

BRIEFING

THE CASE FOR CHILD RIGHTS IMPACT ASSESSMENT IN ENGLAND

“...Ensuring that ... all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights.”

United Nations Committee on the Rights of the Child, General Comment 5

OVERVIEW

The UN Convention on the Rights of the Child (CRC) entitles children to over 40 substantive rights, and places duties on governments to promote, protect and respect the rights of children. These obligations apply to all “duty bearers”, which include national government institutions, public authorities and those delivering public services.

Government and civil society often focus their actions on protecting the integrity of particular individual rights, but generally afford much less attention to ensuring the systems and processes are in place to create an environment in which children’s rights can flourish. Yet, whether intended or not, most policies do have some level of impact on the lives of children, and child rights impact assessments (CRIA) provide a systematic, flexible way to ensure children are placed at the forefront of national decision-making. Understanding and accounting for the potential effects of proposed laws and policies on children is fundamental to governments being able to make the rights in the CRC a reality for every child.

There have been welcome developments throughout the UK in recent years to improve the levels of scrutiny of children’s rights, and adopt a more systematic approach. However, in its 2016 examination of the implementation of children’s rights in the UK, the UN Committee on the Rights of the Child called for the UK to introduce “a statutory obligation at national and devolved levels to systematically conduct a child rights impact assessment when developing laws and policies affecting children”, and to “publish the results of such assessments and demonstrate how they have been taken into consideration in the proposed laws and policies.”¹

Following the examination, Unicef UK commissioned a study to explore the role of CRIA in enabling governments to protect and promote children’s rights. We found that, used properly and at an early stage in the development of a policy, CRIA are powerful tools that both serve the best interests of

¹ UN Committee on the Rights of the Child (2016), *Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*

children and provide them with a voice in adult-dominated processes, preventing potential harm and minimising the risk of costly policy failures and mistakes. It is our hope that this study, in distilling emerging practice and experiences from other countries, will support the further development of CRIA across all four parts of the UK, and encourage the momentum needed to embed this transformative agenda for children's rights.

This briefing focuses on the situation in England. Briefings addressing the particular circumstances in Northern Ireland, Scotland and Wales can be found at: <http://www.unicef.org.uk/publications>.

CURRENT SITUATION ACROSS THE UK

There is no consistent practice across the UK in when and how governments take children's rights into account when developing law and policy, nor in making decisions that impact either directly or indirectly on children.

In **England** and on matters reserved to the UK Government, there is no formal requirement to undertake a CRIA, nor (at the time of writing) an agreed methodology for child rights scrutiny, although government officials are expected to give consideration to the CRC when developing new policy and legislation following Ministerial commitments in 2010.² The Government has published five assessments of children's rights relating to particular Bills, broadly taking the form of compliance statements.

In **Northern Ireland**, there is no requirement on government or public bodies to undertake a CRIA, although a statutory duty exists under Section 75 of the Northern Ireland Act 1998 to assess and consult on the likely impact of policies on the promotion of equality of opportunity through an Equality Impact Assessment (EQIA).

In **Scotland**, a Child Rights and Well-Being Impact Assessment (CRWIA) process was introduced in June 2015 to enable Scottish Ministers to fulfil new legal duties to take children's rights into consideration in their decision-making.³ CRWIA is not a mandatory requirement; however, to September 2017, 21 CRWIAs had been published by departments across Scottish Government.

In **Wales**, CRIA have been in place for a number of years. In 2011, the Rights of Children and Young Persons (Wales) Measure placed a duty on Welsh Ministers to have due regard to the CRC, and to undertake this duty in a number of ways including through CRIA. CRIAs can cover policies, legislation, regulations, strategies, projects and programmes. From 2012 to date, around 260 CRIAs have been undertaken across Welsh Government.

² Teather, S (2010) Children's Commissioner Review. House of Commons Hansard, 6 December 2010, col.17W

³ Part 1, Children and Young People (Scotland) Act 2015

CHILD RIGHTS SCRUTINY IN ENGLAND

In 2010, the then-Minister of State for Children and Families made an important commitment that *“the government will give due consideration to the UNCRC Articles when making new policy and legislation, in doing so, we will always consider the UN Committee on the Rights of the Child’s recommendations...”*⁴ Cabinet Office guidelines on making legislation note that it would “be helpful” for government departments to address the compatibility of government Bills with the CRC on the Rights of the Child within the explanatory notes that accompanying each Bill.⁵

Unicef UK’s research identified five children’s “consideration papers” that had been produced by Government to May 2017: four drafted by teams in the Department for Education, and one by the Home Office’s Modern Slavery Unit. All five papers related to Government Bills. They combined consideration of the CRC alongside ECHR requirements, and were used as part of broader compliance statements. As far as our research was able to ascertain, there was no common process for analysing impacts on children’s rights, and the papers provided minimal or no review of the evidence for the assessments made. The papers also appear to have been drafted after policy decisions had been made, as an “impact assessment” published alongside a Bill. These are shortcomings that should be rectified. A standard template would ensure a consistent approach and a proper impact assessment.

In January 2017, during the passage of the Children and Social Work Bill, the-then Minister for Vulnerable Children and Families made welcome commitments on the way in which the Government intended to take forward its responsibilities under the CRC, including through CRIA:

*“... We have introduced a programme to raise awareness of the UNCRC among civil servants and to increase understanding of what it means to have regard for the articles on carrying out public duties in relation to children. The programme will include a new core learning and development offer through Civil Service Learning, and an offer through the policy profession led by the director-general for children and social care and the chief social worker... We have made a commitment to work with the Joint Committee on Human Rights on how to promote and embed good practice, including through the use of children’s rights impact assessments.”*⁶

WHY SHOULD CRIA BE INTRODUCED IN ENGLAND?

A robust system of child rights impact assessment can lead to better decision-making with positive outcomes for children, and be beneficial to government. Our survey of existing international analysis and direct experiences across the UK has demonstrated many potential advantages of CRIA:

- CRIA make children visible in policy and other decision-making processes that affect them, and recognise children as stakeholders with unique needs, rights and vulnerabilities.

⁴ Teather, S (2010) Children’s Commissioner Review. House of Commons Hansard, 6 December 2010, col.17W

⁵ Cabinet Office, 2017, *Guide to making legislation*, paragraph 12.29

⁶ House of Commons (12 January 2017), [Public Bill Committee, Children and Social Work Bill](#), Seventh sitting, Hansard col.219-220

- CRIA take into account children’s own views about how they may be affected by government decisions.
- CRIA enable governments to consider their obligations under the Convention early in the policy formation process – before decisions are made – rather than waiting until violations are identified.
- CRIA enable policies to be developed which maximise positive benefits for children while avoiding, reducing or mitigating negative impacts, including identification of unintended consequences.
- CRIA can help to minimise discrimination and promote equitable treatment through early identification of differential impacts among different groups of children (for example, by gender, age, family status, rural or urban location, ethnicity, disability).
- CRIA enable factors that have life-long impacts for children to be identified earlier and addressed, helping to ensure that future generations of children are considered – in areas such as citizenship and adoption.
- CRIA create space for consideration of conflicting rights claims and interests, and promote a balance while giving children priority.
- CRIA can help to increase the legitimacy of government decisions through accountability and transparency.
- CRIA encourage cross-departmental co-ordination and policy coherence within and between governments.

“CRWIAs are highly instrumental because they both ‘do what they say on the tin’ (i.e. measure impact) and reach a bit further in landscape and outlook. We think they have huge value to help champion children’s and young people’s needs in the wide range of settings in which they live their lives - these currently under 18, and those of the next generation and thereafter.”

Stakeholder in Scotland

WHAT COMPARATIVE PRACTICE SHOWS US

CRIA are now used in many countries across the world and at different levels of government. The routine use of a CRIA was first introduced in statutory form in Flanders, Belgium, in 1997. At least six European governments have requirements in place for CRIA at the national level – Austria, Finland, Flanders, Italy, Sweden and Wales; and other States include CRIA as part of broader human rights or social impact assessments.

CRIA also take place at the regional and local level. The province of New Brunswick in Canada introduced a mandatory CRIA process for all Cabinet level legislative and policy decisions in 2013. The aim is for government to assess potential positive and negative effects on child’s rights before making any decision, in order to ensure that they have enough time to address any issue that might arise, and seek out suitable alternatives. In New Zealand, the Child Impact Assessment: Best Practice Guideline

has been designed and is being tested by the Ministry of Social Development for policy and legislative development.⁷

Local CRIA in New Zealand

A New Zealand pilot of local CRIAs in Auckland City and Manukau City Council areas demonstrated how impactful the CRIA process could be on those taking part: the youth teams leading the work in the councils, other council colleagues, those working in the services being assessed, and the parents/carers and children and young people all took part in the local consultations used to inform the CRIA.⁸

Although there have been very few comprehensive evaluations of CRIA processes and their impact on outcomes for children, emerging findings from the limited studies that have taken place indicate that well-executed CRIA can lead to better decision-making and have wider benefits. For example, an evaluation published by the Swedish Government stated that ‘many statutory reforms based on the Convention, have also had an effect of reinforcing the rights of children ...’.⁹

Scottish Government’s CRWIA for the NHS Model Complaints Handling Procedure is an excellent example of a comprehensive and continuous CRIA that served the policy making process well. The CRWIA was done early in the development process and went on to record changes made as the proposals were developed and consulted on.

In Wales, the CRIA on plans to reform local government provides an example of an impact assessment looking at broad policy proposals that may have an indirect, as well as direct, impact on children, developed at an early stage of policy formulation when several different options were still being considered.¹⁰

“I don’t think children’s rights would be considered without the CRIA process. The real change is CRIA and the way it drives and supports greater awareness and understanding of the UNCRC and children’s rights.”

Stakeholder in Wales

Our comparative analysis shows that for CRIA to be most effective, they should be undertaken early in the policy development process so that they inform the evolution of that policy. The best CRIA were

⁷ Available at: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/monitoring/uncroc/uncrocguideline-a3-.pdf>

⁸ Children’s Commissioner (February 2009), *Undertaking Child Impact Assessments in Aotearoa New Zealand Local Authorities : Evidence, practice, ideas*

⁹ Ministry of Health and Social Affairs and Ministry of Foreign Affairs (2001), *Swedish Experience of Child Impact Analysis as a tool for implementing the UN Convention on the Rights of the Child*

¹⁰ This Children’s Rights Impact Assessment relates to the proposals in the Welsh Government White Paper *Reforming Local Government: Resilient and Renewed*, published for consultation on 31 January 2017

iterative, and encouraged close collaboration between government departments. In addition, the evidence suggests that once CRIA have been introduced and become a regular function of government, continuing support for officials is crucial to ensuring high quality assessments that can drive the direction of government policy. It is vital that there is a central team in government with the knowledge and expertise to provide this support. Wales and Scotland already have these teams.

Furthermore, we found anecdotal evidence that involvement in CRIA is having a positive impact on officials' levels of awareness and understanding of children's rights – particularly when a CRIA has triggered by or been a part of direct consultation with children and young people.

“CRWIA combats working in silos, helps officials think about how what they're proposing links in with other strategies, policy proposals and legislation – it feels much more joined-up.”

Stakeholder from Scotland

SETTING UP AND IMPLEMENTING CRIA

CRIA may be just one of several analyses that a public body or official may be required or expected to deliver, and are often undertaken as part of complex and crowded policy formulation and decision-making processes. Although impact assessments, including CRIA, tend to follow a common set of steps or stages, there is no single global model of CRIA in place, as governments have tended to create their own, bespoke approach suited to their specific requirements and addressing local priorities and objectives.

However, CRIA typically include each of the following stages to some degree:

-) Screening
-) Scoping
-) Data collection, evidence gathering, and consultation
-) Impact assessment
-) List of options and recommendations
-) Monitoring and evaluation
-) Publication

Once a government or public authority has a clear CRIA process in place, the assessments themselves need to be done well in order to be effective and useful. Our research found that several factors contribute to CRIA processes being successfully implemented in government¹¹ including clarity of purpose; clear scope and support at a senior level of government; sufficient resourcing and timing of conducting a CRIA; a common template and guidance to ensure a consistent approach to CRIA across government (which also helps to maintain quality); regular training and support; access to comprehensive and reliable data on children; consideration of how to best incorporate children and young people's experiences; clear expectations around publication; and measures put in place to monitor the impact of the policy.

¹¹ Ibid

“The CRWIA is more widely adopted and has greater buy-in. It has had a massive impact on the way in which policy is developed in Scotland and the way in which civil servants and wider groups are looking at children’s rights and talking about children’s rights – in a way that hasn’t happened before.”

Stakeholder from Scotland

NEXT STEPS AND RECOMMENDATIONS

The UK Government has reached an important juncture. Steps have been taken over the last few years to improve child rights scrutiny in England, but a consistent cross-governmental approach is still lacking with no agreed CRIA process in place. No comprehensive CRIA has yet been conducted on a bill or major policy.

In a written answer to Parliament in September 2017, commitments made during the passage of the Children and Social Work Bill to consider further ways to embed children’s rights across government were reiterated by the Minister for Children and Families:

“In October 2016, we responded to the United Nations’ concluding recommendations... We are determined to see this through with a framework of actions designed to raise the profile of children’s rights, and embed them across Whitehall and beyond.”¹²

The Department for Education, which acts as the focal point for the implementation of the Convention on the Rights of the Child by UK Government, has already taken important steps to design and deliver this “framework of actions”, including through developing training to raise awareness of the CRC among officials, and advocating for its further consideration in policy making.

The Government can now choose to go forward or step back. Unicef UK urges the UK Government to:

- J Introduce a formal CRIA process throughout Whitehall, with a clear template and guidance.
- J Clarify the material scope of CRIAs to set expectations on when CRIA should be undertaken (e.g. on all Bills, major policies, budgetary decision-making), and how/when the outcomes of CRIA should be published.
- J Establish senior CRIA champions in each government department.
- J Ensure new training materials on children’s rights cover the use of CRIA as a policy development tool, and become a mandatory requirement of all government officials.
- J Make cross-departmental support available for officials carrying out CRIA, including face-to-face support from the child rights team; and provide additional resourcing to address gaps in evidence on impacts on children (including through specific stakeholder engagement).
- J Involve external stakeholders to advise on the content and scope of individual CRIAs.

¹² House of Commons written answer, 14 September 2017, 9780 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-09-11/9780/>

-) Ensure that the child rights team is appropriately resourced both to deliver the new “framework for action” and to continue with the implementation of the 2016 Concluding Observations from the UN Committee on the Rights of the Child.
-) Share good practice and expertise across the four UK jurisdictions on making effective use of CRIA to improve outcomes for children.

ABOUT UNICEF UK

Unicef, the United Nations Children’s Fund, is mandated by the UN General Assembly to uphold the Convention on the Rights of the Child and promote the rights and well-being of every child. Together with partners, Unicef works in over 190 countries and territories to translate that commitment into practical action, focusing special effort on reaching the most vulnerable and excluded children, to the benefit of all children, everywhere. Unicef UK is one of 36 National Committees. Unicef has a specific role in providing advice and assistance to governments around the world in matters relating to children’s rights.

Unicef UK’s review of child rights impact assessment, on which this briefing is based, can be found at: <http://www.unicef.org.uk/publications>.