Dear Minister,

Bankruptcy Fees (Scotland) Regulations 2017

Thank you for attending the meeting of the Economy, Jobs and Fair Work Committee this morning to give evidence on the Bankruptcy Fees (Scotland) Regulations 2017. I am grateful to you for waiting to hear the outcomes of the Committee’s discussion at the end of the evidence session.

As indicated at the meeting, I am now writing to you to set out the concerns of members of the Committee in relation to the Regulations. I would be grateful if you could provide the Committee with a response to the points by lunchtime on Monday 27 March at the latest to allow the Committee to consider your response at its meeting on 28 March:

- Some members are concerned about a lack of a transparent, consistent and understandable process for determining fees. Given that the increased fees will make a relatively small contribution to reducing the AiB’s need for Scottish Government funding, the Committee would like more information on why the fees have been structured the way they are and what alternative options might be available. Some members would like to ask whether the Scottish Government can commit to agreeing to a framework within which fees are set;

- The Business and Regulatory Impact Assessment states that AiB’s approach aimed at full cost recovery is based on the need to recover costs that relate to the administration of insolvency. It goes on to state that “continuing to set fees at current levels means that the AiB will not recover its costs, and therefore, would not be consistent Scottish public finance best practice”. Some members are concerned that there is no transparent framework in place to judge to what extent the fees set should or should not
be consistent with best practice as set out in the Scottish Public Finance manual and whether best practice is thus being followed;

- The Committee has heard evidence that there needs to be a full review of how AiB is funded due to declining levels of bankruptcies in recent years and that the practical implications of this charging regime need to be considered in the context of whether the new powers of the AiB give rise to a conflict of interest. Some members consider that a review needs to be carried out as part of a structured system for setting fees and that this review should be carried out before the new fee regime is brought in. Another view is that a quick replacement SSI with lower fee increases and a lower interest rate could be brought in pending a full review;

- There have also been questions raised about the level of consultation carried out in relation to the changes made via these regulations. This means that the impact of fee increases on stakeholders is not clear;

- There is concern about the 8% interest rate on late fees, and the lack of provision for it to be varied according to circumstances. The Committee notes the commitment from the Minister to review this rate once the new regime has been in operation for some time. However, some members continue to have concerns about the proposed rate;

- The Committee heard evidence that two thirds of creditor petitions for bankruptcy are made by HMRC and local authorities, and that these public bodies will be “very affected” by these changes. ICAS provided the Committee with evidence that, due to the proposed fee increases, HMRC may consider using insolvency practitioners in private practice rather than the AiB as trustee. It also noted that Glasgow City Council was already have alternative arrangements. Some members have concerns that this could further reduce the caseload of AiB and therefore its income.

I look forward to receiving your response to these points.

Kind regards

Gordon Lindhurst MSP
Convener