Dear Edward & John,

THE ENVIRONMENT, FOOD AND RURAL AFFAIRS (MISCELLANEOUS AMENDMENTS AND REVOCATIONS) REGULATIONS 2018

I am writing to inform you of Scottish Ministers’ intention to consent to the Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018, which UK Ministers propose to lay on 13 August.

These regulations will amend a number of out of date references to UK and EU legislation in UK instruments with UK or GB application in both reserved and devolved areas. A list of the instruments impacted in devolved areas is attached in the Annex. These references require to be updated to ensure the most recent EU legislation is referred to on the statute book. These technical updates will make the process of fixing deficiencies caused by EU exit more straightforward, and we will be updating the Scottish Parliament on our plans to fix legislative deficiencies shortly.

Whilst it would be possible for Scottish Ministers to update these references through a Scottish Statutory Instrument, we have agreed that the Secretary of State will make the required amendments in these Regulations. This is because the amendments are technical and also, in part, involve a complex mix of reserved and devolved competencies which it would be difficult to deal with separately.

As you will be aware, under s57(1) of the Scotland Act, UK Ministers may use their powers to implement EU obligations in respect of Scotland, even if the subject matter is devolved. However, the Memorandum of Understanding between our administrations requires that the UK Government may exercise this power only with our agreement. As such, I have written today to Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment to formally provide our consent to the necessary amendments being made to the instruments in the Annex, insofar as these relate to devolved areas.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot
Whilst our position is that the best option for Scotland is to remain within the EU, we recognise the necessity of planning for EU exit to ensure we protect what matters to the people of Scotland. This consent has been provided without prejudice to the Scottish Government’s wider position that consent should be required for UK Government legislation affecting devolved areas. Exiting the EU presents significant implications for the UK’s constitutional arrangements and it is vital that these implications continue to be worked through in the proper way and in a manner that respects devolution.

I have copied this letter to Joan McAlpine MSP, Convener of the Culture, Tourism, Europe and External Relations Committee.

Yours,

Roseanna Cunningham
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