**REGULATORY REVIEW GROUP**

**ANNUAL REPORT – 2015**

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Dear Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy

As you are aware the Regulatory Review Group (RRG) is an independent body established by Scottish Government to promote and develop a culture and environment where both business and Government, in all its forms, work together to promote better regulation and sustainable economic growth. The work of RRG seeks to improve the regulatory landscape and create better regulation for all, by examining problems identified by business and suggesting improvement actions for Government.

I am pleased to present to you our 2015 Annual Report which highlights our progress in achieving those aims and also specific issues which we wish to highlight. As always the Report is a mixture of generic or cross cutting issues that we feel need understood and specific issues which have taken our time throughout this year.

This year the two themes are:

1. The perceived contradiction between operating something from a national perspective versus local operation – which from my experience is more often faction than fact.
2. How Scotland, and other devolved Parliaments, Administrations, and / or regions across the EU get their place and say at the increasing number of stakeholder and other groups within the EU looking at a wide range of regulatory issues across a wide variety of sectors.

In terms of a) this reflects the perpetual regulatory challenge of balancing what needs to be done the same across Scotland and how that is done in a way that does not stand in the way of legitimate and appropriate local circumstance. Local authorities continue to play a critical role in delivering better regulation across a wide range of issues and almost all that RRG does has a local authority dimension to it. While much is discussed publically about Public Sector Reform in terms of Health and other services, that same debate and option appraisal is also needed in the regulatory areas of Planning, Environmental Health, Trading Standards, etc. RRG has always advocated that the process for locally delivered regulation should be designed to give the most consistent and sensible solution for each issue being addressed. Having a national process does not mean that you make national decisions - decisions should be made at the most sensible level for that particular issue. While good progress has been made in areas around, for example, Primary Authority and our work across the energy sectors there remains still much to do in this area.

As the EU remains the main source of new regulation and as Scotland becomes more devolved and regulation of all types falls more under its control so should its ability to access and engage with those who set those regulations in the EU directly. This assertion has nothing to do with politics but Scotland is demographically different in terms of company size and sector demographics to other parts of the UK. The UK Government makes decisions on regulation for all of the UK but now that Scotland, and other parts of the UK, are taking more of these decisions through local devolved Parliaments and Administrations, those differences in demographics need to be recognised and reflected within the EU. It is clear from the work that RRG has done over the years that a lot of the innovation and better ways of working on regulation tends to come from the devolved or regional parts of Member States. This needs to be recognised by the EU and Scotland needs a stronger voice of its own within the EU in areas where it manages the regulation itself.

In terms of our review of statutory regulation, this year we reviewed Part 3 of the Fire (Scotland) Act 2005, an area RRG was involved in some years ago and where we believed that there were still issues to be addressed. The review made 12 recommendations, the main one focusing on the need for fire risk assessors to be competent and give good advice.

As I have highlighted in previous Annual Reports how legislation is produced is as important as how it is implemented. The Land Reform Bill and Lobbying (Scotland) Bill are two examples where RRG believes that the entire process has been run to an extremely tight timescale. RRG continues to feel strongly that there is a need for the introduction of a stage 4 consideration within the Scottish Parliament to allow a Bill to be sense checked before the final version is passed in Parliament.

The report expands not just on all that I have summarised above but also on many

other issues that we have dealt with this year and what we intend to consider in the year ahead. This includes reviewing a piece of Government Sponsored Voluntary Regulation and examining the impact and regulation of new business models to ensure that there is a level regulatory playing field.

We could not do all this without the help and support from all those in Scottish Government and beyond. I express my personal thanks for that as it shows we are all committed to our objective on making better regulation the key to what we do in Scotland.

Yours sincerely



Professor Russel Griggs OBE

Chair, Regulatory Review Group

1. **INTRODUCTION AND BACKGROUND**

I am delighted to present the eighth Annual Report of the Regulatory Review Group (RRG), recording progress towards our overall aims of:

* Creating a culture and environment in Scotland where both business and Government (in all its forms) work together to create better regulation for all; and
* In doing that, have Scotland recognised as the leading country in Europe in terms of better regulation.

All our work is tied to the five key principles of better regulation namely that regulation should be transparent, accountable, consistent, proportionate, and targeted, which are universally accepted by all.

We continue to align our activities and our aspirations with the Scottish Government’s Purpose of increasing sustainable economic growth with opportunities for all to flourish. We remain committed to ensuring that Scotland improves its competitive position, in part through an improved regulatory environment and the work of RRG and its partners.

Our Report this year will follow the pattern of previous years in that we will review the work of this year, look at how we have delivered against our objectives from the previous year and provide a forward look into next year.

In all our Reports there are themes that run through them which have been highlighted by the work we do or come from interaction with others. This year the two themes are:

1. The perceived contradiction between operating something from a national perspective versus local operation – which from my experience is more often faction than fact.
2. How Scotland, and other devolved Parliaments, Administrations, and / or regions across the EU get their place and say at the increasing number of stakeholder and other groups within the EU looking at a wide range of regulatory issues across a wide variety of sectors.

Looking forward to the coming year we will also be looking at a new theme or issue - namely how new technologies are introducing new channels and ways to market, specifically looking at:

* How these channels fit into existing regulatory frameworks; and
* How to ensure a level playing field between those that use these new channels and those who do not

This is not in any way trying to prevent new technologies or channels entering particular sectors but to make sure that in terms of regulation the opportunity that they provide is used in a balanced way.

1. **WHO WE ARE AND WHAT WE DO**

RRG has been in existence since 2004 and was instigated by Lord Wallace of Tankerness, the then Scottish Executive’s Deputy First Minister. Lord Wallace felt that an industry led independent group advising Government on issues around better regulation was the best way to create the dialogue and challenge that was needed on the subject of how Government achieves the balance between necessary and appropriate regulation and understanding the impact it has on business; as well as helping business to better understand the way that Government and Regulators operate in that environment.

We have always focused on better regulation rather than more or less regulation although, we have on occasion, championed increases in regulation as well as reduction or better management of them. Scotland has never had the targets that have been used by UK Government and while we do continue to look at regulation that is no longer necessary, targets to reduce the cost or number of regulations can create and drive behaviours that can give a wrong or worse outcome. Our work has highlighted that in many cases it is how legislation is implemented that is the issue not the legislation itself, indicating it is equally important to ensure those who regulate work as well as those who legislate.

When the Government changed in 2007 and our remit was ‘reinvigorated’ we were actively encouraged to investigate issues or cases which we saw hindering business or Government and make recommendations on how regulatory barriers can be removed. Our role therefore has grown but we still work the same way: first, gathering and considering the evidence from real cases, and then making recommendations as a result of that detailed work.

In specific terms we ‘do’ and act on requests and information we receive. We work with those involved to identify and resolve issues. We are very much focused on the process of making things work better and from this we build a wider knowledge of what needs to improve further in the area of better regulation. This enables us to make more strategic recommendations for Government, Regulators and others to deliver better regulation. It also allows us to discover systemic issues that are present across different types of regulation or legislation that are used across various sectors.

We also agreed, following our reinvigoration, that we would review specific pieces of regulation which are in force to see how they are operating. To date, we have reviewed the Licensing (Scotland) Act 2005, the Housing (Scotland) Bill, the Knife Dealer’s Licensing Scheme, and most recently Part 3 of the Fire (Scotland) Act 2005[[1]](#footnote-1). We are not a policy formulator and our focus is on how legislation is produced and then implemented.

It has always been important that RRG membership represents as broad a view of interests as possible, not just the business community. Therefore as well as having the major Trade Associations as members we have balanced that with membership from STUC, and the wider business community in terms of NFUS and ICAS. We also have representation from the UK Competition and Markets Authority along with officials from Scottish and Westminster Governments. In recent years we have expanded and rounded our membership even further by welcoming COSLA and the Scottish Retail Consortium (SRC). The full membership and remit of RRG is set out in Annex 1.

1. **GENERIC ISSUES**

**Competent Government**

One of the themes in last year’s Annual Report was that in regulatory matters competent government means not just looking at what you need to regulate better today but also what might come in the future that you need to regulate for and what in the past you could have regulated better.

A number of the pieces of work we have done this year, as in the past few years, have been related to renewable energy or ways of making existing energy production more effective or less harmful. This year our work on renewables and energy regulation covered all three areas of competent government:

1. Current - consenting for wind farms.
2. Future - Geothermal power which is still very much in its infancy.
3. Past - bringing together all the work that I, as RRG Chair, have led over the past couple of years on opencast mining into a format and procedure that can be used to ensure that what happened should never happen again.

**National v Local**

The above also highlighted the perpetual regulatory challenge of balancing what needs to be done the same across Scotland and how that is done in a way that is seen as positive and not standing in the way of legitimate and appropriate local concerns.

This friction between local and national has been something that we have seen regularly over the years. Such instances include licensing clerks who would welcome a single national computer licensing IT system as it would allow them to share information much more easily through to areas of new energy like Geothermal, ensuring, as we gain knowledge of how it all works at a practical level, that it is shared and done consistently across Scotland.

Where we all have to get to is a place of trust and recognise that if those who do this as their day job think that sharing or doing something nationally, working from one national template, guideline, etc gives a better outcome for all, then we should take heed.

As initiatives like Primary Authority, which is discussed later in this Report, are introduced to help consistency for both the local authority and the end user, then we all need to accept if having looked at the evidence it has been decided that this is the best way then that has to be accepted by all.

**Government Sponsored Voluntary Regulation**

As we highlighted in last year’s Annual Report we are bringing Voluntary Regulation into our scope where that has been driven by Government to get a sector to address a specific issue. There is a plethora of it already in use in Scottish Government. Government Sponsored Voluntary Regulation has now been brought into line with the statutory regulatory approach so it must conform to all the tests and principles that surround that, including reviewing and revisiting it from time to time. RRG is keen to ascertain which sectors have the majority of these Government Sponsored Voluntary Regulations. While the initial work on this was done by the retail trade, where there are approximately 50 voluntary regulations per retailer[[2]](#footnote-2), it is not clear yet how it impacts in terms of volume on other sectors.

**New Business Models**

This focusing on where the issues mainly lie will also drive our new work on new business models in the market which allow entities and individuals to compete in a different way to that which has been traditionally done. This may mean they do not offer the regulatory protections that are there from traditional, existing operators.

This is not in any way trying to prevent new technologies or channels entering particular sectors but to make sure that in terms of regulation the opportunity that they provide is used in a balanced way.

**European Union**

I have covered in previous years two issues with our engagement with the EU namely:

1. How small business get their voices heard on new legislation given that it is the larger companies that can devote the real time and resources to engaging with the EU on new regulation, etc.
2. How Scotland gets its own voice in the EU where it is relevant to do so.

These two are now becoming more linked as the new Commission sets up the bodies it will look to for advice on delivering better regulation and regulatory proposals. These tend to allow only one representative per EU Member State. The Commission's new Better Regulation Guidelines strengthen their commitment to consultations that reach all relevant stakeholders – and we hope that this will ensure the views of small business and small nations are heard.

As Scotland becomes more devolved and regulation of all types falls more under its control so should its ability to access and engage those who set those regulations in the EU directly. This assertion has nothing to do with politics but Scotland is demographically different in terms of company size and sector demographics to other parts of the UK. The UK Government made decisions on regulation for all of the UK but now that Scotland, and other parts of the UK, are taking more of these decisions through their local devolved Parliaments and Administrations, those differences in demographics need to be recognised and reflected with the EU.

It is clear from the work that RRG has done over the years with others in the EU that a lot of the innovation and better ways of working on regulation tends to come from the devolved or regional parts of EU member states. This needs to be recognised by the EU.

As previous Reports have highlighted, regulation plays a much more important part in the economy and the environment than many realise. Too many still see it as ‘things that stop us doing things’ or ‘make it more difficult to do’ or ‘just red tape’ but more and more that could not be further from the truth. Regulation plays a key role in promoting competitiveness which is explored further in section 4 below.

1. **FOCUS OF WORK IN THE PAST YEAR**

This section of the Report looks back at our work over the last year.

Competitiveness and Regulation

**Regulators**

# Part of bringing competitiveness through regulation is ensuring that our Regulators understand what that means and becoming part of the positive picture that Scotland puts out to the world rather than being looked on as a hindrance to growth.

# One of the key ways that RRG has ensured that happens are yearly Regulators and Sponsors Event which we co-host with Scottish Government. This year was the sixth such event where the main Scottish Regulators working with business meet with their respective sponsor teams and RRG to discuss areas of communality and discuss how to share, and build on, best practice. The main focus of this event was a workshop around the Scottish Regulators’ Strategic Code of Practice which had just been introduced into Parliament. This format provided the opportunity for Regulators to discuss issues around the Code with RRG members acting as facilitators to generate discussion. This format worked exceptionally well with many actions being taken forward. This has included Scottish Government setting up a Regulators’ Group specifically to discuss working with the Code and a knowledge hub where examples of best practice can be placed for all to share and learn from. The Code demonstrates to those outside Scotland, or with a desire to invest here, that we understand the issues that have to be addressed to make better regulation work and how we will all work together and judge ourselves in doing so. The event also heard about the Framework approach that the Scottish Retail Consortium has proposed for Government Sponsored Voluntary Regulation in the retail sector. Both of these show that industry, Regulators and Government working together can help enhance what we do.

**Better Environmental Regulation – SEPA**

The Regulatory Reform (Scotland) Act includes the new integrated framework for environmental regulation which RRG has followed with interest. This framework seeks to deliver a simpler legislative framework which will enable SEPA to focus greatest effort on the environmental problems and issues that matter most.

We remain engaged with SEPA as they take forward their better environmental regulation programme. This year SEPA has developed a new Regulatory Strategy and is currently driving significant changes to how it operates. These changes are aimed at enabling SEPA to deliver as powerfully as possible against its new statutory purpose under the Regulatory Reform (Scotland) Act. This purpose is, in short, to:

Protect and improve the environment (environmental success) in ways that, as far as possible, create:

* Health and well-being benefits (social success); and
* Sustainable economic growth (economic success).

SEPA plans to do much more work with businesses to help tackle the twenty-first century challenge of creating economic and social success within planetary constraints. This builds on existing good examples, including the collaboration between SEPA and the Scotch Whisky Association to support the sustainable growth of that sector.

SEPA is setting up a new Sector Unit to support this approach. This Unit will lead on the planning and co-ordination of SEPA’s sector approach and act as the main gateway for relationship building at a sector level. SEPA is also developing a new Permitting Service to improve the processing of new applications and drive the practical reforms to permits enabled by the Regulatory Reform (Scotland) Act. The intention is to make environmental permissions simpler, clearer and more joined-up for those SEPA regulates.

SEPA has continued to work closely with Scottish Government on implementation of the environmental aspects of the Regulatory Reform (Scotland) Act and also on reform of charging. SEPA is taking a phased approach to implementation under the Act, reforming enforcement first and then permissioning. The new enforcement powers have now been put in force through the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 and are designed to offer SEPA a more proportionate alternative set of tools for dealing with offences. These will be implemented by SEPA via a phased approach starting in 2016.

A key aspect of SEPA’s work in delivering against the statutory purpose is to support and encourage business to “go beyond compliance” through good environmental practice and innovation, recognising that putting sustainability at the heart of business operations benefits the bottom line. Specific examples of the support SEPA provides to business are provided at Annex 3. In embedding its new sectoral approach SEPA plans to do even more to work in this way in the future.

**Working with Local Authorities**

Local authorities continue to play a critical role in delivering better regulation across a wide range of issues and almost all that RRG does has a local authority dimension to it. It is also here that the challenge between local and national raises its head most often. To be clear, RRG has no remit or view on national versus local but does have a view on how regulation is delivered in the best way. This tends to fall under a number of headings or criteria namely:

1. What is it that is to be regulated and delivered?
2. Is there benefit for all if it is delivered the same way across Scotland?
3. Are there adequate resources to deliver this and where are they situated?
4. Who is responsible if the regulatory system breaks down in a specific area?

Item iii) has been the subject of comment in previous Annual Reports. There is now more good work in sharing knowledge and good practice across local authorities. However, the underlying concern of having the correct number of expert staff in key areas of regulatory delivery that local authorities are responsible for remains an unanswered question. While much is discussed publically about Public Sector Reform in terms of Health and other services, that same debate and option appraisal is also needed in the areas of Planning, Environmental Health, Trading Standards, etc. This does not just apply to personnel but to the better utilisation of the same IT and other digital services across all authorities for issues like licensing, which not only assist the applicant but also those whose job it is to decide whether a licence will be supplied.

RRG therefore has always advocated that the process for locally delivered regulation should be designed to give the most consistent and sensible solution for each issue being addressed. Having a national process does not mean that you make national decisions - decisions should be made at the most sensible level for that particular issue.

To that end RRG has been very supportive of the work COSLA has been doing to identify areas within local authorities that would benefit from national standards following the Regulatory Reform (Scotland) Act and the commitment made in the Memorandum of Understanding between COSLA and Scottish Government. One area identified by local authority officers where a more consistent approach would benefit both businesses and local authorities was that of food export health certificates. Certain third (non-EU) countries may require food exports to be certified by a UK Government authority before being exported, and Scottish local authorities provide this service to facilitate their local businesses accessing foreign markets. A working group established to consider this has concluded its work resulting in national standard guidance, processes and certificates for use Scotland wide. This will be adopted by local authorities in 2016 and will provide consistency across Scotland to businesses who wish to expand their export markets, while removing duplication of effort for local authorities.

From the work of the Coal Taskforce, local authorities affected by the challenges of the liquidation of the two leading coal contractors are looking now to work together and produce national guidelines and rules on mineral extraction. These guidelines will form the basis of what all will do in terms of monitoring, planning, etc but at the same time allow for local additions where appropriate. This has already led to a more consistent and robust approach which hopefully will bring in the long term greater trust with the local communities affected. This is expanded on further in the section on Coal below.

RRG is a member of the regulatory forum, hosted by COSLA, which provides a further opportunity to engage with regulators throughout Scotland on local authority regulatory issues. The forum continues to meet regularly and seeks to improve knowledge and sharing of best practice between Regulators. RRG will continue to engage with local authorities, COSLA and the regulatory forum to help deliver the common purpose, consistent approach and the regulatory environment that we all want to achieve.

Multi-Lateral Working

RRG supports multi-lateral working wherever possible. The benefits of this are that everyone is round the table at the one time and whilst we don’t always agree, there is always the chance to hear everyone’s views, come to a consensus and move on. This has been the case this year in several projects I have chaired and which I will explain further below.

**Coal**

In 2013 the Scottish Opencast Coal Taskforce was set up in response to the liquidation of Scottish Coal and ATH Resources which had repercussions for employment, continued coaling and restoration at a number of sites across the Scottish coalfields. The Taskforce and Scottish Government worked together to ensure the optimum outcome for all concerned both for sustained employment, energy supply, host communities, the environment and for site restoration. The Taskforce was represented by the affected councils, The Coal Authority, the relevant Unions, Coal Operators, Scottish Government, Department of Energy & Climate Change (DECC), the Scotland Office, Parliamentarians representing the coalfield communities from across the political parties and SEPA.

A consultation was held in late 2013 to seek views on more effective regulation, securing restoration at existing surface coal mines where coaling is incomplete, and for future sites including extensions. Since that consultation two Taskforce sub-groups (Compliance and Finance) were established to consider the consultation’s findings. The main findings of these sub-groups have been published alongside the full [report](http://www.gov.scot/Publications/2015/11/1267). The sub-groups looked at how more effective regulatory processes could be put in place working alongside existing local authority structures. The sub-groups also took evidence on how new forms of regulation and wider visibility over procedures and outputs might secure improvements including a better understanding of financial guarantee options for site restoration and aftercare, and steps to underpin support in that complex field by addressing skills gaps.

The final [report](http://www.gov.scot/Publications/2015/11/1267) of the Taskforce Compliance and Finance sub-groups was published in November 2015 and provides a platform for further initiatives and consultation on its recommendations by lead partners.

A Coal Restoration Working Group has also been established to monitor and progress surface coal mine site restoration in Scotland.

**Onshore energy consents**

This group continued to meet during 2015 and has now concluded its work. It is a good example of how multilateral working can aid and speed up solutions to what are complex issues involving many parties. The focus of this group was to identify issues and suggest solutions to improve the determination process for onshore energy consents in relation to:

* Streamlining the process.
* Shortening determination time lines.
* Increasing community involvement.

Overall, the group supported an improved streamlined procedure for onshore consents and with the new IT system now in place there is improved clarity for stakeholders. There also remains a lot of scope for wind power. There are lots of people employed in this sector and if applications of high quality continue to come forward there will be more developments consented in the future.

**Geothermal**

Following recommendation by the Geothermal Energy Expert Group[[3]](#footnote-3) a short-term Geothermal Energy Regulatory Structure Sub-Group, with membership drawn from industry, academia, regulators and Government, was established as a wide range of legal issues had been identified. This was in respect of future on-shore geothermal projects, including ownership and licensing of geothermal energy resources.

# Over the course of the sub-group’s two meetings members concluded that, in their opinion, the regulatory framework for mine water and hot sedimentary aquifer geothermal projects is sufficient for the purposes of the current geothermal industry. However, in the absence of any planned deep geothermal projects in Scotland which will require an Enhanced Geothermal System, the sub-group was unable to reach any conclusions in respect of the appropriateness of the current regulatory framework for hot dry rock projects. The sub-group recommended the production of regulatory guidance in respect of geothermal energy to help promote awareness amongst the industry of the current regulatory framework. Work is currently underway on development of the guidance.

Specific Issues

RRG looks at specific regulatory issues brought to our attention by industry, Regulators or Government. This year has been no different.

* We responded to, and explored a number of issues, including the Lobbying Transparency Bill[[4]](#footnote-4) consultation where RRG members continue to have concerns about the unintended consequences of this Bill. While RRG understands the desire that Parliamentarians may have to identify professional lobbyists there are concerns that the definition and structure of who those are in the Bill could lead to significant extra and unnecessary burdens on membership organisations and associations, which RRG is sure was never the intention. This is a good example of an issue that we raised many times before, which is turning the ‘what’ into the ‘how’ where the good intentions of the ‘what’ get lost or confused in the ‘how’.
* Police Charges – RRG was asked to look at concerns raised by business about the viability of events given changes to policing costs. A revised charging policy, introduced in 2014, aimed to deliver more consistency and transparency. The Police were always under the obligation to charge for policing events, however, the rate and methodology varied across Scotland. Some event organisers found charges increased, and made comparisons with England and Wales where private stewards can carry out traffic control (stewards cannot legally direct or regulate traffic in Scotland). EventScotland and Police Scotland have worked to engage with the events industry on this and increase transparency by publishing further information, particularly on the assessment matrix. RRG supports such engagement and helping businesses to understand the regulations, policy and process being used.
* Doing Better – The Initiative to Reduce Red Tape in Agriculture Report – RRG has continued to keep abreast of developments since the publication of the final report and the acceptance of most of the recommendations by Scottish Government. RRG is particularly interested in the work of the new Regulatory Oversight Body for land management which has a remit of considering how best to provide a regulatory oversight for all farmers and land managers and has offered to provide support and advice as required. We will report further on this in next year’s Annual Report.
* Business Rates – As reported in last year’s Report, RRG is interested in many aspects of business rates. Key areas include the valuation appeal process and the Business Rates Incentivisation Scheme. RRG has met with policy officials and received updates throughout this year.
* Deposit Return Scheme – A study commissioned by Scottish Government in 2013 explored the feasibility of improving recycling and reducing littering of drinks containers in Scotland via a deposit return system. Since then there has been further consultation. However businesses have raised concerns about this proposal around the potential costs to business and the impact on the consumer. RRG raised these with Scottish Government policy officials and has been assured that there are various options being considered in relation to recycling. RRG stands ready to assist Scottish Government wherever possible and to evaluate, if asked, what the benefits and challenges might be for each and, as we have done on other issues in the past, provide advice and other alternatives.
* Consumer and Competition Policy in Scotland – RRG has a keen interest in this area of work and has met with Scottish Government policy officials reiterating the need to continue to engage with business as work is taken forward. RRG is particularly interested in how the consumer landscape will differ compared to what Scotland had previously with Consumer Focus Scotland. This issue will become even more important as more powers are devolved to the Scottish Parliament. RRG will continue to monitor this and how Scotland will now address such issues on its own.
* Land Reform Bill – RRG has concerns around this Bill and met with officials several times. This is a challenging Bill and covers a wide range of areas involving business and communities. We consider that guidance will therefore be imperative to the success of this Act and we reiterate the importance of getting the guidance right first time and resourced sufficiently.

The Land Reform Bill and Lobbying (Scotland) Bill are two examples where RRG believes that the entire process has been run to an extremely tight timescale. RRG feels strongly that there is a need for the introduction of a stage 4 consideration within the Scottish Parliament to allow a Bill to be sense checked before the final version is passed in Parliament. This would allow all the amendments that are introduced during stages 2 and 3 to have a final proof to ensure that the legislation is still fit for purpose and delivering on its original aim. Our experience of stage 3 specifically highlights the need for this final stage as during debate, amendments and counter-amendments are made and passed with no opportunity to reflect on them before the Bill is introduced into Parliament. Once fit for purpose legislation can lose its original aim and bring unintended costly consequences for business and public bodies, as well as necessitating later amendments, guidance and Scottish Statutory Instruments (SSIs) by Government and Parliamentary officials.

Legislation

RRG is committed to ensuring:

1. That legislation is formulated in a way that gives the desired policy outcome; and
2. That existing legislation delivers what the policy issue was that was put in place. This now will include Government Sponsored Voluntary Regulation.

It is not RRG’s role or remit to question policy but to see that policy (the what) is put in place by legislation (the how) that reflects the policy. In the section above we set out our views on why we think there should be a stage 4 in the Scottish Parliament (as there is at the UK Parliament) which allows Government to check that the legislation will still deliver what it set out to do. We have seen over the years we have reviewed existing legislation that this has not always been the case. We also believe, as we have said in previous Annual Reports, that initial consultation around policy and what would go into legislation should contain much more of a multi-lateral approach than the current bi-lateral approach that tends to be the case. While there has been much progress in certain areas of policy on this there is still room to go further. All the evidence we have shows that better legislation and therefore better policy outcome comes from involving more stakeholders discussing issues together rather than individual meetings which can tend to overload one side of the argument.

This past year a review was carried out on Part 3 of the Fire (Scotland) Act 2005. The purpose of this Act is to reduce avoidable fires and consequently death, injury and loss of property by creating a single regime applying to all premises (with the exception of private dwellings) and which could be better understood and administered by business and the relevant enforcing authorities. RRG was specifically looking at the development of the legislation and its implementation – whether the principles of better regulation had been met and if the Act was delivering what it set out to achieve efficiently and effectively. Annex 2 provides the remit of this review.

The Act affects almost all businesses in Scotland and places the responsibility on businesses to undertake a risk assessment of their premises. In 2008, businesses contacted RRG with concerns about the implementation of the new fire safety regime in small businesses, in particular small B&Bs and self-catering premises, and inconsistent and disproportionate enforcement. RRG considered that it was now appropriate to review the implementation of the Act to consider the effectiveness of this legislation.

From the surveys and evidence gathered, it was ascertained that in general terms, that the legislation is broadly fine and that the principles of better regulation are met either in part or in full. An unintended consequence could, however, be deemed to be a lack of confidence/competence of businesses to carry out fire risk assessments themselves. The vast array and varying quality of fire risk assessment companies is a concern to business and also to RRG given the risks of inadequate assessments. RRG believes that using accredited fire assessors could help reduce this risk.

Our report making a number of recommendations was submitted to the Minister for Community Safety and Legal Affairs who has requested a meeting to discuss further.

Furthermore, the Scottish Fire and Rescue Service and Scottish Government officials are now discussing how to take forward the recommendations in the report and the outcome will be reported in next year’s Annual Report.

In the coming year as well as looking at reviewing another piece of legislation, RRG will also review a piece of sector wide voluntary regulation and has been considering options for this. It has been agreed that RRG will review the Supporting Healthy Choices Voluntary Framework with work commencing early 2016. This Framework was developed jointly by Scottish Government and the then Food Standards Agency in Scotland, which invites the food and drink industry and other partners to take specific voluntary action to create a healthier food environment for consumers.

**Regulatory Reform (Scotland) Act 2014**

RRG continues to closely follow progress on the implementation of the Enterprise elements of the Regulatory Reform (Scotland) Act 2014 to ensure that the Act delivers what was intended and meets the principles of better regulation. Since last year’s Report, progress has been made in a number of areas.

The Scottish Regulators’ Strategic Code of Practice was laid before the Scottish Parliament at the start of the year. Having been developed by Regulators and business, the Code builds on existing good practice and provides greater transparency on how to apply the five established principles of better regulation and support a risk based enabling approach to help business and regulated bodies to comply and grow. RRG considers the Code will encourage and support a consistent, outcomes focused approach to regulation which will help business comply and grow, and ensure Regulators understand those they regulate.

Primary Authorityis a scheme that allows a business, operating in two or more local authorities, to form a partnership with one local authority in order to receive tailored advice and support in relation to a range of regulations. Primary authority helps ensure local regulation is consistent and delivers efficiencies for both business and regulators. Last year it was recognised as important to ensure that a scheme for devolved regulatory mattersmust meet the needs and requirements of Scottish business, while also looking to the existing UK scheme to avoid unnecessary burdens for businesses with cross-border operations. Engagement and dialogue with business and Regulators is one of the best ways to achieve this. During the year Scottish Government [consulted](http://www.gov.scot/Topics/Business-Industry/support/better-regulation/BetterRegulationBillConsultation/PrimaryAuthorityConsultation) on more detailed proposals for the scope of a scheme and how it would operate in practice, and engagement with stakeholders continues. RRG welcomes the scheme as a development which will help drive forward the better regulation agenda. Members are taking a keen interest to ensure that it becomes operational in Scotland at the earliest opportunity to deliver the benefits it offers to both business and Regulators.

Consistency in regulatory delivery Scotland-wide is an issue which RRG has long advocated for. The Act amended requirements for certificates of compliance for mobile food business street trader licence applications. Nationals standards for mobile traders food hygiene have been developed to support this, and the draft standards consulted on. These seek to support a better regulation approach, providing consistency and transparency, efficiency and effectiveness in the implementation and enforcement of food hygiene regulations. Consistency not only helps business but makes it easier and better for Regulators too.

Business and Regulatory Impact Assessments

Business and Regulatory Impact Assessments (BRIAs) were one of the main recommendations in RRG’s first Report and were implemented in 2010. A BRIA is carried out by Scottish Government officials to ensure that any policy changes which may have an impact upon businesses (or third sector) are considered. Since that time, RRG received regular updates highlighting the quality and quantity of BRIAs completed, and has seen a continuous improvement. RRG was, therefore, concerned to note that in May 2015 the Scottish Government process changed and that the centralised quality assurance service came to an end. Responsibility has passed to each Directorate to ensure assessments are robust. It is of critical importance that the BRIA process is embedded into the policy process to ensure that the impact of all regulatory proposals – whether statutory or voluntary – are fully considered. We will continue to take a keen interest in the BRIA process, and seek assurance that it is indeed seen as an integrated process of policy making. The completion of a BRIA and the associated engagement with business is something RRG always looks at when considering regulatory issues.

Spreading the Word

As Chair of RRG I meet with a variety of people, Regulators and organisations to ensure that people do know of the work of RRG and how we can help them; and also to ensure that everyone is aware of Scotland’s approach to better regulation. This year I have met with a wide range of organisations and heard from them how regulation is affecting them. These organisations have included Food Standards Scotland, SEPA and the Health and Safety Executive all of which have had significant personnel changes at a senior level. It was mutually beneficial to meet with them and learn more about how they are working within the better regulation agenda in Scotland and how we can work together.

Europe

On 19 May 2015 the European Commission adopted its better regulation agenda. This package of reform aims to boost openness and transparency; improve the quality of new laws through better impact assessment; and promote constant and consistent review of existing law. The Commission intends to deliver its better regulation agenda with proposals which encourage and provide for more transparency and consultation, reviewing existing laws, better impact assessment (including a new Regulatory Scrutiny Board), and a shared commitment with EU institutions and member states. As part of this it has introduced a stakeholder Platform which will invite, collect and assess suggestions on how to reduce regulatory and administrative burden. RRG is supportive of such an approach which promotes transparency, consistency, and consultation/engagement but as noted earlier, we hope this will enable the views of small business to be heard, and for Scotland to have its own voice in the EU where it is relevant to do so. As mentioned earlier in this Report, we consider this an important theme.

Scotland has a distinctive ‘better regulation’ agenda for improving the way that regulation is developed and applied in Scotland. Scottish Government will showcase this at an event in Brussels in early 2016 and I will speak about the work of the Group and the better regulation agenda in Scotland.

1. **THE COMING YEAR AND THE FUTURE**

As always, as we look forward to the coming year, part of what we do will come from what we are currently working on but not yet completed. This year is no different and there are a variety of issues that we need to complete or keep our eye on until they come to fruition. These include:

* Contributing to / providing advice on development and implementation of Enterprise provisions within Regulatory Reform (Scotland) Act
* Continue to work with COSLA
* Continuing to work with Food Standards Scotland
* Following the outputs of the Brian Pack report “Doing Better Initiative to Reduce Red Tape for Farmers and Rural Land Managers”
* Continuing to promote and share best practice on our multi-lateral approach
* Continuing to look at various Bills we have an interest in such as the Lobbying (Scotland) Bill
* Finalise all the issues around changes to opencast and minerals regulation
* Following progress of the implementation of the recommendations from the review of Part 3 of the Fire (Scotland) Act 2005

In terms of new issues, we will:

* Review a piece of Government Sponsored Voluntary Regulation
* Review a piece of Government Legislation
* Look at the outputs from the Smith Commission and other further devolution to Scotland to ensure that where there is a change to, or transfer of, legislation it is done in line with the better regulation principles and does not add unnecessarily to current legislation.
* Scope out which sectors are most impacted by new business models. This will include looking at those sectors where the regulatory impact is greatest to ensure that there is as far as possible, an even playing field for all those involved, and any other issues these new ways of getting to market have.

In addition to the above list, RRG will continue to address issues that are brought to us by business, Government and Regulators.

**ANNEX 1**

**Remit and Composition of the Regulatory Review Group**

The Regulatory Review Group (RRG) was set up in December 2004 to examine the issue of regulation. It is an industry-led group made up of representatives from the main business, employee and consumer organisations in Scotland. It works to:

* create a culture and environment in Scotland where both business and Government work together to create better regulation for all; and in doing that,
* make Scotland recognised as the leading country in Europe in terms of better regulation.

The remit of the group, under the Chairmanship of Professor Russel Griggs OBE, is to:

* try and resolve specific problems and regulations that cause Scottish businesses concern;
* formulate a strategic approach and to develop processes to improve the regulatory landscape;
* advise Scottish Government on all aspects of its Better Regulation agenda;
* act as a truly independent and informed monitor, helping to co-ordinate, review and judge Scottish Government and its regulatory agencies Better Regulation performance;
* report annually, helping the Government in its work to improve the regulatory environment for business.

In July 2011, the Minister for Energy, Enterprise and Tourism reaffirmed the value of and ongoing role for the Regulatory Review Group.

Membership

Chairman – Professor Russel Griggs OBE\* – Confederation of British Industry

James Barbour/Alice Telfer – Institute of Chartered Accountants of Scotland

Stephen Boyd – Scottish Trade Union Congress

Garry Clark – Scottish Chambers of Commerce

Ian Cass – Forum of Private Business

Susan Love – Federation of Small Business

Scott Walker – National Farmers Union Scotland

David Martin – Scottish Retail Consortium

Mari Tunby - Confederation of British Industry

Mirren Kelly – COSLA (observer)

Sheila Scobie – Competition and Markets Authority (observer)

Sarah Smith – Better Regulation Delivery Office (observer)

Glenn Preston– Scotland Office (observer)

\* As Chair of RRG, Prof Griggs OBE receives a daily rate of £300, on an as used basis, along with associated travel expenses for up to 85 days per year on RRG-related business.

**ANNEX 2**

**REMIT OF THE REVIEW OF PART 3 OF THE FIRE (SCOTLAND) ACT 2005**

To review Part 3 of the Fire (Scotland) Act 2005 in respect of fire safety in non-domestic premises, and associated material to consider whether the regulations:

* Deliver what it set out to achieve efficiently and effectively
* Respect the principles of better regulation
* Have any unintended consequences, and whether these consequences should have been foreseen
* Identify areas of best practice
* And consider any areas for improvement or lessons to learn

This remit will also include consideration of the competency of external fire risk assessors and the impact of this on the implementation of the Act. The remit of this review will not solely focus on businesses but also consider other regulators affected such as Licensing Boards (re HMOs), HSE and Local Authorities.

The Fire (Scotland) Bill, was passed as an Act of the Scottish Parliament on 23 February 2005 and received Royal Assent on 1 April 2005. Provision for fire safety in non-domestic premises in Scotland is contained principally within Part 3, which came into effect on 1 October 2006. Part 3 removed overlapping legislation and introduced a simplified and consistent approach to general fire safety. However, for a number of reasons, Part 3 also introduced a culture shift for many businesses. Some businesses had previously been reliant on the enforcing authority for direction, others had operated in sectors where there was no proactive enforcement. There were also incidents of businesses failing to comply with their risk assessment obligations, whilst some were confused by overlapping prescriptive and non-prescriptive legal duties. The change in legislation now placed responsibility on businesses to be responsible for their fire risk assessment and fire safety measures. This has introduced some inconsistency and uncertainty of compliance but, to an extent, there will always be some inconsistency - that is the nature of a risk-based approach to legislation.

With the Act having been in force for a number of years RRG considered that it was now an appropriate time to review the implementation of Part 3 of the Fire (Scotland) Act 2005. A sub group was established to progress the review and to look at the development of the legislation through to its implementation and in particular whether it:

* Delivered what it set out to achieve efficiently and effectively
* Respected the principles of better regulation
* Had any unintended consequences

The review also looked to identify areas of best practice as well as areas for improvement which could inform future legislative processes in the promotion of better regulation

**ANNEX 3**

**EXAMPLES OF SEPA’S SUPPORT TO BUSINESS**

**Scotland leads the way in reducing fast food waste**

New regulations required fast food giant McDonald’s to separate and recycle their waste. McDonald’s challenge was to change staff and customer behaviours.  SEPA engaged at an early stage with McDonald’s. Different recycling options were tried out in McDonald’s in Glasgow and customers were asked what they thought. From this, a user-friendly recycling station that customers would easily recognise and want to use was created.  SEPA also brought McDonald’s together with waste contractors who provided technical advice on waste and recycling. This created business opportunities for both the waste generator and waste contractor. Food waste is now sent to an anaerobic digestion plant to produce fertiliser for agriculture and biogas. McDonald’s has gone well beyond simple compliance and has seen the company’s projected recycling rates soar from around 20% to 60%. The project has been so successful within Scotland, McDonald’s has decided to introduce the recycling stations across the rest of the UK and is leading the way in addressing the fast food waste problem.

**Small businesses save money and protect the environment**

Small businesses account for more than half of serious pollution incidents, and waste produced, in Scotland and Northern Ireland. They often find regulations and regulatory guidance complex and lack time or expertise to figure out what their responsibilities are. In partnership with the Northern Ireland Environmental Agency, SEPA is helping small businesses understand their regulatory requirements and improve their environmental performance through [NetRegs](http://www.netregs.org.uk), a dedicated, award-winning web site. NetRegs provides easy to find and understand guidance, advice, on-line self-assessment tools and phone applications. These help businesses comply with environmental regulations and save them time and money. Small businesses estimate they save £500 to £1000 per year because of NetRegs. Partnership working is key to NetRegs success. One example is SEPA’s close work with the construction industry in producing a mobile app which can be accessed from NetRegs on or off-line. This will allow workers on a construction site to easily access information on environmental regulations relating to their activities, supporting construction companies in maintaining high standards of environmental protection and regulatory compliance.

**Scotch distillers drive innovation in renewable energy use**

Strong collaborative working between SEPA and Scotch Whisky distillers has helped drive innovation in renewable energy use. The sector has taken active steps to reduce energy demand increasing its use of non-fossil fuels from 3% in 2008 to 16% in 2012. SEPA worked with the whisky industry to support the development of industry-led quality control processes that enabled distillers’ materials such as draff to be used for electricity generation. The quality control processes conformed to tight specifications, allowing SEPA to regulate in a proportionate way and encourage innovation. This has given the whisky industry confidence to invest further in renewable, while ensuring the environment is well protected. An example of this investment is a £50m, biomass combined heat and power plant built at Rothes in Speyside. This was the first time that a biomass power station capable of utilising wet biomass had been built. The power station is fuelled by distillers materials received from the local distilleries, as well as being supplemented by locally sourced, sustainable woodchip. It produces enough electricity, to support itself and to supply electricity to the national grid for over 7600 homes. This strong collaborative working between SEPA and industry can provide win-win solutions. Helping Scottish businesses become more sustainable, efficient, profitable and competitive; whilst ensuring high standards of environmental care and protection. The Scotch Whisky industry environmental credentials enhances the reputation of their world-renowned quality Scotch.

1. [RRG Reviews](http://www.gov.scot/Topics/Business-Industry/support/better-regulation/regulatory-review-group/publications#top) [↑](#footnote-ref-1)
2. Source – Scottish Retail Consortium – the approximation number covers devolved UK and European regulation [↑](#footnote-ref-2)
3. This group was convened by the Minister for Business, Energy and Tourism in July 2014 to help develop a self-sustaining and economically viable geothermal industry, and to identify barriers to projects and the widespread uptake of geothermal energy [↑](#footnote-ref-3)
4. [RRG response to the Lobbying Transparency Bill](http://www.gov.scot/Resource/0048/00482391.pdf) which has now been renamed the Lobbying (Scotland) Bill [↑](#footnote-ref-4)