative and scrutiny committees is relevant to detailed questions 11, 13 and 14 set out in its call for written evidence:

- How can Lords committees engage more effectively with the public and media to encourage a national conversation?
- What new offline channels could be used to engage with the public?
- How should committees engage with stakeholders in evaluating their activity?

It is also relevant to four of the key questions set out in the same call:

- How can Committees add most value to the scrutiny work of the House of Lords as a second chamber?
- How can House of Lords Committees develop a national conversation to complement their inquiry and scrutiny work?
- How can House of Lords Committees maximize their impact inside and outside the House?
- How can House of Lords Committees promote inter-parliamentary dialogue both within and outside the UK?

3. Why engage the public with committees’ work

3.1 Recent increases in public engagement by House of Lords investigative and scrutiny committees are welcome, as is the inclusion of public engagement in this review. There is considerable scope for House of Lords investigative and scrutiny committees to develop this aspect of their work further.

3.2 There are many reasons for House of Lords investigative and scrutiny committees to engage the public in their work and further develop this part of their activity. These include but are not limited to:

- **Ensuring committees’ have access to key evidence:** The public often holds knowledge that is vital to considerations of a committee’s inquiry topic. Yet public knowledge currently goes unrecognised as a form of evidence more often than it should. Relevant knowledge held by the public could be lived experience, for example what it is actually like to live in an area, use a service, or have a particular life experience (e.g., homelessness). Alternatively, it might be about public opinion and what a representative sample of the public think (please see paragraph 5.4 below). Engaging the public can provide an
important check and balance to the evidence provided by professionals.

- **Adding value to the scrutiny and representative work of the House of Lords:** Quality public engagement on a topic is something that is often not readily available to members of the House of Lords. By undertaking this activity, committees add value to the scrutiny work of the House and better enable it to hold the government to account on the public’s behalf.

- **Moving forward politically difficult issues:** Concerns about public reaction to policy alternatives can make it hard to move forward on issues where any solution is likely to adversely affect some people, so-called “too difficult box” issues. This can mean that issues of real concern to the public are not dealt with by government. Understanding the considered views of a representative sample of the public on such topics can help create political space for progress (again, please see paragraph 5.4 below).

- **Increasing committees’ impact:** Public engagement can help strengthen the impact of committees’ work by enabling them to demonstrate public support for their recommendations. This can make their work politically difficult to dismiss.

- **Helping to increase public understanding of key issues and develop a national conversation:** Engaging the public in committees’ work has the potential to help build public understanding of key issues. The potential for this is greatest when using dialogue or deliberative methods (please see paragraph 5.3 and Figure 1 below). Such methods can be both high profile, if committees’ so wish, and involve producing neutral and accessible materials on the topic in question. These materials can be used both within and beyond the lifetime of an inquiry to help develop and inform a national conversation on an issue, as has happened with some of the materials produced for the Irish Citizens’ Assembly and Constitutional Convention.

- **Building public trust:** Engaging members of the public in committees’ work and listening to what they say has the potential to help build public trust in politicians, parliament and the political system as a whole.

4. **When to engage the public in Committees’ work**

4.1 **Public engagement can take place at several points within committees’ activity.** At all of the four points outlined below, a committee could make the engagement open to all members of the
public, or seek input from a representative sample of the public or from a specific section of the public with relevant lived experience (please see paragraph 5.4 below):

- **Agenda setting**: Public engagement could be used to help committees decide what inquiries to run. This could be done via crowdsourcing inquiry ideas for the committee to consider, through a more in depth process that allows members of the public to discuss and reach conclusions on the issues that they see as most important, and/or by using public engagement to help prioritise the committees’ own ideas.

- **Framing**: Once a committee has decided on the broad topic of an inquiry, public engagement could be used to help frame the inquiry’s terms of reference and inform the specific questions it asks.

- **Responding**: Once a committee has decided on an inquiry’s focus, public engagement can be used to capture the public’s answers to the questions posed by the inquiry. Depending on when this takes place within an inquiry’s lifetime, it can help to inform questions to witnesses or simply feed in to committee deliberations alongside other evidence.

- **Evaluating**: At the end of committee’s life time or parliamentary session, public engagement could be used to assess the extent to which a committee’s work has addressed issues of key public concern, and to flag issues that the committee could consider in the future (linking back to agenda setting).

4.2 It is neither realistic nor desirable for committees to actively engage the public at all four points outlined above and in all their inquiries. Instead we would recommend that committees consider which points in their work and which inquiries would most benefit from public engagement, and prioritise accordingly.

4.3 To-date, public engagement by parliamentary committees has tended to focus on the *Responding* category above. This is because it fits most easily with committees’ existing practices around obtaining evidence. While this is both understandable and a logical starting point, looking ahead committees would benefit from considering the other three options available to them. Case studies and learning from engagement practice within both the UK and other parliaments may be useful in this regard. For example, the National Assembly for Wales has used public engagement to help set part of a committee’s agenda via crowdsourcing inquiry ideas.

4.4 There is a *distinction to be made* between committees’ work being open to public participation, and committees actively engaging the
public. For example, calls for written evidence may be open to all individuals and actively promoted on twitter and elsewhere. This is important. However it is also true that only very limited sections of the public are likely to participate in committees’ activities through these types of channels. Where committees want high quality public input to their work, a more tailored and proactive approach is necessary.

5. Types of offline public engagement methods

5.1 There are many different ‘channels’ or methods for offline public engagement. Which specific method is most suitable for a committees’ needs in any particular instance will depend on the answers to questions such as who exactly it wants to engage, to answer what questions, and over what timescale. These considerations are outlined in Section Six below. They can also usefully be applied to online engagement methods and mixed online/offline approaches.

5.2 We do not believe it is necessary for House of Lords investigative and scrutiny committees to have a detailed knowledge of the many specific engagement methods that exist. However it is important for committees to have an understanding of the different types of public engagement available to them and what they can offer their work. This section therefore contains a high level overview of different types of offline engagement. It is possible to provide this high level overview in several different ways. Paragraphs 5.3 and 5.4 consider two of these.

5.3 One distinction often used by public engagement professionals to make high level distinctions between methods is the difference between engaging individuals, dialogue and deliberative approaches. All of these types of engagement are valid and will be useful to House of Lords investigative and scrutiny committees in different instances. What is important is to understand the differences between the types of engagement and employ them so that committees receive maximum benefit.

Figure 1: Three types of engagement

<table>
<thead>
<tr>
<th>Type of engagement</th>
<th>Engaging individuals</th>
<th>Dialogue</th>
<th>Deliberation</th>
</tr>
</thead>
<tbody>
<tr>
<td>What does it involve</td>
<td>Asking an individual about their experiences or views in more or less detail</td>
<td>Seeking to build understanding of different experiences and views (open ended)</td>
<td>Collectively reasoning – weighing options and making choices together (seeks a</td>
</tr>
<tr>
<td>What does it offer committees</td>
<td>The separate experiences or views of a range of individuals in more or less detail</td>
<td>An understanding of the different experiences and views of participants, including their reactions to the views and experiences of others and some of the reasons underlying their views</td>
<td>The considered conclusions of participants - including where these can and cannot be jointly agreed - and the reasons for them</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Examples of advantages</td>
<td>Good for people who are time poor, as does not involve bringing people together at the same time and can be done over the phone or at the person’s house or place of work. Good for subjects that are very personal where people may be unwilling to talk in a group.</td>
<td>Enables interaction between people with different views, experiences and knowledge, and allows them to react to other people’s opinions. Builds mutual understanding. Can be used to bring different types of professionals, eg public, front line staff, policymakers together.</td>
<td>Gives an understanding of where common ground can and cannot be achieved, and why. Gives an understanding of where people would make trade offs if they cannot have everything they want (eg increased service provision and lower taxes), and why</td>
</tr>
<tr>
<td>Examples of disadvantages</td>
<td>Does not allow for people to hear different views or experiences, or to see how</td>
<td>Does not allow for the reaching of a collective set of recommendations</td>
<td>Less good for subjects that are very personal where people may be unwilling to talk in a group</td>
</tr>
</tbody>
</table>
5.4 A second, complimentary, distinction between methods is the **difference between methods best suited for capturing participants’ lived experiences and those best for capturing public opinion:**

- Committees may sometimes wish to engage members of the public because of a particular **lived experience** they have. For example, they might wish to hear from people who have experience of living in a particular area, using a particular service, or living with the effects of a particular policy change, and so on. Unnecessary here are methods that involve giving participants a lot of information about a subject before asking their views: the committee is asking for information that participants already have.

- In contrast, committees may sometimes want to engage the public – and perhaps a representative sample of the public – to understand
**public opinion** on a particular issue. This may be because an issue is complex, affects large swathes of the public, and/or has moral or ethical implications. If a committee wishes to engage a representative sample of the public, then methods known as ‘mini publics’ can be most suitable, although some dialogue processes can also be used. Mini publics are methods like Citizens’ Assemblies, Citizens’ Juries and Deliberative Polls. They involve bringing a representative sample of the public together to learn about an issue, deliberate on it and reach conclusions. Mini publics have been used around the world to look at issues from how to fund social care (please see paragraph 1.2 above), to whether a voting system should be changed (Canada), to budget priorities (Australia), and abortion and gay marriage (Ireland).

### 6. Choosing the right public engagement method: taking a design approach

6.1 As mentioned in paragraph 5.1 above, exactly which engagement method is most suitable for a committee to use at any particular point is best determined by answering a series of questions. This can be termed ‘a design approach to public engagement’. It reflects good engagement practice by ensuring clarity about the brief for the engagement work before a method is chosen. Taking this approach will help to ensure that engagement work carried out for committees’ meets their needs.

6.2 **Five key questions that it is useful to be clear on before an engagement method is chosen** are:

1. **What is the desired scope of the engagement work?**
   **This question has two parts:**
   (1) What policy areas or issues would the committee like the engagement work to cover (and what should it not cover)? For example, engagement work around an inquiry might look at all or part of the inquiry’s terms of reference.
   (2) What level of influence is being offered to the public? For example, committees are likely to be asking the public to submit their views to an inquiry, rather than to co-determine inquiry findings.
   The answer to these questions may be very obvious to the committee, but they may not be obvious to the public so are worth being clear about in order to help manage participant expectations.

2. **What does the committee want to learn from the engagement?** A helpful way to think about this question is to ask, ‘What can members of the public tell the committee that the committee can only find out from them?’. As seen in
paragraph 5.3, this may be about lived experience or public opinion. As well as agreeing the headline purpose of the engagement, it is also important to ensure that the more detailed questions that sit underneath it meet the committee’s needs.

3. **Who needs to take part in the engagement?** What members of the public need to take part to answer the committee’s questions? Do they need a particular lived experience? Is demographic or geographic representation important? Does the committee want to hear from these members of the public by themselves, or would they ideally bring them together with other stakeholders?

4. **How much budget and staff time is available to support the engagement?** This will have an effect on method choice, as some methods are more expensive and/or time-consuming.

5. **How and when will the committee consider the findings of the engagement?** This is an important consideration for, among other things, method choice (the method needs to be deliverable within the committee’s timescales) and outputs (in what format do the results of the engagement need to be presented to the committee)? It will also help planning for how to feedback to participants about what happened as a result of their engagement.

6.3 A committee does not necessarily need to answer these five questions by itself. After an initial discussion with relevant committee officials, Parliament’s Education and Engagement Service or other engagement professionals should be able to help, including by providing different scenarios or options for the committee to consider. It is however useful for committee officials to bear in mind that these are the sorts of questions engagement professionals will be asking themselves when assessing how best to meet a committee’s requirements.

6.4 Following discussions with the relevant committee(s) to build their understanding of the brief, Parliament’s Education and Engagement Service or other engagement professionals will be able to recommend a method(s) for the committees’ engagement work.

7. **The role of committee members in engagement activities**

7.1 The best role for committee members to play in public engagement activities is often an under-considered question. There can be definite advantages to committee members attending public engagement events both for themselves (the chance to hear input first hand and to ask
questions) and for participants (understanding that their input is being taken seriously). **We would encourage committee members to attend engagement events.**

7.2 However the exact role that committee members play at events needs to be carefully thought through. For the Citizens’ Assembly on Social Care (please see paragraph 1.2) the two committee chairs attended part of the event. They witnessed the Assembly first-hand and gave over dinner speeches about the importance of the Assembly and participants’ input. They also answered questions about their own thinking on social care, without expressing a direct opinion on the options being considered by the Assembly. The Assembly was led by professional facilitators. This helped to ensure the actual, and perceived, neutrality of the process, and meant the leads could employ facilitation techniques to ensure all participants could contribute equally to the discussions.

7.3 **Roles** committee members can play at events include lead, host, witness, and observer. The right role for them to play at any specific event should be carefully discussed and agreed as part of the planning process.

8. **When to begin planning engagement work**

8.1 Planning engagement activities, including securing attendance from appropriate participants, takes time. **It is important for committees to talk to Parliament’s Education and Engagement Service at the earliest possible point** - or to talk to other engagement professionals if the work is not being undertaken by the Service. This could be when a committee is considering undertaking public engagement activity, but has not yet definitely decided to do so.

9. **Sharing learning and practice on engagement**

9.1 It is our understanding that public engagement officials from the four UK parliaments meet several times a year to share learning and practice. This is something we very much support. **There is significant potential for inter-parliamentary learning on public engagement, as the UK parliaments currently have quite different practices in this regard.**

9.2 There may be potential for innovation in how committee chairs are kept up-to-date with the latest innovations in public engagement for parliamentary committees, both within and beyond their own parliament. We are unsure what information is currently made available to committee chairs in this regard.

10. **Conclusion**
10.1 We welcome the inclusion of public engagement in this review. We are keen to support the Liaison Committee and other members and officials of the House in further developing investigative and scrutiny committees’ public engagement work. Such development would benefit the committees themselves, the House of Lords more widely and the public.

September 2018
I very much welcome the Review of the Committees and apologise in advance that my contribution is not more detailed.

**How can Committees add most value to the scrutiny work of the House of Lords as a second chamber?**

Legislation that proposes a significant overhaul, or which covers a subject about which the House has less expertise, would benefit from a short committee inquiry to canvas current thinking, pull evidence together and uncover issues that might be relevant. Having the latest information and a deeper understanding would enhance the House's excellent reputation for informed debate.

During the Committee stages of the Data Protection Bill, colleagues raised concerns that they lacked sufficient understanding or knowledge about several issues that were of consequence in the bill. The Bill was wide-ranging and technical. It intersected with EU legislation and with proposed domestic legislation that had yet to be looked at in detail. It is to the Members' great credit that so much was done to transform and enhance the Bill, but we all would have benefited from the kind of intelligence that a recent committee report provides. At one point it was suggested that an (existing) Committee might take evidence on behalf of the House to fill the gap, but this was deemed not possible given its existing program.

The Data Protection Bill is an excellent example of a Bill that would have benefited from a background committee report, but there are many others.

**How can House of Lords Committees develop a national conversation to complement their inquiry and scrutiny work?**

Reconceiving the Committee's relationship with the media would be beneficial. Committees do important work and more could be done to ensure that reports reach the widest possible audience and contribute to public debate. Whilst I am aware this is something currently under discussion, I wonder if the House has done enough to canvas the opinion of the sector itself. Meeting with lobby journalists, and a range broadcasters and websites could prove valuable. Understanding their needs, in addition to inviting their opinion, might in itself create a closer bond.

A swifter response from HMG to Committee reports would help develop a 'national conversation'. The long gaps between publication and response mean that momentum is lost and often the issue has moved on. Debates then take place when Government's view is already known, and recommendations have been accepted or rejected in advance.

My own view is that HMG should be expected to respond within 4-6 weeks. Whilst I am sure that there are some very real hurdles to undertaking a swift response, the current system that allows reports to linger for 4-6 months
undermines the Committee system and does not make for lively and relevant debate.

**What are the strengths and weaknesses of the current House of Lords Committee structure and what should change?**

The work of the standing Committees offers a valuable service in looking at issues of public interest, particularly those that sit outside the legislative programme.

The features that are of most value are;
- Building a detailed knowledge base, based on primary evidence, on a broad range of subjects
- Collegiate and non-partisan methods of working
- Publishing reports and recommendations that form part of the evidence for civil servants, policy makers and civil society
- Independence from the immediate political agenda

I would like to see more activity to disseminate the findings of reports, for example;
- A publication launch or briefing (media, public, stakeholders and colleagues)
- Outreach to relevant stakeholders to discuss findings and impart learning, as a norm of Committee work
- Coordinating with the HoL Schools programme so that a Committee Member(s) undertakes to host or visit a group of school students for each inquiry, as well as inviting remote/virtual interaction
- More media engagement (as above)

**How should the structure and working practices of House of Lords Committees be rationalised?**

The current structure has served the House well, but it could better reflect changes to the political and technological landscape and be conceived in a way that is intrinsically more flexible to anticipate future changes.

I would like to see a smaller number of thematic Committees that covered broad policy areas with the flexibility to respond and change. The exact division would necessarily be a question for detailed discussion, but as a starting point;

**Home Affairs:**
- Health, Welfare and Wellbeing
- Education and Training
- Housing
- Communications
- Public Engagement

**Defence, Security and Foreign Affairs:**
- Justice
• Human and Children's Rights

**Constitution:**
• Nations, Regions and Local Government
• Legislative Committees

**Economic Affairs:**
• Business, Infrastructure and Industry
• Energy and Environment
• Science and Innovation

**Exiting the European Union**

**The Digital Environment**

As indicated, each area would require sub-committees or possibly joint sub-committees on interdisciplinary issues. Whilst the overall Committee will sit for a predetermined period, sub-committees could be set up, refreshed and disbanded in a more flexible manner.

For example, it would be useful if Committees were empowered to propose a limited number of Ad Hoc Inquiries on related subjects with a (single) representative from their Committee. This would allow useful overlap and the ability to activate subjects that complement their long-term work stream or respond to emerging events.

Policy issues are increasingly interconnected, having general headings and more flexibility reflects the reality of urgent issues in public policy.

I have suggested a standalone Committee on the Digital Environment. The advent of digital technologies is the single biggest factor impacting government, business and civil society. The changes that have come in its wake, and the changes that will emerge over the next decade will make much of our current world unrecognisable. The workload involved in updating our understanding, our legislation, our own processes and preparing and responding for this change that will leave no aspect of UK life unturned - such a Committee will undoubtedly be called upon to support the work of other Committees as their own work intersects with the digital environment.

I have also separated out Europe from International Affairs. Whether the phalanx of current sub-committees are still relevant I am not equipped to say, however the detailed work necessary to engage with and disengage from the EU will require undivided attention for many years to come and might unhelpfully preoccupy a Committee constituted to serve a broader landscape.

Leaving the EU and the seismic change brought about by digital technologies will impact all aspects of public policy. The House would benefit from a fully-resourced and dedicated place for both, within a new Committee structure.
My understanding of the resources available and cost of Committees is not adequate to make a substantive case for the number, length and frequency of Committees. However, I should like to suggest that the Ad Hoc system remains and, if practical, is expanded. My view is that there should be three paths to setting up an Ad Hoc Committee:

1. For the purposes of preparing a background paper on a sector or issue relating to forthcoming legislation
2. To undertake detailed or complementary work instigated by a standing Committee(s)
3. By open application (as now), but possibly the short list chosen by vote

These Ad Hoc Committees may be short or long but fit within the resources allocated for each area.

**A few detailed points**

The process of Committee Membership is opaque. Whilst rotation and balance are necessary, it does not seem that the skills and expertise of members is routinely taken into account. The size of the House dictates that there are more willing Peers than places, given that, the criteria for appointment should be made clearer.

Committee work is exacting, rewarding and prestigious. It would be beneficial to have a clear understanding of the expectations inherent in Committee membership, including, but not limited to, attendance. Additionally, a corresponding system that allow members to resign or be replaced if they routinely fail to meet those expectations would energise Committee work.

The tradition of providing questions to witnesses in advance can make for over-rehearsed responses particularly from the well-funded witnesses with policy support. I would like to suggest that witnesses are given areas and matters of interest, so that the questions are more powerful, and the evidence is more authentic.

I hope that the above is useful in your deliberations.
The opportunity to reflect on the subject coverage of investigative inquiries by House of Lords Select Committees is welcome. I am a social statistician and member the Royal Statistical Society and a member of their Social Statistics Section committee. Statistical evidence bears on much that is important and uncertain about public policy by analysing social data abstracted to a national perspective. Interpretation and criticism of statistics have broad relevance to investigative inquiries and this is a personal response focused on the scrutiny of social statistics.

Summary
Recent investigative inquiries by ad hoc Select Committees of the House of Lords highlight the need for well-designed social statistics. Important recommendations concern:

- the priority of comprehensive UK social statistics about demographic change;
- the neglect of other parts of the population caused by threshold targets such as progression to university;
- the demand for comprehensive official statistics on matters of political importance such as inequality;
- locally relevant and comprehensible social data for purposes ranging from careers advice to public service delivery.

Social statistics is a theme in these investigative inquiries; no secessional Select Committee is scrutinising social science in general, or social statistics in particular. This specifically implies:

- skills and infrastructure issues in social science are rarely scrutinised;
- expertise from related inquiries is not carried forward to the extent it could be;
- inquiry timeliness, topic salience and incisiveness are restricted.

Evidence-informed policy is a government commitment recently bolstered by the expectation that local policy innovation should be appropriately evaluated. Widely acknowledged market failure in undergraduate quantitative social sciences skills (for which effectiveness of policy response might be scrutinised) suggests the availability and quality of such evidence cannot be taken for granted. Investigative inquiries into policy reliant on social statistics should more prominently scrutinise:

- the appropriateness of social conceptualisations and analytical assumptions used in policy;
• the sufficiency and comprehensibility of social data used in informing all stakeholders;

• the capability of responsible commissioners in modelling and evaluating their policy.

Introduction

1 Noting the 'Jellicoe review' received evidence about the selection of inquiry topics[1], both their timeliness and significance, this submission reviews the topics covered by the recent increase in ad hoc committees in respect of social statistics, and the implications for effective scrutiny by other select committees. Generally topics of social science lend themselves to the investigative inquiries of Lords Select Committees as they cut across departments: some general aims of policy that rely on social constructs which are surprisingly hard to pin down e.g. 'life chances' or 'health'. Achievement of targeted policy by classifying social deprivation and household structure can be taken for granted in policy development and demands appropriate scrutiny.

Official Statistics

2 When statistics became independent under the Statistics and Registration Act (2007), residual ministerial oversight was formally moved to the Cabinet Office. The Lords Liaison Committee at that time considered a proposal that a Joint Committee of both Houses be established to scrutinise statistics[2]. One of the arguments at the time was the considerable expertise of members in the Lords. However, the committee responsible for scrutinising the other work of the Cabinet Office (then PASC, now PACAC) has that responsibility. Yet they also expect that other Select Committees call statisticians when, for example, issues of statistical definitions bear on departmental policy, rather than having a monopoly.

3 Specifically the cross cutting focus of Lords inquiries and the expertise of members should be brought to bear on matters of statistical definitions where these bear on policy, and they should engage with ONS statisticians as necessary. An example of this need is seen with the classification of students in international migration[3], where the importance of internationally consistent definitions was overlooked (and contested) by inquiries in the Commons. Similarly where committees inquire and find a lack of statistics to understand society or support policy, they should make relevant recommendations. While PASC recommended compendia to be compiled on the statistical base for referendums on Scottish independence and leaving the European Union, other topics cut across departmental responsibilities. Timely Lords inquiries on cross cutting topics should critically examine the sufficiency of official statistics, for example those on inequality and ageing are only recently being reviewed by ONS.

Specific ad hoc committee inquiries

4 Political polling and forecasting (or projecting) demographic change are core social statistics activities, so it is notable that these two are among the inquiries since 2012. The former noted limited written submissions and the latter
expressed surprise that such forecasts relating population change to public service provision were not routinely made. Social mobility research embraces all of the issues of measurement, coverage and structure in longitudinal studies and that inquiry impressed by its depth and focus. Again coverage of the whole population in planning, which suitable analyses immediately support, is rather rarer than the analyses of problem groups (e.g. NEETs) and spending (e.g. on HE).

5The long term sustainability of the NHS is driven on the demand side by changes in our population and chronic disease morbidity, and the level of care provided in society by family and community structures, which vary geographically. On the supply side, changes in the skills mix of the workforce and the demographic changes in workforce composition are instrumental and are outcomes of social mobility. Reconciling coverage of the whole population and the assumptions about the complexity of the process builds on both the demographic change and social mobility inquiries.

Themes
6Themes in the nature of the ad hoc inquiries supported since the 2012 move to more ad hoc committees offer an insight into gaps in coverage of scrutiny offered by other select committees. While international relations has been identified as deserving a sessional committee, there is a further theme in social statistics which points to a longstanding limitation. Social statistics comprises methodology for the collection of data and inferences in social science, including opinion polling, social surveys and social measurement. These bear particularly on changes of the composition our society requiring studies which have validity in coverage and constructs, as well as appropriate precision.

7Recently announced ad hoc inquiries into intergenerational fairness, the rural economy and regenerating coastal and seaside towns[4] also have this commonality. And to some extent, some past inquiries of ad hoc select committees have added the social science dimension onto more technical or economic uses of data, including the affordability of childcare, and financial exclusion. The concluding inquiry on social and ethical aspects of artificial intelligence can see that how data should be shared and ought to be used transcends the legal obligation of the owner of the data originally collected with consent for a specific administrative purpose. While these inquiries reflect the agility of the system in taking up such topics, they also highlight that such gaps often appear between the departmental responsibilities of Commons committees.

8Although the Science and Technology committees in both Houses nominally include social science in their purview, such scrutiny is very rare. For example, the ethics of social research receives much less scrutiny than comparable epidemiological work despite similar practicalities. Notwithstanding ongoing work on Research Integrity, Algorithmic Accountability, Early Intervention, Screen Time and Social Media in the Commons, the most recent report is from Census and Social Science in 2013[5], and the corresponding Lords committee has nothing on social science in this period. While POST does consider it a focus, social science is more likely to feature as an inquiry topic in the sense of Science and Technology Studies (STS), i.e. sociocultural examination of scientific practices, than social science per se.
9 As well as not making best use of the House’s expertise, it is possible that some issues are being left too late to have useful influence, or overlooked entirely. Some other concerns arise from the use of ad hoc committees to be exclusive in addressing topics of social statistics:

- securing suitable submissions critiquing the quality of evidence used to develop policy;
- timeliness of inquiries in responding to cross cutting issues;
- committee depth and continuity of experience;
- and ensuring scrutiny of provision for skills, resources and capability.

Aspects of these issues raising concern are described in the remainder of this submission.

**Expertise**

10 Sometimes committees have been surprised by evidence provided describing the nature of planning procedures, the data available and the complexity of the process. In other cases the members of committees are evidently learning about the topic during their inquiry, and while this public accountability of experts is essential to the process, expertise on committees is sometimes less evident than the reputation of the House. Where ad hoc committees follow on aspects of their inquiry from a previous committee, they should retain some expertise by including members from the first inquiry on the second. This will be most relevant for technical aspects which feature in several ad hoc inquiries, as identified with social statistics. Building up such expertise will also facilitate accountability for the provision of statistical information on topics such as that on social inequality which is currently developing.

**Skills**

11 Skills in respect of STEM are the subject of periodic inquiries of the Science and Technology Select Committees; and these have recently been complemented by topical inquiries about Digital Skills. Meanwhile skills in social science disciplines have not attracted such scrutiny despite substantial investments in training, particularly for advanced quantitative skills. Research methods training was identified as needing the establishment of a national centre by the ESRC[6], and provision of quantitative training for undergraduates so poor that it was dubbed ‘market failure’. [7] Although committees have from time to time expressed concern about the lack of a chief social scientist in government, skills have experienced a lack of scrutiny which might have expedited interventions. It is also notable that economics teaching has been criticised for its uncritical treatment of model assumptions and that psychology has been struggling with replication for many years and only recently attracted parliamentary attention (about research integrity). Statistical skills in policy will become more pressing as departments respond to the new expectation to reserve budget to evaluate innovations which was announced by the Treasury at the recent What Works Centres anniversary.[8]

**Data resources**

12 While the future of census did attract one (Commons) inquiry in relation to social science, the concerns about household composition were not followed up, but they remain difficult to derive in an administrative data alternative. Other resources in social science include an archive of both data and questions, some centrally collected and others by external deposits, which offers a template for
sharing data which other disciplines should be encouraged to match. However these large investments carry certain risks and represent prioritisation of resources which have attracted no scrutiny, despite the cancellation of the ‘Life Study’ birth cohort and consequent international review. These resources have a wider international context of comparability with other studies around the world, linkage of such large studies into administrative data, new epigenetic possibilities, and a similar cancellation in the USA. Meanwhile some understanding of policy requires long standing sources of data planned many years ago, which cannot be substituted by other sources.

Capability

13Quantitative skills are important in applications to social policy in commissioning and conducting evaluations, as well as synthesising existing evidence. More cross cutting inquiries in the House of Lords should scrutinise such substantive issues, statistical definitions, skill and capacity, and research data resources. Ballooning quantities of data from administrative systems and online transactions all relate to individuals, and increasingly this data collection is designed through targeted advertising etc. Development of statistical methodology can often fall between stools, too applied for the mathematicians and too abstract for the substantive areas, but in social science this experience is particularly acute. So utilisation of data and sceptical consideration of the assumptions in statistical models to support policy development is more limited than it should be.

Conclusion

14Scrutiny of social science is comparatively overlooked in investigative inquiries by sessional committees of both Houses but it often has a cross cutting character. Social statistics is apparent for its importance in public policy both in availability of official data and the assumptions made in policy planning. Ad hoc investigative Select Committee inquiries may not be sufficiently effective or efficient in ensuring the use of social statistics in policy and are likely to overlook skills and resources issues entirely. Capability in using social statistics in policy, ranging across planning, commissioning, evaluating and reviewing evidence is becoming ever more important. The current inquiry should reflect on the efficacy of present arrangements for how social science is scrutinised by the Select Committees of the House of Lords.

I am sure you have had many submissions but I thought I would make a few very brief submissions. I would be delighted to expand on these if it helped.

1. Great Committee Reports, poor PR and public impact We have good PR staff but far too few of them. The House of Lords has as a whole less than 5 full time equivalents. The House of Commons over 10 and the Scottish Government 40. This important feature of our democracy lies largely hidden. This is an area that I have experience in, but other noble Lords have really a lot and given some budget we could spend it well.

2. Use of Video Conferencing. We have some equipment and it is hardly used. We must use this terrific cost saving device rather than for instance travelling en masse to Edinburgh. It does not replace the need to see people from time to time but can augment a relationship (eg with devolved parliamentary committees).

3. Interaction with the devolved parliaments and administrations Since the last review we have had the Scotland Act, etc and the UK is considerably more devolved. There should be regular and timetabled interaction with similar committees both to look at common problems and to look at how devolution mechanics are working. Indeed the Memorandum of Understanding and how the Union is working is a whole subject that should be on one of our Committee’s Terms of Reference (presumably the Constitution Committee).

4. Scrutiny of UK Regulators This has been rather haphazard to date but with the departure from the EU some of the regulators have become very powerful and are quite vital. Examples would be the FCA and the PRA, but there are many. Again I feel that the ToR of several Committees should include examining relevant regulators.

5. Attendance and Performance of Members In the Commercial world this is all now disclosed. I feel we should disclose attendance of members at least. The Chairman of a Committee should also have a duty to consider performance. The privilege of serving on a committee should come with the requirement for reasonable service.

6. Parliamentary diplomacy

In the new and non-EU world we must have regard to being as a House part of the bit of the UK that faces our friends, neighbours and business partners. This means welcoming relevant people here, sending our members to speak and attend gatherings and visiting. Each Committee is well able to come up with a plan that could be submitted for approval in the usual way to the Senior Deputy Speaker, but there must be a reasonable budget to do this. And we must be able to entertain in a reasonable (not lavish) way.

13 March 2018
Lord Kirkwood of Kirkhope, Lord Porter of Spalding, Lord Best and Baroness Warwick of Undercliffe – Written evidence (RIS0069)

Lord Kirkwood of Kirkhope, Lord Porter of Spalding, Lord Best and Baroness Warwick of Undercliffe – Written evidence (RIS0069)

Submission to be found under “Baroness Warwick of Undercliffe, Lord Best, Lord Kirkwood or Kirkhope and Lord Porter of Spalding – Written evidence (RIS0069)”
Submission to be found under “Eirik Bjorge, Arabella Land and Ewan Smith – Written evidence (RIS0034)”
Background to the Law Commission
1. The Law Commission is the statutory independent body created by the Law Commissions Act 1965 to keep the law of England and Wales under review and to recommend reform where it is needed.

2. The driving principle of all our law reform work is to ensure that the law is fair, modern, accessible and as cost-effective as possible. We believe that, for the law to be fair, it must be capable of being understood by the courts, legal practitioners and citizens.

3. This evidence focuses on three areas of work on which the Law Commission may be able to assist the Committee in advance of our oral evidence on 13 June: consolidation; Special Public Bill Committees; and, legislative standards.

4. Consolidation in particular tends to be a Cinderella subject for busy Government departments tasked with implementing Ministerial priorities. But, it has a significant impact on those using the law. Individuals, businesses and the third sector who have to pay for legal advice will see the inefficiency caused by badly drafted or unconsolidated law reflected in their fees for professional advice. Those who have to use the law without professional assistance will struggle to deal with law that is not clear and easy to follow which in turn can directly impact on the efficient administration of justice when unrepresented parties appear before the courts and tribunals.

5. We also believe that the Special Public Bill Committee process represents an excellent mechanism for implementing legislation efficiently, while still ensuring effective Parliamentary scrutiny.

Consolidation and codification
6. A consolidation Bill combines a number of existing Acts of Parliament on the same subject into a single Act so as to improve the accessibility, clarity and certainty of the law without altering its substance or effect. In the 40 years up to 2006 there were 200-plus consolidation Acts; since then there have been two. We have a statutory duty to promote consolidation but our funding has been reduced, which impacts on our ability to undertake such work. More generally, it seems to be the case that consolidation is a low priority across

Whitehall. We take the view, however, that there is still value to consolidation, a view which was supported in a recent recommendation from the House of Lords Constitution Committee, which recommended the Commission be given the necessary funds to undertake this work\textsuperscript{18}.

7. A number of factors are considered by the Commission when considering undertaking consolidation work, for example:

i. whether the law concerned is suitable for consolidation;

ii. the need for consolidation (essentially, the obstacles it would remove in accessing and using existing legislation);

iii. the complexity and size of the project;

iv. the cost of the work involved and the resources available to meet them;

v. the availability of suitable drafters;

vi. departmental priorities (and the risk of their changing); and,

vii. the risk of changes being made to the law during the life of the project (the prospect of significant changes can prevent us taking a project on\textsuperscript{19}).

8. In our report on the \textit{Form and Accessibility of the Law Applicable in Wales} we suggested a method of consolidating existing legislation which we thought had advantages over consolidation as traditionally understood. We called it codification. It differs from straightforward consolidation in two main respects. First, the exercise of drawing the existing law together into one Act is accompanied by a degree of what we called “technical reform”; the effect of the legislation is changed in limited and uncontroversial respects with a view to improving how it operates. Secondly, in the future, when legislating in an area covered by a code, legislators should adopt the discipline of legislating by way of additions to, or amendments of, the code Act, rather than multiplying the number of statutes on the statute book dealing with different aspects of the same subject-matter.

9. This submission focuses on three recent and current projects which we suggest highlight the value of consolidation: Sentencing; Planning Law in Wales; and, Simplification of the Immigration Rules.

\textbf{Consolidation Committees}

10. The consolidation procedure is used when a Bill consolidates the law, rather than making changes of policy. A consolidation bill receives parliamentary scrutiny through a joint committee (the Joint Committee on Consolidation, &c. Bills). This avoids long technical Bills taking up time on the floor of the House.

11. There are two principal methods currently in use by which minor changes can be made to the law as part of a consolidation without the Bill requiring

\textsuperscript{18} https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/27/27.pdf

scrutiny on the floor of the Houses. One is for the Bill to be accompanied by a report of the Law Commission making recommendations for minor alterations in the effect of the legislation; these recommendations are reviewed by the Joint Committee and either accepted or rejected. The other method is for the introduction of the consolidation Bill to be preceded by pre-consolidation amendments of the existing law effected either in, or under powers conferred by “paving” clauses in an ordinary public Bill. This is the model currently being adopted in the Commission’s project for a Sentencing Code. In the case of sentencing, the need for primary legislation to deliver these pre-consolidation amendments can bring about potential obstacles, for example questions of scope can arise because the subject matter is controversial (whereas the consolidation itself is obviously not).

12. In appropriate cases these methods of consolidation represent a highly efficient use of Parliamentary time. We encourage any efforts being made in Parliament to cement the place of Consolidation Committees and ensure they are given sufficient priority if and when there are Bills for them to consider.

Sentencing

13. In the Sentencing Code project, the Commission started by identifying all the existing law, which runs to some 1,300 pages of primary legislative provision scattered over numerous Acts of Parliament. The intention is to redraft all of that into a single statute, using clear language and other drafting techniques to make it as accessible as possible.

14. In addition, the Commission has also published a report demonstrating that it is possible to remove the difficulty with transitional provisions so as to avoid parallel regimes of sentencing law. For example, in relation to a historic sex offender, it would currently be necessary to identify what the date of the offence was and which particular version of the sentencing legislation was in force at that time. The Commission has identified an opportunity to sweep all that away so that, from the date of commencement of the sentencing code, anyone sentenced would be dealt with under the procedures of that code – subject to the very important caveat that no one can be given a graver penalty than that which would have been available at the date of the commission of their offence. That avoids judges having to look back across various parallel regimes.

15. We are drafting the Sentencing Code as a consolidation Bill. The provisions being enacted are all ones that have previously been subject to Parliamentary debate in the course of their original enactment, and a consolidation Bill cannot itself effect policy reform. All that is necessary to enable this to happen is a very small number of uncontroversial clauses in a programme Bill preceding the consolidation Bill.

16. The challenge with any consolidation or code is to maintain it as the single source of primary legislation. While obviously a matter for Parliament, the
key is for there to be a culture whereby any changes to sentencing legislation are made through the sentencing code.

17. The view is sometimes taken that consolidation exercises are a legal nicety, rather than something which can bring about tangible benefits. The Commission suggests this is not so. In the case of sentencing, an independent survey has suggested that around 30% of appeals in the Court of Appeal (Criminal Division) on sentencing involve an unlawful sentence. That is because of a mistake by the judge as to the powers available in relation to the sentencing determination. The human cost can be considerable but, in terms of quantifiable costs, our economic analysis suggests the enactment of the Sentencing Code would bring savings to the criminal justice system of £250m over ten years. There is also widespread interest from Parliamentarians, judiciary, experts and the public, as demonstrated by our recent consultation exercise, during which the Commission spoke with over 1400 people.

Planning law in Wales

18. Although this project relates to devolved law in Wales, and thus any consolidation bill is a matter for the National Assembly for Wales, the Commission’s view is that this is a good example of an ambitious consolidation project. The impetus for this project is a desire on the part of the Welsh Government to bring about greater clarity in the law so that access to justice is improved for the citizen, particularly those who are not legally represented. Although accessibility is the key component of this work, it may also promote investment, given that costs of legal research and advice should be reduced for those seeking to navigate or use planning laws.

19. We envisage the result of the Planning project will be the emergence in due course of a Wales Planning Bill that will replace all or part of 30 or so statutes, and around 100 regulations, rules and orders. That in turn will form the principal element of a new Welsh Planning Code, which will also contain associated secondary legislation (regulations) and Welsh Government guidance. The Bill would incorporate much of what exists at present, but in a clearer pattern, and in a single place rather than spread over numerous Acts; and it would clarify various points of detail. But it would omit a number of provisions that are of no continuing utility, whose continuing presence makes understanding and use of the planning system unnecessarily difficult.

20. As with sentencing, once a Planning Code has been created, the key is to ensure that it contains all of the statute law on a particular topic as it applies in Wales, and that any future changes would be incorporated into the Code, rather than left as freestanding statutory provisions alongside it.

21. The long-term aspiration of the Welsh Government, we understand, is for a number of areas of the law to be consolidated, with potential future candidates including education, housing and health.

Immigration Rules
22. Although our project on simplification of the Immigration Rules does not extend to primary legislation, it arose out of a submission to our 13th Programme of Law Reform (which also described immigration primary statutes as ripe for a consolidation exercise).

23. The Immigration Rules are crucial in setting out the way in which the Government intends the immigration system as a whole to operate, and affect a large number of individuals seeking leave to enter or remain in the UK. However, they are widely criticised for being long, complex and difficult to use. They total 1033 pages in length. Statements of changes to the Rules are now frequent and detailed. Between 2012 and 2017, for example, and driven mainly by the introduction of a more detailed and prescriptive style of drafting, the Rules increased in length by nearly 50%.

24. This project will not involve any substantive changes to immigration policy, but will consider not merely how the Rules could be better presented but also how they could be made easier to use by minor technical reforms such as, for example, standardising some of the rules applicable to different categories of immigrant where discrepancies in them have no policy justification.

25. The complexity that has developed in UK domestic immigration law is also attested to by the presence on the statute book of 14 Acts (excluding Acts relating exclusively to nationality law), as well as significant amendments to immigration law in other statutes such as the Crime and Courts Act 2013 and the Justice and Security Act 2013. Each Act amends ones that have gone before and adds new freestanding provisions. Immigration legislation also encroaches on other areas of law where immigration status is relevant, such as social welfare entitlements and housing. We hope there will be appetite in the future for the Law Commission to undertake work on consolidating these primary statutes.

**Special Public Bill Committees**

26. Certain Law Commission bills may be examined by a Special Public Bill Committee in the Lords, pursuant to the special Parliamentary procedure for a Bill which gives effect to recommendations of the Law Commission and has been agreed between the usual channels to be uncontroversial.

27. The Special Public Bill Committee is a committee which is empowered to take written and oral evidence on a Bill. Following taking such evidence, the Committee then considers the Bill clause by clause in the usual way and is able to amend the Bill before reporting it to the House.

28. By way of background, the membership of the committee is proposed by the Committee of Selection, and the government have a majority over the other parties, with remaining places held by the Crossbench members. It has been the practice for the relevant minister and frontbench spokesmen from the
other parties to be members. Any member of the House who is not a member of the committee may attend any public meeting of the committee, and may speak and move amendments, but may not vote.

29. The special procedure was introduced on a trial basis in 2008 and was made permanent in 2010. It was introduced with the aim of “helping to clear the backlog of Law Commission bills awaiting parliamentary consideration and to significantly reduce delays”\(^{20}\). Since its introduction, 8 Acts have been passed using the special procedure.

30. The term “uncontroversial” has never been defined, but we suggest it means that the proposals in the Bill are acceptable to Government and Opposition Front Benches alike. There is sometimes concern that a Bill making technical changes could be hijacked by amendments raising controversial issues which are technically within scope. This is no doubt true in theory but has not proved a problem in practice since the introduction of the Special Procedure in its present form. Law Commission Bills are always preceded by detailed consultation which is aimed at producing a consensus view. It is worth noting that, for a Bill to be suitable for the Special Procedure, there does not need to be complete unanimity amongst all stakeholders who have commented on the draft Bill.

31. The use of the special procedure is a very helpful mechanism for Parliament, Government and the Commission to take forward reforms because it is designed to enable a Bill to pass through each House taking up very little floor time. By way of example, the recent Unjustified Threats (Intellectual Property) Act 2017 took up less than an hour on the floor of the House of Lords and less than 20 minutes on the floor of the House of Commons, while still retaining thorough Parliamentary scrutiny.

**Legislative standards**

32. The idea of legislative standards has been raised for the UK Parliament before, most recently in the First Special Report of the Constitutional and Legislative Reform Committee. That Committee’s recommendation was rejected by the Coalition Government in 2013. The Law Commission has not taken a view in recent times on this issue in relation to the UK Parliament, however, in Chapter 8\(^ {21}\) of our Form and Accessibility of the Law in Wales report, we recommend the introduction of written legislative standards for Wales – in effect a set of agreed criteria against which the quality of legislation in Wales might be objectively measured. We believe that standards could be of great assistance to members of the legislature when scrutinising Bills, and to policy makers when developing them.

---

\(^{20}\) [https://publications.parliament.uk/pa/ld201314/ldhansrd/text/140512-gc0001.htm#14051218000170](https://publications.parliament.uk/pa/ld201314/ldhansrd/text/140512-gc0001.htm#14051218000170)

33. Perhaps of most relevance to this Inquiry, is the idea of a Legislative Standards Committee. As part of our work, we looked at the different roles that have been performed by legislation advisory committees in New Zealand. Its current Legislation Design and Advisory Committee is a Government body, responsible for drafting and enforcing legislative standards and working with agencies at an early stage of Bill development “to address problems in the basic architecture of legislation and identify potential legal and constitutional issues before bills are introduced”. We were not persuaded that such a committee would represent for Wales the best use of limited resources. Following consultation, we agreed with the concerns expressed by some consultees that such a committee is vulnerable to the political whims of the Government of the day. Moreover, many of the functions it might take on are already within the responsibilities of existing bodies, such as Assembly committees and the Office of the Legislative Counsel. However, the work of the newly constituted Legislation Design and Advisory Committee in New Zealand should be kept under review.

34. More generally, Wales does not currently have a set of formal standards for legislation. Formal standards could be a valuable resource for government officials considering whether and how to legislate. They could also provide a standard measure against which the Welsh Constitutional and Legislative Affairs Committee or others could judge legislation and a powerful tool for achieving better quality legislation.

35. In our evidence to the Welsh Constitutional and Legislative Affairs Committee we suggested that better legislation could be promoted by:
   i. identifying and analysing the underlying policy issues in a way which will highlight clearly the problems to be addressed and possible solutions;
   ii. formulating well thought-through policy objectives, with transparent impact assessment;
   iii. carefully assessing whether a legislative or non-legislative solution would be more appropriate; and,
   iv. setting aside adequate time and resources for pre-introduction public consultation and solution-testing.

36. In addition, the quality of legislation could be improved by:
   i. ensuring that instructions to counsel are comprehensive and clear and reflect fully thought out and agreed policy;
   ii. having departments work closely with drafters to ensure that Bills are clear, concise, consistent, unambiguous, and easily intelligible, keeping technical terminology to a minimum;
   iii. minimising the need for government to table its own amendments to a Bill after it has entered the legislative process;
   iv. making greater use of Keeling Schedules (as part of the explanatory notes) to clarify changes that a Bill makes to previous enactments; and,
v. providing for the clear repeal of any existing enactments that are superseded by the Bill.

37. We took the view that legislative standards should contain guidance on the matters listed above and on policy development and the preparation of better legislation as well as standards for consolidation, codification and the discipline for the preservation of codes.

38. We suggested that the Counsel General should be responsible for developing legislative standards. Insofar as they relate to the design and content of legislation the standards should be reviewed by an Assembly committee and could be formally adopted by the Assembly by resolution in Plenary. Ideally standards should be agreed between the Welsh Government and Assembly.

May 2018
Law Society of Scotland – Written evidence (RIS0032)

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland’s solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society’s Constitutional Law sub-committee welcomes the opportunity to consider and respond to the House of Lords Liaison Committee Inquiry on Review of Investigative and Scrutiny Committees. The sub-committee has the following comments to put forward for consideration.

General Comments

We welcome the Liaison Committee’s review of Investigative and Scrutiny Committees. It is essential to the proper working of the Committee system that there is a strategic approach to the organisation of the committees and the work they do.

We suggest that, as with every reform, change should be evidence based. Accordingly, a survey of each committee, its remit, membership and meeting pattern needs to be undertaken. This will identify potential synergies in the areas of competence of each committee and although unlikely any overlaps or duplication.

The effectiveness and efficiency of each committee should be assessed. This will identify where the committees are influential and what impact their work has. Having ascertained where the committees are it will be necessary to identify where the House wants them to be. What areas of policy will be of the greater importance in the future? What areas are not covered and what should be done to fill any gaps?

1. How can committees add most value to the scrutiny work of the House of Lords as a second chamber?
Legislation is the way in which Government policies are made into binding rules which affect us all. If legislation is to achieve this purpose, it must reflect those policies and express them clearly to those who are affected by the law. Committees can add most value to the scrutiny work of the House by examining legislation closely and commenting on its clarity, effectiveness and accessibility in order to help create good law. The office of the Parliamentary Counsel has expressed “good law” as law that is necessary, clear, coherent, effective and accessible. If committees keep these qualities in mind when scrutinising legislation the outcome should be better law and a better statute book.

Good Law covers four areas:

a. Content, How much detail? Is this law necessary? Does it duplicate, or conflict with, another law?

b. Language and style, Do we know what the likely readership is? Is the language easy to understand?

c. Architecture of the statute book, what should determine the hierarchy and structure of statute law? What should go into Acts and Regulations?

d. Publication, How will law appear to the online user? What can be done to improve navigation? Should we draft law to be machine-readable?

These would be the kind of questions which committees should have in mind when scrutinising legislation.

2. How can House of Lords committees develop a national conversation to complement their inquiry and scrutiny work?

House of Lords committees can engage more effectively with public and media by developing new methods of taking evidence (indeed even using the phrase “taking evidence” should be reconsidered as it implies a formal near-court process which could be off putting to many) using language which is more accessible and less parliamentary in style. Committees can also conduct broader outreach by holding session’s outwith the House of Lords and by choosing a more diverse range of locations in which to meet with the public. Finally, committees should be more flexible about the channels of communication which they employ and the engagement programme which they undertake. Each committee should have a communications plan and identify targets for engagement with community groups, representative bodies; individuals and those on the margins of society which should be achieved within any given parliamentary session. Adopting these methods could help to develop an authentic two-way conversation with Society broadly.

3. What are the strengths and weaknesses of the current House of Lords committee structure and what should change?

It is generally considered undesirable for House of Lords committees to overlap with committees in the House of Commons. However where
committees have a joint interest in a mainstream area of law or policy such as human rights it is helpful to have a joint committee.

In other areas it is important for there to be distance between the committees of both Houses. Departmental committees in the House of Commons have a different role in as much as they are comprised of Members of Parliament who are accountable to their constituents. The committees are designed to assist in holding Government to account. On the other hand, Peers are not subject to the same political pressures as MPs and can bring their expertise and experience to each inquiry. They can also have a wider perspective on issues, examine broader themes and adopt more holistic views.

4. **How can House of Lords committees maximize their impact inside and outside the House?**

The House of Lords committees can maximise the impact inside and outside the House by mounting inquiries which are seen as relevant by government, policy makers, civic society, stakeholder groups and the wider public.

Relevant inquires can be supported by deep research on the topics identified for the inquiry and by the production of robust, sustainable reports which are respected for their impartiality, application of evidence, logic and the usefulness of their recommendations. In general recommendations should fulfil the following criteria they should be SMART. specific, measurable, achievable, relevant and time bound.

To maximise the impact of the work which committees have done each committee should create a communications strategy to accompany each inquiry. The communications strategy should be informed by the objects of the inquiry, the context in which the inquiry takes place politically and socially and the communication methods available to the committee. The committee should avoid adopting a “one size fits all” communication strategy. Some communications to government the civil service or sophisticated stakeholders would not be appropriate to non-governmental bodies, more general stakeholders or the public.

5. **How can House of Lords committees promote inter-parliamentary dialogue both within and outside the UK?**

House of Lords committees can promote inter-parliamentary dialogue within the UK by being a forum to bring together members of the UK Parliament and legislatures in Scotland, Wales and Northern Ireland and by creating an opportunity for debate, exchange and communication between the UK Parliament and the devolved legislatures. However that opportunity does not simply relate to the devolved structures but should extend to other aspects of devolution including City Mayors, participants in regional devolution plans and Local Authorities. House of Lords committees should travel to other legislatures and to hold meetings. This will enable committees to indicate their willingness to engage and may change the perception of House of Lords committees which some participants outwith the House may hold.
Internationally there are a number of existing groups which the committees can enhance participation with including the Inter-Parliamentary Union, the Commonwealth Parliamentary Association and the Association of State Legislators. Other international bodies generally which have an interest or capacity in law making, treaty formulation and legal process would be useful to engage with. Examples of this group would include The United Nations, the EU institutions, the Council of Europe, the Hague Conference on Private International Law and the International Bar Association.

Bilateral relationships with other legislatures should also be enhanced, particularly with the Upper Houses of European national legislatures. The withdrawal of the UK from the EU will require the strengthening of such bilateral relationships to maintain a common level of understanding about the objectives, challenges and attitudes which prevail in the UK and among member states.

**Subject matter and structure**

**An overriding question is: How should the structure and working practices of House of Lords committees be rationalised?**

The essential questions are what do we consider committees to be for? and how can they best achieve those objectives?

The Parliament website states that "Committees consider policy issues, scrutinise the work and expenditure of the government, and examine proposals for primary and secondary legislation. Select committees operate largely by an investigative process, while legislative committees operate mainly by debate".

According to the Committee’s Consultation document there are 24 House of Lords investigative and scrutiny committees and sub committees. This is a significant number of committees and sub committees and represents a considerable investment in committee work. In order to rationalise the structure and working practices it will be necessary to undertake the evidence gathering process referred to above and then examine critically the remits of each of these committees and sub committees and ascertain whether those remits remain relevant. There are many changing circumstances and developing arrangements in the UK not only in the context of withdrawal from the European Union but also in connection with the economy, international relations devolution and other representative structures.

1. **Should the current committee structure be changed?**

The factors which suggest that change to the current committee structure is necessary include:

(a) The UK’s Withdrawal from the EU
The UK’s withdrawal from the EU and replacement of policy and law originating from the EU with that originating within the UK. This will require changed roles for committees and sub committees and the opportunity should be taken to rationalise and modernise the committee structure. Government’s aspirations to create a ‘Global Britain’ and to create a network of trade agreements will necessitate additional scrutiny requirements. Accordingly this could translate into the creation of Select Committees on International Trade, Free Trade Agreements, Private International Law and Citizens’ Rights.

(b) Devolution

Since 1998 devolution has developed considerably with significant increases in powers in 2012 and 2016 for Scotland and in 2006 and 2017 Wales and more powers made available to the Northern Ireland Assembly. Devolution has also developed in England with proposals for English votes for English laws, enhanced power for City Mayors and proposals for regional devolution. Increasing powers for the devolved administrations means that the UK Parliament does not exercise those powers for the devolved areas but the continued relevance of Parliament as a legislature for reserved powers and continued ministerial decision making particularly in connection with finance and strategic matters still rests with Whitehall. House of Lords committees are well placed to consider and examine proposals by the UK Parliament and Government which will have an impact on the devolved arrangements across the UK.

(c) Technological Change

Changes to technology have in the past few years revolutionised the ways in which people communicate, form networks and learn. A use of data and the influence which that use can bring has increased and can be a force for good but can also create controversy when it is abused. Technology is developing very quickly; the use of robots, AI Solutions and over posted communications leaves policy development behind. IT and technological solutions are used by many committees and legislatures within the UK to good effect. House of Lords committees should explore how their work can be enhanced by the application of IT solutions. The renovation of Parliament presents a good opportunity to accommodate current technology in a widespread way and, as far as possible to anticipate advances in technology.

2. What changes are needed in the wake of Brexit? Are committees needed to scrutinise the UK-EU relationship in future, and if so how?

Some may believe there will be no need for an EU committee once the UK has withdrawn from the European Union however the EU will remain a significant trading partner and a significant generator of policy and law which will impact on the UK in a variety of ways. Therefore it will be important for the House of Lords to maintain a committee or committees which will maintain a monitoring and horizon scanning role. This will assist in alerting Parliament and Government to EU developments. The return of powers from the EU to UK will be considerable and the sub committees which currently scrutinise EU
proposals will require to be re-orientated to scrutinise UK proposals in areas of former EU competence and where appropriate take into account views from the devolved legislatures.

3. **To what extent does it remain desirable to avoid overlap with the House of Commons**

Whilst it is desirable to avoid overlap the House of Commons on many things in certain instances it is essential for there to be a joint position. Proper scrutiny of legislation or policy development is not the preserve of one House of Parliament as opposed to another – both Houses have roles to play. That is why collaboration between Committees can be a good use of procedures – or even suggestions such as Committee members being seconded between Houses. The current joint committees: Joint Committee on Human Rights, Joint Committee on the National Security Strategy, Pre Legislative Draft Bill Committee and the Joint Committee on Statutory Instruments all fulfil useful work in areas where both Houses of Parliament will have a common interest.

However it remains desirable for the House of Lords to maintain separate Investigative and Select committees because of the distinct interest which the House of Lords has as a revising chamber. Furthermore committees of the House of Lords can draw on members of significant and wide experience as well as those who have held high political office but can approach matters in a way which does not mirror the highly political environment which can be found in the House of Commons.

4. **What is the best balance between ad hoc committees and sessional committees?**

This is a matter of context. It is correct that Sessional Committees are available to provide oversight and review. Sessional Committees such as the European Union Committees, the Economic Affairs Select Committee, the Communications Select Committee, the Constitution Select Committee, the International Relations Select Committee, and the Science and Technology Committee undertake work which touches on matters of policy and law of a specialist nature.

On the other hand the ad hoc select committees on artificial intelligence, citizenship and civic engagement, the Natural Environment and Rural Communities Act 2006 and political polling and digital media are much more related to aspects or policy or law which emerge during the course of a session.

The Committees should be broad based with a range of expertise and skills and flexible enough to deal with long range matters and to react to developments during the course of a session on matters of public or parliamentary interest by the creation of ad hoc committees. However as the list of ad hoc committees illustrates there is no particular over-arching principle for the creation of an ad hoc committee.
Ad hoc committees are appointed to undertake a particular inquiry and are appointed only for a year. This is insufficient time to develop expertise and disband most after a year is effectively a waste of resources.

The Liaison Committee recommends up to four proposals for new ad hoc committees one of which will be a Post Legislative Scrutiny Committee set against those criteria listed on page 7.

5. What is the best balance between short and long inquiries?

This is a matter of context and will depend upon the subject of the inquiry. Select committees do not shadow the work of government departments. Their investigations look into specialist subjects, taking advantage of Lords expertise and more time (compared to the House of Commons) available to them to examine issues.

The six committees are reappointed at the beginning of a new session. Each one runs inquiries and reports on the issues within their specific areas. Ad hoc committees are established to consider issues outside these specialist subject areas.

Accordingly whether the inquiry is long or short will depend on the topics which appear on the committee agendas.

6. What should be the duration of most committees (e.g. a two or three year term)?

The Fixed-term Parliaments Act 2011 puts a five year period between general election we suggest that committees which are Sessional Committees should run for the whole five years this will ensure the creation of a high level of expertise amongst the members of the committee involved and allow for a consistency of approach.

Ad hoc committees

In relation to ad hoc committees, the Liaison Committee has considered proposals for new committees against these criteria:

(a) makes the best use of the knowledge and experience of members of the House,

(b) complements the work of House of Commons departmental select committees

(c) addresses areas of policy that cross departmental boundaries and

(d) that the activity proposed should be capable of being confined to one year.

7. Are the present criteria for examining proposals for ad hoc committees the right ones?
The criteria for selection of ad hoc committees could be enhanced by insuring that proposals for ad hoc committees relate to matters of significant public or policy interest. The current arrangements for following up committee report especially those of ad hoc committees are not systematic. The Liaison Committee should undertake a study of ad hoc committee reports on a biennial basis and ascertain which reports are suitable for post reporting scrutiny.

8. **Are the current arrangements for following-up committee reports (especially those of ad hoc committees) appropriate?**

We believe that strategic, planned arrangements for follow-up of committee reports should be built into the reports from the start. Each committee should include a recommendation concerning follow-up in each report.

9. **What is the correct balance between the flexibility of having new committees each year and more sessional committees?**

This depends on the social and political context at the time.

10. **How should the work of post-legislative scrutiny committees be developed?**

Post legislative scrutiny is an essential part of learning from the making and implementation of legislation. The Commission on Parliamentary Reform (2017) considered ways to reform the Scottish Parliament and deliver a stronger, more agile, inclusive and effective Parliament. The Commission considered the issue of post legislative scrutiny, paragraphs 107 and 108 of their report are relevant to this inquiry:

107. Our starting point for considering this issue is what is most in keeping with the Parliament’s founding principles of openness, transparency and power sharing. We have concluded that, if a key purpose of parliament is to scrutinise legislation, then accountability to parliament for how those legislative powers are then enacted and delivered, and the outcomes they deliver, must be a key component.

108. We propose, therefore, that a statement should be provided by the Scottish Government or, in some circumstances, the relevant public body, which details the extent to which the legislation has been enacted, what outcomes have been achieved and the cost of implementation. Committees would then consider this statement as part of the legislative process.

We recommend that post legislative scrutiny is built into the remits of sessional and ad hoc committees. The remit of the Scottish Parliament’s Public Auditor Committee was extended to include post legislative scrutiny during 2017.
We note that in the committee appointment round issued on 13 November 2017 the Liaison Committee expected to recommend up to four proposals for new ad hoc committees for appointment in 2018-2019 one of which will be a Post Legislative Scrutiny Committee. In session 2016-2017 33 bills received royal ascent in session 2015-2016 29 bills received the royal ascent and in session 2014-2015 36 bills received the royal ascent. Accordingly conduct of post legislative scrutiny on one bill per session may be considered to be inadequate if there is to be proper assessment of the effectiveness of legislation.

Engagement with the public

There has been a substantial increase in media coverage of Lords committees in recent years. Committees began using Twitter in 2014. Committees have also engaged with hard-to-reach groups by releasing easy-read versions of some reports. There have been additional efforts to engage with children and young people through a variety of methods, including online surveys.

11. How can Lords committees engage more effectively with the public and media to encourage a national conversation?

See our response to question 2.

12. What has been successful in increasing the levels of engagement on social media, and what more could be done?

The media which the House of Lords should use ought to include the following range:

- using rich media (videos and pictures)
- using plain English/language
- tagging and engaging with other relevant accounts (organisations and people)
- using a range of hashtags to link to relevant content
- following social ‘influencers’ in chosen topics and reaching out to them directly
- blogger outreach
- creating useful content that supports the chosen message
13. What new offline channels could be used to engage with the public?

‘New’ offline channels are often variations on existing themes e.g. using posters, attending/supporting relevant events, writing articles for non-traditional print media.

14. How should committees engage with stakeholders in evaluating their activity?

Committees should evaluate their activity by undertaking surveys of the community groups and individuals with which the committee has engaged in the session.

Chairmen and members

15. Are the current arrangements for the appointment of committee Chairmen and members satisfactory, including the “rotation rule”?

The Committee of Selection was appointed on 19 May 2016 to select and propose to the House members to form each select committee of the House (except the Committee of Selection itself and any committee otherwise provided for by statute or by order of the House), Chairman of each select committee, Members to form any other body not being a select committee referred to it by the Chairman of Committees, Members to fill casual vacancies occurring in the membership of select committees and Members to form the panel of Deputy Chairmen of Committees. More transparency around the appointment of Committees would help to ensure public confidence in the process.

An easy but effective way to enhance the power of committees is to moderate the influence of political parties over committee membership, especially Chairmanship. Elected chairmen are considered a success because of the experience of the House of Commons, the Dáil Éireann and National Assembly for Wales. On the other hand many other legislatures do not elect their committee chairmen.

16. What is the ideal number of members for investigative and scrutiny committees?

The ideal number of members for investigative and scrutiny committees depend on the subjects being investigated or the scrutiny being undertaken. House of Lords committees normally comprise 12 members. It is very difficult to identify the optimum number however the following principles should apply:-
(a) there should be a balance of political representation on the committee.

(b) there should be a balance of expertise on the committee.

(c) consideration of gender, race and disability balance is essential.

(d) the number of committee members should be an odd number.

The Commission on Parliamentary Reform reported that the number of MSPs on Scottish Parliament committees was highlighted as another reason why committees do not operate as effectively as they could. This aspect was considered by the Scottish Parliament’s Standards Procedure and Public Appointments Committee in 2013 when it recommended committees should normally have a maximum of seven members. The Commission noted that critics argue that party dynamics are more likely to be replicated within larger committees (roughly interpreted as being eight members or more), thus preventing its members from developing a distinct committee identity. It is also argued larger committees are too unwieldy to discuss detailed and complex policy issues effectively. Supporters of larger committees, however, argue they enable all the parties in Parliament to have a voice and can provide additional scrutiny capacity if more diverse means of inquiry are adopted (such as sub-committees and reporters)(paragraphs 39 and 40).

17. Should there be a written role description for committee chairmen and members to clarify expectations from the outset?

We take the view that there should be a written role and description for the Committee Chairmen and members to clarify expectations for the outset and that this should be supported by a system of orientation and training, performance review and post inquiry review.

Committee effectiveness

18. Is there anything committee staff could do to support chairmen and members to be more effective in their committee work?

It is difficult to answer this question without full knowledge of the current level of support which committee staff provide to Chairmen and members although Committees should have specialist staff in areas which are particularly complex or difficult to deal with.

19. How can the timeliness and content of Government responses be improved?

The timeliness and content of Government responses could be improved by means of a statutory duty on Government to respond to the reports of House of Lords Committees. Failing compliance with the time limit to respond the Government should be under a statutory obligation to provide reasons for that failure. Each report should include an invitation for the Government Minister to appear personally before the committee to explain the Government’s response.
April 2018
Summary:

- The House of Lords Committees’ work should complement the Commons Committees, rather than duplicate, namely by developing more in-depth inquiries and taking the long view on issues;
- Effective parliamentary public engagement needs to reach a diverse public, be issue-based, to listen rather than just broadcast, include feedback channels, be integrated with parliamentary business and be monitored;
- There is no one size fits all form of effective public engagement; this should vary according to the purpose of the activity, its relevant audience and topic;
- *Mini-Publics* could be an effective method to support a national conversation on specific topics;
- The use of social media by Lords Committees is very uneven and could be more coherent;
- The current web forum tool used in Parliament is very out-dated. This could be enhanced very considerably to become more user-friendly;
- Digital engagement is not necessarily always the best way to develop public engagement;
- Effective parliamentary public engagement requires expertise, staffing and resources.

1. I’m submitting this evidence as Professor of Politics, whose research centres on the relationship between Parliaments and citizens. This has recently led me to focus in particular on parliamentary public engagement, particularly in the UK. I am also a member and Deputy Chair of the Study of Parliament Group and I was one of the Commissioners in the Digital Democracy Commission. My submission addresses the section on Engagement with the Public, i.e. questions 11 to 14.

2. Before I outline the elements that make for effective parliamentary public engagement, I would like to identify how I see the role of the House of Lords’ Committee work. In line with the Lords’ overall role, its committees’ work should complement that of the Commons rather than duplicate it. One of the Lords’ strengths is the way in which it complements the Commons, bringing in a space for expertise, reflection and careful consideration, away from the fast pace of party politics and the demands of constituency work. The Lords’ committee work should reflect this. It should therefore facilitate deeper scrutiny and adopt the long view on issues. This may lead to different types of inquiries, which are able to spend more time to consider issues at stake and which may be able to consult more widely, than the Commons’ committees would be able to.

3. In terms of how the Lords can engage with the public more effectively, it is important to highlight the following overall traits which make public engagement effective: it needs to reach a diverse public, it needs to be issue-based rather than procedural, it needs to listen rather than just broadcast, it needs to include feedback channels; it needs to be integrated with parliamentary business rather than exist in parallel; it needs to be monitored and evaluated. I explain each of these in turn in the subsequent paragraphs.
4. **Reach**: research shows that those engaging with Parliament tend to come from a narrow group of people, namely white, well educated, middle/upper class. To reach a more diverse group of people, Parliament needs to actively pursue this goal, it will not happen naturally. Within the issue of diversity, there is also the matter of relevance. Not all issues will be relevant to everyone, but it is important within each issue to have an understanding of who the different affected publics may be and then actively seek to engage with those.

5. **Issue-based**: as I explained in my evidence to the Citizenship and Civic Engagement Committee, the vast majority of the population doesn’t wake up in the morning with a burning desire to engage; most of the public engages when they care about an issue. Effective engagement processes are therefore planned and implemented around issues, rather than around parliamentary processes.

6. **Listening**: most public engagement being developed by representative institutions has followed a broadcasting format, i.e., disseminating their activity and that of their members. Whilst disseminating information about what Parliament does is not to be disregarded, particularly in the case of an institution such as the House of Lords where there is so much misunderstanding about its role, the more important (and more difficult to do effectively) element is listening to the public. This requires the use of a multitude of approaches and channels, according to the issues at stake, the purpose of the engagement and the target audiences. In some cases this may take the form of a Twitter hashtag inviting for comments from the public or an online web forum; in many cases it may be most appropriate to have small face-to-face meetings with members of the public, when they feel at ease to convey their experiences. Fine tuning a multiplicity of methods that enable listening to the public should be part of developing effective public engagement.

7. **Feedback**: this is an element that parliaments tend to forget about, to communicate how public engagement may have been used as part of a parliamentary activity. There is a well-established process whereby those formally submitting oral and written evidence to committee inquiries then receive a notification of the report being published, where one can check if their evidence was cited or not. But feedback mechanisms beyond report publication (formal evidence) are still poor. Research consistently shows that the public feels the need to know whether their input was of any use; this is not necessarily about whether they achieved what they were after, but more about whether someone actually read/listened to what they had to say and considered their view. Research that I developed with Louise Thompson (Surrey University) on an online consultation on a bill in the House of Commons showed that participants felt their input had been pointless and they were unaware of how their comments had been used by officials and MPs.[1]

8. **Integration with parliamentary business**: my research has also shown that whilst parliamentary public engagement has developed considerably since the turn of this century, this has mainly been as an activity parallel to parliamentary business. One of its main challenges now is to integrate it better with ongoing parliamentary business. Parliamentary public engagement is often seen as an activity to make the public aware of the matters being discussed in parliament (with the expectation that if the public realises the institution is relevant to them, they are more likely to understand and appreciate it). However, Parliament also needs to better integrate the public’s voice into its actual work. This requires a re-thinking of parliamentary procedures to ensure there is an opportunity for inputs from a public engagement activity to be considered by parliamentarians (as well as a willingness from Members to utilise
the public’s input). It also requires more staff and/or better tools to systematise views expressed through a public engagement activity. It is wiser to do fewer public engagement activities, but better, than ignore the potential for integration with parliamentary business.

9. **Monitoring**: whilst we have seen a plethora of public engagement initiatives being developed within the UK Parliament, some of these by Committees in the Lords, the monitoring element is still relatively under-developed. This is in great part due to time constraints, but monitoring is a key element of developing effective public engagement: only by knowing (1) which activities have been developed, (2) who has participated (as much as possible) and (3) with what effects, can the institution have confidence in the way it develops further public engagement. Monitoring should be based on embedded institutional processes that collate information about the activities being developed, as well as include evaluation mechanisms (public intake, public evaluation, relevance and use to parliamentary business).

10. **The Lords’ Committees have already developed some good practice in public engagement, but this can be developed further** namely in terms of increasing visits/fact finding sessions away from Westminster, diversifying its public engagement methods and sharpening its online engagement practice and tools. Increasing visits outside Westminster is particularly important to diversify the public it engages with, as is the diversification of public engagement methods. I could say far more about these, but will focus on two specific issues that are raised in the call for evidence: how can the Lords’ Committees encourage a national conversation about issues and how digital tools be better used for engagement.

11. As stated above, Lords’ Committees should complement the Commons’ rather than duplicate. This gives the Lords an opportunity to consider issues in more depth and to consult more widely. One tool which could enable this, but which requires time to be done effectively, is the Mini Public (also known as mini assemblies). Mini publics are temporary bodies constituted of representative samples of the public (with about 50 to 100 members) brought together to consider and deliberate over an issue. Whilst there are now many examples of these,[2] demonstrating the value of consulting the public with time to deliberate on the issues at stake, there has only been a fledgling integration of this method with parliamentary processes. The 2012-2014 Irish Constitutional Convention[3] is a good example of the use of this method with parliamentary integration. More recently, one of the recommendations issued by the Scottish Parliament’s Parliamentary Reform Commission supports the use of mini-publics as a public engagement method.[4] Mini-publics are not suitable for every inquiry or engagement purpose, but they can be very effective methods for specific instances, helping to engage, consult and build legitimacy in the wider decision-making process. They would be particularly suitable to support a national conversation.

12. In terms of digital tools, the House of Lords has some good practice, such as the page that summarises Peers’ social media activity (The Lords Digital Chamber) and some of its YouTube portfolio, but could develop this far more, particularly at the level of Committees.

13. Although five Committees have a Twitter account and other have a dedicated hashtag, the **use of this tool is very uneven in both its volume and quality**. For instance, whilst the EU Committee has a regular presence on Twitter and makes an effective use, for instance, of short videos and infographics, this is not representative of the Lords Committees’ wider
presence on social media. This could be enhanced by a more coherent presence across all committees. Likewise, the principles listed above for effective engagement could be better integrated in this use. The use of social media by the Commons’ Committees has developed considerably recently and constitute good examples from which the Lords Committees could draw. In terms of other upper chambers, the French Senate is a good example of a relatively effective use of social media. However, social media is only one part of digital engagement and can be of little use for some policy areas and audiences. It also requires appropriate resourcing to be done well.

14. Digital engagement can also include other tools, such as the web forum currently used by Committees in the UK Parliament to collate views from the public. Albeit a way of collating evidence from the public, this tool is now considerably outdated and needs to be far more user-friendly, as I have explained in more detail in a report to the Commons’ Petitions Committee during my Knowledge Exchange Fellowship there in 2016/17. This can be developed in many ways, but the Brazilian e-Cidadania (e-Citizenship) may be a good example of a digital platform to collate views from the public by an upper chamber. Other legislatures, such as the Welsh Assembly, have used external online platforms to host online deliberative discussions, such as Loomio.

15. The use of digital tools can enhance engagement significantly, but it also raises specific problems, namely its reach and the interpretation of its outputs. Whilst a digitally based tool can be an effective way to reach a wider audience (beyond location limitations and the usual suspects), it does not naturally reach a representative audience; this needs to be actively pursued. Utilising web based discussion tools hosted by external organisations is one way to address this problem, by going where the relevant public is present digitally. The interpretation of outputs is a more technically challenging problem. Parliament is becoming better at consulting a wider public digitally, but often it is then difficult to use that evidence, due to its volume, difficulty in summarising key points and/or its timing in relation to parliamentary business. Some of this can be addressed by a better understanding of the potential of technical tools to automatically interpret and aggregate digital data. The Parliamentary Digital Service has developed considerably recently and a better integration of the expertise of its technical staff with those services supporting committees and engagement, could help address some of these challenges.

16. This however should not underestimate the value of smaller events or of face-to-face engagement events. Diversifying methods of engagement and considering in each instance the audiences and purpose of engagement should determine more specifically the shape of each activity. There is also another side of public engagement, which is the one of informing and educating the public about the committees’ role. Whilst the Lords have developed interesting initiatives such as the Peers in Schools programme, or its series of short informative videos, this can be developed much further and particularly in relation to the role performed by Committees. Working more with schools (beyond those specifically doing A-level Politics) and small charities (which often lack the expertise or staffing to establish relationships with Parliament), can be very effective ways to better disseminate the work of the Lords’ Committees.

March 2018
[1] C. Leston-Bandeira, L. Thompson and W. Mace (2016), *Letting the Public in on the Act*, report, project funded by British Academy/Leverhulme Trust (Ref: SG141934); also published as a journal article: ‘Integrating the view of the public into the formal legislative process: public reading stage in the UK House of Commons’, *The Journal of Legislative Studies*, 23 (4), 2017; and as a summary blog post: “Engaging the public with the scrutiny of legislation requires more than just asking for their views”, *LSE Blog*, February 2018.


Baroness Liddell of Coatdyke, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Lord Giddens, Baroness Falkner of Margravine, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and L

Baroness Liddell of Coatdyke, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Lord Giddens, Baroness Falkner of Margravine, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee - Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee - Written evidence (RIS0071)”
Review of Lords Select Committees
A Note by Lord Lipsey, Chair, Select Committee on Political Polling and Digital Media

I am delighted that you are undertaking a wide-ranging review of the Lords select committees. In this brief note, I wish to confine myself to one subject: communications. To put it in a nutshell, the quality of Lords Select Committee reports is in my experience admirable. However, much of the hard work that goes into them is wasted. This is because more effort is put into internal aspects of communication than external.

Broadly, what typically happens is this. The Press Office prepares a press release. This is either taken up or not depending on the newsworthiness of the report. Press conferences have on the whole been abandoned as few journalists are now able to or find it worthwhile to attend them. Thereafter however the whole concentration is on obtaining a debate, which may come before or after a ministerial reply. I had the privilege of sitting on the recent Select Committee on the Long-term Sustainability of the NHS which followed this model. Though I have no doubt that the debate scheduled for 26th April will be of the highest standard, I am not sure it will attract the attention it deserves, nor that ministers will feel under as much pressure as they should to adopt the measures recommended by the report as a result of it.

A broader model, which I and my colleagues are following for the Political Polling and Digital Media (PPDM) Committee report published on 17th April, works broadly as follows. It has a wider objective than just influencing ministerial statements and decisions. Instead it aims to set out a view of its subject and to maximise the chances of that view permeating the wider discussion in society of that subject.

Part of the success of this lies in titivating interest in the report and its result before it appears. In the case of the polling report, when the Committee was appointed, we got Martin Kettle, chief leader writer of the Guardian, to write a full length feature which reflected on our subject matter. We tried to sustain interest during the process of drafting the report. For example, I as Chair wrote an article for the i newspaper; the BBC was persuaded to prepare a package based on our evidence and on an interview with me; and efforts were made to ensure that interest was as high as it might be before publication.

Of course, a press release setting out the content followed. It is part of that process. A good deal of work should go into making that as attractive as possible and that requires an iteration between our Press Office and the Chair. But it should be supplemented by other techniques. One is articles by members of the committee (often the Chair). Another is that the Chair or other members should make themselves available to brief leading commentators. There is no guarantee of course that they will buy the committee’s line but no matter: it is more important to be talked about than to be slavishly adhered to. Of course, whatever the inconvenience, availability to broadcasters is essential. I cannot claim to be an expert on social media but it clearly is playing an important role in making sure content is widely disseminated.

If the aim is to change the climate of opinion, a sustained period of activity may be required. So for example the PPDM Committee launched with a seminar including many experts set up by the UCL Constitution Unit. We are in
discussion with the Institute for Government and the Royal Statistical Society for follow-ups. To a varying degree, penetration of the academic community for each subject is necessary. So LSE are considering a seminar on our report; as is Nuffield College Oxford for the autumn of 2018. I understand that other ad hoc committees, including the Committee on Sexual Violence in Conflict and the Committee on Soft Power, have hosted similar well attended post-publication events and perhaps it should become the norm. It allows us to make the most of the cachet of Parliament in order to increase engagement with the report and gives the report a longer shelf life.

Better debate will ensue if bodies active in the field are involved in the launch. So for example the PPDM Committee briefed the British Polling Council (the main industry body) before publication. We did not expect to persuade them of our case. We hoped to make sure that debate with them was well informed on the basis of mutual respect. Our expectations were very much exceeded by a press release from the BPC commending the quality of the report and promising to pursue its BPC-oriented recommendations.

I should say that the Lords Press Office (Head of Press and Media) responded with enthusiasm and skill to this slightly different way of doing things. It draws on their imaginative skills in a way that should add satisfaction to the job they do. It also has the capacity to improve the standing of the House of Lords and its work in the polity. There is a real benefit to having the Committee’s agreement to a communications strategy prepared by the Press Office and committee staff at the start of the inquiry. Sometimes members may feel it is too early to think about communications, but the process focuses minds and helps define a programme of work to support the inquiry from the outset.

Of course, every committee will have its views on how best to conduct its communication strategies. Some Chairs will want a different approach to others – I have no doubt that my approach is conditioned by my 17 years in journalism as a writer and editor. I am not selling a blueprint but rather offering an alternative. That said, I think there is a case for an official note of guidance to Chairs setting out what they might like to consider doing in propagating their reports. I should be happy to offer such expertise as I possess to work with the Press Office and others to prepare such a note.

April 2018
The Earl of Lindsay, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)"
I have a great many thoughts about the effectiveness of select committee systems, not least following many years’ experience in the House of Commons, including designing scrutiny systems and involvement in the revitalisation of the Departmental Select Committees (the Shifting the Balance initiative). So far as your present inquiry is concerned, however, I am very happy to leave the expression of views to those who have longer experience of this House than I; with one exception.

The relationship of the two Houses is, as it should be, one of complementarity. The Lords and Commons do many similar things, but they do not compete; and in complementing each other they increase the influence, and indeed the power of Parliament. The complementary approaches to Select Committees are a case in point. Through the Departmental Select Committees the Commons pursue what might be called a “vertical” approach – examining the expenditure, administration and policies of an individual Department, and drilling down into related agencies and regulators. Our House, on the other hand, majors on cross-cutting Committees – a “horizontal” approach.

I am sure that there will be those who would urge us to move closer to the Commons structure and, for example, to have our own Departmental Committees (in key areas, at least, if not across the board). I would counsel strongly against any such move. The political and news agenda will mean that a Commons Committee and its Lords equivalent will tend to choose similar or identical subjects for investigation, competing directly for the attention and attendance of Ministers and other high-profile witnesses, and for media coverage. More seriously, when two Committees come to different views on a subject, the Government of the day will assume carte blanche to ignore both.

I hope that the outcome of your inquiry will reflect the differing, but complementary, approaches of the two Houses.

I should be very happy to have a chat about wider matters at any stage if it would be helpful to you.

19th April 2018
Baroness McIntosh of Pickering – Supplementary written evidence (RIS0065)

Thank you for the invitation to appear before the Liaison Committee and give evidence on the Role and Structure of Committees.

I hope it might be useful if I were to expand some of the points from the session, especially regarding enhanced member engagement in Committee activities of the House of Lords.

Choosing Topics

On the question of choosing topics for ad hoc committees to consider as part of post-legislative scrutiny, Members should contribute more to suggestions for Post Legislative Scrutiny giving them a greater and more direct interest in the topics/issues for discussion.

Appointment to Committees

The Law Society of Scotland suggested more transparency in the appointment of Members to Committees and that the process should be more inclusive i.e. involving more members in the work of Committees. I support these remarks.

Increasing the Size of Committees and Appointing Substitutes:-

I believe the membership of Committees could be larger, perhaps up to 20 in number.

In addition, I raised the proposal of appointing substitute members on Committees who could attend Committee meetings of the Lords, but not speak or vote, unless the principal member could not be present.

This suggestion would have the advantage of involving more members in the Ad Hoc and other Select Committee proceedings. There are currently probably fewer than 100 Peers who are fortunate enough to serve on a Committee.

Follow up to Committee Reports

The Liaison Committee is, in my view, the best vehicle through which to hold Ministers to account as a formal follow up to a report. At present, even the best and immediate recommendations, which could be swiftly implemented, seem to fall off the edge of a cliff.

The process could be either through sub-committees of the main Committee or by co-opting a small number of former members of the original Ad Hoc Committee to have a meeting six to twelve months after the Report was originally adopted to hold the Minister to account.

Another suggestion would be for the Liaison Committee to name and shame those Departments who have failed to implement any of the recommendations of an Ad Hoc Committee.

Role and Lack of Scrutiny of Delegated Legislation (Statutory Instruments)
In many instances, as was the case with the Ad Hoc Committee considering the Licensing Act 2003, the Act had been amended substantially since being initially enforced, often through delegated legislation/statutory instruments. This procedure illustrates how the original intention of the Act could be clouded or distorted, and the original intention of the Act thwarted, without adequate parliamentary scrutiny.

I believe there is need for greater and more in depth scrutiny of statutory instruments which so often contain the detail as to how a Bill is to be implemented.

I would also urge the House to consider the ability to amend the content of statutory instruments which can still be used to gold plate and add onerous provisions at the stage of the implementation of the Act, often hindering its effective application.

Albeit statutory instruments are delegated legislation, there are circumstances in which they should be amended and thereby improved.

Increasingly too much detail is being left to be implemented by S I s which are not subjected to the same scrutiny as draft bills.

The need for greater scrutiny will be paramount in transposing existing EU legislation into UK law. There is a specific need for scrutiny of the Framework Agreements, how they will be agreed and how decisions brought back from the devolved administrations under Westminster control will be reviewed.

There is also more generally a grey area as regards planning decisions whereby planning inspectors or increasingly Government Departments are usurping the role of Local Authorities in taking planning decisions. There appears to be no review or scrutiny as to how these decisions are taken yet they can have huge ramifications for local communities.

In this regard, I support the comments made by Lord Blencathra in his evidence to you.

I believe pre- legislative scrutiny is performed well already in the House of Commons and bearing in mind the legislation gives effect to the manifesto commitments made by the Government, the Commons is best placed to undertake pre-legislative scrutiny, leaving the Lords better placed to do post-legislative scrutiny.

I would argue there should be more post-legislative, with perhaps an additional Committee each year, with more Members sitting on it and with the power to appoint substitutes.

I entirely endorse the suggestion of a Lessons Learned Document to be drafted at the end of each Ad Hoc Committee enquiry.

These changes would encourage and enhance member participation and invite greater scrutiny on existing legislation.
All the above has resource issues at a time when I appreciate the House resources are under increasing review

**July 2018**
Professor Sir Anton Muscatelli – Written evidence (RIS0046)

I have been fortunate enough to be invited to provide evidence to committees in both Houses of the UK Parliament and to the Scottish Parliament, mainly in my professional capacity as an economist, and as a member of various government advisory groups. My comments here are given purely in a personal capacity.

I believe the committee system is one of the great strengths of our Parliamentary system; yet the work of committees is not given wide publicity or fully appreciated. There are exceptions to this lack of public profile. I contributed to the deliberations of the Commons Treasury Committee in the aftermath of the financial crash where its role and influence was very evident and closely followed by the press and broadcasters. The Commons Public Accounts Committee regularly receives wide coverage given the nature of its reports, and the Commons Culture, Media and Sport Committee is currently receiving a lot of publicity over its enquiry into the use of digital media in connection with elections. But most of the outstanding work of committees goes on under the radar so far as the general public is concerned and, while some of the responsibility for this may rest with the media, it is not easy to see how this might be changed.

Comparing and contrasting Westminster and the Scottish Parliament, I believe that it is a strength of the Scottish Parliament that its committees combine scrutiny and legislative roles, something which is kept separate in the Commons. All bills going through the Scottish Parliament are sent to the relevant subject or standing committee rather than to a specially created Bill Committee, which means the Committee has engagement from the pre-legislative enquiry stage right through to detailed consideration of the content of the Bill. Members of the Committee are closely involved and the Committee itself can significantly shape legislation, as was seen for example in the passage of the Climate Change Bill (Scotland) 2009.

Both in the Scottish Parliament and in the Commons, committees are however limited by remits that match the distribution of functions between government departments/Ministers. Their role tends primarily to focus on scrutiny and holding Ministers to account rather than forward thinking. Especially in the context of the consequences of Brexit, which will be profound, I wonder whether the present enquiry might be willing to consider whether the House of Lords might develop its committee arrangements beyond its traditional ‘revising chamber’ role and consider a more pro-active approach, drawing on the undoubted experience and expertise of its members but also on external expertise, particularly from the research community in new ways.

There is a gap at present between formal committees of enquiry, rarely used because of the expense involved and the formality of the proceedings, appropriate to a quasi-judicial retrospective examination of a controversial action of government (e.g. the Chilcott enquiry) or a very complex and technical matter (such as human embryo fertilisation) and Parliamentary enquiries which, as suggested earlier, inevitably focus on the actions of government. In the context of Brexit, which will have effects right across the spectrum, affecting
the capacity of government to deliver properly thought through legislation, it
would be prudent for all levels of the legislature, including the Lords, to consider
how it might best contribute to forward thinking, rather than being merely
reactive.

Consideration could be given to deploying the expertise in the Lords in
combination with research expertise in our Universities, Research Institutes and
elsewhere to engage with the major challenges that the country will face in
orientating itself to a post-Brexit world. There will be work to do that goes
beyond the scope of a Parliament enquiry as previously conceived but which
falls short of a committee of enquiry. There is a danger that the legislature is
overwhelmed by the volume of legal changes required and equally a danger,
especially for a revising chamber, that it is reactive rather than pro-active. My
first suggestion is that the Lords give consideration to creating committees that
concentrate on future challenges broadly conceived, rather than reflecting
departmental structures. Our economic prospects are tied up with trade
arrangements which in turn link to e.g. how we support investment in science
and technology. Some separation of activity is necessary to divide up functions
but should this correspond to the architecture of government or might there be
better ways to contribute to strategic thinking? I don’t have a particular map in
mind for how this might best be achieved. That depends on the interests of the
members of the House and how its sees its role develop. My view is that the
circumstances we face are such that more sustained engagement with future
thinking is required and that involves moving outside the silos that government
administrative structures impose.

My second suggestion is equally radical. Senior academics, including myself,
are invited to participate in deliberations by committees of Parliament either as
advisors or witnesses to enquiries. Hopefully I and my colleagues provide
useful information to committees but I would question whether the current
arrangements make best use of the expertise in our research intensive
universities, such as the Russell Group Universities whose Board I currently
chair. In the new circumstances that we now face post Brexit, I wonder whether
there might be opportunities, especially if my first suggestion is taken up, for a
more sustained engagement to take place with the sector that for example
involves the identification of active researchers at an early- or mid- career
stage whose expertise might play a useful role in assisting enquiries and who
might gain significantly in their own learning by being involved in such a
process. This would need to be carefully managed so that outcomes and
expectations were aligned, but I can see value in taking an initiative forward. I
think this could benefit both the universities and the Parliament and help build
capacity within the system. So far as using the expertise of more senior people
is concerned, might this be explored in some more detail? There is a lot of
good practice in the way in which current House of Lords Committees use their
advisors but, especially if there was a wish to develop a forward looking agenda,
it might make sense to link this with some of the knowledge exchange activities
of universities so that these can be combined to best advantage.

Professor Sir Anton
Muscatelli
April 2018
National Assembly for Wales committees

1. This paper has been prepared by National Assembly for Wales Commission officials to provide information for the House of Lords Liaison Committee about Assembly committees to assist with its Review of investigative and scrutiny committees.

2. The Commission is chaired by the Llywydd (Presiding Officer) and is responsible for providing property, staff and services to the Assembly.

Review of committee support in the Fourth Assembly

3. In December 2013, the Assembly Commission published a report of its review of committee support, noting that “for a small institution support for committees is well resourced” and that it was “incumbent upon us” to review that support and to “make sure the services we provide are directed to have the most effect and to be of the highest possible quality” given that it “accounts for a substantial proportion of the Commission’s budget each year”.

4. As well as describing the various specialist services offered and how they should develop for the future, and emphasising the importance of integration, the report set out a vision for committees and the key responsibilities of chairs. These have subsequently been endorsed by the Fifth Assembly’s Commission, Business Committee and Chairs’ Forum and are set out in Annexes A and B.

Committees in the Fifth Assembly

5. Following the election in 2016, the Business Committee’s committee system proposals, which took on board its predecessor’s legacy report, were agreed by the Assembly in Plenary on 28 June of that year. This resulted in more committees -14, compared with 12 active in the Fourth Assembly. Two new committees were established to cover Culture, Welsh Language and Communications and External Affairs and Additional Legislation, and other remits were adjusted as a consequence.

Election of chairs

6. Standing Orders were changed on 28 June 2016 to provide for the election of committee chairs. The process involves:

- Business Committee proposing which party groups have which chairs (subject to a two-thirds majority of votes in Plenary);
the Llywydd during Plenary inviting nominations, which can only be made from within the relevant party group (which must be seconded if the group has more than 20 members) and can only nominate a Member for one committee chair; and

a secret ballot of all Members where there is more than one nomination for a chair.

7. A committee can remove its chair with the agreement of a majority of committee members, comprising more than one party group, but subject to agreement in Plenary. (This procedure has not been deployed as yet.)

Appointment of chairs and their role

8. For the first time, each chair in the Fifth Assembly received a letter of appointment from the Llywydd setting out the Assembly’s vision for committees, chairs’ responsibilities and the support available from the Assembly Commission.

9. Chairs also now make statements in Plenary on their committees’ work.

10. The Chairs’ Forum, which met at the end of the Fourth Assembly, now meets informally every term to consider strategic issues around the operation of committees. It is chaired by the Llywydd. Brexit is a standing item, but chairs have also emphasised the importance of public engagement and interparliamentary working, for example.

11. The chairs and their committees are supported by a comprehensive Continuous Professional Development programme and many have taken advantage of external facilitation to assist with strategic planning and performance.

Committee remits

12. The committees of the Fifth Assembly are:

<table>
<thead>
<tr>
<th>Committee remit</th>
<th>Chair</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Committee (organisation of business and procedures)</td>
<td>Llywydd</td>
</tr>
<tr>
<td>Children, Young People &amp; Education</td>
<td>Lynne Neagle – L</td>
</tr>
<tr>
<td>Climate Change, Environment &amp; Rural Affairs</td>
<td>Mike Hedges – L</td>
</tr>
<tr>
<td>Constitutional &amp; Legislative Affairs</td>
<td>Mick Antoniw – L</td>
</tr>
<tr>
<td>Culture, Welsh Language &amp; Communications</td>
<td>Bethan Sayed – PC</td>
</tr>
<tr>
<td>Economy, Infrastructure &amp; Skills</td>
<td>Russell George – C</td>
</tr>
<tr>
<td>Equality, Local Government &amp; Communities</td>
<td>John Griffiths – L</td>
</tr>
<tr>
<td>External Affairs &amp; Additional Legislation</td>
<td>David Rees – L</td>
</tr>
</tbody>
</table>
Membership of committees

13. Most committees are smaller in the Fifth Assembly (but as there are more committees, the number of committee places is about the same):

<table>
<thead>
<tr>
<th>Committee type or name</th>
<th>Fourth Assembly size</th>
<th>Current size</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>L</td>
<td>C</td>
</tr>
<tr>
<td>Policy and legislation committees</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Constitutional &amp; Legislative Affairs</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Finance; PAC</td>
<td>4</td>
<td>2/1</td>
</tr>
<tr>
<td>Scrutiny of the First Minister</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Petitions</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Standards</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

L – Labour C – Conservative PC – Plaid Cymru LD – Liberal Democrat U – UKIP

*For the first time, the membership comprises all the committee chairs.

14. Out of 60 Members, 43 sit on committees. Three committee chairs also sit on two other committees, and eight chairs sit on one other committee. Of the remaining members, four sit on three committees and 18 sit on two committees.

15. There are four Members who are not part of a political group. Each is entitled to one committee place. The two who do not have committee places are members of the Government.

Timetabling

16. To accommodate the additional committees, three (instead of the one previously) were allocated the Monday afternoon meeting
Integrated support services

17. Almost every committee has a clerking team of four staff, comprising the Clerk/Team Leader, a Second Clerk, a Deputy Clerk and a Committee Support Officer. This team works in an integrated way with specialists from other service areas, including research, legal, communications, and translation and interpretation. The integrated team also supports legislative scrutiny of Bills within their committee’s remit at all stages of the process.

Committee scrutiny of primary legislation

18. Policy and legislation committees, as well as the Finance Committee, consider policy, expenditure and legislation within their remits. They undertake inquiries including public engagement to examine the general principles of Bills (Stage 1), and debate and vote on amendments at (Stage 2) before consideration of amendments (Stage 3) and a final vote (Stage 4) in Plenary.

Interparliamentary working

19. From time to time committees make use of the provision in the Assembly’s Standing Orders that they “may meet concurrently with any committee or joint committee of any legislature in the UK”, and there are strong networks across legislatures in some policy areas. Most recently, the Chairs of the External Affairs and Additional Legislation and the Constitutional and Legislation Affairs (CLA) Committees have been participating in the Interparliamentary Forum on Brexit.

20. In its 'UK governance post Brexit' report, the CLA Committee recommended that “the Llywydd seeks to establish with the other Speakers and Presiding Officers of UK legislatures, a Speakers’ Conference with the aim of determining how best to develop UK interparliamentary working, particularly as a means of scrutinising the impact of withdrawal from the European Union on the constitutional framework of the UK”.

21. The Committee also endorsed the 2016 recommendation of the
House of Commons Public Administration and Constitutional Affairs Committee “that the House of Commons’ Standing Orders are amended to allow more interaction between parliamentary committees across the UK, be this a systematic standing arrangement or on a more ad hoc basis”.

Performance and impact

22. The Commission’s performance indicators include the following proxies for service delivery to and about committees:

- Percentage of committee papers issued by deadline agreed with each committee (latest available score was 96.7% against a target of 100%).
- Committee Record of Proceedings published within 5 working days (latest 96.6% / 100%).

23. We also provide regular opportunities for Members and their support staff to rate our services through a survey. “Overall support for Assembly Committees” received a score of 8.5 out of 10 in the latest survey against a target of 8.

24. We track committee impact on a more informal basis. Recent examples include:

- Prompted by evidence to an Equality, Local Government and Communities Committee inquiry, and before the report was published, the Welsh Government decided to expand the role of its Syrian Operations Board to include all refugees and asylum seekers, and the Home Office contracted provider of asylum accommodation decided to engage with the Welsh Refugee Coalition about housing quality complaints.

- The Welsh Government accepted a range of recommendations from the Economy, Infrastructure and Skills (EIS) Committee to increase the independence of the National Infrastructure Commission, including pre-appointment hearings for the chair, a three-year reporting cycle (divorced from the political cycle), and not sharing a building with the Minister’s department.

- The CLA Committee’s report on the UK Government’s Wales Bill was used and referred to by politicians in debates in both the House of Commons and House of Lords. The report was used by the House of the Lords Constitution Committee in the preparation of its report on the Wales Bill.

- In response to the Health, Social Care and Sport (HSCS) Committee’s recommendations on the Public Health Bill, the Minister tabled amendments which added “sexual offences” to the list of offences which would prevent someone from being issued with a licence to undertake special procedures, and set the age of consent for intimate body piercing at 18 rather than
Examples of innovation

Recent committee work has included:

- Going beyond the traditional approach of consulting stakeholders about forward work programmes, the Culture, Welsh Language and Communications Committee decided – in an Assembly first - to select an inquiry by public vote. The inquiry chosen was on funding for and access to music education.

- The Finance Committee has been scrutinising Statutory Instruments on taxation – the first to be scrutinised by the Assembly in 800 years, on land transactions and landfill disposals – and committees have been consulted on the procedure for devolving new taxes.

A range of innovations by the EIS Committee, such as:

- Post-legislative scrutiny on the Active Travel (Wales) Act 2013, with an emphasis on public engagement. 2,500 people completed our survey on attitudes to walking and cycling. The Committee also held 5 focus groups among non-cyclists to look in more detail at the barriers to active travel.

- A photographic competition to promote engagement in its State of Roads inquiry.

- Parallel inquiries by Welsh and Scottish committees on City Deals.

- A joint inquiry with the Public Accounts Committee (PAC) on digitalisation is planned for the Autumn.

Committee-initiated work (i.e. not emanating from Auditor General reports) by PAC, including an innovative long-term, multi-phased inquiry on Care Experienced Children and Young People that is a rolling programme of scrutiny of this policy area.

Academic fellowships piloted during 2017 have now produced outputs for committees, including on the future of the North Wales economy, Brexit implications for Bovine TB, bilingual dementia services, and suicide prevention.

- For its inquiry on loneliness and isolation, the HSCS Committee held focus groups in Newport as part of the ‘Senedd@’ series of week-long events which takes the Assembly on tour around Wales to promote engagement.

First committee Bill, introduced by the Finance Committee to extend the powers of the Public Services Ombudsman for Wales,
following comprehensive consultation in the previous Assembly. As the Welsh Government is a public body subject to scrutiny by the Ombudsman it was considered more appropriate for the Assembly to lead on any legislative change.

- An enhanced role for committees in budget scrutiny, underpinned by a protocol, to reflect the new role of the Assembly in approving tax income, borrowing and expenditure.

- Changes to petitions procedures, requiring a petitioner to be resident in Wales, or in the case of organisations have a base in Wales; removing the distinction between petitions from organisations and individuals, so that all petitions require 50 signatures; and setting a threshold of 5,000 signatures for a petition to be automatically considered for a debate in Plenary.

- More pre-appointment hearings, most recently for the Chair of the new National Infrastructure Commission for Wales.

- More use of stakeholder panels, including by the Climate Change, Environment and Rural Affairs Committee (expert panel on climate change) and the CLA Committee (a citizen panel for its UK governance post-Brexit inquiry).

Strategic changes affecting committees

Assembly reform

26. The Wales Act 2017 gave the Assembly powers to address some important constitutional issues including autonomy over its internal and electoral arrangements. The Assembly Commission has been leading a reform programme, including considering the capacity issues facing the Assembly as a result of its small size. To ensure that any legislative proposals brought forward by the Commission are based on robust, politically impartial, independent advice, the Llywydd established an Expert Panel on Assembly Electoral Reform to review the evidence and make recommendations to her and the Commission. The Panel reported in December 2017 and made reference to the committee system:

“We believe that the Assembly is too small to carry out its responsibilities effectively. An increase in the size of the Assembly would increase the capacity of the institution to fulfil its policy, legislative and financial scrutiny roles. Much of this capacity gain would be seen in the work of Members on committees, as the need for Members to sit on multiple committees would be reduced. However, the extent to which this will be realised in practice will depend on how the Assembly deploys the additional resource. It is not our role to prescribe how the Assembly should structure itself, whether in terms of the committees it establishes or the office holders it appoints. We are clear, however, that if the Assembly does not exercise restraint—for example in
relation to the maximum size of the Welsh Government, the number of committees and the size of committees—the additional capacity and the subsequent benefits for the quality and quantity of scrutiny may not be realised, and the rationale which underpins our recommendations will be significantly weakened.”

27. Mandated by the Assembly, the Commission consulted the public on the Panel’s recommendations and other potential reforms between February and April 2018 and is currently considering the next steps.

Brexit

28. The Assembly Commission, the Chairs’ Forum and the Business Committee have been undertaking strategic planning for Brexit scrutiny, alongside the many individual inquiries being pursued by Committees. The Llywydd wrote to all Committee Chairs to ask them to assess the impact of Brexit scrutiny on their work programmes. The responses will be used to inform resource allocation and prioritisation as well as to review timetabling. Procedural work is underway to examine changes needed to Standing Orders. Alongside clerks and lawyers, the Research Service is providing specialist support, working closely with academics and other stakeholders as well as with other legislatures, and including through our EU office which continues to facilitate committee visits.

Welsh Youth Parliament

29. On 31 May this year, the Llywydd officially launched the opening of the voter registration period for the inaugural Welsh Youth Parliament election, which will be held over a three week period in November.

30. Registration is open to young people between the ages of 11-18, and they can also stand for election, with the nomination process opening in September. 40 young people will be elected following online elections, across the 40 Welsh constituencies, and a further 20 will be returned by 10 partner organisations to ensure a representation of diverse groups of young people. Organisations who work with young people will apply to become Welsh Youth Parliament partners, and will be responsible for returning two young people each. The term will last for two years, and will involve a mixture of regional meetings, events and three meetings of all 60 Welsh Youth Parliament Members in Cardiff Bay.

31. In developing plans we have consulted with young people, and sought the advice and feedback of an external advisory group made up of groups and individuals in the youth sector and young people.

32. This initiative is very much youth-led, so we look forward with eager anticipation to helping the Youth Parliament engage with, and add value to, scrutiny by the Assembly and its committees.

Digital News and Information Task Force
33. On 21 June 2017, a Task Force of experts from the field of digital communications convened by the Llywydd published its report ‘Creating a Digital Dialogue’.

34. Among the Task Force’s recommendations was that “All Assembly staff should consider themselves as content producers”. They elaborated in the report:

“Anything published for public consumption from the date and time of Plenary meetings, press releases, Tweets communicating Senedd opening times, committee reports, legislation flowcharts and business forward work programmes must be communicated with the external audience in mind. It will impact some more than others. The traditional roles within the Assembly mostly mirror the wider parliamentary landscape. However, in the modern era where we are trying to make the Assembly more open and easier to access, we need to rethink the purpose and responsibilities associated with these roles. For example, the committee clerk is now perhaps more of a project manager with responsibility for considering outreach and engagement from the beginning of the process.”

35. The Task Force also recommended that there should be “a proper forward planning, editorial and scheduling process for the production of committee reports. Authority needs to be asserted over this process directly by the Llywydd and her team to rule on publication decisions for committee reports in line with the overall communications strategy of the National Assembly.”

36. The Llywydd welcomed the report and we are using it to inform the future development of digital and communications services, including through MySenedd (see below).

MySenedd

37. Through our digital transformation programme, MySenedd, we have deployed new technology to provide an improved internal and external user experience for the Table Office and the Record of Proceedings. Improvements to our website, as well as for Plenary and the petitions system, and in due course committees, are planned.

Capacity review

38. In Autumn 2017, the light of new and increasing demands for Commission services, and a recognition that continuing pressures on public finances meant the size of the organisation could not continue to grow, we instigated a capacity review. The purpose of the review was to understand how resources are currently allocated within the organisation and to evaluate whether we can be more effective and efficient in our
deployment of resources, to deliver the Commission’s goals and priorities for the Fifth Assembly and beyond. An initial findings report was presented to the Assembly Commission and the Assembly’s Finance Committee in January 2018, and we have conducted a series of staff engagement sessions. We are undertaking a second phase of work to consider the findings in more detail and to develop approaches to delivering our services more efficiently and effectively.

19 June 2018

Annex A – Key responsibilities of chairs

The key responsibilities of committee chairs are to:

- set the strategic direction of the committee and ensure the transparent prioritisation of its activity so as to deliver a balanced, comprehensive and effective programme of legislative, policy and financial scrutiny;
- maximise the relevance and influence of the committee whilst maintaining its clear independence from the Welsh Government;
- act impartially at all times, decisively, fairly and in a manner that maintains the confidence of the committee;
- command the confidence of Members, witnesses and the public at large through knowledge of the subject matter of the committee’s remit; demonstration of effective legislative, policy and financial scrutiny techniques; maintenance of order; and the application of all relevant legal and procedural requirements on the committee;
- secure the commitment and engagement of all committee members and build cross-party consensus wherever possible;
- build the culture and skills mix within the committee required to maximise its effectiveness as a scrutiny body;
- ensure that the committee receives the expert advice, information and other support it requires to fulfil its objectives effectively;
- drive the delivery of all aspects of the committee’s work with pace and quality;
- represent the committee publicly, in the media and in formal Assembly business; and
- ensure critical analysis and evaluation of the committee’s work and drive innovation in its operation so as to increase effectiveness, public engagement and impact.
Annex B – Vision for committees

The Commission’s vision is that the committees of the Assembly should demonstrably improve the quality of policy outcomes, legislation, public services and government spending for society as a whole in Wales. They should be respected, influential and accessible, acting with integrity and independence. Their work should be strategic and rigorous.

This means that Assembly committees will:

☐ have a clear, agreed, strategic plan for their work that prioritises their activities and focuses their use of time and resource;

☐ be a top priority for the Members who serve on them;

☐ be guided by Chairs who fulfil all of the expectations set for them by the Assembly;

☐ be respected and listened to by the Welsh Government because of the quality of their inquiries and scrutiny, the rigour of their questioning, the depth of their analysis and the value of their legislative amendment. The Government will be mindful of the reaction of committees as it formulates its policy, spending and legislative plans;

☐ scrutinise policy, spending and legislation within their portfolio in the round, not as isolated aspects of their responsibilities;

☐ offer and expect constructive engagement with the Welsh Government but retain their detachment and ability to offer objective criticism;

☐ not be limited by constraints on access to Ministers, information or witnesses and will be able to draw on the expert advice and support they require;

☐ engage with a wide diversity of people, be seen by stakeholder groups as important, influential players and as the natural place to go to with concerns and ideas, and undertake work that enhances the public reputation of the Assembly. Their outputs will be accessible to as wide an audience as possible;

☐ ensure that those who contribute to their work see the value of their participation; and

☐ seek critical analysis and evaluation to improve their performance.

June 2018
The total number of members currently (July 2018) serving on committees in the bicameral National Diet of Japan is as follows:

- House of Representatives: 945 for 26 committees (17 Standing Committees and 9 Special Committees). (The number of House Members is 465)
- House of Councillors: 592 for 24 committees (17 Standing Committees and 7 Special Committees). (The number of House Members is 242)

On average, a Member needs to belong to at least two committees.

The National Diet committees do not undertake post-legislative scrutiny.

**July 2018**
Baroness Neville-Rolfe, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)”
Thank you for the opportunity to share information about New Zealand select committee practice to inform the Liaison Committee’s review. It is my pleasure to provide an overview of our committee system and discussion of some particular features and recent developments, which are hopefully relevant to the committee’s work.

**Subject select committees**

Twelve subject select committees are established at the beginning of a Parliament for the duration of the Parliament (i.e. a three-year term). Subject select committees have multiple functions and exercise general oversight of policy, legislative, and administrative matters within their subject areas. Subject select committees are likely to spend the majority of their time considering business referred by the House, in particular scrutiny of bills and financial scrutiny. Committees also consider petitions, international treaties, and reports of Officers of Parliaments. Subject select committees also have the authority to initiate their own business which take the form of briefings or inquiries that fit within their subject areas.

Periodically, there are calls for extra, specialised committees to be established, such as a Petitions Committee or a Human Rights Committee. As well as posing practical difficulties of finding members to sit on these committees (the New Zealand Parliament is only 120 members, including Cabinet Ministers who do not sit on subject select committees), this approach is not favoured because the preferred view is that all committees should consider issues like human rights as part of their core business.

Each committee’s subject area is specified in the Standing Orders as follows (SO 188):

**Economic Development, Science and Innovation Committee:** business development, tourism, Crown minerals, commerce, consumer protection and trading standards, research, science, innovation, intellectual property, broadcasting, communications, information technology

**Education and Workforce Committee:** education, training, employment, immigration, industrial relations, health and safety, accident compensation.

**Environment Committee:** conservation, environment, climate change
Finance and Expenditure Committee: economic and fiscal policy, taxation, revenue, banking and finance, superannuation, insurance, Government expenditure and financial performance, public audit

Foreign Affairs, Defence and Trade Committee: customs, defence, disarmament and arms control, foreign affairs, trade, veterans’ affairs

Governance and Administration Committee: parliamentary and legislative services, Prime Minister and Cabinet, State services, statistics, internal affairs, civil defence and emergency management, local government

Health Committee: health

Justice Committee: constitutional and electoral matters, human rights, justice, courts, crime and criminal law, police, corrections, Crown legal services

Māori Affairs Committee: Māori affairs, Treaty of Waitangi negotiations

Primary Production Committee: agriculture, biosecurity, racing, fisheries, productive forestry, lands, and land information

Social Services and Community Committee: social development, social housing, income support, women, children, young people, seniors, Pacific peoples, ethnic communities, arts, culture and heritage, sport and recreation, voluntary sector

Transport and Infrastructure Committee: transport, transport safety, infrastructure, energy, building and construction.

Four other select committees are established at the beginning of each Parliament (Officers of Parliament Committee, Regulations Review Committee, Privileges Committee, and Standing Orders Committee). A Business Committee, responsible for the organisation of House business and other matters relating to proceedings, is also established but operates in a less formal way than other select committees. This committee’s decisions must be on the basis of near-unanimity, with the Speaker as chairperson, ruling on whether this threshold has been reached and ensuring that decisions are not oppressive of minor parties.

Ad hoc committees can be established but this happens relatively infrequently. In recent Parliaments, ad hoc committees have been established to consider electoral legislation, governance arrangements for Auckland city, and the emissions trading scheme.
In 2017 the Standing Orders Committee recommended a reduction in the number of subject select committees from 13 to 12 and a reorganisation of subject areas. This recommendation was made as part of the committee’s regular review of Standing Orders, which takes place once a term. A key factor in the reorganisation was to better align the subject areas with the current organisation of the public service and appropriations, and the Government’s sector approach to defining objectives and measuring achievements. How the House now conducts financial debates also reflects the sectoral approach.

How committees operate

The overall number of seats across committees is not specified in the Standing Orders but there is a well-established practice that there tends to be approximately as many committee seats as members in the House. Overall membership of committees is required to be proportional, so far as practicable, to membership of the House. The largest Opposition party in this current Parliament actually won more seats than any other party (56 out of 120 seats) but was not able to form a coalition to govern. Therefore this party has a very strong presence on committees. In the current Parliament, 6 out of 12 committees are evenly split between Opposition and Government members and 5 out of 12 are chaired by Opposition members.

Committees have open and closed sessions. In open sessions, they hear evidence from the public and others. Members of the public and affected stakeholders regularly appear before the committees on bills, petitions, and inquiries. Ministers and senior Government officials most commonly give evidence to committees as part of their financial scrutiny work. In closed sessions, committees will receive advice from officials, consider draft reports, discuss matters among themselves, and finally deliberate. While committees will often come to a consensus on matters, there are times when they will not be able to agree (especially where the committee has an equal number of Government and Opposition members) and this will be reflected in the committee’s reporting to the House.

Committees tend to have a regular meeting time in House sitting weeks (usually a Wednesday or Thursday morning) and may meet at other times or in non-sitting weeks. Committees will often be considering multiple items of business at the same meeting.

Committee effectiveness

We have been working on a number of areas in the last few years to improve committee effectiveness.

Composition of committees and role of members
During the last review of Standing Orders, the Standing Orders Committee advocated for a reduction in seats across committees, to be allocated proportionally. The committee recognised that smaller committees could be more effective in the New Zealand context. It said that, “A decrease in committee seats would provide more flexibility for parties to manage committee attendance and absences. This flexibility would also allow members to attend committee meetings according to their interests, expertise and availability. Government backbench members would not be expected to be on more than two committees each, allowing them to be more focused in their committee work”\(^1\) While the reduction in seats did not finally eventuate in the current Parliament, the proposal will hopefully be revisited in the future.

To facilitate flexibility and their engagement in the work of committees, members and their staff have in recent years had access to the papers of all committees (not just the ones they are permanent members of) via the eCommittee system.

**Role of chairperson**

The 2017 review of Standing Orders also recognised that committee effectiveness relies heavily on the proper exercise of the role of chairperson. Although the committee did not want to codify the role in Standing Orders, it did set out clear expectations for chairpersons in its report, which have subsequently become a Speakers’ ruling. The committee stated that, “The overarching principle is that select committee chairpersons, when exercising functions and authority as presiding officers, must regard the interests of the House as paramount.” It noted that these interests are served when:

- the rules and practices of the House are impartially and consistently interpreted, constructively applied, and always complied with
- members are able to make informed decisions about the business before them

the Government is held to account for its policies, strategies, administrative actions, and financial performance

legitimate expectations of Government and non-Government members are accommodated

reports properly crystallise the outcomes of committee consideration and allow the expression of differing views

business and arrangements for meetings are signalled in advance, and good warning is given of meetings outside Wellington

business is considered in a timely way and reporting deadlines are met.\(^2\)

These expectations have provided useful guidance for chairpersons to understand the broad responsibilities of their roles. They also inform discussions between committee staff and the chairperson and provide helpful direction for the chairperson when trying to navigate difficult situations.

**Advice to committees**

Departmental officials and legislative drafters are generally available to committees scrutinising bills. Committees may also engage specialist advisors (e.g. academics, lawyers, practitioners) if they choose. For example, the Finance and Expenditure Committee often receives independent specialist advice on tax bills.

Committee staff also play a role in advising committees beyond providing procedural advice. For example, committee clerks are expected to read all bills before a committee and bring to the committee’s attention any issues of legislative quality the committee is not aware of. Clerks are supported in this work by the Office of the Clerk’s Legislative Counsel (a small team of lawyers who provide legal advice to the Office and Parliamentary Service and draft members’ bills) and Policy staff.

Committees may also receive advice or invite evidence from relevant Officers of Parliament. New Zealand has three Officers: the Controller and Auditor-General; the Ombudsmen; and the Parliamentary Commissioner for the Environment. Staff of the Office of the Auditor- General appear most frequently before committees and their advice is vital to committees’ financial scrutiny of Government spending.

**Committee findings and recommendations**

Committee reports to the House are the mechanism by which committees communicate their findings. When reporting on briefings, inquiries, petitions and international treaties, committees may make recommendations to the Government. The Standing Orders require the Government, not later than 60

\(^2\) Ibid. p20.
days after the presentation of the report, to present a paper to the House responding to the recommendations.

While committee reports on bills are always debated in the House and committee financial scrutiny reports inform the House debates on the Estimates and Annual Reviews, there is often limited House time to debate other committee reports. However, committees can advocate for House debates on their reports (e.g. an inquiry report) by writing to the Business Committee, which facilitates the management of House business. For a committee report to be set down for debate, broad agreement is required across the House as decision-making at the Business Committee operates on a principle of near-unanimity.

Public engagement

Providing increased and more accessible ways for the public to engage with Parliament, including the work of select committees, is a strategic goal for the Office of the Clerk. The House’s business is increasingly being communicated through the Parliament website and social media. The Parliament has its own Twitter, LinkedIn, and Facebook accounts. In addition, each subject select committee has its own Facebook page to advertise for submissions, advise when reports have been presented, and generally keep the public up to date on the committee’s activities. In recent months, hearings of evidence for some committees have been live-streamed via the relevant committee’s Facebook page. It has been pleasing to see the real-time and subsequent engagement occurring in response to the livestreaming.

Committee staff are responsible for moderating the online discussions.

Engaging the public in the committee’s work is increasingly seen as part of the chairperson’s role. For example, most committee chairpersons have recorded video introductions to their committees for the website and other media channels.

July 2018
I write to confirm my key points, which draw on my decade of Foreign Policy report writing in the European Parliament and a further four years in the Council of Europe Parliamentary Assembly. My experience as chair of an ad hoc Select Committee in our House followed on from those immediate past fourteen years’ experience; which followed a decade of committee experience in the Commons.

In summary, I see a number of hurdles in the approach our own House has adopted to examining and reporting on subjects chosen by the whole House as worthy of the time and money these Committees and their reports consume.

1/ The approach of the Clerks was unusual when compared with the other parliaments in which I have sat. The experience was almost one of hostility. In the EP and in the CoE the clerking for a Report is a highly satisfactory experience whereby the Chair or the Rapporteur work in a close and positive professional partnership, with shared and agreed goals. The relationship in our House seems less than a happy one and seemingly with a significantly confrontational flavour.

2/ In our House the Report has no form; no length and no House agreed length or number of words. Reports then can meander, since with no length nor structure members tend to continue their particular points perhaps beyond usefulness. Reports should have all have the same structure, length and shape.

3/ Our Reports are literally written by the committee, line by line. Thus ensuring that anything of real substance gets watered down or altered. If we are to convince governments and outside institutions we must be clearer. The reports should be drafted by the Chair with genuine support from the Clerks and the committee votes but does not edit line by line, word by word as we do in our House.

4/ The Committee should have a decent length of time to carry out its work, but not the very long period we allow ourselves now. Shorter is better, and will allow more topics to be examined, more reports issued and thus create a stronger image and more effective outcomes for the House.

Thank you for carrying out this study.

April 2018
Memorandum

Lord Norton of Louth

1. The House of Lords, like the Commons, has become a more specialised body over recent decades, principally through the use of select committees. The use of committees in the Commons has been more extensive, and comprehensive (in terms of policy sectors) than the Lords, but the use of such committees has arguably played more to the strengths of the Lords in terms both of its membership and its political culture. Its less partisan approach, based on the politics of justification rather than (as in the Commons) the politics of assertion, facilitates the generation of evidence-based and reasoned reports. It meshes with the House as an unelected House exercising the power of persuasion rather than coercion. [1]

2. The use of sessional committees has enabled the House to examine subjects not covered by the Commons departmental select committees and to complement the Commons in fields in which there is scope for coverage by both (as with the European Union, the Commons going for breadth in scrutiny and the Lords going for depth,[2] or with science and technology). The use of ad hoc committees has enabled the House to examine subjects of importance and to do so promptly and in a fairly agile manner. The expansion of the use of ad hoc committees in recent years has been a particular benefit. Using one committee for post-legislative scrutiny has helped fill, albeit partially, a notable gap in respect of legislative scrutiny.

3. My starting point is therefore that the use of select committees, both sessional and ad hoc, has been valuable, enabling subjects to be examined in a way that would not otherwise be possible and in so doing fulfilling the functions usually ascribed to select committees. They inform not just the House, but also government and others in the field (not least organised interests – they enable those interests to speak to Parliament and Parliament, through the committee reports, to speak to them), as well as on occasion the wider public; they ensure that government responds and engages with the House; and they may influence public policy. Those committees charged with scrutiny of primary or secondary legislation, be it in process or substance, may impact the content or form of the legislation. Given that the resources employed are notable more for their quality (principally the time and goodwill of members, as well as the use of clerks and not excessively remunerated specialist advisers) than their burden on the public purse,[3] the use of select committees may be deemed to offer value for money.

4. However, there is a case for employing the current review of select committees to engage in a reconfiguration of the committee structure. The committees that exist have individually done sterling work, but they are the product of disparate and discrete pressures. The House
has, essentially by default, a bottom-up, in effect, largely a member-driven, method of determining what committees exist. The current committees exist because of recommendations from disparate sources. The Constitution Committee, for example, has its origins in a recommendation of the Royal Commission on the Reform of the House of Lords.[4] Some are the result of pressure from peers, most recently, for example, the International Relations Committee.[5] In the case of ad hoc committees, the Liaison Committee makes recommendations to the House based on nominations from members. Though these nominations are assessed against set criteria, the Committee operates in reactive rather than proactive mode.

5. There is much to commend a bottom-up approach, not least in that it responds to members’ concerns. However, there is a downside in that there is no over-arching framework. In terms of a committee system, the whole is the sum of the parts. There is no strategic framework, no means of identifying proactively gaps that need to be filled by committees. That is where the House could be more proactive.

6. There is a case for a more strategic approach, enabling the House to utilise its existing attributes, but to do so in a way that maximises its role as a scrutinising chamber. The House through the use of committees cannot cover all sectors of public policy (it does not have the resources) nor should it, given that the Commons already examines all sectors covered by government departments.

7. I would recommend therefore adopting a more top-down approach, determining (a) sectors that merit systematic parliamentary investigation, outwith those already covered by the Commons, and (b) doing so in the context of the distinctive attributes of the House (experience and expertise). The former may be taken to encompass three categories: (i) policy sectors (ii) legislation and (iii) processes. All three are covered to some degree by extant committees. An instance of the first category is the Science and Technology Committee; an instance of the second is the Constitution Committee when it reports on Bills of constitutional significance; and instances of the third are the Delegated Powers and Regulatory Reform Committee (DPRRC) and Secondary Legislation Scrutiny Committee (SLSC).

8. In terms of priority, I would reverse the order. The House has the experience and expertise to examine the form and substance of primary and secondary legislation. It not only has the capacity, but it may be argued comes close to having the exclusive capacity to do so, especially when capacity is taken to include political will. The Commons is not likely to want to devote resources to examining legislative processes, undertaking the sort of work undertaken by the Secondary Legislation Scrutiny Committee. For MPs, the opportunity cost is too great.

9. My submission is that there is a compelling case for reconfiguring committees in the Lords in order to focus on legislative standards and post-legislative scrutiny. Doing so will play to the strengths of the House and has the potential to improve the quality of legislation. It will serve as
a discipline when Bills are introduced, but also serve to rectify extant law where it is not having the desired effect.

RECOMMENDATIONS

10. **I recommend the appointment of two sessional committees – on Legislative Standards and Post-Legislative Scrutiny – with the use of ad hoc committees to support the latter. They will complement existing committees, providing a suite of committees dedicated to enhancing the quality of the legislative process.**

LEGISLATIVE STANDARDS

**Committee on Legislative Standards**

11. The proposal for a Committee on Legislative Standards has variously been made, most notably by the Political and Constitutional Reform Committee in the House of Commons in 2013[6], by the House of Lords Leader’s Group on Working Practices in 2011,[7] and by the Constitution Committee in 2017.[8] Bodies supporting the recommendation have included the Better Government Initiative, the Bingham Centre and the Hansard Society. The purpose of such a committee would be, as the Leader’s Group concluded, ‘to assess, immediately after introduction and before second reading, the technical and procedural compliance of Government bills with standards of best practice in bill preparation’. [9] The case for a legislative standards checklist was developed by the Constitution Committee in 2004.[10]

12. The case for a Legislative Standards Committee was well adumbrated by the Political and Constitutional Reform Committee:[11]

95. *We conclude that the overall concept of a Legislative Standards Committee is a good idea. We consider that, whilst Parliament and the Executive could agree standards without such a Committee, the introduction of a Legislative Standards Committee would have the following benefits:*

a) It enables Parliament to be a full partner in ensuring standards;
b) It provides parliamentary oversight of the standards process, thereby encouraging change;
c) It allows for a continuing process of investigating and refining standards;
d) It provides a public face for scrutiny of legislative standards, rather than relying upon the closed procedures of the Cabinet’s Parliamentary Business and Legislation Committee.

96. *It is clear that the proposed Legislative Standards Committee should: a) Avoid consideration of the merits of policy; b) Use an agreed set of standards drafted and applied in a manner so as to prevent a tick-box approach; c) Be objective in its critique and recommendations; d) Meet*
the concerns raised by the Leader of the House as to delay and duplication.

13. The Committee addressed effectively the criticisms levelled at the proposal by the then Leader of the House, including that the process of checking standards is already undertaken by the government and that a committee would not have the time to undertake such work.[12] It also quoted Lord Butler of Brockwell in advancing the merits of having such a committee: ‘it would be a useful thing that Parliament could do to press government in the right direction, because ministers do not like being criticised by a committee for not having maintained the standards that they themselves have set.’[13]

14. As the Constitution Committee concluded in 2017:

*We continue to believe that there would be merit in producing a set of standards that legislation must meet before it can be introduced. We endorse the recommendations of the House of Lords Leader’s Group on Working Practices and of the House of Commons Political and Constitutional Reform Committee and support the creation of a legislative standards committee.*[14]

15. Given that the Commons has shown little interest in the creation of a joint committee, the task of establishing such a committee falls to the Lords. Appointing such a committee would not only give effect to the recommendations of the Political and Constitutional Reform Committee, the Constitution Committee and Leader’s Group, but would do so in the context of a wider strategic framework of committee scrutiny of the legislative process.

POST-LEGISLATIVE SCRUTINITY

16. In its 2004 report on *Parliament and the Legislative Process*, the Constitution Committee looked at the legislative process holistically by examining pre- and post-legislation as well as the legislative stages. It recommended that most Acts should be subject to parliamentary scrutiny within three years of their commencement, or six years after enactment, whichever came first.[15] It considered that a joint parliamentary committee would be the most appropriate vehicle for monitoring such review.

17. In its response, the Government acknowledged the value of post-legislative review and referred the matter to the Law Commission to consider the options. It did, though, state: ‘In general, however, the Government is minded to agree with the Committee that six years after a bill’s enactment provides a reasonable time-frame for review’.[16]

18. The Law Commission recommended that consideration be given to setting up a joint parliamentary committee. If departmental select committees in the Commons did not engage in such post-legislative review, ‘the potential for review would then pass to a dedicated committee. The committee, supported by the Scrutiny Unit, could be
involved at pre-legislative as well as post-legislative stages in considering what should be reviewed, could undertake the review work itself or commission others to do so and would develop organically within its broad terms of reference’.\[17\]

19. In response, the Government agreed with the Commission’s overall approach, but felt it appropriate for post-legislative review to be undertaken by Commons committees on the basis of memoranda produced by Government Departments and published as Command Papers, the reviews to be undertaken three to five years after enactment.\[18\] It did not endorse the proposal for a joint committee.

20. In the event, departmental select committees have, not surprisingly, not prioritised post-legislative scrutiny, given their other commitments. Post-legislative scrutiny has been notable for its rarity. Rather, it has been the House of Lords that has shouldered the task of undertaking at least some review on a regular basis. The expansion of ad hoc committees in 2012 to include one dedicated to reviewing a particular Act, or measures in a particular area, has ensured that there is some post-legislative scrutiny. At least one committee is appointed each year to review a particular Act or legislation in a particular field. Committees have been appointed to consider adoption and extradition legislation as well as six specific Acts (Inquiries Act 2005, Mental Capacity Act 2005, Equality Act 2010, Licensing Act 2003, Natural Environment and Rural Communities Act 2006, and the Bribery Act 2010). In addition, the Delegated Powers and Regulatory Reform Committee in 2015 reviewed the Legislative and Regulatory Reform Act 2006, following the assessment of it by the Department of Business, Innovation and Skills.\[19\]

21. The committees have proved worthwhile, they have filled an important gap in ensuring, or seeking to ensure, that legislation fulfils the purpose intended by Parliament, and they have drawn on the expertise of members. The work of the committees has, though, only scratched the surface and their appointment is dependent on particular peers identifying what they consider worthwhile candidates for review. There is a case for more systematic scrutiny. That can be justified on the grounds advanced by the House of Commons Procedure Committee,\[20\] the Hansard Society,\[21\] the Constitution Committee, the Law Commission and the Government.

Committee on Post-Legislative Scrutiny

22. Given that the House of Commons has shown no interest in the appointment of a joint committee on post-legislative scrutiny, it falls to the Lords to establish a committee to undertake such scrutiny. The committee would have the task of scrutinising the reviews of Acts published by Departments and would have a remit to

(a) determine which should be subject to further scrutiny, either by an ad hoc committee or by itself; and
(b) ensure that the reviews undertaken by Departments are of consistently high standard.

23. The Committee would have the potential, as envisaged by the Law Commission, to develop organically ‘and its role could extend to reviewing Bills to assess their suitability for later scrutiny and consideration of whether a review clause might be appropriate’. [22]

Ad hoc committees

24. The committee would be able to refer reviews for scrutiny to ad hoc committees, each formed of members qualified for such a task (as happens with the ad hoc committees established to date to undertake such scrutiny). The number of such ad hoc committees that could be in existence at any one time could be from three to six. They would be in addition to, but in the fullness of time may be in place of, the current sub-committees of the EU Committee and thus utilise similar resources. It would be up to the committee to refer a particular Act or measures in the same policy field.

25. Establishing a Committee on Post-Legislative Scrutiny would enable parliamentary scrutiny of Acts to determine if they have fulfilled their purpose, judged against the purpose or criteria delineated at the time of the introduction of the measure to Parliament. The committee would be able to identify if some modification is necessary or desirable. More generally, it would be able to determine what lessons, if any, may be learned for future legislation in the field. Having such a committee may also serve to discipline government in knowing that its measures will be assessed after enactment. It will potentially develop a culture of ministers seeing success in terms of effective legislation rather than Bills getting passed. Royal Assent will be seen as a staging post in a process, rather than the end point.

26. Utilising ad hoc committees will enable the House to be deft in undertaking such scrutiny. It will have the additional benefit of utilising the skills of different members from session to session. That will enable a larger number of peers to be involved in committee scrutiny than is presently the case, and enabling each to put their particular experience or expertise to the benefit of the House and the legislative process.

CONCLUSION

27. The establishment of the two committees, complementing those already engaged on legislative scrutiny (DPRRC, SLSC, and the Constitution Committee), has the potential to achieve a paradigmatic change in the way legislation is produced in the UK. There would be a greater focus on the way it is constructed (according to consistent and high standards) and a clearer adumbration of what it is intended to achieve. The committees would thus undertake important, indeed necessary, work that would otherwise not be undertaken. They would reinforce, without duplicating or unduly overlapping with, existing committees. There would be a set of committees designed to implement
a clear strategy of legislative improvement (top-down approach) while retaining the existing member-driven process of nominating ad hoc committees (bottom-up approach) in addition to those undertaking post-legislative scrutiny. One would thus retain and build on the existing strengths of the House and fill a gap that otherwise will remain. Failure to fill that gap will be to the detriment of the statute book of the United Kingdom.

11 April 2018


Lord Norton of Louth – Written evidence (RIS0023)


COMMITTEES IN THE HOUSE OF LORDS

Playing to the strengths of the House

1. Committees are key to the efficiency of a legislature. They are, according to Saalfeld and Strom, ‘the most important component of legislative organization and preference aggregation’.\(^1\) They are created to fulfil particular organisational needs. Those needs may differ not only from legislature to legislature, but also from one chamber to another.

2. Excluding domestic committees, concerned with the internal arrangements of the institution, committees can be divided into two categories: core and strategic. Core committees I define as those that are intrinsic to fulfilling the key functions of a chamber, in the case of the UK Parliament legislative scrutiny, scrutiny of government, and giving voice to the concerns of citizens. Strategic committees are those that are established to fulfil tasks which complement the core committees and which fill a strategic need. In the case of UK Parliament, they will enable the Lords to undertake tasks that the elected House is unlikely to have the political will and sometimes the time and resources to undertake.

3. The legitimacy of the House of Commons and its members derives from election. MPs are keen to be re-elected. This drives their activity in

---

between elections. It shapes their approach to committees. Committees may be seen as agents of individual members. The legitimacy of the House of Lords derives from what members do collectively to fulfil the tasks of the House. Here, committees may be seen as agents of the whole House.² Whereas MPs individually engage in ‘look at me’ activities, peers engage in activities designed to contribute to the reputation of the House. This distinction is key to driving recommendations for reshaping committees in the House of Lords.

CORE COMMITTEES

4. In respect of core committees, there are two principal gaps in the House’s fulfilment of its key functions. In terms of legislative scrutiny, the House has some sessional committees that examine Bills for specific purposes (constitutional implications, delegated powers), but there are no dedicated legislative committees, nor means of subjecting Bills (other than in respect of the purposes mentioned) to probing through the taking of evidence. In terms of subjecting government to scrutiny, there is no series of committees akin to the comprehensive set of departmental select committees in the Commons.

5. It would be inefficient, and may invite occasional tensions, were the House to duplicate the work of the House of Commons. However, there is a case for the House filling the gaps in its scrutiny of Bills and of

government. The Constitution Committee in its 2004 report on *Parliament and the Legislative Process* recommended that every Bill at some stage during its passage be considered by an evidence-taking committee.\(^3\) Since then, the House of Commons has introduced Public Bill Committees.\(^4\) These committees are evidence-taking committees for Bills that are introduced in the Commons. However, Bills starting in the Lords are not subject to evidence-taking by Public Bill Committees and hence go through Parliament without being tested through the medium of an evidence-taking committee.

6. I would therefore recommend that Bills introduced in the Lords be referred after Second Reading to an evidence-taking committee, before reverting to consideration in committee of the whole House or grand committee. The period for consideration could be time-limited (no more than four weeks), so as not to unduly delay the Bill.

7. There is also a case for referring Bills that come from the Commons for the purpose of a second-stage scrutiny. Even if evidence is taken on a Bill in the Commons, it tends to be interested evidence and Bills can and do reach the Lords with parts not considered in the House.

8. Lord Stern has recommended the creation of committees to examine sectors of public policy, akin to the current coverage of policy undertaken by EU Committee sub-committees. These may be the ideal committees for

---


the purposes of considering Bills. The committees will already be in existence, comprise members with a particular knowledge of the subject, and have available legal and policy advisers. It would be up to them as to whether to take oral evidence in addition to written evidence before reporting to the House.

9. The committees recommended by Lord Stern would cover the principal areas of public policy and be in a position to enhance not only legislative scrutiny, but also undertake scrutiny of government. As Lord Stern has stressed, they should not duplicate the departmental select committees in the Commons. The committees in the Commons are empowered to examine the ‘administration, expenditure and policy’ of departments. Although since given core tasks to fulfil, the focus has typically been policy. There is considerable scope for Lords’ committees to go for more cross-cutting inquiries and examining areas that do not engage the interest of MPs on departmental select committees. The work of the Public Administration and Constitutional Affairs Committee in the Commons and the Constitution Committee in the Lords, as well as the Science and Technology Committees in both Houses, shows what can achieved without undue encroachment or friction.

10. Core committees may also be deployed to enable the concerns of citizens to be raised. I address this below in the section on being outward looking.

STRATEGIC COMMITTEES
11. Strategic committees would enable the House to fill gaps left by the distinctive orientation of the Commons. In my previous memorandum, I recommended adopting a top-down approach in respect of sessional committees, determining (a) sectors that merit systematic parliamentary investigation, outwith those already covered by the Commons, and (b) doing so in the context of the distinctive attributes of the House (experience and expertise). In terms of the legislative process, it is important, following the 2004 report of the Constitution Committee, to examine the legislative process holistically. That is, considering Bills before they are introduced and Acts once they are in force and not simply the passage of a Bill from First Reading through to Royal Assent. For that reason, in my previous memorandum I advanced the case for a Legislative Standards Committee and a Post-legislative Scrutiny Committee.

12. The arguments for such committees I detailed in my memorandum. Such committees would fill a notable gap in legislative scrutiny and are not likely to be created in the Commons. The Commons is now close to saturation in terms of committee resources, but in any event lacks the political will, for the reasons adumbrated above, to pursue such committees. Unless established by the House of Lords, the statute book will continue to suffer from measures that are poorly drafted, rushed and having unintended, but sometimes unseen, consequences.
13. Filling gaps in terms of legislative and administrative scrutiny is necessary for the House to fulfil its core functions. Doing so is necessary, but it is not sufficient. It omits the third primary function, which is to give voice to and consider the concerns of citizens.

14. The legitimacy of the House derives from fulfilling the functions outlined above, but it is crucial to emphasise the limitations of seeing them purely in terms of legislative-executive relations. They need to be located within the prism of legislative-public relations. Both Houses act as a buckle, the Commons especially, between government and citizens. The ancient right of redressing grievances predates by centuries the emergence of parliamentary democracy. The link is much stronger now as a result of parliamentary elections, and with MPs pursuing with government not only constituency interests, but also the interests of particular constituents.⁵ That task has become significantly greater in recent decades and plays (along with electoral de-alignment) to the need of MPs to engage in activities that bolster their chances of re-election and their parties’ likelihood of electoral success. That has significant consequences for what MPs do, skewing their focus to what they do at the constituency level rather than what they do collectively as a House (as distinct from what they do as parliamentary parties). Nonetheless, there is an awareness on the part of the Commons to be more outward looking, reflected in the creation of the Petitions Committee and occasional online consultations by committees and by experimenting with a Public Reading stage of a Bill.

15. The demands on MPs mean that the capacity of the House and its committees to engage with citizens is developing, but limited. There is scope for the Lords to be more willing to engage with citizens, not least those who are organised as groups as well as those who may come together almost spontaneously (as with many who initiate and sign e-petitions) for particular causes. This may be seen both as a public good, in responding to the concerns of citizens, and as bolstering the legitimacy of the House. Whereas the House of Commons by virtue of election tends to take its legitimacy as given, the House of Lords cannot assume it, but rather has to earn it.

16. Apart from evidence-taking committees on Bills, the use of special committees (formerly ad hoc committees) provide a particular means of engagement. These have the capacity to be agile and focused, addressing particular and current concerns, as well as outward looking.

17. Why not allow members of the public to put forward proposals for such committees? The Commons permits citizens to petition them to take action, and (if 100,000 signatures are obtained) to consider holding debates. Why could not members of the public and interested bodies petition for the creation of a special committee to examine a particular issue of concern? It would be up to the Liaison Committee and the House to weigh the evidence on the quality of the case, though the number of signatures obtained would be a material consideration. The Committee could weigh the case made against the capacity of the House, in terms of
its experience and expertise, to undertake a short sustained inquiry on the subject.

18. Even if not inviting the public to have a direct input, a less radical, but nonetheless significant, option would be to ensure that members of the House, when making submissions for special committee inquiries, identify the support for the proposal from interested bodies. The criteria recently set for making submissions are valuable, but are notable for what they omit. The public are effectively left out of consideration. Of the 27 submissions made for special committees in 2019-20, only one indicates that the proposal is prompted by outside concerns ('brought to our attention by Muslim women’) and another where there has been engagement with interested bodies ('I have spoken to a number of youth leaders’). Another two make general reference to 'widespread concerns'. Although it is not uncommon to refer to the importance of the inquiry for the public good, there is no indication that the proposal has wide public support or is one that is seen as a priority by citizens. This is not to argue that support by the public or affected interests should be privileged over other criteria (there are clearly cases where the subject matter may be of great importance, but not recognised as such by the public), but rather that it should be one of the criteria. Inviting members to consider consulting interested parties will be valuable in gauging support, and likely providing additional material to support the submission, as well as serving to distinguish the serious, developed proposals from the ‘here’s an idea I have just had’ submissions.
19. In terms of legislative scrutiny, not least scrutiny by evidence-taking committees, it may also be desirable to develop an electronic platform that would allow members of the public to comment on Bills as they go through the House. That will require a considerable input of resources, since to be effective it entails not only a passive element – creating a platform for comments – but also create the means for disseminating information about the measures being considered. Members of the public cannot comment on a Bill if they are not aware it is being considered. It may be desirable, indeed necessary, to appoint a committee to make recommendations as to how this goal may be achieved, similar to the inquiry undertaken by the Information Committee in 2009: *Are the Lords listening? Creating connections between people and Parliament.*

Revisiting that report would in itself be valuable, not least to identify recommendations that have not been acted upon.

20. Such engagement may be seen as a good in itself, but it may also serve to tackle limited public understanding of Parliament. Not only is there limited understanding, but also a perception that Parliament is not working for citizens. Various reports of the Hansard Society have shown that only a small minority of the public believes that Parliament is working for them. The use of special committees may serve to address not only particular issues but also, in being seen to do so, enhance public awareness and support for Parliament. The annual appointment of such

---

7 For example, its 2008 report, *Parliament and the Public*, found that only 19 per cent of those questioned thought that Parliament was ‘working for them’.
committees gives the House flexibility to respond to matters that merit informed but timely intervention.

CONCLUSION

21. There is scope for the House to reach a new paradigm in utilising committees to fulfil its core functions and to do so without a substantial increase in committee resources. Assuming the ‘Stern’ committees in resource terms replace affectively the EU Committee and sub-committees, the only additional permanent committees I advocate are a Legislative Standards Committee and a Post-legislative Scrutiny Committee. The value added by such committees would outweigh the limited cost involved.

22. If the House is to exploit the opportunity to review its committee structure to its greatest effect, it needs to do so from the basis of first principles and the recognition of its particular and distinctive resources at its disposal, primarily the experience and expertise of the membership. Exploiting that resource in a way that maximises the capacity of the House to fulfil its core functions will enhance its legitimacy. It is a golden opportunity.

March 2019
Parliamentary Office of Science and Technology (POST) - Written evidence (RIS0015)

Background
1. The Parliamentary Office of Science and Technology (POST) is the UK Parliament’s in-house source of independent, balanced and accessible analysis of public policy issues related to science and technology. Its aim is to inform parliamentary debate, and to keep parliamentarians informed about emerging and current science and technology issues and their policy implications. Originally set up in 1989 to support the use of research evidence from the natural sciences, since 2013 POST has also had a focus on social science (supported by the Economic and Social Research Council). This ensures that POST has access to a wider set of research and can advise across the full spectrum of public policy issues.

2. POST was originally established as a charitable foundation. In 1992, the House of Commons Information Committee, supported by the House of Lords, recommended that Parliament should fund POST for three years, and a subsequent review in 1995 extended this for a further five years. In July 2000 the House of Commons Information Committee recommended that POST should be established as a permanent bicameral institution, funded by the two Houses, in a ratio of 70% (Commons) / 30% (Lords).

3. POST is staffed by a team consisting usually of a Director, eight advisers and two administrative staff. It is supported by around 25 short term doctoral and post-doctoral fellowships funded by external organisations such as research councils and learned societies annually. This constitutes in-kind funding of over £180,000 per year.

4. POST’s objectives, outputs and future work programme are overseen by a Board of 14 parliamentarians, (10 from the Commons and four from the Lords) and four representatives from the research community. Officials from both Houses also attend Board meetings.

5. The Lords Committee Office funds the Lords’ share of the POST budget: around £180,000 per annum. POST costs are split 70:30 between Commons and Lords. The Commons’ share of POST funding is met by the Participation and Research & Information Team. In addition the Lords benefits from the POST fellowships mentioned in (3) and from the funding POST currently receives via its ESRC grant, to support its social sciences work (approx. £600,000 to cover the period October 2016-October 2019).

6. This submission sets out:
   a. The support provided by POST to Lords Committees since 2010.
   b. Evidence to address one of the key questions in the Committee’s review of investigative and scrutiny committees: How can Committees add most value to the scrutiny work of the House of Lords as a second chamber? This section is divided into two sub-sections:
      i. The importance of evidence to effective scrutiny.
ii. The use of evidence by Lords Committees - Evidence presented in this section is taken from a recent POST report into the use of research in the UK Parliament. [1]

c. Suggestions to strengthen evidence gathering and analysis in Lords committees – building on the findings from the above project and the support provided by POST to such committees. These suggestions include:

i. Embedding evidence review processes into the start of select committee inquiries;
ii. Training committee staff on conducting evidence reviews and judging between different types and sources of evidence;
iii. Adapting guidance for specialist advisers and witnesses (including existing templates where available) to emphasise evidence reviews.

Support provided to Lords Committees by POST since 2010

7. POST’s work focuses on five main outputs:
   a. Four-page summaries of public policy issues based on reviews of the research literature and interviews with stakeholders from across academia, industry, government and the third sector; they are peer reviewed by external experts. (POSTnotes: 20–30 per year)
   b. Responsive policy briefings based on mini-literature reviews and peer review since 2013 (POSTbriefs: 5–10 per year).
   c. Events ranging from private meetings open to invited guests only and public seminars (1–2 per month during session).
   d. Support provided to other parliamentary teams, including committees (see below)

8. Since 2010, POST has provided 139 instances of support to 27 different Lords Committees. 11 of these committees (41%) were ad hoc committees. [2]

In addition, POST has also provided six instances of training for staff working in the Lords committee office. Figure 1 shows how the level of support provided by POST to Lords committees since 2010. The dashed line indicates the point from which data about POST’s outputs was routinely, or systematically, collected. Before this date (2014), data is less reliable.

Figure 1: Support provided to Lords Committees by POST since 2010 [3]

9. POST has provided six main types of support to Lords Committees since 2010 (see Table 1). Around half of this support (49%) has been providing advice on the focus of particular inquiries, relevant contacts or literature to consult, on technical issues such as carbon capture and storage, as well as reviewing briefing materials produced by committee staff. Just over a quarter (26%) of the support provided by POST has involved POST providing written or oral briefing materials to Lords Committees. Other support:
   a. 12% of the support provided by POST has been to provide contacts for relevant witnesses or specialist advisers;
   b. 7% was other types of support;
c. 4% seconded staff (mainly PhD fellows on three-month placements);
d. 4% training

Table 1: Types of work provided to Lords Committees since 2010

<table>
<thead>
<tr>
<th>Type of support</th>
<th>Examples of activities</th>
</tr>
</thead>
</table>
| Advice          | Including advice on the focus of inquiries; explanations of technical issues; suggestions on lines of questioning/survey questions; and peer reviewing draft briefings and reports.  
  • For example, in February 2017, POST provided advice to the Lords EU Home Affairs sub-committee for a one-off evidence session on the EU Data Protection Package (February 2017). This advice included peer reviewing a briefing note for Committee Members, providing background information on the Investigatory Powers Act, and summarising key findings and insights on how data is being used across lots of different sectors, and the policy issues that this raises. |
| Briefing        | Providing oral and written briefings on topics (these have been related to former/ ongoing POSTnotes and on distinct topics, where this an evidence base, as requested). This category also includes drafting scoping notes for potential inquiries and drafting reports or sections of reports.[4]  
| Training        | Organising and/or delivering (either in part or in full) of training sessions and/or seminars.  
  • Examples include: the Cross-House Research Methods, which aims to enable staff to develop a thorough understanding of the key concepts underpinning research methodology, in order to be able to critically appraise research and evidence from different sources and to apply these skills to finding and evaluating sources for written briefings and/or assessing written submissions. This course has been delivered to 27 members of House of Lords’ staff[5] in 2014 and 2016 and is collaboratively administered with the Lords Committee Office, the Lords Library, the Commons Committee Office, and the Commons Library. |
| Seconded fellows| Placing PhD students recruited through the POST fellowship schemes with other parliamentary teams and sections.  
  • For example, in September 2017, POST placed a fellow with the Lords Ad Hoc Committee on the Natural Environment and Rural Communities Act for a period of three-months. This placement was funded by the Natural Environment Research Council. Two former POST fellows are now Policy Analysts in the Lords Committee office working with the Science and Technology Committee and the Ad Hoc Committee on Artificial Intelligence. |
Provided contacts | Providing details of contacts for potential witnesses, specialist advisers and seminar participants such as experts from academia, industry or government.  

- For example, in July 2016, POST provided staff on the EU British Irish Parliamentary Assembly (for which the staff is provided by the Lords Committee office) with a list of potential witnesses for oral evidence sessions on childhood obesity (in addition to a bespoke written briefing).

Other support | This category includes a range of support such as circulating calls for evidence to relevant stakeholders, conducting interviews/focus groups, organising and facilitating seminars and other events, and facilitating meetings with external stakeholders (for example horizon scanning sessions with the research councils)  

- For example, in April 2016, POST supported the Ad Hoc Committee on Social Mobility in its inquiry into the transition from school to work for young people. POST analysed over 600 responses to an online survey for 14–24 year-olds. POST presented the results orally to Committee Members and drafted a separate report that was published alongside the Committee’s report.

How can Committees add most value to the scrutiny work of the House of Lords as a second chamber?

The importance of evidence informing scrutiny

10. The first strategic objective in the House of Lords Business Plan 2017-18 is for the House of Lords Administration to “provide effective services to facilitate the work of the House.” The Business Plan states that the Administration will “strive continuously to improve our support for the work of the House: scrutinising legislation, holding the executive to account and debating public policy.”

11. Effective scrutiny is one of the critical measures for a well-functioning Parliament. “Good evidence is the backbone of good scrutiny.”[6] Scrutiny might be boiled down as amounting to asking the right questions of the right people but a critical element of this is equipping Members with the right information to be able to do this. Without it, making effective recommendations is impossible.[7]

12. In 2017, the Lords Constitution Committee, in its inquiry into the legislative process,[8] “welcome[d] the fact that the process of policy development within Government now includes embedded mechanisms that place an emphasis on gathering and evaluating evidence.” The Committee’s report acknowledged that

“The evidence underlying government policies should normally be accessible for scrutiny by outside organisations—this is clearly not always the case at present. We also recognise, however, that there are situations in which evidence will not be available on which to base necessary policy choices: in such situations, the Government should make clear how it intends to develop
an appropriate evidence base and when it intends to review the policy in light of that evidence. We recommend that the Government should routinely publish the evidence base for legislative or policy proposals. If a robust evidence base is not available, the Government should explain why it is nevertheless appropriate to proceed.”

13. In a Parliamentary context, the term ‘evidence’ can refer to many different types of information and can take a variety of formats. There are important distinctions in the extent to which "evidence" is tested and validated --- as in academia and the law. In its narrow sense, Parliamentary "evidence" (such as that submitted to a parliamentary committee) has no such quality control. Rather, to be treated as evidence it has to have been written exclusively for the committee and not previously published elsewhere. That is no proof of its accuracy or veracity.

14. Research evidence has a number of attributes that often make it more reliable, trustworthy and valuable compared with other types of evidence since it is associated with a robust, systematic methodology, which is often peer-reviewed, which enables the reader to judge the way the work was done.[9][10] This definition perhaps applies most particularly to academic research, which usually bears these hallmarks.

**Evidence gathering and analysis in Lords select and legislative committees: Findings from a recent POST study**

15. A recent report published by POST[11] shed light on the evidence gathering and analysis processes of select and legislative committees in the Lords as well as the practices of staff from across the Lords committee office. This report involved 157 people from across Parliament. 27 participants were from the House of Lords (16 were Members of the House of Lords, 11 were members of staff from the Lords committee office[12]). A draft version of the report was subject to two rounds of peer review by external members of the Steering Group[13] and management from the Lords Committee Office, Lords Library, Commons Committee Office, and Commons Library.

16. The report also presents the findings from a case study into the Lords Ad Hoc Committee on National Policy for the Built Environment. This case study involved: shadowing the Committee for three months (observation of public and private meetings, including one Committee visit); interviews with seven Committee Members; and access to private briefing documents produced by Committee staff (for example, briefings produced for Committee Members in advance of oral evidence sessions).[7]

17. POST’s report found that:
   a. Academic research formed a minority of submissions to the Lords Ad Hoc Committee on National Policy for the Built Environment (16% of written evidence submissions referred to academic research; 9% of oral evidence witnesses to the committee were from Higher Education Institutions).
   b. Nearly three-quarters of the evidence received by the Committee (73%) referred to research. However, a significant proportion of this was
unclear about the type of research being referred to and its source (44% of the submissions that referred to research was unclear about the type of research being referred to and more than 25% was unclear about the source of this research). This makes it difficult for committee staff and members to assess the quality and strength on which submission claims are made.

c. Staff and Members on the Lords Ad Hoc Committee on National Policy for the Built Environment (NPBE) faced a number of challenges in gathering and analysing evidence as part of its inquiry. These included:
   i. Dealing with the large quantity of evidence received by the Committee (192 pieces of written evidence and 58 oral evidence witnesses). A combined volume of all of the written and oral evidence that the Committee had received was produced and numbered 1,964 pages.
   ii. Limited time available to process the 192 written evidence submissions alongside, and in parallel to, preparing for oral evidence sessions (58 individuals gave oral evidence with the Committee holding 25 sessions). In addition, the Committee went on two visits. The final evidence session took place on 17th December 2015 and the report was published on 19th February 2016.
   iii. Gathering evidence on all aspects of the inquiry’s scope, which covered planning, governance issues, sustainability, health and wellbeing, capacity and training.

18. In dealing with these challenges, the Committee’s staff relied significantly on the evidence that was submitted to the Committee, which was described as one Committee Member as “commentary pieces focusing on aesthetic aspects” (Peer, interview 49) with another Committee Member saying that most of the evidence the Committee received drew upon case studies and practical experience (Peer interview 28).
   a. Select Committees such as the NPBE Committee do not generally draw on material outside of that which they receive as evidence. Unlike Committees in the Commons, Lords Committees do not have access to a budget in which to commission their own research. Although the Committee staff did undertake their own research and references to this were included in the briefings they provided to Committee members in advance of oral evidence sessions, the briefings they provided were based principally on the written evidence with some exceptions.

19. The approach of relying on the evidence that is submitted carries with it a number of risks.
   a. Committees base their analysis and recommendations on the views of those with the time, resources and inclination to submit evidence rather than the best available evidence (which includes, but is not limited to, research).
   b. A number of studies, including but not limited to the POST study, have demonstrated that select committees do not receive ‘written evidence’ from a balanced cross-section of potential providers: the government and the not-for-profit sector often dominate submissions and the higher education sector is usually underrepresented.\[14]\[15\] When compounded with time and capacity constraints, this often means
that committee staff do not have enough time to do a thorough review of the literature, which leaves select committees heavily dependent on the evidence that they receive through formal processes.

c. This had a tangible impact on the NPBE inquiry. A number of relevant studies related to one aspect of the inquiry’s focus (the impact of the built environment upon people’s mental and physical health) were not included in the evidence base considered by the Committee. It was clear that Committee staff saw research as being relevant to the inquiry and were aware of some research outside of that submitted as evidence. However, the fact that the research identified about the relationship between the built environment and health did not feed into the Committee may suggest that the Committee were not aware of this type of research (in this case systematic reviews) or, that they were unable to find it.

d. Interviews with four committee members highlighted the value they place on the information and briefings provided to them by committee staff and the specialist adviser. It was unclear from these interviews as to whether members understood that the briefings were based predominantly on written evidence submissions (as is usual committee practice). For example, comparing the quotes below, the first quote may suggest that information provided by committee staff are based upon a wider literature review, whilst the second quote shows that this member is aware that it is not.

"I have the sense that the clerks have read the relevant research and filtered it to the committee. I certainly don’t feel deprived of research” (interviewee 27, Peer).

"Currently we receive briefings from committee staff that review the written evidence received or observations put forward in the written evidence, for example the TCPA reports x, y and z. We’ve not tasked the staff to produce a major piece of research. I, personally, would like them to provide an outline of what is known from existing research on the topics, ideally with the quality of such research to be assessed so that I know whether they are worth looking at. It’s also important that the research is relevant to what we’re looking at. Reliability and quality of research is key” (interviewee 26, Peer; see also interviewee 30 and 49 both Peers).

**Strengthening the evidence gathering and analysis processes in Lords select committees**

20. One way to strengthen the evidence gathering and analysis of Lords committees is to embed an evidence review at the start of select committee inquiries.

a. POST has good links with organisations such as the Alliance for Useful Evidence, What Works Centres and others that undertake syntheses of evidence to inform decision-making at national and local levels. POST could act as a broker to facilitate better links between Lords committee staff and these organisations to pilot different
approaches to ensuring evidence reviews feed into inquiries in the most effective and appropriate manner.

b. POST could collaborate with external organisations and individuals to pilot training for committee staff on conducting rapid evidence reviews and adapt this for suitability to parliamentary context. This could offer simple tips on how to distinguish between robustly compiled evidence and other forms of information including assessing both written and oral evidence and research.

c. POST could work with colleagues in the Lords Committee Office to develop guidance for committee staff on presenting and weighting findings from research, including outlining where disagreements occur and how such differences could be interpreted. Such guidance and resources could include an outline of the value of evidence syntheses to parliamentary scrutiny and could be incorporated into induction and professional development processes.

d. POST could work with colleagues in the Lords Committee office to:
   i. Adapt guidance for select committee witnesses and specialist advisers to emphasise evidence syntheses.
   ii. Develop existing templates and guidance to include advice on evidence syntheses – where to find them, how to interpret them and asking effective questions about the underlying evidence base of experts and witnesses.

21. POST would be happy to discuss any of these proposals further with Committee Members or staff if helpful.

16 March 2018


[2] Ad Hoc Committees include: Arctic; Artificial Intelligence; Citizenship and Citizen Engagement; Digital Skills; Equality Act 2010 and Disability; Natural Environment and Rural Communities Act; Affordable Childcare; Financial Exclusion; Licensing Act 2000; Sustainability of the NHS; and Social Mobility. Other Lords Committees supported include: Communications; Economic Affairs; EU Select Committee; EU Energy and Environment Sub-Committee; EU External Affairs Sub Committee; EU Home Affairs Sub-Committee; EU Internal Market Sub-Committee; International Relations; Liaison Committee; and the Science and Technology Committee. Joint committees supported include: Banking Standards; the British & Irish Parliamentary Assembly, Intelligence and Security; and the National Security Strategy.

[3] This data has been collected by the author and is taken from information on the POST website, information saved onto POST’s shared drive and information provided by POST advisers on request.

[4] Since 2010, POST has supported five committees in the House of Lords by drafting sections of the final committee reports. This includes: the Communications Committee in its Digital Switchover inquiry (Mar 2010); the Economic Affairs Committee on decibels and noise pollution for its inquiry on The Economic Impact on UK Energy Policy of Shale Gas and Oil (Apr 2014); the Ad Hoc Committee on Social Mobility in its inquiry into the transition from school to work for young people – POST drafted a separate report that was published alongside the Committee’s report analysing results from a survey with 650 people (Apr 2016); the EU British Irish Parliamentary Assembly in its inquiry into childhood obesity in the UK (Oct 2017); the EU sub-committee on Energy and Environment in its inquiry into Brexit: Energy Security (Dec 2017).

[5] 15 members of staff from the Lords Committee office and 12 members of staff from the Lords Library.
[12] An additional 23 members of staff completed the survey anonymously.
[13] Members of the Steering Group that reviewed the draft report were: Dr Adam Cooper, Lecturer in Social Science and Public Policy, Department of Science, Technology, Engineering and Public Policy, UCL; Professor Emma Crewe, Professorial Research Associate, Anthropology Department, SOAS; Barbara Doig, AcSS, Independent Consultant; Margaret Macadam, Senior Evaluation Manager, Evaluation Strategy and Analysis team, Economic and Social Research Council; Professor Sandra Nutley, Director of the Research Unit for Research Utilisation, University of St Andrews; and Professor Meg Russell, Director of the Constitution Unit, UCL.
Submission to be found under “Baroness Warwick of Undercliffe, Lord Best, Lord Kirkwood of Kirkhope and Lord Porter of Spalding – Written evidence (RIS0069)”
The Rt Hon Lord Rooker - Written evidence (RIS0010)

Proposal for a Lords Select Committee to Scrutinise Regulators

12 March 2018

1 Parliament has created many regulators to regulate the private and public sectors, but does not carry out any periodical scrutiny of these regulators. This should be remedied.

2 The key role of the regulator is generally to monitor, guide and control various sectors in the interest of protecting consumers.

3 There are at least 70 regulators, some of which regulate the professions. Many are statutory regulatory bodies. Regulators are to be found among the Non Ministerial Departments, public bodies and executive agencies. They report to Parliament on an annual basis. As a result of BREXIT the numbers will increase. In the appendix, I have listed 20 statutory regulators as an example. The annual expenditure for these 20 is £2.8bn - ranging from £1m to £1.3bn. Some regulators cover their costs from those they regulate via statutory levies.

4 From time to time a regulator may be called before a select committee on a specific policy issue, usually when something has gone wrong. However regulators, who play a major role in the public policing of private and public activities should be subject to Parliamentary scrutiny.

5 The conduct and delivery of policy issues is rightly for the Commons.

6 As such the scrutiny of the regulator is ideal for the Lords.

7 When I was appointed to Chair the Food Standards Agency I enquired about select committee scrutiny and discovered there had been none. This remains the case. The Commons is rightly concerned with policy. If I was, (say) a Member of the Health Select Committee, my priorities would be hospitals, patients, doctors, nurses and budgets. The governance of a regulator would not be on the radar. It is a low priority for a Commons Departmental Select Committee.

8 I estimate that around 30 Regulators are key players in the statutory role. I propose that a three yearly examination of what they claim to do, what they actually do, and how they do it, should take place. It is important that there is scrutiny of business plans, governance, accountability, probity and performance.
9 Assuming scrutiny of 10 Regulators per year, and at least one evidence session from those regulated and one for the Chair/CEO/ accounting officer this would need 20 plus weeks of work. Regulators covering the UK or England would be involved in order to respect Devolution.

10 Ministers need not be involved, as policy would not be an issue.

11 On rare occasions the NAO has looked at a regulator such as the Charities Commission, (a non ministerial department and not a member of UKRN), but this use of the NAO should really be a ‘long stop’ function. As a result of discussions with members from other Boards and executives of Regulators at an Institute of Government session on regulation, I ascertained that none had been subject to any parliamentary scrutiny.

12 In the past there has been a proposal for a Joint Committee on Regulators. This was not proceeded with. I do not believe this is a Joint Committee function. Members of the Commons should be concerned with policy. The nuts and bolts of checking ‘what it says on the tin’ of these important bodies is ideal territory for the Second Chamber of Parliament.

13 Regulators would of course continue to be involved in policy enquiries by Departmental Select Committees.

14 I have admiration for the unsung work of Regulators in protecting the public. My proposal is not an attack on regulators, nor intended to cause grief. They are set up by Parliament and report to Parliament on an annual basis with detailed reports. Parliament should take an interest and fill a gap in its scrutiny function.
APPENDIX

Some examples of the statutory Regulators

<table>
<thead>
<tr>
<th>Civil Aviation Authority</th>
<th>Financial Conduct Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment Systems Regulator</td>
<td>Ofcom</td>
</tr>
<tr>
<td>Ofgem</td>
<td>Ofwat</td>
</tr>
<tr>
<td>Office of Rail &amp; Road (ORR) Office</td>
<td>Single Source Regs</td>
</tr>
<tr>
<td>Financial Reporting Council</td>
<td>Legal Services Board</td>
</tr>
<tr>
<td>Ofqal</td>
<td>Ofsted</td>
</tr>
<tr>
<td>Competition &amp; Markets Authority</td>
<td>Gambling Commission</td>
</tr>
<tr>
<td>Gangmasters Licensing Authority</td>
<td>IPPC</td>
</tr>
<tr>
<td>Forensic Science Regulator</td>
<td>Food Standards Agency</td>
</tr>
<tr>
<td>Charity Commission</td>
<td>Environment Agency</td>
</tr>
</tbody>
</table>

These Regulators are a mixture of Non Ministerial Government Departments, Public Bodies and Executive Agencies.

They do not all cost the taxpayer as some collect income from those they regulate under Act of Parliament. They all report to Parliament on an annual basis.

The total income of these 20 regulators is £2.8bn varying from under £1m to £1.3bn. 14 of the 20 have income less than £100m.
I should like briefly to add my name to what is doubtless a long list of members who would like to retain the EU Committees. 
I was lucky to serve on both the EU Select Committee and two subcommittees, notably on Sub-Committee C on External Affairs where I feel that my experience of international development in particular was helpful. 
The EU Committees have achieved a remarkable reputation both in the UK and in Europe. In my view, to continue the Committees would express the wide view of this House and possibly the Commons that we continue after Brexit to belong to the Europe of ideas and that most of our legislation already derives, and will continue to be derived, from Europe. I have no doubt there will be a new configuration of the EU Committees but it would be a pity to lose their experience and their reputation.

I would also like to make a case for international development having a rather higher profile than is currently does in the two ‘international’ committees. This can be justified not simply in terms of the aid budget but in the broader outlook of the last, and present, Conservative governments, with opposition support but not without criticism from some minority parties.

29 March 2018

Dear Lord McFall,

I much enjoyed our conversation today.

I thought it right to give you a short summary of the additional point I was making today, in the hope that it can be added to my earlier written submission which is only about the future of the EU Committees.

For some years I have campaigned alongside Lord Howell and many others for a separate international affairs committee in the Lords, and I am grateful that this was finally granted. However, my particular interest and experience has been in international development and I have noticed that this subject has not, for various good reasons, been a priority in the new committee. When I was a member of the EU Select Committee and Sub-Committee on Foreign Affairs, we occasionally touched on international and humanitarian issues, partly because these were sometimes related to defence or foreign affairs. But we discussed some development issues such as refugees and water and sanitation, and I believe these were valuable to the House at the time.

Now that we are likely to reconstitute both the International Affairs and the EU Committees over the coming years, I would simply put in a plea for International Development in its own right as well as in connection with more strategic concerns. In this context we should always, of course, be aware of subjects already being discussed by the related Commons select committees, for example when it comes to aid evaluation and audit which they do well.
Yours sincerely,

John Sandwich

June 2018
Ewan Smith, Eirik Bjorge and Arabella Land – Written evidence (RIS0034)

Submission to be found under “Eirik Bjorge, Arabella Land and Ewan Smith – Written evidence (RIS0034)”
1. I would suggest we consider electing the chairs of Select committees as they do in the Commons - it gives them added status and independence. Could we discuss this with the House of Commons committee chairs to ask their advice?

2. Publicity on Lords select committee reports is good. The real issue here is whether we can make the media operation in the Lords even more effective.

3. To maximise their impact outside the House we must have a good social media strategy. I would also suggest we look at using SKYPE for business to allow more people to participate in committee business on selected items/events. I hope to use it to take the views of some 60 people on my Home Education (duty of Local authorities) Bill. There is a limit to how many people/occasions this can be used but we should explore it.

4. Could we hold occasional meetings in the devolved parliaments where business is UK relevant?

5. Post BREXIT EU/UK links will be of great importance. Can we have a select committee continuing to examine EU legislation where it impacts on the UK? This is an important but complex area and I think we need to examine carefully how best the House can maximise its engagement with the EU Parliament and the individual parliaments. I have proposed a permanent EU/UK parliamentary group and there is interest in this proposal both here and in the EU parliament but there will be no movement until we have exited the EU.

March 2018
Lord Stern of Brentford and Alun Evans – Written evidence (RIS0039)

REVIEW OF THE HOUSE OF LORDS SELECT COMMITTEES

A note by Lord Stern (LSE and Past President of the British Academy) and Alun Evans (Chief Executive of the British Academy)

Introduction

1. This note concerns the structure of the Select Committees of the House of Lords and makes proposals for a more streamlined system. It recommends a strategic and thematic framework of six committees covering the main functions of government and today's, and likely future, challenges. It would provide a much clearer focus and rationale than at present.

Background

2. Whereas the Select Committee system in the House of Commons has been developed to provide committees to shadow each department of state, the nature and structure of the Select Committees of the House of Lords have evolved over time in a more haphazard way, with a much less clear logic for the current Lords structure.

3. There are now several major Committees that run inquiries, together with some other more thematic or subject specific ad-hoc committees. There does not appear however to be a strong rationale for the current shape and structure of the committees. That said, many of them are well respected and have exceptionally strong memberships. Some of the inquiries that have been carried out have led to significant reports and strong recommendations. Any revised system must seek to build on that record of success.

Rationale

4. The rationale for the House of Lords Select Committees should reflect the rationale for, and the role of, the House of Lords itself. That is essentially twofold - scrutiny and strategy:

- To provide a scrutiny and challenge function to the House of Commons and proposals coming from that House including its committees; and

- To provide an overview and strategic sense of direction on some of the key political challenges of our day. It is this latter function that might best shape the Select Committee structure for the House of Lords, but it should not be difficult to keep that consistent with the former.
Proposal

5. We propose that the structure of the major House of Lords Select Committees should both reflect the main strategic and thematic challenges facing the nation today and the functions of government. We have identified six strong themes:

- The economy
- Home affairs
- Health and welfare
- Foreign affairs, including Brexit and post Brexit issues
- Defence and security
- The constitution and local government (including the nations, regions and cities of the United Kingdom)

6. Such a framework of committees would provide the opportunity for the House of Lords to cover all the major cross departmental challenges and look at them in a more joined up way than at present. Membership of the committees could be chosen to ensure as wide a spread of expertise as possible. The above six committees would drive the overall strategy of the House as well as the major areas for inquiry. None of the above would prevent the creation of additional task related and time related inquiries. However, they should be able to report up to one or more of the strategic committees. The committees may wish to create sub-committees. It is worth noting that other policy areas for inquiry would be capable of being analysed by this framework of thematic committees that we propose. For example, housing issues would fall to the economy committee; the issue of local government social care would fall to the health and welfare committee; environment issues would come under the economy as would farming, but both might have additional scrutiny by the committee examining post Brexit issues – and so on.

7. It would be important for the committees to have a free rein over which issues to consider. For example, it would be important that they were not prevented from investigating a particular area if there was other work ongoing or if other bodies (departments, all party groups or think-tanks etc) were already looking into the area. The House of Lords committees should be the bodies that can be seen as providing the most independent, joined up and strategic advice.

8. House of Lords Select Committees should look to build the best sources of evidence and analysis to inform their policy making. This would include universities, national academies and international sources of best practice.

9. These proposals should be keep under regular review. Committees should be time limited (perhaps three years) and their membership and terms of reference might be revised as necessary in the light of events and of major shifts in world or national politics.

March 2018
May I declare my interests as set out in the Register: of particular relevance are:

1. I am Chairman of the Financial Markets Law Committee
2. I am Chairman of the Commission on Justice in Wales
3. I am a member of Executive Committee of the ELI

My submission covers 2 topics:

1. Scrutiny of legislation
2. Scrutiny of the operation of justice issues

**Scrutiny of legislation**

It is not yet clear what areas formerly dealt with as subordinate legislation under the European Communities Act 1972 will be dealt with by primary legislation and what by subordinate legislation, and what will be the precise procedure for the examination of major pieces of subordinate legislation. However the area of EU legislative activity was, as is well known, vast and covered huge swathes of activity. A large number of pieces of legislation were the subject of detailed scrutiny in the European institutions through:

1. The processes of the Commission which often utilised experts to get the legislation as up to date and as accurate as possible
2. The detailed consideration by the Council
3. The detailed consideration by one of the Committees of the European Parliament
4. The final approval by the Council and the European Parliament

I have been thrice involved in detail in this process through my participation in European Bodies (as President of the European Network for the Councils for the Judiciary and as Chairman of a European Law Institute project); the first involved the Stockholm Programme in relation to rights of those accused of crime; the second involved victims of crime; the third involved an attempt by the Commission to create a Common European Sales Law; although the proposal for a Sales law failed at the Parliamentary stage, some of the work is still being taken forward as part of the digital single market.

The volume and complexity of future legislation is likely to be considerable in the EU. Some of this is driven by the impact of digital development, for example in relation to new ways of doing business on the financial markets (such as Digital Ledger Technology) and for consumers (such as the need to clarify rights and liabilities in respect of intermediary platforms and data harvested from consumers).

In addition, as in the recent past, the UK will have its own ideas for development.

I would envisage that the relevant Committee in respect of a given piece of subordinate legislation which contains matters of substance but which was formerly covered by the EU will have to deal with:
(1) Whether it is desirable the UK has its own regime or adopts the regime either as adopted or as developed by the EU. If it is proposed that the UK has its own scheme, the extent to which there is to be equivalence or alignment and how this is to be achieved. This task will involve scrutiny of the policy decision made by HMG and the evidence and analysis that lay behind the decision. This is a new and formidable task.

(2) Whether the legislation (whichever policy decision is taken as to the issue described under (1)) meets the objectives or itself throws up further issues. In relation to the pieces of EU legislation in which I was involved, there were numerous conferences organised by interested bodies which were attended by representatives of the Commission, the Council and the Parliament and the taking of expert evidence by the relevant Committee of the Parliament. In relation to the Common European Sales Law, there were also sessions at which the detailed drafting of the text was considered and discussed with the Parliament (in addition to discussions with the Commission). If the level of scrutiny and consultation is to provide something as good as, if not better than, the EU legislative process, this is a formidable task.

(3) If the legislation is to be dealt with by primary legislation, then there is a need to examine whether the current processes in the House can deal with the issues in a way that addresses the issues I have set out and provide the detailed consideration that will be needed, given the potential for the volume to be high, if much is done by primary legislation; I assume this is outside the terms of reference of this inquiry.

(4) If the legislation on such matters is by subordinate legislation, two major changes may be required:

   i. The committee structure should enable this to be done by a committee that includes those who have or can acquire the relevant subject matter experience; for instance if the legislation is dealing with issues in the financial markets arising out of the digital revolution, then it would be desirable that a committee should be one which has developed expertise in either the financial markets or technology as the general subject matter of the committee’s work.

   ii. The committee should have the ability to suggest amendments in the course of its consideration of the legislation and have a procedure that enables such amendments to be made.

(5) Without an analysis of the likely volume of either primary or subordinate legislation that will require scrutiny and an analysis of the resources that will be required, it is presently not possible for me
to express a view on how these tasks are to be shared between the two Houses.

**Scrutiny of the operation of major policy in relation to justice**

8 Whilst a senior judge, I appeared regularly before Committees of both Houses.

9 The justice system in England and Wales (including the delivery of justice, the prosecution of offenders, probation and prison) now faces many severe problems in part arising out of budgetary constraints, in part arising out of changes to the profession and in part arising out of technological development. In my view, given the expertise in the House, it would be worthwhile considering the formation of a select committee (or expanding the role of one of the existing committees) so that it could examine these issues and possibly related issues (such as, for example, on-going monitoring of the operation of the European Arrest Warrant (and its successor after Brexit) and other judicial cooperation instruments which will need to be put in place after Brexit).

April 2018
Lord Thomas of Cwmgiedd Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe, Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee- Written evidence (RIS0071)”
I have been reflecting on what Lords' Committees can look into which is different from Commons' Committees.

One thing that is clear is that there are more disabled Peers (including me) than disabled MPs, and I think we could build on that. There are so many issues that disability touches, and this is going to become more evident as both the disabled community ages and many of the ageing population become disabled. If the Lords is proud to have so many experts, we should acknowledge the expertise on the mobile benches.

A Committee focussing on disability would certainly be different from the Commons Select Committee on Work and Pensions. It could also build on the Equality and Disability Committee's work which could only touch on a lot of issues like transport, education and employment, and didn't tackle the whole question of independent living. (Nor did it look at benefits.)

It could also highlight the differences around the country in how local authorities fulfil their obligations towards disabled people.

And then there is the landscape after Brexit which has quite a bearing on disability.

So there would be a lot for such a Committee to get their teeth into, and there would appear to be a lot of support round the House for such a Committee.

April 2018
Trade Justice Movement – Written evidence (RIS0073)

Introduction

The Trade Justice Movement (TJM) is grateful for the opportunity to respond to the House of Lords Liaison Committee’s Review of Investigative and Scrutiny Committees inquiry. TJM is a UK coalition of nearly seventy civil society organisations calling for trade rules that work for people and planet. Our members include trade unions, aid agencies, environment, social justice and human rights campaigns, Fairtrade organisations and consumer groups.

1. Should the current committee structure be changed?

Yes. As explained in the answer to the next question, the Trade Justice Movement believes that the House of Lords should establish a Non-EU Sessional Committee on International Trade.

2. What changes are needed in the wake of Brexit? Are committees needed to scrutinise the UK-EU relationship in future, and if so how?

In the wake of Brexit, the House of Lords should establish a Non-EU Sessional Committee on International Trade. This committee would play a complementary role to that of the International Trade Committee in the House of Commons, which scrutinises the activity of the Department for International Trade, and conducts inquiries on issues related to international trade. It would also perform a distinct function from the International Relations Committee or the Economic Affairs Committee. Ideally, we hope that the committee would play a formal role in reviewing negotiations for new trade agreements between the UK and other countries, with the power to refer these agreements to both Houses for debate, scrutiny, ratification and rejection.

As we argue in this submission, international trade plays its own unique and increasingly important role in global political economy, which cuts across foreign relations, economic affairs, global geopolitics, international development and defence. International trade and specifically trade agreements have large consequences for public policy, affecting human rights, including labour rights, democracy, rule of law, public services and the environment. Brexit means that the government will have sole competency for the UK’s trade policy, and it is essential that Parliament plays a role in ensuring scrutiny, accountability and oversight.

a) Trade after Brexit

One of the key promises made by the Leave campaign in the 2016 Referendum was that, outside the EU, Britain would be able to manage its own trade policy. As a member of the EU, international trade agreements, including free trade agreements (FTAs), bilateral investment treaties (BITs), the setting of tariffs and
cooperation with third countries on standards (such as equivalence and mutual recognition regimes), are the sole competence of the EU. As a non-EU member, the UK will negotiate and agree its own trade agreements with other countries. This means that, regardless of the deal agreed between the UK and the EU, the UK government will gain competence for trade and investment policy after the 29th March 2019.

Under the existing UK rules, Brexit means that trade agreements will be entirely negotiated under the Royal Prerogative and the government is able to decide when and with whom to start negotiations, set its own priorities and objectives, conduct negotiations and conclude and sign the eventual deal. Here are no transparency requirements: neither the public nor civil society has a guaranteed right of input, and Parliament does not have a mandate to oversee and scrutinise trade negotiations. The UK’s existing procedure for the negotiation and ratification of trade agreements gives the Government broad powers to negotiate trade agreements in secret and to ratify these agreements without a vote in Parliament.

The Government has introduced a Trade Bill into Parliament, which when passed will give ministers powers to ‘rollover’ bilateral trade agreements which the UK currently has with third countries through its EU membership. However, the Bill fails to address the fact that EU deals will require significant amendment, either because partner countries demand it or because it is technically impossible to simply transfer provisions across: in effect, the deals will be new deals that are passed without parliamentary oversight. The Bill also fails to address the limitations of existing legislation: it grants Henry VIII powers to ministers and limits the power of Parliament to scrutinise or block trade deals. This is worrying, particularly as the current trajectory suggests that new post-Brexit trade agreements will be negotiated in the same way, without Parliamentary oversight.

There is a clear democratic deficit in the UK’s approach to the development of trade policy. This must be addressed before leaving the EU, so that there is a modern and democratic framework in place to govern the re-negotiation of EU trade agreements and the negotiation of trade agreements with new trade partners. Establishing a new International Trade Committee in the Lords would reflect the way Brexit changes the government’s powers and address the democratic deficit in the UK’s existing trade policy. It would reassure members of the public that the government’s trade policy is not outside the oversight of the legislature, and thus strengthen transparency, accountability and democracy.

b) Scrutiny of modern trade agreements

---

The need for democratic oversight of UK trade policy is especially important in the context of modern trade agreements, which affect many aspects of public policy, including jobs, the environment, health, development and inequality.\textsuperscript{10} This has been a development of the last few decades, where developed countries and most notably the EU have negotiated large, bilateral trade agreements which include, for example, regulatory cooperation as well as mechanisms to protect investors – such as the controversial Investor-State Dispute Settlement (ISDS) system. Notable examples include the Transatlantic Trade and Investment Partnership (TTIP), between the EU and USA, and the Comprehensive Economic and Trade Agreement (CETA), between the EU and Canada. These are the kinds of agreements which the UK hopes to negotiate and sign with countries from April 2019, and the government has already cited informal negotiations with the USA, the Trans-Pacific area, Australia and New Zealand.\textsuperscript{11} Given this, it is imperative that trade agreements are subject to the highest level of transparency, scrutiny and accountability.

The highly technical and wide-reaching policy implications of modern trade agreements mean that it would be difficult for Parliament to properly scrutinise details of these agreements without devoted select committees. Trade policy occupies a unique space beyond the remit of other committees, such as foreign or economic affairs, not least because it is subject to its own kind of international law. A trade-specific select committee in the Lords would give peers the time and space required to scrutinise the detail in new trade deals and assess wider policy implications – particularly on health, human rights, workers’ rights and environmental standards. At times this may require joint inquiries with other committees. Either way, it should be clear that occasional debating time in the Chamber is insufficient to properly address the complexity and increasing importance of modern trade agreements.

TJM also hopes that a new International Trade Committee could play a formal scrutiny role in new trade agreements, a suggestion which was supported by many MPs in amendments to the Trade Bill.\textsuperscript{12} This would have to be incorporated into primary legislation, and would require that any new trade negotiations are referred to the committee. The Parliamentary scrutiny committee should have a remit to access all trade negotiation documents as negotiations progress. The Committee should be given the responsibility to review, amend and approve draft negotiation texts. Adequate time should be given for the committee to scrutinise documents and for the Government to then revise its negotiating position.

\textsuperscript{11}See the Department for International Trade’s consultation publications (2018) https://www.gov.uk/government/publications?departments%5B%5D=department-for-internationaltrade&publication_filter_option=consultations
\textsuperscript{12}See NC6 and other suggested amendments, Public Bill Office - Trade Bill amendments at Report Stage https://publications.parliament.uk/pa/bills/cbill/20172019/0122/amend/trade_daily_rep_0716.1-7.html
This would mean that MPs and peers can read negotiation documents, assess public policy implications of deals and ultimately refer trade deals for debate and either ratification or rejection on the floor of both Houses. This would give the committee more powers than other select committees, but would not be significantly different to the role currently played by the European Scrutiny Committee or Delegated Legislation Committees. The committee could also be modelled on the European Affairs Committee in the Danish Parliament, which has the power to mandate government action on European affairs.\(^\text{13}\)

c) Specific threats to democracy and rights

In addition to the procedure for agreeing trade deals, which currently lacks Parliamentary oversight, there is increasing concern about the content of trade deals undermining democracy and human rights. These concerns were raised about TTIP and CETA, which led to civil society action across Europe and North America. In particular, concerns were raised around the Investor-State Dispute Settlement (ISDS) mechanism and its implications of democracy, human rights and rule of law.

ISDS is a mechanism for investor protection, designed to protect the interests of private investors if their profits are harmed by changes to or the implementation of domestic policy. ISDS cases are settled in international arbitration courts, rather than domestic courts. The original stated aim of ISDS was to increase investment in countries where the legal infrastructure was considered to be weak, however the evidence suggests that such provisions have done little to help attract investment to these countries. Further, arbitration courts do not meet Western standards for rule of law: they lack an appeals system, judges do not have the same level of training, trials are not always transparent and there are very high costs to bring a case. ISDS also has worrying implications for public policy; governments risk significant legal costs for defending a case and compensation in the millions, sometimes billions, of dollars if they lose. This has led to ‘regulatory chill’, whereby states are reluctant to introduce legislation which might harm the profits of these investors – even if the legislation is in the interests of the environment, social welfare, or is democratically supported by the electorate. There are examples of cases including Vattenfall vs. Germany (2009), where the Swedish energy firm Vattenfall launched an investor-state claim against Germany on the basis that Hamburg’s environmental legislation amounted to an expropriation and a violation of Germany’s obligation to afford foreign investors “fair and equitable treatment.”\(^\text{14}\) To avoid the case being taken to an international tribunal, the German government settled. If it had gone to an international arbitration court, the cost to the German taxpayer could have been far higher. Other

\(^\text{13}\) More information on the Danish Parliament’s European Affairs Committee here: https://www.thedanishparliament.dk/en/committees/committees/euu

similar cases include *Lone Pine vs. Canada (2013)*\(^\text{15}\) and *Anglian Water Group vs. Argentina (2010).*\(^\text{16}\)

In addition to ISDS, TTIP-style trade agreements can also undermine environmental and other standards, such as health standards, workers’ rights or consumer rights, through regulatory cooperation. Although regulatory cooperation is not in itself undesirable, including such provisions in trade agreements can make it difficult for governments to change things like environmental policy and human rights – even when these changes have democratic support. Where trade agreements are made with countries with lower standards, this can also lead to the lowering of standards or prevent future improvement. For example, concerns were raised about TTIP forcing the UK to allow chicken products washed in chlorine on UK supermarket shelves, whereas the practice is currently banned on health grounds. As the UK rushes to establish trade deals with new countries after Brexit, it is not inconceivable that similar standards and protections will be affected.

Although the establishment of an International Trade Committee would not by itself prevent ISDS or standards-cutting in future trade deals, it would at least give Parliament a platform on which to examine, debate and challenge the inclusion of these provisions in trade deals. The House of Lords has a strong record on noting where public policy has unwanted implications for rights and rule of law, partly due to the high number of legal professionals who are members of the House of Lords. It would be valuable for new trade deals to receive scrutiny from these experts.

*September 2018*

---


Lord Trees and Lord Curry of Kirkharle– Written evidence (RIS0080)

Lord Trees and Lord Curry of Kirkharle– Written evidence (RIS0080)

Submission to be found under “Lord Curry of Kirkharle and Lord Trees – Written evidence (RIS0080).”
I was pleased to have the opportunity to give evidence to your review of committees.

It may be helpful if set out a little more detail about the work of the Secondary Legislation Scrutiny Committee.

The Committee has deep experience, and well-established procedures, for scrutinising statutory instruments (Sis) in order to advise the House. We highlight aspects of Sis which we consider need closer attention, and we are pleased that our reports are often used by members in debates on Sis. Since the start of the 2015 Parliament, we have scrutinised around 700 Sis a year, publishing the results of our scrutiny in some 30 reports during each Session.

But we also seek to keep Government Departments "up to the mark" in their preparation and presentation of Sis.

We have monitored the implementation of changes made in 2012 to the Government's approach to consultation, published several reports on that approach, taken evidence from Cabinet Office Ministers, and secured changes which we think redress the balance between Government and external interests. Our website contains a summary of our involvement in this issue.

In the past two years, we have twice taken evidence from leading Permanent Secretaries about the quality of information provided in support of secondary legislation, and this has prompted a wideranging programme across Whitehall to improve such information. Our advisers frequently give talks and training to Whitehall officials about what we as a Committee require. They have also given seminars to members and staff of the House.

We are open to representations about Sis from external groups; we receive these increasingly often; and we get responses to them from Government Departments in order to give the House a rounded account of views.

We consider that this experience provides us with a strong basis for the scrutiny of secondary legislation to come, not least as a result of the UK's exit from the EU.

July 2018
Firstly on the **overall structure of select committees** in the Lords I argued strongly for a fresh approach given that the current committee structure has clearly grown up in a piecemeal way over the years with the result that its rationale is quite hard to discern. I also felt that with so many committees currently devoted to scrutiny of EU legislation, this in itself provides an opportunity to completely re-draw the committee structure.

As you know I am a strong supporter of the current ad hoc select committees, having served now on four including chairing the recent Financial Exclusion Select Committee. They provide a very helpful means of addressing topical issues and allow members to contribute their wide ranging expertise to a raft of important policy areas. That said, the downside is that it leads to a rather fragmented committee structure with little overall coherence in the range of subjects selected and crucially a real loss of corporate knowledge as ad hoc committees are currently simply disbanded with no follow-up resource allocated (see below).

My solution to this would be to establish around six broad, thematic standing committees which would each conduct a series of inquiries but crucially build up and make best use of the body of knowledge that they have acquired through those inquiries rather than starting from scratch each time. Whilst there are clearly a number of ways of cutting the cake my suggestion was something along the lines of broad based, cross cutting standing committees in the following areas:

- economic affairs
- domestic affairs
- social policy
- environmental affairs
- science and technology
- international affairs.

As you suggested we might also want to retain a constitution committee.[1]

I explained that my rationale for separating out domestic affairs from social policy is that the weight of domestic issues around home affairs, immigration, policing, justice, civil liberties, equalities, culture, media etc is such that a separate social policy committee clustered around health, education, welfare, social care, poverty and disadvantage would ensure that these crucial matters received sufficient coverage and in a more joined up manner. Indeed I would suggest that all four of the ad hoc select committees I have sat on, (ageing population, affordable childcare, social mobility and financial exclusion) would have benefitted from being discrete inquiries sitting within a broader social policy thematic committee which built upon a wider corpus of policy and research knowledge rather than approaching each new inquiry as from a blank piece of paper.

Such a social policy based committee could develop a deep understanding of demographic trends, changing social attitudes and undertake horizon scanning to identify new social issues thereby ensuring that it was ahead of the curve on key social issues which are of direct relevance to people’s everyday lives. I
would suggest that the new ad hoc select committee on Inter-Generational Fairness (which I proposed and am delighted has been selected) would very much fit into this category. I feel that this approach would allow the House of Lords to reach out to people in the country and appear less remote.

I fully recognise the need for House of Lords select committees not to duplicate the business of Commons select committees but feel that around half a dozen broad based, cross cutting committees of the type I have suggested above would allow the House of Lords to do what it does best ie look at cross-cutting issues which range across a number of Government Departments and take a longer term, strategic perspective – often a 10 to 15 year perspective.

I also feel that a committee structure of this nature would help to maximise engagement with stakeholders outside of Parliament and raise the profile of House of Lords committee work more generally. It should be possible to do considerably more outreach work – particularly where committees go out on visits around the country and talk face to face to people most directly affected by the subject matter. This can often elicit extremely important first hand evidence of a very different type to that normally provided in a set piece committee evidence sessions with expert witnesses coming in to give both oral and written evidence. It should also be possible to engage with people via social media and other interactive channels more attractive to young people as part of a wider national conversation.

Thirdly I would welcome an opportunity for backbenchers to have a greater say on how topics are chosen for current ad hoc committees if they should continue in this form, or indeed for specific inquiries undertaken by the type of broad thematic committees that I am proposing. I feel that backbenchers should have a greater opportunity to contribute to the process of shortlisting and deciding on final topics. I’m also a strong supporter of a Backbench Business Committee as a means of providing more opportunities for backbenchers to help shape the non-governmental business of the Lords rather than it all being left to the “usual channels”.

Fourthly I would be in favour of a greater degree of internal democracy in how chairs and indeed members of ad hoc committees are chosen. I would support the election of Committee Chairs as takes place in the House of Commons. This would give Chairs greater legitimacy and clout, and help ensure that they had strong cross-party support. Members putting themselves forward to serve as Committee Chairs would have an opportunity to set out their credentials for being an effective chair as well as explaining how they would go about the process of chairing a select committee so as to ensure maximum effectiveness.

Finally, as we have discussed before, it is essential that appropriate resource is devoted to the follow-up of select committee reports to ensure that their recommendations have maximum leverage on government policy making. One of the major weaknesses of the current ad hoc select committees is that they disband immediately after the report is produced and the committee secretariat immediately takes on new work and is unable to provide any follow-up support to Chairs. In my view this significantly diminishes the likelihood of the recommendations being taken seriously by Government as a period of further
advocacy and discussions with Ministers is generally required after the report is published for it to gain any real traction. At the moment Government responses to select committee reports are often very inadequate, quite often simply rehearsing what the Government is already doing in a certain area and sometimes completely failing to address important recommendations.

Under the current regime it comes down to whether the Chair is prepared to put in considerable personal time and effort for follow up work and do so without any secretariat support. For example as Chair of the former Financial Exclusion committee I have undertaken follow-up work in terms of speaking at external events, requesting meetings with Ministers and other key stakeholders to push forward the report’s recommendations, responding to correspondence including from members of the public, doing both proactive and reactive press work as it arises and trying to maintain a national conversation around financial exclusion to build on the momentum that the select committee report generated. I have also provided update notes to former members of the select committee so they are aware of the activities I have undertaken and have opportunities to contribute if they so wish. Doing all of this without any support is far harder than if there were even a small degree of secretarial support to assist with these tasks and keeping up-to-date in the policy area.

I hope this is helpful.

Baroness Tyler of Enfield

April 2018

[1] The Chairman
Baroness Tyler of Enfield – Supplementary evidence (RIS0077)

I am sorry I haven’t been able to attend as many of the excellent series of seminars as I would have liked to but many of them have clashed with meetings of the ad hoc Select Committee on Inter-Generation Fairness which will be reporting at the end of March.

At the 4 December Seminar Lord Stern and Alun Evans talked about their proposals for restructuring the Lords Select Committees. You may recall that their proposal was remarkably similar to the ideas I put forward in April 2018 and which I subsequently discussed with the Chairman. Although issues relating to the place of the Science and Technology Committee in any new structure have been well rehearsed, my proposal related to a possible new over-arching structure more generally.

To summarise, I argued strongly for a fresh approach given that the current committee structure has clearly grown up in a piecemeal way over the years with the result that its rationale is hard to discern. I also felt that with so many committees currently devoted to scrutiny of EU legislation, this in itself provides an opportunity to completely re-draw the committee structure post Brexit.

As you know, I have been a strong supporter of the current ad hoc select committees, having served now on five including chairing the Financial Exclusion Select Committee and been the original proposer of two of them. They provide a very helpful means of addressing topical issues and allow members to contribute their wide ranging expertise to a raft of important policy areas. That said, the big downside is that it leads to a fragmented committee structure with little overall coherence in the range of subjects selected and crucially a real loss of corporate knowledge as ad hoc committees are currently simply disbanded and have no formal follow up capacity.

You may recall that my solution was to establish around six broad, thematic standing committees which would each conduct a series of inquiries but crucially build up and make best use of the body of knowledge that they have acquired through those Inquiries rather than starting from scratch each time. Whilst there are clearly a number of ways of cutting the cake my suggestion was something along the lines of broad based, cross cutting standing committees in the following areas:

- economic affairs
- domestic affairs
- social policy
- environmental affairs
The Chairman also suggested at the time we might also want to retain a constitution committee, which I feel would have real merit.

I explained that my rationale for separating out domestic affairs from social policy was that the weight of domestic issues around home affairs, immigration, policing, justice, civil liberties, equalities, culture, media etc is such that a separate social policy committee clustered around health, education, welfare, social care, poverty and disadvantage would ensure that these crucial matters received sufficient coverage and in a more joined up manner. Indeed I feel all five of the ad hoc select committees I have sat on, (ageing population, affordable childcare, social mobility, financial exclusion and Inter-Generational fairness) would have benefitted greatly from being discrete inquiries sitting within a broader social policy thematic committee which built upon a wider corpus of policy and research knowledge rather than approaching each new inquiry as from a blank piece of paper.

I felt that such a social policy based committee could develop a deep understanding of demographic trends, changing social attitudes and undertake horizon scanning to identify new social issues, thereby ensuring that it was ahead of the curve on key social issues which are of direct relevance to people’s everyday lives. My clear sense is that the Ad Hoc Committee on Inter-Generational Fairness (which I proposed) very much fits into this category. I continue to feel that this approach would allow the House of Lords to reach out to people in the country and appear a lot less remote. I do accept, however, that it would be possible to have one thematic covering the whole of domestic and social policy, although that would be an extraordinarily wide remit.

I am struck by the fact that there hasn’t yet been much discussion and debate in the seminars about a broad structure of the type that has been proposed above, and what little debate there was has been focussed primarily on the issue of what might happen to the Science and Technology Committee. Whilst that’s clearly important, it’s by no means the whole story and I have been disappointed by the lack of focus so far on broader social policy issues. With this in mind, would it be possible to have a seminar looking specifically at social and domestic policy and the wider case for broad, thematic Standing Committees?
As I said last year, I fully recognise the need for House of Lords Select Committees not to duplicate the business of Commons Select Committees but feel that around half a dozen broad based, cross cutting committees of the type I have suggested above would allow the House of Lords to do what it does best i.e. **look at cross-cutting issues which range across a number of Government Departments and take a longer term, strategic perspective – often a 10 to 15 year perspective.**

March 2019
One of the areas that needs sorting out is the role of the House of Lords and its Select Committees in Financial and Taxation matters. There are quite rightly restrictions on our powers to amend or delay legislation in this area and I have no wish to change this. However as I understand the position is that the House of Lords can freely debate these matters but the sub-committee of the Economic Affairs Select Committee has a restriction imposed by the House of Lords itself so it cannot discuss rates of taxation etc. This as I understand was part of a deal which Gordon Brown insisted on before he would allow the Treasury to cooperate with the Select Committee. It is a nonsense and in practice the sub-committee can usually find ways of circumventing it to say what it wants. Some year ago I gave evidence on this to a Joint Committee of both Houses chaired by Jack Cunningham which your office could look up for you to read. The restriction should be amended.

January 2018
We welcome the opportunity to submit evidence to this inquiry. This submission sets out a proposal for the creation of a new Lords Select Committee to look at the places we live in, the communities we build, and how we use the land around us. We do not suggest a specific title for this new committee. However, a Select Committee on Place Shaping or Creating Great Places could be two possibilities.

In this submission, we suggest what such a committee’s remit could cover. We demonstrate the case for this new committee by setting out the current and long-term relevance of this remit. We demonstrate our belief in its suitability to the manifest expertise of the House of Lords. This submission does not offer any judgement about the nature, characteristics, and effectiveness of the current committee system. We are aware that you have already received considerable written and oral evidence in this regard.

The case for the new committee and its remit

All the major UK political parties share an ambition to build around 300,000 homes a year. Despite this consensus, for decades, we have been falling well short of this target. So much so, that the National Housing Federation and Crisis recently identified a shortfall in England of four million homes. Efforts to build the homes we need will continue, rightly, to dominate policy making and analysis.

While we suggest that current and future barriers to house building should not be out with the committee’s remit, its major focus should instead be place making. In the effort to drive up supply of new housing for current and future generations, we agree with the House of Lords’ adhoc Select Committee on the Built Environment (2016) that a holistic view is beneficial. Where should the new homes go? What form should the new housing take? What makes a great place to live? Are local councils and other locallybased anchor institutions like housing associations sufficiently empowered to be the leaders and guardians of place? Do we have the land, finance and skilled labour to achieve the scale of delivery the nation needs? How do we improve existing places to make them great, and build new great places?

Under this broad remit, we envisage the new Select Committee wishing to also consider:

- the impact of place and the built environment on physical and mental health and social and cultural life,
- sustainable development,
- quality and design,
- location,
- planning powers,
land use, and how to value and classify land,
impact on the lived experience of residents, including their voice within their communities,
the actors involved in shaping and sustaining great places,
ability to address intergenerational unfairness,
infrastructure support for development, and other components,
ability of places to adapt and expand over time.

In going beyond a remit of the built environment, a committee on place or place shaping will be able to look at the social, health, economic and infrastructure aspects that interact with housing, land and people to build great places. Places without appropriate services or spaces and structures for social interaction and social relationships, for example, are more likely to lead to social isolation and depression, which significantly increase mortality rates (Marmot, 2010). The role of councils, with powers over many of these elements, and other local anchor institutions like housing associations, will be fundamental to the comprehensive consideration of place shaping issues.

Suitability of the new committee to the House of Lords

The cross-cutting nature of the proposed committee’s suggested remit would make it suitable to the Lords’ tradition of non-departmental Select Committees. This would also be a way of retaining its distinctiveness to the Commons’ Housing, Communities and Local Government Select Committee, which we believe is important. We are keen to advocate a complementary committee, not a duplication.

The House of Lords currently lacks a permanent committee focused on domestic social policy. We would argue that the remit we envisage would bring large swathes of policy into scope, efficiently under a single umbrella, for deliberation and scrutiny. In covering the interaction between a broad range of policy themes, we would also argue that such a committee would fill a scrutiny gap left by the tendency to look at issues in siloes.

Such a committee would play to the strengths of the membership of the House of Lords. The committee’s remit would reflect the breadth of members’ expertise, in local government, housing, planning, design, architecture, infrastructure, development, social structures and public health. Social scientists, sociologists, anthropologists and planners could bring their knowledge and experience to bear. Questions of place are universal, but play out differently in urban and rural, northern and southern contexts. We envisage the committee having a UK-wide framework. It should look at experiences in the devolved nations, and what policy lessons might be transferable.

The breadth of the Lords’ membership will enable all perspectives to be given informed consideration. Significant numbers of Peers have a current or historic association with local authorities and housing associations. Both act as local economic anchors, embedded in their communities. This deeply rooted sense of place, the social ties which develop, the investment by tenants and constituents of meaning into places, are at the heart of the sorts of issues that we feel such a committee should consider. Able to investigate national policy and funding
decisions, the committee will be well-placed to recommend necessary reforms to empower, enable and support councils and other locally-based actors such as housing associations to meet their aspirations for their communities.

**A committee for today and tomorrow**

A committee on place shaping could appropriately address today’s pressing concerns, for example, how to meet a housing need gap of four million homes, or how to ensure interventions into the public realm bring existing and prospective residents on side. It would also enable questions of sustainable development and future proofing to fall within scope. For example, housing for older people, smart cities, carbon neutral homes and transport, modern methods of construction, shared living, and developments in flexible working.

Creating successful ‘places’ is more than just building quality houses, important though these are. It requires the provision of all the facilities for a good quality of life (RICS, 2016). We hope that the Liaison Committee will respond positively to our proposal to apply the Upper House’s varied and detailed knowledge to the many influences which shape our varied communities and make great places.

**July 2018**
My general contention is that - on the assumption that Brexit goes ahead and that as a consequence the key role of the House of Lords EU Sub Committees disappears – we have the opportunity to redeploy those resources onto a comprehensive range of permanent policy Committees.

It is recognised that the timescale of the rundown of activity on EU Affairs is not predictable and that the process may well take place in stages. That in turn would mean that the kind of radical proposals I am putting forward would need to be phased rather than introduced all at once. Even so it would be important that the House accepted early on the principle that there should be more policy committees and that their coverage would be as comprehensive as resources and planning allowed.

The Need for a Structure of Lords Policy Committees

The House of Lords’ two key constitutional functions are:

- to scrutinise in detail and propose revisions to all proposed legislation covering the whole range of government activity and all government departments (except we do not scrutinise or revise Finance Bills);
- to hold the government to account for policy, delivery and administration - likewise across the whole range of responsibility of Central Government departments and agencies.

The House has a considerable reputation for conducting both of these functions with great diligence and considerable expertise. Yet we do not have ongoing policy Committees to back up those roles.

It is bizarre that now the House consists overwhelmingly of members appointed for their experience and expertise in fields covering the whole range of Government policy and responsibility – in industry and business, education, health, social and legal affairs etc – that their expertise has not been reflected in the House’s Committee structure. Indeed – whilst I personally am an unrepentant supporter of a predominantly elected second Chamber – I have always recognised that one of the most important justifications for maintaining an appointed House is the level and range of expertise and life experience that the modern House of Lords represents. Yet most of that experience is not used in the most obvious and effective way in our current Committee structure.

The release of both staffing resources and experienced members from the current role of the EU Select Committees gives us the opportunity to address this dilemma.

Of course there have been some changes in the last twenty years as the House has recognised the logic of developing high quality policy scrutiny in key areas.
In 2000 we established the Economic Affairs Committee and the Constitutional Affairs Committee both of which have been hugely successful in both enhancing the House’s important role through rapid constitutional and economic change – and making effective use of members experience in these fields.

And in 2016 we established the International Relations Committee – this following a previous consultation on Committee structure. I was one of many advocating such a move.

We also (for slightly odd reasons) in 2007 established a Communications Committee.

All these Committees have been successful in delivering authoritative work of use to members, successive governments and interested stakeholders – and to a degree the media and general public.

These ‘recent’ changes have still left whole swathes of public life and of government responsibility untouched by House of Lords Committees. Indeed the vast majority of Government decisions are not covered. And likewise there are whole swathes of expertise amongst members of this House which is not put to use in our Committee structures.

I am of course not arguing for Committees of the House to consist solely of ‘experts’. All these relatively new Committees have consisted of members who have experience in these areas combined with others whose history is in other walks of life and have worked well as a result.

Role of the European Union Committees

Much of the committee staff resource and much of the talent and experience of Members has been deployed (since 1973) on the House of Lords EU Select Committee and its six Sub Committees. The work this structure has done has been invaluable in scrutinising not just Commission proposals for EU legislation and regulation but also assessing EU and UK Government policy and strategy in a wide range of areas. That role is now coming to an end in March 2019 (or possibly December 2020.

We now have the opportunity to deploy both staff and member resources to new tasks.

Suggestions for a new permanent Policy Committee Structure covering the Range of Government Policy

We need a comprehensive structure of Committees each of which will be responsible for overseeing Government policy and wider developments in their areas in the economy and society. I set out a proposal for a comprehensive range of Committees at TABLE A.

TABLE A

PROPOSAL FOR STRUCTURE OF PERMANENT POLICY COMMITTEES OF THE HOUSE OF LORDS
<table>
<thead>
<tr>
<th>Policy Committee</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional and Human Rights *</td>
<td>Constitutional affairs, devolution, equalities, human rights</td>
</tr>
<tr>
<td>Economic Affairs*</td>
<td>Macroeconomics, public finances, income and wealth</td>
</tr>
<tr>
<td>Education and Culture</td>
<td>Schools, further and higher education, vocational training, creative sectors, arts, media, sport</td>
</tr>
<tr>
<td>Environment and Land Use</td>
<td>Climate change, natural environment, planning, agriculture, food, air, water, marine and fisheries</td>
</tr>
<tr>
<td>European Union ~</td>
<td>UK/EU Relations post Brexit</td>
</tr>
<tr>
<td>Industrial and Employment Strategy</td>
<td>Industrial Strategy, business, employment and employment conditions, regional policy</td>
</tr>
<tr>
<td>Infrastructure</td>
<td>Transport, energy, communications, digital infrastructure</td>
</tr>
<tr>
<td>International Relations*</td>
<td>International and Commonwealth affairs, development, defence and security</td>
</tr>
<tr>
<td>Justice and Security</td>
<td>Courts, policing, criminal law, migration, physical and digital security</td>
</tr>
<tr>
<td>Regulatory Policy</td>
<td>Better regulation, sector and other statutory regulators, consumer and competition</td>
</tr>
<tr>
<td>Science and Technology</td>
<td>Scientific development, R&amp;D, technological advance and change</td>
</tr>
<tr>
<td>Social Services and Social Policy</td>
<td>Health, social care, housing, social security, social mobility</td>
</tr>
<tr>
<td>(International) Trade</td>
<td>International trade treaties, export opportunities, customs arrangements, tariffs WTO.</td>
</tr>
</tbody>
</table>

*broadly existing Committee

I suggest that these Policy Committees should also be responsible for considering – hopefully increasing numbers of – Draft Bills; and Bills subject to post legislative scrutiny in their fields.
We should not duplicate the Departmental structure of Select Committees in the House of Commons but rather allocate Committees broader areas of policy which would cut across departments. Different configurations are of course possible - and of course they could be changed each Parliament as no Parliament can bind its successor. However this is simply my proposal for an eventual comprehensive coverage by permanent Policy Committees.

Others will no doubt have different configurations and combinations but the key issue is that the committee structure should cover the whole range of government policy and administration (aside from taxation).

I have retained a European Union Select Committee (without its subcommittees) because there will be an ongoing complex relationship between the EU and the UK post Brexit. However eventually this role might merge with the International Relations Committee or be divided between that Committee and the proposed International Trade Committee.

I have also included a somewhat different proposition for a new Regulatory Policy Committee. This is partly to address the issues that will inevitably follow the passage of the EU Withdrawal Bill as regards the use of Henry VIII powers but it would also address the need to have clarity of approach to regulatory reform (now we can no longer blame the EU for much of our regulatory approach). There will inevitably be pressures both for tighter regulation and for deregulation once we have ‘taken back control’. Meanwhile there is some anxiety about the diminution of independent oversight of regulatory proposals with an apparently reduced role for the independent Better Regulation Committee. In addition there is a need for parliamentary oversight of statutory regulators; a few years ago there was an ad hoc committee on the role of economic sector regulators but this role needs to be institutionalised so that parliament has oversight of - and can conduct inquiries into - the performance of all statutory regulators.

This committee would be responsible for oversight of the general policy and approach to regulation. It would not take over or clash with the role of the Delegated Powers Committee which assesses the appropriateness of specific delegations in new primary legislation, nor the role of the Statutory Instruments Committee in assessing the merits of specific new SIs – nor indeed the role of any new Lords body sifting proposals for delegated legislation arising from the EU (Withdrawal) Bill.

The proposed list also envisages the splitting of the functions of the Communications Committee between two policy committees – Education and Culture and Infrastructure; with internal HoL communications issues going to the Administration Committee.

Whilst the proposal aims to create a comprehensive structure of Policy Committees the remits proposed in TABLE A could be modified and it would be possible to arrange a phased introduction of these Committees over say three Parliamentary sessions.

Resourcing and Membership
Taking into account the retention of the Economic Affairs, Constitution Affairs and International Relations Committees and the abolition of the EU Sub Committees and the Communications Committee, this structure if we assume 12 members per Committee would approximately involve roughly the same number of Members and the same staff resources as the pre-existing committee structure. In staff terms it might involve marginally more with more specialised expertise but that could be offset by having fewer ad hoc Committees.

I commend these proposals to the Liaison Committee Review.

LORD WHITTY

Attached at ANNEX I are further comments on the specific Questions set out in the Consultation Paper.
ANNEX I
ANSWERS TO SPECIFIC QUESTIONS

Key Questions

• How can Committees add most value to the scrutiny work of the House of Lords as a second chamber?

• What are the strengths and weaknesses of the current House of Lords Committee structure and what should change?

*Its main strength is the solidity of the evidence based approach and the effective use of the expertise of Lords members combined with the skills of the clerks and policy advisers.*

*Its main weakness is that there are whole swathes of public life and government activity that the present structure does not touch. This means the relationship between episodic legislative scrutiny on particular bills, however diligent, is not linked to overall strategic policy assessment.*

• How can House of Lords Committees develop a national conversation to complement their inquiry and scrutiny work?

• How can House of Lords Committees maximize their impact inside and outside the House?

*We need to organise public seminars on significant Reports or groups of reports currently for example on our Brexit Reports); this has been done occasionally but mostly we rely on publication and media coverage to evoke interest in civic society*

• How can House of Lords Committees promote inter-parliamentary dialogue both within and outside the UK?

*On all inquiries we need to ensure we engage with Committees in the Devolved Assemblies. With Brexit we will need to re-evaluate our role on COSAC – probably retaining observer status whilst also increasing bilateral contacts with parliamentary committees in the major European countries and beyond in Commonwealth parliaments and the USA.*
**Subject matter and structure**

An overriding question is: How should the structure and working practices of House of Lords committees be rationalised?

To help answer that question:

1. Should the current committee structure be changed?
2. What changes are needed in the wake of Brexit? Are committees needed to scrutinise the UK-EU relationship in future, and if so how?
   
   *See main submission.*

3. To what extent does it remain desirable to avoid overlap with the House of Commons?

   *We should not seek to match or duplicate Commons departmental structures but there will need to be some overlap of subject matter. Liaison between Lords and Commons staff and Committee chairs could be improved.*

4. What is the best balance between ad hoc committees and sessional committees?

   *My proposition for permanent policy committees would reduce the need for ad hoc Committees but not eliminate it. We would still probably need two or three ad hoc committees per year. The one on AI at the moment could not be captured in a policy committee structure.*

5. What is the best balance between short and long inquiries?

   *This will vary. Committees will need to judge. But in general we probably over emphasise longer inquiries when shorter ones might have been more impactful.*

6. What should be the duration of most committees (eg a two or three year term)?

   *The Committees should be established for a full parliament and individual appointments – including chairs – for three years. Two years is too short to develop expertise and ethos. However initial appointment to a new structure should be staggered with some having shorter periods so that the whole committee does not disappear at the same time. This will be a delicate but short term problem.*
Ad hoc committees

In relation to ad hoc committees, the Liaison Committee has considered proposals for new committees against these criteria:

- Makes best use of the knowledge and experience of members of the House;
- Complements the work of House of Commons departmental select committees;
- Addresses areas of policy that cross departmental boundaries; and
- That the activity proposed should be capable of being completed in one year.

7. Are the present criteria for examining proposals for ad hoc committees the right ones?

Broadly yes. If my proposal for comprehensive policy committees were adopted the criteria should also be that the issue covers more than one policy committee remit.

8. Are the current arrangements for following-up committee reports (especially those of ad hoc committees) appropriate?

We do not do enough follow up. This ought to fall to the Policy Committees – as could post legislative scrutiny - in future.

9. What is the correct balance between the flexibility of having new committees each year and more sessional committees?

As indicated I favour more sessional committees – but we will still need 2/3 ad hoc committees as well.

10. How should the work of post-legislative scrutiny committees be developed?

This should be an explicit part of the remit of proposed policy committees.

Engagement with the public

There has been a substantial increase in media coverage of Lords committees in recent years. Committees began using Twitter in 2014. Committees have also engaged with hard-to-reach groups by releasing easy-read versions of some reports. There have been additional efforts to engage with children and young people through a variety of methods, including online surveys.

11. How can Lords committees engage more effectively with the public and media to encourage a national conversation?

We should encourage all Committees to hold regular physical and virtual meetings with their stakeholders and the general public.
during and after each significant inquiry. To achieve that we should reduce concentration on producing weighty tomes of reports – though we will still need to produce that kind of report – and focus more on communicating our findings via more user friendly and generally electronically based means.

12. What has been successful in increasing the levels of engagement on social media, and what more could be done?  
   Evidently this has been successful to a degree with for example the Brexit reports. More structured digital engagement could help.

13. What new offline channels could be used to engage with the public?  
   See above

14. How should committees engage with stakeholders in evaluating their activity?  
   Organise at least once each year a physical meeting and a digital engagement with stakeholders – combining the two may be more difficult.

Chairmen and members

15. Are the current arrangements for the appointment of Committee Chairmen and members satisfactory, including the “rotation rule”?  
   Appointment by the ‘usual channels’ is difficult to justify in theory but in practice I cannot see we can do it any other way. There does however need to be some inhibition about politically vindictive removals.  
   See above on rotation.

16. What is the ideal number of members for investigative and scrutiny committees?  
   10-12 maximum. Anything bigger is unmanageable.

17. Should there be a written role description for Committee chairmen and members to clarify expectations from the outset?  
   In theory probably yes – but difficult to draft much beyond the existing guide.

Committee effectiveness

18. Is there anything committee staff could do to support chairmen and members to be more effective in their committee work?  
   In general staff perform a miraculous job. Policy Analysts could perhaps be more assertive in proposing background reading for Members and Chairs – and perhaps performing induction
sessions. *Then by exploring innovative ways of communicating the Committee findings.*

19. How can the timeliness and content of Government responses be improved?

*Propose and adopt a Resolution of the House that written responses shall be within two months of delivery of the report – otherwise the S of S will be hauled before the Committee.

*Designate one Thursday per month for consideration of Committee Reports and keep it inviolate.*
Submission from Dr Sarah Wollaston MP, Chair of the Liaison Committee, House of Commons to the House of Lords’ Liaison Committee’s review of investigative and scrutiny committees.

Thank you very much for your invitation to submit evidence to your Committee’s inquiry on the future of House of Lords investigative committees. I have set out some comments below based on my reflections having been a member of the Health Select Committee for 7 years, its Chair for 4 years, and as Chair of the Commons Liaison Committee since November 2017. I should note that this submission is based on my informed but personal point of view. I have not yet had the opportunity for a full discussion on this topic with all the members of the Commons Liaison Committee.

I would be happy to be consulted on early drafts of any blueprint for reorganised Lords’ Committees if that would be helpful. I will be following the progress of your review with interest, and look forward to hearing your views on how the two Liaison Committees might work together in the future.

Sarah Wollaston MP  
Chair, House of Commons Liaison Committee

Memorandum from Dr Sarah Wollaston MP, Chair of the Liaison Committee

1. The review’s terms of reference pose the question “To what extent does it remain desirable to avoid overlap with the House of Commons?” While I would suggest that it is always wise to try to avoid duplication, I think that committees in the two Houses can complement the others’ work by bringing a greater range of perspectives to an issue. Nevertheless, it is widely recognised that many members of the Lords bring great expertise and experience and are often less constrained by party politics.

2. The departmental arrangement of Commons committees is settled, and I do not feel that it would be necessary to duplicate this in the Lords but rather to complement and in particular to look at cross cutting areas which may span departments. The Commons’ exclusive responsibility for the raising and spending of public money should be recognised and respected. Any reorganisation of Lords Committees could seek to build on the special strengths of the Lords in the scrutiny of legislation and delegated legislation. Whatever arrangement of Lords’ committees is eventually arrived at, complementarity is what we should seek to achieve and this requires a degree of coordination. To date, there has not been much opportunity or structure for dialogue between the Houses’ committees. There are of course, joint-committees of both Houses and I hope that there will be further opportunities to develop this especially for pre-legislative scrutiny and Parliamentary Commissions, but there would be benefit in greater communication and coordination between permanent subject committees. For example, we could establish quarterly or biannual meetings of the two Liaison committees as part of encouraging more reciprocal relationships between committees.

3. Committees can work more effectively and have greater influence by working together and this has become an increasing part of the work of Commons committees. This could extend to the potential for greater collaborative working between committees of the two Houses. House of
Commons Standing Order 137A(1)(b) does provide for joint meetings between Lords and Commons committees but, so far as I am aware, has never been used for such. The Liaison Committee has recently published a report that seeks to enhance existing powers for committees to work jointly. Nonetheless, we must recognise that the cultures of the two Houses are very different and that the pursuit of joint working needs to add benefits to both. It should not be expected to become the general pattern of working, but there is merit in exploring the benefits and how they might be realised.

4. In particular, benefits could come from joint working between the Commons and the Lords on specific topics. As well as capitalising on the evidence and cross-party way in which committees work, it could contribute towards establishing a consensus on policy areas where difficult decisions are required. For example, more than a hundred MPs, twenty-one of whom are members of the Liaison Committee, have recently supported a request the establishment of a Parliamentary Commission on Health and Social Care involving members of both Houses. The work of the Lords Committee in this area is very valuable. This is just one example of a subject area where the value of a coordinated cross House approach could deliver benefits.

5. A factor that must be considered in proposing future enhanced joint working between committees or the establishment of new commissions or committees across the Houses, is resources. The time commitment involved in committee work for MPs is substantial and the impact of any additional meetings on Member time should be borne in mind. While complementarity and enhanced joint working may make scrutiny more efficient overall, the practical implications need to be planned for. This extends to the staff resources available. In the Commons we are already questioning whether the current staff resourcing level is adequate to support effective scrutiny. Any development of greater joint working between the committees of the two Houses would need to be resourced as there is little prospect of committee teams having capacity to take on new, or extend existing work, within current arrangements.

6. As a minimum, and without additional resource, Committees of the two Houses could do more to share best practice. There is – rightly – much interest in both Houses in examining how we can broaden the evidence base our Committees receive and increase the diversity of witnesses giving oral and written evidence. The Liaison Committee is going to consider this matter next week, including looking at statistics for the gender diversity of witnesses for the first six months of this parliamentary session. Staff in the Lords and Commons Committee Offices share best practice but this is an area where the two Houses could learn more from each other. The Commons Committe Office has made much progress on other forms of outreach and engagement and has identified it as a priority committee activity.

April 2018

[3] Draft House of Commons Committee Office Strategic Narrative, April 2018
Lord Vaux of Harrowden, Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe and Lord Thomas of Cwmgiedd.

Members of the EU Financial Affairs Sub-Committee: Written evidence (RIS0071)

Submission to be found under “Lord Bruce of Bennachie, Lord Butler of Brockwell, Lord Cavendish of Furness, Lord de Mauley, Lord Desai, Baroness Falkner of Margravine, Lord Giddens, Baroness Liddell of Coatdyke, The Earl of Lindsay, Baroness Neville-Rolfe and Lord Thomas of Cwmgiedd and Lord Vaux of Harrowden: Members of the EU Financial Affairs Sub-Committee: Written evidence (RIS0071)"