

**Explanatory Memorandum to The Equality Act 2010 (Statutory Duties)
(Wales) (Amendment) (EU Exit) Regulations 2019**

This Explanatory Memorandum has been prepared by the Education and Public Services Equality Branch as part of the Communities Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018.

Mark Drakeford
First Minister of Wales

18 December 2018

PART 1

1. Description

1.1 As a consequence of the UK's withdrawal from the European Union, an amendment is required to the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 ("the 2011 Regulations") at regulation 18 (public procurement). Regulation 18 includes a reference to the 'Public Sector Directive' and it is this deficiency that needs to be corrected.

1.2 The amendment is purely technical in nature and will provide a similar correction to that required to Section 155 (2) and (3) of the Equality Act 2010.

1.3 On 13 December, UK Government laid for sifting consideration by Parliament, the Public Procurement (Amendment) (EU Exit) Regulations 2019 which makes the same technical amendments to section 155(2) and (3) of the Equality Act 2010. Standing Order 30A, relating to Statutory Instrument Consent (SICM), was engaged and the SICM was laid before the National Assembly for Wales 18 December.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 The Welsh Ministers have powers under section 11 of, and paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 ("the 2018 Act") to correct failures of "retained EU law" to operate effectively, and other "deficiencies" arising from the withdrawal of the United Kingdom from the European Union.

2.2 The amendment in this instrument corrects "deficiencies" within "retained EU law". It is proposed that the instrument be subject to annulment procedure. Instruments under the 2018 Act must first be laid for sifting by the CLA Committee. The instrument makes minor and technical changes and the amendment has no substantive effect on equalities nor on the operation of the Public Sector Equality Duty in Wales.

2.3 The UK Government Cabinet Office is leading on the amendment to section 155(2) and (3) of the Equality Act 2010 to correct similar references. The 2011 regulations flow from the Equality Act 2010 and so the two should be consistent with one another. The amendment will replace references to the "Public Sector Directive" with references to the "Public Contracts Regulations 2015" ("the 2015 Regulations").

3. Legislative background

3.1 This instrument relates to the withdrawal of the United Kingdom from the European Union and is being made under section 11 of, and paragraph 1(1) of Schedule 2 to the 2018 Act. The Leader of the House and Chief Whip has made relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

4.1 The instrument amends a reference to an EU Directive which will not be applicable when the United Kingdom leaves the European Union. Therefore this instrument is required to ensure that the 2011 Regulations remain clear, workable and fit for purpose after EU exit.

What did any relevant EU law do before exit day?

4.2 The legislation outlined in paragraph 1.1 contains references to the 'Public Sector Directive'. Before exit day, this reference is relevant because the Public Sector Directive applies to the UK as a EU Member State.

Why is it being changed?

4.3 The technical changes made by this instrument will remove references to the Public Sector Directive because this will no longer be of relevance to the UK post EU exit.

What will it now do?

4.6 The instrument will provide that the terms which are currently defined in Regulation 18 of the 2011 Regulations, by reference to the Public Sector Directive, will be instead defined by reference to The 2015 Regulations, as of exit day. The effect of the amendment is minimal because the 2015 Regulations gave effect to the Public Sector Directive so, in practice, the amendment to the definitions has little impact but the amendment allows for the 2011 Regulations to read clearly and accurately post EU exit, by reference to domestic legislation, rather than EU law.

5. Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been conducted. No policy change is introduced through these amending Regulations. The Regulations are technical in nature and intended solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6.2 These amending Regulations have no impact on the statutory duties as set out in sections 77 to 79 of the Government of Wales Act 2006 or the statutory partners as set out in Sections 72 to 75 of the Government of Wales Act 2006.

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4)	Applies to Ministers of	A statement to explain what, if

	and (5) of paragraph 28, Schedule 7	the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or	A statement to explain why it is appropriate to create such a sub-delegated power.

		paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The First Minister has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because this instrument provides for necessary technical amendments and makes no substantive changes to equality law in Wales”.

2. Appropriateness statement

2.1 The First Minister has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Equality Act 2010 (Statutory Duties) (Wales) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because the amendments are technical in nature and designed to address failures of retained EU law to operate effectively after exit day”.

3. Good reasons

3.1 The First Minister has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the instrument makes technical amendments to definitions of certain terms in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 simply to allow those Regulations to operate effectively post EU exit.

4. Equalities

4.1 The First Minister has made the following statement “The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

4.2 The First Minister has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“I have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

6.1 Not applicable.

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable.