



The Scottish Parliament
Pàrlamaid na h-Alba

Alison Irvine
Head of Cabinet, Parliament and
Governance Division
Scottish Government

Delegated Powers and Law Reform
Committee
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26 January 2023

Dear Alison

Charities (Regulation and Administration) (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting on Tuesday 24 January.

As part of its consideration of the Bill, the Committee agreed to seek an explanation on the following delegated powers:

Section 4(3)

Section 4(3) inserts a new section 69A into the Charities and Trustee Investment (Scotland) Act 2005 ("2005 Act") 2005 Act. Section 69A lists criminal offences, conviction for any of which results in a person being automatically disqualified from being a charity trustee of a Scottish charity. Subsection (4) provides a power for the Scottish Ministers to amend section 69A so as to add or remove an offence from the list of offences.

The Delegated Powers Memorandum (DPM) explains that the criteria for automatic disqualification of charity trustees in Scotland have not been updated since the 2005 Act was enacted, which would appear to indicate that changes do not require to be made frequently.

Given that (a) exercise of the power would amend primary legislation and (b) the specification of further offences would broaden the scope of the disqualification criteria regarding criminal offences, the Committee queries:

- **whether it is appropriate to delegate this power and seeks further justification as to why it is being taken (to include examples of similar powers being taken in other primary legislation, if possible).**

Section 5(3)

Section 5(3) of the Bill inserts a new section 69(7) into the 2005 Act to provide a power to amend section 69 by adding or removing persons or descriptions of persons to or from the list of persons disqualified from being a charity trustee and to modify the definitions in section 70 of the 2005 Act.

The DPM explains that the criteria for automatic disqualification of charity trustees in Scotland have not been updated since the 2005 Act was enacted, which would appear to indicate that changes do not require to be made frequently. Given that exercise of the power would amend the scope of the regime for disqualification of charity trustees as a whole and involve amending primary legislation, the Committee queries:

- **whether it is appropriate to delegate this power and seeks further justification as to why it is being taken.**

Section 16(3)

Section 16(3) inserts a new section 5(2)(aa) into the 2005 Act which provides that Office of the Scottish Charities Regulator must refuse to register an applicant which has no or negligible connection to Scotland. Section 16 also inserts a new section 5(5) into the 2005 Act to include a power for Scottish Ministers to make provision about the factors which are, or are not, relevant in assessing whether an applicant has no or negligible connection to Scotland.

Given the centrality of the Register to the scheme of regulation set up by the 2005 Act, and the fact that the power permits amendment of primary legislation, the Committee queries:

- **whether it is appropriate to delegate this power and seeks further justification as to why it is being taken.**

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by **Wednesday, 1 February**.

Yours sincerely

Lucy Scharbert
Clerk to the Delegated Powers and Law Reform Committee