



HOUSE OF LORDS

Liaison Committee

4th Report of Session 2021–22

New committee activity in 2022

Ordered to be printed 16 November 2021 and published 19 November 2021

Published by the Authority of the House of Lords

HL Paper 97

Liaison Committee

The Liaison Committee is appointed by the House of Lords to advise the House on the resources required for select committee work and to allocate resources between select committees; to review the select committee work of the House; to consider requests for Special Inquiry Committees and report to the House with recommendations; to ensure effective co-ordination between the two Houses; and to consider the availability of members to serve on committees.

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The Members of the Liaison Committee are:

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Lord Collins of Highbury	Baroness Scott of Needham Market
Lord Davies of Oldham	Lord Smith of Hindhead
Lord Gardiner of Kimble (Chair)	Baroness Walmsley
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Declaration of interests

A full list of Members' interests can be found in the Register of Lords' Interests:
<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

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New committee activity in 2022

INTRODUCTION

Special inquiry committees in 2020 and 2021

1. Since 2012 the House of Lords has usually appointed four special inquiry committees each session. At least one of these has usually been a post-legislative scrutiny committee, such scrutiny being an innovation in the 2010–15 Parliament. In the exceptional circumstances of the COVID-19 pandemic, in 2020–21 we agreed to pause post-legislative scrutiny in order to facilitate the appointment of a dedicated committee scrutinising the Government response to COVID-19, and to understanding the wider and longer-term impacts for the economy, society, technology and international relations.
2. The COVID-19 committee and the three current special inquiry committees, on a national plan for sport and recreation, risk assessment and risk planning and youth unemployment respectively, were all ordered to report by the end of November 2021 and are expected to do so. The Liaison Committee therefore had the challenging task of assessing all the bids for new committee activity to start in January 2022.

The Common Frameworks Scrutiny Committee

3. In July 2020 we recommended the appointment of an additional new committee, the Common Frameworks Scrutiny Committee “for the duration of the present session”.¹ Although not a special inquiry committee, the need to establish this further committee at short notice stretched committee resources. Following our report setting out the case for the new committee,² it was appointed by the House on 17 September 2020. In making our initial recommendation we “considered that it would be important that the Liaison Committee should keep the work of the [Common Frameworks] Committee under regular review”.³ Our first such review took place in March 2021, when we concluded that:

“The Common Frameworks Scrutiny Committee is not a sessional select committee and will therefore cease to exist as and when Parliament is prorogued at the end of the session, unless a decision is taken to reappoint it. We believe it is performing a vital role, and one which, owing to the delays in the common frameworks programme, is likely to be needed until the end of 2021.”⁴

4. Following this recommendation, the Common Frameworks Scrutiny Committee (CFSC) was reappointed at the start of the 2021–22 session. At our meeting in October 2021 we took note of a letter from Baroness Andrews, Chair of the CFSC, requesting a further extension in the light of

1 Liaison Committee, *A Common Frameworks Scrutiny Committee* (4th Report, Session 2019–21, HL Paper 115), para 18

2 Liaison Committee, *A Common Frameworks Scrutiny Committee* (4th Report, Session 2019–21, HL Paper 115).

3 *Ibid.*, para 17

4 Liaison Committee, *Review of the Common Frameworks Scrutiny Committee* (9th Report, Session 2019–21, HL Paper 241)

the delays in common frameworks being produced. We noted the importance of the work of the CFSC and agreed to recommend the extension of its appointment until the end of July 2022, with the proviso that if it proved possible to complete its work at an earlier date it should do so.

Other additional requests for committee resources

5. Following one of the many recommendations of our wide-reaching review of committees,⁵ this year as well as considering proposals for new special inquiry committees we also needed to consider requests from Chairs of sessional committees that their committee should have the power to appoint a sub-committee, with the associated staff and other resources. We received a letter from Lord Hollick, Chair of the Industry and Regulators Committee, requesting the power to appoint a financial services sub-committee.⁶ We considered this carefully, alongside the requests for new special inquiry committees, and concluded that since the Industry and Regulators Committee was first appointed in 2021 it was preferable for it to complete its initial inquiries before considering any further expansion which would divert committee resources from other activity.
6. At our meeting on 15 November we also considered a letter from Lord Gilbert of Panteg, Chair of the Communications and Digital Committee and member of the Joint Committee on the Draft Online Safety Bill.⁷ That letter outlined proposals for a new joint committee to scrutinise the work of regulators and the digital regulation landscape. Whilst noting that the timing for appointment of any such new committee was still unclear, Lord Gilbert suggested that there would be “merit in the Committee being in place during the final parliamentary stages of the Online Safety Bill so that it can hit the ground running when these new and extensive powers are handed to Ofcom”.⁸ We are grateful to Lord Gilbert for this early indication of this proposal for a new committee to be appointed during the course of 2022, when we would need to consider it further, taking into account the timetable for the work of the Common Frameworks Scrutiny Committee.

Proposals for new special inquiry committees and our criteria for selection

7. The proposals for new special inquiry committees which we received in autumn 2021 were all published online on 28 October 2021. They are available at <https://committees.parliament.uk/publications/7533/documents/79392/default/>. The titles of the proposals are listed in Appendix 2.
8. We considered all the proposals for new committee activity in accordance with our published criteria for selection, as follows:
 - Makes best use of the knowledge and experience of Members of the House;
 - Complements the work of Commons departmental select committees;

5 Liaison Committee, *Review of House of Lords Investigative and Scrutiny Committees: towards a new thematic committee structure* (6th Report, Session 2017–19, HL Paper 398)

6 Letter to the Senior Deputy Speaker from Lord Hollick, Chair of the Industry and Regulators Committee, 9 September 2021

7 Letter to the Senior Deputy Speaker from Lord Gilbert of Panteg, Chair of the Communications and Digital Committee, 10 November 2021

8 Letter to the Senior Deputy Speaker from Lord Gilbert of Panteg, Chair of the Communications and Digital Committee, 10 November 2021

- Addresses areas of policy that cross departmental boundaries; and
 - The activity proposed should be capable of being confined to one year.
9. In addition, and as announced in our invitation to members of the House to submit proposals for new committee activity in 2021, we also took into account wider factors such as the balance of topics across the special inquiry committees (including in previous years), the work being undertaken by other Committees and within Government, and the possibility of early legislation on the subject matter.

Conclusion

10. **Once again we had difficult choices to make, and are grateful to those members and committee Chairs who put forward their proposals, clearly putting a considerable amount of effort into doing so. The number of proposals we received underlines the high regard in which our committees are held across the House and beyond.**
11. **We are conscious that many of the subject areas proposed by members of the House, including those which we recommend in this report, are as wide-ranging as they are topical and important. *We recommend that when agreeing their detailed calls for evidence all committees should be mindful of what can feasibly be achieved in the timeframe available.***
12. ***In view of the pressures on committee rooms in the House of Lords, particularly on Tuesdays and Wednesdays, earlier this year we agreed in principle that newly appointed committees should be invited to meet on other days of the week, for example Thursdays or Mondays. We reiterate this recommendation.***
13. This report sets out our other recommendations to the House.

ADULT SOCIAL CARE PROVISION

14. Lord Laming proposed a special inquiry select committee to consider Adult Residential Care Services.
15. Adult social care is the support provided to adults (both older people and people of working age) with physical disabilities, learning disabilities, or physical or mental illnesses, and their carers. This may include personal care (such as support for eating, washing or getting dressed) or help with domestic routines (such as cleaning or going to the shops).⁹ Adult social care needs are becoming increasingly complex and costly.¹⁰ Whilst public discourse tends to focus on social care for the elderly, the Economic Affairs Committee's 2018 report found that almost half of all public funding for social care is spent on the working-age population.¹¹
16. The Government have recently announced their plans for social care reform. A white paper on health and social care integration was published in February 2021¹² and the Health and Care Bill was introduced to Parliament on 6 July 2021.¹³ Plans to introduce a new, UK-wide 1.25 per cent Health and Social Care Levy, from April 2022 to fund additional spending on social care were announced in September 2021.¹⁴
17. Adult social care in England is provided by more than 14,000 different provider organisations, most commonly through care homes and nursing homes, and domiciliary care agencies. The delivery of social care is fragmented. The Nuffield Trust has described "a number of different intersecting markets, each with different mechanics, features and ambitions and providing services to a huge number of people with a wide range of needs." They outlined additional complexity within the system: "within these overlapping markets, care is provided by a vast and diverse set of providers. Furthermore, there is substantial regional variation in the structure, size and features of the provider market."¹⁵
18. The Care Quality Commission (CQC) is responsible for regulating social care. The CQC does not regulate all types of social care activities, however, and so there are many care providers about which little is known.¹⁶ A recent report estimated that in 2019–2020 only 68% of adult social care establishments

9 House of Commons Library, Adult Social Care Funding (England), Library Note, [Number CBP07903](#), 11 December 2020, p 5

10 King's Fund, 'Key facts and figures about adult social care' (2 July 2021): <https://www.kingsfund.org.uk/audio-video/key-facts-figures-adult-social-care> [5 November 2021]

11 Economic Affairs Committee, *Social care funding: time to end a national scandal* (7th Report, Session 2017–19, HL Paper 392), para 41

12 Department for Health and Social Care, *Working together to improve health and social care for all*: <https://www.gov.uk/government/publications/working-together-to-improve-health-and-social-care-for-all> [accessed 5 November 2021]

13 [Health and Care Bill](#) [Bill 183 (2021–22)]

14 HC Deb, 7 September 2021, [cols 153–155](#)

15 Nuffield Trust, *Fractured and forgotten?* (April 2021) p 2: <https://www.nuffieldtrust.org.uk/files/2021-04/nuffield-trust-social-care-provider-market-web1.pdf> [accessed 5 November 2021]

16 Skills for Care, *The state of the adult social care sector and workforce in England* (October 2020): <https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/publications/national-information/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx> [accessed 5 November 2021]

were regulated by the CQC.¹⁷ The Government have announced plans to introduce CQC oversight of Local Authorities' commissioning of adult social care through the Health and Care Bill.¹⁸

Suggested scope for a potential inquiry

19. A special inquiry committee could examine the role of the CQC in ensuring that social care needs are met by local authorities and could examine how NHS trusts and local authorities could better coordinate and ensure that the appropriate bodies are delivering the appropriate care.¹⁹ In addition, an inquiry could seek to make recommendations on how to streamline and consolidate social care provision and ensure that all providers are regulated. Furthermore, an inquiry could explore the duty place of care that exists between local authorities and recipients of social care and could examine if additional enforcement powers might be needed, and if so, what body they might be discharged to.²⁰
20. A special inquiry committee on this topic might consider the following:
 - How the Government can develop a strategy for delivering a comprehensive social care package that is tailored to individual needs.
 - How the Government can plan for the increased rise in social care needs, including the increase in complex adult social care needs.
 - How the Health and Social Care Bill will impact social care organisation and delivery of services.
 - The role of regulators including the CQC in ensuring social care is delivered in an effective manner.
 - How the Government's proposals for Integrated Care Systems will impact social care provision and associated opportunities to improve patient experiences through these systems.
 - Whether the resources available to support unpaid carers are sufficient and what provisions might be needed if not.
 - What measures can be taken to ensure the wider public are better informed and better able to navigate the social care system.
21. ***The Committee recommend that a special inquiry committee be appointed "to consider the planning for and delivery of adult social care services in England", to report by the end of November 2022.***

17 Skills for Care, *The state of the adult social care sector and workforce in England* (October 2020) p.26: <https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-state-of-the-adult-social-care-sector-and-workforce-2020.pdf> [accessed 5 November 2021]

18 [Health and Care Bill](#) [Bill 183 (2021-22)] as amended in Public Bill Committee, section 25

19 The Lord Carter report on operational productivity and performance in English NHS acute hospitals found that as many as 8,500 beds in acute trusts were blocked with patients who were medically fit to be transferred but couldn't be due to delays in organising the next stage of their care, or a lack of suitable care being available through their local authority. Department for Health and Social Care 'Independent report: Productivity in NHS hospitals' (5 February 2016): <https://www.gov.uk/government/publications/productivity-in-nhs-hospitals> [accessed 5 November 2021]. See also House of Commons Health Committee, *Urgent and emergency services* (Second Report, Session 2013–14, HC 171), para 39

20 Care Act 2014, [part 1](#)

FRAUD ACT 2006 AND DIGITAL FRAUD

22. Lord Vaux of Harrowden and Lord Stevenson of Balmacara proposed a special inquiry select committee to consider fraud and Lord Young of Cookham proposed a special inquiry select committee to consider online fraud. We considered combining these two proposals with post-legislative scrutiny of the Fraud Act 2006.
23. Under UK law, Fraud is defined as “making a dishonest representation for your own advantage or to cause another a loss.” This can include: fraud by false representation, fraud by failure to disclose information and fraud by abuse of position.²¹ Fraud is increasingly being carried out online, over the phone and by text. The Government’s ‘Beating Crime Plan’ published in 2021 states that fraud now accounts for “approximately 42% of all crime against individuals and costs society at least £4.7 billion a year.”²²
24. The financial impact of fraud on the economy is significant. Although banks are often able to prevent fraud and reimburse victims, UK Finance estimate that £3.27 in every £10 of attempted fraud is lost.²³ According to the Office for National Statistics (ONS), in 76% of fraud incidents that occurred in 2019, the victim incurred a financial loss.²⁴ Action Fraud figures show that, more than £78 million was lost to clone scams in 2020.²⁵ Research by Citizens Advice has found that 36 million adults were targeted between January and June of 2021.²⁶
25. It has been reported by the Victims’ Commissioner that victims of fraud often experience emotional distress after the crime, even if their money is returned. This can include feelings of shame, guilt and fear that they will be defrauded again.²⁷ Victims whose personal information such as their date of birth and home address has been stolen might have concerns over their own physical safety.²⁸
26. The Financial Conduct Authority (FCA) has a statutory strategic objective of “securing an appropriate degree of protection for consumers”.²⁹ Banks

21 Thompson Reuters, Practical Law, *Financial crime in the UK (England and Wales): overview*: (1 March 2020): [https://uk.practicallaw.thomsonreuters.com/8-520-4390?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/8-520-4390?transitionType=Default&contextData=(sc.Default)&firstPage=true) [accessed 5 November 2021]. See also Fraud Act 2006, [section 4](#).

22 UK Government, *Beating Crime Plan* (July 2021), p 42: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015382/Crime-plan-v10.pdf [accessed 5 November 2021]

23 UK Finance (2021), *Fraud – The Facts 2021* (2021), p 11: <https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202021-%20FINAL.pdf> [accessed 5 November 2021]

24 Office for National Statistics, *Nature of fraud and computer misuse in England and Wales: year ending March 2019*, para 1: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/natureoffraudandcomputermisuseinenglandandwales/yearendingmarch2019> [accessed 17 November 2021]

25 Action Fraud, ‘Attack of the clone firms: over £78 million stolen in ‘clone’ firm investment scams’ (27 January 2021): <https://www.actionfraud.police.uk/news/clonefirms> [accessed 5 November 2021]

26 Citizens Advice, ‘36 million Brits targeted by a scammer so far this year’ (14 June 2021): <https://www.citizensadvice.org.uk/about-us/about-us1/media/press-releases/36-million-brits-targeted-by-a-scammer-so-far-this-year/> [accessed 5 November 2021]

27 Victims Commissioner, *Who suffers fraud? Understanding the fraud victim landscape* (October 2021): <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2021/10/VC-Who-Suffers-Fraud-Report.pdf> [accessed 5 November 2021]

28 Anna Tims, ‘Haunted by shame: victims of bank transfer scams tell of lasting trauma’, *The Guardian* (17 April 2021): <https://www.theguardian.com/money/2021/apr/17/bank-transfer-scams-fraud-victims> [accessed 5 November 2021]

29 Financial Services Act 2012, [part 2](#). See also Financial Conduct Authority, ‘About the FCA’ (15 July 2021): <https://www.fca.org.uk/about/the-fca> [accessed 5 November 2021]

have also played a key role in identifying and preventing fraud, stepping in at the point where an attempt is made to transfer money. In 2020, banks and card companies prevented £1.6 billion from being lost to fraud.³⁰ However, perpetrators of these crimes are rarely prosecuted. An investigation by Which? has shown that since 2018, more than 96% of cases reported to the UK's national fraud reporting centre went unsolved.³¹ Online platforms currently have no legal obligation to protect users against fake or fraudulent content, although some platforms have pursued initiatives of their own.

The Fraud Act 2006

27. The Fraud Act 2006 provided for the first time a general offence of fraud, which had previously been covered by a range of deception offences. The Act specifies three ways in which fraud can be committed, namely by false representation, by failing to disclose information and by abuse of position. It also creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in frauds, as well as a new offence of fraudulent trading applicable to non-corporate traders.³²
28. The Ministry of Justice published a post-legislative assessment of the Fraud Act 2006 in a memorandum to the Justice Select Committee in June 2012.³³ The memorandum reported that the CPS advised that the Act had simplified fraud law, and that “the offences are now easily understood by those involved in, and responsible for, the investigation of fraud”. City of London Police concurred, stating that it had “been impressed with the simplicity and clarity of the reformed law on fraud” and advised that “the Act allows investigators to take prompt action to avoid further criminality”.³⁴ It was also reported that guilt is more readily admitted than for the former deception offences, and that the broad span of offending covered by the Act had helped prosecutions.³⁵
29. The memorandum also noted that the Law Commission’s report, on which the Act is based, recommended that the common law offence of conspiracy to defraud should be abolished. This was not included in the original Act, but was considered as part of the post-legislative memorandum. A consultation revealed a firm consensus that the offence should be retained. The memorandum concluded by stating that “our overall assessment of the Act is that it has been successful in achieving its initial objectives of modernising the former array of deception offences”.³⁶
30. The Chartered Institute of Public Finance and Accountancy (CIPFA) published a short assessment of the Fraud Act in March 2017, 10 years after its commencement. It stated that the Act’s impact on fraud “is not what anyone had in mind in 2007: billions of pounds continue to be lost each year in the public sector alone and according to the Crime Survey for England

30 UK Finance (2021), *Fraud – The Facts 2021* (2021) p 11: <https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202021-%20FINAL.pdf> [accessed 5 November 2021]

31 Which?, ‘Exclusive: more than 96% of fraud cases go unsolved’ (24 September 2018): <https://www.which.co.uk/news/2018/09/exclusive-more-than-96-of-reported-fraud-cases-go-unsolved/> [accessed 5 November 2021]

32 Fraud Act 2006, [Explanatory notes](#)

33 Ministry of Justice, *Post-legislative assessment of the Fraud Act 2006 Memorandum to the Justice Select Committee* (June 2012): <https://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/2012/post-legislative-assessment-fraud-act-2006.pdf>

34 *Ibid.*, para 14

35 *Ibid.*, para 15

36 *Ibid.*, para 41

and Wales (year ending September 2016), fraud and cybercrime is now the most commonly experienced offence with almost one in ten people falling victim”. The CIPFA assessment added that “legislation alone was never going to fix the problem” and that “although the Fraud Act provided the legal system with the tools to tackle fraudulent behaviour in the UK, it could only ever be as good as the resources available to support it”.³⁷

Suggested scope for a potential inquiry

31. A post-legislative review of the Fraud Act might consider how its provisions are used in practice by prosecutors and more widely for the prevention and detection of fraud. In particular, it might consider whether the increase in reports of fraud since the passage of the Act has any legislative remedy or whether it needs to be addressed primarily through implementation of existing provisions or other mechanisms such as increasing the scope and powers of regulators. This approach could be applied to newer types of fraud such as digital scams. An inquiry could be well timed to build on recommendations made by the Joint Committee on the draft online safety bill and the Treasury Committee’s consumer fraud inquiry.
32. A committee on this topic might consider the following:
 - The causes and risks associated with the digital economy and the balance between encouraging the growth of tech companies and protecting consumers.
 - The roles and responsibilities of regulators, financial services providers and tech companies in protecting the public against digital fraud.
 - How the police can be better supported to prosecute criminals who engage in cybercrime.
 - Whether the resources available to the police to support victims of fraud are sufficient and if not, how this could be addressed.
 - What measures can be taken in terms of education/training to ensure that expertise in online platform technology exists outside of the dominant companies.
 - What measures can be taken to ensure the wider public are better informed and able to recognise online fraud and scams when they encounter them.
33. ***The Committee recommend that a special inquiry committee be appointed “to consider the Fraud Act 2006 and digital fraud”, to report by the end of November 2022.***

³⁷ The Chartered Institute of Public Finance and Accountancy (CIPFA), ‘The Fraud Act: ten years on’ (20 March 2017): <https://www.cipfa.org/services/cipfa-solutions/fraud-and-corruption/support-and-resources/articles/the-fraud-act-ten-years-on> [accessed 5 November 2021]

LAND USE IN ENGLAND

34. Baroness Young of Old Scone proposed a special inquiry select committee to consider the pressures on land use and how the related decision-making processes might be improved.
35. Land is a highly valuable asset and the way it is used has implications for every citizen and most, if not all, sectors of the UK's economy. Pressures on land use are increasing—as the Government attempts to tackle the housing crisis, level up on infrastructure and build a carbon neutral future, more and more land is needed to accommodate new projects. At the same time, factors like demographic change, economic growth, societal preferences and climate change are expected to continue to shift the demands on land.
36. Responses to these pressures and approaches to land use vary across the UK. Scotland has in place a framework to establish how land uses should be prioritised and encourage pieces of land to be used for multiple purposes, and steps towards similar systems are being taken in Wales and Northern Ireland. England, on the other hand, does not have a national plan or framework. Rather, district councils are largely responsible for issuing planning permission while government departments have a role in setting strategic aims. One criticism of this approach is that national, local and regional decisions are not joined-up, and as a result land is not used as effectively as it could be.

Other recent House of Lords committee activity

37. Given the importance of the subject of land use, and its impact on a wide range of areas, it is unsurprising that several aspects have already been the subject of a number of committee inquiries. In the House of Lords, the special inquiry committee on the Rural Economy recommended in 2019 that the Government “should revisit the merits of a national spatial plan to ensure that planning policy operates in a framework where land use priorities are properly considered above the local level”.³⁸ The Built Environment Select Committee's remit is to consider housing, planning, transport, and infrastructure. That Committee is currently concluding an inquiry into the Housing Demand. This inquiry has examined current demand for housing and how it is changing, and what the barriers to meeting that demand are. This includes examining the current planning system and the degree to which there is a lack of a joined-up national approach. The Committee is expected to publish its report in the next few weeks.
38. The Built Environment Committee's current inquiry focuses on housing specifically, and its investigation of the planning system overlaps substantially with several areas of land use, including land value capture and brownfield development. In recommending a special inquiry into land use in England we consider it important that overlap with the remit of the work of the Built Environment Committee is avoided. The Built Environment Committee will begin a new inquiry in January. Whilst it would, as usual, be for the new special inquiry committee to agree its detailed call for evidence following its establishment, this should be done following consultation with the Chair of the Built Environment Committee, currently Baroness Neville-Rolfe.

38 Rural Economy Committee, *Time for a strategy for the rural economy* (Report of Session 2017–2019, HL Paper 330), p 15

Suggested scope for a potential inquiry

39. A special inquiry committee could examine the current and developing pressures on land use excluding the built environment, as well as considering the systems presently in place and under development to deal with these pressures. It might then consider how those systems could be improved, benefiting from the experience of Scotland, Wales and Northern Ireland.
40. A committee on this topic might consider the following:
 - The current demands on land use in England and how these demands are expected to change in the short, medium and long terms.
 - The impact of these demands on the environment and climate change.
 - The current systems through which land use is decided and how effective they are, including the variations across the UK and between urban and rural regions.
 - How the decision-making process surrounding land use can be improved, including to foster integration and deliver multifunctional uses of land.
41. ***The Committee recommend that a special inquiry committee be appointed “to consider Land Use in England”, to report by the end of November 2022.***
42. ***Following appointment, the committee should consult the Chair of the Built Environment Committee before agreeing its call for evidence, in order to avoid overlap with the work of that Committee.***

POST-LEGISLATIVE SCRUTINY OF THE CHILDREN AND FAMILIES ACT 2014

Post-legislative scrutiny in the House of Lords

43. The first post-legislative scrutiny committee, on adoption law, was set up in session 2010–12. Subsequent committees have considered; mental capacity, extradition, equality and disability, the natural environment and rural communities, licensing and bribery. This work has been well-received on all sides of the House and is considered an important aspect of its committee scrutiny.
44. The Government has committed (in most cases) to producing a post-legislative scrutiny memorandum three to five years after an Act receives Royal Assent. The memorandum is intended to assess “how the Act has worked out in practice, relative to objectives and benchmarks identified during the passage of the bill and in the supporting documentation”.³⁹ It is submitted to the relevant departmental select committee in the Commons, which thus has first refusal on whether to conduct a fuller review.
45. In practice, therefore, this House has to select post-legislative scrutiny topics from either (a) those which are the subject of a memorandum but have not been picked up by the relevant Commons committee or (b) those which have not been the subject of a memorandum, either because the department has not yet drafted it or because the relevant Commons committee has agreed that one need not be produced. If a Lords committee is established to consider an area in respect of which a memorandum has not been published, the committee will request one from the relevant department. This was the procedure followed by the committee on the disabilities aspects of the Equality Act 2010 and that on the Bribery Act 2010. An updated memorandum may also be requested from the Government, for example for the inquiry on the Licensing Act 2003.
46. Within these parameters, past experience suggests that it is desirable to choose a subject where the law:
 - is relatively stable, i.e. it has not been significantly amended within the last five years, so the committee has live experience on which to draw;
 - is not the subject of obvious proposals for imminent reform; and
 - is interesting but not obviously irreconcilably divisive.
47. In selecting legislation to recommend for post-legislative scrutiny in 2022 we were conscious that hitherto no legislation from the Department for Education or the Department for Business, Innovation and Skills (merged into the Department for Business, Energy and Industrial Strategy as of July 2016) had been subject to post-legislative scrutiny by a House of Lords committee. Scrutiny of legislation from the Ministry of Housing, Communities and Local Government has also been limited.

³⁹ Cabinet Office, *Guide to Making Legislation* (July 2015): <https://www.gov.uk/government/publications/guide-to-making-legislation> [accessed 5 November 2021]

Children and Families Act 2014

48. The Children and Families Act 2014 is wide-ranging. It made several changes to the adoption system, most of which were designed to streamline the process, making it easier for adoptions to happen, whilst ensuring child safety and welfare (Part 1). Additionally, it made major reforms to children and young people's special educational needs and disabilities (SEND) services (Part 3). The Act also introduced provisions relating to family justice (Part 2), childcare agencies (part 4), child welfare (Part 5), the remit of The Children's Commissioner (Part 6) and working rights to leave and pay (Part 7, 8, 9).
49. There has been no post-legislative scrutiny memorandum published by the Department of Education for the Children and Families Act 2014, although the House of Commons Education Committee has undertaken scrutiny of Part 3 of the Act. In October 2019, the Committee published a report, *Special educational needs and disabilities*⁴⁰ in which it found that the SEND reforms as introduced by the 2014 Act had been let down in "failures of implementation" and had resulted in "confusion and at times unlawful practice, bureaucratic nightmares and a lack of accountability, strained resources and adversarial experiences." The government response was received on 22 July 2020.⁴¹
50. To date, there has been no scrutiny of Part 1 of the Children and Families Act 2014. Although it has been widely recognised in the children's social services sector and by academics that the Children and Families Act 2014 has significantly increased the number of adoptions and the speed of the adoption process, consistent concerns have been raised regarding the added pressure to prioritise a placement even if there is uncertainty about its merits for the child.^{42,43} In December 2019, the Government announced that an additional £45 million would be allocated to the Adoption Support Fund (established in 2015) to enable it to operate for another year.⁴⁴ On 16 January 2020, Michelle Donelan MP, Parliamentary Under-Secretary of State for Children and Families, wrote to the Directors of Children's Services stating that adoption was a priority for the government and requesting review of several key processes.⁴⁵ The Government's National adoption strategy was published in July 2021.⁴⁶ The strategy refers to the issues identified with support following adoption and states that the government intends to "review

40 Education Committee, *Special educational needs and disabilities* (First Report, Session 2019, HC 20)

41 Education Committee, *Special educational needs and disabilities: Government Response to the Committee's First Report of Session 2019* (First Special Report, Session 2019–21, HC 668)

42 Rachel Schraer, 'Child placed with unsuitable adopter taken back into care after poor social work assessment', *Community Care* (8 September 2015): <https://www.communitycare.co.uk/2015/09/08/child-placed-unsuitable-adopter-taken-back-care-poor-social-work-assessment/> [accessed 5 November 2021]

43 Stanley Mason, 'Why did it take a child's death to reveal adoption system failings?', *The Guardian* (23 August 2018): <https://www.theguardian.com/society/2018/aug/23/social-workers-adoption-system-failings> [accessed 5 November 2021]

44 Department for Education, 'More funding to boost adoption support' (22 December 2019): <https://www.gov.uk/government/news/more-funding-to-boost-adoption-support> [accessed 5 November 2021]

45 Letter from Michelle Donelan MP, Parliamentary Under-Secretary of State for Children and Families to Directors of Children's Services (16 January 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859403/Adoption_letter_final.pdf [accessed 5 November 2021]

46 Department for Education, 'Adoption strategy: achieving excellence everywhere' (26 July 2021): <https://www.gov.uk/government/publications/adoption-strategy-achieving-excellence-everywhere> [accessed 5 November 2021]

the three-year rule in consultation with Regional Adoption Agencies (RAAs) and Voluntary Adoption Agencies (VAAs) to see if it is still fit for purpose.”⁴⁷

Suggested scope for a potential inquiry

51. An inquiry might consider whether the child safety and welfare adoption safeguards in Part 1 of the Children and Families Act 2014 are functioning as intended. It might also consider how the reforms introduced under the Act are shaping decision making at the various stages of the adoption process and consider whether the Act enables best practice to be followed. Additionally, an inquiry might look at the effectiveness of the outsourcing provision within the Act.
52. *The Committee recommend that a post-legislative scrutiny be appointed “to consider the Children and Families Act 2014”, to report by the end of November 2022.*

⁴⁷ Department for Education, ‘Adoption strategy: achieving excellence everywhere’ (26 July 2021) p 42: <https://www.gov.uk/government/publications/adoption-strategy-achieving-excellence-everywhere> [accessed 5 November 2021]

CONCLUSIONS AND RECOMMENDATIONS

1. Once again we had difficult choices to make, and are grateful to those members and committee Chairs who put forward their proposals, clearly putting a considerable amount of effort into doing so. The number of proposals we received underlines the high regard in which our committees are held across the House and beyond. (Paragraph 10)
2. We are conscious that many of the subject areas proposed by members of the House, including those which we recommend in this report, are as wide-ranging as they are topical and important. We recommend that when agreeing their detailed calls for evidence all committees should be mindful of what can feasibly be achieved in the timeframe available. (Paragraph 11)
3. In view of the pressures on committee rooms in the House of Lords, particularly on Tuesdays and Wednesdays, earlier this year we agreed in principle that newly appointed committees should be invited to meet on other days of the week, for example Thursdays or Mondays. We reiterate this recommendation. (Paragraph 12)
4. The Committee recommend that a special inquiry committee be appointed “to consider the planning for and delivery of adult social care services in England”, to report by the end of November 2022. (Paragraph 21)
5. The Committee recommend that a special inquiry committee be appointed “to consider the Fraud Act 2006 and digital fraud”, to report by the end of November 2022. (Paragraph 33)
6. The Committee recommend that a special inquiry committee be appointed “to consider Land Use in England”, to report by the end of November 2022. (Paragraph 41)
7. Following appointment, the committee should consult the Chair of the Built Environment Committee before agreeing its call for evidence, in order to avoid overlap with the work of that Committee. (Paragraph 42)
8. The Committee recommend that a post-legislative scrutiny be appointed “to consider the Children and Families Act 2014”, to report by the end of November 2022. (Paragraph 52)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Bradley
 Baroness Campbell of Surbiton
 Lord Collins of Highbury (from 3 November 2021)
 Lord Davies of Oldham
 Lord Gardiner of Kimble
 Baroness Hayter of Kentish Town (until 3 November 2021)
 Earl Howe
 Lord Lang of Monkton
 Lord Judge
 Baroness Scott of Needham Market (from 3 November 2021)
 Lord Smith of Hindhead
 Lord Tyler (until 28 October 2021)
 Baroness Walmsley

Declarations of interest

Lord Bradley
Proposal by Lord Bird (Prevention in policy-making)
Following my report to Government (the Bradley Report, 2009) I have a continuing interest in the further development of liaison and diversion services, including early intervention and prevention.

Baroness Campbell of Surbiton
Proposal by Baroness Massey of Darwen (Assisted dying)
Network of Disabled People

Lord Collins of Highbury
Proposal by Baroness Kennedy of the Shaws (Assistance to lawyers and judges at risk globally)
An APPG member on lawyers and judges at risk globally

Lord Davies of Oldham
No relevant interests to declare

Lord Gardiner of Kimble
Partner, CM Robarts & Son (farming partnership)
Shareholder and Director: Robarts (Investment) Limited (property company)
Farm and property at Kimble, Buckinghamshire
Vice President, Buckinghamshire Agricultural Association
Vice President, Suffolk Agricultural Association

Baroness Hayter of Kentish Town
No relevant interests to declare

Earl Howe
Proposal by Baroness Young of Old Scone (Pressures on land use and the decision-making framework for competing priorities for land)
Beneficial owner of farmland

Lord Judge
Proposal by Baroness Kennedy of the Shaws (Assistance to lawyers and judges at risk globally)
Former Lord Chief Justice of England and Wales

Lord Lang of Monkton

Chairman of Lovat Parks Ltd, a company that owns and manages holiday parks

Baroness Scott of Needham Market

No relevant interests to declare

Lord Smith of Hindhead

No interests declared

Lord Tyler

No relevant interests to declare

Baroness Walmsley

No relevant interests to declare

A full list of members' interests can be found in the Register of Lords' Interests:
<https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

APPENDIX 2: LIST OF PROPOSALS SUBMITTED

The proposals we received this year were all published online on 28 October 2021. These are available at <https://committees.parliament.uk/publications/7533/documents/79392/default/>. The titles of the proposals are listed below.

- Assistance to lawyers and judges at risk globally (Baroness Kennedy of The Shaws)
- Assisted dying (Baroness Massey of Darwen)
- Devolution in England (Lord Dubs)
- Enforcement powers of local authorities (Lord Moylan and the Earl of Clancarty)
- Fraud (Lord Vaux of Harrowden and Lord Stevenson of Balmacara)
- Global refugee situation policy (Lord Hylton)
- Government's strategy for ending digital exclusion (Lord Knight of Weymouth)
- Islamic marriage and divorce in England and Wales (Baroness Cox)
- National identity cards (Lord Campbell-Savours and Lord Blunkett)
- ODA cuts (Baroness Hodgson of Abinger)
- Online fraud (Lord Young of Cookham)
- Pay review bodies (Lord Lipsey)
- Pressures on land use and the decision-making framework for competing priorities for land (Baroness Young of Old Scone)
- Prevention in policy-making (Lord Bird)
- Residential Care Services for adults (Lord Laming)
- Responses to the Daesh atrocities (criminal accountability) (Baroness D'Souza)
- The economic and social costs of achieving net zero by 2050 (Lord Hutton)

APPENDIX 3: TEMPLATE SPECIAL INQUIRY SUBMISSION FORM

The current special inquiry committees are due to complete their work by the end of November. On behalf of the Liaison Committee, I am now writing to invite members to suggest proposals for four new special inquiry committees to start in early 2022. Due to the exceptional circumstances of the pandemic, during 2020–2021 we were unable to follow our usual practice of one of the four special inquiry committees being devoted to post-legislative scrutiny. It is the Liaison Committee’s intention that we should resume this important branch of committee scrutiny at the start of next year.

In order to provide greater consistency, this year the Committee is again inviting all members submitting proposals to use the headings suggested in the form accompanying this invitation. Proposals should be sent to the Clerk of the Liaison Committee, Philippa Tudor, by email: hlliaisoncmtee@parliament.uk no later than 10 September 2021.

All ideas submitted by then will be considered by the Liaison Committee using the following criteria for selection:

- Makes best use of the knowledge and experience of Members of the House
- Complements the work of Commons departmental select committees
- Addresses areas of policy that cross departmental boundaries
- The activity proposed should be capable of being confined to one session.

Members whose proposals are shortlisted by the Liaison Committee will be invited to present their proposal briefly to a meeting of the Committee later this year.

In reviewing proposals, the Liaison Committee takes into account the criteria listed above. In addition, the Committee may also take into account wider factors such as the balance of topics across the special inquiry committees (including in previous years), the work being undertaken by other Committees and within Government, and the possibility of early legislation on the subject matter.

GARDINER OF KIMBLE
July 2021

Liaison Committee

Proposal for a special inquiry (ad hoc) committee in 2022

Note: Following feedback, the Liaison Committee has agreed this template for use by members wishing to propose an inquiry. Members are invited to use it as a guide, and to address each of the questions below. Members are asked to describe the proposal in 100- 500 words.

Title:

Name of member(s) of the House making the proposal: [Type here]

Description of the proposal (in 100-500 words). If you are proposing a post-legislative scrutiny committee, please explain the aspects of the Act that you think particularly warrant scrutiny:

What would the inquiry be trying to achieve?

How does the proposal make best use of the knowledge and experience of Members of the House?

How does the proposal address areas of policy that cross departmental boundaries?

Is the proposed special inquiry committee capable of being completed by the end of November 2022? (For reference, most special inquiry committees hold approximately 20 x 1-hour evidence sessions throughout the inquiry, but proposals for shorter inquiries are also welcome.)

Do you have any additional comments in relation to your proposal which you wish

If you have any relevant interests that relate to your proposal please can you list them below.

Please send this form, if possible by email, to the Clerk to the Liaison Committee hlliaisoncmttee@parliament.uk, to arrive no later than 10 September 2021.