

Equalities, Human Rights and Civil Justice Committee

10th Meeting, 2022 (Session 6), Tuesday 29 March 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instrument:
 - [2022/Draft: The Equality Act 2010 \(Specific Duties\) \(Scotland\) Amendment Regulations 2022](#)

2022/Draft: The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2022

2. The draft SSI is being laid before the Scottish Parliament under sections 153(3) and 207(4) of the Equality Act 2010 (“the 2010 Act”). The affirmative instrument is subject to approval by resolution.
3. The purpose of this instrument is to apply the Scottish specific equalities duties, as set out in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended), to Environmental Standards Scotland (“ESS”).

Delegated Powers and Law Reform Committee Consideration

4. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on [1 March 2022](#). The DPLR Committee agreed that it did not need to draw the Parliament’s attention to the instrument on any grounds within its remit.
5. A copy of the Scottish Government Policy Note is included at Annexe A together with links to any associated documents.

Equalities, Human Rights and Civil Justice Committee Consideration

Procedure for Affirmative instruments

6. The draft instrument was laid on 21 February 2022 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to affirmative procedure (Rule 10.6). It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instrument should be approved.
7. The Cabinet Secretary for Net Zero, Energy and Transport has, by motion [S6M-03277](#), proposed that the Committee recommends the approval of the instrument. **The Committee is therefore required to report to the Parliament by 1 April 2022.**
8. The Cabinet Secretary for Net Zero, Energy and Transport is due to attend the Committee meeting on 29 March to answer any questions on the instrument and to move the motion for approval.

Recommendation

9. **It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument.**
10. **The Committee is asked to delegate to the Convener authority to approve a short, factual report on the instrument for publication.**

Clerks to the Committee
23 March 2022

Annexe A

Scottish Government Policy Note

The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2022

The above instrument is proposed to be made in exercise of the powers conferred by sections 153(3) and 207(4) of the Equality Act 2010 (“the 2010 Act”). The instrument is subject to the affirmative procedure.

Purpose of the instrument

The purpose of the instrument is to apply the Scottish specific equalities duties, as set out in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended), to Environmental Standards Scotland (“ESS”).

Policy objectives

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (“the 2021 Act”) established ESS and sets out its functions and powers – namely, to monitor public authorities’ compliance with environmental law and the effectiveness of environmental law and of how it is implemented and applied.

The purpose of this instrument is to list ESS in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended) (“the 2012 Regulations”), making ESS subject to the equalities duties in the 2012 Regulations. These duties include: assessing the impact of new or revised policies or practices on the needs set out in the public sector equality duty; publishing equality outcomes and reporting on progress on meeting those outcomes; reporting on mainstreaming equality; publishing information on the gender pay gap and equal pay; gathering employee information in relation to protected characteristics and using this information to better perform the public sector equality duty; and taking account of the public sector equality duty in the context of procurement.

This instrument also makes provision for the time periods within which certain duties must be complied with.

Consultation

In accordance with the requirement under section 153(4) of the 2010 Act, the Commission for Equality and Human Rights was consulted and is content with the proposal to list ESS in the 2012 Regulations.

ESS has also been consulted and supports the policy.

Impact Assessments

An equality impact assessment (“EQIA”) was undertaken in relation to the UK Withdrawal from the European Union (Continuity) (Scotland) Bill (“the Bill”) which preceded the 2021 Act. That EQIA was carried out in June 2020 and is published here: <https://www.gov.scot/publications/continuity-bill-equality-impact-assessment/documents/>

The EQIA made reference to the intention for ESS to be made subject to the specific equalities duties in the 2012 Regulations. This instrument therefore seeks to achieve that policy objective. As the proposals in this instrument are primarily consequential in nature to the 2021 Act, it was considered that it was possible to rely upon the conclusions of the previous EQIA for this instrument.

A Child Rights and Wellbeing Impact Assessment (“CRWIA”) was not required for this instrument. These impacts were considered as part of the development of the Bill and it was considered that a CRWIA was not required, as recorded here: <https://www.gov.scot/publications/continuity-bill-child-rights-wellbeing-impact-assessment/>

A Fairer Scotland Duty Assessment was not considered required for this instrument. It was concluded that the Fairer Scotland Duty did not apply to the development of the Bill, as outlined here: <https://www.gov.scot/publications/continuity-bill-fairer-scotland-duty/>

An Islands Communities Impact Assessment was not required for this instrument, as the instrument is not considered likely to have an effect on an island community which is significantly different from its effect on other communities.

A Strategic Environmental Assessment was not required for this instrument as the instrument is not considered to have any significant environmental effects.

Financial effects

The Cabinet Secretary for Net Zero, Energy and Transport confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

A BRIA was carried out in the development of the Bill and is available here: <https://www.gov.scot/publications/continuity-bill-business-regulatory-impact-assessment/>