

Gordon Lindhust MSP  
Convenor, Economy, Jobs and Fair Work Committee  
Scottish Parliament

By email only.

30 October 2017

Dear Mr Lindhurst

**The Scotland Act 1998 (Insolvency Functions) Order 2017 (the Order)**

I write to you about the above statutory instrument which has been laid before the Scottish Parliament and which the Committee may report on before 8 November 2017 and on which the Committee are taking evidence during its session on 31 October 2017.

Following devolution and the Scotland Act 1998, the ability to create legislation involving insolvency as it affects Scotland has been split between the UK Parliament and the Scottish Parliament. While the position for personal insolvency is fairly straight forward in that responsibility is fully devolved, the position in relation to corporate insolvency procedures is not straight forward. In broad terms, responsibility for Company Voluntary Arrangements and Administration is reserved to the UK Parliament. Receivership is fully devolved to the Scotland Parliament. Liquidation is reserved to the UK Parliament although the process of liquidation is devolved to the Scottish Parliament.

As a result of the complicated legislative power landscape, this gives rise to two particular problems on a practical basis:

- i. questions often arise in relation to liquidation on where legislative competence lies.
- ii. the legislative provisions will often now vary significantly throughout the UK. This is often not because of any specific policy difference or intent but simply because of differing resource availability or parliamentary priorities at a particular time.

As you will be aware, businesses will regularly operate across the UK and corporate groups will often have entities formed in Scotland as well as England & Wales. It is therefore to the benefit of the economy, creditors and insolvency practitioners that, where it is sensible to do so and the policy objectives are consistent in Scotland with the rest of the UK, that the insolvency legislation is consistent. The current split of legislative powers does not facilitate that to occur.

Recognising the issues described above, the Calman Commission considered this issue and recommended that all corporate insolvency legislative powers should be re-reserved to the UK Parliament, a position which was not accepted by the Scottish Government.

In the absence of an ability to have all corporate insolvency legislative powers within the gift of a single Parliament, the objective of the Order to confer mutual functions on the Scottish Ministers and a Minister of the Crown so that both have the power to bring forward as appropriate winding up rules or regulations for Scotland in relation to companies, incorporated friendly societies or limited liability partnerships, irrespective of whether these rules or regulations relate to reserved matters under schedule 5 of the 1998 Act or matters that are not reserved is one which we would fully support.

I/..

I trust the above is of assistance to the Committee in considering the Order. I shall of course be pleased to provide any further information should this be necessary.

Yours sincerely

A handwritten signature in cursive script that reads "David M Menzies". The signature is written in a light grey or blue ink.

**David Menzies**  
**Director of Practice**