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17 October 2012

Sandra Reid
Better Regulation and Industry Engagement
Scottish Government
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Dear Sandra

Better Regulation: Consultation on Proposals for a Better Regulation Bill

I have responded to the relevant questions posed in the consultation questionnaire, however, to satisfactorily address the views of the Institute, I have provided some context and additional observations which are important for the Scottish Government to consider as part of the consultation process.

There are also specific references to Environmental Health Officers within the consultation document and as the body responsible for the educational and professional standards for Environmental Health Officers in Scotland it is important that the Institute is involved in both the consultation and any subsequent activities in relation to the Bill.

The Institute has been in existence for over 135 years and has around 1,200 members the majority of whom are Environmental Health Officers working in that capacity for Scottish local authorities.

The objects for which the Institute is established are for the benefit of the community to promote the advancement of Environmental Health by:

- stimulating interest in and disseminating knowledge concerning Environmental Health;
- promoting education and training in matters relating to Environmental Health; and
- maintaining, by examination or otherwise, high standards of professional practice and conduct on the part of Environmental Health Officers in Scotland.

Environmental Health Officers in Scotland are part of a graduate only profession and by virtue of their under-pinning academic education, professional practical training, professional qualifications and experience are well placed to apply a holistic public health approach to the education of the public and to the enforcement of a wide range of environmental and public health legislation.

The Institute, which is Incorporated by Royal Charter, is an independent and self-financing organisation. It neither seeks nor receives grant aid. The Institute's charitable activities are funded significantly by the subscriptions received from its members.

The Royal Environmental Health Institute of Scotland is a registered Scottish charity, No. SC009406.

It is important to note that in terms of EU Directive 2005/36/EC on the recognition of Professional Qualifications within Members States and under the European Communities (Recognition of Professional Qualifications) Regulations 2007 the Royal Environmental Health Institute of Scotland is a UK Competent Authority for the Profession Environmental Health Officer/Chartered Environmental Health Officer. In this respect individuals who have successfully completed the appropriate academic study and professional training and examinations are awarded the Institute's Diploma in Environmental Health.

The Institute is an independent accreditation body and currently accredit the BSc (Hons) Environmental Health and MSc Environmental Health degree courses delivered by the University of Strathclyde, BSc (Hons) Environmental Health at the University of the West of Scotland and the MSc Environmental Health degree course (by distance learning) delivered by the University of Derby. In addition to achieving the academic qualification, those wishing to become an Environmental Health Officer require to undertake the Institute's Scheme of Practical Training with a Scottish local authority over a minimum period of 48 weeks. Thereafter they require to successfully complete the Institute's Professional Examination, an assessment of their professional competence, before practicing as an Environmental Health Officer. It is important to stress the robust academic and professional training system and standards required to become an Environmental Health Officer as it is the application of this scientific knowledge and professional competence in everyday situations which serves to protect public health.

First and foremost, Environmental Health Officers are not merely regulators. They are professionals who have undertaken robust academic and professional training obtaining the knowledge, skills and competencies required to be part of the wider public health workforce. The distinction they have within the wider public health workforce is that they have powers to use legislation to protect public health when the need arises. In the majority of instances Environmental Health Officers prefer to work in co-operation with business and others in their pursuit to protect public health and in many cases businesses view them as a valuable source of advice and assistance.

Legislation enforced by Environmental Health Officers exists for very good reasons. Fundamentally the legislation is designed to protect public health. Indeed it could be argued that the protection of public health has a positive impact on economic growth. Poor health comes at a cost and Scotland suffers from relatively high rates of workplace sickness absence. It would therefore be illogical to dismantle a health protection system which contributes to the economic growth of the country.

Environmental Health is an evidence based profession and as such only instigates enforcement action based on evidence and risk. This approach has been practiced by Environmental Health Officers for several decades and the principles of transparency, fairness, proportionality and consistency have been embedded within their professional training and development. It is therefore disappointing that the consultation paper includes anecdotes from the Federation of Small Businesses without any dialogue with the Institute as there are usually two sides to a story. The Environmental Health community could easily recount anecdotes critical of businesses in relation to consistency, however it is not considered a dignified or constructive way to progress matters.

The present composition of the Regulatory Review Group is heavily weighted to business interests. The Institute does not believe that such composition will lead to a balanced view and subsequent responsible regulation. A balanced membership will also result in a greater understanding for all concerned and issues could be discussed and probably resolved in an open and transparent manner. The Institute also believe that the term 'Better Regulation' is a misnomer, merely copying the approach adopted in other parts of the United Kingdom. Scotland has an opportunity to take a more inclusive and enlightened approach and the Institute would suggest that the term 'Responsible Regulation' would be a more appropriate description. Responsible regulation with effective oversight should be encouraged as it can prevent the risk of serious failures resulting in adverse effects to human health and the environment which otherwise have the potential to adversely affect the economy. In other words responsible regulation pays.

The Institute organises training events to assist member Environmental Health Officers in working towards attaining and maintaining their Continuing Professional Development (CPD). These events provide opportunities to reinforce the principles of responsible regulation and on occasions industry led presentations are incorporated within such events. This demonstrates the Institute's belief that an inclusive and transparent approach meets the needs of all concerned. At a recent event, the private sector 'Events Industry' presented to an audience articulating the difficulties they faced in relation to meeting regulatory requirements. The session was open and participatory and resulted in the Industry representatives realising that their difficulties were not as a result of Environmental Health requirements but of local licensing requirements. The Institute is of the opinion that licensing requirements in many instances overlap and confuse issues which are already covered under national statutory instruments. This is not only confusing for business but also frustrating for Environmental Health Officers. It is areas such as these that should be reviewed to cut out both duplication and contradiction.

In conclusion the Institute would advocate a more inclusive approach and would wish to be included in future discussions to ensure a balanced approach to responsible regulation in Scotland. Scotland has economies of scale which can be used advantageously to address these issues and the opportunity should not be missed.

The following are the Institute's responses to the specific questions posed in the consultation questionnaire.

Better Regulation Consultation

Q1 – National Regulation systems and policies are already in place in many instances in the form of Codes of Practice, Guidance and Industry Standards for a range of subjects which form part of the regulatory landscape. In general terms where Codes of Practice, Guidance and Industry Standards exist they are used by regulators and can assist in developing a consistent approach. None of those emanated from government and are products of national agencies, professional bodies, industry groups or a combination of the above. It is difficult to envisage the Scottish Government being able to replicate such work. In principle, the Institute appreciates the rationale behind the proposal for the enabling powers, however, it is concerned that it could potentially increase bureaucracy which could result in increased costs.

REHIS and the environmental health community within local authorities have worked with others over the years to produce and promote national systems and standards designed to enhance consistency of approach. As an example REHIS is represented on the Scottish Food Enforcement Liaison Committee (SFELC) who have produced a number of pieces of work in relation to officer competence, effective food sampling and guidance for food enforcement officer training. This is all designed to ensure consistency of approach.

Similarly there are regional liaison groups for subjects such as food safety/standards and health and safety which feed into national groups. These arrangements have been in place for over 20 years and have served to promote best practice and consistency of approach in relation to the regulation of food safety/standards and health and safety legislation. It once again demonstrates the unique position in Scotland where economies of scale can be utilised to everyone's advantage.

Rather than commit to a view on a matter which has only been described in abstract form, the Institute as the body who set academic and professional standards for Environmental Health Officers and Food Safety Officers, would prefer to be involved in discussions involving greater detail on the proposal which would allow for constructive comment. The opt – out capacity for regulators could result in an even more confusing landscape for regulators and those regulated and once again has the potential to be clumsy and bureaucratic. Such a system should not be within the remit of the Regulatory Review Group in its current composition.

Q 9 It should be the duty of every regulatory authority to consider the impact of their regulatory activity on business, however, it is difficult to envisage them being able to report on the impact in a way that would be meaningful. Action that results in business closure could easily report on number of days of lost business, however, decisions of this magnitude are not taken lightly and would have to be balanced by the positive impact on

public health or public safety. The impact of other regulatory action would be extremely difficult to quantify in terms of impact on business and the Institute would advocate that only an evidence led approach would be meaningful, otherwise there is a danger of reported information being unreliable.

Q10 The Institute would not advocate reporting on the impact of regulatory activity as there is a high degree of probability that the information would be unreliable. Every regulatory authority should consider the impact of their regulatory activity on business as part of a decision making process. It need not be statutory but enshrined as best practice within guidance.

Q12 The Institute is of the opinion that statute should be reviewed regularly to determine its relevance and effectiveness and if it is still fulfilling the purpose for which it was introduced. Reviews would require to canvas the views of all stakeholders to ensure that the results are balanced and do not reflect any extreme opinions. It is therefore advocated that the results of reviews should go through a robust moderation process prior to decisions being taken.

Some legislation will lose its relevance quicker than others. It would therefore be sensible to implement a tiered system which could filter out legislation which is still fulfilling its purpose and determine that in such cases a full scale review is unnecessary. This would allow the focus to fall on legislation requiring a robust review to be undertaken. In effect it is utilising risk assessment tools to ensure that priority is given to the areas most requiring review and therefore utilising resources efficiently and effectively. This could either be part of a mandatory scheme or enshrined in Scottish Government guidance. The nature of the review should be a process unique to Scotland.

Q 22 If common commencement dates would be helpful to business they should be introduced.
-23 The exception to this would be where legislation is being introduced quickly to deal with a national emergency situation.

Q 24 Food Safety legislation was introduced to protect public health. This must be borne in mind when considering any changes in respect of mobile food businesses. A Certificate of Compliance is only relevant on the day it is issued. Whilst the facility may in itself meet the physical requirements in relation to food safety, food handling and hygiene practice may not be carried out consistently from day to day in the business. The business may in fact have a food safety management system documented and available for audit, however, it is the consistent application of the food management system which is of paramount importance. The Institute's objectives are to improve and protect public health in Scotland and therefore cannot accept that moveable food businesses can only be inspected by the local authority in which the business is registered/based. This could result in businesses operating within other local authority boundaries practising poor food handling and unsatisfactory hygiene unabated. This could have a serious adverse effect on public health. Consistency has often been voiced as a criticism of regulators in the past, however experience demonstrates that businesses do not operate within standards

consistently. As such, certificates of compliance are meaningless. For example, what is being suggested would mean that moveable food businesses could operate at a major event such as 'T in the Park' serving tens of thousands of people without their food handling and hygiene practices being open to inspection. It is appreciated that this proposal was drafted in the wake of a specific incident and well meaning, however, there are complexities which have not been considered and the Institute cannot agree to this proposal.

Susan Love, Policy Manager – Scotland, Federation of Small Businesses is speaking at the Institute's Environmental Health Update on the morning of Friday 16 November 2012 at the Apex International Hotel, The Grassmarket, Edinburgh. The programme commences at 9.55 with Susan presenting her paper Better Regulation – a Business Perspective at 11.45. The Institute wishes to invite you to the event and would be pleased to welcome you on the day. Please let me know if this would be of interest and I will ensure that the programme is sent to you.

I trust these comments are both critical and constructive and helpful to the consultation. The Institute wishes to be kept informed of progress in relation to the consultation and looks forward to greater involvement in the future.

Yours sincerely

Robert Howe
Director of Professional Development