1. The topics I will address relate to the following questions from the Call for Evidence.
   - **Creating good law** question 3: Are there improvements that could be made at this stage of the process that would result in law that is more easily understandable by users and the public?
   - **Technology** question 7: How could new or existing technologies be used to support the development and scrutiny of legislation?
   - **Public involvement and engagement** question 10: What mechanisms could be used to increase or improve engagement with the public and stakeholders?
   - **Information provision** question 11: How effectively is information about potential legislation disseminated at this stage in the process?
   - **Parliamentary involvement** question 14: Is there scope for Parliament or parliamentarians to be more involved at this stage of the legislation process?

2. I have chosen to address these particular questions because they are linked together by a wider and pressing concern with democratic legitimacy, and, with particular reference to the House of Lords, what can be termed ‘non-electoral legitimacy.’ In submitting this evidence, I will draw on my research and publications in the fields of deliberative democracy and British politics, in addition to more recent research on new technologies. Following a preamble regarding the need to protect in some respects the present character of the House of Lords, I proceed to consider how the Lords could carry out the development and scrutiny of legislation more effectively by means of deeper and wider engagement with the public.

3. I have argued in *The Political Quarterly* that second chambers such as the House of Lords are inherently controversial by virtue of their antagonistic role within political systems. Since they usually lack the obvious electoral legitimacy that first chambers typically enjoy, they must take care not to overreach public and political perceptions regarding the reasonable use of their powers – perceptions that usually take as their base more fundamental ideas about the legitimacy of second chambers’ composition and powers. In essence, second chambers act as a check on first chambers, but are themselves checked by public doubts about legitimacy.

4. That such doubts exist regarding the House of Lords cannot be doubted. A recent (October 2015) survey carried out by the Electoral Reform Society showed that only 10% of the public supports the status quo, while 48% desired an elected chamber and 22% backed wholesale abolition. Such views both inform, and are doubtless influenced by, widespread opposition to the present arrangements in the media and among political commentators and politicians, who frequently utilise intemperate language in railing against what is seen as an archaic affront to democracy. Some commentators criticise the size of the upper chamber, but most focus upon the fact that its members are unelected. The prevailing mood thus exemplifies the ethos that

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Anthony King has described as ‘democracy rampant’, or the view that electoral processes are the only legitimate basis of political authority.

5. As against such views, I have argued that a concept of non-electoral legitimacy can usefully be developed by drawing on theoretical resources in political science (e.g. concepts of representation, bicameralism, and deliberative, or reason-governed, democracy) and by applying such concepts to the House of Lords since the 1999 reforms. The post-1999 chamber has typically been more representative of public views than the Commons, and has enabled more deliberative and less partisan debate than is typically found in the Lower House – a feature which has also allowed peers to undertake representation of interests and groups outside party political lines. More recently, in a political context in which the internal travails of political parties have greatly weakened official opposition to the government, the Lords can be seen as the de facto opposition. Taken together, these and other features of the Upper House suggest that many critiques of the Lords effectively misunderstand and/or misrepresent the role and functions of the second chamber in our parliamentary system. Furthermore, replacement of the Lords with a wholly or partially elected second chamber would likely lead to serious new constitutional questions. The inherently controversial character of the Upper House would not be negated, but merely transformed, by such reforms, which would also jeopardise if not eradicate the presence of expertise and experience in the Lords, as I recently argued in a piece for the British Medical Journal.

6. Since the Lords not only plays a vital antagonistic role within the present arrangements but also represent a crucial source of expertise and experience within the Westminster system, ensuring its survival in a recognisable form is one of the most pressing – and also one of the most neglected – constitutional issues in contemporary politics. The most effective way to ensure its survival is to improve public and political perceptions of its (non-electoral) legitimacy, thus blunting populist attacks. In my view, this would involve a two-fold strategy: (a) undertake small-scale, practicable reforms (e.g. reducing the size of the chamber, restraining Prime Ministerial patronage); and (b) enact ‘supply-side’ reforms through which the Lords could make itself more relevant and more present in voters’ lives. For the remainder of this submission, I will focus on (b).

7. Supply-side approaches differ from demand-side approaches, which tend to characterise the perceived crisis of British politics as resulting from media cynicism and public misunderstanding of a political class working hard to satisfy rising public expectations. By contrast, supply-side approaches emphasise the need for politicians to engage a more diverse group of stakeholders in policy-making and to revitalise democracy through new accountability mechanisms. The emphasis placed by many peers upon public accountability and ‘surrogate’ representation (i.e. politicians


http://blogs.bmj.com/bmj/2015/03/31/lords-reform-bad-news-for-expert-scrutiny-in-westminster/

representing interests outside their own, or their parties’) suggests that an opportunity exists for the Lords to engage more broadly and deeply with the public. In my view, deeper engagement of this kind would improve the effectiveness of the Lords in terms of developing understandable law, disseminating information, involving a wider range of stakeholders in policy formation, and making better use of new technologies. In the following material, I canvass some potential avenues in this regard.

8. Useful strategies for the use of technology to enable ‘digital democracy’ are found in the 2015 Report of the Speaker’s Commission for Digital Democracy.\(^5\) While the report focuses on the House of Commons, many of its recommendations are also applicable to the Lords. The Lords would also benefit from ensuring that ‘everyone can understand what it does’ by engaging in a new communications strategy to ensure both increased public awareness of the role of the Lords and the peer, and increased public participation in the work of the Lords. Useful specific recommendations in the former regard include: simplifying parliamentary language; developing digital tools (e.g. jargon busters) to help readers/listeners understand what is happening; piloting a new procedure for amending bills so that amendments can be written, debated and voted on in plain English; and using more infographics and visualisations on the House of Lords website and in parliamentary reports to aid understanding. Future developments in this regard could also include allowing members of the public to use electronic devices in the House of Lords chamber and Westminster Hall (following the three-month trial period in 2015 in the Commons) and experiment with new ways for members of the public to put forward questions for peers using social media platforms such as Twitter. Additional technological strategies could include encouraging greater use of e-petitions and experimenting with the capacity for viewers to engage in real-time polls regarding issues being debated.

9. A further simple expedient to increase engagement with the public would be to develop the House of Lords website in order to ensure that every Member has an active email address and up-to-date biography, with cross-referencing across peers to shared areas of interest and activity. Likewise, peers should be encouraged to engage much more frequently and consistently with social media (e.g. Twitter, YouTube) and through portals such as Lords of the Blog and Lords Digital Chamber, again with more effort made to link together peers with shared interests. Taken together, these measures would help to encourage members of the public to engage with content produced by peers and, where appropriate, to make contact with peers regarding specific areas of interest (thus mirroring the constituency MP model for extra-geographical and thematic topics). These approaches would also help to disseminate information more effectively, especially if undertaken in conjunction with a ‘jargon-busting’ strategy.

10. A dedicated House of Lords app (e.g. ‘LordIt’, ‘PeerPressure’, or something similar) could be developed to bring a number of these technological initiatives together in a...
user-friendly, engaging manner. If advertised via multiple channels, this alone could drive substantial additional engagement with the work of the Upper Chamber. It would be preferable if this app were to be ‘co-designed’ – i.e. designed with the ongoing involvement of members of the public in addition to peers and technologists. As I recently argued in an academic paper, co-design processes are vulnerable to a number of pitfalls that can limit their effectiveness (e.g. the tendency to recruit self-selecting participants rather than those with neglected voices). Nevertheless, some element of inclusion is undoubtedly better than none, and measures can be taken to improve inclusion of neglected stakeholders in both initial and future iterations.

11. Co-design processes can also be powerful in terms of fundamental topics such as linguistic clarity and the avoidance of jargon. Consequently, I would suggest initiating ongoing processes of public involvement in matters relating to developing legislation that is more easily understood by members of the public. Such engagement would not necessarily take place face-to-face, but could consist in a substantial group of volunteers who could read draft legislation and identify issues regarding clarity.

12. While digital technology is very useful in terms of generating wider engagement, it is not necessarily suitable for generating deeper engagement. The Speaker’s Report, for example, rightly recognises that online forums are ‘not very good at large-scale deliberation.’ A different kind of approach, and one which resonates with the deliberative character of debates in the Lords, could centre on a version of the ‘deliberative polling’ method pioneered by James Fishkin, Bruce Ackermann, and others. As Fishkin and Luskin (2005) note, democracies face the challenge of how to reconcile the seemingly opposed values of political equality and deliberation. As political equality has expanded (e.g. through the extension of suffrage, polling, and referendums), so political deliberation has receded. ‘Most ordinary citizens’, they remark, ‘know and think remarkably little about politics... Thus decisions by referendum involve far less deliberation than decisions by legislatures.’ The question thus arises as to how deliberation – the weighting of competing considerations through informed, balanced, conscientious, substantive and comprehensive discussion – can be incorporated into contemporary political systems.

13. This general concern aligns with the specific need to enable greater engagement between the House of Lords and the public. Deliberative polling, in its original formulation, exposed random samples of citizens to balanced information, encouraging them to weigh opposing arguments and then express their considered opinions. (It thus revitalises the Athenian model, in which groups of several hundred citizens chosen by lot deliberated and decided together.) In the case of the House of Lords, however, depth of engagement rather than statistical representativeness of the population at large would more likely be the principal aim. In this context, I envisage a number of deliberative events in which peers would engage with

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members of the public along both geographical (e.g. regions and cities within the UK) and thematic (e.g. ‘floating constituencies’ constituted by specific interest groups, ethnic backgrounds, age groups, genders) lines. In such events, as with Fishkin’s deliberative polling approach, participants would be sent carefully balanced briefing materials, laying out the major arguments for and against specific policy proposals. These could then be discussed in deliberative events at which a small panel of peers would act as moderators and facilitators. Participants (including peers) would be asked to answer questions before and after the event; these opinions would also be publicly discussed and reflected upon in order to demonstrate the impact of deliberation upon opinion-formation, and to communicate this aspect of the work of the House of Lords. By utilising deliberative polling, the Upper Chamber would be able to engage deeply with, and gain insight from, members of the public who may not normally engage in political deliberation. The House of Lords would also become a more visible part of the political landscape, both in terms of issues considered and in terms of geographical location.

14. Organising and hosting deliberative events, as with several of the above suggestions, would incur additional costs. Some or all of these costs could be met by reducing the size of the chamber, which would also improve public perceptions of effectiveness and legitimacy.

15. In conjunction with small-scale reforms, the above suggestions would help to address challenges relating to public, media and political perceptions of legitimacy. In turn, this would help to safeguard the vital role of experience and expertise in the present House of Lords while also presenting important opportunities for citizens to become more involved in, and knowledgeable about, public policy and law-making.

15th October 2016