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
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.