

## SCHEDULE 2

(Introduced by section 19(3))

### PROCEDURE FOR MAKING REGULATIONS

#### *Enhanced procedure regulations*

- 1 (1) This paragraph applies to a statutory instrument containing regulations made under this Act that—
- (a) establish a new public authority;
  - (b) confer functions on a public authority;
  - (c) impose or increase a fee in respect of a function exercisable by a public authority;
  - (d) create, or widen the scope of, a criminal offence;
  - (e) create or amend a power to legislate;
  - (f) modify primary legislation;
  - (g) are made under section 11, section 12 or section 22;
- but this paragraph does not apply if paragraph 4 applies.
- (2) If the Welsh Ministers consider it appropriate to proceed with the making of regulations they must lay a draft of the regulations before the National Assembly for Wales along with a statement setting out the Welsh Ministers' view on whether the procedure in sub-paragraphs (6) to (14) should apply.
- (3) If the draft regulations contain provision modifying primary legislation, the Welsh Ministers must lay a statement before the National Assembly for Wales that explains why the provision is needed.
- (4) If after the expiry of the 40-day period the draft regulations laid under sub-paragraph (2) are approved by a resolution of the National Assembly for Wales, the Welsh Ministers may make regulations in the terms of the draft regulations, unless the procedure in sub-paragraphs (6) to (14) apply.
- (5) The procedure in sub-paragraphs (6) to (14) applies to the draft regulations instead of the procedure in sub-paragraph (4) if—
- (a) the draft regulations are to be made under section 12 or section 22,
  - (b) the National Assembly for Wales resolves within the 30-day period that the procedure should apply, or
  - (c) a committee of the National Assembly for Wales charged with reporting on the draft regulations recommends within the 30-day period that the procedure should apply and the Assembly does not by resolution reject the recommendation within that period.
- (6) The Welsh Ministers must have regard to—
- (a) any representations,
  - (b) any resolution of the National Assembly for Wales, and
  - (c) any recommendations of a committee of the National Assembly for Wales charged with reporting on the draft regulations,
- made during the 60-day period with regard to the draft regulations.
- (7) If, after the expiry of the 60-day period, the Welsh Ministers wish to make regulations in the terms of the draft, they must lay before the National Assembly for Wales a statement—

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- (a) stating whether any representations were made, and
  - (b) if any representations were made, giving details of them.
- (8) The Welsh Ministers may, after the laying of a statement, make regulations in the terms of the draft if it is approved by a resolution of the National Assembly for Wales.
- (9) But a committee of the National Assembly for Wales charged with reporting on the draft regulations may, at any time after the laying of a statement under sub-paragraph (7) and before the draft regulations are approved by the Assembly under sub-paragraph (8), recommend that no further proceedings be taken in relation to the draft regulations.
- (10) Where a recommendation is made by a committee of the National Assembly for Wales under sub-paragraph (9) in relation to draft regulations, no proceedings may be taken in relation to the draft under sub-paragraph (8) unless the recommendation is rejected by resolution of the Assembly.
- (11) If after the expiry of the 60-day period the Welsh Ministers wish to proceed with the draft regulations but with material changes, the Welsh Ministers must lay before the National Assembly for Wales—
  - (a) the revised draft regulations,
  - (b) a statement—
    - (i) giving a summary of the changes proposed,
    - (ii) stating whether any representations were made, and
    - (iii) if any representations were made, giving details of them.
- (12) If the revised draft regulations are approved by a resolution of the National Assembly for Wales, the Welsh Ministers may make the regulations in the terms of the revised draft regulations.
- (13) But a committee of the National Assembly for Wales charged with reporting on the revised draft regulations may, at any time after the laying of a statement under sub-paragraph (11) and before the draft regulations are approved by the Assembly under sub-paragraph (12), recommend that no further proceedings be taken in relation to the revised draft regulations.
- (14) Where a recommendation is made by a committee of the National Assembly for Wales under sub-paragraph (13) in relation to revised draft regulations, no proceedings may be taken in relation to the revised draft under sub-paragraph (12) unless the recommendation is rejected by resolution of the Assembly.
- (15) For the purposes of this paragraph, regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.
- (16) In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before the National Assembly for Wales.
- (17) For the purposes of sub-paragraph (16), no account is to be taken of any time during which the National Assembly for Wales is dissolved or in recess for more than four days.

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### *Disclosure of representations*

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- (1) Where a person making representations about draft regulations or revised draft regulations under paragraph 1 has requested the Welsh Ministers not to disclose them, the Welsh Ministers must not disclose them under paragraph 1 if or to the extent that to do so would (disregarding any connection with proceedings in the National Assembly for Wales) constitute a breach of confidence actionable by any person.
  - (2) If information in representations relates to another person, the Welsh Ministers need not disclose the information under paragraph 1 if or to the extent that—
    - (a) it appears to the Welsh Ministers that the disclosure of that information could adversely affect the interests of that other person; and
    - (b) the Welsh Ministers have been unable to obtain the consent of that other person to the disclosure.
  - (3) Sub-paragraphs (1) and (2) do not affect any disclosure that is requested by, and made to, a committee of the National Assembly for Wales charged with reporting on the draft regulations or revised draft regulations.

### *Standard procedure regulations*

- 3
- (1) This paragraph applies to a statutory instrument containing regulations under this Act, unless paragraph 1 or 4 applies.
  - (2) The regulations may not be made unless a draft of the regulations has been laid before and approved by a resolution of the National Assembly for Wales.

### *Urgent procedure regulations*

- 4
- (1) A statutory instrument containing regulations under this Act (except section 11, section 12 and section 22) may be made without a draft being laid before, and approved by resolution of, the National Assembly for Wales if it contains 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.
  - (2) After an instrument is made in accordance with sub-paragraph (1), the Welsh Ministers must lay it before the National Assembly for Wales along with a statement explaining the circumstances of the urgency and why, in the Welsh Ministers' opinion, it was necessary to make the regulations without a draft being laid and approved.
  - (3) Regulations contained in an instrument made in accordance with sub-paragraph (1) cease to have effect at the end of a period of 30 days, beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of the National Assembly for Wales.
  - (4) In calculating the period of 30 days, no account is to be taken of any time during which the National Assembly for Wales is dissolved or in recess for more than four days.
  - (5) If regulations cease to have effect as a result of sub-paragraph (3), that does not—
    - (a) affect the validity of anything previously done under the regulations, or
    - (b) prevent the making of new regulations.

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*Procedure on re-exercise of certain powers*

- 5 An instrument to which paragraph 1, 3 or 4 applies that revokes, amends or re-enacts any such instrument may (despite section 14 of the Interpretation Act 1978) be subject to a different procedure under this Schedule from the procedure to which the instrument containing the original regulations was subject.

*Combinations of instruments*

- 6 (1) Sub-paragraph (2) applies to a statutory instrument containing regulations under this Act that is subject to a procedure under paragraph 1, 3 or 4.
- (2) The statutory instrument may also include regulations under another enactment that are made by statutory instrument subject to a procedure before the National Assembly for Wales that provides for the annulment of the instrument after it has been made.
- (3) Where regulations are included as mentioned in sub-paragraph (2), the procedure applicable to the statutory instrument is the procedure mentioned in sub-paragraph (1) and not the procedure mentioned in sub-paragraph (2).
- (4) This paragraph does not prevent the inclusion of other regulations in a statutory instrument that contains regulations under this Act.