16 November 2018

Dear Gillian,

THE CONTROL OF TRADE IN ENDANGERED SPECIES (AMENDMENT) (EU EXIT) REGULATIONS 2018
EU EXIT LEGISLATION

I write in relation to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a no-deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our responsibility to ensure that devolved law continues to function on and after EU withdrawal.

The UK Government is proposing to make the above named regulations to ensure the continued operability of regulations which relate to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The proposed corrections are technical in nature and limited to preserving the effective functioning of CITES regime, which is currently governed and implemented on a UK-wide basis. As such, Scottish Ministers would be content to consent to the Regulations should our consent be sought.

However, the UK Government has not written to request the consent of Scottish Ministers to the Regulations and we are therefore not in a position to notify the Scottish Parliament under the agreed protocol. This is due to an on-going disagreement with the UK Government as regards devolved competence in relation to CITES.
As you will be aware, the import and export of endangered species is reserved by the Scotland Act 1998 (Schedule 5, Part II, section C5). However, Scottish Ministers consider that there are devolved elements within the CITES regime, on which the Regulations will touch. In our view, the domestic implementation of CITES is a reserved matter only so far as it concerns the prohibition and regulation of the import and export of endangered species. The prohibition and regulation of transactions which do not involve export or import measures are not reserved. Measures which go beyond the requirements of CITES such as those regulating the advertising, transport for sale or purchase and sale in the domestic market are broadly considered to be devolved. The UK Government does not agree with our analysis and considers the whole of CITES to be a reserved matter.

It is crucial that we ensure devolved interests are respected and we will continue to press our position with the UK Government in relation to CITES. I will be writing to the UK Government shortly to set out the Scottish Government’s view of the extent of devolved interests in CITES and to make clear that we consider our consent is needed for the Regulations to proceed. In the meantime, and in the spirit of being open and transparent with you in relation to our preparations for EU Exit, I attach details of the proposed Regulations for your consideration.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you in due course.

Yours,

[Signature]

ROSEANNA CUNNINGHAM