

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

03 April 2024

Dear Ms Slater,

I am writing as Chair of the Regulatory Review Group (RRG) to provide independent advice on the implementation of a ban on single-use vapes in Scotland from 01 April 2025 following a UK-wide consultation in December 2023.

This note provides an overview of the RRG’s role and details recommendations on cumulative impact assessment, definitions used in regulations, and considerations for the compliance and enforcement regime.

Regulatory Review Group (RRG)

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

The RRG’s objectives are to:

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

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

Single-Use Vapes Ban

Along with RRG members, I met with your officials on Tuesday 27 February 2024. Your officials provided an insightful presentation on the policy issue and provided detailed responses to our questions.

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

1. Clarity over the timescales for implementation and the underpinning conditions is required. As set out to officials, the RRG considers the 01 April 2025 implementation date to be reasonable for businesses to adjust, on the basis that:
 - a. There is alignment with the UK Government and Welsh Government over the commencement date to ensure that the risk of market distortion is reduced;
 - b. There is a cumulative assessment undertaken with public health on measures affecting retailers to be introduced during 2025, to be set out as part of this Business and Regulatory Impact Assessment (BRIA). Although the single-use vapes ban is primarily an environmental issue, the business impacts are interlinked with other work being carried forward in the public health space. Officials across the organisation should work to identify and mitigate impacts upon retailers who will have to make various adjustments to their business operations due to each new requirement, including for single-use vapes.
 - c. There is a clear communication strategy in place delivered with consistent and targeted messaging and guidance ahead of the implementation date. The RRG encourages the Scottish Government to consider how the communications on single-use vapes is tied in with the wider Circular Economy communications. This will ensure consistency and coherence and help consumers recognise these interventions as part of a broader package of activities geared towards the same outcomes. There is a significant number of retailers established solely for the purpose of selling vapes and related products. Changes to operating models will require support to aid understanding and ensure remaining stock can be sold in advance, particularly given that no discounting on these products is permitted. The RRG welcomes the update that since it met with officials, the Scottish Government has proactively written to affected businesses on the vaping register.
2. Precision over *the definition of 'single-use' and the possible inclusion of 'top-up pods'* within the regulations is needed. The RRG highlights that the wording as proposed may create gaps in application and a resulting drop in compliance when implemented. Given the profitability of these products to businesses, the regulatory framework needs to be clear, consistent, and robust to ensure that the risk of non-compliance is reduced. The RRG would welcome assurance that the final wording adopted will be scrutinised and co-developed with relevant stakeholders, namely Trading Standards.
3. Continuation of the positive and proactive engagement with the RRG and wider regulators should take place ahead of and following implementation. The RRG highlights that ongoing monitoring and proportionate enforcement will be required

to ensure strong compliance. There is a risk of a rise in illicit vapes due to the demand and therefore, possibility of an illegal market forming. The enforcement regime must be robustly designed and members would welcome the return of policy officials to further discuss this as the policy develops.

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

The RRG would be happy to discuss the above recommendations with you and would welcome an update on how the Scottish Government intends to take these forward in policy development.

Yours sincerely,

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

PROF RUSSEL GRIGGS OBE
Chair, Regulatory Review Group

ANNEX

Membership of RRG

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

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