The Regulatory Review Group (RRG) is responding, by way of this letter, to register its interest in your inquiry into post-legislative scrutiny. We welcome the Scottish Parliament’s intention to consider potential approaches to carrying out post-legislative scrutiny within the Scottish Parliament, and to consider what changes are required to Standing Orders and the Parliament’s procedures.

RRG is an independent body which works to promote and develop a culture and environment where both business and Government work together to promote better regulation and sustainable economic growth in Scotland. Members come from the main business, consumer and employee organisations in Scotland. The remit of the group includes trying to resolve specific problems with regulations that cause business concern, and advise the Scottish Government in all aspects of the Better Regulation agenda. We offer the following comments and reflections based on RRG’s experience.

Respecting the principles of better regulation requires an approach that ensures regulation is transparent, proportionate, consistent, accountable and targeted only where needed. Regulation is necessary to provide protection but it also has an important role in driving competitiveness and economic growth. Ensuring regulators apply the appropriate balance between economic and other regulatory objectives is key to this. Consistency in delivery and implementation are also key.

Part of the work of RRG involves reviewing legislation, to consider if the principles of better regulation are met and whether the outcomes of the legislation have been achieved. As part of the work RRG reviewed the Licensing (Scotland) Act 2005, publishing a report on the findings, and is currently reviewing the Knife Dealer’s Licensing legislation.

RRG is of the view that it is important that legislation is reviewed where appropriate. Sufficient time needs to be given to enable the legislation to bed down and be implemented so at least 2 years of enactment should have passed before considering a review of whether it is achieving its objectives, issues arising and whether it could be implemented better. Any such review should also be proportionate.

In Scotland, on the advice of RRG, Business and Regulatory Impact Assessments (BRIA) should be completed for all Scottish legislation with the potential to impact on business. Not only does this ensure review and consideration pre-implementation – and trying to get legislation right first time – but where a BRIA has been completed the information within it could help any post legislative review process to determine whether the legislation has achieved the effect intended.
Over the years that RRG has looked at, and reviewed legislation, we have learned that the guidance that accompanies legislation is as important as the legislation itself. Guidance can make legislation work effectively and if not done well can make it unworkable. In some cases, changing the guidance can negate the need for new legislation being introduced. Therefore, a post-implementation review should look to see whether guidance is in place from the start to help those affected by the regulations.

RRG would be happy to provide any further information that would be helpful. More information on the Regulatory Review Group can be found at Better Regulation – Regulatory Review Group.

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