1. Committees are key to the efficiency of a legislature. They are, according to Saalfeld and Strom, ‘the most important component of legislative organization and preference aggregation’. They are created to fulfil particular organisational needs. Those needs may differ not only from legislature to legislature, but also from one chamber to another.

2. Excluding domestic committees, concerned with the internal arrangements of the institution, committees can be divided into two categories: core and strategic. Core committees I define as those that are intrinsic to fulfilling the key functions of a chamber, in the case of the UK Parliament legislative scrutiny, scrutiny of government, and giving voice to the concerns of citizens. Strategic committees are those that are established to fulfil tasks which complement the core committees and which fill a strategic need. In the case of UK Parliament, they will enable the Lords to undertake tasks that the elected House is unlikely to have the political will and sometimes the time and resources to undertake.

3. The legitimacy of the House of Commons and its members derives from election. MPs are keen to be re-elected. This drives their activity in between elections. It shapes their approach to committees. Committees

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may be seen as agents of individual members. The legitimacy of the House of Lords derives from what members do collectively to fulfil the tasks of the House. Here, committees may be seen as agents of the whole House. Whereas MPs individually engage in ‘look at me’ activities, peers engage in activities designed to contribute to the reputation of the House. This distinction is key to driving recommendations for reshaping committees in the House of Lords.

CORE COMMITTEES

4. In respect of core committees, there are two principal gaps in the House’s fulfilment of its key functions. In terms of legislative scrutiny, the House has some sessional committees that examine Bills for specific purposes (constitutional implications, delegated powers), but there are no dedicated legislative committees, nor means of subjecting Bills (other than in respect of the purposes mentioned) to probing through the taking of evidence. In terms of subjecting government to scrutiny, there is no series of committees akin to the comprehensive set of departmental select committees in the Commons.

5. It would be inefficient, and may invite occasional tensions, were the House to duplicate the work of the House of Commons. However, there is a case for the House filling the gaps in its scrutiny of Bills and of government. The Constitution Committee in its 2004 report on *Parliament*

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and the Legislative Process recommended that every Bill at some stage during its passage be considered by an evidence-taking committee.\textsuperscript{3}

Since then, the House of Commons has introduced Public Bill Committees.\textsuperscript{4}

These committees are evidence-taking committees for Bills that are introduced in the Commons. However, Bills starting in the Lords are not subject to evidence-taking by Public Bill Committees and hence go through Parliament without being tested through the medium of an evidence-taking committee.

6. I would therefore recommend that Bills introduced in the Lords be referred after Second Reading to an evidence-taking committee, before reverting to consideration in committee of the whole House or grand committee. The period for consideration could be time-limited (no more than four weeks), so as not to unduly delay the Bill.

7. There is also a case for referring Bills that come from the Commons for the purpose of a second-stage scrutiny. Even if evidence is taken on a Bill in the Commons, it tends to be interested evidence and Bills can and do reach the Lords with parts not considered in the House.

8. Lord Stern has recommended the creation of committees to examine sectors of public policy, akin to the current coverage of policy undertaken by EU Committee sub-committees. These may the ideal committees for the purposes of considering Bills. The committees will already be in


existence, comprise members with a particular knowledge of the subject, and have available legal and policy advisers. It would be up to them as to whether to take oral evidence in addition to written evidence before reporting to the House.

9. The committees recommended by Lord Stern would cover the principal areas of public policy and be in a position to enhance not only legislative scrutiny, but also undertake scrutiny of government. As Lord Stern has stressed, they should not duplicate the departmental select committees in the Commons. The committees in the Commons are empowered to examine the ‘administration, expenditure and policy’ of departments. Although since given core tasks to fulfil, the focus has typically been policy. There is considerable scope for Lords’ committees to go for more cross-cutting inquiries and examining areas that do not engage the interest of MPs on departmental select committees. The work of the Public Administration and Constitutional Affairs Committee in the Commons and the Constitution Committee in the Lords, as well as the Science and Technology Committees in both Houses, shows what can achieved without undue encroachment or friction.

10. Core committees may also be deployed to enable the concerns of citizens to be raised. I address this below in the section on being outward looking.

STRATEGIC COMMITTEES
11. Strategic committees would enable the House to fill gaps left by the distinctive orientation of the Commons. In my previous memorandum, I recommended adopting a top-down approach in respect of sessional committees, determining (a) sectors that merit systematic parliamentary investigation, outwith those already covered by the Commons, and (b) doing so in the context of the distinctive attributes of the House (experience and expertise). In terms of the legislative process, it is important, following the 2004 report of the Constitution Committee, to examine the legislative process holistically. That is, considering Bills before they are introduced and Acts once they are in force and not simply the passage of a Bill from First Reading through to Royal Assent. For that reason, in my previous memorandum I advanced the case for a Legislative Standards Committee and a Post-legislative Scrutiny Committee.

12. The arguments for such committees I detailed in my memorandum. Such committees would fill a notable gap in legislative scrutiny and are not likely to be created in the Commons. The Commons is now close to saturation in terms of committee resources, but in any event lacks the political will, for the reasons adumbrated above, to pursue such committees. Unless established by the House of Lords, the statute book will continue to suffer from measures that are poorly drafted, rushed and having unintended, but sometimes unseen, consequences.

OUTWARD LOOKING
13. Filling gaps in terms of legislative and administrative scrutiny is necessary for the House to fulfil its core functions. Doing so is necessary, but it is not sufficient. It omits the third primary function, which is to give voice to and consider the concerns of citizens.

14. The legitimacy of the House derives from fulfilling the functions outlined above, but it is crucial to emphasise the limitations of seeing them purely in terms of legislative-executive relations. They need to be located within the prism of legislative-public relations. Both Houses act as a buckle, the Commons especially, between government and citizens. The ancient right of redressing grievances predates by centuries the emergence of parliamentary democracy. The link is much stronger now as a result of parliamentary elections, and with MPs pursuing with government not only constituency interests, but also the interests of particular constituents.⁵ That task has become significantly greater in recent decades and plays (along with electoral de-alignment) to the need of MPs to engage in activities that bolster their chances of re-election and their parties’ likelihood of electoral success. That has significant consequences for what MPs do, skewing their focus to what they do at the constituency level rather than what they do collectively as a House (as distinct from what they do as parliamentary parties). Nonetheless, there is an awareness on the part of the Commons to be more outward looking, reflected in the creation of the Petitions Committee and occasional online consultations by committees and by experimenting with a Public Reading stage of a Bill.

15. The demands on MPs mean that the capacity of the House and its committees to engage with citizens is developing, but limited. There is scope for the Lords to be more willing to engage with citizens, not least those who are organised as groups as well as those who may come together almost spontaneously (as with many who initiate and sign e-petitions) for particular causes. This may be seen both as a public good, in responding to the concerns of citizens, and as bolstering the legitimacy of the House. Whereas the House of Commons by virtue of election tends to take its legitimacy as given, the House of Lords cannot assume it, but rather has to earn it.

16. Apart from evidence-taking committees on Bills, the use of special committees (formerly ad hoc committees) provide a particular means of engagement. These have the capacity to be agile and focused, addressing particular and current concerns, as well as outward looking.

17. Why not allow members of the public to put forward proposals for such committees? The Commons permits citizens to petition them to take action, and (if 100,000 signatures are obtained) to consider holding debates. Why could not members of the public and interested bodies petition for the creation of a special committee to examine a particular issue of concern? It would be up to the Liaison Committee and the House to weigh the evidence on the quality of the case, though the number of signatures obtained would be a material consideration. The Committee could weigh the case made against the capacity of the House, in terms of
its experience and expertise, to undertake a short sustained inquiry on the subject.

18. Even if not inviting the public to have a direct input, a less radical, but nonetheless significant, option would be to ensure that members of the House, when making submissions for special committee inquiries, identify the support for the proposal from interested bodies. The criteria recently set for making submissions are valuable, but are notable for what they omit. The public are effectively left out of consideration. Of the 27 submissions made for special committees in 2019-20, only one indicates that the proposal is prompted by outside concerns (‘brought to our attention by Muslim women’) and another where there has been engagement with interested bodies (‘I have spoken to a number of youth leaders’). Another two make general reference to ‘widespread concerns’. Although it is not uncommon to refer to the importance of the inquiry for the public good, there is no indication that the proposal has wide public support or is one that is seen as a priority by citizens. This is not to argue that support by the public or affected interests should be privileged over other criteria (there are clearly cases where the subject matter may be of great importance, but not recognised as such by the public), but rather that it should be one of the criteria. Inviting members to consider consulting interested parties will be valuable in gauging support, and likely providing additional material to support the submission, as well as serving to distinguish the serious, developed proposals from the ‘here’s an idea I have just had’ submissions.
19. In terms of legislative scrutiny, not least scrutiny by evidence-taking committees, it may also be desirable to develop an electronic platform that would allow members of the public to comment on Bills as they go through the House. That will require a considerable input of resources, since to be effective it entails not only a passive element – creating a platform for comments – but also create the means for disseminating information about the measures being considered. Members of the public cannot comment on a Bill if they are not aware it is being considered. It may be desirable, indeed necessary, to appoint a committee to make recommendations as to how this goal may be achieved, similar to the inquiry undertaken by the Information Committee in 2009: *Are the Lords listening? Creating connections between people and Parliament.* Revisiting that report would in itself be valuable, not least to identify recommendations that have not been acted upon.

20. Such engagement may be seen as a good in itself, but it may also serve to tackle limited public understanding of Parliament. Not only is there limited understanding, but also a perception that Parliament is not working for citizens. Various reports of the Hansard Society have shown that only a small minority of the public believes that Parliament is working for them. The use of special committees may serve to address not only particular issues but also, in being seen to do so, enhance public awareness and support for Parliament. The annual appointment of such

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7 For example, its 2008 report, *Parliament and the Public,* found that only 19 per cent of those questioned thought that Parliament was ‘working for them’.
committees gives the House flexibility to respond to matters that merit informed but timely intervention.

CONCLUSION

21. There is scope for the House to reach a new paradigm in utilising committees to fulfil its core functions and to do so without a substantial increase in committee resources. Assuming the ‘Stern’ committees in resource terms replace affectively the EU Committee and sub-committees, the only additional permanent committees I advocate are a Legislative Standards Committee and a Post-legislative Scrutiny Committee. The value added by such committees would outweigh the limited cost involved.

22. If the House is to exploit the opportunity to review its committee structure to its greatest effect, it needs to do so from the basis of first principles and the recognition of its particular and distinctive resources at its disposal, primarily the experience and expertise of the membership. Exploiting that resource in a way that maximises the capacity of the House to fulfil its core functions will enhance its legitimacy. It is a golden opportunity.

March 2019