



Ministry  
of Justice

The Right Honourable  
**Robert Buckland QC MP**  
Lord Chancellor & Secretary of  
State for Justice

Baroness Taylor of Bolton  
Chair  
Select Committee on the Constitution  
House of Lords  
London  
SW1A 0PW

29 September 2020

Dear Lady Taylor,

Thank you very much for your letter of 11 September.

I have been and remain absolutely committed to the oath I took as Lord Chancellor to respect the rule of law. The freedoms and protections which we all enjoy rely on the rule of law; it is an important constitutional principle and, as a responsible Government, we remain committed to it.

On 10 September, the Government published a statement on the legal position of certain provisions of the UK Internal Market Bill. As I have said publicly, including at Justice Questions in the House of Commons on 22 September, the proposed provisions are the actions of a responsible Government to prepare for the worst and in accordance with the most honourable traditions of the British state—we cannot allow the peace process or the UK's internal market to inadvertently be compromised by unintended consequences of the protocol. Against that contingency, the Government considers it appropriate to ask Parliament to provide a means of addressing these issues, if the genuine and earnest attempt by the negotiating team to resolve these conflicts does not succeed.

Therefore, the Government asked Parliament to support the use of the provisions in Clauses 42, 43 and 45 of the UKIM Bill, and any similar subsequent provisions, only in the case of, in our view, the EU being engaged in a material breach of its duties of good faith or other obligations, and thereby undermining the fundamental purpose of the Northern Ireland Protocol. We have been very clear that such examples include:

- a. insistence that GB-NI tariffs and related provision such as import VAT should be charged in ways that are not related to the real risk of goods entering the EU single market;
- b. such insistence under (a.) leading to a failure to reach agreement in the Joint Committee, with the result that the default provisions on tariffs between GB and NI apply;
- c. insistence on paperwork requirements (export declarations) for NI goods going to GB, thereby compromising the principle of “unfettered access” in Article 6 of the Protocol;
- d. insistence that the EU's state aid provisions should apply in GB in circumstances when there is no link or only a trivial one to commercial operations taking place in NI; and
- e. refusal to grant 3rd country listing to UK agricultural goods for manifestly unreasonable or poorly justified reasons.

As the Prime Minister said on 14 September when he made his opening statement at the second reading of the UK Internal Market Bill: These provisions are...“an insurance policy and if we reach agreement with our European friends which I still believe is possible - they will never be invoked.”

He also explained that the passing of this Bill does not constitute the exercise of these powers and that ministers would return to Parliament with a statutory instrument on which a vote would be held, as well as simultaneously pursuing every possible redress under international law, as provided for in the Protocol.

In addition to this, during Committee Stage in the House of Commons the Government tabled an amendment to the Bill that will require the House of Commons to vote for a motion and for a take note debate to take place in the Lords, before a minister can use the 'notwithstanding' powers contained in the Bill.

I understand that my office is working with the Clerk to the Committee to find a future date on which I may be able to accept your invitation to discuss this and other matters with the Committee.

Yours sincerely

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly slanted style.

**RT HON ROBERT BUCKLAND QC MP**