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Parliament surrendered role over Covid emergency laws, says Lady Hale

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Hale retired in January after becoming the first woman to lead the supreme court in 2017. Photograph: Lauren Hurley/PA

The former president of the supreme court says parliament “surrendered” its role over emergency laws restricting freedoms amid the coronavirus pandemic, in an intervention expected to embolden MPs threatening a Commons revolt.

Lady Hale, who retired [in January](#) after becoming the first woman to lead the supreme court in 2017, is critical of the way health regulations were imposed on the public with little or no parliamentary scrutiny.

The [Coronavirus Act 2020](#), passed in March, gave government “sweeping” powers alongside other “draconian” regulations, and “it is not surprising the police were as confused as the public as to what was law and what was not”, she says in an opening essay for a collection published on Monday and seen by the Guardian.

In a reference to Dominic Cummings, the prime minister's chief adviser whose [lockdown journey](#) to Durham was revealed by the Guardian, Hale says: "A certain government adviser obviously did know what the regulations were and what they said. Others might have also felt that they had a reasonable excuse for doing something like he did. But they did not do it, either because they did not know the law and just abided by what they were told or because they felt they were not safe.

"Hence the outcry that there was one law for those in power and another law for the rest of us. There isn't. But that's how it felt to many."

Hale says parliament has resumed much of its traditional role "but it did surrender control to the government at a crucial time". "Maybe the lockdown and its severe consequences ... were inevitable or at least the best solution that could be devised in the circumstances. My plea is that we get back to a properly functioning constitution as soon as we possibly can."

Growing numbers of Tory MPs are increasingly unhappy about the way restrictions on everyday life have been forced into law without the Commons being effectively consulted. They intend to register a protest on Wednesday 30 September, when there will be a vote on renewing the provisions of the [Coronavirus](#) Act.

The act gives the government a wide range of emergency powers to tackle the coronavirus crisis, although most of the Covid lockdown laws have been imposed using regulations under the Public Health Act 1984, which take effect prior to a parliamentary vote.

At the weekend Sir Graham Brady, the chair of the Conservative backbench 1922 Committee, signalled his willingness to rebel against the government to ensure parliament gets a greater say.

"In March, parliament gave the government sweeping emergency powers at a time when parliament was about to go into recess and there was realistic concern that NHS care capacity might be overwhelmed by Covid-19," he [told the Sunday Telegraph](#).

"There is now no justification for ministers ruling by emergency powers without reference to normal democratic processes. It is essential that going forward all of these massively important decisions for family life, and affecting people's jobs and businesses, should be exercised with proper supervision and control."



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On 30 September, MPs plan to vote on an “all or nothing” proposition that would either extend the powers in the Coronavirus Act for six months or result in them lapsing.

In a recent report arguing that the government’s sidelining of parliament for emergency measures had “not always been justified”, the Commons public administration committee said the government should allow votes on amendments. More than a dozen Tory MPs are said to share Brady’s concerns, and one proposal is for an amendment that would ensure any new measures have to be voted on by MPs first.

Brady’s intervention is a sign of the scale of disquiet among Boris Johnson’s backbenchers about the way he is handling the pandemic.

Some Conservative MPs, such as Sir Desmond Swayne of New Forest West, are concerned the government’s restrictions are too draconian. Swayne has complained that rules on face coverings were imposed without “the democratic legitimate right to ask you the counter case and vote upon it in parliament”. Others have expressed doubts about [the “rule of six”](#).

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The intervention from Hale is likely to fuel the discontent. In [Justice Matters](#), a 153-page book published by the Legal Action Group, she explains that parliament has three constitutional functions: to pass laws, vote on government funding and hold it to account.

“In March this year, almost exactly six months [after the prorogation ruling at the supreme court upheld the sovereignty of parliament, it] surrendered these functions in the face of Covid-19,” she writes.

It voted to give the Treasury £260bn in contingencies and passed the Coronavirus Act. Furthermore “a great deal of what the public was told they could or could not do was not in the regulations. It was just in government guidance.”