



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 2

REGULATORY REFORM

Secondary legislation: duty to review

28 Duty to review regulatory provisions in secondary legislation

- (1) This section applies where—
 - (a) an Act confers a power or duty on a Minister of the Crown to make secondary legislation, and
 - (b) the Minister exercises the power or duty so as to—
 - (i) make regulatory provision in relation to any qualifying activity (see sections 29 and 32), or
 - (ii) amend regulatory provision made in relation to any qualifying activity.
- (2) The Minister must—
 - (a) make provision for review in the secondary legislation in which the regulatory provision is made (see section 30), or
 - (b) publish a statement that it is not appropriate in the circumstances to make provision for review in that legislation (see section 31).
- (3) This section does not apply if or to the extent that the power or duty is to be exercised so as to—
 - (a) make or amend—
 - (i) provision imposing, abolishing or varying any tax, duty, levy or other charge, or

- (ii) provision in connection with provision falling within subparagraph (i);
 - (b) make or amend provision in connection with procurement;
 - (c) make or amend provision in connection with the giving of grants or other financial assistance by or on behalf of a public authority;
 - (d) make or amend provision which is to cease to have effect before the end of the period of 5 years beginning with the commencement date; or
 - (e) make or amend provision which is subject to review by virtue of existing provision in the secondary legislation.
- (4) In this section and section 29 “public authority” has the same meaning as in the Freedom of Information Act 2000 (see section 3 of that Act).

29 Section 28(1)(b): interpretation

- (1) This section applies for the purposes of section 28(1)(b).
- (2) “Qualifying activity” means any activity carried on—
- (a) by a business for the purposes of the business, or
 - (b) by a voluntary or community body for the purposes of the body.
- (3) For the purposes of subsection (2) the references to a 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, or
 - (b) is acting on behalf of a public authority in carrying out the activity.
- (4) The Secretary of State must publish a statement as to how it is to be determined whether a business or a voluntary or community body is controlled by a public authority.
- (5) “Voluntary or community body” has the meaning given in section 27.

30 Section 28(2)(a): “provision for review”

- (1) This section applies for the purposes of section 28(2)(a).
- (2) “Provision for review”, in relation to any regulatory provision, is provision requiring the Minister to—
- (a) carry out a review of the regulatory provision, and
 - (b) publish a report setting out the conclusions of the review.
- (3) A review of any regulatory provision which implements an EU obligation or any other international obligation of the United Kingdom must have regard to how the obligation is implemented in the other Member States or countries which are subject to the obligation.
- (4) A report must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision,
 - (b) assess the extent to which those objectives are achieved,
 - (c) assess whether those objectives remain appropriate, and
 - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

- (5) The first report must be published before the end of the period of 5 years beginning with the commencement date.
- (6) Subsequent reports must be published at intervals not exceeding 5 years.

31 Section 28(2)(b): appropriateness of making provision for review

- (1) This section applies for the purposes of section 28(2)(b).
- (2) The circumstances in which the Minister may determine that it is not appropriate to make provision for review include those in which—
 - (a) a review would be disproportionate 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).
- (3) The Secretary of State may publish guidance about the factors to be taken into account in determining whether it is appropriate to make provision for review.
- (4) The Minister must have regard to any guidance.

32 Sections 28 to 31 etc: supplementary

- (1) This section applies for the purposes of sections 28 to 31 and this section.
- (2) “Commencement date” means the date on which the secondary legislation making or amending the regulatory provision comes into force for any purpose.
- (3) “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.
- (4) “Regulatory provision”, in relation to any qualifying activity, means—
 - (a) provision imposing requirements, restrictions or conditions, or setting standards, in relation to the activity, or
 - (b) provision which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions or standards which relate to the activity.
- (5) But where any of section 30(2), (3), (4)(a) or 31(2) applies by virtue of section 28(1)(b)(ii), the references to regulatory provision are to the regulatory provision as amended by the secondary legislation made by the Minister.
- (6) “Secondary legislation” means orders, regulations or rules made under any Act.
- (7) The validity of any secondary legislation is not to be affected by any question as to whether a Minister of the Crown complied with section 28(2).