

Lord (Tariq) Ahmad of Wimbledon
Foreign, Commonwealth & Development Office
King Charles Street
London
SW1A 2AH

13 December 2022

Lord Ponsonby, Lord Purvis of Tweed, Lord Pannick KC
House of Lords
London
SW1A 0PW

Dear Fred, Jeremy, David,

We write to you in response to your statements relating to the Northern Ireland Protocol Bill, which concerned Clause 18(1) of the Bill and its purpose. For the benefit of the House, we shall place a copy of this response in the Lords Library.

With apologies for repeating some of the discussion in the House, we would like to start by setting out the overall purpose of the clause. The purpose of Clause 18(1) is to authorise Ministerial conduct relating to the Northern Ireland Protocol in connection with one or more of the purposes in the Bill (where that conduct is not otherwise authorised by the Bill). Clause 18(1) therefore sets out that Ministers will be acting lawfully when they go about their regular duties of non-legislative conduct, such as publishing guidance.

It is important to provide certainty, where in different circumstances it would be taken for granted, due to the interaction of this Bill with section 7A of the European Union (Withdrawal) Act 2018. Clause 18(1) is needed to provide clarity for those instances where a Minister is acting in support of the domestic obligations created by this Bill, which replace prior domestic obligations stemming from international obligations currently being implemented automatically by section 7A. The reasons for this replacement we have discussed extensively and we do not propose to cover here.

What Clause 18(1) is not, therefore, is an extraordinary power or indeed a delegated power at all. This is simply the normal scope of executive action that is considered right and proper for Ministers to carry out in support of legislation and the purposes within it, in the usual course of government business.

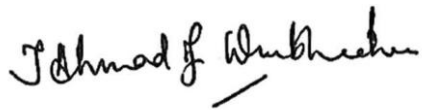
In terms of possible actions that are being referred to, as above, publishing guidance is a clear example of such non-legislative conduct. Other examples could include notifications from Ministers to the EU or providing direction to officials. Without

Clause 18(1), there is a risk that a legal challenge, on the basis of section 7A, to the principle that Ministers can act in support of this Bill in the way we described delays, obstructs or otherwise creates uncertainty around the implementation of revised operation of the Protocol.

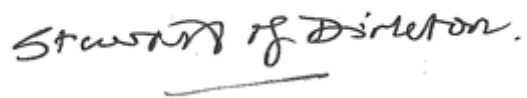
We hope this response provides further explanation of Clause 18(1) and why it is included within the Bill, and we thank you again for your detailed consideration of this important matter. Please do not hesitate to contact us if you have any further questions.

Yours sincerely,

LORD AHMAD OF WIMBLEDON

Handwritten signature of Lord Ahmad of Wimbledon in cursive script.

LORD STEWART OF DIRLETON

Handwritten signature of Lord Stewart of Dirleton in cursive script.