

# **SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: REGULATORY REFORM**

##### **Business impact target**

##### *Section 21: Duty on Secretary of State to publish business impact target etc.*

193. This section creates a duty on the Secretary of State to publish a business impact target for the Government. The target must relate to the economic impact on business activities of all measures (or provisions) that fall within the definition of “qualifying regulatory provision” (see section 22) and either come into force or cease to have effect between two general elections. “Business activities” includes activities undertaken by voluntary or community bodies (defined in section 27).
194. An interim target must also be published covering the same measures over the period between the most recent general election and three years after the start of the Parliament.
195. Both targets must be published within 12 months of the start of a new Parliament i.e. the first Queen’s speech after the general election.
196. At the same time that the target is set, the Secretary of State must publish the types of measures that are to be classed as qualifying regulatory provisions. These are the measures that will be scored against the target. The Secretary of State must also publish the methodology that will be used to calculate the economic impact of each qualifying regulatory provision. The target, interim target, methodology and definition of qualifying regulatory provisions must all be laid before Parliament.
197. Subsection (5) sets out the factors that the Secretary of State must have regard to when setting the targets and the definition of qualifying regulatory provisions. These include: the effect of regulation on economic growth and competitiveness; minimising any disproportionate impact of regulation on small businesses; and delivering efficiency in regulating business activities while keeping the costs of regulation to a minimum.
198. Subsection (8) provides that duty to publish a target and the other associated sections only apply where these provisions come into force before the start of a new Parliament, or within the first twelve months of the new Parliament.
199. Subsection (10) provides that in the event of an early election held within 12 months of the start of the new Parliament, the duties under this section and sections 22 to 27 are disapplied.

***Section 22: Sections 21 and 23 to 25: “qualifying regulatory provisions” etc.***

200. This section defines the term “qualifying regulatory provisions”, by reference to two related terms: “statutory provision” and “regulatory provision”.
201. A “statutory provision” is defined in subsection (6). It includes public Acts made in the UK Parliament, subordinate legislation made by UK Ministers, and other similar provisions – for example statutory guidance. Any provision relating to a devolved or transferred function or competence is excluded (subsection (7)).
202. A “regulatory provision” is a statutory provision that has a regulatory effect - as defined in subsections 3 (a)(b) (the definition follows section 32 of the Legislative and Regulatory Reform Act 2006). Tax measures (including tax administration), procurement measures, grant measures and temporary measures that have effect for less than 12 months are excluded (subsection (4)).
203. A “qualifying regulatory provision” is a regulatory provision determined by the Secretary of State to be a qualifying regulatory provision under section 22.

***Section 23: Duty on Secretary of State to publish reports***

204. This section sets out the duty on the Secretary of State to publish reports covering the impact of qualifying regulatory provisions.
205. For a five year fixed-term Parliament, there are five reporting periods: the first period (between the general election and the 12 month anniversary of the Queen’s speech); three successive 12 month periods; and a final period ending at the next general election (subsection 7). Reports must be published within one month of the end of each reporting period, except for the final report which must be published before the dissolution of Parliament (subsection 10).
206. In the event of an early election held within 12 months of the start of the new Parliament, the reporting obligations are disapplied (see subsections (9) and (10) of section 21). For an early election held after that date, a final report would still be required, but one or more of the three annual reports may be omitted (depending on the timing of the election) (subsections (8) and (9)).
207. The reports, which must be laid before Parliament, must include:
- i. a list of all the qualifying regulatory provisions that came into force (or ceased to have effect) during the reporting period, together with their economic impacts, and a total for all measures for that reporting period (subsection 3 (a) to (c)). For the final report, this may include measures that are expected to come into force within the reporting period, but which are not actually in force at the date of publication.
  - ii. other than for the first report, the aggregate impacts across all reporting periods since the general election (subsection 3(d)).
  - iii. an assessment of the contribution of each Government department to the overall impacts for the period, and since the general election (subsection (3)(e)).
  - iv. a list of other regulatory provisions that came into force or ceased to have effect which are not classed as qualifying regulatory provisions and which do not score towards the targets.
208. The report must also cover two other topics:
- i. the actions of Government departments during the reporting period to mitigate disproportionate burdens on small businesses (subsection 4);

- ii. any examples of “gold-plating” (i.e. going beyond minimum provisions necessary for implementation) of EU or international obligations during the reporting period, together with the reasons (subsections (5) and (6))

#### ***Section 24: Additional matters to be included in reports***

209. This section makes further provisions in relation to the reports.
210. Subsection (2) stipulates that the assessment of the impacts of a qualifying regulatory provision can only be included in the report if it has been verified by the independent verification body appointed under section 25. This mirrors the current administrative arrangement under which the Regulatory Policy Committee verifies the cost to business of all measures that fall within the scope of the One-in Two-out target before performance is reported in the Statement of New Regulation. Where an impact has not been agreed at the time of publication of the report covering the period in which the provision came into force, subsection (4) requires that it is included in the report covering the next reporting period.
211. The third report, which will cover the period in which the interim target applies, must include an assessment of the extent to which that target has been met (subsections (5) and (6)). Similarly, the final report (which will be published at the end of the Parliament) must include an assessment against the overall business impact target (subsections (7) and (8)).

#### ***Section 25: Appointment of body to verify assessments and lists in reports***

212. This section sets out the duty on the Secretary of State to appoint an independent verification body. The body must verify the estimates of economic impact of all measures in scope of the business impact target, and the classification of the regulatory provisions as qualifying regulatory provisions (subsection 1). These functions are at present carried out by the Regulatory Policy Committee. The appointment, which must be for the full period until the next election, must be made before the business impact target is set (subsections 3 and 4).
213. The body must, in the opinion of the Secretary of State, be independent from the Secretary of State (subsection 5). For example, the Secretary of State could not appoint a body comprising the Secretary of State’s officials to perform the role.
214. The body must also have relevant expertise in assessing the economic impact of regulation on business activities, including smaller businesses (subsection 6).

#### ***Section 26: Amending the business impact target etc***

215. This section provides powers for the Secretary of State to change the target and associated definitions during the Parliament. For example, the current Government set an initial target of One-in One-out at the start of the Parliament, but added a supplementary target of One-in Two-out starting in 2013 – it may be that a similar scenario could arise in future. Similarly the current Government has also updated the methodology for calculating impacts under One-in two-out to improve the incentive effects around pro-competition measures.
216. The Secretary of State can change either of the targets, the definition of qualifying regulatory provisions, or the methodology. Any changes must be published and laid before Parliament. Reports that have already been published must be amended and laid before Parliament where required.

#### ***Section 27: Sections 21 to 25 etc: interpretation***

217. This section defines the key terms used in the previous six sections. “Business activities” includes both activities carried on by a business, and activities carried on by

*These notes refer to the Small Business, Enterprise and Employment  
Act 2015 (c.26) which received Royal Assent on 26 March 2015*

a voluntary or community body (defined in subsection (5)) – except activities that are carried on by a business or body that is part of the public sector, or activities undertaken on behalf of a public authority.

218. A business or body is treated as part of the public sector if it is controlled by a public authority. It is intended that this will be determined in line with any determination by the Office for National Statistics (in accordance with relevant international standards) that an entity is classified to the public sector. Guidance will be published by the Secretary of State to establish this (subsection (4)).