REGULATORY REVIEW GROUP

**REGULATORY REVIEW GROUP**

**ANNUAL REPORT – 2014**

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Letter to Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy

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Annex 1   Remit and Composition of Regulatory Review Group

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 2014 Annual Report which highlights our progress in achieving those aims and also specific issues which we feel 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 2014.

In terms of the generic themes two key issues which have come to prominence this year and will be part of our focus in coming years are, firstly why we have regulations at all and, secondly what type of regulations they should be.

Why we have regulations at all is to do with competent government. Competent government in the area of better regulation is about government – in whatever form - making sure it is aware of all the challenges that effect a specific issue and that there is in place workable and practical solutions that can and will allow it to operate in a way it would find acceptable and would practically address the issue referred to it.

In terms of evidence gathering and consultation you are aware that RRG has for many years been a strong advocate of multi-lateral consultations and we continue to be so. While we have seen good positive progress in seeing a multi-lateral approach being adopted there is still some way to go and we would urge all those involved in regulation to make it mandatory. Our belief is that without that multi-lateral, evidenced based approach it is hard to see how competent government can work.

RRG has worked with Scottish Government over the years on many areas where competent government has been demonstrated and also in others where on review it perhaps could have been done better but we can say that in those latter cases developing a competent solution has been a key part of finding a way forward.

Competence does not just apply to what happens today but also looking at what might or could happen in the future. RRG has again worked with Scottish Government on areas like Carbon Capture and Storage where Scotland has since been cited as best practice in the world for looking at what is coming before it does. That is also true of forward EU legislation where in issues like the Industrial Emissions Directive getting to grips with the regulation before the event has helped industrial sectors to plan better.

The second generic theme that has arisen this year and will now form part of the way we work in the future relates to the different types of regulation that exist. We appear to have forgotten about a large class of regulation and need now to bring these back into the ambit of better regulation more generally.

Research published by the British Retail Consortium highlighted that in recent years the retail sector has seen a proliferation of government sponsored voluntary regulation, and that it had not been governed or formed in a way that considered the better regulation principles and guidelines which now apply to government statutory legislation. I am pleased that both the Scottish and Westminster governments have accepted that better regulation principles and guidelines should apply to ‘government sponsored voluntary regulation’ in any sector and RRG will now also encompass it in its work.

In terms of our review of statutory regulation, this year we have returned to the Fire (Scotland) Act 2005, and part 3 in particular, which we were involved in some years ago and where we believed that there were still issues to be addressed. We will publish our findings later this year but suffice to say that since we have started our review it has expanded to cover a wider look at how businesses and indeed public bodies ensure fire compliance. We are working closely with the Scottish Fire and Rescue Service in this and with many other stakeholders and interested parties. It was interesting to note a comment by Scottish Fire and Rescue Service that it was uncommon for them to be brought in at an early stage for such reviews. Their comment was a positive one and again highlights the need for more multi-lateral consultation and working groups when issues are identified. Just because you are the regulating body does not mean you cannot be part of identifying what the issues are or what the solutions could be.

This year once again we have again seen how important regulation is for competitiveness as in many cases it is what decides whether a business can be competitive not just in its local environment but internationally. That has been especially true this year in the work RRG has been doing with the chemicals, energy, and coal sectors each of which in different ways is being impacted by regulation. In each though there are ways forward if all parties work together, which can be challenging if not all are under your control.

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 I would like to take this opportunity to thank all those in Scottish Government and elsewhere who have worked with us for the positive help and assistance they have given. We all want to achieve the same thing which is sustainable economic growth for Scotland and in a way which allows us all to benefit and that is not always without its challenges but good progress continues to be made.

Yours sincerely



Professor Russel Griggs OBE

Chair, Regulatory Review Group

1. **INTRODUCTION AND BACKGROUND**

I am delighted to present the seventh 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.

RRG works closely with Scottish Government to actively promote an improved regulatory landscape and reduce unnecessary burdens on business and is committed to encouraging a partnership approach to developing and delivering regulations with the support and assistance of the regulators and the regulated; and to identify regulatory barriers to growth and solve these where we can.

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

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 agreed at that time that we would not set targets in terms of reducing the number of regulations or costs. The reason for that is that we believe that targets can create and drive behaviours that can give a wrong or worse outcome. Our focus since has been to achieve better regulation and the understanding that sometimes that might mean more regulation not less. This view came from our early work which 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. While we never will expect all our recommendations to be accepted by government or regulators the vast majority have been because we are a group that does things rather than a ‘think tank’. Our work is based on getting involved in real cases to help find solutions, and considering that detailed evidence base is the way we make recommendations of substance.

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.

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 and the Knife Dealer’s Licensing Scheme. We are not a policy formulator and our focus is on how legislation is produced and then implemented. Using real information which comes to us from a range of sources we look at the process, both at macro and micro level, to see if it is achieving what it set out to achieve, and if and how it can work better.

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 have also a member from the UK Competition and Markets Authority, who replaces the representative from the Office of Fair Trading, along with officials from Scottish and Westminster governments attending. In recent years we have expanded and rounded our membership even further by welcoming COSLA and the Scottish Retail Consortium. The full membership and remit of RRG is set out in Annex 1.

1. **GENERIC ISSUES / THEMES**

Two key issues which have come to light and to mind this year and which will form a lot of the focus of this year’s report are (1) why we have regulations at all and (2) what type of regulations they should be. Why we have regulations at all is to do with competent government and it is that I would like to expand on and explore in this section - what competent government means in terms of better regulation and how it manifests itself in that form.

Competent government in this area is about government – in whatever form - making sure it is aware of all the challenges that effect a specific issue and that there is in place workable and practical solutions that can and will allow it to operate in a way it would find acceptable and would practically address the issue referred to it. What those solutions would be should be developed on the back of evidence gathering and consultation, allowing the government to make a practical and proportionate decision.

While that may sound a little theoretical it is not. It is the essence of how competent governments formulate the regulations and other rules to deal with specific matters. Ineffective regulation tends to happen when governments, or other public bodies that produce regulation, do so in a way that is neither evidence based nor takes account of the views of society in its widest form. Part of that competence also comes from having in place good review processes that will spot when regulation is not working as effectively as it could or should, or identify a future issue that government should take a view on in terms of how it would regulate it if it were to come to pass.

Competent government appears in many forms and the work of RRG, particularly this year, has identified this. Below are some examples of how competent government has worked which we hope can help embed the theory outlined above into good practice so all those involved in the wide area of regulation understand and use it.

Taking a forward look, RRG has worked with Scottish Government to consider regulatory issues coming over the horizon where a view on viability or acceptability needs to be made. Carbon Capture and Storage (CCS) has been a prime example of that. RRG worked with stakeholders to identify the regulatory framework that any new company wanting to create such a project in Scotland would have to operate to. This safeguards not just the environment but also the communities involved while at the same time allowing Scottish Government to have a framework in which it can make its own decisions should that become necessary. While no new CCS project is yet in place it makes it clear to those wishing to exploit any such opportunity what they will have to do to get any project up and running which brings more certainty to them – which is what developers across all sectors say they prefer.

This approach will now be extended to geothermal energy following recommendation by the Geothermal Energy Expert Group (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). A wide range of legal issues have been identified for consideration in respect of future on-shore geothermal projects, including ownership and licensing of geothermal energy resources. A short-term group is being established to look at these issues. It will look at the current regulatory landscape, identify planned legislative changes which may have an impact on the geothermal industry and consider future needs in order to provide advice to Scottish Ministers in respect of what action is required to better support the on-shore geothermal industry through legislation.

There has also been much media coverage and discussion this year around the subject of unconventional gas and how it may or may not impact on Scotland. The Scottish Government established an independent Expert Scientific Panel to look at unconventional oil and gas, which reported in July 2014. Part of its conclusions were that while the regulatory regime was largely in place, there did appear to be gaps.

The Scottish Government has continued its cautious and evidence-led approach by announcing a moratorium on unconventional oil and gas planning consents until further research (including a public health impact assessment) and a full public consultation are completed. In doing so, this will provide an opportunity to consider in detail any regulatory gaps, such as those noted by the Expert Scientific Panel on Unconventional Oil & Gas last year.

Competent government is also about constantly looking at what is going on in terms of regulations already in place and whether they are achieving what they set out to.

RRG looks at specific regulations and in the last few years has highlighted changes that need to be made to make regulation work better, especially in the area of delivering consistency across Scotland. As a result, we have seen changes to existing practices as well as new legislation and protocols where government has changed things to make sure that it remains competent. The Regulatory Reform (Scotland) Act 2014, for example, introduces a range of measures to deliver consistent and proportionate regulation, and SEPA published new flood maps which provide greater clarity to business by enabling a range of flood risk profiles and scenarios to be depicted.

Sometimes RRG come across issues which do not just need minor change but a wholesale reassessment of the regulatory framework. Again that is where a competent government approach can work well in being prepared to admit in these areas that it needs to do better in the future.

RRG, and especially its Chair, has been involved deeply in the challenges which the opencast mining industry has faced and the demise of major companies and the legacy that has left. It is clear from this that while the regulatory system was in essence fine there were parts where the possible outcome of certain actions had not been considered or which were not being operated effectively by those who were empowered to do so. Therefore in this case government went back to basics to examine all aspects of the regulation affecting this sector. The Coal Task Force, who were given overall responsibility for taking this forward, will propose a new way forward for the regulation of this sector which will be consulted on during 2015. Competent government in this instance was demonstrated in the acceptance that all had not gone as well as it should and the risk and impact were such that a total review was the best way forward.

The examples given above could lead those reading this report to assume that government is always competent but that is not the case. Getting government within a political context to agree to do something that is obviously competent but could have political fallout is not always easy. Competence should in general overrule all else as if a government is not competent in the area of regulation then it cannot provide a sustainable and stable framework within which businesses and wider society can operate. However government itself can think it is being competent when in effect it is not. For example, in relation to who they consult with, which is explained below in the context of an issue raised in previous Annual Reports[[1]](#footnote-1).

Previously we reported concerns expressed by small business about the effect of the EU Biocidal Products Directive and disproportionate impact on small business. Government both at UK level and in the EU thought it had done its work competently as it had consulted widely with industry. However it transpired that larger trade associations with resources to negotiate and influence tended to represent larger business for which the new EU Directive worked well. It did not work well for small businesses and had the potential, if implemented harshly, to put some out of business. In terms of consultation, competent government means fully understanding the nature and diversity of the sector of industry you are regulating and making sure that you get input from all - not just the easiest to reach.

In much of the work of RRG, we find the issue stems from the diversity of those impacted by regulations not being fully understood. A good example of that is the Fire (Scotland) Act 2005 which RRG is currently reviewing. RRG was involved in issues related to this some years ago, and it transpired the original reason for the problem was that the diversity of the bed and breakfast market had not been fully understood. Remedial action was then taken to make the legislation work better.

This need to understand better the breadth and diversity of all the sectors that regulation deals with and the impact on them continues to be a challenge. While government, and in terms of what RRG does, Scottish Government is realising more and more what competent government means and acts accordingly, as indicated above there are still areas that could be made better – like ensuring wide and multi-lateral consultation.

This leads into the second generic issue which we wish to highlight in this year’s report, namely the different types of regulation that exist. We appear to have forgotten about a large class of regulation and need now to bring these back into the ambit of better regulation more generally.

Earlier this year the British Retail Consortium published research they had commissioned from Dr. Christopher Decker & Professor Christopher Hodges (both Oxford) titled ‘Government-sponsored voluntary regulation in the British Retail Sector’[[2]](#footnote-2). It highlighted that in recent years the retail sector has seen a proliferation of government sponsored voluntary regulatory arrangements. By ‘government sponsored voluntary regulation’ what is meant is that government approach industry with issues of concern and rather than introduce mandatory legislation agree rules or other arrangements that the industry will voluntarily abide to, to deliver the same solutions and goals.

The reason that government may adopt this approach rather than legislate for it themselves are many but include:

1. There is a belief that industry taking ownership for the issue makes it more imbedded in what they do rather than just complying to legislation.
2. Legislation can be difficult to process in terms of time and definition.
3. It means that the industry rather than the government take on the resource implications of putting the regulation into place and monitoring it.

The conclusion of the report was that while a lot of this regulation had been put in place it had not been governed or formed in a way that considered the better regulation principles and guidelines which now apply to government statutory legislation, and which over recent years has brought some structure to how all that works. A key recommendation was that this should change and that voluntary regulation should be subject to the same rigor and review as other regulation. This appears to be sensible and there is no reason to believe that if other sectors were examined a similar proliferation of this type of regulation and the same conclusions would also be seen.

The Scottish Retail Consortium developed from this work a framework for voluntary regulation[[3]](#footnote-3). This has presented this to Scottish Government, as well as RRG, of which they are a member. RRG is fully supportive of their proposed framework approach.

The framework includes a series of assessments that retailers and government should apply when considering voluntary regulation. It also includes some proposals for changes in procedures to be followed by policy makers.

The main suggestion is a framework of six principles which should be applied to voluntary regulation. These are:

* An evidence base approaching the proposition of a problem or social objective.
* Clarity of desired outcome.
* Practical, proportionate and targeted proposal based on retail knowledge of consumers.
* Robust impact assessment.
* Monitoring and review.
* Full application of better regulation principles.

While those six principles were set out specifically for the retail industry there is no reason why they should not apply to any industry sector where government sponsored voluntary regulation is being considered.

The Minister for Business, Energy and Tourism in the Scottish Government has written to the Scottish Retail Consortium formally supporting their framework document for voluntary regulation and expressing a desire to see the principles contained within the framework adopted in Scotland, not only in the retail sector but more widely across all sectors where voluntary regulation could be used. Scottish Government officials will look at voluntary regulation in the context of updating policy guidance and promoting these principles more widely.

The Chancellor of the Exchequer in the UK Government, as a result of this work, announced in the Autumn Statement that:

*“The government will build on the ‘Accountability for Regulator Impact’ scheme by updating guidance to require government departments and regulators to engage business on the impacts of any government-sponsored voluntary scheme with business prior to implementation, and to work together to minimise costs where possible. Business will also have the right to ask the Regulatory Policy Committee to independently review a scheme’s impact.”*

This means that all proposals for such voluntary regulation in the Westminster Government will be subject to their Accountability for Regulatory Impact scheme, which requires – before a change is implemented – an assessment of its impact on business and engagement with business.

Both these statements bring government sponsored voluntary regulation within the same confines as statutory regulation and RRG is looking at its own role as advisor on better regulation to encompass that as well.

Over the coming months we will consider which sectors are most impacted by this form of regulation and whether there are any further issues which need to be addressed which would help bring all such regulation more in line with the better regulation principles. We will also look to review, as part of our workplan, voluntary as well as statutory regulation to see whether it is operating effectively and whether the principles of better regulation have been met. We will report on this next year – having looked at both types of regulation and building on the work started by the retail sector.

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

As highlighted in previous reports, a key role that regulation plays is in competiveness. This has been highlighted again this year in further work we have done around the Grangemouth industrial cluster where regulation around energy costs, along with other emissions’ regulations, play a key role in deciding where these predominantly international businesses compete for investment with their sister companies around the world.

We also reported last year on the work undertaken by the Grangemouth Regulatory Review Group and the opencast coal mining industry. This year work on the restoration of opencast coalmines continues to move apace.

Throughout this work it has become clear that to deliver both regulatory objectives and support competiveness, the specific needs of Scottish business must be recognised at the development stage of any legislation, whether that comes from Scotland, UK or Europe. This importance was further highlighted last year in Sir Ian Wood’s review of regulation in the North Sea[[4]](#footnote-4) and how changes in that could increase investment and production there.

Regulators

For the past five years, RRG has met with the leaders of the main Scottish regulators that interact with business, and their respective sponsor teams. The 2014 regulators and sponsors team event continued to build on progress made in ensuring that regulators in Scotland work and are seen as enablers rather than enforcers. The focus of this event focused very much on the impact of the Regulatory Reform (Scotland) Act 2014, especially the Scottish Regulators’ Strategic Code of Practice. To provide attendees with an idea of how regulatory codes are used, Food Standards Agency officials presented on the Review of the Food Law Code of Practice (Scotland) as this code had just been reviewed. The event reiterated the importance of engagement with stakeholders and sharing of best practice as being paramount to the success of the better regulation agenda in Scotland.

Better Environmental Regulation – SEPA

SEPA has continued to work with Scottish Government to take forward better environmental regulation. This included the development of the environment aspects of the Regulatory Reform (Scotland) Act 2014 (the Act). The Act gave SEPA a new statutory purpose, giving primacy to SEPA’s role on the environment but also recognising the contribution it can make to sustainable economic growth and health and wellbeing. This supports SEPA’s direction of change which includes doing more to secure compliance; recognise and promote the business benefits of good environmental performance; support existing and emerging business sectors; and deliver efficiencies.

Implementation under the Act is being delivered in stages, with the first stage focusing on delivering a more proportionate and effective approach to enforcement. During 2014 Scottish Government and SEPA consulted stakeholders on detailed proposals for new enforcement tools. This will be followed by consultation on a proposed new SEPA enforcement policy and supporting guidance, in preparation for phased implementation from 2015. Future implementation under the Act will include the development of a new integrated framework of environmental regulation, including taking forward simpler, clearer and more joined-up permissions and supporting processes and guidance, reducing complexity and saving time and money.

Part of SEPA’s agenda is about targeting effort where it is most needed. This includes doing more to deal more quickly and effectively with those who are acting illegally and undermining the competitiveness of legitimate operators. In 2014 SEPA established a Waste Crime Team as part of an 18 month pilot initiative to target waste crime activity concentrated within the Central Scotland area. In 2014 SEPA, with partners, also secured European Commission funding to take forward a 5 year project to explore and demonstrate innovative approaches to understanding and reducing waste crime.

SEPA’s agenda includes doing more to promote and recognise the many business benefits of good environmental performance. Part of this is SEPA’s work in partnership on the “Vision in Business for the Environment of Scotland” (VIBES) Awards, held in November 2014, promoting businesses in Scotland who are taking significant steps to improve or reduce their impact on the environment, often saving money in the process.

Legislation

Each year RRG commits to reviewing at least one piece of legislation which we believe is either not working as it should or causing unintended consequences either in terms of outcomes or the burden it imposes on both business and regulators.

This year RRG commenced reviewing Part 3 of the Fire (Scotland) Act 2005 in respect of fire safety in non-domestic premises, and associated regulations. This issue was originally raised in 2008 when 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. Scottish Government guidance was revised and updated to help address this, however the process raised a number of questions about the new fire safety regime. A sub group has been established to progress the review and RRG will report its findings to Scottish Ministers in due course.

RRG continued to take a keen interest in the Regulatory Reform (Scotland) Bill and was pleased to see it passed by the Scottish Parliament in January 2014. During the year we have continued to contribute to the thinking as work to implement the provisions has progressed. The approach taken for the development of the Scottish Regulators’ Strategic Code of Practice, namely establishing a short term working group comprising regulators and business representatives, reinforces our preferred approach of using multi-lateral engagement to bring about better understanding and deliver effective solutions. We were pleased to be members of this group and believe the Code will support regulators in considering the contribution of their regulatory activity to achieving sustainable economic growth, while also applying the principles of better regulation. Crucially, it will also provide transparency for business on what they can expect from regulators. We are also following the development of the proposals for the scope and detail of a Primary Authority scheme for devolved regulatory matters in Scotland. Given the benefits this can bring to both business and regulators it will be crucial to ensure that the scheme meets the needs and requirements of Scottish business while also looks to the UK scheme to avoid additional unnecessary burdens for businesses with cross-border operations.

Multi-Lateral Working

As noted in last year’s report, RRG now routinely uses the multi-lateral consultation approach in all it does – whether investigating regulations that cause business concern, reviews of legislation or special projects. Delivering results, RRG is increasingly asked to apply and facilitate this approach in areas such as energy which is particularly sensitive and can be controversial.

The Grangemouth Regulatory Review Group met early in the year and has seen membership continuing to increase. Bringing together business, regulators and the community good progress has been made on a number of issues of interest to the group, including flood risk management. The group will continue to meet as appropriate, to discuss relevant regulatory issues.

A similar approach is being used across other sectors, with multi-lateral groups established to consider more effective regulation on the Opencast Coal Restoration, and in particular issues around Compliance and Monitoring, and Finance. These groups brought together stakeholders in an open forum for all to contribute ideas and suggestions freely, providing an understanding of different perspectives and practices. With a wide range of interests represented this approach is helping deliver a successful outcome which will be accepted by all and deliver more effective regulation.

RRG has also been asked to facilitate a unique and complex project which will involve multiple landowners across different council areas, and where this approach should be of benefit in considering the regulatory framework to find a suitable way forward.

Working with Local Authorities

RRG works closely with local authorities, their representative bodies and COSLA on issues arising and the better regulation agenda. RRG has a good working relationship with Councillor Stephen Hagan, the COSLA Spokesperson for Development, Economy and Sustainability. The COSLA representatives on RRG play a part in disseminating regulatory information from RRG to local authorities and bringing concerns of local authorities to RRG’s attention. It is also pleasing to report that one of the COSLA representatives on RRG is working with Scottish Government to look to see where national standards could be applied and developed within local authority regulatory services as part of the Regulatory Reform (Scotland) Act.

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

Business and Regulatory Impact Assessment

The introduction of a Business and Regulatory Impact Assessment (BRIA) as most readers will know was a main recommendation in RRG’s first report. BRIAs were implemented in April 2010 with the introduction of a new regime requiring a BRIA to be completed for all future Scottish legislation and regulations, and significant changes to existing ones. This is still an area of close interest to RRG who receive twice yearly updates highlighting the quality and quantity of BRIAs completed. Since last year’s Annual Report we have seen signs of improvement in the completion of BRIAs and hope this will continue.

However, the area that continues to cause the most concern is the lack of business engagement in some policy areas. This may be caused by a number of reasons from over use of the same businesses through to businesses not responding to requests. To further promote this the RRG chair participated in an “In Conversation” article highlighting the importance of business engagement. This article was shared with RRG members to promote awareness amongst their membership base, and has also been published [[5]](#footnote-5). Business input into BRIAs is of paramount importance as without their insight into how legislation and regulations will impact on them Scottish Government runs the risk of implementing regulations that will have unintended consequences on business.

Specific Issues

RRG looks at specific regulatory issues brought to our attention by industry, regulators or government. It is important for RRG to meet all people involved to discuss the issues and encourage the use of multi-lateral discussion before regulations or legislation are finalised.

This year, RRG has looked at a myriad of regulatory issues and responded to various Scottish Government consultations and Parliamentary inquiries such as:-

* Standards, Procedures and Pubic Appointments Committee Inquiry into Post-Legislative Scrutiny in the Scottish Parliament.
* Scottish Government consultation on the Scottish Regulators’ Strategic Code of Practice.
* Economy, Energy & Tourism Committee Evidence on the Scottish Regulators’ Strategic Code of Practice.

Specifically RRG has also met with policy officials where there have been particular regulatory interest or issues identified:-

* Doing Better – The Initiative to Reduce Red Tape in Agriculture – the final report[[6]](#footnote-6) prepared by Brian Pack was published in August. Issues raised in this report were familiar to RRG. A central theme was that mutual understanding was key to better regulation but issues also included having to ensure that the guidance is right; the culture, which requires to be looked at as part of change; data sharing; and the role of inspectors/regulators – are they inspectors or enablers. With a common objectives of improving the regulatory environment and achieving better regulation, RRG will follow the output of this work, and stands ready to offer advice.
* Business Rates – RRG has an interest in many aspects of business rates and policy changes and is closely following proposed developments and changes. Key areas include the valuation appeal process and the Business Rates Incentivisation Scheme.
* Air Weapons and Licensing Bill – this Bill was introduced into the Scottish Parliament on 14 May 2014 to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes. RRG members emphasised the importance of public awareness around this Bill and the need for clarity about fee levels. Based on the experience of reviewing the Knife Dealer’s Licensing Scheme and other licensing issues, RRG also highlighted the need for consistency of the licensing scheme and also consideration of the impact on the rural community.
* Implementation of carrier bag charges and associated guidance has been an area of keen interest to RRG members who were concerned that without clear guidance there would be confusion and inconsistency in implementation across Scotland. RRG ensured these concerns were fed into policy officials as the Bill and guidance documents were developed. The charges came into force in October 2014 and it was agreed that RRG would host a roundtable meeting with stakeholders in 2015 to ascertain how well this legislation is understood and being implemented.

RRG cannot stress enough that we are happy to be used as a sounding board if that would help inform and advise policy work. We can, as appropriate, engage with and advise policy makers throughout the entire legislative process, including post-implementation to help ensure that legislation and implementation of it remains aligned with the better regulation principles and does not burden business.

Licensing has always been an area in which RRG has had a keen interest and this year has been no different. Business concerns were brought to RRG about a Highland Council consultation on the activities requiring public entertainment licences. Adventure activities providers were concerned about the possible inclusion of outdoor activities which is already an area that is well regulated and covered by authorities such as the Adventure Activities Licensing Authority. Further discussion has led RRG to understand that there was no intention that additional regulation would be added where activities are already well regulated. RRG will remain in contact with Highland Council to ensure that this is the case.

Additionally, RRG met this year with Glasgow City Council to discuss the Council’s draft rules for the use of outdoor spaces including rules for commercial activity. Although these regulations are not specifically licensing issues they could have an adverse impact on small businesses specifically and RRG had a concern that the principles of better regulation were not being met. RRG provided the Council with concerns and feedback around these draft rules which will inform the Council’s consideration as it moves to finalise the rules for the use of outdoor spaces.

RRG members also discussed concerns regarding local business activity during the commonwealth games. RRG wrote to the Commonwealth Games Organising Committee expressing concern on the implications of the advertising and street trading regulations that would apply during the 2014 Commonwealth Games. In particular, RRG highlighted the need to avoid a disproportionate burden on business and ensure early awareness of regulatory requirements. RRG members were assured that all affected businesses would be kept fully informed of the regulations and the requirements of them, and any burdens on business would be minimised.

Spreading the Word

It is important for RRG to speak to as wide a range of audience as possible to promote a culture of better regulation and the role that plays in achieving sustainable economic growth. Members are regularly invited to speak at events and this year these events have included:

* The Scottish Food Enforcement Liaison Committee (SFELC) - RRG provided an update on the better regulation agenda with a specific focus on the Scottish Regulators’ Strategic Code of Practice and how that would impact on regulators.
* Chief Fire Officers Association Scotland (CFOAS) Business Engagement Forum - We remain members of the Chief Fire Officers Association Scotland Business Engagement Forum which enables the business community to engage with the Scottish Fire and Rescue Service and help deliver better outcomes.

**Smarter Regulation in Europe**

We were pleased to see regulatory reform identified as a priority area in Scotland’s Agenda for EU Reform, and the appointment of a First Vice-President within the European Commission who will be in charge of better regulation, amongst other things. We will watch with interest how this will be progressed and continue to look for opportunities to promote our approach to delivering better and smarter regulation in Europe while also look for the Commission to deliver smarter and proportionate regulation.

Having presented at the EU High Level Group on Administrative Burdens during 2013, we read with interest the Group’s Final Report. While we may not agree with all the specific recommendations contained in the report, we share the common objective of reducing the regulatory burdens on business. We will continue to work to ensure that our enabling and multi-lateral approach is driven home strongly as well as supporting and encouraging the new Commission to deliver smarter regulation which is simpler, more effective and more proportionate,

RRG secretariat having attended the Smart Regulation in the EU conference, reported back to RRG on this. A well attended event, smarter and better regulation to support jobs, growth and investment, is expected to remain on the European agenda for the next Commission, particularly as better regulation has been allocated to the portfolio of the new First Vice-President. Recognising that much of the regulations affecting Scottish businesses come from Europe, RRG has an ongoing interest in strengthening Scotland’s voice in Europe, promoting our best practice and sharing best practice.

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

In terms of the coming and future years there is a significant list of issues we will follow, be part of, or lead on including:

* Contributing and providing advice on the development and implementation of the Enterprise provisions within the Regulatory Reform (Scotland) Act 2014. We will watch closely how the Act is used and implemented and look at it being used in the way and spirit in which the legislation was put into place.
* Reviewing government sponsored voluntary regulation across all sectors. We will ask Scottish Government and our regulators in Scotland to highlight those areas of regulation that fall into this category and from that look at how extensive the issue is in Scotland and where it is most used. RRG will select voluntary regulation to review and look at to see if it follows the new framework.
* RRG will also continue to review annually one piece of statutory legislation which we believe is either not working as it should or causing unintended consequences on business and regulators
* Continuing to work closely with COSLA as they develop outputs from the Regulatory Reform (Scotland) Act. It is at local authority level that we would expect to see the greatest impact from this Act. There is already joint working on how the Act can be used in some areas to move forward and we will monitor the progress of this.
* Following progress on implementation of the carrier bag charges legislation. This was a complex piece of legislation in terms of its implementation and there was much discussion and consultation on guidance before it came into force. In the autumn of 2015 we will have an initial look at how it is working and look to see if there are any areas of challenge that still need to be addressed through enhanced guidance etc, including facilitating a roundtable meeting with stakeholders.
* Working as appropriate with the new food body in Scotland - Food Standards Scotland – as it takes forward its role of providing Scotland with regulation and independent advice on food safety and standards, food information and nutrition.
* Completing the review of the Fire (Scotland) Act 2005 and reporting findings. It is already clear from the work done to date by the sub group that there are some wider issues to be considered therefore our review will have had input from those who have to comply with the Act as well as those who have to enforce it.
* Following on the implementation of recommendations from the Doing Better – The Initiative to Reduce Red Tape in Agriculture – and inputting to this as appropriate. We will work with the team who are looking to implement the findings of this review to ensure that anything that is introduced adds value to what is already there and does not duplicate.
* The annual regulators and sponsors team event. This will focus on the issue of competent government as well as highlighting the need to ensure that government sponsored voluntary regulation is looked at correctly.
* Ensuring that the BRIA becomes business as usual for both businesses and government officials. We will continue to work with, and assist, Scottish Government in reviewing the BRIA process to see what can be done to ensure that everyone who should be involved in it is doing so in a way that gives the output that was always intended ie namely allowing business and government to better understand each other.
* Continuing to promote and share best practice on our multi-lateral approach.
* Programme for Government - we will highlight and keep under review any areas which impact on business regulation and whether RRG should do anything to ensure that the better regulation principles are fully taken into account.
* Smith Commission - as with the Programme for Government we will look to see whether new legislation will impact on areas within the ambit of RRG.

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

Finally, RRG is an independent, a-political body, and will continue to remain so.

Aligned with the Scottish Government’s strategy of delivering increased sustainable

economic growth we welcome the opportunity to contribute to the ongoing development of regulatory thinking.

Professor Russel Griggs OBE

Chair, Regulatory Review Group

**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 the 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 the 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 then 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

Phil Orford – Forum of Private Business

Susan Love – Federation of Small Business

Scott Walker – National Farmers Union Scotland

David Martin – Scottish Retail Consortium

Mirren Kelly – COSLA (observer)

Sheila Scobie – Competition and Markets Authority (observer)

Sarah Smith – Better Regulation Delivery Office (observer)

Glenn Preston– Scotland Office (observer)

\*RRG would like to express sincere thanks to Kyla Brand of the Office of Fair Trading and Alex Jackman from the Forum of Private Business for all their input into the work of RRG and in taking forward the Better Regulation agenda.

1. [RRG Publications](http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group/publications) [↑](#footnote-ref-1)
2. <http://www.brc.org.uk/brc_policy_master.asp?id=707&spolicy=VOLUNTARY+REGULATION> [↑](#footnote-ref-2)
3. <http://www.brc.org.uk/downloads/Voluntary-Regulation-Scotland.pdf> [↑](#footnote-ref-3)
4. <http://www.woodreview.co.uk/documents/UKCS%20Maximising%20Recovery%20Review%20FINAL%2072pp%20locked.pdf> [↑](#footnote-ref-4)
5. <http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group/InConversation> [↑](#footnote-ref-5)
6. <http://www.scotland.gov.uk/Publications/2014/08/2494> [↑](#footnote-ref-6)