

Professor Russel Griggs OBE
Chair – Regulatory Review Group
c/o RRG Secretariat
Directorate for Business and Better Regulation
The Scottish Government
5 Atlantic Quay, 150 Broomielaw
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Minister for Public Health and Women’s Health
cc/ Cabinet Secretary for NHS Recovery, Health and Social Care
cc/ Cabinet Secretary for Wellbeing Economy, Net Zero and Energy
cc/ Minister for Small Business, Innovation, Tourism and Trade
cc/ Minister for Green Skills, Circular Economy and Biodiversity

21 February 2024

Dear Ms Minto,

I am writing as Chair of the Regulatory Review Group (RRG) to provide independent advice on the implementation of the Tobacco and Vaping Framework – a roadmap to 2034 published on 22 November 2023.

This note provides an overview of the RRG’s role and details recommendations on cumulative impact assessment, engagement with stakeholders and potential implementation considerations.

Regulatory Review Group (RRG)

The independent RRG was re-established by the Scottish Government as part of the New Deal for Business to support Scottish Ministers in improving the regulatory environment for businesses and their involvement in that process. The RRG’s membership is detailed in the Annex. The RRG consider upcoming regulatory developments and as part of its work programme identified the Tobacco and Vaping Framework as a scrutiny priority.

The RRG’s objectives are to:

1. Work constructively with the Scottish Government to ensure that policy officials and relevant Ministers are sighted on implementation challenges with regulations early in development.
2. Deliver purposeful and targeted written and verbal advice to the Scottish Government, drawing upon extensive expert insight from business and regulators across Scotland.
3. Support the delivery of the New Deal for Business by ensuring that the potential barriers to the success of Scottish Government policies are removed through an improved understanding of the practicalities of implementation.

The RRG’s remit is to examine and identify implementation challenges and appropriate mitigations of regulation. The RRG does not provide a view on the appropriateness of substantive policy or decisions to be taken on legislative priorities.

Tobacco and Vaping Framework

Along with RRG members, I met with your officials on Wednesday 10 January 2024. Your officials provided an insightful presentation on the policy issue and gave good and comprehensive responses to our questions, which has enabled us to highlight some key observations for your attention.

The following recommendations have been made by the RRG for consideration as part of the policy development process:

1. There needs to be further work to establish what a coordinated package of regulatory and voluntary measures would look like in delivering on the tobacco free Scotland by 2034 target. The RRG would welcome further engagement with policy officials on the detail of this package. This will ensure that implementation challenges including around commencement dates and cumulative impacts on businesses and their operations can be identified and mitigated during policy development.

There are businesses who will be affected that have never had to comply with tobacco sale restrictions to date and therefore, extensive regulatory intervention will incur significant costs. Clarity over timescales, requirements and expectations will need to be communicated effectively to small businesses. Particularly where the business has been established solely for the purpose of selling vapes and related products, changes to operating models will require time and support to aid understanding.

2. Early engagement with the RRG, regulators and businesses on restrictions for advertising and promotion, as part of the first implementation plan of the Framework, is essential. The RRG is interested in understanding and scrutinising the anticipated cumulative impact that restrictions placed on businesses for advertising and marketing within shops will have both for this and other public health policies in train. These impacts will also support development of implementation timescales required for compliance and enforcement purposes.
3. Clarity over anticipated enforcement requirements for any package of measures should be presented to the RRG at the earliest opportunity. The RRG has concerns over the cumulative burden of vaping restrictions that may emerge over time, including the recently announced ban on single use vapes in Scotland and across the wider UK. Previous enforcement has been a success due to identified funding but there will be significant additional costs to Local Authorities, and it is not clear how these will be met.
4. The RRG requests that Consumer Scotland be involved in the working group that is scoping activities on how to deliver the Tobacco Free Scotland by 2034 target. Consumer Scotland's expertise will help to develop robust indicators and help to identify where the best opportunities to act and affect behaviours in the marketplace will be.

While preparing this advice, the Scottish Government has announced their intention to ban the sale of single use vapes later this year. The RRG will invite Circular

Economy officials to explore business and regulatory impacts with us shortly. The RRG maintains that early engagement with businesses impacted and regulatory stakeholders on the suite of vaping restriction proposals, whether that be in the public health or circular economy spaces, is central to successful implementation of regulation.

A copy of this letter will be published on the RRG's webpage and has been sent to your Ministerial colleagues with an interest in this area.

The RRG would be happy to discuss the above recommendations with you and provide officials with any further advice as they work to implement this policy.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Russel Griggs', with a large, stylized flourish above the name.

PROF RUSSEL GRIGGS OBE
Chair, Regulatory Review Group

ANNEX

Membership of RRG

- Chairman – Professor Russel Griggs OBE
- Fiona Richardson – Convention of Scottish Local Authorities (CoSLA)
- James Fowlie – Convention of Scottish Local Authorities (CoSLA)
- Brian Lawrie – Environmental Health
- David MacKenzie – Trading Standards
- Ewan Macdonald-Russell – Scottish Retail Consortium (SRC)
- Susan Love – Association of Chartered Certified Accountants (ACCA)
- Douglas White – Consumer Scotland

Members are representatives of business, regulators and consumers, however, are acting independently in their RRG involvement.