



Department for
Business & Trade

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)

September 2023

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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 provision in secondary legislation that regulates business or voluntary and community bodies¹. The inclusion of a review provision 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 provision in secondary legislation. It must be taken into account by any Minister making such a determination.²

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 business³, or
 - (b) Publish a statement that it is not appropriate in the circumstances to do so⁴. 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 provision. Circumstances where a review provision 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 provisions 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.

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

² See section 31(4) of the Act.

³ 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 by or are acting on behalf of a public authority. [See SBEE Act 2015](#)

⁴ See Section 28 of the Act.

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 +/- £10 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 +/- £10 million (net annualised) this should be a significant factor in considering whether a statutory review provision is the appropriate way of keeping the regulations under review. This will help to ensure that statutory review provisions are focused on measures with significant impacts on business.
8. Statutory review provisions should generally not be included in statutory instruments where the potential burdens of PIRs are likely to outweigh the potential benefits.

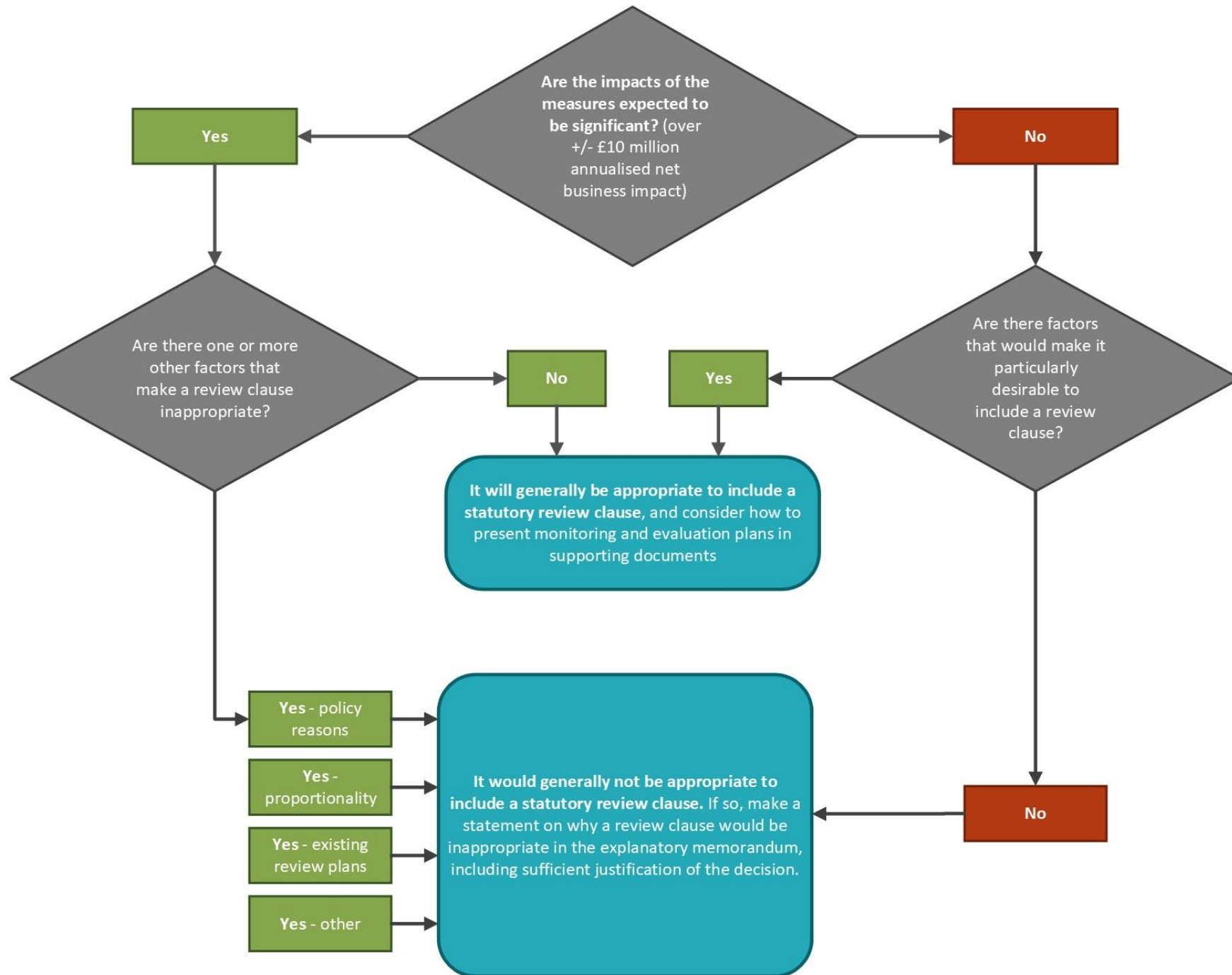
Approach to considering the appropriateness of including a statutory review provision

9. The following flowchart sets out the factors that should be considered when determining whether it is appropriate to include a statutory review provision.
10. The first and most significant factor in the consideration of whether a review provision is appropriate is whether the measure has an impact greater or less than +/- £10 million (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 provision is not considered appropriate, this does not preclude the need for non-statutory review plans supported by appropriate monitoring and evaluation.

Retained EU Law

12. The duty to include a statutory review provision in secondary legislation does not apply to regulations made under the Retained EU Law (Revocation and Reform) Act 2023.⁵

⁵ See section 20(5) of the Retained EU Law (Revocation and Reform) Act 2023.



Factors that may make the inclusion of a review provision inappropriate

13. There are a number of reasons why it may not be considered appropriate to include a statutory review provision. Measures should, however, still be subject to proportionate monitoring, evaluation and non-statutory review where appropriate.
14. The first consideration should be whether there is expected to be a significant annualised net impact on business (greater than +/- £10 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 provision, be a strong indication that a statutory review provision may not be appropriate.
15. For measures with expected impacts above this threshold, departments will need to consider whether the statutory review provision requirements would be inappropriate due to:
 - (a) policy reasons (for example where increased uncertainty in relation to the future regulatory environment could impose unnecessary burdens or where significant tranches of regulation would be subject to concurrent statutory review requirements);
 - (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 provisions 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 – the examples above are not exhaustive and, provided the relevant ministerial statement offers a well-reasoned explanation as to why a review provision is not considered appropriate, departments may wish to make arguments as to other exceptional reasons not caught by a-c above.
16. Where there are one or more reasons to suggest that it is inappropriate to include a review provision, the relevant minister will need to make a statement to this effect and explain why it is considered appropriate not to include a review provision. If there are no factors that make it inappropriate to include a statutory review provision, then departments will need to include a statutory review provision. If the inclusion of a review provision 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 provision

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

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 provision should be up to five years from when the amendment is implemented.

Review Provision Deadlines

21. The deadline to be stated in the review provision is for completion and publication⁶ of the PIR, and is not the deadline for starting the evaluation. The PIR publication deadlines are outlined in section 30(5) and (6) of the Act.

⁶ Publishing should be on legislation.gov.uk.