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Lord de Mauley
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22nd October 2018

Dear Rupert,

Thank you for your contributions to the debates at the Committee Stage of the Ivory Bill. I said that I would reflect on the points you raised about the presumption in clause 12 that a person commits an offence only if the person knows or should have known that an item contained ivory.

You asked for clarification on whether clause 12 will protect someone who genuinely believes an item is made from ivory from another animal. Clause 12(2) has been included to protect those who fall victim of mislabelling of ivory and therefore genuinely did not know that the item contained ivory (clause 35(1) defines ivory in the Bill as being ivory form the tusk or tooth of an elephant). Clause 12(3) adds to the defence by allowing a person to prove that he or she took all reasonable precautions and exercised all due diligence to avoid committing an offence.

You mentioned in your contribution the link with clause 35(4) which provides for ivory to be elephant ivory unless the accused can prove otherwise. If a person is accused of selling an ivory item, there will be a presumption that the item contains elephant ivory and it will be for the accused to prove that the ivory is from a different animal. A person can rely on the defences explained above in clause 12(2) and 12(3) and the courts can take a view on whether the accused knew or should have known the difference between elephant ivory and other types of ivory.

In the event that the definition of ivory in clause 35(1) is expanded to include ivory from other species which are in addition to elephants, clauses 12 and 35 would cover the wider definition of ivory.

I am copying this letter to Baroness Jones of Whitchurch and will be placing copies in the Libraries of both Houses.

Yours ever,

John