STATUTORY INSTRUMENTS

2020 No. 1500

EXITING THE EUROPEAN UNION, NORTHERN IRELAND

The Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020

Made - - - -	*9th December 2020*
Coming into force - -	*10th December 2020*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8C(1) and (2) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 8F(1) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Protocol on Ireland/Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020.

(2) They come into force on the day after the day on which they are made.

Amendment of the Northern Ireland Act 1998: democratic consent process

2.—(1) The Northern Ireland Act 1998(**b**) is amended as follows.

(2) After section 56 (Civic Forum) insert—

"PART 5A

EU WITHDRAWAL: DEMOCRATIC CONSENT PROCESS

Democratic consent process

56A. Schedule 6A (EU Withdrawal: democratic consent process) has effect."

(3) After Schedule 6 (standing orders: further provision)(**c**) insert Schedule 6A in the Schedule to these Regulations.

(**a**) 2018 c. 16; section 8C was inserted by section 21 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) and paragraph 21 was amended by paragraphs 38 and 53 of Schedule 5 to that Act.
(**b**) 1998 c. 47.
(**c**) Amendments have been made to this Schedule but they are not relevant to this instrument.

9th December 2020

Brandon Lewis
Secretary of State
Northern Ireland Office

SCHEDULE

Regulation 2

EU Withdrawal: democratic consent process

"SCHEDULE 6A

Section 56A

EU WITHDRAWAL: DEMOCRATIC CONSENT PROCESS

PART 1

General

Introduction

1.—(1) Part 2 of this Schedule requires the Secretary of State to initiate the democratic consent process in relation to each new continuation period.

(2) Part 3 of this Schedule establishes, for the purposes of Article 18 of the Protocol as read with the unilateral Declaration, the default democratic consent process referred to in paragraphs 3 and 4 of the unilateral Declaration.

(3) Part 4 of this Schedule establishes, for the purposes of Article 18 of the Protocol as read with the unilateral Declaration, the alternative democratic consent process referred to in paragraphs 5 and 6 of the unilateral Declaration.

(4) Part 5 of this Schedule makes provision about procedural matters and the outcome of the democratic consent process.

(5) Part 6 of this Schedule makes provision about an independent review into the functioning of the Protocol.

(6) To the extent that the standing orders of the Assembly are inconsistent with this Schedule, this Schedule (rather than the standing orders) is to have effect.

(7) For the purposes of this Schedule, a motion that is tabled and then withdrawn is to be regarded, at times after its withdrawal, as not having been tabled.

(8) In this Schedule—

"alternative democratic consent process" means the democratic consent process established by Part 4 of this Schedule;

"default democratic consent process" means the democratic consent process established by Part 3 of this Schedule;

"democratic consent process" means the process by which—

(a) democratic consent in Northern Ireland to the continued application of Articles 5 to 10 of the Protocol is to be sought, and

(b) a decision expressing that democratic consent is to be made;

"notification of the start of the democratic consent process" has the meaning given in paragraph 4;

"Protocol" means the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement(**a**);

"unilateral Declaration" means the declaration by Her Majesty's Government concerning the operation of the 'Democratic consent in Northern Ireland' provision of the Protocol made on 17 October 2019.

Meaning of "consent resolution" and effect if consent resolution rejected

2.—(1) In this Schedule "consent resolution" means a resolution of the Assembly in this form—

"That Articles 5 to 10 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement should continue to apply during the new continuation period (within the meaning of Schedule 6A to the Northern Ireland Act 1998)."

(2) This Schedule ceases to apply at the end of a particular current period if—

(a) by that time, the Assembly has decided the question on a motion for a consent resolution which relates to the new continuation period, but

(b) the Assembly did not pass the consent resolution.

Meaning of "continuation period", "current period" etc

3.—(1) In this Schedule—

"continuation period" means—

(a) the period of four years or eight years (as determined in accordance with sub-paragraph (2)) that begins with the day that follows the last day of the initial period;

(b) each subsequent period of four years or eight years (as determined in accordance with sub-paragraph (2)) that begins with the day that follows the last day of the preceding continuation period;

"current period", in relation to a new continuation period, means—

(a) the initial period, in the case where that period immediately precedes the new continuation period, or

(b) the continuation period which immediately precedes the new continuation period, in any other case;

"initial period" means the period of four years that begins with the day that follows IP completion day(**b**);

"new continuation period" means, at any particular time, the first continuation period that is to begin after that time.

(2) The duration of a continuation period is to be—

(a) four years if the consent resolution which relates to that continuation period was passed by a majority of the members voting but not with cross-community support(**c**);

(b) eight years if the consent resolution which relates to that continuation period was passed with cross-community support.

(3) In this Schedule, a period set out in an entry in the first column of this table has the meaning given in the corresponding entry in the second column of the table—

Period	*Meaning*

(**a**) EU Withdrawal Agreement is defined in Schedule 1 to the Interpretation Act 1978 (c. 30).
(**b**) IP completion day is also defined in Schedule 1 to the Interpretation Act 1978.
(**c**) "Cross-community support" for the purposes of the Northern Ireland Act 1998 is defined by section 4(5) of that Act.

"final two months of the current period"	the period of two months ending with the last day of that current period
"final one month of the current period"	the period of one month ending with the last day of that current period
"final 25 days of the current period"	the period of 25 days ending with the last day of that current period
"final 15 days of the current period"	the period of 15 days ending with the last day of that current period
"final 5 days of the current period"	the period of 5 days ending with the last day of that current period

PART 2

Duty of Secretary of State to initiate the democratic consent process

Duty to give notification of the start of the democratic consent process

4.—(1) The Secretary of State must give a notification of the start of the democratic consent process in relation to each new continuation period.

(2) The notification relating to a new continuation period must be given on the day immediately before the start of the final two months of the current period.

(3) The notification must be given in accordance with Part 3 (if that Part is applicable) or Part 4 (if that Part is applicable).

(4) The "notification of the start of the democratic consent process" that relates to a new continuation period is a written notification that—

(a) states the date of the first day of the new continuation period, and

(b) states that, before that date, Her Majesty's Government in the United Kingdom must notify the European Commission of the outcome of the democratic consent process established by this Schedule in relation to the continued application of Articles 5 to 10 of the Protocol during the new continuation period.

PART 3

Default Democratic Consent Process

Application

5. This Part applies if the First Minister and the deputy First Minister hold office (including if another Northern Ireland Minister is exercising the functions of either office in accordance with section 16A(11)(**a**)) at the beginning of the day on which the Secretary of State is required to give the notification of the start of the democratic consent process in relation to a new continuation period.

Giving the notification of the start of the democratic consent process

6.—(1) The Secretary of State must give the notification of the start of the democratic consent process to—

(a) the First Minister and the deputy First Minister, and

(**a**) Sections 16A, 16B and 16C were substituted for section 16 by section 8 of the Northern Ireland (St Andrews Agreement) Act 2006 (c. 53); section 16A was further amended by paragraph 2 of Schedule 1 to the Northern Ireland (Stormont Agreement and Implementation Plan) Act 2016 (c. 13).

(b) the Presiding Officer.

(2) The notification of the start of the democratic consent process must state that the default democratic consent process applies.

Presiding Officer to inform members of the Assembly

7. On receipt of a notification of the start of the democratic consent process under this Part, the Presiding Officer must take such steps as the Presiding Officer considers necessary to bring the notification to the attention of the members of the Assembly.

Consent resolution: motion by First Minister and deputy First Minister

8.—(1) This paragraph applies where the Secretary of State gives a notification of the start of the democratic consent process under this Part in relation to a new continuation period.

(2) Before the start of the final one month of the current period, the First Minister and the deputy First Minister acting jointly may table notice of a motion for a consent resolution which relates to the new continuation period.

(3) No other member of the Assembly may table notice of a motion for a consent resolution which relates to the new continuation period before the final one month of the current period.

(4) If they have tabled notice of a motion under this paragraph, the First Minister and the deputy First Minister acting jointly must provide the members of the Assembly with such explanatory materials as it is reasonable to provide in order to assist them when deciding the question.

Consent resolution: motion by any member of the Assembly

9.—(1) This paragraph applies where—

(a) the Secretary of State gives a notification of the democratic consent process under this Part in relation to a new continuation period, and

(b) before the start of the final one month of the current period, the First Minister and the deputy First Minister acting jointly have not tabled notice of a motion for a consent resolution which relates to the new continuation period.

(2) Before the start of the final 25 days of the current period, any member of the Assembly may table notice of a motion for a consent resolution which relates to the new continuation period.

(3) Sub-paragraph (2) does not prevent any other members of the Assembly—

(a) from adding their names to the notice of the motion that has been tabled, or

(b) having done so, from moving the motion,

in accordance with the standing orders or practice of the Assembly.

(4) If a member of the Assembly has tabled notice of a motion for a consent resolution in accordance with sub-paragraph (2), the Secretary of State must take reasonable steps to provide the members of the Assembly with such explanatory materials as it is reasonable to provide in order to assist them when deciding the question.

Consent resolution: consideration of motion

10.—(1) This paragraph applies if—

(a) notice of a motion for a consent resolution which relates to the new continuation period has been tabled by the First Minister and deputy First Minister acting jointly in accordance with paragraph 8(2), or

(b) notice of a motion for a consent resolution which relates to the new continuation period has been tabled by a member of the Assembly in accordance with paragraph 9(2),

and, before the start of the final 15 days of the current period, the question on that motion is not decided by the Assembly.

(2) The Assembly must sit at noon on the required sitting day (whether or not the Assembly would otherwise be sitting on that day or at that time, and whether or not that day falls during a recess).

(3) The motion for the consent resolution is to be proceeded with in the Assembly on the required sitting day—

(a) as the first business on that day; or

(b) where the election of the Presiding Officer or any deputy or deputies is, by virtue of this Act, any other enactment or the standing orders of the Assembly, required to be the first business on that day, as the first business after the election of the Presiding Officer or deputy or deputies.

(4) The Presiding Officer must move the motion for the consent resolution if no other member of the Assembly moves it when it is required to be proceeded with in accordance with sub-paragraph (3).

(5) The question on the motion for the consent resolution (if not already put) is to be put—

(a) at 6:00pm on the required sitting day, if the motion is proceeded with as the first business on the required sitting day (in accordance with sub-paragraph (3)(a));

(b) six hours after the motion is moved, if the motion is proceeded with as the first business after the election of the Presiding Officer or the deputy or deputies on the required sitting day (in accordance with sub-paragraph (3)(b)).

(6) The Assembly may not be adjourned on the required sitting day until after the declaration of the result of the division or vote on the question on the motion for the consent resolution.

(7) Accordingly, no motion for the adjournment of the debate on the motion for the consent resolution, or of the Assembly, may be taken on the required sitting day until after the declaration of that result.

(8) If the question on the motion for the consent resolution is not put as required by sub-paragraph (5), and is not put at any later time on the required sitting day, then—

(a) the earliest day after that day that is not an excluded day is to be regarded as the required sitting day for the purposes of this paragraph, and

(b) sub-paragraphs (2) to (7) and this sub-paragraph are to apply again accordingly.

(9) In this paragraph—

"excluded day" means—

(a) Saturday,

(b) Sunday,

(c) Christmas Day,

(d) Good Friday, and

(e) any day that is a public holiday in Northern Ireland;

"required sitting day" means the earliest day during the final 15 days of the current period that is not an excluded day.

PART 4

Alternative democratic consent process

Application

11. This Part applies if the offices of the First Minister and the deputy First Minister are vacant (and their functions are not otherwise being exercised by another Northern Ireland Minister in accordance with section 16A(11)) at the beginning of the day on which the Secretary of State is required to give the notification of the start of the democratic consent process in relation to a new continuation period.

Giving the notification of the start of the democratic consent process

12.—(1) The Secretary of State must give the notification of the start of the democratic consent process to —

(a) the Presiding Officer, and

(b) the clerk to the Assembly.

(2) The notification of the start of the democratic consent process must state that the alternative democratic consent process applies.

(3) As soon as practicable after giving notice under sub-paragraph (1), the Secretary of State must take reasonable steps to provide the members of the Assembly with such explanatory materials as it is reasonable to provide in order to assist them when deciding the question on the motion for a consent resolution.

(4) In this paragraph "the clerk to the Assembly" means the person who holds or exercises the functions of that office in accordance with the standing orders or practice of the Assembly.

Presiding Officer to inform members of the Assembly

13. On receipt of a notification of the start of the democratic consent process under this Part, the Presiding Officer must take such steps as the Presiding Officer considers necessary to bring the notification to the attention of the members of the Assembly.

Consent resolution: motion by a member of the Assembly

14.—(1) Where the Secretary of State has given a notification of the start of the democratic consent process under this Part in relation to a new continuation period, any member of the Assembly may table notice of a motion for a consent resolution which relates to the new continuation period.

(2) Sub-paragraph (1) does not prevent any other members of the Assembly—

(a) from adding their names to the notice of the motion that has been tabled, or

(b) having done so, from moving the motion,

in accordance with the standing orders or practice of the Assembly.

Consent resolution: requirement to consider motion

15.—(1) This paragraph applies in either of the following cases.

(2) Case A is where—

(a) the Secretary of State gives a notification of the start of the democratic consent process under this Part in relation to a new continuation period, and

(b) before the start of the final one month of the current period, no member of the Assembly has tabled notice of a motion for a consent resolution which relates to the new continuation period.

(3) Case B is where—

(a) the Secretary of State gives a notification of the start of the democratic consent process under this Part in relation to a new continuation period,

(b) before the start of the final one month of the current period, a member of the Assembly tables notice of a motion for a consent resolution which relates to the new continuation period, and

(c) before the start of the final 25 days of the current period, the question on that motion is not decided by the Assembly.

(4) The Assembly must sit at noon on the required sitting day (whether or not the Assembly would otherwise be sitting on that day, or at that time, and whether or not that day falls during a recess).

(5) If, before the start of the required sitting day, a member of the Assembly has not tabled notice of a motion for a consent resolution which relates to the new continuation period, the Presiding Officer must table such a motion.

(6) Sub-paragraph (5) does not prevent any other members of the Assembly—

(a) from adding their names to the notice of the motion that has been tabled as soon as practicable on that day, or

(b) having done so, from moving the motion,

in accordance with the standing orders or practice of the Assembly.

(7) The fact that a motion tabled by the Presiding Officer in accordance with sub-paragraph (5) is tabled on the required sitting day does not prevent the motion from being proceeded with on that day in accordance with this paragraph.

(8) The motion for the consent resolution is to be proceeded with in the Assembly on the required sitting day—

(a) as the first business on that day; or

(b) where the election of the Presiding Officer or any deputy or deputies is, by virtue of this Act, any other enactment or the standing orders of the Assembly, required to be the first business on that day, as the first business after the election of the Presiding Officer or deputy or deputies.

(9) The Presiding Officer must move the motion for the consent resolution if no other member of the Assembly moves it when it is required to be proceeded with in accordance with sub-paragraph (8).

(10) The question on the motion for the consent resolution (if not already put) is to be put—

(a) at 6:00pm on the required sitting day, if the motion is proceeded with as the first business on the required sitting day (in accordance with sub-paragraph (8)(a));

(b) six hours after the motion is moved, if the motion is proceeded with as the first business after the election of the Presiding Officer or the deputy or deputies on the required sitting day (in accordance with sub-paragraph (8)(b)).

(11) The Assembly may not be adjourned on the required sitting day until after the declaration of the result of the division or vote on the question on the motion for the consent resolution.

(12) Accordingly, no motion for the adjournment of the debate on the motion for the consent resolution, or of the Assembly, may be taken on the required sitting day until after the declaration of that result.

(13) If the question on the motion for the consent resolution is not put as required by sub-paragraph (10), and is not put at any later time on the required sitting day, then—

(a) the earliest day after that day that is not an excluded day is to be regarded as the required sitting day for the purposes of this paragraph, and

(b) sub-paragraphs (4) to (12) and this sub-paragraph are to apply again accordingly.

(14) This paragraph has effect subject to paragraph 16.

(15) In this paragraph and paragraph 16—

"excluded day" means—

(a) Saturday,

(b) Sunday,

(c) Christmas Day,

(d) Good Friday, and

(e) any day that is a public holiday in Northern Ireland;

"required sitting day" means the earliest day during the final 25 days of the current period that is not an excluded day.

Election of an interim Presiding Officer

16.—(1) This paragraph applies if on the required sitting day—

(a) the election of a Presiding Officer or any deputy or deputies is, by virtue of this Act, any other enactment or the standing orders of the Assembly, required to be the first business on that day, and

(b) the Assembly does not elect from among its members a Presiding Officer or any deputy or deputies.

(2) The Assembly must elect from among its members an interim Presiding Officer.

(3) Neither section 39 nor section 42 applies to the election of the interim Presiding Officer (nor is the election of any deputy or deputies required).

(4) Accordingly, the interim Presiding Officer is to be elected by a majority of those members of the Assembly voting.

(5) The proceedings for the election of an interim Presiding Officer are to be chaired by the oldest member of the Assembly present.

(6) But if the oldest member present is also seeking election as interim Presiding Officer then the next oldest member present is to chair the proceedings instead, and so on.

(7) An interim Presiding Officer—

(a) holds office only for the purposes of business relating to a motion for a consent resolution which relates to the new continuation period, and

(b) ceases to hold office once written notification of the matters mentioned in paragraph 19(2) has been given to the Secretary of State.

(8) Standing orders may make further provision in connection with the election of an interim Presiding Officer.

(9) In its application in a case where this paragraph applies, paragraph 15 has effect as if—

(a) the following were substituted for paragraph 15(8)—

"(8) The motion for the consent resolution is to be proceeded with as the first business after the election of the interim Presiding Officer.";

(b) the reference to the Presiding Officer in paragraph 15(9) were a reference to the interim Presiding Officer;

(c) the following were substituted for paragraph 15(10)—

"(10) The question on the motion for the consent resolution (if not already put) is to be put six hours after the motion is moved.".

(10) In sub-paragraph (1) the reference to "the required sitting day" is to the first such day.

PART 5

Procedural Matters and Outcome

Application

17. This Part applies in relation to any motion for a consent resolution whether the default democratic consent process or the alternative democratic consent process is applicable.

Procedural matters relating to motions for consent resolutions

18.—(1) A motion for a consent resolution is to be decided without amendment.

(2) The question on a motion for a consent resolution is to be decided by a majority of those members of the Assembly voting.

(3) Where a consent resolution is passed by a majority of the members voting, the Presiding Officer must—

(a) determine whether the resolution has also been passed with cross-community support; and

(b) announce the determination of that question.

(4) For provision about the consequences of a consent resolution also being passed with cross-community support, see paragraph 3(2).

(5) Section 42 does not apply in relation to a motion for a consent resolution.

(6) Once the Assembly has decided the question on a motion for a consent resolution which relates to a continuation period (whether the Assembly has passed the motion or not), further notice of a motion for a consent resolution which relates to that continuation period may not be tabled, or if already tabled, may not be proceeded with.

(7) A reference in this paragraph or in paragraph 19 or 20 to the Presiding Officer has effect as a reference to the interim Presiding Officer if a person is holding that office in accordance with paragraph 16.

Outcome of process: Presiding Officer to notify Secretary of State

19.—(1) This paragraph applies when the Assembly decides the question on a motion for a consent resolution which relates to a new continuation period.

(2) The Presiding Officer must give the Secretary of State written notification of the following matters—

(a) whether or not the Assembly passed the consent resolution;

(b) if the Assembly passed the consent resolution, whether the Assembly passed it—

(i) by a majority of the members voting but not with cross-community support, or

(ii) with cross-community support.

(3) The notification must be given before the start of the final 5 days of the current period.

Outcome of process: Secretary of State to notify European Commission

20.—(1) This paragraph applies when the Presiding Officer gives the Secretary of State the notification required by paragraph 19 in relation to a motion for a consent resolution which relates to a new continuation period.

(2) The Secretary of State must give the European Commission written notification of the following matters—

(a) whether or not the Assembly passed the consent resolution;

(b) if the Assembly passed the consent resolution, whether the Assembly passed it—

(i) by a majority of the members voting but not with cross-community support, or

(ii) with cross-community support.

(3) The notification must be given on or before the final day of the current period.

PART 6

Independent Review

Independent review into the functioning of the Protocol

21.—(1) This paragraph applies where the Presiding Officer notifies the Secretary of State that the Assembly has passed a consent resolution by a majority of the members voting but not with cross-community support.

(2) The Secretary of State must commission an independent review into the functioning of the Protocol in accordance with paragraphs 7 to 9 of the unilateral Declaration.

(3) The reference in this paragraph to the Presiding Officer has effect as a reference to the interim Presiding Officer if a person is holding that office in accordance with paragraph 16."

EXPLANATORY NOTE

(This note is not part of the Regulations)

Article 18 of the Protocol on Ireland/Northern Ireland to the Agreement on the withdrawal of the United Kingdom from the European Union makes provision for consent to be provided by the Northern Ireland Assembly to the continued application of Articles 5 to 10 of that Protocol. Consent must be given every 4 or 8 years depending whether it is given on a simple majority or cross-community basis.

These Regulations make provision for that democratic consent process. They do so by inserting a new Schedule 6A in the Northern Ireland Act 1998 (c. 47). Part 3 of that Schedule makes provision for the process that will apply in circumstances where there is a functioning Northern Ireland Executive. Part 4 makes provision for the process that will apply in circumstances where there is not a functioning Executive in place. This is consistent with the undertaking made by the United Kingdom Government in its declaration concerning the operation of the "Democratic consent in Northern Ireland" provision of the Protocol made on 17 October 2019 ("unilateral Declaration").

Where consent is given on a simple majority rather than cross-community basis, then Part 6 of new Schedule 6A requires the Secretary of State to commission an independent review into the functioning of the Protocol and the implications of any decision to continue or terminate alignment on social, economic and political life in Northern Ireland. Again, this is consistent with the undertakings made by the Government in the unilateral Declaration.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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