Progress of sorts

Nicky Fisher, President of R3, the UK's insolvency and restructuring trade body, looks at the future of insolvency practitioner regulation...

On the face of it, the Government's plans for the future of insolvency regulation contained a number of positives. Proposals for a single regulator housed inside the Insolvency Service will not be progressed, the bonding regime will be reformed, and firm regulation will be introduced alongside the changes to regulation for licence holders.

But, there remain some areas of concern. While the single regulator will not be housed in the Insolvency Service, the prospect of one being introduced has not entirely gone away. The Government is also progressing with its plan for a compensation scheme and, while the news of firm regulation and bonding reform are both welcome in principle, the finer details of both proposals still need to be developed…

The practicalities of firm regulation

The Government has been clear that it sees firm regulation as a solution to the regulatory gap that has emerged as the profession – and the demands on it – have evolved following the introduction of the Insolvency Act in 1986.

And while we support the principle of firm regulation, as the majority of our members believe it will improve professional standards, we really need to see the details around these proposals. To date, the Government has only published an outline of how this process will work, which, given the size and scale of the change this will introduce, is a cause for concern.

We will continue to push Government for more details through our parliamentary engagement work to ensure we are able to respond and present the views of the profession at the earliest opportunity.

Compensation concerns

The compensation scheme was one of the more controversial proposals the Government put forward at the end of 2021 – and one which could create an onerous burden for the profession if it is not developed with the utmost care.

The Government has acknowledged that the proposed scheme will take into account the nature of the work undertaken by the profession and find a way around the issue of spurious or high-volume claims with its solution to these issues appearing to be to consult further.

But, we still need to see the details of how this will work in practice, so we will be keeping a close eye out for the consultation document, and ensuring the views and concerns of the profession around these proposals are clearly heard.

Two stages, many questions

The Government's two-stage approach to reforming the bonding regime was a mixed blessing. The amendments it intends to introduce via secondary legislation, which include increasing General Penalty Sum cover from £250,000 to £750,000, prescribing that a maximum indemnity period must be at least six years from the date of appointment and extending the current minimum requirements of a bond, are positive.

It has been clear the bonding regime is in need of reform for some time now, so the decision to move forward with these changes – something we called for in our consultation response – was welcome.

However, the lack of detail around the Government's plans to review a number of areas of the bonding regime – including changes to IP Security and bonds for successor insolvency practitioners, among other things – are a cause for concern.

The Government intends to consult on these areas in the new year, and we will be taking every opportunity to clarify the details of what's planned for the future.

A ticking clock

The jury is still out on the Government's proposals for the future of insolvency regulation. While there were a lot of positives in the Government's announcement, there are still plenty of questions that need answering around the details of certain key areas.

And the window for responses is getting smaller. Several of these proposals are dependent on parliamentary time being available for legislation to be passed and there are some critical elements that are due for further consultation in 2024.

But, with a General Election likely to take place next year, the biggest question is how far the Government will be able to move forward with these before the legislative agenda is put on pause while the country goes to the polls. ■

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