

Dear Sir,

I must be on your list because of having written a very dull book on banking law in Scotland.

I have a very few rather unhelpful comments to throw into the pot.

The first is that at one stage it is envisaged that where a bank fails, some other method of payment of things such as pensions, child benefit, tax credit should be used, perhaps involving Post Offices. Yet, in a fine example of not-joined up thinking, the Government is busy closing down post offices, particularly in rural districts in Scotland, where presumably people will make less political fuss, but will still be mightily inconvenienced. They will end up with some form of payment certificates but in some cases have to travel miles to pay them in, instead of going to the local post office since it won't exist any more. What are the recipients of these funds expected to do until they can get to some sort of paying in place?

The second point relates to the non-registration of floating charges over banks' assets and undertaking where Liquidity Assistance is being provided.

I can see exactly why this might be a good idea, and why you have suggested it, but it flies in the face of the fact that the whole point of the registration of a floating charge is that unsecured creditors and investors have an (admittedly pretty limited) opportunity to be aware that the company's assets are secured and that their chances of getting their money back become all the more meagre. If these charges are unregistered, effectively the creditors and others are being deceived.

You may be unaware of another problem. At the moment, the Bankruptcy and Diligence etc. (Scotland) Act 2007 is being studied by officials in the Registers of Scotland. It is not yet in force. One of the requirements of the Act is that all floating charges over company assets have to be registered in a special Scottish Register of Floating Charges. Without registration, the charge will be invalid. Security registration in Scotland depends on the concept of fair publicity. If, say, the Clydesdale Bank started to go under, it would need the secret Liquidity Assistance, but presumably the LA would not be supplied without a charge over the Bank's assets. That charge would not be valid unless registered.

If one is going to exempt banks from this rule, it makes the principle of registration less effective.

The Scottish press today have seized upon the possibility of the abolition of Scottish notes. This may or may not be what is intended in the Banking Stability Document, but up here it would be a very unpopular move and would be a propaganda coup for the SNP. There may be a political dimension to this that has been ignored in Westminster. If there is an economic argument for the abolition of Scottish notes, it had better be sold to the Scottish population in such a way that it shows (a) that they are not well protected at the moment and (b) that the new arrangements are safer for consumers than before. Either of these is fraught, because if you suggest (a) you might trigger a run on a bank, and (b) begs the question why it wasn't done earlier.

I have no idea how one sorts all this out. I am sorry only to be able to see problems and not to be more constructive with solutions.

Yours sincerely

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