

LAW DERIVED FROM THE EUROPEAN UNION (WALES) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS OF THE ACT

Section 19 and Schedule 2 - Regulations

123. **Section 19(2)** provides that the powers to make regulations under the Act may make different provision for different purposes, different cases or different areas. This could include for example specifying a different exit day for different purposes, if that was considered appropriate.
124. All regulations made under the Act are subject to the same scrutiny framework set out under Schedule 2. Schedule 2 provides for three different procedures for scrutiny of regulations made under the Act. The standard procedure is the affirmative procedure, as laid out in paragraph 3. This applies to all regulations made under the Act, other than those which are subject to the urgent procedure or the enhanced procedure.
125. The urgent procedure is laid out in paragraph 4 and requires regulations subject to the procedure to be made and then laid before the Assembly. The regulations will cease to have effect after a period of 30 days after being made unless the regulations are approved by a resolution of the Assembly during the 30-day period. On laying the instrument (following its making) the Welsh Ministers must also lay a statement explaining the circumstances of the urgency and why it is necessary for the regulations to be subject to the urgent procedure.
126. The urgent procedure applies to regulations which contain a declaration that the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being laid and approved. Regulations made under sections 11, 12 and 22 cannot be subject to the urgent procedure and must in all cases fail to be scrutinised in accordance with the enhanced procedure set out in paragraph 1.
127. The procedure with the potential for the greatest level of scrutiny is the enhanced procedure as laid out in paragraph 1. Apart from regulations made under sections 11, 12 or 22, the scrutiny procedure to be applied is informed by the contents of the regulations rather than the power under which the regulations are made. All regulations made under sections 11, 12 or 22 of the Act are subject to the enhanced procedure set out in paragraph 1. Paragraph 1(1) lists the regulations that are subject to the enhanced procedure.
128. Under the enhanced procedure the Assembly may apply the standard affirmative procedure to any regulations that fall within paragraph 1(1) apart from those made under sections 12 or 22. The Assembly may choose this procedure by approving a draft of the regulations by resolution after 40 days have expired since the draft regulations were laid by the Welsh Ministers. The full enhanced procedure as set out in paragraph 1(6) to (14) applies to any regulations made under sections 12 or 22.

129. The Assembly may decide to apply the enhanced procedure to draft regulations falling within paragraph 1(1) by resolving within the 30-day period following laying that the procedure should apply. A committee of the Assembly charged with reporting on the draft regulations may recommend within the same 30-day period that the enhanced procedure should apply. In the event of such a recommendation, the enhanced procedure is to apply unless the Assembly rejects the recommendation by resolution within the same 30-day period.
130. Where the enhanced procedure applies, paragraph 1(6) to (14) sets out the applicable procedure. This is a two-stage procedure during which the Welsh Ministers may revise the draft regulations. The initial stage is a 60-day period after laying of the draft regulations where representations may be made, the Assembly may pass resolutions and a committee of the Assembly charged with reporting on the draft regulations may make recommendations. All such representations, resolutions and recommendations must be taken into account by the Welsh Ministers. Having laid a statement under paragraph 1(7), the Welsh Ministers may make regulations in the terms of the draft regulations if they are approved by a resolution of the Assembly. Where the Welsh Ministers wish to make material changes to the draft regulations, they must lay before the Assembly the revised draft regulations and a statement in accordance with paragraph 1(11)(b). The Welsh Ministers can make the revised draft regulations if they are approved by a resolution of the Assembly.
131. [Paragraph 1\(9\)](#) and [\(13\)](#) enables a committee of the Assembly to recommend that no further proceedings are taken in respect of the draft regulations or revised draft regulations. Where such a recommendation is made, no further proceedings can take place in respect of the draft regulations or revised draft regulations unless the recommendation is rejected by resolution of the Assembly. This means that without the Assembly rejecting the recommendation, the draft regulations or revised draft regulations cannot be made by the Welsh Ministers.
132. [Paragraph 2\(1\)](#) and [\(2\)](#) makes provision for when the Welsh Ministers must not and need not disclose representations made about draft regulations or revised draft regulations under paragraph 1. However, the provision in paragraph 2(1) and (2) does not operate to prevent the Welsh Ministers from disclosing to a committee of the Assembly charged with reporting on the draft regulations or revised draft regulations.
133. Section 14 of the IA 1978 provides that where an Act confers power to make subordinate legislation it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under the power. This provides that any revoking, amending or re-enacting instrument is subject to the same scrutiny requirements applicable to the original instrument. Paragraph 5 provides a contrary intention for the purposes of section 14 of the IA 1978. This reflects the fact that the scrutiny arrangements applicable under Schedule 2 are governed by the contents of the regulations (other than regulations made under section 11). Therefore an original instrument made under the standard procedure may later require to be amended under the urgent procedure. Paragraph 5 enables this to take place.
134. [Paragraph 6](#) reflects the possibility that a statutory instrument containing regulations made under the Act may also contain regulations made under a different power which is subject to the negative resolution procedure. Paragraph 6 provides that in such circumstances the applicable scrutiny arrangements are those set out under the Act.