Review of Lords’ Select Committees. Blencathra Submission.

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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. (Paragraphs 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)
Review of Select Committees.  Blencathra submission.

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 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 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.
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 ordnance
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 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.

**Option2. 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 7pm 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 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 as 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 update 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 it’s 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.