

Counsel General's Portfolio Board for Continuity and Recovery 22.5.20

Paper on Impact Assessments

This paper outlines the requirements for undertaking impact assessments and support available to undertake them. It aims to help design Welsh Government's policy response as part of the Covid-19 recovery phase.

In responding to the Covid-19 outbreak and during the recovery policy response, it is essential that impact assessments are undertaken by Welsh Government. Ministers must be advised of the impact of decisions and legislation on those who might be most marginalised and disadvantaged. This is vital, particularly when decisions are being made at speed and where public emergency decisions are determining our legislation, policy and decisions.

Appraising impact – both positive and negative – is an essential part of developing policy and building delivery plans with optimum impacts/effects. Testing the proposed policy decision on those likely to be affected is an essential part of the assessment of impact, and part of meeting the involvement duty in the Well-being of Future Generations (Wales) Act 2015. This should be done by engaging with different groups of people on the policy proposal and the impact assessments on them, and seeking their views. Although more challenging virtually, there are government fora and advisory groups that can be engaged as well as established focus groups around Covid-19 and recovery.

The Integrated Impact Assessment tool is a structured way to consider impact in the round and to identify and avoid, remedy or mitigate any negative impacts of decisions, and to take opportunities to achieve positive impact. Impact assessment should be developed iteratively throughout the policy making process as part of integrating the social, cultural, economic and environmental considerations, represented in the Well-being Goals, into all of our work. Impact assessments, done well, also help us to understand cumulative impacts on different groups in society. In addition to the Well-being of Future Generations (Wales) Act 2015, there are statutory duties in place to specifically consider the impact assessments listed below:

- Children's rights (The Rights of Children and Young persons (Wales) Measure 2011)
- Equality (The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 place duties on public authorities in Wales, including to carry out equality impact assessments)
- Rural proofing (Screening stage required by Welsh Ministers for all proposals)
- Health (Screening stage required by Welsh Ministers for all proposals)
- Privacy (A policy, project, legislation or ICT project that will process personal data, or require another organisation to do so, must comply with the Data Protection Act 2018 and the Human Rights Act 1998).
- Welsh Language (Welsh Language (Wales) Measure 2011 and the Policy Making Welsh Language Standards).

Depending on the policy decision, it may also be necessary to consider Economic, Environmental and Biodiversity assessments and Information on Regulatory Impact Assessments which must be completed for proposed legislation that could affect the public or private sectors, charity or voluntary sectors. There are also requirements for other impact assessments deriving from statute which apply in certain circumstances, for example, a justice impact assessment is required for any Senedd Bill.

Publication

Independent scrutiny is seen as crucial to increasing the quality of impact assessments, testing the evidence base and making the system credible for stakeholders. Impact assessment should be iterative throughout policy development and not carried out once decisions have been made. The Welsh Government is expected to publish summaries of impact assessments on the website and to make the impact assessment available if requested, and to publish reports on equality impact assessment where impact is significant.

Impact assessments help Cabinet understand the likely impact of their proposed interventions. They also provide Senedd Cymru with supporting evidence on matters brought before it for scrutiny in order to hold the Welsh Government to account, and to support the wider legislative process. In addition some assessments have their own statutory requirements for reporting.

Proportionality

The nature of the policy and the extent of its coverage will determine the depth of evidence that needs to be gathered and considered. The principle of proportionality should guide how much effort and resource should be applied at each step of impact assessment. It should not be used to guide whether an impact assessment should be undertaken, only the scale of gathering and consideration of evidence needed to complete it.

Ultimately, it is for the senior official responsible for clearing the advice on the decision to take a judgement on what is required – this judgement and the reasons for it will need to be recorded and where appropriate set out in advice to Ministers. In some cases, it may be appropriate to refer to an earlier impact assessment conducted on a higher level decision. However, officials will still need to consider whether the decision they are taking is likely to give rise to any impacts different to those identified in the earlier assessment.

Given the exceptional circumstances in responding to Covid-19, policy and Legal Services drafted guidance on impact assessment (see Annex below). This was a response to the immediate emergency phase and now needs to be updated.

Current Position

The Covid-19 impact assessment guidance was intended for immediate decisions in response to the crisis, acknowledging the leeway needed in an emergency scenario. We are now in a different phase, considering options on easing restrictions,

prioritising restart and recovery. Therefore, a more rigorous approach to impact assessment is required - and expected - from stakeholder groups, Ministers, Commissioners and Scrutiny Committees.

The Senedd Committees are showing an increasing interest in impact assessments, The Chair of the CYPE Committee wrote to various Ministers on 12 May:

“We recognise that the urgent pace at which emergency legislation was passed limited the ability of the Welsh Government to undertake a CRIA at the time it sought the then-Assembly’s legislative consent. However, sufficient time has now passed to enable the Welsh Government to undertake an assessment of the impact on children of all measures—not just those decisions relating directly to children’s services—taken to manage Covid-19. We welcome officials’ confirmation that a “full suite” of impact assessments is being prepared and urge the Welsh Government to make these assessments— including CRIsAs—publicly available as soon as possible”.

<https://business.senedd.wales/documents/s101047/Letter%20from%20the%20Chair%20of%20the%20Children%20Young%20People%20and%20Education%20Committee%20to%20the%20Welsh%20Government%20.pdf>

The Children’s Commissioner for Wales has informed Welsh Government that there is a perception in the children’s sector that impact assessments are not being done. The Commissioner’s office appreciated that early decisions may have been made without robust impact assessments but are expecting impact assessments to be completed going forward. They would be expecting at the least impact assessments on the Covid-19 work streams and for those impact assessments to be published. The Equalities and Human Rights Commission and equality stakeholder groups have also been raising the issue of Equality Impact Assessments. There has been recent communication from the Wales Audit Office which suggests they are also interested in examining this area.

Support

Support is available for officials on impact assessment:

- Equality branch colleagues are working closely with Knowledge and Analytical Services to collate, log and summarise the key themes from a range of reports, briefings and insights in relation to the impact of COVID-19 on people with protected characteristics in Wales. This work provides a resource to better understand the equality impacts of COVID-19 in Wales, and to consider mitigating actions where necessary. They are also providing conduits to groups who can provide insight into equality impacts from people with lived experience.
- Children’s Branch CRIA@gov.wales can provide advice on CRIsAs and on data from the ‘Coronavirus and me’ children’s survey).
- Other sources of data include the regular COVID-19 data monitors, and on the Coronavirus sections of the Welsh Government website and the ONS website
- The Welsh Language Standards Team can provide advice on the Welsh Language requirements: Safonau.Standards@gov.wales

- Equality leads embedded within departments can support policy colleagues in developing impact assessments.

Next steps

The current Integrate Impact Assessment tool is very lengthy. Before the crises, a cross-government group were considering a way to undertake impact assessment more iteratively, but the work was paused.

The Portfolio Board are asked to note:

A small group led by equalities and children's rights will:

- Draw on the IIA tool to develop guidance and key questions to produce a more streamlined form and guidance on impact assessment with a focus on statutory requirements. This will include consideration of socio-economic impact ahead of the duty being commenced this Senedd Cymru term. In doing so, they will work with Legal Services to ensure that the process is formalised and that it facilitates meeting statutory duties and protecting Welsh Government from challenge.
- Provide advice for officials on where they can access evidence to inform impact assessments, and fora that can be used for involvement of appropriate groups/people.
- Work with KAS to provide accessible robust research and evidence which provides a picture of differential impacts.

Annex

Guidance for Covid-19

Given the exceptional circumstances in responding to Covid-19, the steps below have been agreed with Legal Services and published on the News Page on 16 April as guidance to policy makers.

COVID-19: Policies and Impact Assessments

Whilst everyone is adversely impacted by Covid-19, many with protected characteristics and children are likely to be experiencing increasingly disproportionate suffering. When we are taking decisions at pace we need to ensure that these aren't having unintended negative impacts. Where adverse impacts cannot be avoided every attempt should be made to mitigate them and take opportunities to promote equality.

The steps below provide basic guidance to ensure a proportionate response:

1. Keep a clear record of the reasons for departing from the usual methods of assessing impact and the steps taken.
2. Ensure such decisions to depart from the usual approach are proportionate and justified; consider the merits of this separately for each case.
3. Apply the principle that, as a minimum, Ministers must demonstrate they have consciously directed their minds to their obligations (the Welsh Language, equality and the duty to have 'due regard' to the United Nations Convention on the Rights of the Child for every decision).
4. Keep records of decision-making, including all relevant factors taken, or not taken, into account and the impact on compliance with statutory obligations.
5. Consider future opportunities to review decisions, to more comprehensively monitor impact and to comply with engagement provisions.

Any decision to dispense with assessing impact will carry a high level of risk and should be avoided if possible. As an absolute minimum, Ministers must be able to demonstrate they have consciously directed their minds to their statutory obligations when making decisions. Crucially, they must be advised of the impact of decisions and legislation on those who might be most marginalised and disadvantaged.