

The Scottish Improving Regulation Report 2008

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Introduction by Minister for Enterprise, Energy and Tourism

Increasing sustainable economic growth is the over-riding purpose of the Scottish Government. Within this, making Scotland one of the best places in Europe to do business is one of the key national outcomes. So establishing a Europe-leading approach to the improvement of business regulation is in itself a fundamental government objective. Better regulation covers a very broad swathe of government activity. It concerns Planning, the role of SEPA, SNH and other enforcement agencies. It includes trading standards offices, environmental protection, and the work of Local Authorities. And it is relevant to government interaction with business, at Ministerial level, at official level, and through agencies such as Scottish Enterprise and Highland and Island Enterprise.

Yet improving regulation is a daunting challenge. Concerns about “red tape”, “gold-plating”, and “burdening business” continue to abound, whilst centrally-driven reform programmes the world over are often perceived as taking too long, or run the risk of becoming mired in their own bureaucracy, whilst struggling to achieve the desired impact. So rather than establish a heavily resourced central unit, charged with driving a high profile “better regulation” agenda through Government and its agencies, we consider that the government’s purpose in itself holds the key to long-term, sustainable improvements in regulation. Such improvements are only to be achieved if all parts of Government and its agencies, including regulators and enforcement agencies, are encouraged to interact more fully with each other and other stakeholders to develop their own solutions, based on a thorough understanding of our purpose (sustainable economic growth), and of how to align their own work to this end. In practical terms, the very first step is to develop a better degree of understanding and communication between those who produce regulation, those who enforce it, and those who are affected by it. This should be common sense, yet in truth it is too often not happening in a coherent and regular manner. Better communication will lead to better crafted regulation, and to a more appropriate degree of proportionality in its enforcement. It will also lead to less regulation, as increased interaction throws up alternative ways of achieving policy objectives. And it will help shed light on existing regulation – how it works, how it is enforced, and what changes or innovations may need to be introduced to ensure that, in the most common sense and practical manner, it continues to meet the policy objectives that it was designed for in the first place.

The small size of Scotland, the open-ness of communication channels between decision makers across the public, private, and voluntary sectors, and the new sense of purpose and collective endeavour which is beginning to emerge are all valuable elements which, I believe, make our approach not only possible in the first place, but also the right one for Scotland. The best endorsement in this respect comes from the industry-led Regulatory Review Group, who support this view, and the notable success of whose work over the past year has attracted positive interest not only from the Scottish media and business community, but also from the Whitehall department responsible for improving regulation.

I am delighted to present this report, which represents a breakthrough in that it is the first time a shared report between Government and the independent industry-led RRG has been published. This is indicative in itself of a shifting relationship between

the public and private sectors in Scotland, which this administration is extremely keen to promote, based on a common understanding of our goals and objectives, a common understanding of the challenges we face, and a common understanding of how we can each contribute to the solutions.

Jim Mather
July 2008

SCOTTISH GOVERNMENT REPORT

Establishing a Europe-leading approach to improving business regulation

Increasing sustainable economic growth is the over-riding purpose of the Scottish Government. Underpinning that purpose, the Government is also determined to make Scotland one of the best places to do business in Europe.

Therefore, establishing an approach, which seeks to be at the leading edge of European practice regarding the improvement of business regulation, is in itself a fundamental government objective. Better regulation covers a very broad swathe of government activity. It concerns Planning, the role of SEPA, SNH and other enforcement agencies. It includes Trading Standards offices, Environmental Protection, and the work of Local Authorities. And it is relevant to government interaction with business, at Ministerial level, at official level, and through agencies such as Scottish Enterprise, Highland & Islands Enterprise and Scottish Development International.

The immediate challenge is to choose an approach which offers the best chance of success. The most visible, and superficially appealing option is to adopt a centrally-led model, directing resource to a dedicated unit charged with driving a high profile “better regulation” agenda through Government and its agencies. Such a model has been adopted by the EU in Brussels, and by the UK government in Whitehall, and Scotland continues to benefit from the resulting initiatives that seek to improve and reduce the cost of implementation of the regulations produced by these two bodies, which account for around 80% of the total regulations that apply to business in Scotland.

The Whitehall approach has been rated as one of the most respected improving regulation programmes in the world by a number of international surveys, and as already stated, Scotland can benefit from the work being undertaken UK-wide by the Better Regulation Executive.

It remains nonetheless a very significant challenge to address this agenda and to put in place the means to agree & measure improvement.

Views on the actual progress being made UK-wide are correspondingly diverse, with the Public Accounts Committee stating this month that more work and in particular more robust estimates of the projected benefits of the current programme are needed. [source: 1st July 2008 Public Accounts Committee 32nd Report]. As in many countries throughout Europe, concerns about “red tape”, “gold-plating”, and “burdening business” continue to abound.

Consequently, we feel that we recognise that we need to develop an approach that is genuinely fit for purpose and able to deliver tangible results and offers more than is currently available from the attempts by Westminster and Brussels to rectify matters.

The need for culture change

The challenge clearly invites some fresh thinking. It would be nonsensical (and beyond the Scottish Government's current powers) simply to attempt to duplicate the efforts already underway in Whitehall and Brussels.

Albeit that separate attention however does need to be given to the regulations introduced by Holyrood, even though these are of a relatively modest scale.

However, regardless of the better regulation initiatives introduced by Brussels and Westminster, we face the same challenges as the devolved administrations of all other EU member states, in ensuring that national and EU legislation is enforced in a way that is sensible, risk-based, and proportionate, and avoiding the perceived tendency of UK enforcement agencies to "gold plate" on EU standards.

So rather than develop a Scottish scaled down version of the same structures that already exist in Whitehall (the Better Regulation Executive), we have approached the problem from a different perspective.

Given that:

- Regulation is the product of Government, and
- Enforcement is the duty of dedicated agencies,

then we consider there are better ways to achieve alignment between our overall purpose and the ways in which we are regulating, and enforcing regulation, than using a **central** "Better Regulation" unit as, what might be termed, a directive agency.

We consider that long-term, sustainable improvements in regulation are only to be achieved if:

- All parts of Government,
- Its agencies, including regulators and enforcement agencies, and
- The regulated entities from the Public, Private & Voluntary Sector

are encouraged to become increasingly aligned towards a single, overarching purpose.

This Government has developed just such an over-riding purpose and a corresponding set of national indicators and outcomes, as articulated in our Government Economic Strategy [<http://www.scotland.gov.uk/Publications/2007/11/12115041/0>].

By incorporating a better regulation agenda into this approach, we benefit too from the very considerable work that is on-going right across the public sector landscape in Scotland to achieve alignment with the overall purpose of increased sustainable economic growth.

Better regulation becomes less of an arcane, specialised subject if looked at from an "increasing economic growth" perspective and allows us to develop beyond the technical language of "legislative compliance" and "regulatory enforcement" (or the anecdotal "government red tape"), into more readily identifiable ideas around

“common sense measures”, “reducing waste”, “supporting enterprise” and “end-user focussed policy”.

The Regulatory Review Group and the Enterprise and Industry team

The focal point for the Government’s work in improving business regulation is the independent, industry-led Regulatory Review Group (RRG), which embodies the partnership approach that the Scottish Government is taking with Scottish business. This group was tasked by the First Minister to “act as a truly independent and informed monitor, helping to co-ordinate, review and judge the Scottish Government and its regulatory agencies on Better Regulation performance”. It is in recognition of this role that the RRG has this year, for the first time, been invited by Ministers to report on its work, and that independent report constitutes the main body of this document.

Support for the RRG is provided from within the Scottish Government’s Enterprise and Industry Division, which plays its own facilitative role to promote business engagement throughout the Scottish Government, and acts as the main point of contact between Government and business representative organisations. Working closely with members of the RRG, and as one of their key programmes, the Division is focussed on promoting a better degree of understanding and communication between those who produce regulation, and those who are affected by it, in practical terms by presenting the Business Impact Assessment (referenced later in the body of the report) across all areas of Scottish Government over the coming months. This is contained within the Division’s wider remit to develop and share expertise in the broadest sense on business, enterprise and industry, and to facilitate the most productive engagements between Government and business, at official as well as Ministerial level.

By encouraging Divisions throughout the Scottish Government to engage with business through meaningful consultation procedures, the impact of their policy proposals on businesses, charities and the third sector will be better understood, leading to the development of possible alternatives to legislation, thoroughly considered Regulatory Impact Assessments, and the review of legislation after its introduction [*Information on number and type of Regulatory Impact Assessments can be viewed at Annex A*]. By securing the input of regulators to this process, it will in addition become increasingly possible to review enforcement procedures, and for an enforcement regime to evolve, which continues to ensure that legal and policy objectives are being met, whilst striking the correct balance in terms of proportionality and responsiveness to risk.

Summary of steps being taken

In summary terms, the Scottish Government’s efforts to promote Better Regulation are being achieved by:

- High level political commitment from FM and Cabinet to Improving the Regulatory Environment for Scottish business. This helps boost Scottish business competitiveness and productivity by stripping out unnecessary cost.

- The establishment of a close and highly productive relationship between Ministers and officials and the independent RRG, and the provision to that body of the support and resources it deems that it requires from within Government to enable it to serve its purpose.
- Introducing a focus on better regulation as a key element of the ongoing work to increasingly align the public sector in Scotland behind the Government's overall purpose of increasing sustainable economic growth. This has the effect of mainstreaming a "better regulation" focus throughout Government activity, rather than that being seen as the preserve of a specialist internal unit.
- Recognising that sound and effective Regulation is needed to meet our social and environmental objectives, whilst addressing the challenge of minimising the bureaucracy and cost to business. Using a risk based approach and undertaking an extensive review of existing legislation will help deliver this. This approach is very much in line with delivering the 5 strategic objectives of the Government.
- Recognising the need for Continuous Improvement, where we challenge regulatory orthodoxies and seek to achieve a step change in the competitiveness of Scotland in terms of attracting new investment and retaining existing businesses.
- Working within the current devolution settlement and the parliamentary dynamics of minority government to achieve policy objectives without seeking immediate recourse to fresh legislation.

This Government has

◇ For Primary UK Legislation

explored scope for introducing consensual business friendly legislation at Westminster such as that requested by the Scotch Whisky Association.

◇ For EU Legislation

avoided Gold Plating EU legislation by neither rushing transposition nor adding unnecessary hurdles to business. Liaised closely with business on transposition of EU Regulations already in progress (examples include REACH and the EU Services Directive).

◇ For Existing Regulation

- used the RRG and other business stakeholder groups to ensure business views are addressed in major reviews already underway (eg close consultation with the RRG enabled policy officials working on a recent Waste Management Review to produce a package of reforms that will make a valuable contribution to the improvement of waste regulation within the limits imposed by European legislation).

- encouraged all arms of the Scottish Government to undertake early Review Regulatory Impact Assessments (RIA) of those Scottish Acts or SIs which have a significant impact on business. We will seek assistance from the RRG, business stakeholder groups and business generally to help us prioritise these review RIAs.

- ensured any messages emerging from Professor Crerar's review of Regulation, Governance, Audit and Complaint Handling in the public sector take business interests into account.

◇ For new Scottish Legislation

Ministers are very receptive to the RRG suggestion to secure a new Partnership between the Scottish Government and Business that would include:

- ◆ More detailed consultation - and the potential for visits to individual business premises - before laws are drawn up for Scottish legislation
- ◆ A requirement for business to dedicate time and resources needed to allow Government to consult meaningfully with them

The cost and benefit impact of new legislation, gained from engagement with a sample set of businesses, can then be grossed up to provide an estimate of the impact on Scottish business as a whole. This should lead to the creation of a regulation impact data set, which may be used for future measurement and benchmarking purposes. This would also fulfil one of the obligations placed on the RRG by Scottish Ministers, to devise a better system of measuring, and thereafter targeting reductions in administrative burdens, both generally and in devolved areas. It is felt this might prove to be a more productive way of doing things than the "one in one out" approach.

To ensure delivery the Enterprise and Industry division continues to:

- ◇ Engage with other arms of Government to mainstream good practice (as identified by the Hampton, Arculus and Macrory Reviews) regarding Risk Assessment, Enforcement and Sanctions.
- ◇ along with the RRG, explore the present arrangements with our main regulators, both devolved (SEPA, AIB, SNH, Care Commission), and reserved (HSE and FSA), to identify issues that prevent them from adopting sensible Better Regulation practices or from promoting economic competitiveness.

We believe that our concerted activity in this area demonstrates:

- ◇ the Scottish Government's high level commitment to improving the regulatory environment, not through establishing a new bureaucratic system, but through developing the means of placing better regulation

centre stage within activity to deliver increasing sustainable economic growth

- ◇ the unique partnership between business and government that exists in the RRG
- ◇ Finally, in asking the independent RRG to produce this Better Regulation Report, we believe the Government demonstrates a commitment to openness and honesty about our work to develop a Europe-leading model for improving business regulation, which, working together with business and regulators, we are determined to deliver.

We believe that this could help us create a new environment in Scotland, where Regulatory Reform becomes a liberating exercise that could boost business confidence across the board and increase morale in the ranks of the regulators. In this new climate, we could expect to see higher levels of trust and cooperation between the regulator and regulated as they work to common goals and as a result deliver the following savings:

1. The costs of people writing & maintaining central specifications and guidance material
2. The cost of inspection and compliance visits
3. The cost of preparing for Inspection
4. The cost of Specifications being wrong
5. The costs of people being de-motivated by unnecessary bureaucracy.

In addition there is the upside of releasing energy and effort to be part of the sort of best practice that is compliant and sustainable and which results in lowering operating, energy and environmental costs and more customers

This in turn allows the Regulator the chance to play a more positive role with individual entities and to learn more and more about what works. Consequently, the regulator in that climate will tend to see that it can play the most rewarding and effective role, when it focuses on understanding what works and disseminating information about the methods that are producing the best results.

But, this should be done in a way that leaves entities free to decide what best suits their circumstances.

The future for better regulation in Scotland

The second part of this report constitutes the independent assessment of the current regulation landscape in Scotland, and recommendations for improvement, that the First Minister invited the Regulatory Review Group to develop.

The assessment is thoroughly well informed, and work on some elements of the proposed solutions is already underway. Ministers have been greatly encouraged by the fact that several notable successes of the RRG over the past year have already attracted positive interest, not only from the Scottish media and business community, but also from the Whitehall department responsible for improving regulation. In an area of such notorious difficulty to make tangible headway, this gives them every confidence that the foundations are in place, and that the ambition of establishing a Europe-leading model for improving business regulation is something we may energetically pursue.

Enacting the recommendations of the RRG, and achieving concrete progress as a result, will now become the focus of the continued partnership between Government, business and regulators which the RRG plays such a central role in bringing together. It is precisely through a partnership approach such as this that our Europe-wide aspirations will become a reality. The Scottish Government very much looks forward to this next phase of work, and expects that evidence of tangible progress over the coming 12 months will form the basis of the next annual report.

ANNEX A

Regulatory Impact Assessments

Meanwhile, the RIA provides a structured framework for policy makers to think through and analyse the costs and benefits of any proposed legislation by ensuring that they have considered 2 fundamental questions:

- is the proposed legislation the best way of achieving the policy objective?
- what will its impact be on end user groups, and other affected constituencies?

The RIA is designed to help policy makers think through the consequences of proposals, improve the quality of advice to Ministers and encourage informed debate.

As can be seen from Table 1 below from slow beginnings in 2000-01 the number of RIAs the Enterprise and Industry Division has advised on has steadily increased and now averages around 80 per year with a growing number arising from Brussels. In the year to 31st March 2008, 66 final Scottish RIAs were processed of which 47 or over 70% dealt with the implementation of EU initiatives.

Table 1 : Final RIAs since April 2000 to March 2008: ¹

<u>Financial Years (to end –March)</u>	<u>European</u>	<u>Total</u>
2000 – 2001	18	30
2001 – 2002	4	19
2002 – 2003	32	43
2003 – 2004	25	44
2004 – 2005	40	65
2005 – 2006	33	68
2006 – 2007	26	58
2007 – 2008	47	66

¹ Details of all our final and Partial RIAs are available on the Scottish Government's website at

<http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full>

