

STATUTORY INSTRUMENT CONSENT MEMORANDUM

Public Procurement (Amendment) (EU Exit) Regulations 2019 which contain amendments to Section 155 (2) and (3) of the Equality Act 2010

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Public Procurement (Amendment) (EU Exit) Regulations 2019 were laid before Parliament on 13 December 2018. The Regulations can be found at:

<http://www.legislation.gov.uk/ukdsi/2019/9780111176788/contents>

Summary of the Regulations and their objective

3. The objective of the SI, in the main, is to correct deficiencies in legislation arising from the UK leaving the European Union as provided for by the European Union (Withdrawal) Act 2018.
4. The Regulations make amendments to a suite of procurement related legislation but the amendments to which this SICM relates are technical amendments to section 155 (2) and (3) of the Equality Act 2010. These amendments are required to ensure this provision of the Equality Act 2010 can continue to operate effectively post EU exit.
5. The SI to which this Statutory Instrument Consent Memorandum relates has been laid in the UK Parliament under the negative procedure, which will automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the provisions that amend the primary legislation referenced in this Memorandum would come into force on exit day.

Provisions to be made by the Regulations for which consent is sought

6. The primary legislation that is within the legislative competence of the Assembly that is to be amended by the draft SI, is section 155(2) and (3) the Equality Act 2010, which itself is amended by regulation 3 of the Regulations. The amendment provides for defining a term by reference to the Public Contracts Regulations 2015, rather than by reference to the Public Sector Directive. The Public Contract Regulations 2015 are domestic regulations which gave effect to the Public Sector Directive.

7. It is the view of the Welsh Government that the provisions described above fall within the legislative competence of the National Assembly for Wales, and could be the subject of a National Assembly Bill.

Why is it appropriate for the Regulations to make this provision

8. This amendment is relatively minor and is technical in nature given that it provides for certain terms to be defined by reference to a set of domestic regulations which gave effect to an EU Directive, rather than by reference to the EU Directive itself. There is no divergence between the Welsh Government and the UK Government in relation to the policy of the correction. Making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In the exceptional circumstances presented by EU exit, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Financial implications

9. There are no anticipated financial implications for the Welsh Government associated with these Regulations.

Prof Mark Drakeford AM
First Minister of Wales
18 December 2018