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Delegated Powers and Law Reform Committee
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18 January 2023

Dear Lucy,

Shark Fins Bill LCM

Thank you for your letter of 12 January outlining the outcomes of the meeting on 10 January of the Delegated Powers and Law Reform Committee, at which the Committee considered the Shark Fins Bill. As you outline, the Legislative Consent Memorandum (“LCM”) relating to the Shark Fins Bill was lodged on 30 November 2022. We are grateful for the consideration of this LCM by the Committee.

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

I note your questions relating to paragraph 4 of the schedule of the Bill, which confers on the appropriate authority (the Scottish Ministers in relation to Scotland) a power to impose a civil monetary penalty of 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.

As you outline, paragraph 4(4) does provide that the appropriate authority may, by regulations, substitute a different maximum amount for this penalty. Paragraph 4(7) specifies that any regulations made under paragraph 4(4) are subject to the affirmative procedure. This will ensure an appropriate level of scrutiny by the Scottish Parliament.

The Scottish Government considers that it is appropriate to include this power in the Shark Fins Bill to amend the maximum civil penalty amount. The Scottish Government notes that this approach has precedent in both UK and Scottish primary legislation, in terms of section 44 of the Childcare Payments Act 2014 and section 23 of the Regulatory Reform (Scotland) Act 2014.

We do not anticipate that this power to amend the maximum monetary penalty amount will be used frequently, however, this power would provide the Scottish Ministers with the ability to respond to material future changes, such as increased risks to highly sensitive shark species. In addition, given that the value of detached shark fins and products containing them are determined by market forces and can fluctuate, this power would enable Scottish Minister to respond to a material increase in that market value, which would otherwise result in the value of the illegal activity associated with shark finning and importing or exporting detached shark fins, or products containing them, far exceeding the value of the monetary penalty set out in paragraph 4(3) of the Bill schedule, which would reduce the deterrent effect of this penalty. This power would also enable the penalty amount to be amended to reflect changes in the value of money, which could otherwise undermine the deterrent effect of this penalty.

In the absence of a power to make regulations to amend the maximum monetary penalty amount, any amendments would require to be made through primary legislation, which the Scottish Government does not consider to be a proportionate use of Parliamentary time, given that the affirmative procedure will enable an appropriate level of scrutiny of any regulations made under paragraph 4(4).

We also wish to retain consistency across the UK administrations in the matter of shark conservation. Appropriate guidance on the exemption certificate process will be developed and agreed by the Secretary of State, the Scottish Ministers and the Welsh Ministers. The Scottish Government does not anticipate that these fines will vary in amount across Great Britain.

Yours sincerely,

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