



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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12 January 2023

Dear Alison

Shark Fins Bill LCM

At its meeting on 10 January, the Delegated Powers and Law Reform Committee considered the delegated powers that are exercisable within the Scottish Parliament's legislative competence in the Shark Fins Bill as described in the Legislative Consent Memorandum ("LCM") lodged on 30 November 2022. The Committee would appreciate a response to the points set out below.

Paragraph 4 of the Schedule – Penalty for providing inaccurate etc information in connection with an application

Power conferred on: in relation to England, the Secretary of State; in relation to Wales, Welsh Ministers; in relation to Scotland, Scottish Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative procedure

Paragraph 4 of the schedule of the Bill gives the appropriate authority (the Scottish Ministers in relation to Scotland) a power to impose a civil monetary penalty up to £3,000 on an applicant where they deliberately provide inaccurate information or where they fail to correct or update relevant information before an exemption certificate is issued.

Paragraph 4(4) provides that the appropriate authority may, by regulations, substitute a different amount for this penalty. Paragraph 4(7) specifies that any regulations made under paragraph 4(4) should be made using the affirmative procedure.

The Committee noted that the reason given in the Delegated Powers Memorandum ("DPM") for the use of a delegated power is to allow for the adjustment of the penalty in the future, particularly to take account of changes in the value of money or where it

becomes necessary to increase the protection bestowed upon sharks in the future by increasing disincentives to kill them for their fins.

The DPM acknowledges that it is unusual to confer a power to vary a penalty by subordinate legislation. The Committee noted, however, that the Scottish Government has not provided a view in the LCM on the power to adjust the level of the penalty. Given the significance of adjusting a penalty, the Committee considered that this is a wide power.

The Committee therefore agreed to seek the Scottish Government's views on:

- **the appropriateness of including a power to adjust a civil penalty in the Bill; and**
- **what the Scottish Government might consider in relation to the variation of the penalty, determined in accordance with the relevant power under paragraph 4(4) of the schedule, to ensure it is consistent across the UK.**

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 12 noon on **Wednesday, 18 January**.

Yours sincerely

Lucy Scharbert
Clerk to the Delegated Powers and Law Reform Committee