Explanatory Memorandum to the Equality Act 2010 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021

This Explanatory Memorandum has been prepared by the Local Government Department of the Welsh Government and is laid before Senedd Cymru in conjunction with the above Order 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 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021.

Julie James MS
Minister for Housing and Local Government

23 February 2021
1. Description

The Equality Act 2010 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021 amends Part 2 of Schedule 19 to the Equality Act 2010 to provide that corporate joint committees established by regulations made under Part 5 of the Local Government and Elections (Wales) Act 2021 are subject to the provisions of the Equality Act 2010 where relevant.

Those provisions come into force on the 1 April 2021.

2. Matters of special interest to the Equality, Local Government and Communities Committee

The Equality, Local Government and Communities Committee will wish to note that this Order amends the Equality Act 2010 so as to make Corporate Joint Committees subject to the Public Sector Equalities Duty within that Act. The Order forms part of a package of instruments which underpin the establishment of Corporate Joint Committees. It is intended that additional regulations will be made as part of the wider package of instruments to ensure that Corporate Joint Committees are also subject to the Socio Economic Duty within the act. This approach is in line with the phased approach taken to the development of the Corporate Joint Committee regulations. The phased approach prioritises those duties, such as the Public Sector Equality Duty, which govern how a Corporate Joint Committee establishes themselves and which need to apply to the Corporate Joint Committees from establishment or as soon as possible thereafter. The Socio Economic duty will be applied to Corporate Joint Committees in advance of the commencement of their substantive duties in relation to Strategic Development Planning, Transport Planning and the Economic Wellbeing function (due to commence in February 2022).

3. Legislative background

The powers enabling this Order to be made are contained in section 151(2) of the Equality Act 2010. Section 151(2) provides the Welsh Ministers with a power to amend by Order the list of Relevant Welsh Authorities to which the Public Sector Equality Duty (section 149) within the Equality Act 2010.

This Order will be subject to the affirmative resolution procedure in the Senedd by virtue of section 209(2) and (3)(b) of the Equality Act 2010.

Subject to approval by the Senedd, the Order will be made by the Minister for Housing and Local Government and come into force on 1 April 2021.

4. Purpose and intended effect of the legislation

The Equality Act 2010 (Public Authorities subject to the Public Sector Equality Duty) (Wales) Order 2021 (“amendment Order”) amends Part 2 of Schedule 19 to the Equality Act 2010. The amendment Order provides that Corporate Joint Committees established under Part 5 of the Local Government and Elections (Wales) Act 2021 are subject to the Public Sector Equality duty (Section 149) of the Equality Act 2010.
The amendment Order forms a package of amendments to legislation that will underpin all Corporate Joint Committees and put in place the necessary legislative framework for the effective administration and governance of Corporate Joint Committees.

Corporate Joint Committees are corporate bodies, established via regulation, and consist of those principal councils in Wales which are specified in the establishment regulations. In some circumstances National Park authorities in Wales are also included in a Corporate Joint Committee, where this is the case this will also be set out in the relevant Corporate Joint Committee establishment regulations.

The overall intent in establishing Corporate Joint Committees is that a Corporate Joint Committee will be treated as part of or a member of the ‘local government family’ and largely subject to the same or similar powers and duties as local authorities in the way that they operate and are governed.

The amendment Order seeks to ensure that Corporate Joint Committees are subject to the Public Sector Equality Duty within the Equality Act 2010. The intention is that Corporate Joint Committees will be subject to a number of the duties within the Equality Act 2010. For example, The Corporate Joint Committees (General)(Wales) Regulations 2021 which sit alongside this Order amends section 59 of the Equality Act 2010 to ensure equality of treatment of members of a Corporate Joint Committee by the Corporate Joint Committee. It is also intended to apply the Socio Economic Duty within the Equality Act 2010 to Corporate Joint Committees before the functions each CJC exercises commence.

The amendments within this Order amends Part 2 of Schedule 19 of the Equality Act 2010 so as to add Corporate Joint Committees to the list of relevant authorities to which the Public Sector Equality Duty (under Section 149 of that Act) applies.

5. Consultation

Section 151(2) of the Equality Act 2010 provides that the Welsh Ministers must, before making regulations using the power in section 151(2) of that Act, consult with the Equality and Human Rights Commission.

The Welsh Ministers have consulted the Equalities and Human Rights Commission in Wales. The Equalities and Human Rights Commission in Wales agreed that it would be appropriate for the Public Sector Equalities Duty to apply to Corporate Joint Committees.

In addition, the application of wider public body duties was considered as part of the consultation on the draft Corporate Joint Committee Establishment Regulations which ran from 12 October 2020 to 4 Jan 2021. In line with the approach to treating Corporate Joint Committees as part of the ‘local government family’ respondents agreed that Corporate Joint Committees should be subject to the same public body duties as principal councils in Wales – including the Public Sector Equality Duty within the Equality Act 2010.
6. Regulatory Impact Assessment (RIA)

A separate regulatory impact assessment has not been prepared in respect of this Order. However, the regulatory impact assessment to accompany The Mid Wales Corporate Joint Committee Regulations 2021, The North Wales Corporate Joint Committee Regulations 2021, The South East Wales Corporate Joint Committee Regulations 2021 and The South West Wales Corporate Joint Committee Regulations 2021 assessed the potential costs and benefits associated with establishing the Corporate Joint Committees through regulations. In assessing the potential costs and benefits the RIA considers the overarching policy intent that Corporate Joint Committees should be treated as part of the 'local government family' including wider public sector duties such as those in the Equality Act 2010. The costs associated with the application of the Equality Act 2010 to Corporate Joint Committees was considered therefore as part of the regulatory impact assessment on the Corporate Joint Committees regulations themselves.

A copy of the RIA to accompany The Mid Wales Corporate Joint Committee Regulations 2021, The North Wales Corporate Joint Committee Regulations 2021, The South East Wales Corporate Joint Committee Regulations 2021 and The South West Wales Corporate Joint Committee Regulations 2021 is available as part of the relevant documentation to accompany those regulations: