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### **Research report for external body :**

Hoffman, S. (2015). *Evaluation of the Welsh Government's Child Rights Impact Assessment procedure under the Children's Rights Scheme pursuant to the Rights of Children and Young Persons (Wales) Measure 2011.*

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**Evaluation of the Welsh Government's Child  
Rights Impact Assessment procedure under  
the Children's Rights Scheme pursuant to the  
Rights of Children and Young Persons (Wales)  
Measure 2011**

**Final Report: November 2015**

(Interim report: June 2015)

**Wales Observatory on Human Rights of Children and Young People**

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## Executive Summary

1. Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on the Welsh Ministers to have ‘due regard’ to specified provisions of the United Nations Convention on the Rights of the Child when exercising any of their functions. The Welsh Ministers have published a Children’s Rights Scheme setting out arrangements they have made for securing compliance with the due regard duty. The Scheme includes a formal six-step Child Rights Impact Assessment procedure (CRIA) to predict the likely impact of legislation or policy on children’s rights. CRIA is carried out *ex ante* as part of Welsh Government decision-making processes. The CRIA six-step procedure is:
  - Step 1- What’s (*sic*) the piece of work and its objective(s)?
  - Step 2 - Analysing the impact.
  - Step 3 - How does the work support and promote children’s rights?
  - Step 4 - Advising the Minister and Ministerial decision.
  - Step 5 - Recording and communicating the outcome.
  - Step 6 - Revisiting the piece of work as and when needed.
  
2. Adopting a mixed methodology this study evaluates the Welsh Government’s CRIA procedure utilising an analysis framework developed having regard to the literature on human rights impact assessment and child rights impact assessment. It examines a selection of ten CRIAs carried out between May 2014 and March 2015 focusing on procedural compliance and substantive assessment processes.<sup>1</sup> The methods adopted in the evaluation are: analysis of CRIA documents and CRIA narratives, interviews with Welsh Government CRIA users and external stakeholders, and stakeholder questionnaires.
  
3. The literature review identified a number of core features of human rights impact assessment contributing to effective and meaningful CRIA. CRIA good practice should:
  - Identify groups of children likely to be affected by a proposal and ensure non-discrimination.
  - Gather and analyse evidence on the potential impact of a proposal.

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<sup>1</sup> Total CRIA completed in the relevant period, n=73. Sample = 14%.

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- Ensure proper awareness and understanding of children’s human rights amongst those undertaking CRIA.
  - Provide meaningful opportunities to participate in CRIA for children and others who might be affected by a proposal.
  - Evaluate a proposal in the context of children’s rights and consider alternatives.
  - State the outcome of CRIA and provide reasons for any determination or decision.
  - Provide for monitoring and review of a proposal post implementation.
4. The evaluation concludes that the staged CRIA procedure adopted by the Welsh Government embeds a number of core objectives of human rights impact assessment into relevant Welsh Government decision-making processes. Steps 1-3 of the procedure establish fit-for-purpose practices that help identify the impact of a legislative or policy proposal on children and children’s rights. The six-step CRIA is a contribution to embedding children’s rights in the legislative and policy-making processes of the Welsh Government.
5. Whilst steps 1-3 of the CRIA template establish a fit-for-purpose procedure the evaluation found that implementation is inconsistent. There is departure from the expectations of good practice in some important areas. Although the study found that officials responsible for CRIA are prepared to engage in a meaningful way with relevant processes, it concludes that ineffectual guidance (as included on the CRIA template) and partial understanding of children’s rights can lead to incomplete analysis. Although there are a number of examples of good practice amongst the CRIAs examined, the quality of analysis often falls short of what is anticipated of human rights and child rights impact assessment.
6. The evaluation recommends amending the CRIA template to improve CRIA processes and outcomes. Guidance included at each step of the procedure should be strengthened to provide better direction to officials to ensure that CRIA objectives are met in practice. Particular attention needs to be given to strengthening guidance to direct attention to possible discriminatory impacts of a proposal and the need to consult with children and young people (or other relevant stakeholders). The

evaluation found that in both these areas the Welsh Government CRIAs examined rarely meet the expectations of good practice. Another area the evaluation identified as a weakness is the general lack of attention paid to budgets and resources to support implementation of a proposal in CRIA analysis.

7. In relation to the remaining steps in the CRIA procedure, the evaluation concludes:
  - The purpose of step 4 is unclear with undue emphasis on confirming compliance with the due regard duty and advising the Minister, leading to some confusion amongst users.
  - Step 5 deals with recording the evidence in support of CRIA outcomes. Identification of evidence is a fundamental requirement of good practice and should be integral at steps 1-3.
  - Step 6 deals with arrangements for monitoring and review of a proposal following implementation. Strictly this procedure is *ex post* rather than *ex ante*; however the requirements of step 6 are an important contribution to effective CRIA and should be retained.
8. The evaluation found that the timing of Welsh Government CRIA is inconsistent with good practice. The six-step procedure is usually implemented at a relatively advanced stage in the legislative or policy process. This reduces the possibility that alternatives will be seriously considered and limits the time available for relevant stakeholders, including children and young people, to participate in the procedure.
9. The evaluation identifies limited knowledge and awareness of children's rights amongst officials undertaking CRIA as a weakness in CRIA processes. There is limited capacity for officials to develop high levels of expertise. This is to some extent mitigated through support provided by the Welsh Government's Children's Rights Implementation Team.
10. The study found that the Implementation Team is seen as an important reservoir of knowledge and awareness of children's rights internal to the Welsh Government. Input from the Implementation Team leads to improved CRIA analysis and outcomes. Despite this there remain gaps in awareness and understanding of

children's rights amongst those completing CRIA with implications for analysis and outcomes. With some exceptions, the study found that analysis and assessment is often partial. Whilst most CRIAs examined identify relevant impacts on children's rights, the evidence from stakeholders confirms gaps in analysis.

11. The study concludes that increasing the capacity of the Implementation Team to support assessment would likely improve outcomes. Training and innovative use of technology to access officials to explanatory materials on children's rights could help raise understanding of children's rights within the Welsh Government, as would consultation with children and young people and other relevant stakeholders.
12. A core requirement of effective CRIA is proper communication of reasoning and outcomes. Whilst CRIA narratives examined almost invariably predict positive impacts for children and children's rights, this is seldom accompanied by an explanation of how or why the predicted impact will be achieved, or how a proposal will support or promote children's rights. The evidence confirms that those involved in CRIA are likely to possess a deep appreciation of how a proposal will result in its predicted outcomes, especially on impact (step 2), however this is not often reflected in CRIA narratives. Guidance accompanying steps 2 and 3 should be strengthened to require an explanation of how CRIA outcomes are determined, including by reference to any relevant evidence relied upon.
13. Revisiting CRIA predictions to take account of outcomes following implementation is a key aspect of impact assessment. Monitoring of a proposal and subsequent review can provide validation of CRIA predictions, or might suggest a need for reconsideration of a proposal in the light of new evidence. The evaluation found that arrangements for monitoring and review of CRIA outcomes are not adequately prioritised as an aspect of the Welsh Government's CRIA procedure.

### **Summary of Recommendations**

- The Welsh Government should continue to implement a formal CRIA procedure in order to predict the impact of governmental decision-making on children's rights.

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- Consideration should be given to how CRIA might be introduced earlier in the decision-making process across Welsh Government.
- As a matter of priority the Welsh Government should review arrangements for receiving the views of children and young people and others likely to be affected by a proposal. This will include but should not be limited to formal public consultation on a proposal.
- The CRIA template should be streamlined: guidance on steps 1-3 should be revised to ensure relevance and clarity; additional guidance should be included as necessary to direct attention to fundamental objectives of CRIA.
- Guidance at step 2 should be strengthened to require a full explanation of how any prediction of impact is determined; evidence relied on should be identified at this stage.
- Guidance at step 3 should be strengthened to require a full explanation of how a proposal supports and promotes children's rights, paying particular attention to resources, financial or otherwise, to support implementation; evidence relied on should be identified at this stage.
- Arrangements for monitoring and review, including review of CRIA outcomes, should be required to be clearly stated.
- The Welsh Government should ensure that the Implementation Team is maintained as a vital resource to support CRIA, and should give consideration to how the Team's capacity to support CRIA processes might be increased.
- The Welsh Government should give consideration to providing advanced and/or bespoke training for staff engaged in CRIA.



## REPORT

### **Evaluation of the Welsh Government's Child Rights Impact Assessment procedure under the Children's Rights Scheme pursuant to the Rights of Children and Young Persons (Wales) Measure 2011**

#### **Format of Report**

Part I discusses the context and background to the evaluation. It includes an account of human rights impact assessment and Child Rights Impact Assessment, discussing CRIA principles, objectives and methods, as well as the CRIA procedure adopted by the Welsh Government. Part I also describes the methodology used in this study. Part II reports on findings from the evaluation of CRIA procedure, focusing on process, CRIA objectives and good practice. Part III reports in more detail on findings from CRIA template users (officials) and stakeholders in relation to each step in the procedure.

## **PART I**

### **Background**

1. The Rights of Children and Young Persons (Wales) Measure 2011 (the 'Measure') came into effect in May 2012. Section 1 of the Measure places a duty on the Welsh Ministers to have 'due regard' to Part 1 of the United Nations Convention on the Rights of the Child (the 'UNCRC') and specified articles from two of its optional protocols<sup>2</sup> when exercising any of their functions. Section 2 of the Measure obliges the Welsh Ministers to make and publish a children's scheme setting out the arrangements they have made for the purpose of securing compliance with the duty under section 1.
2. On the 29<sup>th</sup> April 2014 the National Assembly for Wales approved a revised Children's Rights Scheme (the 'Scheme') published by the Welsh Ministers in

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<sup>2</sup> Articles 1 to 7 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, except article 6(2); and, articles 1 to 10 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

compliance with Section 2 of the Measure.<sup>3</sup> Section 7 of the Scheme refers to Child Rights Impact Assessment (CRIA) as a ‘process...to assist Ministers in having due regard to the UNCRC’. A formal structured CRIA template (‘CRIA’ or ‘CRIA template’) is set out at Annex 2 of the Scheme. This is a staged six-step procedure to be followed by Welsh Government officials *ex ante* as part of legislative or policy decision-making. The Scheme includes a commitment to evaluate how the full range of duties to which the Welsh Government is subject under the Measure has been implemented. The present evaluation is a contribution toward meeting this commitment.

### Methodology

3. Adopting a mixed methodology of analysis of CRIA documents and narratives, interviews and questionnaire survey this study examines the CRIA template, as well as a selection of completed Welsh Government CRIAs carried out between May 2014 and March 2015 focusing on: [a] compliance with the six-step procedure; and [b] the quality of substantive assessment processes undertaken at each step of the procedure.
  
4. The evaluation utilises a principled framework developed having regard to the literature on human rights impact assessment and CRIA. The literature review identified a number of fundamental or core features of human rights impact assessment and CRIA. These include general principles of participation and non-discrimination, as well as key objectives and methods integral to effective CRIA procedure and good practice. Based on the literature review it is established that meaningful CRIA should include procedures which:
  - a. Identify and explain the proposal subject to impact assessment.
  - b. Confirm that children will be affected by a proposal and identify groups of children likely to be affected.
  - c. Ensure non-discrimination.
  - d. Gather and analyse evidence on the potential impact of a proposal.
  - e. Ensure proper awareness and understanding of children’s human rights norms amongst those undertaking the procedure.

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<sup>3</sup> Replacing the previous Children’s Rights Scheme approved on 27<sup>th</sup> March 2012, operational from 1<sup>st</sup> May 2012.

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- f. Provide information to children and others who might be affected, and to decision-makers on the potential impact of a proposal and about children's human rights.
  - g. Provide meaningful opportunities to participate for children and others who might be affected by a proposal, and foster debate on alternatives to supporting and promoting (fulfilling) rights.
  - h. Evaluate (assess using informed judgment) a proposal and consider alternatives, including any contribution to progressive realisation of children's human rights, and any negative impact from the proposal.
  - i. Notify the outcome of CRIA and provide reasons for any decision or conclusion.
  - j. Provide for monitoring and review of a proposal, including review of CRIA determinations and outcomes.
5. During the period May 2014 to March 2015 the Welsh Government carried out 73 CRIAs; 27 of these were on proposals for legislation, and 46 on policy. Document analysis was carried out on a selection of ten CRIAs, representing 14% of all CRIAs in the relevant period. The number of CRIAs selected for examination was determined having regard to resources available for the project and the timescale of the evaluation. The CRIAs examined were:

### *On legislation*

- Legislative Proposal for Additional Learning needs\*\*
- National Transport Plan\*
- Well-being of Future Generations Bill\*
- Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill

### *On policy*

- Raising the Ambitions and Educational Attainment of Looked After Children in Welsh Schools\*\*
- Draft 10 year plan for the EYCC & Play Workforce in Wales\*\*
- Revised Child Poverty Strategy for Wales\* and \*\*
- National Community Cohesion Delivery Plan
- Addressing Mental Health Problems of CYP in the Youth Justice System\*\*
- Substance Misuse Treatment Framework (SMTF)

\* Strategic selection based on discussions with Welsh Government. The remaining CRIA were selected at random.

\*\* Referring directly to children or children and young people.

6. Document analysis of the selected CRIAs was carried out using a template developed paying attention to the objectives of CRIA and good practice. At this stage the analysis was focused on compliance with the primary purpose of each of the six-steps in the CRIA procedure, as well as with guidance included at each stage.
7. The CRIA template includes at each stage a requirement for a narrative explanation of how specified procedures have been met in substance. CRIA narratives were examined and analysed based on the principles, objectives and methods identified from the literature review as contributing to CRIA good practice.
8. The evidence has been enriched through interviews with Welsh Government officials directly involved in completion of five of the CRIAs examined. An interview schedule was prepared having regard to findings from the initial examination of CRIA narratives. Although a number of common themes were addressed with each of the interviewees a semi-structured approach was adopted to allow officials to comment on their individual experiences. Additional qualitative data was received from stakeholders external to the Welsh Government by way of interviews, as well as by a semi-qualitative questionnaire. In the case of the questionnaire, this focused on steps 2 and 3 of the CRIA procedure. It was decided to adopt this approach to the questionnaire following discussions with stakeholders in advance of the study. The data from officials and stakeholders was analysed to identify common themes and issues.

### **Child Rights Impact Assessment: CRIA Wales**

9. This section provides a short account of CRIA principles, objectives and procedure that contribute to meaningful impact assessment. CRIA may be described as a procedure to predict the impact of any proposed law or policy (programme or budgetary allocation) that affects children and the enjoyment of their rights. At each stage of CRIA procedure those undertaking the assessment engage in practices or

processes of reflection and judgment to inform decisions or outcomes. As CRIA takes place before implementation of a policy or legislation it is *ex ante* and is a contribution to the implementation of children's rights through the decision-making of government.

10. In addition to the fundamental aspects of *ex ante* CRIA identified above at paragraph [4], there are important additional procedures which are *ex post*, and which should accompany implementation of a policy or legislation. The most important *ex post* procedures related to CRIA are: [a] monitoring implementation to gauge the accuracy of CRIA predictions; and, [b] undertaking further impact assessment as necessary. Although not part of *ex ante* CRIA these procedures should be seen as essential to systematic CRIA procedure. They guarantee confidence in outcomes and ensure that CRIA is seen as integral to government decision-making.
11. Welsh Government CRIA begins by encouraging the official undertaking the assessment to reflect on the relevance of a proposal for policy or legislation for children and young people, and to consider this in the context of children's rights as guaranteed by the UNCRC. Where on initial consideration it is determined that a proposal is relevant to, and impacts on children and young people, the official is instructed to apply the CRIA template set out at Annex 2 of the Scheme. This initial determination is structured by flowcharts accompanying the Scheme (Scheme, Annex 1): these are applied separately to proposals for legislation and for policy. The decision whether to apply the formal CRIA template to assess a proposal may be seen as a screening procedure. This study does not extend to evaluation of any screening procedure undertaken by the Welsh Government prior to application of the CRIA template.
12. The CRIA template sets out a six-step assessment procedure, the headings given for each of the six-steps are:
- Step 1- What's (*sic*) the piece of work and its objective(s)?
  - Step 2 - Analysing the impact.
  - Step 3 - How does your piece of work support and promote children's rights?
  - Step 4 - Advising the Minister and Ministerial decision.

- Step 5 - Recording and communicating the outcome.
- Step 6 - Revisiting the piece of work as and when needed.

13. At each step in the procedure the CRIA template includes guidance that variously directs or suggests to the template user that they engage in specified processes, including: gathering evidence; reflecting on evidence; exercising judgment to make a determination. The guidance also helps identify further procedures that might contribute to an assessment of the relevance of a proposal for children's rights, for example, consultation with children and young people.

**PART II**

14. Part II reports on findings from the evaluation of CRIA procedure, focusing on processes, CRIA objectives and good practice. Part III reports in more detail on findings from officials and stakeholders in relation to each step in the procedure.
15. Steps 1-3 of the CRIA template seek to identify the piece of work or proposal to which the CRIA template is applied and its objectives (step 1), and provide for a structured assessment of the impact of a proposal on children (step 2), and how a proposal supports and promotes children's rights (step 3).
16. Step 1 of the template seeks to identify and explain the proposal and to confirm its relevance to children. This is consistent with CRIA good practice. Information entered on the template at step 1 will inform children or other stakeholders about the proposal. This may be seen as a contribution to principled CRIA as it supports engagement with the procedure. The requirement at step 1 to consider whether any particular group of children will be affected by a proposal further supports principled CRIA by encouraging the identification of potentially discriminatory impacts.
17. Step 2 prompts an analysis of the impact of a proposal on children, young people or their families. In order to ensure meaningful assessment at this stage CRIA processes should include taking relevant evidence into account. Guidance included at step 2 does not require the official undertaking the procedure to identify the evidence that informs the assessment. In this respect there is a risk that an essential element of CRIA good practice may be overlooked when the procedure is implemented (see further Part III).
18. Guidance at step 2 includes a reminder to consider whether to engage with children and young people at this stage. Consultation is not mandated. Although the possibility of consultation and participation is consistent with CRIA good practice the guidance is soft, leaving the decision whether to engage with stakeholders to the discretion of the official completing the assessment. As will be discussed in Part III, this weak-form guidance is not sufficient in many cases to ensure a fully principled approach to CRIA practice which engages with children and other stakeholders.

19. Step 3 prompts reflection on how a proposal supports and promotes children's rights. This is consistent with the fundamental objective of CRIA to predict the impact of government action on children's rights as a contribution to informed decision-making. Guidance accompanying step 3 asks officials to identify UNCRC articles most relevant to a proposal, and to reflect on how children's lives will be affected, including how children's access to rights is improved. Guidance at this stage also prompts consideration of whether a proposal maximises 'outcomes within the articles of the UNCRC', and if not, if there are any alternatives.
20. The guidance accompanying step 2 and step 3 does not include any direction to consider potentially discriminatory impacts. Nor is there any instruction to take into account the views of children and young people, or other stakeholders. These omissions introduce the possibility that important considerations in any CRIA will be overlooked.
21. Steps 4-6 are of a different quality to steps 1-3. Step 4 concerns advice to the Minister and Ministerial decision. Guidance accompanying step 4 is various and includes a direction to provide a summary of earlier steps in the procedure, as well as bureaucratic requirements to confirm compliance with the due regard duty and instructions to engage in further reflection, including on issues raised in steps 2 and 3. Amongst the issues suggested for consideration at this stage are the allocation of resources linked to the mitigation of negative impacts, and the impact of a proposal in other policy areas. These are matters which should be taken into account at step 2 and step 3 of the procedure.
22. A number of important deliberative and reflective considerations contributing to effective CRIA are required at step 4. However, there is no clarity as to which considerations are to be prioritised at this stage, and there is considerable overlap with previous steps in the procedure. It is unclear whether step 4 is intended to provide a summary of outcomes, or advice to the Minister. The former is consistent with CRIA good practice.



23. It is noted that step 4 may be read as an attempt to confirm compliance with due regard duty set out in section 1 of the Measure. If this is what is intended it is misplaced. As noted in the Scheme, CRIA will assist a Minister to have due regard to the UNCRC. It will provide the information a Minister requires in order to properly inform themselves of the factors to be taken into account when making a decision having an impact on children and young people. CRIA should not substitute Ministerial compliance with the due regard duty as this will be subsequent to and independent of completion of the template.
24. Step 5 requires a record of evidence that has informed and ‘tells the story’ of the assessment. As already noted, the identification of evidence is a key aspect of CRIA procedure at step 2 and step 3. If, as should be assumed, evidence is required to be identified at these earlier stages there would be no necessity to repeat this requirement at step 5.
25. Step 6 provides for further assessment following monitoring and evaluation of a proposal post implementation. Step 6 contemplates *ex post* procedures. Whilst *ex ante* and *ex post* procedures are important for effective CRIA, for the sake of clarity arrangements for monitoring and review should be seen as distinct from processes of evaluation and assessment integral to CRIA predictive decision-making.
26. There are two sections in addition to the six-step procedure included on the CRIA template. These refer to ‘Budgets’ and ‘Monitoring and Review’. The issue of resources and budgets is relevant to impact (step 2) and how rights are promoted (step 3). Considerations relating to budgets are integral to CRIA and there is no reason why these should not be required to be taken into account as an aspect of the six-step procedure.
27. Monitoring and review are important contributors to an effective system of CRIA. It is appropriate that the CRIA template should highlight arrangements for review. The section on Monitoring and Review permits the exercise of discretion whether to specify arrangements for monitoring and review.

**PART III**

28. Part III reports on findings from the evaluation on each step in the CRIA procedure focusing on the experience of officials and stakeholders.

29. Officials interviewed for this evaluation confirmed that the template is a useful practical tool to support and structure the assessment process. The arrangement of the CRIA template as a sequential procedure was thought by all users to be a logical approach to assessment. This is consistent with the literature on CRIA which contemplates a staged approach.

*Step 1: What's the piece of work and its objectives?*

30. All of the CRIAs examined for this study include a description of the proposal being assessed. For the most part these are short and do not include detailed information about the proposal, how it will be implemented, budgetary implications or implications for other areas of policy. In general the summaries at step 1 provide some context and explanation of a proposal and its primary objectives, but little more. In most cases a better appreciation of the likely impact of a proposal is gained from reading available consultation documents or other explanatory materials. On this basis some officials interviewed questioned the efficiency of requiring further explanation when relevant information is available in other accessible documents. Others commented that describing the work helped them focus on issues relating to children. It was suggested that including hyperlinks to relevant explanatory documents might be an efficient mechanism to direct stakeholders to information about a proposal.

31. Of the CRIAs evaluated, nine identify the intended beneficiaries of a proposal but only six confirm that it will affect children (as required by guidance at step 1). This omission is surprising as application of the CRIA template is predicated on an assessment that a proposal will have an impact on children (see Scheme, Annex 2). Only one CRIA identifies particular groups of children likely to be affected by a proposal. Evidence on the issue of impact provided by stakeholders suggests that in some cases the discriminatory impact of a proposal on particular groups of children has been overlooked.

*Step 2: Analysing the impact*

32. Whilst four of the CRIAs examined make reference to and reflect on evidence used to develop a proposal, including empirical evidence, the majority of narratives do not include any reference to evidence relied on to support the assessment of predicted impact. When asked about this at interview officials stated that they had taken relevant data into account to inform their assessment. It was apparent that interviewees possess a deep and detailed knowledge of the area of work with which they were concerned as CRIA template users. However, the way in which CRIA narratives are completed does not adequately demonstrate this knowledge or its application.
33. An important feature of CRIA is effective communication of the processes as well as the outcomes of assessment. Whilst all of the CRIAs examined communicate the conclusion or outcome of assessment at step 2, for the most part there is limited discussion of how this is determined. There is a tendency to conflate the objectives underpinning a proposal with its predicted impact (whether policy or legislation), resulting almost invariably in a prediction of positive impact(s) for children and young people.
34. In seven of the CRIAs evaluated the impact of a proposal is assumed as being the same as the objectives of policy or legislation, without explanation of how the proposal, or parts of the proposal, will contribute to, or result in the positive impacts predicted, or what specific mechanisms will result in particular impacts. In the remaining CRIAs there is some reference to supporting evidence to back up claims that a proposal will have positive impact(s), but in all but one the narrative does not extend to a discrete and detailed rationalisation of impact. Although three of the CRIAs evaluated identify negative impact(s), only one of these includes a comprehensive discussion of the issue.
35. In response to questions at interview about the assumed correspondence between policy objectives and predicted positive impacts a number of officials pointed out that government policy is not advanced with the intention that it will have a negative impact, and that policy is developed with positive objectives in mind. On this basis

several interviewees were confirmed in their view that the intention of policy may be treated as a prediction of impact. Interviewees suggested that where a proposal is at an advanced stage of development, and is assessed by an official close to the development process, it is unsurprising that policy intent will be treated as predictive of impact.

36. Evidence from stakeholders in some cases identifies different impacts from those predicted in the CRIAs examined, including negative impacts. This suggests that conflating policy objectives and impact can result in some likely impacts being overlooked, and points at the potential for significant weakness in the completion of Welsh Government CRIA.

37. A notable omission from the narratives in all CRIAs examined is any detailed analysis of how a proposal will affect budgets and budgeting for children. In some cases this issue is not mentioned at all. This was raised as a significant concern by stakeholders. Even in CRIA narratives where budgets are discussed the discussion is superficial and fails to identify budget allocations or resources to support implementation. Officials suggested different reasons for this including consideration of budgetary implications as an aspect of other impact assessment procedures (e.g. equality or regulatory impact assessment).

38. Notwithstanding its consideration in other impact assessment procedures, failure to address resources and budgets as integral to CRIA represents a deficit in analysis. It is also departure from CRIA good practice as those affected by a proposal will be deprived of information which might contribute to understanding a proposal and its impact, undermining their participation in the procedure.

*Step 3: How does your piece of work support and promote children's rights?*

39. All of the CRIAs evaluated make reference to relevant articles of the UNCRC, including one or more of its 'general principles' (articles 2, 3, 6 and 12). In nine of the CRIAs examined there is reference to one or more of the remaining articles of the UNCRC. Although a matter of opinion, evidence from stakeholders suggests that in some cases there are omissions from the list of relevant articles taken into account.

40. UNCRC articles identified in CRIA narratives are often repeated word-for-word. In three CRIAs there is some elaboration, and in two cases the narrative suggests a detailed knowledge of the rights guaranteed and the obligations for government. However, in the majority of cases the CRIA narratives suggest a less than complete understanding of the rights guaranteed by the articles mentioned. In this respect officials interviewed for this study were refreshingly open in recognising the limitations of their understanding of the UNCRC. Several attributed this to limited capacity and workload, i.e. they did not see themselves as having enough time to develop a high level of expertise in children's rights alongside their other responsibilities. There was consensus amongst officials that the Welsh Government's Implementation Team (see below) provides a repository of relevant expertise. It was also apparent from interviewees that there is a willingness to receive guidance, either through the provision of written information (including the use of hyperlinks to published materials), or through the input of external stakeholders as an aspect of consultation. Some officials also felt that in some instances bespoke training should be provided.
41. Analysis of CRIA narratives at step 3 reveals variation in quality. Two CRIAs include an explanation of how it is thought the proposal will improve access to rights and maximise outcomes. In the remaining cases these issues are either partially dealt with, with limited analysis or explanation, or one or other is omitted from the discussion. In five of the CRIAs examined there is no analysis of how the proposal will improve access to rights, whilst six CRIAs do not offer any explanation of how a proposal will operate to maximize outcomes (only one CRIA fails to address either issue in some respect).
42. Evidence from stakeholders confirms the possibility of gaps in rights analysis. In their evidence stakeholders raise additional considerations relating to the impact of particular proposals on children's rights not otherwise discussed in corresponding CRIAs. Stakeholders also questioned assertions or assumptions made in some CRIAs about how a proposal will promote access to rights, suggesting a need for more comprehensive analysis.

*Step 4: Advising the Minister and Ministerial decision*

43. Given the lack of clarity already noted as a feature of step 4 (above paragraphs [21]-[23]), it is unsurprising that in all of the CRIAs examined completion of this step is less than satisfactory. For example, the narratives examined do not include a summary of the analysis and outcomes from earlier steps in the procedure. At interview several officials expressed themselves unclear as to the purpose of step 4. In general, it was felt that step 4 ought to be streamlined and there should be clarification of its purpose.

*Step 5: Recording and communicating the outcome*

44. Most of the CRIAs selected make reference to archiving of evidence on the Welsh Government iShare system. Officials and stakeholders are in agreement that the requirements of step 5 should be met during completion of steps 1-3.

*Step 6: Revisiting the piece of work as and when needed*

45. Officials interviewed were in general agreement that step 6 is concerned with *ex post* impact assessment and review, a view shared by external stakeholders. The consensus is that the procedures contemplated by step 6 are essential but stakeholders in particular are concerned that more information on arrangements for monitoring and further evaluation should be included.

46. In the CRIAs examined step 6 is either not completed or is completed to a high level of generality, e.g. merely stating that the proposal will be reviewed following implementation. This is mitigated in some cases by additional information included in the section on Monitoring and Review.

*Guidance and support for users undertaking CRIA*

47. At each step of the CRIA procedure there is guidance to officials. This is 'soft' guidance offered variously as questions, suggestions or recommendations rather than directions or requirements. Initial findings (analysis of documents) suggested a lack of clarity about the purpose of some of the guidance, with the possibility that template users might be misled or confused. This was not entirely confirmed during interviews with officials. There was general agreement that the guidance is

sometimes unclear, with some repetition, but despite this officials felt that it nonetheless provides valuable amplification of the requirements at each step of the procedure. Several suggested that the guidance could be edited to provide clearer instruction and that they would welcome additional guidance.

48. There was general consensus amongst officials interviewed that more could be done to support informed decision-making. It was recognised that training available to all Welsh Government staff on the UNCRC had been very useful, but this was felt to be less beneficial where staff are asked to undertake detailed consideration of children's rights for CRIA. When asked whether they would welcome training, and/or embedded hyperlinks to materials explaining the nature and content of children's rights, officials agreed this would be helpful. Some urged caution, drawing attention to the need to consider whether busy officials have the capacity to develop the necessary level of understanding of rights to ensure CRIA is properly executed. In this respect there was strong recognition of the support provided by the Welsh Government's Children's Rights Implementation Team.
49. The evidence from interviews with officials confirms that the Implementation Team is regarded as a valuable resource. Officials expressed satisfaction with the advice given by the team and several indicated that additional or different considerations had been taken into account as a result of advice received. With capacity issues in mind, interviewees were in agreement that the primary repository of expert knowledge on children's rights in the Welsh Government should be the Implementation Team.
50. Discussion with the Implementation Team in advance of this study identified CRIAs where there had been significant input from the team during the assessment procedure. Some of these were included in this evaluation and were amongst the most proficient of those examined (confirmed by stakeholder evidence and by analysis of documents and CRIA narratives).

*CRIA timing and the decision-making process*

51. In order for CRIA to be an effective mechanism to influence legislation it should take place at an early stage in the decision-making process. The CRIAs evaluated were all completed at an advanced stage of legislative or policy process. With this in mind officials were asked during interview whether CRIA outcomes have the potential to influence Ministerial decision-making. All interviewees felt confident that any advice to a Minister to re-think a proposal would be properly taken into account. Despite this several commented that putting forward alternatives for significant change at an advanced stage of development of a proposal was probably impractical. It was also suggested by some officials that their involvement with the development of a proposal over time made it difficult for them to conceive of a better alternative.
52. Stakeholders expressed dissatisfaction with the timing of CRIA, suggesting that the late stage at which the assessment is carried out rules out consideration of alternatives as part of the development of legislation or policy, especially alternatives put forward by those external to the Welsh Government.

*Consultation with children and other stakeholders*

53. Participation by children and young people and others affected by a proposal is a key principle and fundamental procedure in principled CRIA. Officials interviewed for this evaluation agreed that evidence from consultation would be relevant to their assessment. Despite this consultation was not carried out in eight of the CRIAs examined. In the remaining two CRIAs there is reference to the views of children and young people based on public consultation, but the narrative does not fully explain how this is taken into account to inform the assessment.
54. Stakeholders are highly critical of the lack of consultation prior to CRIA, especially consultation with children and young people.

**Conclusions**

55. Steps 1-3 of the Welsh Government's six-step CRIA procedure are consistent with and implement fundamental aspects of human rights impact assessment, and in particular CRIA. Whilst these steps establish a fit-for-purpose procedure



implementation is inconsistent. Officials are willing to engage with the procedure and bring relevant expertise to the process, especially on impact. Support for analysis is provided by the Implementation Team. Despite this, the practice of Welsh Government CRIA at steps 1-3 was found to deviate in many instances from the expectations of CRIA good practice.

56. The stage at which CRIA is implemented is inconsistent with CRIA good practice and reduces the possibility that alternatives will be seriously considered, as well as limiting the opportunity for relevant stakeholders to contribute to the assessment.
57. A significant departure from CRIA good practice is the failure to implement a consistent procedure for receiving the views of children and young people and others affected by a proposal in advance of CRIA. This is inconsistent with good practice because: children are not participating in CRIA procedure; and, children's views, and the views of others affected by a proposal, are not used to inform CRIA outcomes.
58. A general weakness in Welsh Government CRIA is that for the most part the narratives included at each step of the procedure do not fully 'tell the story' of how predicted outcomes are arrived at. The explanations and justifications given for CRIA outcomes are missing or are incomplete. A particular weakness is the failure to address budgetary considerations as an integral part of CRIA.
59. Existing guidance is at times unclear as to its purpose and there is repetition in some areas, although much of what is set out is relevant and helps direct attention to appropriate issues. Guidance included at each step of the procedure is adequate but not sufficient; there is considerable scope for improvement, including by addition of new guidance
60. Step 4 of the procedure is not fully aligned with fundamental aspects of CRIA. Guidance included at this stage is unhelpful and serves to confuse the purpose of step 4. Whilst CRIA will contribute to better decision-making in compliance with section 1 of the Measure, step 4 places undue emphasis on compliance with the Ministerial duty.

61. Steps 5 and 6 are misplaced as part of CRIA *ex ante* procedure. Step 5 is redundant if CRIA is properly implemented at step 2 and step 3. The processes contemplated by step 6 are more appropriately dealt with as discrete considerations distinct from *ex ante* impact assessment. This is provided for in the section on Monitoring and Review, although guidance accompanying this section does not give sufficient direction to ensure that suitable arrangements are properly specified.
62. Officials completing CRIA often possess considerable expertise in the area of work to which a proposal applies. In contrast, and for reasonable reasons, awareness and understanding of children's rights generally amongst officials is basic. The Implementation Team provides a vital resource to support implementation, contributing a more advanced understanding of children's rights.

### **Recommendations**

[1] The Welsh Government should continue to implement a formal CRIA on proposals for legislation or policy which are likely to have an impact on children in order to determine the impact on children's rights and to contribute to governmental decision-making which supports and promotes children's rights.

[2] Consideration should be given to introducing CRIA earlier in the legislative or policy decision-making process to provide genuine opportunities for a proposal to be reviewed and alternatives considered, and for CRIA outcomes to be reconsidered in the light of any changes made. This should include consideration of how to require CRIA to be implemented earlier in any decision-making process for all relevant proposals, and how to support officials to undertake early CRIA on a case-by-case basis.

[3] As a matter of priority the Welsh Government should review arrangements for receiving the views of children and young people and others likely to be affected by a proposal. Public consultation should not be regarded as the only mechanism for receiving the views of children and young people. Officials should be encouraged to make use of the full range of mechanisms available to engage with children and young people in order to receive their views on a proposal. Wherever possible stakeholder views should be received in advance of CRIA; where this is not possible

arrangements for CRIA should contemplate revisiting the assessment once relevant views are received.

[4] Where public consultation takes place this should ensure that appropriate mechanisms are in place to receive the views of children and young people, especially those who might be otherwise excluded from consultation. Arrangements should be put in place to require CRIA outcomes to be informed by, and where relevant reviewed in the light of evidence received from public consultation.

[5] The existing CRIA template should be streamlined with a view to implementing a procedure more closely aligned with CRIA good practice. Amendments should include:

[a] clarifying the guidance at each step of the procedure to ensure a focus on the assessment required at each stage.

[b] establishing the purpose of step 4 as being to provide a summary of the outcomes from steps 2 and 3, including any predictions of impact, and to remove bureaucratic elements and references to advice to the Minister.

[c] deleting step 5 (whilst requiring identification of evidence at steps 1-3).

[d] deleting step 6 as part of the *ex ante* process and replacing it with a revised section on Monitoring and Review (see further below recommendation [10]).

[e] deleting the section on 'Budgets' (whilst requiring consideration of resources at steps 2 and 3).

[6] The guidance included at steps 1-3 should be revised in the light of the comments made above in Part II and Part III. Current guidance should be retained to the extent that it remains relevant and clear. Additional guidance should be included that encourages or requires (as appropriate) the official completing a CRIA to:

[a] provide hyperlinks as appropriate to explanatory materials on legislative or policy proposals.

[b] identify relevant evidence to support conclusions, assessments or predictions set out in the narratives accompanying steps 2 and 3 and wherever possible to include references or hyperlinks to enable external stakeholder's to access this evidence.

[c] give consideration at each of steps 1-3 to the impact of a proposal on particular groups.

[7] There should a requirement in all CRIA to explain the relevance of any evidence or opinion received from stakeholders, in particular evidence from children and

young people, and how this has been taken into account in the assessment. Where consultation evidence is not available an explanation of why this is not available should be provided. Where consultation is contemplated but is not planned until after a CRIA is completed it should be clearly stated how the evidence from any future consultation will be taken into account, including arrangements to review CRIA outcomes.

[8] Guidance at step 2 should require a clear account of the predicted impact of a proposal, including the impact on budgets, and a full explanation of how any prediction of impact is assessed. Guidance should encourage reflection on impacts that are not otherwise identified as objectives of the proposal being assessed. The guidance should require an explanation of the reason or reasons for any assessment, conclusion or prediction of impact supported by reference to any evidence relied on to inform the assessment, which might include statistical data, research reports or other policy documents or proposals.

[9] Guidance at step 3 should require an explanation of why selected articles of the UNCRC are considered relevant in the context of the proposal. This should include an explanation of the rights given to children and the obligations on government arising from each of the articles identified. The guidance should require a full explanation of the reason for any assessment that a proposal supports and promotes children's rights guaranteed by the articles identified. Particular attention should be given to the requirement to identify resources to support implementation

[10] The section on Monitoring and Review should be retained as an integral part of the procedure. Guidance should be added to the section which includes requirements to:

[a] provide information on arrangements for monitoring and review of the proposal following implementation.

[b] provide information on arrangements for review of the outcomes from CRIA in the light of any post-implementation review.

[c] indicate the latest date for review of implementation and of CRIA outcomes.

[11] The Welsh Government should retain the Implementation Team and the accumulated expertise it represents and should give consideration to increasing its

capacity to support CRIA. Consideration should also be given to requiring CRIA users to make full use of the Implementation Team.

[12] To improve awareness and knowledge of children's rights amongst staff completing CRIA the Welsh Government should consider providing advanced and/or bespoke training for officials engaged in CRIA.

### **Contact Information**

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**Report ends**