

Explanatory Memorandum to “The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2020”

This Explanatory Memorandum has been prepared by the Welsh Government Education Public Services Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister’s Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of “The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2020”

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum

Kirsty Williams, MS
Minister for Education

11 November 2020

PART 1

1. Description

1.1 The Regulations make technical amendments to the Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 ("the 2019 Regulations") which arise as a result of amendments made to the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 ("RPQ Regulations 2019") by the Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) Regulations 2020 ("PQS 2020 Regulations").

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

2.1 This instrument is being made under section 132 of the Education Act 2002 and section 11 of and paragraph 1 of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act"). As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum this instrument will be subject to the negative procedure. The Legislation, Justice and Constitution Committee considered this instrument on Monday 2 November and have laid their report. The report can be found at <https://senedd.wales/laid%20documents/cr-ld13657/cr-ld13657-e.pdf> and notes that the Committee agrees that the appropriate procedure for these Regulations is the negative resolution procedure. The instrument makes minor consequential amendments and as such is appropriate to be subject to annulment.

3. Legislative background

- a) This instrument is being made using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- b) Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under section 132(1) and (2) of the Education Act 2002 in relation to prescribing requirements to be met in order to attain the status of qualified teacher. The functions conferred on Senedd Cymru under these sections were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 made amendments to the School Teachers' Qualifications (Wales) Regulations 2012 in relation to the recognition of teachers' qualifications in Wales in accordance with the Recognition of Professional Qualifications (Amendment etc) (EU Exit) Regulations 2019.

Why is it being changed?

4.2 This instrument makes minor consequential amendments to the Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 in accordance with the changes made to the Recognition of Professional Qualifications (Amendment etc) (EU Exit) Regulations 2019 by the Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) Regulations 2020.

What will it now do?

4.3 The instrument makes minor technical amendments to the Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 to update cross-references to provisions in the Recognition of Professional Qualifications (Amendment etc) (EU Exit) Regulations 2019 as changed by the Professional Qualifications and Services (Miscellaneous Provisions) (EU Exit) Regulations 2020. It will have little to no impact on Welsh Government education policy in regard to teacher qualifications; the instrument is intended to enable the current legislative and policy framework to remain effective.

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 effective following the end of the Implementation Period. We have consulted with Education Workforce Council as the competent authority for teachers in Wales. A consultation on the draft regulations for the EWC to consider was held 10th September 2020 to 21st September 2020. EWC advised they were content with the regulations and had no further comments to make. Ongoing engagement with EWC as the competent authority responsible for implementing the regulations will continue.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been conducted. The Regulations are technical in nature and intended to enable the current legislative and policy framework to remain effective following the withdrawal of the United Kingdom from the European Union. No, or no significant, impact on the private or voluntary sector is foreseen as a result of the instrument.

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.

Annex

Statements under the European Union (Withdrawal) Act 2018

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 Legislation, Justice and Constitution Committee (as sifting committee)
Appropriate-ness	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	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) 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	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) 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 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 8(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.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or 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 Minister for Education, Kirsty Williams has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of the Senedd (i.e. the negative procedure)”. This is because this instrument provides for minor technical amendments intended to enable the current legislative and policy framework to remain effective.

2. Appropriateness statement

- 2.1 The Minister for Education, Kirsty Williams has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2020 do 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 IP completion day”.

3. Good reasons

- 3.1 The Minister for Education, Kirsty Williams 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 in relation to the regulations covering the qualification of teachers in Wales.”

4. Equalities

- 4.1 The Minister for Education, Kirsty Williams has made the following statement

“The instrument does 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 Minister for Education, Kirsty Williams has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Kirsty Williams, 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

Not applicable

8. Urgency

- 8.1 Not applicable.