



Department for  
Business, Energy  
& Industrial Strategy

# SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

Statutory Guidance under s.31 of the Small  
Business, Enterprise and Employment Act

Determining whether it is appropriate to make  
provision for review (Post-Implementation  
Review Guidance)

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## Introduction

1. This guidance is to assist departments in implementing the duty in the Small Business, Enterprise and Employment Act 2015 (the Act), which requires the inclusion of a statutory review clause in secondary legislation that regulates business or voluntary and community bodies<sup>1</sup>. The inclusion of a review clause requires policy officials to undertake a 'Post-Implementation Review' (PIR) in line with the legislative requirement in the Act.
2. This guidance sets out the factors that should be considered by departments when determining whether it is appropriate to include a review clause in secondary legislation. It must be taken into account by any minister making such a determination.

## Legal background

3. Section 28 of the Act places a statutory duty on UK government ministers to either:
  - (a) Include review provisions in secondary legislation that regulates business<sup>2</sup>, or
  - (b) Publish a statement that it is not appropriate in the circumstances to do so<sup>3</sup>. Any statement could form part of the Explanatory Memorandum (EM) for the statutory instrument.
4. The Act includes some example circumstances in which the minister may determine that it is not appropriate to comply with the requirement to include a review clause. Circumstances where a review clause may not be appropriate include those in which:
  - (a) a review would be disproportionate when taking into account the economic impact of the regulatory provision on the qualifying activity, and
  - (b) a review would be undesirable for particular policy reasons (such as there being an exceptionally high need for certainty in the longer term).
5. This guidance is issued under section 31 of the Act, and sets out the government's approach to statutory review clauses in all statutory instruments within scope of the provisions of the Act and the factors to be taken into account in determining whether it is appropriate to make provision for review.

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<sup>1</sup> This guidance uses the term "business" to cover both businesses and voluntary and community bodies.

<sup>2</sup> Subject to the exclusions at section 28(3) which are for; tax legislation or legislation related to tax, legislation about procurement, legislation about giving grants or financial assistance by or on behalf of a public authority, legislation which will have temporary effect and legislation which already contains a review provision, and the carve out at section 29(3) for legislation which regulates business or voluntary or community bodies that are controlled or are acting on behalf of a public authority. See [SBEE Act 2015](#).

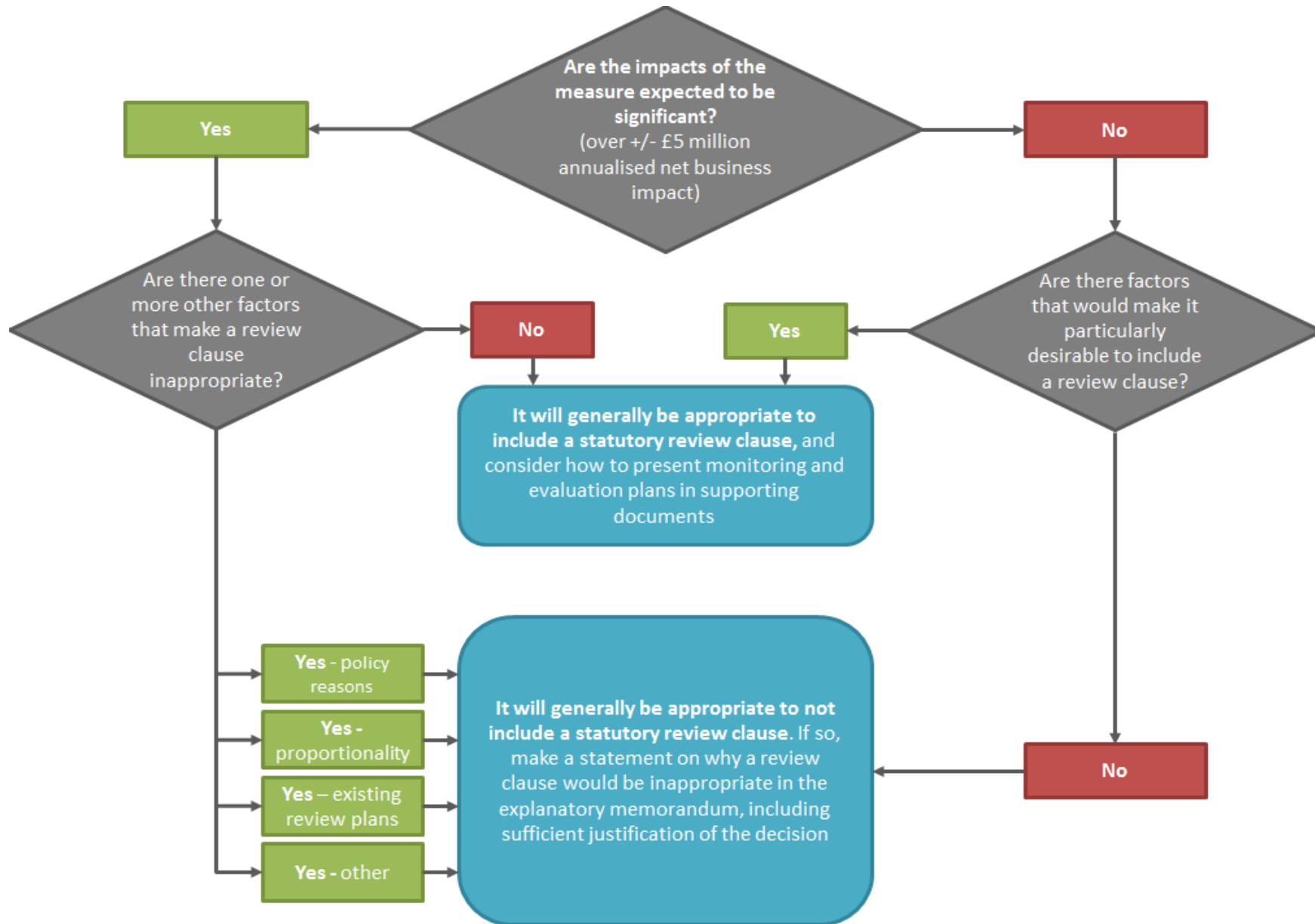
<sup>3</sup> See Section 28.

## Policy objective

6. The requirement to review regulation at timely intervals is designed to support government's overall objective that regulations with significant regulatory impact (over +/- £5 million net impacts annualised) on business should remain in force only where:
  - (a) they are deemed necessary,
  - (b) they are having the intended effect, and
  - (c) any associated costs to business are appropriate.
7. Where a measure has impacts of less than +/- £5 million (net annualised) this should be a significant factor in considering whether a statutory review clause is the appropriate way of keeping the regulations under review. This will help to ensure that statutory review clauses are focused on measures with significant impacts on business.
8. Statutory review clauses should generally not be included in statutory instruments where the potential burdens of PIRs are likely to outweigh the potential benefits.

## Approach to considering the appropriateness of including a statutory review clause

9. The following flowchart sets out the factors that should be considered when determining whether it is appropriate to include a statutory review clause.
10. The first and most significant factor in the consideration of whether a review clause is appropriate is whether the measure has an impact greater or less than +/- £5million (net annualised) on business. Consideration of the other factors detailed in paragraph 4 above and the flow chart below should follow.
11. For regulations where a statutory review clause is not considered appropriate, this does not preclude the need for non-statutory review plans supported by appropriate monitoring and evaluation.



## Factors that may make the inclusion of a review clause inappropriate

12. There are a number of reasons why it may not be considered appropriate to include a statutory review clause. Measures should, however, still be subject to proportionate monitoring, evaluation and non-statutory review where appropriate.
13. The first consideration should be whether there is expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised). Where a measure is expected to have impacts under this amount, this will, absent any other factor(s) that would make it particularly desirable to include a review clause, be a strong indication that a statutory review clause may not be appropriate.
14. For measures above this threshold, departments need to consider whether a statutory review clause would be inappropriate due to:
  - (a) policy reasons (for example where uncertainty for the future regulatory environment could impose unnecessary burdens or where tranches of regulation would be subject to concurrent statutory reviews);
  - (b) proportionality (for example where there may be high costs of undertaking a review, with limited scope for change or where the costs of the regulation were associated with transition and/or sunk costs);
  - (c) existing review plans (for example wider non-statutory reviews or existing review clauses in other legislation are already planned to take place in advance of when the statutory review would be due, in which case the commitment to undertaking the wider review including proposed timetables would need to be set out in the ministerial statement); or
  - (d) other exceptional reasons - provided the relevant ministerial statement offers a well-reasoned explanation as to why a review clause is not considered appropriate, departments may wish to make arguments as to other exceptional reasons not caught by a-c above.
15. Where there are one or more reasons to suggest that it is inappropriate to include a review clause, the relevant minister will need to make a statement to this effect and explain why it is considered appropriate not to include a review clause. If there are no factors that make it inappropriate to include a statutory review clause, then departments will need to include a statutory review clause. If the inclusion of a review clause is deemed appropriate and included in the legislation, then departments should set out appropriate monitoring and evaluation plans.

## Factors that may make it appropriate to include a review clause

16. If none of the above factors to discount the inclusion of a review clause apply, or there are specific policy reasons for including a review clause, then these are strong indications that a review clause should be included. If the inclusion of a review clause is deemed appropriate and is included in the legislation, then departments should set out appropriate monitoring and evaluation plans.

## EU Exit SIs

17. Where EU exit legislation relating to deficiencies is made under existing legislative powers, this will be a key factor in support of making a ministerial statement rather than including a statutory review clause. The inclusion of review clauses in all EU withdrawal secondary legislation would create a large volume of concurrent reviews and potential challenges for regulatory stability and legal certainty. Furthermore, government takes the view that reviews of such correcting regulations would be impractical, and any potential benefit would be outweighed by the potential adverse effects in terms of cost and use of resource. A ministerial statement must however still be made for legislation within scope of this guidance. For legislation that only partially relates to EU exit legislation Departments should also consider the other factors in this guidance when considering if it will be more appropriate to make a ministerial statement instead of including a review clause.

## Scope of the review provision

18. In cases where the secondary legislation amends existing regulation, departments should take into account different options for the scope of the review provision when applying the test.
19. The scope should be set with a view to achieving the best balance between the likely benefits and any potential adverse effects of the review provision. For example, where the legislation introduces a significant new limb to an existing regulatory regime, or brings new activities into scope of an existing regulatory regime, this extension of the regulatory scheme (i.e. the effect of the amendment) may also be appropriate to include in the scope of the review provision. If that is the case then the drafting of the review provision should ensure that the review requirements are not erroneously extended to the wider existing regulatory framework.
20. However in other cases, it may be more appropriate and proportionate for the scope of the review provision to align with the regulation as amended (rather than purely the effect of the amendment). That would enable a single review provision to cover the existing regulatory regime including the effect of amendments, rather than reviewing the amendments separately. The timescale of the review clause should be up to five years from when the amendment is implemented.

## Review clause deadlines

21. The deadline to be stated in the review clause is for completion and publication<sup>4</sup> of the PIR, and is not the deadline for starting the evaluation. Generally the deadline will be five years after the date when the measure came into force.

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<sup>4</sup> Publishing should be on legislation.gov.uk, this replaces the requirement for the PIR to be laid before Parliament.



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