

Explanatory Memorandum to the Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023

This Explanatory Memorandum has been prepared by the Education, Social Justice and Welsh Language Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above Regulations and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023.

Jeremy Miles MS
Minister for Education and the Welsh Language
20 June 2023

1. Description

The Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023 ('the Regulations') amend the list of relevant Welsh authorities in Part 2 of Schedule 19 to the Equality Act 2010 ('the 2010 Act') in order to add the Commission for Tertiary Education and Research ('the Commission'), and remove the Higher Education Funding Council for Wales ('HEFCW')

Those provisions come into force on the 4th September 2023.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The Legislation, Justice and Constitution Committee will wish to note that these Regulations amend the 2010 Act to make the Commission for Tertiary Education and Research a public authority for the purposes of section 149 of that Act, thereby subject the Commission to the Public Sector Equality Duty, that is the 'due regard' duty to ensure that advancement of equality of opportunity, the elimination of discrimination, and the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it, are key considerations when it is carrying out its functions.

The transitional provision in the Regulations in respect of HEFCW will apply until section 23 of the TER Act is brought into force, this will be provided for through a commencement Order to be made ahead of the Commission becoming operational in April 2024.

3. Legislative background

The powers enabling these Regulations to be made are contained in section 151(2) of the 2010 Act. Section 151(2) provides that the Welsh Ministers may add a relevant Welsh authority to Part 2 of Schedule 19, subject to their having consulted with the EHRC.

These Regulations are subject to the affirmative resolution procedure by virtue of section 209(2), (3)(b) and (6) of the 2010 Act.

Subject to approval by the Senedd, these Regulations will be made by the Minister for Education and the Welsh Language and come into force on 4th September 2023.

4. Purpose and intended effect of the Legislation

The Regulations amend Part 2 of Schedule 19 to the 2010 Act in order to make the Commission a relevant Welsh authority for the purposes of the Public Sector Equality Duty and to remove reference to HEFCW.

The Commission was established by section 1 of the Tertiary Education and Research (Wales) Act 2022 (as commenced by the Tertiary Education and Research (Wales) Act 2022 (Commencement No. 1) Order 2022).

The Regulations include transitional provision providing that the reference to the Commission is to be read as including reference to HEFCW until section 23 of the TER Act is brought into force. Section 23 of the TER Act provides for the dissolution of HEFCW.

5. Consultation

In accordance with section 152(2) of that Act, the Welsh Ministers have consulted the Commission for Equality and Human Rights who have confirmed they are content for the Regulations to be made in reliance on the Welsh Ministers' powers in section 151(2).

6. Regulatory Impact Assessment (RIA)

A separate regulatory impact assessment has not been prepared in respect of these Regulations. However, the regulatory impact assessment to accompany the TER Act at its introduction to the Senedd assessed the potential costs and benefits associated with establishing the Commission.

It was assumed for the purpose of this regulatory impact assessment that exercising such duties as the public sector equality duty will be something which was undertaken by the corporate body function of the Commission and the costs for exercising such duties are included in the range of costs provided in the regulatory impact assessment which accompanied the Act.