

# **Scrutiny of regulations arising from the UK's exit from the European Union - Protocol between the Welsh Government and the Constitutional and Legislative Affairs Committee of the National Assembly for Wales**

## **Background and purpose**

1. This Protocol has been agreed within the context of the United Kingdom's exit from the European Union and the Welsh Ministers' powers to make regulations under the European Union (Withdrawal) Act 2018 ("the 2018 Act") to contribute to the establishment of a fully functioning statute book for Wales at the point of exit.
2. The Constitutional and Legislative Affairs Committee ("the CLA Committee") will play a significant role in the scrutiny of regulations made or to be made under the 2018 Act.
3. This Protocol recognises the objective of ensuring a fully functioning statute book, shared between:
  - i. the Welsh Government, with responsibility to bring forward an appropriate programme of regulations to implement exit, and
  - ii. the National Assembly for Wales (and in particular the CLA Committee) with responsibility to effectively scrutinise that programme of regulations.
4. This objective is intended to provide certainty in relation to the law for citizens and businesses.
5. The Protocol therefore sets out an understanding between the CLA Committee and the Welsh Government of the administrative arrangements for the scrutiny of regulations that are to be made by the Welsh Ministers under the powers conferred by Part 1 of Schedule 2 to the 2018 Act, as recommended by the CLA Committee in its report Scrutiny of regulations made under the European Union (Withdrawal) Act 2018: operational matters:

"We recommend that the Welsh Government enters into an agreement with us as the sifting committee to cover:

- an early warning system to assist with managing the scrutiny of all subordinate legislation until the end of this Assembly (in 2021);
- the optimum day of laying of proposed negative regulations under the 2018 Act; and
- any other matter that will aid the effective and efficient scrutiny of regulations made under the 2018 Act, especially regulations correcting deficiencies in retained EU law."



6. This recommendation reflected:
  - the commitment given by the Leader of the House to the CLA Committee on 11 June 2018 that the Welsh Government is keen to give as early a warning as possible to both the Assembly and its committees in order for smooth and efficient scrutiny work to take place;
  - the assumption that the CLA Committee is the sifting committee for the purposes of the 2018 Act,and is intended to complement the revised Standing Order provisions in relation to the scrutiny of regulations under the 2018 Act.

## **The Protocol**

7. This Protocol represents the agreed position of the CLA Committee and the Welsh Government on the management of all regulations made under the 2018 Act and laid before the National Assembly.
8. The CLA Committee and Welsh Government recognise that the scrutiny and quality of regulations made under the 2018 Act will be best served by an approach where a consistent flow of regulations is maintained, to a schedule of which notice is given in advance.
9. An early warning system will enable appropriate planning to take place. An even flow of regulations, appropriately prioritised will help avoid peaks and troughs, and ensure the most efficient use of resources.
10. The CLA Committee acknowledge that the programme of subordinate legislation brought forward by Welsh Ministers may be affected by decisions and events outside of the control of the Welsh Government, and that EU exit is one of a number of Welsh Government priorities to be delivered through subordinate legislation. Both the Welsh Government and the CLA Committee will endeavour to take mitigating action to reduce the risk of bottlenecks in the process.
11. As part of this process the Welsh Government will seek to ensure a steady and even flow of regulations for both sifting and for the scrutiny process.
12. The Welsh Government will provide early warning to the CLA Committee of all regulations to be brought forward under the 2018 Act. The CLA Committee will, in turn, share the information with other Assembly committees as appropriate.



13. A rolling early warning system will reflect the update provided in July 2018 by the Leader of the House to the CLA Committee on the number of regulations that will be required to correct deficiencies in retained EU law.
14. The early warning system, agreed by the CLA Committee and the Welsh Government, will consist of the Welsh Government providing to the CLA Committee the following information regarding regulations derived from the 2018 Act once every two weeks:
  - a list of forthcoming proposed negative regulations subject to the sift procedure, with the target date of laying of each;
  - a list of forthcoming regulations to be subject to the negative procedure, with the target date of laying of each;
  - a list of forthcoming regulations to be subject to the affirmative procedure, with the target date of laying of each;
  - where appropriate, notification of any forthcoming complex regulations;
  - where appropriate, notification of any forthcoming lengthy regulations;
  - any other information that the Welsh Government considers will aid the effective and efficient scrutiny of regulations made under the 2018 Act.
15. As part of the update once every two weeks, the Welsh Government will also aim to provide information regarding the volume of business as usual regulations to be scrutinised under Standing Orders 21.2 and 21.3 (i.e. the CLA Committee's normal statutory instrument workload and which derives from purely domestic legislation).
16. The CLA Committee currently meets every Monday in a sitting week. The Welsh Government acknowledges that laying proposed negative regulations on a Tuesday will provide the CLA Committee with the best use of the 14 calendar day sifting period in the 2018 Act as it will generally provide two opportunities to consider regulations. The Welsh Government also acknowledges that laying proposed negative regulations on a Thursday or Friday will in practice only provide a single committee meeting to consider. For that reason, the Welsh Government will seek to avoid laying proposed negative regulations on a Thursday and Friday.

## Monitoring

17. The CLA Committee and Welsh Government will routinely monitor the application and interpretation of the Protocol, and each will draw any issues to the attention of the other at the earliest opportunity. If considered appropriate, either the CLA Committee or the Welsh Government, or both, may draw any issues to the attention of the Business Committee, the Llywydd, or the National Assembly, as appropriate.



18. The CLA Committee and the Welsh Government will keep under review the Protocol's application to the scrutiny of regulations made or to be made under other relevant Brexit-related Acts at the relevant time.
19. The CLA Committee and the Welsh Government will respond to any issues raised in a timely manner. As per current practice, should the CLA Committee consider it necessary they may invite Welsh Ministers to attend a committee meeting.
20. The CLA Committee or the Welsh Government may propose revisions to the protocol and both will need to agree to any revisions made.

### **Timeframe**

21. This Protocol ceases to have effect on exit day.

### **October 2018**

