



Restoring the UK's economic credibility requires Rule of Law leadership

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In Thursday's Autumn Statement, Chancellor Jeremy Hunt will aim to deliver on the overriding priority of Rishi Sunak's new Government: restoring the UK's economic credibility following the calamitous interlude of the Truss Government, which so spectacularly destroyed the UK's longstanding reputation for economic competence and stability.

But there is more to restoring confidence and credibility in the UK economy than merely persuading markets that the public finances are now on a sustainable footing. As both the [Lord Chief Justice](#) and the [Deputy President of the UK Supreme Court](#) have recently explained in public lectures, it is now universally acknowledged that there is a [crucial link](#) between a country's commitment to the rule of law and its levels of innovation, inward investment, trade and economic growth. In the Lord Chief's words, "the importance of good governance through a commitment to the rule of law is widely recognised as underpinning prosperity."

It is, however, an uncomfortable truth much less frequently acknowledged, and unspeakable by serving judges, that the UK's former reputation as a genuine world leader in its commitment to the rule of law has been a major casualty of the [assault on independent institutions](#) delivered by the recent populist turn in British politics. From the world famous front page attacks on senior judges as "Enemies of the People", to the deliberate breaching of international law in the UK Internal Market Bill, which provoked the resignation of the Head of the Government Legal Department, and many examples in between, real and tangible damage has undeniably been done to the UK's standing in the world as a nation synonymous with the rule of law values of Magna Carta.

To restore the UK's economic credibility, the Government must therefore urgently show some [Rule of Law leadership](#): it should seize the opportunity presented by a change of Prime Minister to signal to markets, investors, trading partners and businesses that it has hit the reset button, drawing a line under the recent series of self-inflicted wounds which have so damaged this country's international reputation as a rule of law regarding nation.

There are no signs so far that the Sunak Government understands this imperative. On the contrary, the Government appears determined to proceed with tainted Bills inherited from its deliberately iconoclastic predecessors. The Retained EU Law Bill threatens to drive the final nail into the coffin of the UK's reputation for legal certainty and predictability by creating "[huge legal uncertainty](#)" as to what the law will be for businesses and others at the end of 2023. The Northern Ireland Protocol Bill, premised on an interpretation of international law considered risible by most informed legal experts, remains the centrepiece of the Government's strategy for solving the unsquareable circle of the post-Brexit Northern Irish border. The Government's determination to proceed with its deportation to Rwanda policy calls into question its professed commitment to the Refugee Convention.

Most bafflingly of all, and in reckless disregard of the criticism it has received from its [own benches](#), the Government is now

bringing back the Bill which threatens to do the most damage to the UK's international reputation, the so-called "Bill of Rights" Bill - widely regarded, even within the Conservative Party, as a longstanding, personal and ideological crusade of the current Deputy Prime Minister and Justice Secretary, a political calculation designed to divide the electorate by appealing to people's worst instincts, rather than a carefully thought through, evidence-based response to a pressing policy problem.

The full extent of the international dismay caused by this extraordinary Bill, which will not only significantly reduce the UK Government's accountability for people's human rights but undermine the world's most successful supranational system for their protection, and the further damage it will inflict on the UK's reputation for legal certainty, predictability and regard for the international rule of law, is only now beginning to emerge. It will soon become apparent, however, as bemused international partners and multilateral organisations from the Council of Europe to the UN move from puzzlement to alarm at the prospect of the UK providing succour to the authoritarian populists who continue to threaten the rules-based international order which the UK used to promote.

The UK's rule of law problem would not be solved, and international credibility restored, however, merely by dropping or amending these highly controversial Bills. The rot in the fabric of our rule of law institutions runs much deeper. The express reference in the Ministerial Code to ministers being under a duty to comply with international law has been removed. Ministers remain under an overarching duty to comply with the law, but, in a highly significant move which has received little attention and no parliamentary scrutiny, the former Attorney General and now Home Secretary Suella Braverman recently issued new guidance to Government lawyers on "legal risk", designed to loosen legal constraints on ministers in a hurry.

The former Attorney General thought that Government lawyers are too risk averse when advising ministers about legal risk and therefore needlessly hamper the achievement of ministerial policy objectives. The crucial change from the earlier (2018) Guidance Note on Legal Risk (issued by the Government Legal Dept, not the AG) is in the way that legal advice about legal risk is to be presented by Government lawyers so that it is not perceived to be an obstacle to a proposed policy or course of action.

Instead of advising on the percentage likelihood of a legal challenge succeeding, which the former Attorney General thought led to unnecessarily cautious decision-making by policy-makers because it was too readily perceived as a "block" on policy, under the new Guidance lawyers not only can but should advise that there is a sufficient legal basis to proceed, even if there is a high risk of a legal challenge succeeding. Only if there is no respectable legal argument that can be put to a court in support or defence of the action the minister wishes to take should Government lawyers advise that the proposed action is unlawful.

In other words, despite the Attorney General's responsibility as the Government's senior Law Officer for upholding the rule of law by helping ministers to comply with their overarching duty to comply with the law, the Attorney General wanted to encourage ministers to take more risks over the legality of their policies and decisions. Is it really compatible with a minister's duty to comply with the law to proceed with a law or policy in the face of expert legal advice that a legal challenge is highly likely to succeed?

We can see the consequences of this significant change of approach playing out before our eyes in the controversy surrounding whether the now Home Secretary "ignored legal advice" from officials that she would be acting unlawfully if she failed to approve alternative accommodation to reduce overcrowding at Manston processing centre. Under the terms of her own Guidance, she would have a "sufficient legal basis" for taking that course even if departmental lawyers were advising her that there was a high (more than 70%) chance of a legal challenge succeeding.

It therefore looks highly likely that rule of law leadership will be the missing piece in the Government's plans to restore the UK's economic credibility on Thursday. Both the Prime Minister and the Chancellor have acknowledged that restoring that credibility means rebuilding trust in the UK's institutions and political actors. Given the importance of the rule of law to economic credibility, that has to include restoring trust in the UK as a rule of law regarding nation.

Reinstating the explicit reference to international law in the Ministerial Code, dropping the Retained EU Law Bill and the Bill of Rights Bill, and reverting to the Government Legal Department's earlier Guidance on Legal Risk would be a good start. Without such earnestness of good intent, the new Government will continue to inflict economic self-harm by failing to reverse the damage already done by its predecessors to the UK's once proud international reputation for the rule of law.

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