

BRIEFING

STRENGTHENING CHILD RIGHTS IMPACT ASSESSMENT IN WALES

“...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, led by efforts in Wales since 2011. 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. It included a desk review of existing UK and international practice, and interviews with key stakeholders involved in developing or delivering child

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*

rights scrutiny processes across the UK. 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 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 Wales. Briefings addressing the particular circumstances in England, Northern Ireland and Scotland 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 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

CRIA IN WALES

The Rights of Children and Young Persons (Wales) Measure 2011 was a ground-breaking piece of legislation that made Wales the first country in the UK to embed the CRC into domestic law. Section 1 of the Measure places a duty on Welsh Ministers to have due regard to the requirements of the CRC and its Optional Protocols when exercising any of their functions. The 2014 Children's Rights Scheme sets out the arrangements Welsh Ministers have in place to make sure they comply with the duty, including a CRIA procedure. This includes setting out a flowchart as part of the CRIA process. The flowchart is used to determine whether or not officials working on policy or legislation need to complete a formal CRIA template. This screening process, although a preliminary stage in CRIA, is nonetheless part of the process and integral to effective CRIA:

“The process can range from thinking about the impact of decisions on children in the course of day-to-day work activity, through to the formal application of a structured impact assessment template accompanied by a record of the outcome and decisions.”⁴

Although CRIA is not mandatory in Wales, it is seen as a primary tool for delivering Ministerial duties on children's rights. The Implementation Team for the Wales Child Rights Measure is aware of around 260 CRIAs having been undertaken since 2012. The Welsh Government guidance on CRIA encourages officials to start them early in the policy development process and complete them over a period of time, *‘returning to consider or reconsider issues as new evidence becomes available and/or a proposal is subject to change’*.

Practice has varied quite extensively to date – while we found many good examples of CRIA, we also found CRIA that were drafted too late in the policy development process, becoming one-off products drafted to record and communicate decisions rather than to inform them. For example, a CRIA on plans to reform local government in 2017 provides an example of an impact assessment looking at broad policy proposals that may have an indirect, as well as direct, impact on children, and was developed at an early stage of policy formulation when several different options were still being considered. This CRIA commits to publication of a further CRIA to accompany any future Bill.⁵ In another instance, a CRIA on Safeguarding Regulations and Guidance arising from Part 7 of the Social Services and Well-Being (Wales) Act 2014 (one of a series of 12 CRIAs on different parts of the Act given its extensive implications for children) noted the CRC articles engaged by the policy and provided a summary of selected evidence on deficiencies within public services that supported the measures within the Act, but was undertaken in the late stages of the policy development process so was unable to be used as a tool to consider different approaches.

“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

⁴ Welsh Government (2014a), *Children's Rights Scheme*. Approved by the National Assembly for Wales on 29 April 2014

⁵ 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

The Implementation Team retains an overview of all policy areas within Welsh Government from a child rights perspective, and offers officials a CRIA toolkit: templates, guidance and sample CRIAs. A public newsletter goes out every quarter which links to all published CRIAs; it also lists unpublished CRIAs and gives contact details to request them. The team also provide advice and guidance on children's rights and CRIA, including face face-to-face training, across Welsh Government. An e-learning course providing basic training on children's rights is mandatory for all Welsh Government officials.

The CRIA model in Wales has been extensively evaluated, providing useful analysis on what works well and what can still be improved.⁶ The evaluation highlighted some good practice but also a number of concerns about the quality of CRIAs and how they were being used to drive policy and legislation. Recommendations include streamlining the existing CRIA template in order to create a process more closely aligned with CRIA good practice; clarifying guidance for officials to strengthen and focus the assessments taking place; and highlighting within the guidance the need to ensure attention is given both to the possible discriminatory impacts of a proposal, and to the need to consult with children and young people. The Welsh Government has revised the CRIA template significantly based on findings from the evaluation, including to simplify and focus the procedure. In the independent evaluator's view the revised template is much improved.⁷

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 – Austria, Finland, Flanders, Italy, Sweden and Wales; and other States include CRIA as part of broader human rights or social impact assessments.

Unicef UK's review of existing international analysis and direct experience from the UK found that a robust system of child rights impact assessment can lead to better decision-making with positive outcomes for children, and be beneficial to government:

- 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.

⁶ Hoffman. S and Morse. C (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*. Swansea: Wales Observatory on Human Rights of Children and Young People

⁷ Personal communication

- 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.

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 there is no single global model of CRIA in place, 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, as in the case in Wales, 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 government⁸ 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.

It was also important that CRIA were undertaken early in the policy development process to inform the evolution of that policy. The best CRIA were iterative, encouraging close collaboration between

⁸ Supra 6

government departments, and were often complemented by the provision of training and individual support from a centrally resourced expert team.

“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 in Scotland

NEXT STEPS AND RECOMMENDATIONS

In many respects the Welsh Government is the leader when it comes to the use of CRIA in the UK, and has been willing to continually review and revise its practice to improve its scrutiny of children’s rights and the benefits this can bring for children. All the stakeholders we spoke to in Wales, whether from government or civil society, were positive about the value CRIA brought to the policy-making process, and were committed to doing more to ensure CRIA were used to their full potential.

Unicef UK recommends that Welsh Government:

- J Evaluate the pilot of the revised CRIA template and guidance.
- J Revise the mandatory child rights training for Welsh Government officials, and develop a second tier training programme to support the use of CRIA as a policy development and improvement tool.
- J Introduce systematic CRC and CRIA awareness raising sessions for all Ministers and senior civil servants.
- J Ensure that the Implementation Team is sufficiently resourced to support colleagues across government in undertaking high quality CRIA, including in enabling colleagues to recognise and plan for any resource implications of the CRIA process.
- J Make all CRIAs publicly available, highlighting examples of best practice.
- J Consider ways to link CRIAs relating to specific policies (for example, those produced at consultation, then Bill, then draft regulation stages) to provide a record of how that policy has changed to better promote, respect and protect children’s rights.
- J Explore the use of a multi-agency, co-production approach to CRIA which involves external experts, including the distinct role that the Welsh Government’s Child Rights Advisory Group could play in supporting the development of individual CRIA.
- J Consider how to use Welsh Government’s experience of undertaking CRIA at the national level to promote similar practices at the local level.
- J 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>.