



# HOUSE OF LORDS

Select Committee on the Constitution

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Rt. Hon Robert Buckland QC MP  
Lord Chancellor  
Ministry of Justice  
102 Petty France  
London  
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11 September 2020

Dear Lord Chancellor,

## **Rule of law and the UK Internal Market Bill**

I write on behalf of the Constitution Committee regarding our concerns about the rule of law implications of the UK Internal Market Bill.

The Bill proposes ministerial powers to allow the Government to depart from the terms of the Withdrawal Agreement with the European Union. As the Secretary of State for Northern Ireland confirmed in the House of Commons, it permits the Government to break international law. Whether that breach is “specific and limited” or not is irrelevant. Any breach of international law threatens to undermine confidence in future treaty commitments made by the UK Government and increases the likelihood that the governments of other countries will breach their international law obligations. Those practical consequences are of great significance. The proposed course of action also appears to be in tension with the constitutional principle of the rule of law and we write to you in that connection.

Established international law on treaty modification, termination and withdrawal is clear. The UK is a party to the Vienna Convention on the Law of Treaties, which although applicable for treaties between states, nevertheless outlines several core rules that are broadly considered to reflect customary international law. Articles 61 and 62 of the Vienna Convention set out the narrow grounds on which states may be entitled to exercise a right of withdrawal from a treaty, in each case subject to the procedural requirements set out in Articles 65–68. These requirements would need to be fully and clearly satisfied, and so far they have not been.

The Vienna Convention is clear in Article 60 that a material breach of a bilateral treaty entitles the other party to invoke that breach as a ground for terminating or suspending the operation of the treaty “in whole or in part”. The Bill thus puts the entire Withdrawal Agreement, and the other related agreements, at risk, potentially unravelling the policy of the European Union (Withdrawal Agreement) Act 2020. This would have far-reaching consequences.

The Bill proposes to confer ministerial powers that may deviate from the provisions of a binding treaty. As you will be aware, the Ministerial Code states that there is an “overarching duty on Ministers to comply with the law” and the Cabinet Manual says that “Ministers are under an overarching duty to comply with the law, including international law and treaty

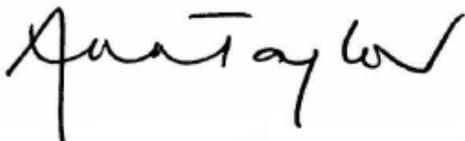
obligations, uphold the administration of justice and protect the integrity of public life.” Furthermore, the Civil Service Code requires civil servants to “comply with the law and uphold the administration of justice.” The Bill would thus confer powers at odds with such duties, modifying and possibly eroding them.

Although the Bill proposes to mandate the deviation from international law by means of an Act of Parliament, the constitutional principle of the rule of law still applies. As the distinguished jurist Lord Bingham argued, “the rule of law requires compliance by the state with its obligations in international law as in national law.”

We know how seriously you take your oath of office and responsibility to uphold the rule of law and when you appeared before the Committee in July you spoke passionately on the subject. Therefore, we should be grateful for a statement from you on how you believe the UK Internal Market Bill complies with international law.

We will consider the implications of the UK Internal Market Bill in detail as part of our legislative scrutiny work, but given the unprecedented nature of the circumstances it is important that we raise our concerns about this matter at the earliest opportunity. We will therefore be putting this letter in the public domain.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Baroness Taylor of Bolton'. The signature is fluid and cursive, with a large 'T' and 'B'.

Baroness Taylor of Bolton  
Chair of the Constitution Committee

- cc. Rt. Hon Boris Johnson MP, Prime Minister
- cc. Rt. Hon Dominic Raab, Secretary of State for Foreign, Commonwealth and Development Affairs
- cc. Rt. Hon Michael Gove, Chancellor of the Duchy of Lancaster
- cc. Rt. Hon Suella Braverman QC MP, Attorney General
- cc. Lord Keen of Elie QC, Advocate General for Scotland
- cc. Lord Callanan, Minister for Climate Change and Corporate Responsibility