

## **Small Business, Enterprise and Employment Act 2015**

### **Statement - control by a public authority**

1. This statement<sup>1</sup> is to assist departments in implementing the provisions of the Small Business, Enterprise and Employment Act 2015 (“the Act”) which place duties on UK Government ministers as follows:
  - a. On the Secretary of State for BIS, to publish a business impact target for the Government in respect of the economic impact on business activities<sup>2</sup> of qualifying regulatory provisions<sup>3</sup> which come into force or cease to be in force during a Parliament;
  - b. On any UK Government minister, to either include review provisions in secondary legislation that regulates business<sup>4</sup>, or else publish a statement that it is not appropriate in the circumstances to do so.
2. It is aimed at policy makers, analysts, and lawyers developing new legislative proposals to enable them to determine whether their proposals fully or partially regulate the public sector and are therefore out of scope of the duties.

### **Legal background**

3. The duty to publish a business impact target is contained in sections 21-27, and the duty regarding review provisions is set out in sections 28-32.
4. The business impact target concerns the economic impact on business activities of qualifying regulatory provisions. The duty to include a review provision applies to new regulatory provision made in respect of any qualifying activity. Business activities and qualifying activities are defined as any activity carried on:
  - a. by a business for the purposes of a business, or
  - b. by a voluntary or community body for the purposes of the body
5. For both duties, references to business or a voluntary or community body do **not** include a business or a voluntary or community body which:
  - a. is controlled by a public authority<sup>5</sup>, or
  - b. is acting on behalf of a public authority in carrying out the activities
6. The Act requires the Secretary of State to publish a statement (this document) as to how it is to be determined whether a business or voluntary or community body is controlled by a public body<sup>6</sup>.

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<sup>1</sup> This statement is published in compliance with section 27(4)

<sup>2</sup> In this statement “business” means businesses and voluntary and community bodies

<sup>3</sup> As defined pursuant to section 22

<sup>4</sup> Subject to the exclusions at section 28(3)

<sup>5</sup> Public authority has the same meaning as in the Freedom of Information Act 2000

### **Policy Objective**

7. The Government's policy objective is that the business impact target and duty to review should be focused on regulatory impacts on private sector business, and voluntary and community bodies. This means that impacts on businesses and voluntary and community bodies which are classified as being part of the public sector, or which act on behalf of the public sector, should not to be taken into account for the business impact target or the statutory duty to review.
8. The provisions of the Act describe the public sector as a public authority. Where a business or voluntary or community body is acting on behalf of a public authority, this should be self-evident. However, because there are different ways of classifying whether a body is controlled by a public authority, guidance must be issued to clarify this point.

### **Guidance under section 27(4) and 29(4)**

9. The policy approach to be followed in determining whether a body is controlled by a public authority is as follows.
10. The Office for National Statistics (ONS) publishes a comprehensive set of guidelines which together define which organisations are classified as part of the public sector. These are consistent with the general approach to classification under international and EU rules.
11. Under those guidelines, the difference between the public and private sectors is determined by where control lies, rather than by ownership or by whether or not the entity is publicly financed. Control is understood as being the ability to determine general corporate policy. For example, this control can be exercised through the appointment of directors, control of over half of the shareholders' voting power, through special legislation or decree, or through regulation.
12. In determining whether a business or voluntary body is "controlled by a public authority" Departments should therefore follow the current classification system operated by the Office for National Statistics (ONS) as set out in the ONS Public Sector Classification Guide.
13. The Classification Guide is updated on a regular basis, so departments should ensure that they are using most relevant information.
14. For cases that are not clearly covered by this ONS guidance, policy departments should refer classification issues to HM Treasury's classification branch in the first instance.

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<sup>6</sup> See clauses 27(4) and 29 (4)

**Coverage of both public and private sector**

15. There will be cases where legislation impacts upon both the public sector and non-public sector organisations. In these cases, the following assessment should apply
- a. Business impact target – for qualifying regulatory provisions, the economic impact of all elements related to the public sector would be out of scope. Only the economic impact to business or voluntary or community bodies would be in scope.
  - b. Duty to review – measures that make regulatory provision in relation to any qualifying activity should include a review clause, or else a statement should be published that a review clause is not appropriate.

**Annex 1 – Public Sector Classification Guide**

The Public Sector Classification Guide and full documentation detailing major classification decisions is available on the ONS website.

<http://www.ons.gov.uk/ons/guide-method/classifications/na-classifications/the-ons-classification-process/index.html>