Minister for Community Wealth and Public Finance
Tom Arthur MSP

Scottish Government
Riaghaltas na h-Alba

T: 0300 244 4000
E: scottish.ministers@gov.scot

Claire Baker MSP
Convener
Economy and Fair Work Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Economyandfairwork.committee@parliament.scot

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Bankruptcy and Diligence (Scotland) Bill

The Minister for Parliamentary Business has asked me to follow up your discussion with him on 6 June, when you raised some issues about the approach that the Scottish Government is taking with this Bill, linking in with issues which you had put to the First Minister in the Conveners Group meeting on 24 May. As Minister with lead responsibility for the Bill, I would be very happy to meet with you in person to hear your views and try to address any concerns. Meantime, I thought it might be helpful to set out a few initial thoughts on some key points.

The first point, of course, is that the purpose and substance of the Bill should not be particularly controversial. It takes the opportunity to make some relatively minor and technical improvements to the wider law around bankruptcy and diligence, all reflecting the outcome of extensive discussion with specialist stakeholders. But primarily, it lays the groundwork for a moratorium to benefit people experiencing a mental health crisis, by offering a degree of temporary protection from creditors.

It is section 1 of the Bill which paves the way for subsequent secondary legislation to introduce (and, thereafter, to adjust) a mental health moratorium in Scotland. I understand that your core concern is around this feature and the balance of what we have placed on the face of the Bill and what we envisage progressing later, through regulations. In particular, I understand there is concern that, without more detail, your Committee could encounter difficulties in undertaking the required thorough scrutiny of our legislative proposal as it goes through its Parliamentary stages.

Let me be clear that I and, indeed, the whole Scottish Government entirely subscribe to the fundamental principle of appropriate Parliamentary scrutiny of legislation. We want to do all we can to facilitate that and, because I recognise the basis of your concerns, I want try to assist in this case.

In practical terms, the use of regulations allows the proposals to be worked up through engagement with our specialist Mental Health Moratorium Working Group. The approach

should also enable us, in due course, to act in a responsive manner if it becomes necessary (e.g. in light of post-legislative scrutiny) to seek to adjust the form of the moratorium that is initially implemented. It offers a degree of future-proofing. This is important because we cannot be certain that such adjustments will not be merited in light of experience, as our understanding of the complexities of mental health and its interaction with financial matters evolves. Utilising secondary rather than primary legislation to make such adjustments will enhance the ability of the law to keep pace with our evolving understanding.

Those are practical benefits of the approach that we propose, but I do recognise that the Committee will want to have the best possible picture of what the initial moratorium will look like. With that in mind, I am happy to give a commitment that the report of the Working Group will be provided to the Committee when it becomes available (which I anticipate being before the end of the summer recess). It is this report that will be the key driver for the regime that we eventually seek to introduce although, of course, we will need to make our own assessments of its proposals and take account of any representations from other stakeholders. I am happy to keep the Committee abreast of those assessments and representations.

In addition to providing the Committee with such background analysis, which is what will inform our approach to the regulations, I will ask officials to strive to ensure that draft regulations can be made available to Parliament for stage 3, if not earlier. Naturally, when we are able to produce these will be influenced by a range of factors including the nature and complexity of the Working Group's report and recommendations, views expressed by other stakeholders, and the further development of policy. I should add that we would not close the door on bringing forward amendments to the Bill itself to put additional detail into primary rather than secondary legislation, if such a course appears reasonable and appropriate in the light of developments.

Finally, and while I know you will already be aware of this, can I highlight that we are proposing that regulations made under section 1 (either to establish or later to amend a mental health moratorium) will be subject to the affirmative procedure. This provides Parliament, if it has concerns with a set of regulations, with an opportunity to send the Scottish Ministers away to think again, or ultimately to block the regulations entirely. It is a significant procedure. However, while our view has been that it is proportionate in this instance, we are open to considering additional and enhanced scrutiny if there is a strong argument to do so.

I hope this letter gives some reassurance and, as I say, I would be happy to meet if that would be helpful.

I am copying this letter to the First Minister and to the Minister for Parliamentary Business.

TOM ARTHUR