Dear Minister,

Insolvency (Amendment etc.) (EU Exit) Regulations 2018

At its meeting on 2 October, the Economy, Energy and Fair Work Committee considered the proposal by the Scottish Government to consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to the Insolvency (Amendment etc.) (EU Exit) Regulations 2018.

The Committee took evidence from officials from the Accountant in Bankruptcy and from the Scottish Government. We also received written representations from R3. Details of that evidence can be found at the following link.

The Committee recognises the need to put contingency plans in place for the event of a ‘no deal’ exit from the EU. However, we are concerned that we are being asked to scrutinise proposals for a UK statutory instrument (SI) without knowing the full detail the final instrument.

Ideally, the Committee would like to be able to see a draft of the SI alongside the consent notification to allow us to take a view on whether it delivers the changes set out in the notification and to consider whether there are any unforeseen consequences.

We understand that the Scottish Government may not have seen a draft of the SI before providing the Committee with the notification. However, where possible, we would ask the Scottish Government to consider providing the Committee with a draft
of UK SIs being dealt with under this process alongside future consent notifications referred to this Committee.

In the event that the Scottish Government cannot provide a draft SI, each notification should provide a clear summary of what the deficiencies in the EU instrument or domestic legislation are, and what changes the proposed SI will make to address those deficiencies.

We understand that where the final SI is being taken through Westminster, there is limited time and scope for changes to be made. However, the Committee would ask the Scottish Government to write to the Committee at the earliest opportunity with its assessment of whether the SI as laid by the UK Government matches the policy intention set out in the notification and to provide the Committee with an assessment of any unforeseen consequences.

Subject to the request to receive details of the final SI at the earliest opportunity, the Committee is content with the Scottish Ministers’ proposal to consent to the proposals set out in the notification, in relation to the Insolvency (Amendment etc.) (EU Exit) Regulations 2018, being included in a UK SI.

Kind regards

Gordon Lindhurst MSP
Convener