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Lord de Mauley  
House of Lords  
London SW1P 0PW

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Lord Carrington  
House of Lords  
London SW1P 0PW

Dear Rupert and Matthew

Thank you for your joint letter of 29 October about whether an item with detachable ivory elements falls under the *de minimis* exemption in the Ivory Bill, and also to Lord de Mauley for his letter of 31 October regarding the assessment of the ivory content of items (particularly items containing integral voids) for the purpose of the *de minimis* criteria. I would like to respond to both of these letters.

Turning first to your letter of 29 October, as I made clear at Report Stage, in determining whether an item falls within the *de minimis* exemption, component parts/elements of an item should be included (rather than being assessed separately). In the examples I gave, the removal of the ivory handle of a teapot lid or serving dish, or removing an ivory knob from a barometer would, even though these components were designed to be removable, mean that the item as a whole could no longer function as intended. Therefore, providing that the total volume of ivory in the whole of those items is less than 10%, the above items will meet the *de minimis* criteria.

The Bill does not confer powers to make regulations (or statutory guidance) allowing us to supplement the Bill's provisions on the *de minimis* exemption. We do not consider such powers are necessary, as the Bill provides a clear statement about the *de minimis* exemption. The Delegated Powers and Regulatory Reform Committee made reference to specific powers in the Bill to publish *statutory* guidance on matters to be taken into account when assessing whether an item was of outstandingly high artistic, cultural or historical value, or the information that should be set out in applications. The guidance I mentioned in Report is the non-statutory administrative guidance which will be produced to help applicants to understand the provisions of the Ivory Act, and in particular to provide information about assessing whether items would meet the exemptions in the Bill.

The non-statutory guidance will include information about how to assess whether an item containing ivory will qualify for an exemption and provide examples such as those that I gave

in Report. As is usual, we will consult stakeholders on this guidance before it is published, and will ask stakeholders to assist us in identifying more examples of typical items with detachable ivory elements that may qualify for exemption.

Turning to the letter of 31 October from Lord de Mauley, and the question of the assessment of items containing voids, the *de minimis* exemption is available where (among other factors) the volume of ivory in the item is less than 10% of the total volume of the material of which the item is made. This is clearly set out in the Bill. The policy intention, as expressed in the Bill, is that the *de minimis* exemption should be assessed against the volume of the material of the item: to do otherwise would likely lead to unintended consequences such as items with a significantly higher proportion of ivory and large void spaces being categorised as exempt.

There will be circumstances where it is difficult for a person to make a precise assessment of either the volume of ivory in an item or the volume of material in an item. For example, where an ivory item is of irregular shape or where the ivory item contains voids that are not possible to access, or is hollow.

You highlighted a statement I made at Lords Committee Stage on this topic in which I referred to the voids in a chest of drawers. Following your letter and further reflection, we have concluded that, given the policy intention as expressed in the Bill, this was not an appropriate example. More appropriate examples would be either a hollow, irregularly-shaped statue or a sealed box or other such item which it is not possible to open. This is because, as it is clearly not possible to access these voids, no precise measurement can be made. I therefore intend to raise and clarify this in my remarks at Third Reading so a better description is placed on record.

We are, of course, also developing detailed administrative guidance to provide information about assessing items for the purpose of the *de minimis* exemption. This guidance will include suggested ways of assessing the percentage volume of ivory in circumstances where it is more difficult to make that assessment. The Government does recognise that it may be difficult, in certain circumstances, to assess with precision the percentage volume of ivory in an item. We will produce this guidance in consultation with key stakeholders.

Clause 12(3) of the Ivory Bill states that it is a defence for a person to prove that they have taken all reasonable precautions, and exercised all due diligence, to avoid committing an offence. This defence will be available to all those who misjudge the percentage volume of ivory in an item registered as exempt under the *de minimis* exemption, particularly in circumstances where there were difficulties in accurately assessing that volume and the person has taken all reasonable precautions and exercised all due diligence in their attempt to assess the ivory content of the item.

My officials and I are available to meet on Monday to discuss any issues raised here further, if you would find that helpful.

With your permission I would like to place a copy of this letter in the Library of the House of Lords along with your letters to me.

Yours ever,  
John