

Finance Committee Public Services Reform (Scotland) Bill

August 2009

Introduction

The Federation of Small Businesses (FSB) is Scotland's largest direct-member business organisation, representing almost 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

While the Federation has not been involved in wider debate on reform of public services, we are pleased to submit comments regarding the potential for the Bill to reduce the regulatory burden on businesses.

General Principles

The FSB broadly welcomes the content of the Bill. Its provisions appear to build on existing work and should help to simplify the public sector landscape, as well as drive greater efficiency in public services.

In our submission to the Committee's Strategic Scrutiny of the Scottish Budget inquiry (April 2009), we indicated that future spending constraints would necessitate greater efficiency in the operation of public services as they interact with business. In particular, we suggested that there was scope at local authority level to engage with the better regulation agenda. The Bill therefore acts as a timely opportunity to consider opportunities in this area.

Part Two – Order-Making Powers

The FSB supports the order-making powers in the Bill.

Such powers, in relation to improving the exercise of public functions, are necessary to ensure a modern, fit-for-purpose regulatory regime; although we echo comments submitted by other organisations regarding the importance of preconditions.

The introduction of order-making powers mirrors developments which have taken place in UK legislation, most notably in the 2006 Legislative and Regulatory Reform Act. While Scotland has chosen a different approach to

address better regulation (compared to Westminster) we are still playing 'catch up' in addressing many issues relating to better regulation, including the right legislative framework. These powers are a useful starting point and there are obvious links with reforms to different public organisations and agencies; however the 2006 Act was more clearly focused on the delivery of better regulation e.g. through inspection and enforcement of businesses.

The 2006 Act also contained order-making powers regarding the promotion of regulatory principles (transparency, accountability, proportionality and consistency) to ensure that regulatory functions are exercised according to these principles. The FSB believes that this section complements the order-making powers in relation to removing burdens. We therefore think that the inclusion in the Bill of similar order-making powers to promote better regulation principles would be helpful.

The FSB understands that the order-making powers in part two of the Bill would be used relatively infrequently and therefore should not be over-sold as an easy answer to business concerns about regulation. We appreciate that it is often difficult to find specific examples of legislation that represent a burden to business. Often this is because it is rarely the application of the legislation, as opposed to the policy objective, which causes problems i.e. the government, believes that certain measures are necessary to achieve its policy objective even if business perceives these measures to be a burden. By far the most common complaint (and the most difficult to address) is the cumulative effect of legislation. Each measure on its own looks straightforward enough (and its impact is assessed in isolation); it is the breadth of different measures to be dealt with that causes the problem.

We are, nonetheless, committed to working with the Scottish Government to identify opportunities where these powers might be used to good effect, perhaps by addressing unintended consequences in legislation, following post-implementation review e.g. the 2005 Licensing Act. It might also be worth considering whether these powers could be used to update existing business regulation to ensure consistency. A useful example to consider would be the licensing provisions in the Civic Government (Scotland) Act 1982. These provisions cover a wide range of miscellaneous business activity and were reviewed by a task group in 2003-04. While certain elements have subsequently been taken forward in alcohol licensing and justice legislation, the Scottish Executive announced in 2005 that it would be up to future governments to decide whether or not to implement additional recommendations.

Lastly, at this stage it looks unlikely that these powers could be used to address the implementation of regulations at local level, particularly where fees, policies and conditions are set locally. While the FSB accepts that certain regulations require local flexibility, this is where many 'red tape' issues arise for small businesses. We are not yet convinced that local government in Scotland has adequately engaged in better regulation and there is much scope for improvement. In particular, the level of scrutiny of new measures which will impact on small businesses in national legislation (through Regulatory Impact Assessments) can be undermined by the lack of similar, formal scrutiny of local policies and fee arrangements. With new economic development responsibilities and the introduction of the Concordat, the FSB is hopeful local authorities will begin to address better regulation as part of their efforts to develop a competitive local business environment.

