

SL(6)362 – The Equality Act 2010 (Relevant Welsh Authorities) (Amendment) Regulations 2023

Background and Purpose

These Regulations amend Schedule 19 to the Equality Act 2010 (“the 2010 Act”). Schedule 19 sets out the public authorities which are subject to the public sector equality duty under section 149 of the 2010 Act, which provides that a public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Regulations amend Part 2 of Schedule 19 to the 2010 Act to replace the Higher Education Funding Council for Wales (“HEFCW”) with the new Commission for Tertiary Education and Research (“CTER”), following the passing of the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”). The Regulations will come into force on 4 September 2023 but until section 23 of the 2022 Act comes into force, the reference to CTER in the 2010 Act will be read as including HEFCW.

Procedure

Draft affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

There are two points to note in the headnote to the Regulations:-

- a) the English text does not use the standard headnote for draft affirmative statutory instruments. As a result, the words “for approval” appear twice within the sentence; and



b) there is a difference between the English and Welsh text in both headnotes as the words “for approval by resolution of Senedd Cymru” are missing from the Welsh version.

2. Standing Order 21.2(v) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 2(b) fails to identify with certainty where the new entry should be included in Part 2 of Schedule 19 to the Equality Act 2010.

Describing an insertion as being made at “the appropriate place” is only appropriate when the entries are all listed in alphabetical order, so that it is clear where the new entry should be inserted. However, the previous amendments to the same list of other educational bodies have inserted their new entries at the end of the list. As a result, the entries in the existing list are not all in alphabetical order so there could be uncertainty as to where to insert the new entry at the beginning of the list or at the end of the list.

Previous amendments made to Part 2 of Schedule 19 have all described more precisely the location of the insertion by stating “Under the sub-heading “Other educational bodies”....”;

3. Standing Order 21.2(v) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 3 amends Part 2 of Schedule 19, but it does not state that this is Part 2 of Schedule 19 to the 2010 Act. Regulation 3 does refer to the 2022 Act and it is therefore possible that a person reading regulation 3 in isolation would be confused as to its meaning. Reference to the 2010 Act is also missing in the heading to regulation 2.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Committee notes that these Regulations come into force on 4 September 2023, yet CTER was established on 15 December 2022. The Welsh Government is asked to confirm why these Regulations are being made to take effect on 4 September 2023 rather than 15 December 2022 or in April 2024, which is when the Explanatory Memorandum states that section 23 of the 2022 Act will come into force.

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Paragraph 2 of the Explanatory Memorandum refers to the public sector equality duty as:

...the “due regard” duty to ensure that advancement of equality of opportunity and elimination of discrimination...



This description omits the third strand of the public sector equality duty, namely to have due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. If a provision of an Act is to be described in an Explanatory Memorandum it is important that this is done accurately to avoid any misunderstanding. The Welsh Government is therefore asked to explain why it only refers to two strands of the duty and not the third.

Welsh Government response

A Welsh Government response is required to each of the reporting points.

Legal Advisers

Legislation, Justice and Constitution Committee

12 June 2023



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee