



The Scottish Parliament
Pàrlamaid na h-Alba

Economy, Jobs and Fair Work Committee

Paul Wheelhouse
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Dear Minister

Bankruptcy Fees (Scotland) Regulations 2018

Having considered the above statutory instrument, we wanted to write to you highlighting the following points—

Previous version of the instrument

- The Committee wrote to you outlining our concerns over the Bankruptcy Fees (Scotland) Regulations 2017 on 22 March 2017 and that instrument was subsequently withdrawn;
- Our general concerns were that there was not a transparent, consistent and understandable process for setting fees; the extent to which there should be full cost recovery was not clear, and likewise the impact of fee increases on stakeholders;
- Furthermore: "*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”;

- Specific concerns covered: an increase in the commission the AiB proposed to take from the sale of debtors’ assets (seen as having an adverse impact on debtors’ ability to start again); a proposal to charge 8% interest where fees were paid late (expected to affect a small number of insolvency practitioners); and capping the fee for auditing an insolvency practitioner’s account (resulting in what were seen as unacceptable cross-subsidies);

Current version of the instrument

- We first considered the current iteration of the instrument on 17 April 2018 and decided to seek written views from ICAS, Govan Law Centre and Citizens Advice Scotland. We received submissions from ICAS, Alan McIntosh (formerly of Govan Law Centre) and Money Advice Scotland;
- Members discussed how they wished to proceed with the instrument on 8 and 15 May, informed by the views of those stakeholders plus a submission on 14 May from the Accountant in Bankruptcy (AiB) itself, and agreed this correspondence on 22 May;
- The Committee notes the 2018 Regulations would not take forward a number of the fee increases proposed in the 2017 Regulations, in particular: plans to increase the commission charged on selling assets, cap the AiB’s audit fee, and charge interest on late payments;
- We note the fees charged to debtors to go bankrupt will not change (currently £90 for a ‘Minimal Asset Process’ bankruptcy and £200 for a full administration bankruptcy);
- We also note that the 2018 Regulations would increase the fee charged to a creditor to apply for a debtor’s bankruptcy, as well as the AiB’s fee for administering a bankruptcy. These increases were also proposed in 2017 although the administration fee proposed was lower. Additional fee increases proposed in the 2018 Regulations include the AiB’s annual supervision fee and various fees for entries in the Register of Insolvencies;
- When looking at the previous regulations, the Committee commented on consultation: *“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”;*
- The policy note with the current regulations states that AiB consulted its stakeholders on the 2018 Regulations. It did not publish the responses, though it did publish its own summary of responses;
- The Committee wishes to highlight that the responses themselves were not published and to encourage the AiB to consider for future consultations - in the interests of greater transparency - publishing responses in full (save, of course,

for personal details, and taking into account any content raising issues of a sensitive nature).

Conclusion

- **We appreciate the AiB have gone some way to addressing the Committee's concerns about the 2017 Regulations in this the 2018 iteration. On that basis, the Committee is content, but we also believe there to be merit in looking at how a more transparent and sustainable framework for setting fees could be arrived at. The Committee would, therefore, welcome further consideration of this matter by the AiB.**

I look forward to receiving your response.

Kind regards

A handwritten signature in black ink, appearing to read "Gordon Lindhurst". The signature is written in a cursive style with a large, stylized initial 'G' and 'L'.

Gordon Lindhurst MSP
Convener

cc Alex Reid, Head of Policy Development, AiB