

BRIEFING

STRENGTHENING CHILD RIGHTS IMPACT ASSESSMENT IN SCOTLAND

“...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, including through new scrutiny processes to enable Scottish Ministers to take the CRC into account in their decision-making. 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

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*

international practice, and interviews with key stakeholders involved in developing or delivering child 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 Scotland. Briefings addressing the particular circumstances in England, Northern Ireland 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 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

CRWIA IN SCOTLAND

Part 1 of the Children and Young People (Scotland) Act 2014 places all Scottish Ministers under a duty *‘to keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC, and if they consider it appropriate to do so, take any of the steps identified by that consideration’*. They are also required *‘to take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware’*, and *‘to promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children’*. Ministers are also required to report on the steps they have taken to further the rights in the CRC every three years⁴.

Getting it Right for Every Child (GIRFEC) sets out the Scottish Government’s national approach to improving the well-being of children and young people.⁵ The 2014 Act places key elements of GIRFEC in statute including eight child well-being indicators – Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included (SHANARRI).

The dual child rights and child well-being frameworks are combined in Scotland’s newly established model of child rights scrutiny, the Child Rights and Wellbeing Impact Assessment (CRWIA). CRWIA includes a screening stage, in an effort to ensure CRWIA can become a sustainable part of Scottish Government decision-making.

Although CRWIA has no statutory basis, the current Scottish Government has made it a core part of its implementation strategy to deliver their Part 1 duties.

The vast majority of CRIA undertaken within Scotland and internationally are *ex ante* CRIAs which examine the potential impacts on children of legislation, policies and programmes as they are being developed and, if necessary, avoid or mitigate any negative impacts. Nevertheless, consideration is being given to introducing *ex post* CRIA, which would also evaluate the impact of policy and legislation on children and young people.

“At the moment, it’s a CRWIA for basics – but as things develop, there will be a need a CRWIA level 1 and CRWIA 2 about reflecting back on how they’ve done their CRWIAs, what they think it’s achieved, whether it’s had the impact and, if it hasn’t, why not, and do that in a training environment with government officials.”

Between June 2015 and September 2017, 21 CRWIAs were published by Scottish Government. All assessed a positive or neutral impact of the policy or legislation in question on children’s rights. Several did not progress beyond the screening stage. Nevertheless, there are some impressive examples: the CRWIAs on the Carers (Scotland) Act 2016; Health (Tobacco Nicotine and Care) (Scotland) Bill; Mental Health Strategy; and Pregnancy and Parenthood in Young People Strategy summarise the evidence and results of consultations, including some with children and young people, and record how the

⁴ Act available at: <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

⁵ <http://www.gov.scot/Topics/People/Young-People/gettingitright/what-is-girfec>

proposed policy and implementation measures will be monitored. They also serve as an example of CRWIAs that are developed throughout the policy and legislation development process. More recent CRWIAs on the Child Poverty Bill, and another on Contracted Employment Support, have been presented as “works in progress” that will be reviewed and updated as the legislation or policy develops. Furthermore, in the case of two CRWIAs, the CRWIA for NHS Model Complaints Handling Procedure and the CRWIA for the Children and Young People (Scotland) Act 2014 draft statutory guidance to Part 3 (Children’s Services Plans), drafting process included public consultations. A ‘CRWIA workshop’ was organised on the former which led to additional recommendations for guidance on consent and enabling the use of social media to make complaints. An interesting co-production approach was also taken in 2015/16 to developing a CRWIA on government plans to raise the age of criminal responsibility in Scotland.⁶

“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.”

When the CRWIA process initially launched in June 2015, priority was given to legislation going through the parliamentary process, and major policy areas that would directly impact on children. Those working on Bills were also encouraged to recognise the CRWIA’s potential as a policy improvement approach for implementation of their enacted legislation. The next phase of development of CRWIA in Scotland will focus on increasing the number of CRWIAs undertaken on policy areas that have an indirect impact on children.

“. . . We saw very quickly that CRWIAs could have most impact for children and young people beyond these children-specific policies.”

Our research highlighted some challenges in implementing the CRWIA process across Scottish Government, which included a lack of clarity around the material scope of CRWIA, in part a reflection of CRWIA not being a mandatory process; and little consistency in the promptness with which CRWIA were published following completion, raising concerns around transparency and accountability in real time. We also found that there was a lot of variation in when CRWIA were being undertaken within the policy development process, which in turn impacted significantly on the extent to which their findings were used to inform the development of policy and legislation, and were able to address concerns raised through public consultation.

Reflecting the success of the new CRWIA process, questions were also raised during the course of our research about the capacity of the Central Support Team to respond to the growing demand for information, advice and support; and the extent to which their expertise was recognised across Scottish Government as key to delivering the Part 1 children’s rights duties.

⁶ https://consult.scotland.gov.uk/youth-justice/minimum-age-of-criminal-responsibility/supporting_documents/CRWIA.pdf

However, plans are in place to address some of these concerns, with targeted training being provided to Ministers, Directors and senior officials, including those who do not work on child-specific areas; an intention to increase the number of exemplar CRWIAs available to support officials new to the scrutiny process; and a commitment to evaluate the CRWIA template and guidance as well as the e-learning course for Scottish Government officials.

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.
- 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 Scotland, 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 government⁷ 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 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.”

⁷ Ibid

NEXT STEPS AND RECOMMENDATIONS

“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.”

CRWIA, although not mandatory, is increasingly being used as a tool to enable Ministers to comply with new duties to take children’s rights into account. There is a welcome intention on the part of Scottish Government to apply CRWIA to new policies, measures and legislation with direct impact on children, and to expand the use of CRWIA in policy areas that indirectly affect children - a crucial element in taking a holistic approach to realising children’s rights.

To further strengthen the impact of CRWIA, Unicef UK recommends that the Scottish Government:

-)] Expand the planned evaluation of the CRWIA template and guidance to include areas such as the model used, material scope, training, and the capacity of the central team.
-)] Clarify the material scope of CRWIAs to set expectations on when CRWIA should be undertaken (e.g. on all draft legislation, strategies and consultations).
-)] Ensure that cross-departmental support is available and appropriately resourced for officials carrying out CRWIA, including the provision of face-to-face training and support.
-)] Establish senior CRWIA champions in each government department.
-)] Provide systematic CRC and CRWIA awareness raising sessions to all Ministers and senior civil servants, and consider developing an advanced level of training for key officials.
-)] Ensure CRWIAs are published within a fortnight of being submitted to the central team.
-)] Continue using a multi-agency, co-production approach to CRWIA on priority issues with direct impacts on children and young people, involving external experts as appropriate.
-)] Share good practice and expertise across the four UK jurisdictions on making effective use of CRWIA 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>.