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Dear Cabinet Secretary for Finance and Sustainable Growth

I am delighted to present the third Annual Report of the Regulatory Review Group, 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, make Scotland recognised as the leading country in Europe in terms of better regulation.

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

The report looks back over the last year and also sets out what we intend to do in the immediate future. However I am particularly pleased to record a range of significant developments arising from specific projects or activities which, taken together, demonstrate substantive progress in enhancing existing and future regulation and also changing the culture and practice of regulators in Scotland.

The last year saw:

- The full implementation of the RRG’s main recommendation from our first report, with the introduction of a new Business and Regulatory Impact Assessment regime for all future Scottish legislation and regulations (and significant changes to existing regulations);

- Regulators, especially SEPA, embarking on change programs to move them towards the more enabling risk based framework and outcomes approach agreed by all;

- Following advice from RRG and the business organisations, the inclusion of provisions in the Public Services Reform Act which enable speedier amendment of existing legislation which is inconsistent with the five key principles of Better Regulation;

- COSLA establish a new Regulatory Forum and develop a forward work programme which complements RRG’s activities; this augers well for appropriately consistent local regulation across Scotland, encouraging better and more efficient use of regulatory resources and shared understanding of best practice. It will also allow us to work with COSLA and individual Local Authorities to ensure that there is sufficient capacity to deliver the key regulatory services they control;

- RRG continue to look at specific regulatory issues brought to our attention by industry, regulators or Government, and this year, we resolved issues around fire regulations, Energy Performance Certificates, Eurocodes and the Microgeneration Certification Scheme;
o The Group complete our formal review of established legislation, which focused on the Licensing Act and was welcomed by Government, Local Authorities and businesses across Scotland. Implementation of most of our recommendations is already underway; and

o RRG take forward a range of specific regulatory projects, including the completion of highly innovative regulatory exercises relating to open cast mining and carbon capture and storage.

The report of an open cast coal mining project is being published in parallel with this report. It is significant for a number of reasons. First, it was successful: shortening planning timescales by more than 50% and helping to secure jobs in a local community determined to balance challenging economic considerations with protecting the local environmental legacy for future generations. Second, it was necessarily a collaborative project, which serves to confirm that moving forward on better regulation will depend crucially on promoting a change in culture and behaviour.

Across Scotland, and in the report, there are many example of individuals and organisations working together to address complex problems in a pragmatic way which is focused on both enabling and delivering a range of positive outcomes and regulatory compliance. Change is happening, but there is great deal still to do. That will continue to be a major focus of the Regulatory Review Group’s efforts in the year ahead.

Yours sincerely

[Signature]

Professor Russel Griggs OBE

Chair, Regulatory Review Group
1. Introduction and Background

This is the third Annual Report of the Regulatory Review Group (RRG) and we feel we are making real progress with the objectives set by Scottish Government, ourselves and others. Practical positive outcomes are now being seen and put into place in line with the cohesive partnership approach we wish to foster. This comes at a time when all parts of the economy – public and private – are bracing themselves for a tough few years ahead as the fiscal restraints in the public sector come into effect. This will make it even more critical that Government (in all its forms), business and regulators work together to find effective and efficient ways of putting into practice the legislation and other rules the democratic process we live in produces.

In our Annual Report last year we stated that we had made much progress in:

a) Understanding the issues and landscape for regulation in Scotland, the rest of the UK and in Europe;

b) Putting in place a realistic plan of what needs to change to deliver better regulation in Scotland; and

c) Starting the process of change to do that and achieving some significant changes towards that.

This year has taken these further forward, especially in terms of c) where both within Government and Regulators there has been some fundamental change in ways of working that will form key parts of the better regulation structure going forward. There is a momentum now in certain areas and while RRG will still have to encourage and monitor we can move to more specific solutions and the fulfilment of other parts of our role.

Also, increasingly, throughout the year people have come to us, not just from industry but from Government, including Ministers and Local Authorities, with regulatory issues which they wish us to give an opinion on or investigate. We believe this now demonstrates a desire to be part of our cohesive and inclusive approach to better regulation and also an understanding of the benefits of operating in a better regulation environment. Therefore, we believe real progress has been made this year in changing culture in what we do in Scotland and how we do it for the betterment of all, and to drive sustainable economic development and the competitiveness of businesses in Scotland.

This report sets out what has happened in this third year of the RRG, and what we intend to pursue in the coming year, including an outline of what we think our real outcomes should be and how we might measure those.

RRG remit & strategic outcomes

The RRG is an independent body, supported by the Scottish Government, with members drawn from the main business, employee and consumer organisations in Scotland (see Annex A). It works to:
create 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, make Scotland recognised as the leading country in Europe in terms of better regulation.

In achieving those objectives its work falls into a number of areas namely;

a) Advising and assisting the Scottish Government in putting in place a process for creating legislation which is in line with these aims/or which enables better regulation.

b) Working with Regulators to ensure that they deliver legislation appropriately within an enabling manner within the five key principles of better regulation.

c) Reviewing existing regulation where it appears to either not deliver the desired output Government wishes or is contrary to one of the five key principles of better regulation.

d) On an ad hoc basis reacting to issues brought to it by business, regulators, Government, or other stakeholders which appear to be operating contrary to the five key principles of better regulation.

e) Mainly within d) ensure that in areas where matters are devolved across the UK to ensure that regulation operates effectively in Scotland in a way that enhances rather than detracts from Scotland’s competitiveness.

We do the above within the spirit and application of the five key principles of better regulation namely that they should be transparent, accountable, consistent, proportionate, and targeted. Annex B sets out our detailed interpretation of how we interpret each of these principles which forms the template for the decisions and analysis we make. We also do this with an understanding that for this to work there has to be a real partnership between all those involved and an evidence based approach to all parts of the process from creation to implementation.

2. Focus of our work in the past year

RRG has had a particularly busy year progressing and resolving a range of issues. In reviewing what we and others have done in this area in the last year we will consider outstanding matters from our first Annual Report as well as recommendations and issues identified in our second Annual Report.

We have been proactive in setting the framework for better regulation through for example implementing practical steps for policy makers and encouraging an approach to legislation that will allow for more flexibility in implementation. Working with regulators we have made progress towards enabling approaches, which we look forward to expanding more broadly through our growing relationship with Local Authorities. With the Scottish Environment Protection Agency (SEPA) in particular we can report many specific advances of culture and practice. We are promoting awareness of the continuing need for appropriate expertise, especially in local authority regulatory services, and we have also responded to particular issues where concerns have been raised. Finally, we have set precedents for approaches to
reviewing the detailed implementation of selected legislation and pioneered a collaborative approach to turnkey projects. More detail on these is set out below.

Business Impact Assessments

One of the key recommendations from our first Annual Report was the creation and introduction of a new simpler Business Impact Assessment which encouraged the kind of evidence based partnership approach that we advocate. As stated in last year’s report we wanted this to be embedded in the mainstream thinking of Scottish Government, with buy in at the most senior level to ensure that it would flow effectively throughout Government.

We are delighted to say that this has now been achieved and on 1\textsuperscript{st} April 2010 a new Business and Regulatory Impact Assessment (BRIA) was introduced throughout Scottish Government not just for main legislation but for all types including Statutory Instruments. The composition of the BRIA is set out in Annex C along with an outline of how it is being introduced across Government. In the coming year RRG will be looking to see how the introduction of BRIA has been effected, and examining some initial BRIA’s to see how they have been compiled and completed.

Scottish Environment Protection Agency (SEPA)

In our first Annual Report we supported the new direction that SEPA was proposing to follow. With the launch of their Corporate Plan\textsuperscript{1} and Change Program we are delighted both with the content and how all their delivery partners have grasped the challenge as well. Annex D sets out a series of specific case study examples of SEPA working to deliver better regulation across the wide range of better regulatory principles. This includes progress on the Waste Incineration Directive which we highlighted last year.

We will continue to work closely with SEPA both specifically and as part of our wider Regulators Group and hope we might use their best practice to help others. We will also monitor the introduction of its new regulatory model to see how that works to help businesses and SEPA work more effectively together as well as how it impacts on SEPA’s funding model, the challenges of which we highlighted in our first Annual Report.

Public Services Reform (Scotland) Act 2010

Another challenge we previously identified was the time it takes to change legislation when what was in the original legislation does not work in practice, produce the desired output, or has unintended impacts. We specifically highlighted the fact, and continue to do so, that legislation should focus on the ‘what’ Government is trying to achieve and leave the ‘how’ to be decided by those who have to implement it within a template or guidelines if that is felt necessary.

An example we highlighted previously was with the Care Commission which could not achieve the outcome Government wished because of the way the legislation

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\textsuperscript{1} Scottish Environment Protection Agency : Publications - Corporate Plan
forced them to undertake a specific number of inspections per year per care home. We are pleased that the Public Services Reform Act has enabled this to be rectified but the change took over two years.

Consequently we are also pleased that section 17 of the recent Public Services Reform (Scotland) Act (see below) which provides powers for Scottish Ministers to change more quickly and simplify legislation which offends the five principles of better regulation and stops the true outcome being achieved. We will monitor how this section is used over the coming year and report on its effect in our next Annual Report.

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<tr>
<th>Public Services Reform (Scotland) Act 2010</th>
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<td>Part 2 – Order making powers</td>
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**17 Power to remove or reduce burdens**

(1) The Scottish Ministers may by order make any provision which they consider would remove or reduce any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.

(2) In this section “burden” means any of the following –

(a) a financial cost,
(b) an administrative inconvenience,
(c) an obstacle to best regulatory practice,
(d) an obstacle to efficiency, productivity or profitability, or
(e) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

For the purposes of subsection (2)(c), “best regulatory practice” means practice under which (in particular) regulatory activities should be -

(a) carried out in a way that is transparent, accountable, proportionate and consistent,
(b) targeted only at such cases as require action.

**Working with Regulators**

In last year’s Annual Report we stated that we were about to meet with all the regulators that fall within our remit, plus their sponsoring teams from Government, to see if we could put in place a protocol or ‘way of working’ that reflected our overall aims.

That meeting took place on the 10th June 2009. It delivered a successful outcome, with all agreeing that regulators will work within a risk based framework in an enabling rather than an enforcing manner. This will enable businesses and organisations, not the regulator, to assume the responsibility for compliance and be audited to substantiate that as appropriate. The full outcome from that meeting is detailed in Annex E.
At that meeting a regulator suggested that to move to this way of working, a change in the Key Performance Indicators (KPI's) may be appropriate as unless performance measures are aligned with the agreed principles they could drive behaviour in the wrong direction. It was agreed that a small working group of regulator’s chairpersons would be set up to consider this. This group suggested that RRG conduct a survey of the KPIs currently used by regulators to examine how many are supply side generated (focused on process) and how many demand side (focused on customer and outcomes). The results found that the current balance between supply and demand was around 60:30, with the remainder not fitting into a distinct category. This showed that some change needed to be made as it was clear that the split did not give the focus on the customer that all agreed was needed.

However rather than try to work with each regulator to establish new KPIs it was decided to put in place a framework based on outcomes where:

i) each regulator would identify a small number of outcomes it was trying to achieve;

ii) for each outcome they would paint a picture of ‘what success would look like’; and

iii) the metrics would then be what was needed to take them from where they are today to where they want to be.

Annex F explains the above in greater detail.

RRG has also agreed to adopt the framework in terms of its own outputs and section 3 of this report includes the work we will be doing to put those in place over the coming months.

Reviewing Legislation

i) Extension of Fire Regulations

In last year’s Annual Report we highlighted the investigation we had carried out into the extension of Fire Regulations being applied to small bed and breakfast establishments and self catering premises. Our investigation highlighted how these changes were being interpreted and implemented inconsistently by Fire and Rescue Services across Scotland. In response we highlighted the need for national regulators or central policy officials to issue stronger guidelines on how things should be implemented - a theme that has reappeared in other work we have done this year and which we comment on more specifically elsewhere in this report.

At the time of writing our last Annual Report, Government, industry, and Fire and Rescue Services were setting up a working party to try and resolve the issues. That working group met several times but in the end could not agree on a settlement as it still relied on a ‘tick box’ process that did not really satisfy any party fully. However the Group did ask for further consultation which was forthcoming and new Fire Safety Guidance has now been produced which will be used as part of a solution.
We are pleased to say that this solution is on its way to being implemented by the intervention of Jimmy Campbell then Chief Fire Officer of Fife Fire and Rescue Services and also Chair of the Community Safety Group Association of Chief Fire Officers (Scotland), who took a much more cohesive and wider approach to the issue and identified the real problem as a lack of understanding amongst Fire Officers of risk based inspection and evaluation of an issue, and training to support this.

RRG always like to highlight ‘heroes’ and Jimmy Campbell is one such person. He not only identified what the problem was but pursued a solution which demands a new approach and also brought differing parts of Government together to implement it. While this change of mind set amongst Fire Officers will take time we believe the lasting and beneficial effect on the way of working and relationships between them and businesses will be much more long lasting and effective. It will again put the responsibility for compliance where it should lie – with the B&B owners themselves.

The Minister for Community Safety announced the new measures and we would hope to see the positive effects of this change by the time of out next Annual Report.

As an aside and unrelated to the above, we also believe that the approach the Fire and Rescue Service has taken to shared services and efficiencies is an example that many other organisations could follow. Sharing is something that all public organisations will have to look at and the way some Fire and Rescue Services have agreed and are sharing equipment and expertise within a trusting framework in terms of cost is an exemplar for others to follow. Also using experience and frequency of use as the determinates of how wide a geographical area needs to be or can be covered by an individual is a route others could follow and we will explore that later in this report.

ii) The Licensing (Scotland) Act 2005

This is the first major review of legislation that RRG has embarked on. We have learned much from our experience and it is our intention to try and complete at least one such review every year hereafter.

The report arising from the review was published in June 2010 and we are now facilitating progress of the short term recommendations to help put in place a more consistent administration for licensing across Scotland.

We believe the report has been well received even though it does present some challenges that need to be addressed in terms of consistency across localities. It highlights the need to always split decision making and the evidence that helps that decision to be made into two distinct parts. RRG supports the need for decisions to be made in the right place and in many cases that may be very local. However there is no reason why administration systems need to be local and in many situations there are strong arguments for a Scotland wide corporate approach to be taken which provides greater efficiency and effectiveness.

2 http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group/publications
The review also highlighted an issue which we raised in our first Annual Report, namely, the number of trade bodies that represent specific sectors and how, on occasion, that can be a challenge and not a strength. In issues where it is important that industry helps Government as part of the partnership needed to produce better regulation, industry needs to find ways of expressing its own corporate view coherently.

RRG’s role in carrying out such reviews should also be clearly understood. Our role is to test whether the legislation is meeting its objectives and critically whether it is operating in a way that meets the 5 key principles of better regulation. If we find it is not then we will try and find ways to resolve the problem or suggesting how others might work together to do so. We do not see our role as coming up with definitive solutions which others may have to implement as we believe strongly that to develop the change that may be necessary you need to be part of creating the solution. We would therefore always want those that do the specific as their day job to ‘own’ the solution.

Local Authorities

In last year’s Annual Report we expressed concerns over the challenges we experienced engaging fully with Local Authorities. During this year that situation has progressed positively and we now have good working relationships with Local Authorities across a wide spectrum, including through the Regulators Forum which COSLA established earlier this year. This Forum’s outcomes include promoting a consistent approach to regulation across Scotland, encouraging better and more efficient use of regulatory resources and disseminating good practise.

We will continue to work with all Local Authorities in the coming year to develop these relationships further. The changing fiscal environment however will place extra pressures on Local Authorities and it will be essential to look at radical solutions to the challenges that will bring. What is clear is that the status quo cannot remain and looking at ‘shared services’, just as the bringing together of ‘back office’ functions, cannot be sufficient.

Regulatory Services within Local Authorities, where RRG has most interfaces, are the heart of where they deliver regulation. These services are composed differently across Scotland but in essence contain Licensing, Environmental Health, Trading Standards, and Planning. This year we were approached by the Environmental Health and Trading Standards sectors who expressed concerns to us about their ability to carry out their obligations under better regulation if resources are squeezed any further. These services are governed by legislation, both UK and Scottish, which sets out what they should do in terms of Duties and Powers. Duties are things that they have to do and Powers are things that they can chose to do depending on circumstances. However, in terms of better regulation it is often the case that the enabling part of what these regulators do, and which all agree is critical to achieving better regulation, is in the Powers and not the Duties which tend to focus on the enforcing or policing part of their role. Business, in particular, will say that it is this assisting and advising role which they value most and it could be the one most under threat.
It is clear that Environmental Health and Trading Standards Officers have done their work well in recent years which can be seen in the reduction of food related infections and ‘scams’ that have developed. This is a result of the excellent work done by these officers who have not only ‘policing’ their areas well but more importantly worked with business to help them become more compliant.

The concerns raised with us are to do with capacity and if they are squeezed below a certain level they may have to focus on Duties only. Scotland has built up a good reputation in this area which could be damaged by any further reduction in capacity. We will continue to work on this issue with these bodies and Consumer Focus Scotland who have highlighted their own similar concerns.

Part of the challenge may be that neither Environmental Health or Trading Standards has a specific policy lead within Scottish Government so there is no national focus within Government on these issues. Northern Ireland in recent years had a similar situation with Trading Standards but has now set in place a central policy lead which has helped the situation there so perhaps Scotland should consider this as well.

While we understand and sympathise with the challenging decisions those in Local Authorities will have to make in the year ahead we also believe that these should be on the basis of what is needed rather than what has to be done and also by taking a more radical approach to shared services. We believe that an expertise driven approach as developed, for example, by the Fire and Rescue Services could help. The Services are currently looking at the expertise, how often it is needed, its impact, and then decides what geographic area should be covered, ignoring the current boundaries that are in place. Therefore for example, for incidents involving certain hazardous substances with the potential for contamination, which only happen infrequently, there are only four ‘expert’ units covering all eight Fire and Rescue Services across Scotland. Similarly with specialist vehicles there is now sharing across services.

We are aware that some Local Authorities are starting to look at these opportunities but in terms of better regulation and the services this covers we believe that this ‘expertise’ based approach should be examined as we believe it provides opportunities for Scotland to keep it effectiveness and capacity in these areas.

We believe that this expertise driven approach to shared services could also apply to planning where there are concerns from both industry and from within Government that the fiscal restraints imposed, and the way they are applied by Local Authorities, may impact on the full implementation of the Planning etc (Scotland) Act 2006 and the change in culture it demands.

It may appear odd from all the above that RRG is concerned about a reduction in those implementing regulation, but better regulation requires all parties to work together effectively and that means each having the right capacity and expertise to do so and it is there that we have concerns. A revised approach to shared services would also help consistency across Local Authorities, which still remains a challenge.

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3 Up to Standard? A review of trading standards services in Scotland
in certain areas, as it would allow those who do this as their day job to design the correct and workable outcome that could then be fitted within the fiscal restraints that need to be in place.

The Local Better Regulation Office (LBRO) is addressing similar issues in other parts of the UK. While LBRO does not have a full statutory role in Scotland we can learn from what they have been doing. RRG has an LBRO member and with the Improvement Service we will work to see how LBRO’s best practice can be used in Scotland.

Devolution

In our 2009 report we identified the need to develop a closer understanding across the devolved parts of the UK. Through our efforts a Better Regulation 4 Nations Forum has been established, bringing together officials working on better regulation within each of the UK’s 4 nations. Quarterly meetings provide an opportunity to work more collaboratively and allow us all to understand better across the UK how we work and how we can resolve issues amongst us. This Forum will have increasing importance over the coming year as we see and monitor the changes that the new Coalition Government in Westminster brings to regulatory reform and how that will impact elsewhere.

What is also clear is that devolution is highlighting more and more different ways of doing things based on the differing policies and outcomes of the differing administrations which throws up both best practice that others can copy but also challenges in how we get understanding and some form of consistent approach if not solution across the UK.

Specific Issues Raised with RRG

a. Energy Performance Certificates (EPC)

At the time of writing last year’s Annual Report we were in the middle of reviewing the differences between EPC in Scotland, and in England and Wales. We are delighted to report that having finished this process, Scottish Government Building Standards commissioned research and produced a detailed document to explain the difference in approach to the production of EPCs in Scotland to other parts of the UK.

A recast of the European Directive on the Energy Performance of Buildings was signed in June 2010. The forthcoming public consultation on the recast will revisit the presentation of the information on the EPC and could result in a more unified approach across the UK that will satisfy both industry and officials. The real success, however, is the positive reaction from industry and officials with the way they have looked at these issues across borders and developed their own processes for dealing with them. Therefore another of our ‘heroes’ this year has been Scottish Government Building Standards who, through their flexible ways of working have been able to tackle this specific issue which has led to a better outcome for all.
CASE STUDY: ENERGY PERFORMANCE CERTIFICATES

Background
The Scottish Property Federation, on behalf of the industry, had raised concerns regarding the energy performance rating of non-domestic buildings detailed on Energy Performance Certificates (EPC) and the different approaches being taken throughout the United Kingdom to calculate this. Evidence suggested that EPC ratings for Scottish non-domestic buildings appear to report less favourable ratings than in other parts of the UK. There were concerns that Scottish businesses were being potentially disadvantaged as the EPC could influence the building value.

Role of the Regulatory Review Group
In aiming to create a culture and environment in Scotland where both business and Government work together to create better regulation for all, the Regulatory Review Group (RRG) sought to resolve specific problems and regulations causing business concern where all other avenues to address the matter have been exhausted.

Process
To determine if this was a regulatory matter which was causing an unnecessary burden on business, the RRG met with Scottish Government and industry representatives to discuss the issue. To assist in further understanding of the issue, the Scottish Government Building Standards Division commissioned research from the Buildings Research Establishment. The research identified the differences in the generation and presentation of information using examples for a range of buildings for Scotland and for England & Wales.

This research was accompanied by an information paper produced by the Building Standards Division explaining differences in presentation of information within each of the UK administrative areas. The paper also highlighted that a direct comparison of ratings was not possible due to the different approaches which had been adopted.

This disparity does not support the principles of better regulation which along with transparency, encourages consistency. It was agreed that there was a need for all parts of the UK to take, wherever possible, a common evidence-based approach.

Outcome
A recast of the European Directive will enable all parts of the UK to review the existing methodology and its application, to investigate how a more consistent approach to reporting performance might be delivered. The Scottish public consultation on the recast could result in a change in the presentation of the EPC information. It is recognised that a more unified approach would remove the perception of any unintended or unjustified economic disparity across the UK which has arisen through the current approach, and help deliver more consistent regulation.

Views of those involved
Scottish Property Federation - welcomed the engagement they had from the RRG on this matter. They were impressed by the willingness of officials to discuss concerns through the auspices of RRG. It enabled them to engage in constructive and informative discussion and form a better view of the requirements of Government policy. In their view, RRGs support and understanding was needed to get to this level of productive discussion.

Scottish Government Building Standards – also welcomed the engagement of the SPF and RRG. The ability to work together to identify and quantify the issues affecting EPC production was particularly useful given changes applied by Europe.
Regulatory Review Group – believe that facilitating face to face discussion engendered a clearer understanding of the problem, and in particular the importance of looking at and understanding differences in approach across the UK. Where these exist, the reasons for them must be clearly justified.

b. Eurocodes

Another issue which we were asked to address concerned the introduction of Eurocodes - a common European set of structural design codes for civil engineering work – and differences across the different parts of the UK.

As part of the equalisation process across Europe, British Standards in the construction industry are being phased out. This has been planned since the 1990’s so both Government and industry have been aware that this was coming for some time. 1st April 2010 was the date when British Standards for planning and building control would no longer be supported. In England industry lobbied the UK Government and it was decided that guidelines around construction standards for England and Wales would not be revised until 2013. The Scottish Government however, was to include Eurocode references in the 2010 update of the Building Standards Technical Handbook. This caused concern that Scottish companies would be disadvantaged if they used British Standard references on construction drawings etc. and were asked to redo them using the Eurocodes with the extra burden and cost that that would entail.

RRG discussed the issue with Scottish Government Building Standards officials who agreed to add a ‘ready reckoner’ appendix into the guidelines. This provided a read across from Eurocodes to the British Standards which satisfied all parties. While the solution may appear simple, and it was, this illustrates the role that bodies like RRG play when industry wants a whole solution, or equalisation with what other parts of the UK are doing, whilst another solution may achieve the same result.

CASE STUDY: EUROCODES FOR STRUCTURAL DESIGN

Background
The Regulatory Review Group (RRG) were informed of industry concerns regarding the introduction of European standards for structural design (Eurocodes) on 1 April 2010. With effect from the same date, British standards for building regulation design and construction would be withdrawn (no longer reviewed or updated) as when harmonized European standards exist, British Standards Institute are obliged to withdraw national standards.

The Scottish Buildings Standards Technical Handbook provides guidance on building regulations. The updates for the 2010 edition, published in April 2010, include replacing British Standards with Eurocode references. Building standards guidance in England and Wales will not however be updated until 2013. Industry were concerned that with Scottish Guidance being updated earlier, Scottish Business were disadvantaged compared to English and Welsh counterparts as they had a shorter transition period before Eurocode references were used within guidance.

Role of the Regulatory Review Group
In aiming to create a culture and environment in Scotland where both business and Government work together to create better regulation for all, the Regulatory Review Group
sought to resolve specific problems and regulations causing business concern where all other avenues to address the matter have been exhausted.

**Process**

RRG met with industry representatives raising the concerns to establish a full understanding of the issue and the impact on Scottish business. This was followed by a meeting with Scottish Government Building Standards Division responsible for the Scottish guidance to discuss the concerns and possible solutions.

**Outcome**

As a result of RRG involvement, Scottish Government Building Standards Division amended the 2010 Scottish Buildings Standards Technical Handbook to include a table showing how the new Eurocodes correspond to (withdrawn) British Standards. Although it is recognised that the British Standards are now withdrawn, and not all standards are directly comparable, this table will help understanding and ease the transition process for business as they move across to eurocodes. This approach was acceptable to both industry and Scottish Government Building Standards Division.

**Views of those involved**

Industry were delighted that RRG managed to resolve the issue in a manner suited to our industry, as demonstrated in the quote below:

“My experience of meeting the RRG chairman was made extremely easy by the informal discussion held. I found he had done his homework on the subject in advance of the meeting and in this way he had a good knowledge of our point of view. This allowed the discussion to progress at a better pace and allowed Prof Griggs to concentrate his questioning. By engaging with RRG, and demonstrating the disadvantage that would be placed on Scottish engineering due to non-conformity with the remainder of the UK, the logic of our argument could easily be seen. Prof Griggs was able to act promptly to enable the necessary changes to the guidance in the forthcoming building standards revision. At a time when our industry is under severe pressure, this simple change has assisted greatly.”

Scottish Government Building Standards - Working with the Regulatory Review Group (RRG) has allowed the Division to forge closer links with industry and to sympathise more widely with commercial pressures. The expanded advice we have provided on alternative approaches and the additional Annex providing a list of Structural Eurocodes and corresponding British Standards should continue to provide industry with the comfort needed to continue to use withdrawn standards on a risk based approach without compromising public safety.

The Regulatory Review Group believes that this issue highlighted the benefit of taking a step back to get to the root of the problem and finding simple solutions to minimise regulatory burdens.

c. Microrenewables

The renewables market has been identified as one with great potential for Scottish businesses. The sector supplies and fit microrenewables to homes for individuals and families, which is encouraged with grants available from the UK Government to households to convert to renewables. To ensure that the installation is completed properly, and qualifies for grant, the supplier must be accredited to a standard set by the UK Government under the Microgeneration Certification Scheme (MCS).
The Microgeneration Certification Scheme (MCS) is an independent scheme that certifies microgeneration products and installers in accordance with consistent standards. Those wishing to become a MCS certificated installer company, or to have their products certificated under the MCS, must apply to a Certification Body which has been accredited for this. Up until now there has not been an accrediting body in Scotland. This disadvantaged Scottish companies. Scottish companies also believe that they already have in place schemes which are at least equivalent to MCS.

RRG was asked to look at how Scotland could retain its competitiveness in this area and have businesses accredited. We established that the Construction Licensing Executive is now in the process of becoming an accreditation body in Scotland. Having spoken to the Department of Energy and Climate Change (DECC) and the Chair of the MCS Steering Group, RRG is of the opinion that there is enough flexibility in the scheme for a Scottish accrediting body to accommodate the wishes and concerns of the industry bodies in Scotland. It has asked all parties in Scotland to work together to reach a solution that is satisfactory to all and a recent meeting of all those involved has indicated progress is going well.

DECC and MCS we believe are being reasonable and have aligned their standards to those coming from Europe. While we accept that in some areas Scotland may have and desire higher standards than those applied by MCS, we do not believe that should be a reason for having a separate standard in Scotland. This would in effect then block companies operating in this area, but outside their own jurisdiction, which we do not believe would help the competitiveness on the industry. We will report fully on the outcome in next year’s Annual Report.

Turnkey Projects for Multi-partnership working

In last year’s Annual Report we stated that we would like to examine whether ‘turnkey’ models could be put in place around projects which involve multi regulators, agencies, communities, and business and other parts of Government all working together. In considering a suitable pilot we focussed on areas that would help planning reform as introduced through the Planning etc (Scotland) Act 2006 and particularly the pre-application consultation process. The reason for this was that feedback from developers indicated one of their main problems was the sequential system of meeting with regulators, planners and others individually and the time consuming process they have to go through preparing their application in consultation with relevant stakeholders. The developer knowing earlier that it was not worthwhile proceeding with the proposal would also be a benefit.

The project we settled on involved finding a replacement for an open cast coal mine at Powharnal, near Muirkirk in East Ayrshire where Scottish Resources Group are currently operating. The detail of the project and learning from it is set out in the report that has just been published4. The key learning for all parties was:

4 Powharnal Report
i) Bringing all parties together at the beginning could add value to all in terms of knowledge and understanding, as well as truncate timescales and save resource for everyone.

ii) Finding a common purpose that everyone could buy into was critical. If that cannot be found it will make the project difficult to implement.

iii) The final planning application submitted will be of higher quality and should therefore proceed through the remainder of the process more easily.

iv) Overall time could be reduced to 15 months from initial conversation to opening of the project if all runs to schedule for the rest of the project and the application is approved. This compares with the gestation period of 5 years for the current site. We will update on the actual final timescales in next year’s Annual Report.

v) The role of the independent Chair, which RRG took in this pilot, is critical to success of the pilot.

vi) The developer has to be committed to working to achieve a solution and accept that not finding one is a possibility.

We were also pleased to be asked to participate in an innovative exercise to test run the regulations for carbon capture and storage projects. Such projects will by their very nature be large and complex involving many regulators and multiple consents. This exercise brought together all the key developers, consultants, environmentalists, planners, academics and regulators, to consider and assess the current regulatory framework and identify pinch-points as well as the opportunities for improvements in the various onshore and offshore licensing regimes. An output report on the exercise will be forthcoming based on delegate feedback, with the findings in this evolving area helping to streamline the regulatory framework for processing all existing and future carbon capture and storage projects. Participants found it to be a helpful and informative exercise, with the Global Carbon Capture and Storage Institute participating and recognising it as “an innovative first-of-kind exercise for which the Scottish Government should be congratulated for organising, and which should service as an example for other countries to also consider undertaking”.

We believe this shows the growing acceptance within Government and elsewhere that pre development discussions amongst all parties are now a key process in producing a better and more effective end product.

**Widening work into Europe**

This year we intended to look more closely at the impact of European Audit on organisations and how that can add extra burden when using European funds. We also wanted to look at how the European Union (EU) itself was changing the way it looks at better regulation. Some years ago, RRG chaired a Better Regulation Sub Rosa during Best of Scotland Week in Brussels. This was about how the EU was changing its approach to Impact Assessments etc. It would be good to see if the European Commission have delivered the changes they had embarked on, particularly as better regulation (now called smarter regulation by the European Commission) is high on their agenda.
However, this is the area we have made least progress on this year for a number of reasons. While our priorities have been focussed on other parts of our work, part of the challenge has been in finding clear examples in the area of EU Audit to take to Europe to discuss. Like many things to do with better regulation, many complain about the impact regulations, regulators, or auditors have on them but when asked to provide specific example find it difficult to do so. Regulation in many ways is like paying tax where you may not like doing it but is necessary if you want the type of society you desire.

It is our intention to carry this over into the coming year and we would welcome any specific examples we could use regarding EU audit requirements. In terms of wider engagement with the EU we will begin this in partnership with SEPA later this year in terms of the work the environmental regulators are doing jointly in this area across Europe.

3. The Coming Year and the Future

Looking to our work programme for the coming year, some issues included in section 2 will continue to progress into this year. We need, for example, to progress our work in Europe further both in terms of European Audit and how the EU is changing its approach. This includes revisiting the work RRG started some years ago through a Sub Rosa event. Other key tasks for RRG in the coming year will be:

a. Another pilot project will be undertaken to further test the outcomes of the multi-partnership collaborative project we facilitated this year. We are working with planning officials to identify a different type of development but should anyone reading this have a project in pre-development which they would like to volunteer we would be pleased to consider it.

b. We will continue to work with Regulators and Sponsoring Departments to produce the outcome based framework set out earlier in this report and we will report on progress on this in our next Annual Report.

c. We will continue to examine specific issues. We have already been asked by the Minister for Housing and Communities to review the regulatory framework for Registered Social Landlords, including the provisions in the Housing Scotland Bill and identify any potential burdens. This is especially important with the introduction of the new Housing Scotland Bill and proposed changes to the Scottish Housing Regulator.

d. Reviewing another piece of legislation (which has yet to be decided).

e. Reviewing a few BRIAs that have been completed to evaluate their effectiveness as well as follow up on the introduction of BRIA to see what learning we can gain.

f. Looking at how we can continue to work closer with other parts of the UK, including LBRO, to use their best practice and learning in Scotland where appropriate.
g. Maintaining a watching brief on how public spending cuts could impact on better regulation, in light of comments made elsewhere in this report.

h. Working closely with SEPA to explore its proposals for legislative reform so that this Agency can operate under a simpler, streamlined and far better aligned regulatory framework which includes the possibility of integrated site permits, fully aligned administrative arrangements and improved criminal and civil sanctions for dealing with environmental crimes. We covered some of these issues in our Annual Report in 2009 and will work with SEPA, the Scottish Government and businesses in 2010-11 to help shape the proposals. We recognise that this may mean new primary legislation and/or amendments being made via secondary legislation in order to make the necessary progress.

i. Finally and perhaps most importantly review our own outcomes, paint our picture of success and then design metrics to judge ourselves as we make the journey from where we are to where we want to be. We feel this is the right time to do this as all partners involved in better regulation now more fully understand the role and work of RRG, and in taking this forward we will be to speak to each of the partners involved in better regulation in Scotland.

Another busy year ahead but we are a long way from where we started three years ago and are pleased with progress which is recognised not just in Scotland but elsewhere.

Professor Russel Griggs OBE
Chair, Regulatory Review Group
Annex A

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 organisations and its work involves identifying regulations that are causing business concern and investigating areas for review.

In June 2007 the First Minister announced a re-invigoration of the Group under the Chairmanship of Professor Russel Griggs with a remit to:

- continue with its original role, to try and resolve specific problems and regulations that were causing Scottish businesses concern;
- formulate a strategic approach and to develop processes to improve the regulatory landscape such as making recommendations for improving the Regulatory Impact Assessment (RIA) process;
- advise the Scottish Government on all aspects of its Better Regulation agenda, including measuring compliance costs to business, one in one out, proposals for a Local Better Regulation Office etc;
- 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.

Membership

Chairman – Professor Russel Griggs OBE – Confederation of British Industry  
Paul Provan – Institute of Chartered Accountants of Scotland  
Stephen Boyd – Scottish Trade Union Congress  
Garry Clark – Scottish Chambers of Commerce  
Trisha McCauley – Consumer Focus Scotland  
Jim Gorie – Forum of Private Business  
Susan Love – Federation of Small Businesses  
James Withers – National Farmers Union Scotland  

The following people have observer status within the Group:  
Kyla Brand – Office of Fair Trading  
Michael Gibson – Local Better Regulation Office  
John Henderson – Scotland Office
Principles of Better Regulation

RRG works to build awareness of, and commitment to, the five principles of better regulation – that regulation should be consistent, transparent, accountable, targeted and proportionate.

Our views on how these principles should be apply are described in more detail below:

**Transparent**
- Government should be open and transparent to all stakeholders, including the regulator, when creating legislation;
- All stakeholders should know why the legislation is being put in place, how it will be implemented, impact on them, and should be encouraged and allowed to contribute to its creation;
- Government should be open and honest in how it communicates its intentions and also be open to receiving and responding positively to feedback;
- Government and regulators should be open, and honest, and be receptive to views and ideas on changing existing legislation based on experience of it working from any source within and out with Government.

**Accountable**
- All parties, Government (at Scottish national and local level), Regulators, and business, should be accountable for their part in better regulation and work together in partnership;
- Government should be accountable for the legislation it produces, its impact, and for reviewing it where appropriate;
- Regulators are responsible for seeing that businesses comply with legislation and for suggesting and implementing changes to it;
- Businesses are accountable for complying with legislation but also for suggesting changes to legislation where the original outcome desired from the legislation can be achieved in a better way. Regulators and Government have a responsibility to listen to those suggestions constructively and respond to them.

**Consistent**
- Government and Regulators must put in place processes that ensure that legislation is created and implemented consistently - whoever does it in their organisations or jurisdictions.

**Proportionate**
Legislators and policy makers should:
- take enough time to look at alternative methods of implementing policy other than legislation;
- understand the breadth and complexity of the markets that the legislation will impact on;
- appreciate how a particular regulation will interact with other regulations;
recognise the differing issues and circumstances of businesses of different size and sectors.

Businesses have to be proportionate too, and understand that while legislation is not always an ideal outcome, it reflects the interests, needs and aspirations of the wider community. Businesses have to accept that the burden sometimes may be proportionate to that societal impact or benefit.

**Targeted**
- Legislation and regulation should only impact on those it was intended to effect and not others.
Business and Regulatory Impact Assessment

On 1 April 2010, the Scottish Government launched its new Business and Regulatory Impact Assessment (BRIA). A BRIA helps policy makers gather and use evidence to find proposals that best achieve policy objectives while minimising costs and burdens.

A BRIA should be completed for any Scottish regulation which may have an impact on business or the third sector, to ensure all delivery options and the impact on business is fully considered before regulation is made.

The BRIA requires through consultation and engagement, consideration of all the options and the impact on business including the businesses and sectors impacted, the impact on the competitiveness of Scottish companies and the likely costs and benefits. As recommended by RRG, there should be direct engagement with between 6-12 companies which are expected to be affected in order to better assess these costs and/or benefits, and thereby support economic recovery and increased and sustainable economic growth.

A series of awareness raising seminars were delivered across the Scottish Government to promote and support the introduction of the BRIA. These were supported by RRG members who attended some of the events.

A toolkit and template have been produced to help inform and guide the BRIA process. More information on Business and Regulatory Impact Assessment can be found on the [Scottish Government website better regulation pages](http://www.gov.scot/).
ANNEX D

SEPA Regulation Case Studies for the 3rd Regulatory Review Group Annual Report

Below are eight examples of better regulation completed in 2009-10 by the Scottish Environment Protection Agency (SEPA) in conjunction with Scottish businesses, stakeholders and partner organisations.

SEPA has been committed to visibly delivering better regulation for a number of years now but the pace and progress of change has increased considerably over the last year. This focus on better regulation has been influenced significantly by close working with the Regulatory Review Group as well as through participation in European networks and UK partnerships.

SEPA has well over 40 examples of better regulation and is transforming its services and operations through such practical delivery. The case studies provided below illustrate the breadth of issues covered together with the amount of emphasis being placed by SEPA on being a supportive and enabling regulator. This approach ensures compliance and positive environmental outcomes with a clear end-user focus.

(1) More customer-friendly letters
As part of its better regulation and customer focus work in 2009-10, the Scottish Environment Protection Agency (SEPA) set up a small project team to review the most commonly used standard letters. The letters selected by this team were used across all of the regulatory regimes implemented by SEPA and are used for a variety of purposes such as providing advice on the progress or outcome of an application, asking operators for more information or helping to clarify statutory requirements.

The objective of the work was to make the letters simpler and clearer using plain English techniques and taking consideration of the new format used by Her Majesty’s Revenue and Customs (HMRC). In total, 167 standard letters have been improved and are now being used by SEPA staff.

(2) Changes to sampling and inspection activity
Two significant better regulation changes have been implemented by the Scottish Environment Protection Agency (SEPA) in 2010 in relation to sampling and inspection activity.

For effluent discharges, SEPA reviewed its overall sampling programme with a view to freeing up staff time for higher priority work such as tackling failing sites and improving priority catchments. This review has led to reductions in sampling frequencies at compliant sites based on risk and by utilising the flexibility allowed under the Urban Waste Water Treatment Directive. In total, this has resulted in a 23% reduction in the effluent sampling programme and the removal of just over 3,000 samples. No sites have been completely dropped from monitoring but SEPA is considering whether this might be possible for some of the lower risk ones.
On the inspection side, SEPA has reduced or removed inspections at lower risk, compliant, sites in order to dedicate more time to regulating and resolving issues at higher risk or failing sites. As part of this work, SEPA has developed, and is refining, a new risk assessment tool that works across regulatory regimes. The risk profile generated by this tool will enable SEPA to identify the types of activities that are inherently lower risk. This information is being used together with expert knowledge to identify where inspection effort can be reduced either to a more responsive approach or a 1 in 3 year audit inspection programme. With effect from early April 2010, SEPA has reduced planned inspections at such sites by 24% and removed or delayed over 3,500 inspections. In 2010-11, SEPA will be developing an audit-based approach to inspections to deliver advice and other compliance support to operators.

(3) Reducing burdens and improving services for farmers, crofters and foresters
Scotland’s Environmental and Rural Services (SEARS) is a partnership of nine public sector organisations that delivers services to farmers, crofters and foresters on behalf of the Scottish Government and the public.

SEARS is about to enter its third year of operation and has a clear focus on improving services, reducing inspection burdens and bureaucracy for rural land managers. These are outcomes that come from a focus on the end-user and core better regulation principles.

One of the key aspects to the SEARS partnership is for inspections that would otherwise have been carried out separately to be carried out by one organisation with an existing reason to be at a farm or woodland. As one of the lead agencies in the partnership, SEPA has invested a significant amount of time in training staff in other organisations so that they can carry out its inspection work. This has resulted in 2,375 inspections being carried out for SEPA, mainly by Scottish Government Rural Payments and Inspections Directorate (RPID) with a small number from Scottish Natural Heritage (SNH) staff. If any non-compliance issues are found during these inspections, they are usually resolved at the time with very few being referred back to SEPA. This type of approach is leading to knowledge and information exchange and a greater awareness of regulatory requirements. It is also resulting in more favourable survey results from customers about the services that SEARS is delivering. This is an example of better regulation being delivered through a partnership approach.

(4) New guidelines for land remediation and waste management
Land remediation is a vital part of sustainable development. As an activity it helps to conserve undeveloped areas by remediating land that has already been used. The return of land to productive use is not without risk as historical activities may have left a legacy of contamination. As such, risks to the environment and human health must be addressed as part of the remediation process.

In order to clarify what regulatory controls will be applied to this activity, SEPA published “Land Remediation and Waste Management Guidelines” in 2009-10 to provide advice on how land remediation is to be regulated by SEPA. This guidance was produced for those involved in the planning, carrying out and regulation of land remediation.
One very positive outcome from producing this guidance is that it has helped to streamline part of the development process. It did so by aligning waste regulation for the re-use on-site of certain soils to those of developmental control and contaminated land regulation by providing a greater focus on risk-based remediation plans. This approach has resulted in wide benefits as the level of evidence required to satisfy local authorities and SEPA should be the same.

In their consultation response the Environmental Industries Commission (EIC) said that:

“This is a welcome step in ensuring consistency across the industry and bringing clarity to many difficult issues. The document is extremely pragmatic in approach seeking to apply light touch regulation where possible, and more rigorous control where necessary. This approach is welcomed by members and will, we are sure, be welcomed by the industry in general.”

(5) Regulator and industry cooperation leads to new green field soils guidance
This case study demonstrates how strong partnership working with business and industry can deliver practical solutions with good outcomes as part of a focus on better regulation. In this case, the main aim of the project was to encourage the sustainable re-use of uncontaminated greenfield soils in construction in Scotland while minimising bureaucracy.

In 2009-10, the Scottish Environment Protection Agency (SEPA), Civil Engineering Contractors Association (CECA), National Industrial Symbiosis Programme (NISP) and the Environmental Industries Commission (EIC) jointly developed guidance on when excavated greenfield soils can be used off-site in construction and development projects without the application of waste controls on each use. This project was taken forward as part of SEPA’s commitment to simplify waste regulation under the Better Waste Regulation Action Programme.

What the guidance does is to simplify the recovery and reuse of natural top-soils and sub-soils from greenfield sites such that activities that are currently regulated as waste operations will no longer be regulated as such. The document applies to well defined off-site uses which will allow the construction industry to share materials more. Some soil types are not covered by the guidance, including soils from brownfield and contaminated sites.

To illustrate the scale of activity, approximately 3 million tonnes of soil were used in over 430 regulated uses in 2007-08. The new regulatory position will significantly reduce the number of these activities that are regulated under waste controls whilst ensuring that greenfield soil continues to be used sustainably.

(6) Increased recycling of gypsum from waste plasterboard
This example of better regulation aims to reduce disposal of waste gypsum to landfill, by encouraging changes in behaviour and stimulating new markets for the recovery of waste. By confirming that gypsum from waste plasterboard which has been processed to the correct specification and complies with certain other criteria
will no longer be considered by SEPA to be waste, the Scottish Environment Protection Agency (SEPA) is helping Scottish businesses to increase the amount they are recycling.

The recovery and recycling of gypsum can be used to replace virgin material in plasterboard and cement manufacture and in soil conditioner markets. Currently, between 1.1 and 1.75 million tonnes of plasterboard enters the waste stream each year in the UK. This is not only a waste of resources but is also of environmental concern due to the foul smelling gas (hydrogen sulphide) that gypsum produces when in contact with biodegradable waste.

In order to promote the market for quality gypsum recycling, SEPA has taken the position that compliant gypsum from waste plasterboard which has been recycled to the correct specification (BSI PAS109:2008) and is to be used for plasterboard or cement manufacture or as a soil conditioner will no longer be regarded as waste by SEPA. This means the subsequent storage, movement and use will not be subject to the requirements of waste legislation, meaning it does not need to be transported by a registered waste carrier or accompanied by a controlled waste transfer note.

(7) Tackling the illegal disposal of waste tyres
The Scottish Environment Protection Agency (SEPA) carried out an initiative in 2009-10 known as ‘Operation Aspen’ in order to reduce illegal waste tyre disposal in Glasgow and Lanarkshire. As well as blighting the landscape, illegally dumped waste tyres can cause environmental damage and take business away from legitimate operators. SEPA is devoting a significant amount of resource to tackle this issue.

Enforcement Support Team officers in SEPA worked in partnership with local regulatory teams to deliver a targeted operation. There were a number of strands to the work including education, in both the public and commercial communities, aimed to reduce the opportunity for illegal disposal of waste tyres. Enforcement, through focused regulation and investigation, was also necessary to reduce the availability of waste tyres and to disrupt the activities of the illegal waste carriers.

Approximately 500 advisory letters and questionnaires were sent to operators which contributed to the targeting of over 100 site inspections over a 2 day period. This resulted in the issuing of a substantial number of advisory or warning letters for poor tyre disposal practices and other environmental issues found at the sites. The success of previous campaigns was apparent in Operation Aspen as a good number of sites had appropriate procedures in place.

SEPA already has data that provides an indication that a decreased incidence of fly-tipping of tyres has occurred in Glasgow and Lanarkshire and that legitimate tyre disposal companies have experienced an increase in business.

(8) End of waste positions on waste-derived fuels
Agreeing ‘end of waste’ positions is a significant area of activity under the Better Waste Regulation Action Programme and links very closely to the promotion of the recovery and use of waste-derived fuels. SEPA’s regulatory stance is instrumental to supporting markets for such fuels and, in turn, this can make a significant contribution to Scotland’s zero waste policy.
One of the main obstacles to the use of waste fuels is the Waste Incineration Directive (WID) which has detailed requirements and involves significant investments and on-going costs. Whilst these are fully justified in the burning of, for example, heavily contaminated oil, where a waste-derived fuel can demonstrate equivalent environmental performance against a virgin fuel the additional controls may not be proportionate.

SEPA's approach is to promote the use of recycled products, help business save on fuel costs, and encourage Scottish manufacturing whilst maintaining a high level of local environmental protection. The fact that WID does not apply to fuels meeting ‘end-of-waste’ is key to this.

A programme is currently on-going in relation to the following materials when used as fuels:

(a). Waste lubricating oil.
(b). Off-shore drilling mud.
(c). Tallow.
(d). Skin grease.

(a). Waste lubricating oil
Every year around 800,000 tonnes of lubricating oils are sold in the UK. Roughly half is estimated to be collected after use and moves through the waste management system. Whilst there is some interest in regenerating these oils as lubricants, most of the waste oil is burned in Waste Incineration Directive (WID) compliant plants. Various metals, sulphur and chlorine are present in the oils at elevated concentrations as a result of the use of additives and through engine wear. With sufficient treatment, these wastes may be processed into a replacement distillate fuel oil or residual fuel oil.

SEPA is in the process of adopting a sector-wide specification for the treatment of these waste oils. It will require that the British Standard for virgin fuels to be met and adds extra environmental parameters to ensure that there is no greater risk of harm to the environment or human health compared to relevant virgin fuels.

Such a specification will provide increased market confidence in the quality of products made from waste and will encourage greater recovery and recycling of waste lubricating oils as well as cost savings for Scottish industry.

(b). Off-shore drilling mud
In the North East of Scotland around 60,000 tonnes of drilling mud is received on shore from drilling platforms every year. The mud can yield up to 13 million litres of fuel per year. With sufficient treatment, these wastes may be processed into a replacement distillate fuel oil.

SEPA has agreed ‘end of waste’ positions with two companies in the North East and is now in the process of adopting a national specification for fuel produced from such wastes on a sector-wide basis. Strong evidence demonstrated that the recovered fuel posed no greater threat to the environment or human health than a virgin fossil
fuel. This sector approach has been made possible due to good information from individual companies providing the evidence base for such a specification.

(c). Tallow
SEPA is working with the rendering sector to determine ‘end of waste’ positions for tallow that may be re-used as fuel in boilers or pollution abatement thermal oxidisers. In light of changes to European legislation on animal by-products due to take effect in 2011, SEPA has taken a position in line with advice from the Scottish Government and support from the Minister for the Environment to not seek compliance with the Waste Incineration Directive (WID) in respect to the burning of tallow until 4 March 2011. This position has a variety of consequences for the different plants regulated by SEPA and gives time for further work to be carried out with the industry.

The opportunity for the rendering industry to make “end of waste” cases for tallow has therefore been offered and SEPA has written to the relevant operators to outline the requirements for an end of waste case. A demonstration that tallow, when burned, has no greater risk of harm to the environment or human health than an equivalent virgin fuel is central to each case.

Were successful cases to be made in line with guidance from SEPA, it would then be possible to agree that processed tallow has ceased to be waste when used as a fuel. This is a way forward which secures compliance with the Waste Framework Directive and ensures an appropriate level of protection for the environment and human health. SEPA is awaiting the first evidence from the rendering sector.

(d). Skin grease
SEPA recently completed a project with the Scottish Leather Group resulting in an ‘end of waste’ position for processed skin grease. This allows such processed skin grease to be used as a non-waste distillate and residual fuel replacement in the company’s on-site operations.

This outcome was the result of evidence presented by the Scottish Leather Group in line with SEPA’s published end of waste guidance. The company were able to demonstrate that their processed skin grease posed no greater threat to the environment or human health than a comparable virgin fossil fuel. The agreement will allow the company to replace the use of fossil fuels at the site, saving the company money and reducing their carbon footprint.
REGULATORS AND SPONSORS DIVISIONS EVENT
WEDNESDAY 10 JUNE – 2009

This paper sets out the outcomes of the above meeting, and has been agreed by those present as a basis for the way forward.

The objectives of the meeting were to

- To produce a set of guiding principles that we can all work to in terms of how we wish better regulation to work.
- Whether the Key Performance Indicators (KPIs) that the Regulators currently work under lead to or encourage better regulation.
- A definitive list of what needs to change from which an ‘Action Plan’ can be produced

Guiding Principles are that better regulation should be:

- Transparent
- Accountable
- Consistent
- Proportionate
- Targeted

Traditional regulation may be perceived as:

- An ‘enforcement culture’
- Slow, inflexible and bureaucratic
- Designed and implemented remotely from customers
- Built around forms, permits, inspections and data requests
- Putting staff behind the ‘rule book’, from where it’s hard to hear or understand business needs
- Lacking trust, integration, effective engagement and intervention.

In Scotland we wished to move to better regulation which:

- Helps people comply by using a light touch - but not a soft touch!
- Focuses on real problems and risks to produce positive outcomes
- Relies on partnership between Government, regulators and business
- Dependent on a wide range of regulatory and non-regulatory tools
- Designed around both customer and regulator needs
- Leads to simple regulation that works

It was agreed policy makers should resist the temptation of putting the ‘how’ into policy or legislation. Better regulation comes when legislation defines ‘what’ is to be regulation and why (for both effectiveness of regulation and the principle of operating independence).
Better regulation has to be a partnership between Government, Regulators, and those regulated. Unless they all work together to produce the above then it is unlikely to happen. This means that the culture has to be one of working together to produce a purpose and outcome that is relevant and understood by all and that each feels accountable to deliver.

Forming and working together in this partnership will mean;

**Enforcement ‘v’ Enabling**

The traditional role of regulation focuses on enforcement in many cases but moving towards innovative/better regulation focuses on enabling, understanding, and partnership working to help produce a simpler approach. It was agreed that within a risk based framework which allowed for the swing between enabling and enforcement enabling should always be the preferred option but understanding that in certain circumstances and types of risk enforcement must lead. Enabling leads to the culture change we all desire.

It was agreed

1. In principle, all regulators and Government to work for an approach which moves the balance from enforcement to enabling, while accepting that they are not mutually exclusive. It is recognised that enforcement may still be necessary in some situations and a risk based approach is an integral part of this. It is recognised that a ‘one size fits all’ approach does not work but the principle set out here can be applied to varying approaches.
2. The balance between enforcement and enabling may be influenced by the origin of the regulation (EU, UK or Scotland). Traditional approach is to use legislation but if this is too prescriptive it can prevent a risk based approach. Regulators should therefore be provided with the powers rather than the procedures by Government. Note: the Public Sector Reform Bill incorporates a duty of user focus and power of Ministers to be prescriptive as to process and the draft provisions needs to be considered if the principles agreed are to be implemented.
3. An enabling approach requires not only confidence in the ability of the Regulator but also consideration of all the options by Government before hand as the legislative route is not the only one.
4. With Regulators one step removed from Government, political risk may discourage the risk approach associated with enabling and reinforce enforcement and compliance: for Government feels compelled to react when something goes wrong. This can tighten control and regulation, and the challenge is to educate, understand and be proportionate. Therefore the partnership approach between Government, regulators and the regulated should be at the heart and a condition of almost everything to do with better regulation with each helping the other to resolve challenges where they occur. The principle of independence of regulators was also proposed.
5. Legislation requires to be interpreted and a risk based approach requires decision makers to be fully informed. The skills of those leading, and working with regulators is crucial. Soft skills are as important as technical/specialist ones.
6. Public Sector Reform Bill currently incorporates an enabling power but engagement is needed to create better understanding. Policy makers can be
reluctant to consult where they perceive this will hinder delivery but poor consultation results in unintended consequences, unsatisfied stakeholders and legislation/regulation not fit for purpose. Change of attitude is required as stakeholders offer opportunity rather than threat.

**Action:**
- **All to work towards operating under the overriding principles agreed from the above.**
- **RRG to co-ordinate action on the issues and challenges from 1-6 above.**

**EU Directives**

Attendees were asked to consider if we should be doing more in respect of Europe and whilst the response was a yes there was doubt expressed about whether we could.

It was agreed

1. Scotland’s ability to input has changed over the last few years.
2. Particular challenges exist around revisiting Directives once adopted or directives which are more targeted at other Member States.
3. UK’s greater risk aversion with EU directives leads to more robust transposition and interpretation and this is an aspect which should be examined.
4. It was recognised that Member States have different approaches in dealing with EU Regulation implementation – some treating Directives as ‘interesting guidelines’ rather than ‘must do’ and we need to move to a similar approach.
5. The Better Regulation agenda in Europe was lagging behind both Scotland and the UK.

**Action:**
- **All to work towards resolving the issues and challenges from 1-5 above.**
- **RRG to promote better regulation agenda within Europe.**

**Local Authorities**

It was agreed

1. There was a perceived lack of cohesiveness on regulation between Scotland’s 32 Local Authorities.
2. Local Authorities are the biggest regulators for businesses but there is no common approach on how to tackle this inconsistency.
3. We need to ensure they understand legislative responsibilities and have competence to deliver, and it was not clear if they had the relevant and appropriate skills.
4. There was also a recognition that local authorities are facing greater challenges with the possibility of more delivery being passed to them while facing the possibility of budget restrictions.
5. Some regulators have well established liaison network groups and if other similar groups exist there could be scope to bring these together.
6. Scottish Local Authority Economic Development Group has a role/interest but perhaps not sufficient influence within their own organisations to effect change.

**Action:**
- *Explore options for greater engagement with Local Authorities. Regulators/Agencies to look at their respective liaison networks with Local Authorities and explore the possibility of drawing some of these together.*
- *RRG to lead on working with Local Authorities to promote better regulation principles.*

**Key Performance Indicators (KPIs)**

It was agreed

1. KPIs can drive behaviour but can be restrictive if they don’t closely fit with the organisation or reflect the span of activity the Regulator is involved in.
2. It is likely that to achieve and operate under the principles of moving towards enabling, new KPIs would be necessary for some and some existing ones may not fit. A group of Regulator Chairs should be formed to look at what this might mean, recognising that one size would not fit all given the differences in size, maturity and scope of regulators.
3. Need to be able to sell the advantages of better regulation but the question of how we measure whether regulation is getting better is not easily answered.
4. With regard to the relationship between Sponsor Divisions and Regulators there is a wide range of expectations and lack of consistency of approach. KPIs are only part of this relationship. Civil Servants need to balance the different roles of working to Ministers and to the regulators they sponsor. Discussions on the role of sponsor are currently taking place within Scottish Government, and the issues discussed at this meeting should inform this. Also the recently formed ‘Sponsors’ group should be encouraged to produce some principles and guidelines for consistent ways of working that fit with the principles agreed here.

**Action:**
- *Sponsor divisions to take forward discussion on the issues raised including enforcement-enabling, risk, performance measures and frameworks and produce Code of Conduct.*
- *RRG to work with Chairs group on what new outcomes might mean in the context of new principles.*

**Conclusions and other issues**

We all must be accountable for our actions but with wide range of stakeholders with different expectations need simplified approach. Key challenge is to communicate expectations clearly. A single set of principles used by all would help which would allow us all to manage our own businesses to the same purpose in terms of enabling and enforcing.

Government should focus on the ‘what’ not the ‘how’, offering more flexibility and scope to exercise discretion on how to deliver better regulation.
Need clear definition of who are Regulators. Publicly funded ‘private’ regulators also have role to play and need to be identified. Otherwise they add another level of burden.

Regulators role as employer requires balance between ability to attract and develop staff, and level of control.

Leadership, skills and performance monitoring were clear themes emerging throughout the session.

Greater freedom and responsibility to reward success and penalise failure may help avoid short-termism.
1. Professor Griggs welcomed and thanked everyone for attending. He noted that a similar meeting in 2009 led to the establishment of a Regulator Chairs Group to examine key performance indicators (KPIs), principles agreed at the meeting and alignment with the Government’s Economic Purpose and National Performance Framework. He confirmed that the aim of this meeting was to review that first phase of activity and determine how to move forward, collectively and as individual organisations.

2. Professor Griggs summarised the results of a survey of Regulators’ KPIs initiated by the Chairs working group, which had been previously circulated to Regulators. This demonstrated that more indicators are currently supply or input-focused rather than demand-led or outcome-focused (around 60:30, with the remainder not fitting into a distinct category). The working group’s view is that there should be a rapid move towards assessing performance using a small number of key outcomes (ideally perhaps three).

3. Representatives from the Scottish Government Public Bodies Policy Team provided additional background on their work to support public bodies in transition to an outcomes based approach, and their related role to provide advice and guidance to sponsor teams. A more outcome-based approach is also part of the rationale for the Public Services Reform Act which includes order making powers to quickly remove/reduce regulatory burdens deemed to be inconsistent with the five principles of better regulation.

1. In the discussion that followed all attendees confirmed that they are actively working towards the NPF outcomes and will work to develop related and targeted KPIs:

- The Care Commission expressed thanks for the opportunity to be involved, and is comfortable with having fewer outcomes, provided these remain relevant and meaningful.

- The Food Standards Agency is working the Scottish Government to identify what success looks like and how to best measure progress, and also examples of related best practice.

- The Scottish Environment Protection Agency continues to make good progress with a change agenda although it represents a major challenge.

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5 Available on request from Scottish Government Better Regulation & Industry Engagement Branch
6 More information and guidance on the Effective Public Bodies Programme is available on the [Scottish Government website](http://www.gov.scot)
SEPA has worked closely with the sponsor team from the beginning of the process to ensure clarity and common purpose.

- The work of the Accountancy In Bankruptcy aligns with national outcomes, but has a different business model as it is not funded by the State, is demand-led, and acts as both regulator and policy sponsor (creating some internal tensions).

- The Scottish Housing Regulator currently has three key outcomes focused on the bodies being regulated. SHR recognises the need to demonstrate what they are doing through effective communication with the wider public.

- Historic Scotland noted that planning reform has been helpful in prompting joint work with other agencies and shorter delivery timescales. Outcome based performance indicators can also be challenging as customers sometimes prefer or are more familiar with supply side indicators.

- HSE is using an outcome based approach, and is interested in the impact of Single Outcome Agreements and resource constraints on Local Authority services. There is a need to ensure that the right indicators are identified to minimise any risk of potential inconsistencies from the Local Authorities which may distort the outcomes based approach. It was noted that some regulators such as Trading Standards and Environmental Health who sit within Local Authorities do not have a national voice in Scotland. Future resource constraints present challenges to them and it was suggested the Public Bodies team may be able to assist.

2. Generally, all present recognised that some bodies will need more time than others to make this transition, although a bi-product should be improvements in relationship between regulators and sponsor teams. There was also agreement that as regulators are at different stages in this process, this is a good time to explore ways in which to share best practice across all organisations, including UK-wide regulators. Suggestions on how this might be achieved included:

- The Strategic Board – its leadership role could provide impetus to move the agenda forward and send a consistent message;
- Scottish Government Forums can be used to roll out key messages;
- Cross agency workshops and events provide top level support;
- Joined up working across Scottish Government sponsor teams;
- A centralised system to store and share best practice models.

6. With all agreeing with the need to move towards an outcomes based approach, RRG will now take a step back from this process allowing the regulators and sponsor departments to work together in partnership. RRG will review progress at a later date.

RRG Secretariat
June 2010