



Sunsetting Regulations: Guidance



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Sunsetting Regulations: Guidance

Executive Summary

- (i) By ensuring that the need for each new regulation is regularly reviewed, sunsetting will contribute towards the Government's goal of transforming the role of regulation in our society. Where regulation is no longer needed, or where it imposes disproportionate burdens, sunsetting will help ensure that it is removed. In other cases, it will help keep effective regulation up to date, and support improvements where necessary.
- (ii) Some new legislation already includes a sunset or review clause, which can take a number of different forms. The Government has agreed that sunsetting will now be mandatory for new regulation introduced by Whitehall departments, where there is a net burden (or cost) on business or civil society organisations. Departments should also consider whether the sunsetting of other regulation would be beneficial.
- (iii) Domestic regulation enacted through secondary legislation should be subject to the formal requirement of a statutory review, and an automatic expiry date. Domestic regulation enacted through primary legislation, and any legislation that implements international (including EU) obligations, should be subject to a review obligation only.
- (iv) The first statutory review should in most cases be carried out and published no later than five years after the relevant regulation comes into force. Where the regulation is subject to automatic expiry, this should be scheduled to take effect seven years after the same date.
- (v) As part of the usual pre-legislative clearance process, departments will need to demonstrate to Reducing Regulation Committee (RRC) how their proposals for sunsetting are consistent with the Government's approach to reducing regulation, and justify any departures from the approach set out in this guidance ("comply or explain").
- (vi) The purpose of the statutory review is to ask whether the policy objectives that led to the introduction of the regulation are still valid and relevant; whether regulation is still the best way of achieving those objectives; and, if so, whether the existing regulation can be improved so as to reduce burdens on business and civil society organisations. For EU regulation, the principal focus will be on improving the transposition, and on enforcement, in order to reduce burdens.
- (vii) Reviews should be carried out in a way that is proportionate, considering in particular the scale of the expected and actual costs to business and civil society organisations resulting from the regulation.

- (viii) Where possible, the review should be combined with other planned activities, such as a post-implementation review or (in the case of EU obligations) a review by the European Commission. To assist in co-ordinating relevant activities, it is recommended that departments should publish on an annual basis a forward regulatory review programme covering the next five years.
- (ix) Following the review, where it is proposed that the regulation should be renewed RRC will expect to see evidence that improvements to the existing regulation, and possible non-regulatory alternatives, have been adequately considered.

Introduction

1. This guidance has been prepared by the Better Regulation Executive (BRE) to assist departments in implementing the Government's commitment to sunset regulations. It sets out the objectives for the new policy, the standards that will be applied across Government, what departments will have to do differently, and how the new system will work with existing requirements such as post-implementation review, and post-legislative scrutiny. The guidance is supplemented by annexes providing more detailed information where required.

The Government's objectives

2. In "Reducing Regulation Made Simple"¹, the Government set out its ambition to transform the role of regulation in our society. Freeing business and civil society groups from unnecessary burdensome regulation can help free up the capacity they have to innovate, diversify, and grow. Achieving that vision needs a new approach to regulation.
3. By ensuring that the need for each new regulation is regularly reviewed, the Government's policy on sunsetting will contribute towards this goal. In cases where regulation is no longer needed, or where it imposes disproportionate burdens on businesses or civil society organisations, sunsetting will help ensure that it is removed. In other cases, it will help keep effective regulations up to date, and support improvements where necessary.
4. The introduction of sunset provisions will complement and help to strengthen existing processes for monitoring the impact of regulation. This will support early action where regulation is proving costly, difficult, or ineffective, and will provide wider opportunities for scrutiny of existing regulation by Parliament, and by the businesses and civil society organisations affected. It will also help drive culture change across Government in its approach to regulation.

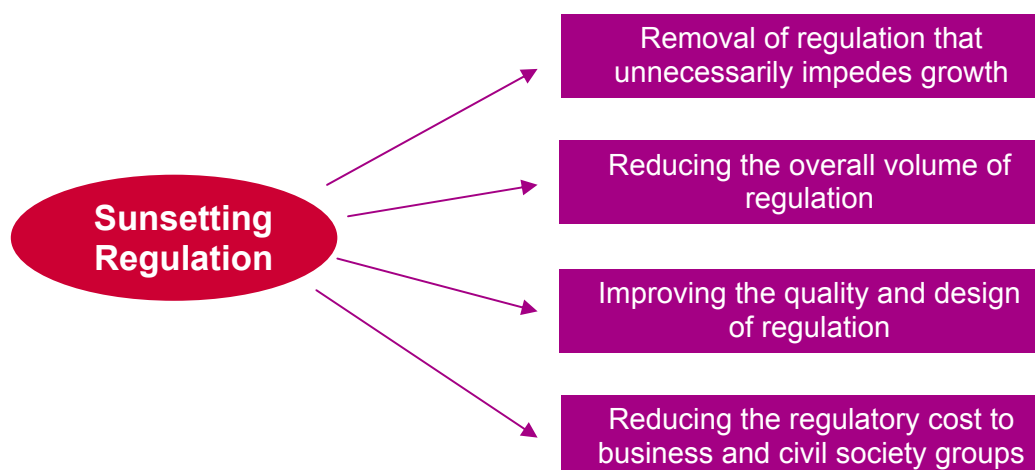


Figure One: Contribution of Sunsetting Regulations to Government's key priorities for regulation

¹ <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple>

Scope of this guidance

5. Different forms of sunset and review clauses can already be used by departments when introducing new legislation – for example where the measures relate to a one-off event, or in relation to the exercise of certain delegated powers.
6. This guidance covers the application of sunset to new domestic regulation that :-
 - is introduced by Whitehall departments and other central government organisations, such as executive agencies;
 - gives rise to a direct net burden (or cost) on businesses or civil society organisations; and
 - is not already subject to an existing sunset clause that will cause it to expire within five years of coming into force².
7. The guidance also covers domestic legislation implementing all new EU (or other international) regulatory obligations.
8. ***Departments should also consider positively the application of sunset provisions to new regulation that does not fall within the scope of this guidance.*** This may include, for example, cases where there is no net burden on business but where there may nevertheless be good reasons to limit the period during which regulations are in force, or to require a review to be carried out. This guidance is not intended to prescribe or limit application of sunset in such cases. However the objectives, nature, and policy and administrative implications of using sunset provisions in those cases may be different from the cases that fall within the scope of this guidance.
9. Independent regulators do not automatically fall within the scope of this guidance. They have, however, been invited to participate voluntarily in respect of their own regulations.
10. Further details on scope, including the other forms of regulation that are covered by this guidance, are attached at [Annex A.](#)

Implementation stages

11. The implementation of the sunset provisions for regulations that are within the scope of this guidance involves three main stages :-
 - **introduction:** providing for a sunset process in the legislation (or other regulatory measure) that gives rise to the regulatory burden;
 - **review:** monitoring and evaluating the effect of the regulation, including carrying out and publishing a statutory review; and
 - **removal, renewal, or amendment:** either the regulations expire or are repealed, or they are renewed, with or without amendments.

² For example regulations relating to one-off sporting or other events, or to regulations which are specifically created for the purpose of a temporary pilot exercise.

12. All three stages will need to be considered and planned for at the outset when a new regulation falling within the scope of this guidance is being introduced. What is involved at each stage may vary according to nature and impact of the relevant regulations. However in each case, the three stages will need to be planned, and to work together in a coherent sequence.
13. The following sections of the guidance examine each of the three stages in further detail. The guidance principally covers the process for regulation made through primary and secondary legislation (including legislation that implements EU or international obligations); however the same principles should be applied to other forms of regulation that are within scope.

The Introduction Stage

Overview

14. The main focus of the introduction stage is on including the sunset provision in the legislation introducing the regulation. Departments will need to consider the **type** of sunset provision that should apply, the **scope** of the provision, and the associated **timings**.

Type

15. There are two types of legal provision that are discussed in this guidance :-

- A “review clause” imposes a statutory duty to carry out a review of the relevant regulation on a specified timescale but does not provide for automatic expiry (meaning that further legislative action would be required to remove the regulations, or to amend them, but not for them to remain in force).

Review clauses should be used for all new regulation that is within the scope of this guidance.

- A “sunset clause” provides for automatic expiry after a specified period (meaning that further legislative action is required for the regulations to remain in force, with or without modifications³).

For domestic regulation enacted through secondary legislation, a sunset clause should be used in conjunction with a review clause. For regulation enacted through primary legislation, and for legislation (including secondary legislation) that implements international (including EU) obligations, only a review clause should be used.

16. In this guidance we use “sunsetting”, “sunsetting provision”, or “sunsetting policy” to encompass the use of either or both of the two legal provisions described above. A more detailed table comparing the two types and how they should be applied is included at [Annex B](#). Examples of draft provisions for use in secondary legislation are attached at [Annex C](#).

³ In the case of expiry, although the expiry itself is automatic, it may nevertheless also give rise to consequential changes to legislation – see paras 56 to 57 below

Scope

17. As a minimum, the sunset provision should apply to the elements of the legislation that give rise to the regulatory burden on business and civil society organisations. When deciding on the precise scope, departments will need to consider :-

- whether, if the regulation is part of a package of measures aimed at achieving a particular objective, it would be more appropriate to apply the sunset provision to the package, including also non-regulatory or de-regulatory elements. This may make sense, for example, where it would mirror the scope of the planned post-implementation review, or other evaluation;
- whether there are associated non-regulatory elements that will – for transitional or other reasons - need to continue in force, even when the regulatory elements have ceased to have effect. In such cases, it may be necessary for the scope of the sunset clause to be relatively narrow, for example limited to certain regulatory elements only.

Timing

18. There are two aspects to the timing of any provisions that departments will need to consider at the introduction stage :-

- the date for the publication of the statutory review(s) required under the review clause;
Other than in exceptional circumstances, the date of the publication of the first statutory review should be no later than five years after the regulation comes into force.
- the date on which the regulation will, in the absence of renewal, expire (applicable to sunset clauses only)
Other than in exceptional circumstances, the expiry date should be no later than seven years after the regulation comes into force.

Statutory Review(s)

19. The sunset provision should specify, on the face of the legislation, the deadline for the publication of the results of the statutory review. Other than in exceptional circumstances, this should be no later than five years after the regulation comes into force. This is consistent with the timescales for post-legislative scrutiny and post-implementation review⁴.

20. Where the sunset provision includes a sunset clause, the statutory review is a one-off event: if the regulation is renewed or amended, the new (or amended) regulation will be subject to its own sunset provisions. Where only a review clause is used, it should specify that the review should be repeated every five years.

21. There may be cases in which it would be appropriate to set an earlier date for a statutory review – for example to co-ordinate with a planned review of related regulations, or where uncertainty regarding the effect of the regulation at the time of introduction means that an early post-implementation review is planned (see below Figure 2, Scenario B). Equally, in cases where the implementation of regulatory changes resulting from the review is likely to

⁴ In the case of post-legislative scrutiny, the 3-5 year period starts from the date of Royal Assent.

be a particularly complex or lengthy process (for example where the regulation falls within the scope of the Technical Standards Directive), it may be appropriate to carry out the review at an earlier stage to allow additional time for any changes to the legislation to be made and brought into force before any specified expiry date (Figure 2, Scenario C).

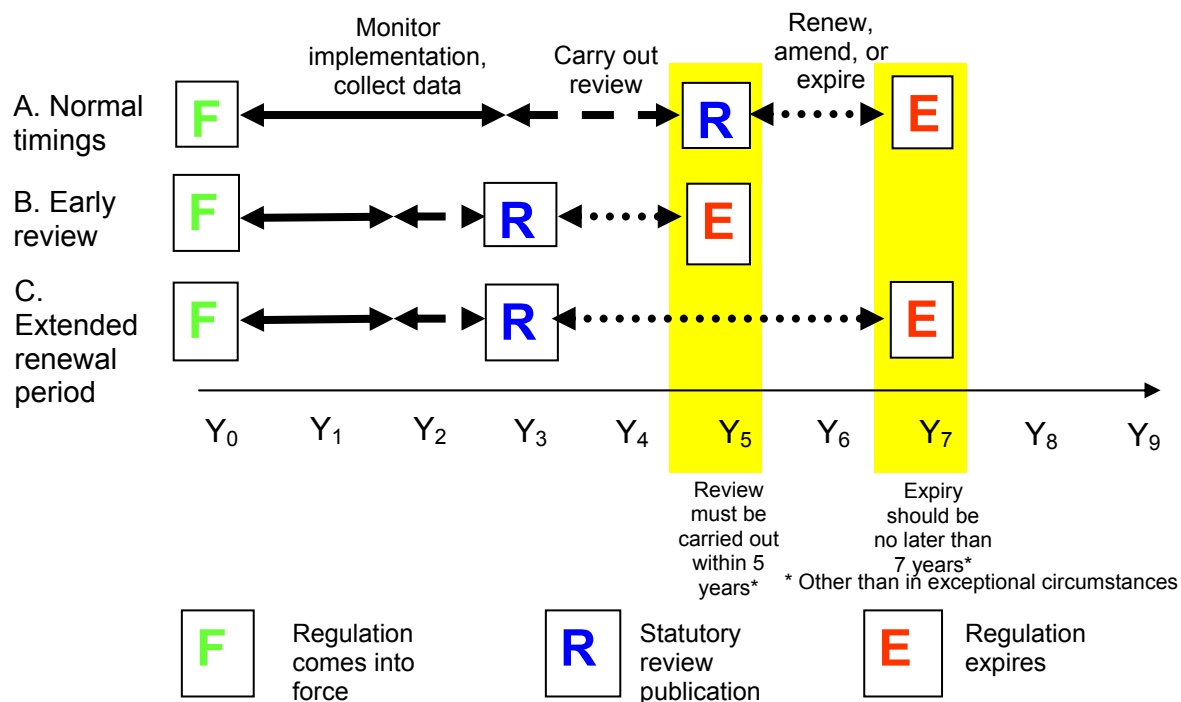


Figure 2 : Indicative review and expiry timings for secondary legislation with sunset clause (other scenarios at Annex E)

Expiry

22. For sunset clauses, the date on which the regulation expires must also be specified on the face of the legislation. Other than in exceptional circumstances, the expiry date should be no later than seven years after the regulation comes into force. In most cases, this will be two years after the date by which the statutory review must be completed and published.
23. The statutory review date and the expiry date must be sufficient to allow time for new regulations to be made to replace the set that are due to expire, including amendments where appropriate, whilst also allowing those affected by the regulation an adequate period to plan for and implement any changes required in order to comply. Where an early statutory review date is proposed (i.e. less than five years), the expiry date should in most cases also be brought forward, unless the reason for carrying out an early review is the requirement for additional time to implement any potential changes to the regulations arising from the review. The activities involved between the completion of the review stage, and the expiry, amendment, or renewal of the regulation are explored in more detail below (see para 44 -).

Practical Application

24. In each case where regulatory proposals are being developed, departments will need to consider how sunseting (including review) should be applied so as to best achieve the

Government's objectives for reviewing and improving regulation. This will include weighing up the options in terms of the type, scope and timing of the provision, and also seeking stakeholder views as part of any consultation process.

25. The general principles and guidelines set out above are the starting point for this process. They are not exhaustive. Departments will still need to decide upon the best approach on a case by case basis. For example :-

- where secondary legislation is being made under existing powers, particularly for domestic regulation, departments will need to consider whether the scope of those powers may have implications for the nature of the sunset provision that can be included. This is something on which departmental lawyers will be able to advise;
- where the regulation is introduced through the amendment of existing legislation, in many cases it will be appropriate to insert the relevant sunset provision in the legislation that is being amended (where there is no pre-existing provision) rather than in the amending instrument⁵;
- where the potential future expiry of the regulation would give rise to significant uncertainty for those affected by the regulation, departments should consider including provisions intended to deal with those consequential issues as part of the implementing regulations⁶;
- where a significant regulatory burden derives directly from domestic measures set out directly in primary legislation, or where the impact of the proposed regulatory measures is particularly uncertain, departments should consider whether it may be appropriate⁷ to apply a sunset clause to relevant provisions in primary legislation in addition to the use of a review clause⁸; and
- where sunset provisions are being considered for legislation in a devolved area (whether wholly or partially devolved), colleagues in the relevant administration will have an interest and should be consulted in the usual way⁹, with agreement to legislate obtained as necessary through the relevant process. Departments should be mindful of the possibility that the review of implementation in the different nations may potentially generate different policy proposals for legislative changes.

Clearance, transparency, and scrutiny

26. As part of the normal policy clearance process, departments will need to clear their proposed provisions with Reducing Regulation Committee (see paras 59-60 below), including justification of any departures from the approach set out in this guidance ("comply or explain"). Once agreed, a commentary on the provisions should be included in the

⁵ This is likely to be a more straightforward and transparent approach than making the amending instrument subject to its own sunset clause, which could give rise to an increased risk of legal uncertainty. It also reflects the fact that in practice the review will need to focus on the effect of the amended instrument, rather than the just the amendment itself.

⁶ Any consequential provisions should be outside the scope of the sunset clause i.e. they should remain in force when the regulation expires. Consequential changes are discussed in more detail at para 56.

⁷ Such an approach is unlikely to be appropriate where the legislation implements a European obligation, due to the risk of infraction proceedings

⁸ Where a sunset clause applies directly to regulation implemented through primary legislation, departments will need to consider carefully the mechanism for renewal and/or amendment

⁹ Consultation would also apply in areas such as Social Security Matters where a system of Legislative Consent may be used.

relevant explanatory notes (for primary legislation), and explanatory memorandum (for secondary legislation).

27. Departments should expect detailed scrutiny of sunset provisions from relevant Parliamentary Committees, including the Merits Committee and the House of Lords Delegated Powers and Regulatory Reform Committee. Regulations affecting the devolved administrations may also be subject to scrutiny in the relevant Assembly / Parliament and committees under the procedures established under the Sewel Convention.

The Review Stage

Overview

28. The main purpose of sunseting is to facilitate regulatory changes and improvements, including de-regulation, in order to reduce burdens on businesses and civil society organisations. It will do this by driving a more systematic and thorough approach to the review of regulation, building on existing procedures including post-implementation review. The review stage therefore plays a central role in achieving the Government's objectives.

Objectives of the review

29. The core purpose of the review is to answer three related questions :-

- (a) **are the policy objectives that led to the introduction of the regulation still valid and relevant ?**
- (b) **if the objectives are still valid and relevant, is regulation still the best way of achieving those objectives, compared to the possible alternatives ? and**
- (c) **if regulation is still justified, can the existing regulation be improved ?**

30. For regulations that implement EU obligations, the principal focus of the review should be to identify areas where implementation and enforcement could be improved to reduce burdens on UK businesses, learning from the practical experience both in the UK and in other European countries. Where departments can learn from how their counterparts in other European countries have implemented, departments should consider aligning implementation in UK to ensure British businesses are not put at a competitive disadvantage. However, departments should also consider whether there is evidence, and potential for an alliance with other EU member states, that would support taking a request for a wider review of the objectives of the underlying EU legislation to the European Commission.

31. In the case of domestic regulation, departments should consider, for example :-

- where policy objectives have changed, or where the original policy objectives are no longer relevant, whether the regulation should either be allowed to expire, or else be repealed;
- if the regulation has not had any significant beneficial impact in line with the original policy objectives, then the presumption should be that it should be allowed to expire (or else be repealed);

- whether factors such as unintended consequences of regulation, higher than expected costs, or low levels of compliance mean that non-regulatory approaches are now a better way of achieving the original policy objectives; and
- if a regulatory approach is to be retained, how the existing regulation can be improved, for example by reducing the costs for the businesses and civil society organisations affected, or improving the approach to enforcement.

32. Questions concerning whether the regulation is working as intended and how the original policy aims can best be delivered are already addressed in the context of post-implementation reviews, evaluation, and post-legislative scrutiny¹⁰. In practice this means that in many cases much of the statutory review is likely to be carried out as part of one of those other processes. Importantly, however, the requirement to assess whether the original policy objectives remain valid extends the scope of the statutory review, beyond the scope of a conventional evaluation, to questions usually addressed as part of a wider policy review process, or a stock review¹¹ of existing regulations.

Carrying out the review

33. Reviews should be carried out in a way that is proportionate, considering in particular the scale of the expected (and actual) costs to businesses and civil society organisations resulting from the regulation. The existence of very substantial costs, even where these are offset by expected benefits, provides the greatest potential for savings and improvements as a result of the review. Departments should also consider whether there may be unexpected costs arising as an unintended consequence of the original regulation.

34. Although departments may carry out a standalone review focused on a single regulation in order to meet the statutory requirement to review, in practice it is likely that departments will find it more efficient to co-ordinate the statutory review with other planned activities, including for example :-

- statutory reviews of other related regulations;
- the post-legislative scrutiny of primary legislation;
- a post-implementation review carried out under the impact assessment process;
- a stock review of existing regulations;
- a formal evaluation of the relevant policy area;
- a review led by the European Commission, either of a specific piece of legislation, or legislation in a particular field; or
- some other form of policy review or policy development process.

¹⁰ As well as considering whether the policy is working out as intended, both post-legislative scrutiny and post implementation reviews extend to the future delivery of those policy aims. For example, the objectives of post-legislative scrutiny include contributing to better regulation. Post-implementation reviews should inform future policy development and improve delivery methods.

¹¹ Departments are required to undertake reviews of their existing 'stock' of regulation to identify opportunities to remove or revise regulations that unnecessarily impede growth. This process is critical to the successful implementation of the One-in, One-out rule.

35. Where more than one review is required in overlapping policy areas, departments are already expected to co-ordinate the relevant activities¹². Combining the delivery of the statutory review of the relevant regulation with another broader review will generate conclusions that are more meaningful – because it sets the individual regulations in a broader policy context – as well as also being more efficient – because it avoids the duplication of work that could be involved in running separate reviews. Where the review of the regulation is combined with a more general policy review it also has the potential to directly improve the quality of policy development going forward, including identifying where Government may no longer wish to intervene.
36. Where a repeat review is being carried out – for example in the case of primary legislation where the regulation is not subject to a sunset clause – it should be possible to draw on and update as necessary the analysis carried out during the earlier review exercise. This should therefore be a more streamlined process.

Planning, co-ordination, and consultation

37. Departments will need to plan their forward regulatory review programme in order to realise the benefits of co-ordination, and to discharge the relevant statutory obligations as efficiently and effectively as possible. ***It is strongly recommended that this is addressed as part of department's annual business planning process, including the annual publication of a forward regulatory review programme covering the next five years.***
38. Planning and co-ordination should consider other departments for whom the removal or amendment of the relevant regulation may have implications for their legislation. Where the subject matter of the regulation is wholly or partially devolved, or where the Westminster legislation has amended or repealed devolved legislation, the relevant devolved administrations will also need to be consulted at an early stage. In all cases, effective planning and the publication of a forward legislative review programme should facilitate the necessary engagement.
39. In carrying out reviews, departments will need to consider how best to gather information and views from businesses, civil society organisations, and others affected by the regulation. Other than in cases where only a small number of organisations are affected, a formal consultation may form a valuable part of this process. As with other aspects of the review process, however, departments should take an approach that is proportionate, taking into account the scale of the costs to businesses and civil society organisations resulting from the regulation.

Clearance and Publication

40. The report on the statutory review, setting out the conclusions reached, must be cleared by RRC and the relevant policy committee before publication. When clearance has been obtained, the report must be published in a Command Paper and laid before Parliament. In planning for the review, departments must allow sufficient time to ensure that these processes can be completed within the statutory deadline for publication.

¹² “Clarifying the relationship between policy evaluation, post-legislative scrutiny, and post-implementation review”, March 2010 (<http://www.bis.gov.uk/assets/biscore/better-regulation/docs/10-928-clarifying-policy-evaluation-post-legislative-scrutiny-post-implementation-review>)

41. In most cases, it will be appropriate to link publication of the review report to a completed post-implementation review impact assessment, or (as applicable) the departmental memorandum setting out the results of post-legislative scrutiny. Where the review of the regulation has fed into a wider review of policy, or where a need for amendments to the existing regulation has been identified, the review could be published as part of a policy document also setting out the proposed changes.
42. It will be the responsibility of departments to keep a central record of how they have met the relevant statutory obligation for each regulation that contains a review clause.
43. We expect that the relevant Parliamentary Committees will in due course wish to consider the scrutiny process for statutory review reports, as more information becomes available as to the practical effect of the sunset policy. BRE will update this guidance as required.

The Removal / Renewal Stage

Overview

44. The removal / renewal stage is the third stage in the process for implementing sunset, and covers the actions that are taken following the statutory review. In principle, there are three possible outcomes :-

- the regulation is removed and no longer has any effect;
- the regulation is renewed, without any changes; or
- the regulation is amended.

Removal (Expiry)

45. The process for removing the regulation will depend on the form of the sunset provision used, and on whether the regulation implements EU obligations.
46. Where the regulation includes a sunset clause, it will cease to have effect as of a certain date. In those circumstances, if the review concludes that the regulation is no longer required the sunset clause will in due course result in the regulation no longer having effect from the given expiry date.
47. Where the regulation includes only a review clause, there is no such automatic expiry. In those circumstances new legislation will be required to repeal the existing regulation.
48. In the case of regulation implementing EU obligations, the process for removal is likely to be significantly more complex and extended if it requires changes to be made at an EU level to the underlying EU legislation. Where there is a planned or current review of the regulation at an EU level, departments should ensure that the conclusions of the statutory review carried out under the domestic implementing legislation are fed into that process, with a view to reaching agreement with other member states on amendment or removal of the regulation. In other circumstances, departments are encouraged to make the case for a review with the European Commission.
49. Even where the regulation ceases to have effect through the operation of an expiry clause, departments will need to actively manage the process of removal. There may be consequential changes to existing legislation (see para 56 below), and practical implications

such as the need for guidance material to be updated. In addition the implementation of the change will need to be communicated to businesses and others affected by expiry.

Renewal

50. Where the basis of the sunset provision is a review clause, no action is required to renew the regulation because it will (in the absence of any action) continue to remain in force. However where a sunset clause has been used, new legislation will be required to renew the existing regulation before the automatic expiry takes effect. When the legislation is renewed, the existing sunset provisions should be amended as necessary, reflecting the start of a new cycle of review and expiry.

Amendment

51. Amendment to the regulation will require new legislation. As part of the process of amendment, the existing sunset provision should be amended as necessary, reflecting the start of a new cycle of review and (as applicable) expiry when the amended regulation comes into effect.

52. Where the regulation implements EU obligations, departments will need to consider whether any amendments can be made within the scope of the underlying EU legislation. Where the amendments would require changes to that underlying legislation, departments will need to seek to negotiate and agree any changes at an EU level.

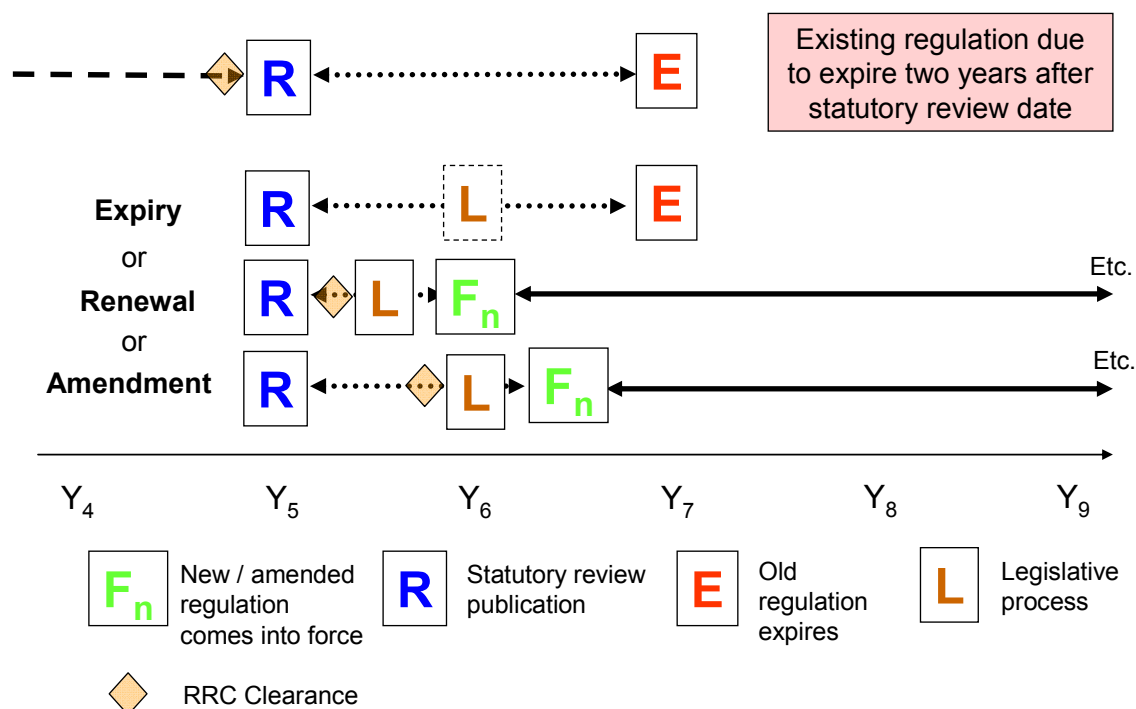


Figure 3 : Expiry, Renewal, or Amendment : Indicative timescales for domestic secondary legislation with sunset clause

Legislative process

53. Any new legislation that is required, including legislation that renews existing legislation, should be introduced through the normal legislative and parliamentary processes. An updated impact assessment should be prepared, drawing on the results of the statutory review, with the reasons for the proposed legislative action set out clearly in the explanatory

memorandum or explanatory notes. Departments should review the need for further consultation according to the proposed action being taken : for example where the regulation is being renewed unchanged, the benefits of consultation may be limited, particularly if there was consultation as part of the earlier review.

54. In the case of new secondary legislation, it is good practice for departments to seek to minimise the burden on Parliament by ensuring that there is adequate time for parliamentary scrutiny (recognising the pressures on Committee workload at certain times of the year). Where the regulation is being renewed, it is recommended that departments should plan their work to ensure that the relevant instrument is presented a minimum of three months in advance of the date that the renewal is to take effect. To facilitate efficient use of parliamentary time, departments may seek to combine debates on related affirmative instruments that are subject to renewal¹³.
55. Where the statutory review recommends changes to primary legislation, departments will need to identify a legislative vehicle for effecting any changes. In some cases, the use of a legislative reform order could be an option that departments may wish to consider. Otherwise departments will need to bid for a place in the legislative programme through the usual processes.

Consequential changes

56. Departments should consider at the time of implementation of the regulation the consequences of its potential future expiry, and what legislative provision it is appropriate to include to address any associated risks or sources of uncertainty to those affected by the regulation, including provisions that may be helpful in minimising any potential adverse effect on business confidence. When the regulation is to be revoked or is due to expire, departments will again need to consider what, if any, further savings or consequential provisions may be required. Departmental lawyers should be consulted on this at an early stage in planning the process of revocation or expiry. They will need to consider what needs to be provided for in legislation in the light of those sections of the Interpretation Act 1978 which deals with the effect of repeals (sections 15-18). These may include saving provisions that relate to things done during the period when the regulation was in force¹⁴. In addition in a sunsetted regulation prospective amendments may be required to other legislation that is linked to the regulations that are to be revoked (or which are due to expire)¹⁵.
57. Where legislation covering matters that are wholly or partially devolved is amended, repealed, or allowed to expire, there may be significant consequential implications for Scottish, Northern Irish, or Welsh legislation which has been amended or enacted in reliance on, or in consequence of, the relevant legislation¹⁶. Early consultation with the

¹³ Composite instruments that renew unrelated regulations should however generally be avoided

¹⁴ An example of such a provision is found in the Electrical Equipment (Safety) Regulations 1994 which say

(1) . . . provided that the said Regulations of 1989 shall continue to apply to electrical equipment to which these Regulations do not apply by virtue of paragraph (4) of regulation 4 below....)

¹⁵ If savings or consequential provisions are in an instrument which contains a sunset clause, rather than a separate, revoking instrument, then they will have to be in a separate part of the instrument that is not within the scope of the sunset provision.

¹⁶ In some cases, this can work in reverse. For example, Acts of the Scottish Parliament (and instruments made under them) can modify Westminster Acts in certain limited circumstances and provisions may be made otiose or unworkable if provisions are allowed to expire.

devolved administrations is important to ensure that consequential effects are not inadvertently missed.

One-in, One-out

58. The treatment of regulatory changes as a result of the removal / renewal stage will be addressed in the relevant guidance on One-in, One-out. Where a regulation that falls within the scope of this guidance is renewed prior to expiry, this will not count as a new “In”; but where it is allowed to expire (or amended so as to reduce burdens) this will count as an “Out”.

Reducing Regulation Committee

59. The Reducing Regulation Committee (RRC) plays a key role in supporting effective implementation of sunset provisions, challenging departments and ensuring the measures set out in this guidance help deliver the Government’s ambitions for transforming the role of regulation.

60. In parallel with clearance from the relevant policy committee, departments are required to obtain RRC clearance :-

- at the pre-legislative stage, before the legislation is introduced;
Departments will need to demonstrate to RRC how their proposals for sunseting are consistent with the Government’s approach to reducing regulation, and justify any departures from the approach set out in this guidance (“comply or explain”).
- prior to the publication of the statutory review report;
Departments must demonstrate to RRC that the conclusions reached in the review report are robust and have an adequate evidence base. For example where it is proposed that the regulation should be renewed, RRC will expect to see appropriate evidence that improvements to the existing regulation, and possible non-regulatory alternatives, have also been considered, and (in the case of EU obligations) that British businesses are not at a competitive disadvantage relative to their competitors.
- at the pre-legislative stage for any legislation that renews, revokes, or amends the existing regulation following the statutory review.
RRC’s scrutiny at this stage is consistent with its wider role in scrutinising legislation, including in relation to “One-in, One-out”.

Further Advice

61. Comments and questions on this guidance should be addressed to BRE, via departmental Better Regulation Units.

62. BRE will be working with departments on implementation, to share good practice and lessons learned, and ensure that issues are addressed successfully. An initial review of the guidance will be carried out after six months.

63. References to guidance on related matters, and other resources, can be found at [Annex D](#).

List of Annexes

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[B – Sunset vs Review comparison table](#)

[C – Draft provisions](#)

[D – Related guidance](#)

[E - Review and expiry timings: further examples](#)

ANNEX A - Scope of this guidance – further detail

The purpose of this annex is to provide further detail on the scope of this guidance, in addition to the summary included in the body of the main guidance document.

The starting point for the scope of this guidance is the current scope of “One-in, One-out” (OIOO). However there are some differences, which are highlighted below.

Definition of regulation

For the purposes of this guidance, regulation is defined as:

“a rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes. This can be summarised as all measures with legal force imposed by central government and other schemes operated by central government”.

For the purposes of this guidance, the regulatory measures that are likely to fall within the scope of this definition are :

- Acts of the UK Parliament;
- Statutory Instruments made under UK Acts of Parliament;
- Codes of practice and self-regulation which are backed by statutory force;
- Guidance issued under statutory powers; and,
- Bye-laws made by central government.

The following are excluded from the scope :

- Legislation made by the Scottish Parliament, the Northern Ireland Assembly, or the National Assembly of Wales;
- Subordinate legislation made by departments (or other rule-making authorities) in the devolved administrations;
- Regulations made by or on behalf of an Independent Regulator;
- Tax measures - central and local, and also environmental;
- Fees; and
- Licences.

In broad terms, the scope of this guidance reflects the current scope of One-in, One-out. However it should be noted that the following are excluded from the scope of OIOO, but fall within the scope of this guidance:

- European Union Regulations, Decisions and Directives implemented through domestic legislation;
- International agreements and obligations implemented through domestic legislation;

- Civil Emergencies - those measures which would be classified as an emergency under the Civil Contingencies Act 2004¹⁷ – and certain other emergency powers; and
- Regulation addressing financial systemic risk.

¹⁷ Given the nature of these measures, they may not be subject to a full impact assessment, RRC clearance or usual parliamentary scrutiny. However where there is likely to be a net impact on business or the third sector, the regulations should in general be subject to a review or sunset provision to ensure that they are reviewed on a regular basis.

ANNEX B - Comparison of Review Clauses, and Review Clauses with Sunset clause

| | Review Clause | Review plus Sunset Clause |
|---|--|--|
| Effect | Obligation to carry out a review within a certain period | Obligation to carry out a review within a certain period; expiry of legal effect of regulation on a certain date |
| Principal application | European regulation enacted through primary and secondary legislation; domestic regulation enacted through primary legislation | Domestic regulation introduced through secondary legislation |
| Secondary application (where justified) | Domestic regulation implemented through secondary legislation in exceptional circumstances, where sunset clause is not feasible, or would give rise to unacceptable risks or costs | Can in principle be applied to primary legislation implementing domestic regulation – but not European regulations |
| Timing of review | Repeat – every five years | One off – normally after five years |
| Mechanism for expiry | New legislation required to revoke original regulation (either primary or secondary, depending on form of original legislation) | Regulation expires automatically on given date. (Legislation may be required to deal with consequential changes) |
| Mechanism for renewal | New legislation required if being renewed with amendments; no action required if no amendments proposed | New legislation required (either primary or secondary, depending on form of original legislation) |

ANNEX C - Draft Provisions (to be adapted as necessary)

A. Review plus sunset (for secondary legislation implementing domestic regulation)

Citation, Commencement, and Expiry

- 1.—(1) These Regulations may be cited as the [] Regulations 2011.
- (2) They come into force on 2011.
- (3) They cease to have effect on at the end of the period of seven years beginning with the day on which these Regulations come into force.

Review [*This should be placed after the provisions to be reviewed*]

- 2.—(1) Before the end of the review period, the Secretary of State must—
- (a) carry out a review of these Regulations,
 - (b) set out the conclusions of the review in a report, and
 - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
 - (b) assess the extent to which those objectives are achieved, and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) “Review period” means the period of five years beginning with the day on which these Regulations come into force.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 1(3) provides that these Regulations are to cease to have effect seven years after they come into force.

Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be allowed to expire as regulation 1(3) provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the Regulations in force with or without amendments or to revoke them early.

B. Review only (for secondary legislation implementing EU obligations)

Citation and Commencement

- 1.—(1) These Regulations may be cited as the [] Regulations 2011.
- (2) They come into force on 2011.

Review [*This should be placed after the provisions in the instrument that are to be reviewed*]

- 2.—(1) The Secretary of State must from time to time—

- (a) carry out a review of [regulations ... to ...],
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how [the XYZ Directive] (which is implemented by means of [regulations ... to ...]) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by [those regulations],
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which [regulations ... to ...] come into force

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

ANNEX D - Related Guidance

Guiding Principles for EU legislation

<http://www.bis.gov.uk/policies/better-regulation/policy/european-legislation/guiding-principles-eu-legislation>

Impact Assessment Guidance and Toolkit (includes guidance on Post-implementation review)

<http://www.bis.gov.uk/policies/better-regulation/policy/scrutinising-new-regulations/preparing-impact-assessments>

Post-legislative scrutiny

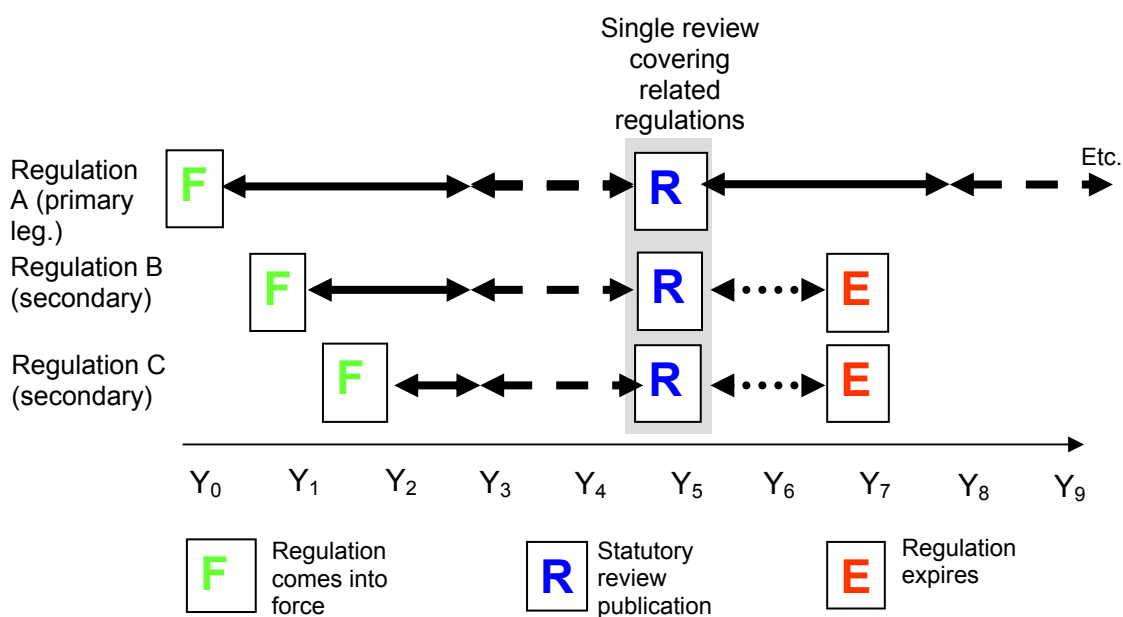
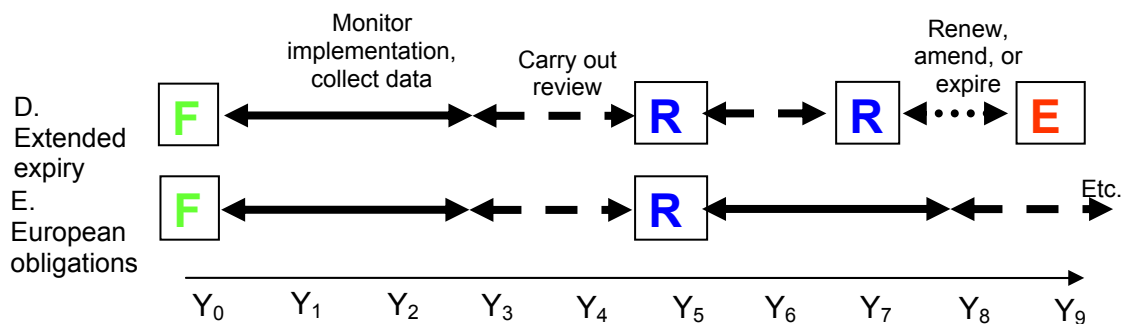
http://interim.cabinetoffice.gov.uk/making-legislation-guide/post-legislative_scrutiny.aspx

<http://www.bis.gov.uk/assets/biscore/better-regulation/docs/10-928-clarifying-policy-evaluation-post-legislative-scrutiny-post-implementation-review>

Reducing Regulation Made Simple

<http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive/reducing-regulation-made-simple>

ANNEX E - Review and Expiry Timings: Further Examples



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