

## Equality Impact Assessment (EIA) Template – Part 1

<b>Policy title and purpose (brief outline):</b>	<b>The Law Derived from the European Union (Wales) Bill</b>  The principal objectives of the LDEU Bill are to provide stability and certainty for Welsh citizens and businesses on the UK's withdrawal from the European Union. As a general rule, this will mean that the same rules and laws will apply in Wales on the day after exit as on the day before.
<b>Name of official:</b>	<b>Sian Brown</b>
<b>Department:</b>	<b>Office of the First Minister and Cabinet Office</b>
<b>Date:</b>	<b>01/03/2018</b>
<b>Signature:</b>	

## 1. Please provide a brief description of the policy/decision.

On 13 July 2017, the UK Government introduced the European Union (Withdrawal) Bill (“the EU (Withdrawal) Bill”) in the House of Commons. The EU (Withdrawal) Bill repeals the European Communities Act 1972 and provides that on the UK’s exit from the EU the entire body of EU law (subject to some specified exceptions) is incorporated into domestic law.

The Welsh Government agrees that legislation is required to provide stability and continuity as the UK withdraws from the EU. It is essential that clarity and certainty are provided for citizens and businesses during a period of unprecedented changes. A Bill enacted by the UK Parliament, for the UK as a whole, which respected the devolution settlement would be the best way to achieve this. However, when the UK Government introduced, in July, its EU (Withdrawal) Bill as the legislative vehicle to deliver this objective, it was clear that this was not its approach.

The Welsh Government, together with the Scottish Government, has sought to address their concerns about the EU Withdrawal Bill by working with the UK Government to amend it. In the absence of an agreement, the Welsh Government and Scottish Government jointly published a number of amendments to the UK Bill that, if passed, would respect the devolution settlements. Those amendments were tabled, debated and voted on at Commons Committee stage but were not passed.

As the proposed amendments to the EU (Withdrawal) Bill sought by the Welsh Government were not passed and no meaningful amendments were brought forward by the UK Government, the Welsh Ministers remain unable to recommend that the Assembly gives its consent in relation to the EU (Withdrawal) Bill.

The UK Government has indicated that it will be bringing forward amendments to the devolution aspects of the UK Bill at Lords Committee stage. The Welsh Government continues to work with the UK Government to seek an agreement on amendments to the EU (Withdrawal) Bill but has had to prepare for the possibility that the Assembly withholds its consent. This preparation has included the development of the Law Derived from the European Union (Wales) Bill (“the LDEU Bill”).

The LDEU Bill has two main objectives. The first objective, consistent with the EU (Withdrawal) Bill, is to ensure that the law continues to function effectively on the UK’s withdrawal from the EU. The second objective is to ensure that the Assembly and Welsh Ministers are responsible for taking the necessary legislative steps in relation to EU law applying in relation to Wales in devolved areas.

### **EU DERIVED WELSH LAW**

Subject to the Assembly passing the LDEU Bill, it will provide powers for the Welsh Ministers, by regulations, to create a body of EU derived Welsh law. This is made up of provision on devolved matters contained in:

- Direct EU law,
- EU derived enactments, and

- Provision made under EU related powers.

As EU derived Welsh law is to be created by regulations made under the LDEU Bill, the Bill itself will not result in any immediate practical changes. As a result, the LDEU Bill itself will not effect any changes to EU law. Any changes will be achieved by virtue of the regulations made under the LDEU Bill, which will only take effect at the point of the UK's withdrawal from the EU.

However, as a general rule, the policy objective of the LDEU Bill is to provide that the same rules and laws apply in Wales on the day after exit as on the day before.

Subject to the LDEU Bill being passed by the Assembly, consideration will be given to what further impact assessments are needed as part of any programme of subordinate legislation under the Bill. The following analysis is, therefore, mainly focused on the provisions contained in the Bill, but does consider, as far as is possible, the possible impacts of the programme of subordinate legislation made under the LDEU Bill.

This impact assessment will be revisited (if necessary) as the LDEU Bill progresses through the National Assembly stages.

The only potential impact of the provisions on the face of the LDEU Bill in terms of equality relates to the LDEU Bill's treatment of the EU's Charter of Fundamental Rights of the European Union ("the Charter") and the general principles of EU law ("the general principles").

### *The Charter*

The approach taken in the EU (Withdrawal) Bill has influenced the scope of the powers and the provisions contained in the LDEU Bill to ensure that both Bills can operate alongside each other. This was particularly the case in relation to those provisions in the EU (Withdrawal) Bill which are of general application. One such provision is in relation to the Charter. Clause 5(4) of the EU (Withdrawal) Bill provides that the Charter does not form part of domestic law on or after exit day.

On 5 December 2017 the UK Government published the *Charter of Fundamental Rights of the EU Right by Right Analysis*<sup>1</sup> which sets out the UK Government's view of the effect of the provisions of the EU (Withdrawal) Bill which relate to the Charter. It states that, in the UK Government's view, the Charter did not create any new rights and, rather, it reaffirmed the existing legally binding fundamental rights in a new and binding document<sup>2</sup>.

The Welsh Government has been clear in its position that the UK withdrawal from the EU should in no way lead to a dilution in human rights protections, including rights relating to equality. However, to seek to promote clarity, certainty, stability and continuity, and to ensure the LDEU Bill can operate alongside the EU (Withdrawal)

---

<sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/664891/05122017\\_Charter\\_Analysis\\_FINAL\\_VERSION.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/664891/05122017_Charter_Analysis_FINAL_VERSION.pdf)

<sup>2</sup> See paragraph 5.

Bill, the LDEU Bill does not substantially depart from the position provided for in the EU (Withdrawal) Bill.

The LDEU Bill does not, therefore, make provision to incorporate the provisions of the Charter that would be within the Assembly's competence. The LDEU Bill does, however, seek to maintain the interpretive value of the Charter and requires any question before the courts as to the validity, meaning or effect of any EU derived Welsh law to be decided, as far as is relevant, in accordance with the Charter.

To go further and seek to incorporate the Charter under the LDEU Bill would be likely to be rendered ineffective by virtue of the operation of clause 5(4) of the EU (Withdrawal) Bill or would, at the very least, cast serious doubt on the validity and application of the provisions.

The UK Government's equality analysis notes that the Charter is only one element of the UK's human rights architecture and most of the rights protected in EU law are also found in other international instruments to which the UK is party, most notably the European Convention on Human Rights ("the ECHR")<sup>3</sup>. The analysis concludes that, for this reason, the decision not to incorporate the Charter in domestic law will not impact those persons with protected characteristics. This position has attracted some criticism, including from the UK Parliament's Joint Committee on Human Rights which is of the view that the standing for bringing challenges is narrower and the remedies are weaker under the Human Rights Act 1998 ("the HRA") compared to the Charter<sup>4</sup>.

The arrangements for devolution mean that these criticisms are not as relevant in relation to Wales. The legislative powers of the Assembly are governed by the Government of Wales Act 2006, in particular section 108. It provides that a provision of an Act of the Assembly is not law so far as it is incompatible with the ECHR, in the exact same way as a provision of an Act of the Assembly is not law so far as it is incompatible with EU law, and therefore the Charter. The standing for bringing challenges and the remedies available in respect of the legislation of the Assembly and the acts of the Welsh Ministers are the same whether on the grounds of incompatibility with EU law or with the ECHR.

However, the Welsh Ministers will, as required by law<sup>5</sup>, consider the impact of any regulations made under the LDEU Bill on equalities. The analysis undertaken will inform the development of the regulations and, where appropriate or necessary, any relevant impact assessments will be published.

### *General principles*

The general principles of EU law are the key legal principles governing the way in which the EU operates. General principles are applied by the Court of Justice of the EU and domestic courts when determining the lawfulness of legislative and

---

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629244/European\\_Union\\_Withdrawal\\_Bill\\_equality\\_analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629244/European_Union_Withdrawal_Bill_equality_analysis.pdf) at paragraph 18.

<sup>4</sup> <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/774/774.pdf> see paragraphs 9 to 12.

<sup>5</sup> Section 149 of the Equality Act 2010.

administrative measures within the scope of EU law, and are also an aid to interpretation of EU law.

General principles of EU law include subsidiarity, proportionality and legal certainty. Of direct relevance to this analysis are the general principles of equality and non-discrimination.

The LDEU Bill mirrors the approach taken in the EU (Withdrawal) Bill on general principles and their aid to interpretation. The LDEU Bill ensures that any question as to the validity, meaning or effect of EU derived Welsh law is to be determined in accordance with general principles of EU law.

The EU (Withdrawal) Bill makes provision so that there is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law. It further provides that a court or tribunal may not disapply or quash legislation or administrative action on the grounds of incompatibility with any of the general principles of EU law. These provisions in the EU (Withdrawal) Bill are of general application, i.e. they will apply to the law generally. As a result, any provision in the LDEU Bill which provided for a different or contrary legal effect would, at worst be rendered ineffective, or at best, be seriously in doubt.

As the UK Government's equality analysis highlights, there are existing protections in domestic law that will minimise any impact of the provisions in the EU (Withdrawal) Bill. These include protections afforded under equalities law, such as the Equality Act 2010 but also the ECHR. In terms of the ECHR, the UK Government's equality analysis identifies a possible impact on the remedies available in domestic law. The HRA provides for a declaration of incompatibility where a court finds primary legislation to be in breach of the ECHR. The position is different under the devolution settlement as any Assembly Act, subordinate legislation or administrative act of Welsh Ministers which are incompatible with the ECHR are unlawful. The limited impact identified in the UK Government's equality analysis in this scenario is therefore not applicable in relation to primary legislation in devolved areas in Wales.

**POWER TO MAKE PROVISION CORRESPONDING TO EU LAW AFTER EXIT  
DAY AND WELSH MINISTERS' CONSENT TO SUBORDINATE LEGISLATION  
WITHIN THE SCOPE OF EU LAW**

It is not envisaged that the provisions in sections 11, 13 and 14 of the LDEU Bill will have an impact on equalities and human rights. However, any regulations made under section 11 and any subordinate legislation which is the subject of the consent requirement under sections 13 and 14 could have such an impact. As required under the Equality Act 2010, the Welsh Ministers, in exercising these functions, will have regard to equalities and will assess any possible impact on a case by case basis. Any regulations will also have to be compliant with the ECHR to be lawful.

**2. We have a legal duty to engage with people with protected characteristics under the Equality Act 2010 (please refer to Annex A of the EIA guidance) identified as being relevant to the policy. What steps have you taken to engage with stakeholders, both internally and externally?**

The Assembly has agreed that the LDEU Bill is to be treated as an Emergency Bill. Because of the emergency nature of the Bill it has not been possible to undertake consultation with stakeholders nor to provide a comprehensive list of those that will be impacted by it.

However, the LDEU Bill will not have any immediate impact on people with protected characteristics. Any impact of the Bill will be achieved by way of the regulations made under the Bill. Where appropriate and necessary, an analysis of the impact of the regulations being made under the Bill will be undertaken. This will include, as appropriate, the involvement of people or consultation with people with protected characteristics. The level and nature of any such engagement will be dependent on the regulations in question. The main policy objective of the LDEU Bill is to secure continuity. The powers to make regulations in the Bill have therefore been designed to be exercised in a manner that will ensure that, as far as possible, the rules and laws that apply before exit continue to apply after exit.

**3. Your decisions must be based on robust evidence. What evidence base have you used? Please list the source of this evidence e.g. National Survey for Wales. Do you consider the evidence to be strong, satisfactory or weak and are there any gaps in evidence?**

The LDEU Bill has been prepared in response to the content of the EU (Withdrawal) Bill and the specific concerns of the Welsh Government, and the Assembly, regarding the EU (Withdrawal) Bill's approach to devolution. It has never been the Welsh Government's preference to introduce the LDEU Bill, but the UK Government's approach in the EU (Withdrawal) Bill has left the Welsh Government with no option but to introduce the LDEU Bill. The LDEU Bill has, therefore, been developed to operate alongside the EU (Withdrawal) Bill. The LDEU Bill's development has taken into account the work undertaken by the UK Government in developing the EU (Withdrawal) Bill. This has included the EU (Withdrawal) Bill itself but, more importantly for the purpose of this assessment, consideration has been given to the number of documents accompanying the Bill, such as the explanatory notes<sup>6</sup>, the equality analysis<sup>7</sup>, the Impact Assessment<sup>8</sup>, the ECHR memorandum<sup>9</sup> and the Charter of Fundamental Rights of the EU Right by Right Analysis<sup>10</sup>.

<sup>6</sup> <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0079/18079en.pdf>

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629244/European\\_Union\\_Withdrawal\\_Bill\\_equality\\_analysis.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629244/European_Union_Withdrawal_Bill_equality_analysis.pdf)

## Analysis of impact on protected groups

The LDEU Bill makes provision to enable the Welsh Ministers, by regulations, to take the necessary legislative steps to ensure the statute book continues to operate effectively as the UK withdraws from the EU. As the necessary legislative steps will be taken by way of regulations the Bill itself will not result in any impact. However, the decisions to be taken in the development of any regulations will be guided by the provisions in the Bill. The powers have been designed purposefully to ensure continuity. Any modifications to EU derived Welsh law will, therefore, be limited to what is necessary to ensure the statute book continues to function effectively.

In general, there are particular decisions taken in the development of the LDEU Bill which could result in a negative impact on persons with protected characteristics. These decisions relate to the Charter of Fundamental Rights and general principles of EU law. The LDEU Bill does not incorporate the provisions of the Charter that relate to devolved matters within the scope of EU law. It also does not enable individuals to make claims to a court on the grounds of a breach of the general principle of EU law. These decisions were dictated by the approach taken in the EU (Withdrawal) Bill and the fact that any attempt to legislate to the contrary in the LDEU Bill would be rendered ineffective by provision in the EU (Withdrawal) Bill and therefore cause confusion and uncertainty.

The risk of any negative impact in consequence of those decisions relating to the Charter and general principles of EU law will be mitigated by the existing protections afforded in domestic law. It will also be mitigated by provision in the LDEU Bill which ensures that, as far as possible, provision in EU derived Welsh law is to be interpreted in accordance with the Charter and the general principles of EU law. This will be kept under review as the LDEU Bill is implemented.

The following tables provide a detailed assessment of how the LDEU may impact on protected groups.

---

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/628004/2017-07-12\\_repeal\\_bill\\_impact\\_assessment\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/628004/2017-07-12_repeal_bill_impact_assessment_1_.pdf)

<sup>9</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674640/2018-01-18\\_ECHR\\_memorandum\\_on\\_Repeal\\_Bill.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674640/2018-01-18_ECHR_memorandum_on_Repeal_Bill.pdf)

<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/664891/05122017\\_Charter\\_Analysis\\_FINAL\\_VERSION.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/664891/05122017_Charter_Analysis_FINAL_VERSION.pdf)

**4.1 Do you think this policy / decision / practice will have a positive or negative impact on people because of their age?**

Age	Positive	Negative	None / Negligible	Reasons for your decision (including evidence) / How might it impact?
Younger people  <i>(Children and young people, up to 18)</i>			X	<p>The analysis above identifies elements of EU law which cannot be reproduced under regulations made under the LDEU Bill. Some of these elements include provisions which are aimed directly at younger people. The Children's Rights Impact Assessment provides further details on any potential impacts. However, Article 14 (right to education) and Article 24 (rights of the child) of the Charter of Fundamental Rights are of particular relevance.</p> <p>The LDEU Bill is unlikely to have a positive or negative impact on younger persons. This is because, as set out in the analysis above, safeguards in domestic legislation protect the rights of this group.</p> <p>This will be kept under review, in particular in the development of any regulations made under the Bill.</p>
People 18-50			X	<p>The majority of EU law applies to all persons of any age, other than where specific targeted intervention is considered necessary to address any</p>

				identified disadvantage or issues. It is not considered that any element of the LDEU Bill will impact persons of this age group differently from any other ages.
Older people (50+)			X	<p>The LDEU Bill itself will not have any impact on older people. Any regulations made under the Bill could have an impact but, as these are designed to be made in a manner that ensures continuity with current EU law, it is not envisaged that there would be any substantial impact. Where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p> <p>In terms of the scope of the powers, and the fact that corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact on older people. Where either the Charter or general principles of EU law relate directly to disabled persons, such as Article 25 of the Charter, which deals specifically with the rights of the elderly, alternative provision is available in domestic law, such as the Equality Act 2010 and the ECHR, which secure the rights of older people.</p>

				<p>In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision.</p> <p>In addition, provisions in the LDEU Bill allow the Charter and general principles of EU law to continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.</p> <p>As with younger persons, there are elements of EU law which are directly addressed at older people. In particular, there is provision in Article 25 of the Charter which deals specifically with the rights of the elderly.</p> <p>The LDEU Bill is unlikely to have a positive or negative impact on older people. This is because, as set out in the analysis above, safeguards in domestic legislation protect the rights of this group through, for example, the Equality Act 2010. There are also protections afforded under the ECHR, which forms</p>
--	--	--	--	--

				<p>an integral element of the devolution settlement.</p> <p>As indicated above, the Charter and general principles of EU law will also continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.</p>
--	--	--	--	--

## 4.2 Because they are disabled?

Impairment	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Visual impairment			X	<p>The Bill itself will not have any impact on persons who are disabled. Any regulations made under the Bill could have an impact, but as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p> <p>In terms of the scope of the powers under the Bill, and the fact that corresponding provision to the Charter or</p>
Hearing impairment			X	
Physically disabled			X	
Learning disability			X	
Mental health problem			X	
Other impairments issues			X	

				<p>general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact on disabled persons.</p> <p>Where either the Charter or general principles of EU law relate directly to disabled persons, such as Article 26 of the Charter which provides for the integration of persons with disabilities, provision is available in domestic law, such as the Equality Act 2010 and the ECHR which secure the rights of disabled persons. In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision.</p> <p>In addition, provisions in the LDEU Bill ensure that the Charter and general principles of EU law will continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU</p>
--	--	--	--	---

				law..
--	--	--	--	-------

#### 4.3 Because of their gender (man or woman)?

Gender	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Male			X	<p>The Bill itself will not have any differing impact on persons as a result of their gender. Any regulations made under the Bill could have an impact but, as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p> <p>In terms of the scope of the powers under the Bill, and the fact that corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact on a person on the grounds of their gender.</p> <p>Where either the Charter or general principles of EU law relate directly to a person's gender, such as Article 23 of the Charter which sets out the rights and principle of equal</p>
Female			X	

				<p>treatment for men and women, provision is available in domestic law. For example, the Equality Act 2010 and the ECHR secure the rights of persons not to be discriminated against on the grounds of their gender.</p> <p>In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision. In addition, provisions in the LDEU Bill ensure the Charter and general principles of EU law will continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.</p>
--	--	--	--	--

#### 4.4 Because they are transgender?

Transgender	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
			X	The Bill itself will not have any differing impact on transgender persons. Any regulations made under

				<p>the Bill could have an impact, but as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p> <p>In terms of the scope of the powers under the Bill, and the fact that corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact on transgender persons. Provision is available in domestic law, such as the Equality Act 2010 and the ECHR which secure the rights of persons not to be discriminated against on the grounds of a person being transgender.</p> <p>In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of</p>
--	--	--	--	--

				<p>such provision.</p> <p>In addition, provisions in the LDEU Bill ensure that the Charter and general principles of EU law continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.</p>
--	--	--	--	---

#### 4.5 Because of their marriage or civil partnership?

<b>Marriage and Civil Partnership</b>	<b>Positive</b>	<b>Negative</b>	<b>None / Negligible</b>	<b>Reason for your decision (including evidence)/ How might it impact?</b>
Marriage			<b>X</b>	<p>The Bill itself will not have any differing impact on persons as a result of their marriage or civil partnership. Any regulations made under the Bill could have an impact but, as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p> <p>In terms of the scope of the powers under the Bill, and the fact that</p>

				<p>corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact based on a person's marital or civil partnership status. Where either the Charter or general principles of EU law relate directly to marital or civil partnership status, such as Article 9 of the Charter which relates to the right to marry and found a family within national laws, provision is found in domestic law, such as the Equality Act 2010 and the ECHR which secure the rights of married persons and persons in a civil partnership.</p> <p>In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision.</p> <p>In addition provisions in the LDEU Bill ensure that the Charter and general principles of EU law continue to be an aid to interpretation, meaning that any EU</p>
--	--	--	--	---

				derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.
Civil Partnership			X	See above.

#### 4.6 Because of their pregnancy or maternity?

Pregnancy and Maternity	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Pregnancy			X	<p>The Bill itself will not have any differing impact on persons as a result of pregnancy or maternity. Any regulations made under the Bill could have an impact but, as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p> <p>In terms of the scope of the powers under the Bill, and the fact that corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not</p>
Maternity (the period after birth)			X	

				<p>considered that this will have any impact based on persons who are pregnant or have given birth. To the extent that either the Charter or general principles of EU law relate directly to these matters, provision is found in domestic law, such as the Equality Act 2010 and the ECHR, and also employment legislation which secure the rights of pregnant persons and persons who have given birth.</p> <p>In any case, any provision in the Bill which provides for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision.</p> <p>In addition provisions in the LDEU Bill ensure the Charter and general principles of EU law continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.</p>
--	--	--	--	--

#### 4.7 Because of their race?

Race	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Ethnic minority people e.g. Asian, Black,			X	The Bill itself will not have any differing impact on persons as a result of their race. Any regulations made under the Bill could have an impact but, as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.
National Origin (e.g. Welsh, English)			X	
Asylum Seeker and Refugees			X	
Gypsies and Travellers			X	
Migrants			X	
Others			X	In terms of the scope of the powers under the Bill, and the fact that corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact based on a person's race. Where either the Charter or general principles of EU law relate directly to the prevention of racial discrimination provision, such as Article 21 of the Charter which refers to the right not to be discriminated on the grounds of race, provision is found in domestic law, such as the Equality Act 2010 and the

				<p>ECHR which secure the rights of persons not to be discriminated against on the grounds of their race. In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision.</p> <p>In addition, provisions in the LDEU Bill ensure that the Charter and general principles of EU law continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.</p>
--	--	--	--	--

#### 4.8 Because of their religion and belief or non-belief?

Religion and belief or non – belief	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Different religious groups including Muslims, Jews,			X	The Bill itself will not have any differing impact on persons as a result of their religion, belief or non-belief. Any regulations made under the Bill could have an

Christians, Sikhs, Buddhists, Hindus, Others (please specify)				<p>impact but, as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p> <p>In terms of the scope of the powers under the Bill, and the fact that corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact based on a person's religion, belief or non-belief. Where either the Charter or general principles of EU law relate directly to a person's religion, belief or non-belief, such as Article 22 of the Charter which relates to respect of a person's cultural, religious and linguistic diversity, provision is found in domestic law such as the Equality Act 2010 and the ECHR which secure the rights of persons in relation to their religion, belief or non-belief.</p> <p>In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be</p>
Belief e.g. Humanists				
Non-belief				

				<p>rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision.</p> <p>In addition, provisions in the LDEU Bill ensure that the Charter and general principles of EU law continue to be an aid to interpretation, meaning that any EU derived Welsh law created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.</p>
--	--	--	--	--

#### 4.9 Because of their sexual orientation?

Sexual Orientation	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Gay men			X	<p>The Bill itself will not have any differing impact on persons as a result of their sexual orientation. Any regulations made under the Bill could have an impact, but as these must ensure continuity with current EU law, it is not envisaged that there would be any impact. In any event, where appropriate, any impacts will be assessed in the development of regulations and taken into account as necessary.</p>
Lesbians			X	
Bi-sexual			X	

				<p>In terms of the scope of the powers under the Bill, and the fact that corresponding provision to the Charter or general principles of EU law will not be possible under the powers contained in the Bill, it is not considered that this will have any impact based on a person's sexual orientation. Where either the Charter or general principles of EU law relate directly to a person's sexual orientation, such as Article 21 of the Charter which relates to the right not to be discriminated against on the grounds of sexual orientation, provision is found in domestic law, such as the Equality Act 2010 and the ECHR which secure these rights.</p> <p>In any case, any provision in the Bill which provided for the incorporation of the Charter or general principles of EU law into domestic law would be rendered ineffective by the EU (Withdrawal) Bill, or at the very best there would be serious doubt as to the effect of such provision.</p> <p>In addition provisions in the LDEU Bill ensure that the Charter and general principles of EU law continue to be an aid to interpretation, meaning that any EU derived Welsh law</p>
--	--	--	--	---

				created under the LDEU Bill will have to be interpreted, as far as is possible, in accordance with the Charter and general principles of EU law.
--	--	--	--	--

**4.10 Do you think that this policy will have a positive or negative impact on people's human rights? *Please refer to point 1.4 of the EIA Annex A - Guidance for further information about Human Rights.***

Human Rights	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Human Rights including Human Rights Act and UN Conventions			X	<p>The Bill itself will not have an impact on a person's human rights. There is scope for the regulations to have possible impacts but the development of any regulations will include a detailed consideration of any possible impact and, in accordance with the restriction on the Welsh Ministers powers to make regulations incompatibly with the ECHR, any identified impacts will be mitigated to ensure that regulations are compatible with the ECHR.</p> <p>In terms of the Charter and general principles of EU law not being directly incorporated under the LDEU Bill, much of the provisions found in the Charter are reflected in the ECHR. This is also true of</p>

				<p>some general principles of EU law. A feature of the devolution settlement is that any provision in an Assembly Act or secondary legislation is unlawful insofar as it is incompatible with the ECHR. This ensures that any legislative steps taken in an Assembly Act or secondary legislation are subject to challenge by persons whose human rights are infringed</p>
--	--	--	--	--

***If you have identified any impacts (other than negligible ones), positive or negative, on any group with protected characteristics, please complete Part 2.***

***Only if there are no or negligible positive or negative impacts should you go straight to part 2 and sign off the EIA.***

## **Equality Impact Assessment – Part 2**

### **1. Building on the evidence you gathered and considered in Part 1, please consider the following**

#### **1.1 How could, or does, the policy help advance / promote equality of opportunity?**

For example, positive measures designed to address disadvantage and reach different communities or protected groups?

The LDEU Bill does not make the necessary legislative changes to ensure the continued operation of the statute book on exit. These changes will be the subject of regulations made under the Bill. In making these regulations, certain restrictions will apply to ensure continuity, but certain policy decisions will be required. In making these policy choices the Welsh Ministers will be subject to the public sector equality duty and will be required to consider how those choices could be made in a manner which advances or promotes the equality of opportunity.

The LDEU Bill also ensures that any question as to the validity, meaning or effect of EU derived Welsh law contained in regulations made by the Welsh Ministers under powers contained in the Bill must be determined in accordance with the Charter and general principles of EU law. This means that EU derived Welsh law must be interpreted, as far as possible, in accordance with the provisions of the Charter and the general principles of EU law. By ensuring that the Charter is also to be used as an aid to interpretation, the LDEU Bill goes further than does the UK Bill.

#### **1.2 How could / does the policy / decision help to eliminate unlawful discrimination, harassment or victimisation?**

See above.

#### **1.3 How could/does the policy impact on advancing / promoting good relations and wider community cohesion?**

See above.

## 2. Strengthening the policy

**2.1 If the policy is likely to have a negative effect ('adverse impact') on any of the protected groups or good relations, what are the reasons for this?**

**What practical changes/actions could help reduce or remove any negative impacts identified in Part 1?**

As the LDEU Bill's main objectives are to provide stability and certainty on the UK's withdrawal from the EU, it is not envisaged that there will be any adverse impact on any protected groups. Any negative impacts in the making of regulations under the Bill will be identified and steps taken to mitigate any such impacts as far as that is possible.

The LDEU Bill does not directly incorporate the Charter or general principles of EU law into domestic law. Consideration was given to steps that could be taken to address this but provision in the UK Government's EU (Withdrawal) Bill would render any such attempts ineffective, or at the very best there would be serious doubt as to the effect of any such provision in the LDEU Bill. To avoid the inevitable confusion that such steps would take, which of itself could result in negative impacts on people's rights, such provision was not included. This will be kept under review as any regulations are made under the Bill and any gaps identified will inform any possible further steps that the Welsh Ministers could take.

**2.2 If no action is to be taken to remove or mitigate negative / adverse impact, please justify why.**

**(Please remember that if you have identified unlawful discrimination (immediate or potential) as a result of the policy, the policy must be changed or revised.)**

Not applicable.

### 3. Monitoring, evaluating and reviewing

#### How will you monitor the impact and effectiveness of the policy?

List details of any follow-up work that will be undertaken in relation to the policy (e.g. consultations, specific monitoring etc).

The ongoing effects that the LDEU Bill creates will be monitored through equality impact assessments, where necessary, on the regulations made under the LDEU Bill.

The results of all impact assessments where the impact is significant will be published on the Welsh Government's website.

### 4. Declaration

**\*Please delete as appropriate:**

**The policy \*does / does not have a significant impact upon equality issues**

#### Official completing the EIA

Name:

Sian Brown

Department:

OFMCO

Date:

01/03/2018
Signature:
<b>Head of Division (Sign-off)</b>
Name:
Robert Parry
Job title and department:
OFMCO
Date:
02/03/2018
Signature:
Review Date: