

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
Glasgow, G2 8LU

Minister for Green Skills, Circular Economy and Biodiversity
cc/ Cabinet Secretary for Wellbeing Economy, Net Zero and Energy
cc/ Minister for Small Business, Innovation, Tourism and Trade

23 April 2024

Dear Ms Slater,

I am writing as Chair of the Regulatory Review Group (RRG) to provide independent advice on the Circular Economy Bill, now at Stage 2 of the parliamentary process, proposed to create tools to tackle waste and increase reuse and recycling rates in Scotland.

This note provides an overview of the RRG's role and details recommendations on cumulative impact assessment, consumer messaging and considerations for the compliance and enforcement regime.

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 Circular Economy Bill 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.

Circular Economy Bill

Along with RRG members, I met with your officials on Tuesday 27 February 2024. Your officials provided an insightful presentation on the policy issue and provided detailed responses to our questions. This Bill provides the potential for significant economic opportunities for Scotland, and it is in the spirit of supporting that endeavour that this advice is provided.

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

1. There should be a cumulative assessment of the impact of all proposed measures captured within the scope of this Framework Bill upon business, in particular small business. While the RRG welcomes assessment on individual requirements, the impacts of regulatory measures resulting from this legislation should be modelled and evidenced in cumulative terms. Even where costs are approximate, the intended and unintended consequences and mitigations where appropriate should be set out.
2. Business and consumer messaging will be critical to the successful implementation of the Bill and requirements contained within it, and will be a determining factor in compliance. The RRG invites the Scottish Government to develop a communications approach that highlights to businesses and consumers the role that this legislation plays to support Scotland's green economy, and requirements for business and individuals. This will also help consumer participation in understanding the value in recycling and reusables. The RRG recommends considering a national campaign to raise awareness and inform consumers on how to recycle, reuse or dispose of waste in an appropriate way.
3. Local flexibility has the potential to have a positive impact, however, there is a risk of inconsistent consumer messaging. There are local differences already in waste collection services, where issues are already prevalent around enforcement. This creates scope for rogue traders to operate and fly tipping to become prevalent, and therefore, messaging must highlight where local differences exist, potential risks for consumers and how to best comply.
4. There may be potential for confusion to arise on who has responsibility for compliance, for example on waste disposal in areas with communal bin use. This may lead to issues for enforcement and particularly delivering fixed penalty notices in a proportionate way. A clear structure will need to be designed and put in place to ensure proportionate enforcement, including self-regulation opportunities. Punitive approaches should only be employed when adequate information and education have already been put in place. The RRG identified an existing gap in legislation on commercial waste and therefore, providing regulators with the ability to deal with that issue appropriately within the Bill and/or secondary legislation will help ensure legislation is workable and delivers desired policy outcomes.
5. Clarity is needed on what is in and out of scope, particularly on wording relating to non-perishable goods. The RRG would welcome clarification and assurance that these non-perishables are not included as part of requirements on disposable goods to ensure that regulation is proportionate and can be regulated effectively.

The RRG would also welcome clarification and assurance that product standards and quality will be maintained for consumers and the requirements under the Bill will enhance this where possible.

6. Clarification is needed on reporting requirements will take place, notably who, when and how reporting with the Bill provisions will occur. The RRG invites the Scottish Government to provide detail on this as soon as practicable, noting that any reporting on measures contained within the Bill or planned for secondary legislation, should be streamlined to minimise administration costs for businesses and reduce non-compliance resulting from confusion. The RRG requests detail on which regulators will have oversight of reporting for the aspects in scope.

The RRG invites your policy officials to return once this work has progressed to further explore implementation challenges and constructively engage on mitigations.

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 would welcome an update on how the Scottish Government intends to take this forward during the policy development and legislative process.

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

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.