Dear Convener

Today the Government lodged our Supplementary Legislative Consent Memorandum for the UK Government’s European Union Withdrawal Bill (the Withdrawal Bill). Your committees will be considering the detail of the Memorandum in the coming weeks, and I look forward to engaging with your committees further to aid their scrutiny of the Memorandum.

During the passage of the Continuity Bill I committed the Scottish Government to making every effort to maximise the Parliament’s ability to scrutinise Brexit related regulations, whether being brought forward at Holyrood or Westminster. The need for effective joint working between Parliament and Government in this area was also acknowledged by your Committees during your earlier consideration of the Withdrawal Bill LCM. During the passage of the Continuity Bill, I also committed to sharing draft protocols as soon as possible.

In the Memorandum, we refer to the joint working between Scottish Government and the Scottish Parliament that has led to two draft protocols being produced relating to parliamentary scrutiny of the consent of Scottish Ministers to proposals being taken forward under UK Statutory Instruments under the Withdrawal Bill, and the scrutiny of Scottish Statutory Instruments being made under the Withdrawal Bill.

The first protocol (attached at annex A to this letter) sets out the arrangements for the Scottish Parliament to scrutinise instances where Scottish Ministers wish to give consent for the United Kingdom Government to correct a Brexit legislative deficiency via a UK Statutory Instrument. The second protocol (at annex B) sets out guiding criteria to enable Scottish Parliamentary committees to prioritise their scrutiny of Brexit SSIs should there be a large volume of these requiring scrutiny within a short time period.

The draft protocols are based on the European Union Withdrawal Bill, and both state that they can be reviewed. This is to give us the necessary flexibility to make procedural changes. One particular aspect that still needs to be addressed is what a sifting procedure may entail, my officials will work with Parliamentary colleagues to revise the protocols in the coming weeks. I hope that these drafts aid your Committees’ consideration of the Supplementary Legislative Consent Memorandum.
I am copying this letter to Joe Fitzpatrick, Minister for Parliamentary Business.

MICHAEL RUSSELL
Protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Bill in relation to proposals within the legislative competence of the Scottish Parliament

Introduction

1. This protocol sets out a shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the exercise by UK Ministers of powers under the European Union (Withdrawal) Bill (“the Bill”) in relation to proposals within the legislative competence of the Scottish Parliament.

2. The protocol also sets out how proposals for UK Statutory Instruments (SIs) will be categorised to help committees target their scrutiny in a proportionate manner. This protocol has been prepared prior to the Bill completing its passage through the UK Parliament and accordingly both the Scottish Government and the Scottish Parliament recognise that it may be necessary to re-visit the protocol.

3. The Scottish Government and the Scottish Parliament also recognise that it may be necessary to re-visit the protocol to consider whether its provisions should apply to other legislation relating to the UK’s withdrawal from the European Union. In particular, the protocol does not take in to account the provisions within the UK Withdrawal from the European Union (Legal Continuity)(Scotland) Bill (the Continuity Bill) at this stage. If the Bill is the mechanism for legislation this will involve consideration of the best way to ensure that the provisions in the Continuity Bill that are not on the face of the UK Bill are given effect to, and this may involve revisions to this protocol or the development of further protocols.

4. The protocol applies to proposals which may result in statutory instruments containing provision under clauses 7, 8 or 9 of the Bill where the provision could be made by the Scottish Ministers exercising their equivalent powers in Schedule 2 (“relevant provision”). Where there is agreement between the UK Government and the Scottish Government that the relevant provision should be subject to joint procedure (laid in both the UK Parliament and the Scottish Parliament) or be made in a Scottish Statutory Instrument (SSI) then the procedures set out in the protocol will not be required. In such instances, the Scottish Parliament will be able to scrutinise the instrument via either the joint procedure or the SSI procedure.

5. There is a separate protocol establishing the process for the consideration of SSIs under the Bill and the categorisation of such instruments.

Background

6. The Bill contains various delegated powers for:
   - UK Ministers to make regulations in all areas, including provisions within devolved competence;
   - Scottish Ministers to make regulations by SSI within devolved competence as defined in paragraphs 9 or 18 of Schedule 2;
• UK Ministers and Scottish Ministers to make regulations in a UK SI under a joint procedure.

7. In that regard the Bill is unusual in that it provides concurrent delegated powers to the UK Government and the Scottish Ministers to make provision within devolved competence as defined in paragraphs 9 and 18 of Schedule 2.

8. The UK Government has indicated, in its Delegated Powers Memorandum that accompanies the Bill, that it will not normally use the powers in the Bill to amend domestic legislation in areas of devolved competence without the agreement of the relevant devolved authority.

9. It is recognised that the Scottish Parliament has power to legislate for matters within devolved competence (as defined in paragraphs 9 and 18 of Schedule 2). However, where the Scottish Ministers consent to the power being exercised by UK Ministers alone in relation to devolved competence this will be done by SI. In such cases the Bill makes no provision for scrutiny by the Scottish Parliament of the exercise of that power. Both the Scottish Parliament and the Scottish Government recognise that, as a matter of principle, the Scottish Parliament should have the opportunity to consider in advance of the exercise of such powers whether it is content for the matter to be taken forward by SI rather than SSI.

10. As noted earlier, the protocol applies in respect of all SIs containing provision under clauses 7, 8 or 9 of the Bill where the provision could be made by the Scottish Ministers exercising their equivalent powers in Schedule 2 (“relevant provision”). However, the protocol recognises that that not all relevant provisions will merit the same level of scrutiny. In prioritising scrutiny capacity the Scottish Parliament will wish to take a proportionate approach. The proportionality issue is addressed by suggesting a differentiated scrutiny approach depending on the significance of the provision proposed.

Process

11. The Scottish Parliament should be notified about all proposals which may result in statutory instruments containing relevant provision prior to consent being given by Scottish Ministers to the UK Government to proceed. What the Scottish Parliament then does by way of scrutiny may vary depending of the significance of the proposal. The following process provides a guide as to how committees might wish to consider proposals for relevant provision in UK SIs, but it is not prescriptive or mandated.

Phase 1 - identification

12. Proposals for inclusion in SIs will emerge from deficiencies in legislation identified (by the Scottish Government or UK Government) that will need corrected as a consequence of UK withdrawal from the EU. Discussions will take place between the Scottish Government and UK Government counterpart departments on how to fix the deficiencies identified and the most appropriate legislative vehicle to use (UK Statutory Instrument, Scottish Statutory Instrument or instrument subject to Joint Parliamentary procedure). If the legislative vehicle considered appropriate is a UK Statutory Instrument then the process moves to phase 2.
Phase 2 - notification

13. At the earliest opportunity, the Scottish Government will notify the Scottish Parliament where the Scottish Ministers propose to give consent to proposals being included in UK SIs where the proposals would be within devolved competence. An early indication is important because if the Scottish Parliament recommends not to include provisions in a UK SI there needs to be sufficient time for the Scottish Government to prepare the necessary SSI. At this stage, the Scottish Government may or may not have seen the draft UK SI that the proposals are to be included in.

14. The notification will be by way of a Notification of Intention to Consent (Notification) accompanied by a letter from the relevant Scottish Minister to the relevant lead subject committee. The notification and letter should also be copied to the Convener of the Delegated Powers and Law Reform Committee.

15. A single notification to the Scottish Parliament may cover a number of proposals for correcting deficiencies or it may only cover a proposal to correct a single deficiency. This will be dependent on the nature of the legislation that is being corrected and the policy area. The precise timing of notifications may vary depending on the nature of what is being notified. However, the Scottish Government will share information with the Scottish Parliament about the expected timing and volume of notifications.

16. From the date of receipt of the notification from the Scottish Government, the Scottish Parliament will normally have a maximum of 28 days (subject to paragraph 18) in which to consider the notification.

17. The notification will detail—

- The name of the instrument in question (if known) or a title describing the policy area
- A brief explanation of law that the proposals amend
- Summary of the proposals and how these correct deficiencies
- An explanation of why the change is considered necessary
- Scottish Government categorisation of significance of proposals
- Impact on devolved areas
- Summary of stakeholder engagement/consultation
- A note of other impact assessments, (if available)
- Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislating
- Intended laying date (if known) of instruments likely to arise
- If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?
- Information about any time dependency associated with the proposal
- Any significant financial implications

Phase 3 – parliamentary scrutiny

18. As noted at paragraph 15, from the date of receipt of the notification from the Scottish Government, the Scottish Parliament will normally have a maximum of 28 days to consider the notification. For the purposes of this protocol, in calculating any period of days, no account shall be taken of any time during which the Scottish Parliament is
dissolved or is in recess for more than 14 days. The Scottish Parliament and the UK Parliament have different recess periods. The Scottish Government will seek to ensure that the United Kingdom Government is aware of Scottish Parliament recess periods and take them into account in its own legislative programming and that it respects the role of the Scottish Parliament under the terms of this protocol.

19. The Committee’s consideration will be of the Scottish Minister’s proposal to consent to the UK Parliament legislating as contained in the notification.

20. To support committee consideration of notifications this protocol categorises matters that may be included in a notification, so as to assist committees to prioritise scrutiny of more significant matters. The categories also suggest that there are particular matters that the Scottish Government and Scottish Parliament agree should be subject to the joint procedure or made provision for in an SSI rather than a UK SI.

21. This protocol sets out different levels of scrutiny based on the significance of the proposal to be included in a notification.

22. A suggested approach to scrutiny is set out in relation to each of the categories. There is flexibility for a committee to do more or less in terms of scrutiny than what is set out below, within the timeframe set out in paragraph 15.

23. The categories make no provision for particular policy areas to fall into any one of the categories, but it may become apparent that there are policy areas where there is significant stakeholder interest and substantive proposals within this policy should necessarily normally fall into a higher category.
• Category A

These are proposals for UK SIs containing relevant provision which the Scottish Ministers must notify to the Scottish Parliament prior to granting consent in the way described above. This would be a residual category of all proposals for SIs subject to the protocol, where the relevant provision is not significant enough to fall within categories B or C. It is expected that matters falling into this category would not necessarily be so significant as to require a committee to take evidence from the relevant Scottish Minister or stakeholders. While proposals under category A may not be significant, committees would retain the right to take evidence on such proposals for SIs should they wish to do so and could come to the view that the Scottish Parliament should not give its approval to the Scottish Ministers giving their consent to UK Ministers. Set out below is an illustrative guide to the type of matters that may fall into category A.

<table>
<thead>
<tr>
<th>Category A</th>
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<tbody>
<tr>
<td>It is expected that proposals for instruments falling into this category will have the following characteristics:</td>
</tr>
<tr>
<td>• Minor and technical in detail.</td>
</tr>
<tr>
<td>• Ensuring continuity of law.</td>
</tr>
<tr>
<td>• Clear there is no significant policy decision for Ministers to make.</td>
</tr>
<tr>
<td>• References which are no longer appropriate once the UK has left the EU, such as provisions which refer to “member states other than the United Kingdom” or to “other EEA states”</td>
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This is an illustrative list and not a comprehensive view of what falls into this category.
• Category B

Matters in category B are considered to be more significant than those contained in category A. Again these are proposals for UK SIs containing relevant provision which the Scottish Ministers must notify to the Scottish Parliament prior to granting consent in the way described above. It is expected, however, that these are matters where the lead committee may wish to take evidence on the notification from the Scottish Government (and potentially from external stakeholders where it is felt that the notification is significant). A committee would not be obliged, however, to take evidence. Again, based on its consideration of the notification, a committee could come to the view that the Scottish Parliament should not give its approval to the Scottish Ministers giving their consent to UK Ministers.

<table>
<thead>
<tr>
<th>Category B</th>
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<tbody>
<tr>
<td>It is expected that proposals for instruments falling into this category will have the following characteristics:</td>
</tr>
<tr>
<td>• Provision establishing a new public authority in the UK;</td>
</tr>
<tr>
<td>• Transfer of functions - providing for a function of an EU entity to be exercised by a public authority in the UK, irrespective of whether the public authority was established for the purposes of the EU (Withdrawal) Bill;</td>
</tr>
<tr>
<td>• Replacement, abolition, or modification of certain functions of EU institutions e.g. reporting (both receiving and making reports), monitoring, compliance and enforcement;</td>
</tr>
<tr>
<td>• Sub delegation - transferring EU legislative powers to a UK public authority;</td>
</tr>
<tr>
<td>• Sub-delegation - creating or amending a power to legislate;</td>
</tr>
<tr>
<td>• Provision which imposes, materially increases or otherwise relates to a fee in respect of a function exercisable by a UK public authority. This could also expressly include changes to the group of bodies or individuals required to pay such fees;</td>
</tr>
<tr>
<td>• Provision which creates, or widens the scope of, a criminal offence. Any provision which increases the penalty which may be imposed in respect of a criminal offence;</td>
</tr>
<tr>
<td>• Provision which involves a significant financial impact on individuals, business, public sector, the economy (this could be automatically elevated to category C if it met a particular financial threshold);</td>
</tr>
<tr>
<td>• Provision which creates, widens the scope of, or increases the level of fine for a fixed penalty.</td>
</tr>
</tbody>
</table>
• Category C

Finally, there are matters that it is considered should be subject to joint procedure in the UK and Scottish Parliaments, in accordance with paragraph 2 of Schedule 7 to the Bill. These are matters where it is considered that the Scottish Parliament will wish to consider the terms of the instrument not the proposal to legislate. This protocol does not identify matters falling into the category, but on the basis of experience the Scottish Government may come to the view that there are matters that should automatically fall into this category. In these instances, this protocol is not engaged as the Scottish Parliament will be able to scrutinise the instrument under the joint procedure. However, this category is included in this protocol for reference, to enable the Scottish Parliament to recommend to the Scottish Government that a proposal which may result in a UK SI is taken forward as an instrument under joint procedure.

Reporting

24. The lead Committee is under no obligation to use the full 28 day period outlined above, and may instead wish to write to the Scottish Government at an early stage to confirm that it is content with the Scottish Ministers’ proposal to consent to the proposals being included in a UK SI.

25. However, the Committee may wish to undertake consideration of the proposal to consent to the matters being included in a UK SI and make a report to the Parliament.

26. That report may make one of three recommendations—

1. That the Scottish Ministers should proceed to notify the UK Government of their decision to consent to the proposals being included in a UK SI to be made by UK Ministers.
2. That the Scottish Ministers should not consent to the proposal being included in a UK SI to be laid solely in the UK Parliament and instead request that the proposals be included in a UK SI to be made under the joint procedure.
3. That the Scottish Ministers should not consent to the proposals being included in a UK SI and instead should include the proposals in an SSI.

27. If a committee makes a recommendation as mentioned at sub-paragraph 2 or 3 of paragraph 25 then the lead Committee should notify the Scottish Government in writing. The Scottish Government should normally be given 7 days to respond. If the Scottish Government does not agree to the recommendation made then the Parliamentary Bureau should---

• by motion propose that the Scottish Parliament agrees to the Committee’s recommendation, and
• schedule time in the chamber for debate on the motion.

28. That debate may take place after the period of 28 days has expired, but should take place within 14 days following the expiry of the 28 day period.

29. If the Scottish Parliament agrees to the motion the Scottish Government would normally not consent to the proposal being included in a UK SI and would either
request that the proposal be included in a UK SI to be made under the joint procedure or include the proposal in an SSI, depending on what the committee recommended.

**Phase 4 – finalisation of the SI**

30. Where the Scottish Ministers have consented to proposals being included in a UK SI to be made by UK Ministers the UK Government will proceed with drafting, or finalising the SI in question. The Scottish Government will track which UK SI or SIs the proposals are included in. When in receipt of a draft SI, the Scottish Government will take a view as to whether the SI reflects the proposals that were consented to. The Scottish Government will either—

- Advise the Scottish Parliament when the SI is laid in the UK Parliament and that it is content that the SI is drafted in a manner that is consistent with the consent granted.
- Advise the Scottish Parliament in writing to the lead Committee and the Delegated Powers and Law Reform Committee that there has been a variation in the approach taken to the proposals included in the SI, but that the variation is not so significant as to engage the need for a further process of obtaining the Parliament’s approval. The letter will explain the Scottish Government’s reasons.
- Advise the Scottish Parliament that there has been a more substantive variation to the approach taken to the proposals included in the SI and that as such it no longer reflects what the Scottish Parliament approved and that an SSI will be laid or alternatively the instrument will be subject to the joint procedure.

**Revisions to this protocol**

31. This protocol will be kept under review. The Scottish Government or the Scottish Parliament may propose revisions to the protocol and both will need to agree to any revisions made.
Protocol on the scrutiny of SSIs made using powers under the European Union (Withdrawal) Bill

Introduction

1. This protocol sets out a shared understanding between the Scottish Government and the Scottish Parliament on the process for considering Scottish Statutory Instruments (SSIs) under the European Union (Withdrawal) Bill (“the Bill”).

2. This process does not replace the Parliament’s existing processes for the scrutiny of SSIs. The existing procedures for the consideration of SSIs under the Interpretation and Legislative Reform (Scotland) Act 2010 and in the Parliament’s Standing Orders continue to apply. This protocol augments those processes to assist committees in their scrutiny of SSIs.

3. The protocol sets out an approach which categorises SSIs, so as to assist Committees to prioritise their scrutiny in the event that the Scottish Ministers lay large numbers of instruments under the Bill before the Parliament. The protocol also establishes a role for the Delegated Powers and Law Reform Committee (“the DPLR Committee”) to “flag” instruments to lead committees where it holds a contrary view to the Scottish Government on the significance of an instrument.

4. This protocol has been prepared prior to the Bill completing its passage through the UK Parliament and accordingly both the Scottish Government and the Scottish Parliament recognise that it may be necessary to re-visit the protocol. It is also recognised that it may be necessary to re-visit the protocol to consider whether its provisions should apply to other legislation relating to the UK’s withdrawal from the European Union. In particular, the protocol does not take in to account the provisions within the UK Withdrawal from the European Union (Legal Continuity)(Scotland) Bill (the Continuity Bill) at this stage. If the Bill is the mechanism for legislation this will involve consideration of the best way to ensure that the provisions in the Continuity Bill that are not on the face of the UK Bill are given effect to, and this may involve revisions to this protocol or the development of further protocols.

5. There is a separate protocol establishing the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the exercise powers by the UK Ministers under the Bill in relation to proposals within the legislative competence of the Scottish Parliament.

Categorisation

Background

6. The Scottish Government and the Scottish Parliament agree that when dealing with high volumes of SSIs under the Bill, Scottish Parliament committees will wish to have as clear an indication as possible of which instruments are likely to be most significant, so as to prioritise their scrutiny. If such numbers are not forthcoming then the need for prioritisation may not be so acute.
7. This process is a guide to committees to assist in prioritisation. It neither requires committees to apply particular scrutiny to instruments nor does it limit what committees can do.

8. The Scottish Government will take a case by case view of what category an instrument should fall into. It is for the Scottish Parliament, and more specifically, the DPLR Committee to take a case by case view of whether or not it agrees with the category applied to the instruments by the Scottish Government.

**Categories**

9. This protocol sets out three different levels of scrutiny based on the significance of the SSI.

10. The normal processes would still apply to the consideration of laid only, negative and affirmative instruments. That is to say, all instruments will be considered by the DPLR Committee from a technical perspective irrespective of what category they fall into. Furthermore, all instruments will be referred to a lead committee, again irrespective of the category they fall into and they will be considered in the normal way that a laid only, negative or affirmative instrument would be considered.

11. The categories make no provision for particular policy areas to fall into any one of the categories, but it may become apparent that there are policy areas where there is significant stakeholder interest and substantive SSIs within this policy should normally fall into a higher category.

12. This protocol does not prescribe a process that lead committees should apply to the scrutiny of matters falling into the different categories, but by categorising instruments it provides committees with a guide as to what they might wish to prioritise.

13. As a guide, however, committees might not consider taking evidence on matters falling into the low category, but might wish to at least take evidence from the relevant Scottish Minister on matters falling into the medium category. On matters falling into the high category the Committee might wish to take evidence from the relevant Scottish Ministers and stakeholders.
Low

It is expected that proposals for instruments falling into this category will have the following characteristics:

- Minor and technical in detail.
- Ensuring continuity of law with no policy change.
- Clear there is no significant policy decision for Ministers to make.
- References which are no longer appropriate once the UK has left the EU, such as provisions which refer to “member states other than the United Kingdom” or to “other EEA states”.

This is an illustrative list and not a comprehensive view of what falls into this category. It would be expected that instruments falling into this category would be negative instruments.
Medium

It is expected that proposals for instruments falling into this category will have the following characteristics:

- More significant negative instruments.
- Instruments that are predominantly concerned with technical detail but include some more significant provisions that may warrant scrutiny by the subject committee.
- Instruments necessary for continuity where there may be a minor policy change involved, but limited policy choice and an “obvious” policy answer.
- Ministers have policy choice, but with limited implications. For instance, if there is only one obvious policy option as to which body may provide an opinion or receive a report, then this may fall within this category.

High

Generally, this category should at least cover matters that the European Union (Withdrawal) Bill has affirmative procedure for although there may be some affirmative instruments that might fall into category 2. Category 3 should cover—

- Provision establishing a new public authority in the UK;
- Transfer of functions - providing for a function of an EU entity to be exercised by a public authority in the UK and there is a policy choice about what that public authority should be, irrespective of whether the public authority was established for the purposes of the EU (Withdrawal) Bill. For example, a regulatory function could theoretically be done by either SEPA or Scottish Water, therefore Parliament may have an interest in the policy choice made by Scottish Ministers;
- Replacement, abolition, or modification of certain EU functions e.g reporting (both receiving and making reports), monitoring, compliance and enforcement;
- Sub delegation - transferring EU legislative powers to a UK public authority;
- Sub-delegation - creating or amending a power to legislate;
- Provision which materially increases or otherwise relates to a fee in respect of a function exercisable by a UK public authority. This could also expressly include changes to the group of bodies or individuals required to pay such fees;
- Provision which creates, or widens the scope of, a criminal offence. Any provision which increases the penalty which may be imposed in respect of a criminal offence;
- Provision which involves a significant financial impact on individuals, business, public sector, the economy;
- Provision which creates, widens the scope of, or increases the level of fine for a fixed penalty.
**Process of categorisation**

*Phase 1 – categorisation of SSIs by the Scottish Government and other information to accompany SSIs*

14. At this stage, it is unclear how many SSIs will be laid under the Bill, but it is expected that there will a significant number and it is imperative that the Scottish Government and the Scottish Parliament work closely together to plan scrutiny of the SSIs.

15. As is currently the case, the Scottish Government will share information with the Scottish Parliament about upcoming SSI activity. This information sharing will help identify when there are likely to be increased volumes of SSIs overall, and increased volumes that may impact particular subject Committees.

16. The laying process for SSIs under the Bill in the Scottish Parliament will be similar to the process for laying at present. However, the information to be supplied to support an instrument is more extensive.

17. Amongst other things, the Scottish Government will be required to advise the Scottish Parliament as to which category it considers the SSI falls in to. In doing so the Scottish Government will apply the approach set out in this protocol. The Scottish Government will, however, consider each SSI on a case-by-case basis to assess whether the categorisation is appropriate.

18. SSIs that are laid in the Scottish Parliament have an explanatory note that sets out what the instrument does and is accompanied by a separate policy note. These will contain much of the information that the Scottish Parliament requires to aid scrutiny of the SSIs. The information in the policy note includes:

- a summary of the consultation carried out,
- the policy objectives of the instrument
- a note of any impact assessments undertaken or prepared,
- a note of significant financial implications.

In addition to the information that is ordinarily included in the accompanying documents, SSIs made under this Bill will also include:

- an explanation of the existing EU law,
- the reasons for and effect of the proposed change,
- a statement explaining why the Minister considers the change necessary,
- an indication of how the instrument should be categorised in relation to the significance of the change proposed,

*Phase 2 – DPLR Committee consideration*

19. Once an instrument has been laid before the Scottish Parliament it will be considered by the DPLR Committee in its normal way, applying technical scrutiny to the instrument.

20. At the same time the DPLR Committee will consider whether it agrees with the category applied to the instrument by the Scottish Government.
21. Where the DPLR Committee considers that the category applied to the instrument is not correct, it will flag this in its report to the lead committee. In flagging this to the lead committee the intention is to assist committees to prioritise the level of scrutiny applied to instrument. However, flagging an instrument does not mean that the lead committee is obliged to undertake the level of scrutiny suggested by the DPLR Committee. A committee might wish to undertake detailed scrutiny of an instrument in the low category and it might equally not wish to apply detailed scrutiny to an instrument in the high category.

Phase 3 – lead committee consideration

22. Lead committees will be obliged to undertake the normal scrutiny process applied to instruments. That is to say, if it is an affirmative instrument, the lead committee will take evidence from the relevant Minister on a motion recommending approval and make a recommendation to the Parliament; if it is a negative instrument the lead committee must consider it; and if it is a laid only instrument the lead committee may consider it, but must do so only where it breaches the laying requirements.

23. Beyond meeting these requirements it is for the lead to decide what, if any, further consideration it would wish to take.

24. In considering what further action to undertake the Committee may wish to take account of the categorisation applied to the instrument by the Scottish Government or the fact that an instrument has been flagged by the DPLR Committee.

Revisions to this protocol

25. This protocol will be kept under review. The Scottish Government or the Scottish Parliament may propose revisions to the protocol and both will need to agree to any revisions made.