

BRIEFING

THE CASE FOR CHILD RIGHTS IMPACT ASSESSMENT IN NORTHERN IRELAND

“...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 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 Convention 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 Northern Ireland. Briefings addressing the particular circumstances in England, 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 Convention 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 Convention on the Rights of the Child, 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 NORTHERN IRELAND

As noted above, there is no requirement on government or other public bodies to undertake a CRIA in Northern Ireland, although Section 75 of the Northern Ireland Act 1998 does place a duty on designated public authorities to promote equality of opportunity on nine different grounds, including age. Under Schedule 9 of the Act, each public authority is required to develop an equality scheme setting out how it will, *inter alia*, "...assess and consult on the likely impact of policies on the promotion of equality of opportunity". The intention is for children's rights to be considered as part of this broader assessment.

The 1998 Act also established the NI Commission for Human Rights. Its functions include: a duty to advise the NI Government and Assembly of legislative and other measures which ought to be taken to protect human rights; and a duty to advise the Assembly whether a Bill is compatible with human rights. In both cases, "human rights" refer to rights under the European Convention on Human Rights (ECHR), which of course apply to children as well as adults.

A draft EQIA to the Welfare Reform Bill in 2011 failed to take any account of the impact of the welfare reforms on children and young people. The final version of the EQIA contained no further consideration of the impact of the welfare changes on children⁴; however the Government has not to date accepted calls from the Northern Ireland Commissioner for Children and Young People (NICCY) that a separate assessment process such as CRIA is required.

Conducting CRIA as part of a wider human rights impact assessment can have certain advantages if done well. One of them is that the CRIA can become mandatory by proxy if the other impact assessment is required by law, and that the experience of measuring the policy/draft legislation against CRC requirements raises awareness of children's rights within government. However, the experience of the Flemish Government shows that there is a certain tension between preserving specificity of CRIA and its alignment with other impact assessments, and there are trade-offs and risks included in such an integrated process, particularly where expertise on children's rights may be lacking.⁵ Our research in Northern Ireland indicated that, although there was a general assumption that potential impacts on children would be considered in the EQIA, the few that have noted any potential impact on children have failed to differentiate between different age groups or different groups of children (for example, children in care, children from BAME backgrounds, children with disabilities, gender, etc.).

'... the EQIA fails to provide that dedicated gaze on children and it's limited in two ways: it's just equality, not broader rights – it's a non-discrimination focus – and segregates children amongst everything else.'

Stakeholder in Northern Ireland

There are, however, other developments in Northern Ireland that have the potential to strengthen considerations of children's rights, and pave the way towards the use of a more formal child rights scrutiny process. For example, the Children's Services Co-operation Act 2015 places a "duty to co-

⁴ Department for Social Development (2012), Welfare Reform Bill (Northern Ireland) 2011 Completed Equality Impact Assessment

⁵ See Desmet, E and Op de Beeck, H (2014), *Strategic decisions in setting up child rights impact assessments*, in *Revue Generale de Droit*

operate” on public authorities in order to improve the well-being of children and young people. The NI Government is also required to adopt a children and young people strategy setting out how it proposes to meet the well-being duty, and to report on the impact of this strategy. The reporting cycle is yet to be agreed (at the time of writing). Under section 1(4), the Act also specifies:

“In determining the meaning of wellbeing for the purposes of this Act, regard is to be had to any relevant provision of the United Nations Convention on the Rights of the Child.”

A draft children and young people strategy was issued for public consultation in December 2016. The draft strategy links the NI Government’s duty to report on the implementation of the CRC to the strategy. It also includes a suite of proposed indicators under each of the eight well-being outcomes which will be used to review progress and assess the impact of actions. In its draft strategy, the NI Government states that *‘Both the UNCRC articles and Concluding Observations serve as a helpful and important guide to making sure that our policies – whether they hold direct or indirect consequences – consider children.’*⁶

WHY SHOULD CRIA BE INTRODUCED IN NORTHERN IRELAND?

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.
- 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.

⁶ Department of Education (2016), *Children and young people’s strategy 2017-2027: consultation document*

- 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.

“[CRIAs] 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 national CRIA – 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

⁷ Available at: <https://www.msd.govt.nz/documents/about-msd-and-ourwork/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*

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. Where they were most effective, CRIA were 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

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

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.

“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

¹¹ Ibid

NEXT STEPS AND RECOMMENDATIONS

Integrating a child rights perspective into broader equality and human rights impact assessment processes can be a valuable way of bringing considerations about impacts on children into government decision-making. However, the rights provided for within the UN Convention on the Rights of the Child take account of the particular needs, vulnerabilities and developmental stages of children, and without robust structures in place, it is difficult for these rights – and the distinct considerations they give rise to – to be fully accounted for within such broader, often adult-focused processes. This in turn compromises the ability of government to properly consider the impacts of particular policies and legislation on children. Although there have been important steps towards prioritising the rights of children and young people within discrete strategies in Northern Ireland, the systematic consideration of children’s rights across government remains lacking.

Unicef UK recommends that the NI Government should:

-) Commission research on how well the current EQIA covers children’s rights and represents their particular needs, views and experiences.
-) Work with NICCY and the Equality Commission to develop a CRIA model for NI which can be integrated with the existing EQIA.
-) Pilot the use of this integrated EQIA/CRIA on the policies developing through the children and young people strategy.
-) Establish a central child rights team to ensure cross-departmental support is available for officials to embed children’s rights considerations into EQIA.
-) Introduce systematic training for government officials and ministers on the UN Convention on the Rights of the Child, including its application to policy and legislative development.
-) 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>.