

Sir Derek Jones KCB
Ysgrifennydd Parhaol
Permanent Secretary



Llywodraeth Cymru
Welsh Government

Jocelyn Davies AM
Chair of the Finance Committee
National Assembly for Wales
Cardiff Bay
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Dear Jocelyn,

Finance Committee's legacy – Financial scrutiny of legislation

I am grateful to the Finance Committee for this opportunity to give evidence on the important subjects of how the costs, benefits and other financial impacts of the Welsh Government's Legislative Programme in the Fourth Assembly have been assessed and how these will be reviewed. The attached paper provides a response on each of these points.

This is the first term in which the National Assembly has had full primary law-making powers and I am proud of the significant contribution that the civil service has made in supporting Ministers to bring forward 26 Government-proposed Bills in this term, 22 of which are now Acts of the Assembly. This achievement should not be under-estimated. While I acknowledge and support the Committee's view that it is quality, not quantity, that is important, it is nevertheless the case that the organisation has had to develop its legislative capacity substantially to deliver this programme, and at times it has been a steep learning curve. Overall I believe that my colleagues have achieved a considerable amount in supporting Ministers to propose new laws for the benefit of people in Wales.

At the same time, this is the first term in which this has been done and this means there is much to learn and improve. The legislation brought forward by the Welsh Government is fundamentally a matter of political judgement. But I am committed to continuing to improve the administrative approach to planning, managing and delivering legislation, and to supporting Ministers as effectively as possible in reaching those judgements. Refining our approach to assessing the costs, benefits and other impacts of primary legislation is an important part of that learning, so I welcome the Committee's continuing interest in this area.

Yours,
Derek



Finance Committee Paper on Regulatory Impact Assessments (RIAs)

Introduction

1. The purpose of a Regulatory Impact Assessment (RIA) is to provide the National Assembly, Welsh Ministers, the Accounting Officer and stakeholders with an assessment of the likely impacts of legislation. Such an assessment is crucial to the effective scrutiny of proposed policy changes.
2. Each RIA also aims to meet the requirements of Standing Order 26.6(vi) by presenting a best estimate of the costs of proposed legislation, identifying on whom those costs fall and the timescales over which the costs are expected to arise.
3. While Standing Orders do not explicitly require the assessment of a range of options or the identification of benefits, their inclusion is an important part of the assessment from a Value for Money (VFM) perspective, attempting to set out to the Assembly and stakeholders how the benefits associated with a legislative proposal might help to balance additional costs. The requirement underpinning an RIA therefore has much in common with the requirement placed on Accounting Officers to assess objectively the VFM of all government actions (legislation, regulation, policy, programmes and projects). In consequence, the process for developing an RIA reflects the principles set out in HM Treasury's "Green Book" on how to ensure that VFM has been achieved and demonstrated.
4. The process, structure and content of RIAs have been considered in two recent reviews:
 - The Constitution and Legislative Affairs Committee made a number of recommendations around the structure and content of Explanatory Memoranda and RIAs in 'Making Laws in Wales' (published October 2015).
 - The Public Policy Institute for Wales (PPIW) has been commissioned to review impact assessment processes (including RIAs) in Wales as part of the reducing complexity agenda. This review, which is being led by Dr Clive Grace, is expected to report in January 2016.

The process followed for undertaking RIAs of Government-proposed Assembly Bills

5. The RIA for Government-proposed Assembly Bills has in most cases to date been completed by the relevant policy team - often with specialist input from Welsh Government economists and the other analytical teams - although in some cases the policy team has commissioned external consultants to undertake the assessment. Welsh Government Economists have produced guidance on undertaking RIAs aimed at policy teams working on Assembly Bills. This guidance follows the approach set out in the HM Treasury Green Book: Appraisal and Evaluation in Central Government. The guidance is

currently being reviewed and will be published as part of the refreshed Legislation Handbook on Assembly Bills.

6. The following is a summary of the process for developing an RIA as set out in the current guidance:

- The first stage of the RIA process is to set out all credible options which could achieve the stated policy objectives. The list of options will include a 'Do Nothing' option to act as the baseline scenario. Policy teams are also recommended to consider any realistic 'Do Minimum' options to test whether a large proportion of the claimed benefits under the preferred option could be delivered at a lower cost.
- Having identified a set of options, the next stage is to consider which organisations and/or sectors are likely to be affected under each option. They could include the public sector, private business, the voluntary sector and the general public. While the focus of the RIA should be on impacts within Wales, the assessment should also consider impacts at the UK level (for example, if the proposals impact on the Ministry of Justice).
- Each RIA seeks to identify the cost in the 'Do Nothing' (or baseline scenario) and the additional costs associated with each option. These costs may be economic, social or environmental and can be transitional or recurrent. The preferred approach is to monetise all costs, although a qualitative description of costs will be included where monetisation is not practicable. An appraisal period is selected which is considered long-enough for a 'steady state' to be reached on costs. For most Assembly RIAs, this has tended to be 5 years although this has been extended to 10 years for some RIAs. Where costs are expected to continue beyond the selected appraisal period, this is identified in the RIA narrative.
- Having identified and monetised costs, the next part of the analysis is an assessment of the anticipated benefits. As with costs, the benefits can be economic, social or environmental. The benefits are monetised where possible to enable an objective decision to be made on Value for Money, although, in practice this tends to be more difficult than monetising costs. Where it is not possible to monetise benefits, RIAs are expected to provide the best possible evidence on the nature and scale of those benefits in order to ensure that the trade-offs between costs and benefits across the various options are made as explicit as possible.
- The monetised costs and benefits are discounted (using the HM Treasury central discount rate) to reflect the social rate of time preference¹. This is a standard approach in economic appraisal.
- In addition to the cost-benefit analysis there are a number of specific policy impact assessments that form part of the policy development process. Some of these impact assessments are a legal requirement (for

¹ There is evidence showing that society generally prefers to receive goods and services now rather than later and to defer expenditure until later years. This is known as time preference. In economic appraisal a declining weight is attached to costs and benefits that occur in future years to reflect this time preference.

example, 'Equality and Human Rights' and 'Children and Young People') whilst others (for example, the competition assessment) reflect good policy practice. These supplementary assessments could be seen as providing more detail on the distribution of costs and benefits across particular groups and sectors, and are therefore consistent with the cost-benefit analysis and draw on the same sources of evidence.

- The preferred option is selected on the basis of the above assessment with the decision explained in the RIA.
 - The final chapter of the RIA relates to the Post-Implementation Review, setting out the planned approach for monitoring, reviewing and evaluating the policy. Current guidance on this chapter of the RIA in the Legislation Handbook, was prepared in conjunction with Welsh Government's Knowledge and Analytical Services division (KAS). One of the areas identified in the guidance as appropriate to consider is whether estimated costs and benefits have been realised and where appropriate the reason for any variance. The First Minister has committed to reviewing the current Legislation Handbook on Assembly Bills and to publishing the revised version in his response to the Constitutional and Legislative Affairs (CLA) Committee report on Making Laws in Wales.
7. In most cases, given the forward looking nature of RIAs, there will be some degree of uncertainty in the assessment of costs and benefits and a number of assumptions will have to be made. Where this is the case, the levels and areas of uncertainty are explained in the RIA. Where appropriate, cost estimates are presented in ranges and/or sensitivity analysis is undertaken.
 8. The evidence needed to inform an RIA varies from one Bill to another and typically comes from a variety of sources. Key to the development of meaningful RIAs is the involvement of stakeholders. While stakeholders are involved currently in the development of RIAs, this is an area which could be improved upon further.
 9. To add maximum value, the development of the RIA should be a continual process. An initial impact assessment should be completed at an early stage of the policy making process, with the assessment refined at key stages throughout the process (for example, consultation, draft Bill and introduction). Indeed, the RIA could perhaps best be seen as simply the formal documentation of the evidence needed to ensure that the relevant legislation has been designed to be fit for purpose.
 10. The First Minister has committed, in his response to the Making Laws in Wales report, that policy teams will usually be required to publish a draft financial assessment alongside any draft Bill. The recent draft Bills on Additional Learning Needs and the Minimum Unit Price of Alcohol have been accompanied by a draft RIA.

11. Earlier consideration and more effective stakeholder involvement are expected to lead to an improvement in the quality of RIAs when Bills are introduced into the Assembly.

How costs and benefits are currently presented in RIAs

12. For more complicated Bills, such as those containing a number of quite distinct proposed policy changes, it is recommended that a separate RIA is completed for each proposal. It is recognised that in some cases this has led to quite lengthy and complicated Explanatory Memoranda.
13. To aid the reader, each RIA has included a summary table(s) drawing together the costs and benefits of the preferred option(s) and, where there is more than one proposal, presenting the overall cost of a Bill. The costs are presented both undiscounted and in present value terms. The Welsh Government recognises that concerns have been raised by the Auditor General for Wales and Finance Committee around the presentation of costs and benefits in RIAs and in particular that the presentation of monetised benefits alongside cash costs is potentially misleading - this is certainly not the intention. The presentation of monetised benefits alongside costs is a standard approach in economic appraisal and is intended to support the Value for Money assessment.
14. In light of the recommendations made on recent Bills by the Finance Committee and those made by the CLA Committee in their report on Making Laws in Wales, Welsh Government officials are undertaking a review of the structure, content and presentation of RIAs and how best to meet the requirements set out under Standing Order 26.6(vi). However, the review will need to ensure that the Value for Money element of the assessment is retained. As part of the process, an initial meeting has been held with the Wales Audit Office to discuss the evidence they have given on various RIAs and consider how information could be better presented. The review is ongoing and will also need to take into account any changes to Standing Orders in respect of Explanatory Memoranda which may arise from the CLA Committee's recommendations to the Business Committee in the Making Laws in Wales report and any recommendations in the PPIW report. The guidance on RIAs will be updated accordingly as part of the refreshed Legislation Handbook on Assembly Bills and will then be published.

The process for updating RIAs as and when subordinate legislation is drafted and costed

15. Where possible, a best estimate of the cost of any associated subordinate legislation will be presented in the RIA accompanying an Assembly Bill. Where this has not been possible it has generally been because the detail of the subordinate legislation was not known at the time of producing the Bill RIA.

16. Section 76 of the Government of Wales Act 2006 required Welsh Ministers to make a code of practice setting out their policy on the carrying out of Regulatory Impact Assessments for subordinate legislation. This code identifies a limited number of exceptions whereby subordinate legislation would not require an RIA. However, in the majority of cases an RIA is completed for subordinate legislation.
17. The approach taken in developing an RIA for subordinate legislation is broadly similar to that set out above for Assembly Bills. In some cases, where the subordinate legislation is as envisaged when the Bill was introduced, the RIA accompanying the subordinate legislation will replicate the Bill RIA. In other cases, more detail will be included or more substantial changes will be required in the RIA accompanying the subordinate legislation. For example, the RIA accompanying subordinate legislation on Developments of National Significance reflected further stakeholder engagement and policy refinement undertaken following the enactment of the Planning (Wales) Act 2015.
18. The Welsh Government does not re-visit and update an RIA produced for an Assembly Act once subordinate legislation has been drafted and costed.

What assessments have you already made regarding the accuracy of RIAs for Bills passed this Assembly?

19. In the current term, the emphasis has been on making the RIA which is published on introduction of proposed Legislation as accurate as possible. The RIA process is overseen by Welsh Government economists with input from KAS and the Legislative Programme and Governance Unit. The purpose of this is to try to ensure a consistent approach to RIAs; the appropriate and balanced use of data and evidence; and compliance with Standing Order and HM Treasury Green Book requirements
20. To date, no retrospective assessment of the accuracy of RIAs has been undertaken by the Welsh Government. As explained in the section below, it is considered too early to have undertaken a post-implementation review of many pieces of primary legislation passed during the current term.

How you plan to undertake post legislative scrutiny of the cost of legislation that was enacted in the Fourth Assembly

21. The Legislation Handbook stipulates that the Explanatory Memorandum which is completed for each Assembly Bill should outline the planned approach for the post-implementation review of the legislation. There are a number of different aspects that could be covered by a post-implementation review and the scale and coverage will vary from one piece of legislation to another.

22. The Legislation Handbook provides policy teams with guidance on planning for post-implementation review, this guidance is consistent with the HM Treasury “Magenta Book”. As mentioned above, the Legislation Handbook is being reviewed and will then be published.
23. In some cases the post-implementation review may include a review of the expected costs and benefits of the legislation: for example, in respect of the Mental Health (Wales) Measure 2010 the Minister for Health and Social Services has confirmed a cost benefit analysis will be undertaken in a proportionate way, and will draw on the wider available research evidence and data which has been routinely collected since the Measure was implemented.
24. For many of the pieces of legislation enacted during the Fourth Assembly we have not yet reached the point where a post-implementation review is considered appropriate. For example, the Local Government Byelaws (Wales) Act 2012 was the first Government-proposed Bill to become an Act of the Assembly: it received Royal Assent on 29 November 2012 but was not fully commenced until 30 March 2015.

How the cumulative cost of legislation in the Fourth Assembly is being measured

25. The narratives accompanying the 2015-16 and 2016-17 draft budgets have included assessments of the additional cost (in the relevant year) to Welsh Government of legislation (including both enacted legislation and Bills that had been introduced in the Assembly). The assessments include additional funding provided by the Welsh Government to, for example, local authorities and the NHS to implement legislation. The narratives are predominantly based on information in the RIAs but also reflect any revisions made to costings subsequent to the publication of an RIA.
26. The issue of the cumulative cost of legislation was raised by Finance Committee in correspondence with the Minister for Finance and Government Business during 2015. The following extract, taken from the Minister’s letter of 10 June 2015, remains valid:

“The RIA process does not include as a standard requirement an assessment of the cumulative impact of policy changes and new Welsh legislation on the private sector as a whole. To require this in every case would be disproportionate. However, RIAs have considered the cumulative impact of policy where a particular sector has been

impacted by a number of new policy or legislative changes. This approach is in line with current guidance from HM Treasury”.

27. The consultation process gives stakeholders the opportunity to bring to the Welsh Government’s attention any instances where they believe effects may impact cumulatively on a particular sector, and the Welsh Government will continue to make an assessment of such impacts on a case-by-case basis.

Welsh Government
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