



# Comisiynydd Plant Cymru Children's Commissioner for Wales

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## Ymateb i Ymgynghoriad / Consultation Response

Date / Dyddiad: 31<sup>st</sup> October 2018

Subject / Pwnc: Scrutiny of the draft budget for 2019/20 and impact assessments

### Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales' principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

This written submission has been prepared to inform the concurrent Committee sessions for the Finance Committee, Children Young People and Education Committee and Equality Local Government and Communities Committee on 15<sup>th</sup> November 2018.

I understand that the purpose of the meeting is to discuss the Welsh Government's impact assessments for its draft budget, so I have focused on impact assessments in relation to children's rights within my response. I have picked out particular aspects of the 2019-20 budget to illustrate my points but my response also covers the following general points:

- Due regard to the UNCRC
- Children's Rights Impact Assessments
- UN Committee on the Rights of the Child and General Comment 19 on public budgets
- Children's Budgeting in Wales
- A Children's Rights Approach.

My submission covers international and national expectations around children and participatory budgeting, and seeks to highlight areas where I feel unfortunately these expectations have not been met in the last two years' budget processes.

The key points I will cover are:

- There does not appear to have been progress around the prominence of children and children's rights within the budget considerations;
- There is a lack of analytical evidence in the form of Children's Rights Impact Assessments to show whether children are better or worse off as a result of the budget decisions; and
- Due regard to Children's Rights in exercising Ministerial functions is a legislative requirement and not an 'optional extra'.

### **Due regard to the UNCRC**

As Children's Commissioner for Wales, my legislative remit requires me to have regard to the United Nations Convention on the Rights of the Child (UNCRC) when exercising my functions. Similarly there is a duty on all Welsh Ministers to have due regard to the UNCRC when exercising their functions, under Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011. Whilst the Committee scrutiny session on 15<sup>th</sup> November 2018 will look at impact assessments in the broadest terms, my contribution to that session is necessarily contained to issues affecting children and the UNCRC.

The Children's Rights Scheme 2014 which sits underneath the above named Measure sets out the arrangements for the Welsh Government to have due regard to the UNCRC when exercising functions. Children's rights impact assessments (CRIA) were a key focus of attention when preparing the scheme, and are described as "the process for providing the evidence that children's rights are being analysed and considered with appropriate rigour in our work." The Scheme contains process flowcharts towards the end at Annex 1, which take officials through a series of questions to consider whether or not a CRIA is required to be completed. Questions include whether advice is being offered to a Minister or whether they are carrying out ministerial functions, and whether or not the decision is "relevant to young people". The flowcharts require officials when submitting advice to ministers to confirm that due regard has been given to the UNCRC.

The Scheme sets out the following arrangements in order that Ministers may evidence their compliance:

- putting a Children's Rights Impact Assessment (CRIA) process in place;
- setting out Accountability and Compliance mechanisms;
- providing information and guidance on how Welsh Ministers may be held to account for compliance with the due regard duty.

In recognition of other legal duties and assessments, the Scheme makes clear that Welsh Ministers will align the CRIA process and afford it "adequate prominence" with other assessment requirements. They state that should the wider arrangements be reviewed or amended, "Ministers will ensure that the duty is fully considered and that there is no retrogression in the application of the due regard to the UNCRC".

The Scheme requires reports to be produced at periodic intervals of 2.5 years, to demonstrate compliance with the scheme and the duty of due regard. The 2018 Compliance Report indicated that "it is now time to reflect on the progress made in relation to children's rights, and review the Scheme to bring it up to date." The proposal was to increase the focus on outcomes and changes for children and young people rather than just measuring outputs. It was proposed that the work would be completed by the end of 2018, and that it would be carried out in consultation with children and young people, the Children's Commissioner for Wales and other stakeholder groups. Any changes would require approval by Assembly Members. To date this work has not progressed.

However, in the meantime, the Welsh Government has introduced their Strategic Integrated Impact Assessment (SIIA). The SIIA has been used for the budget process since 2015 and a further SIIA has been published alongside the 2019-20 draft budget proposals on 2<sup>nd</sup> October 2018. We are aware that SIIA have now been rolled out across the Government, so all new policy and legislative proposals should now be subject to a SIIA rather than individual impact assessments.

## **Children's Rights Impact Assessments (CRIA)**

Children's Rights Impact Assessments (CRIA) are recognised internationally as a key mechanism to 'operationalise' the UNCRC and its guiding principle of best interest. A CRIA would therefore consider the potential impact that any proposed policy, legislation, budget or change in administrative services could have on children and their rights, prior to enactment or implementation. This process is said to help ensure effective protection and realisation of rights, and to avoid any adverse impact.

The CRIA template used by the Welsh Government follows a six stage process:

Step 1- What is the piece of work and its objective(s)?

Step 2 - Analysing the impact.

Step 3 - How does the work support and promote children's rights?

Step 4 - Advising the Minister and Ministerial decision.

Step 5 - Recording and communicating the outcome.

Step 6 - Revisiting the piece of work as and when needed

In his [2015 evaluation report](#) on the CRIA procedure in Wales, Simon Hoffman from the Observatory on children's human rights at Swansea University stated that "[t]he six-step CRIA is a contribution to embedding children's rights in the legislative and policy-making processes of the Welsh Government." The evaluation report recommended amending the CRIA template because "particular attention needs to be given to strengthening guidance to direct attention to possible discriminatory impacts of a proposal and the need to consult with children and young people (or other relevant stakeholders)."

The evaluation report made a number of recommendations, intended to strengthen and extend existing work around CRIA and embed the use of CRIA earlier within the policy making process.

[A 2017 UNICEF CRIA briefing for Wales](#) reflects that although CRIA are not mandatory in Wales, it is seen as a primary tool for delivering Ministerial duties on children's rights. The intention is for them to be completed early in the policy development process, to inform the direction of each policy and legislative proposal. However where they have been drafted too late in the policy process, UNICEF observed that CRIA became "one-off products drafted to record and communicate decisions rather than to inform them."

CRIA need to be done well in order to make a difference and contribute positively to policy development. CRIA should also be produced across government departments and should seek to include the direct views of children and young people.

Despite there being areas where improvements could be made, Wales was considered to be the leader on CRIA use in the UK, according to the UNICEF work.

UNICEF UK recommended that Welsh Government:

1. Evaluate the pilot of the revised CRIA template and guidance.
2. 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.
3. Introduce systematic CRC and CRIA awareness raising sessions for all Ministers and senior civil servants.
4. 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.
5. Make all CRIAs publicly available, highlighting examples of best practice.
6. 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.
7. 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.
8. Consider how to use Welsh Government's experience of undertaking CRIA at the national level to promote similar practices at the local level.
9. Share good practice and expertise across the four UK jurisdictions on making effective use of CRIA to improve outcomes for children.

Whilst CRIA are available on request, they are not all 'publically available'. Further, the introduction of SIIA does not require the publication of a CRIA in every case. Only sections 1 and 7 of the SIIA are expected to be published; children's rights sit within section 2. This means that, should an official decide that a full CRIA is not required to be completed, they will not have to publish their reasoning for this. It is also unclear whether, if a full CRIA is completed alongside the SIIA, it will be automatically published.

## **UN Committee on the Rights of the Child**

Article 4 of the UNCRC states the following:

*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*

The United Nations Committee on the Rights of the Child has produced a number of General Comments on issues related to children's rights. In 2016 the Committee published General comment No. 19 (2016) on public budgeting for the realization of children's rights (art. 4) ("GC 19"). It is intended to assist states in the implementation of article 4 in relation to public budgets.

The messages gathered from 2,693 children from 71 countries to feed into this general comment included the following:

- (a) Plan well. There should be enough money in the budget to provide for all rights of children;
- (b) It is impossible for you to invest in us if you do not ask us what to invest in! We know; you should ask;
- (c) Do not forget to include children with special needs in your budgets;
- (d) Spend money fairly and wisely. Don't spend our money on something that is useless — be efficient, save money;
- (e) Investing in children is a long-term investment, and it generates a lot, so remember to think of it;
- (f) Investment in our families is also an important way of securing our rights;
- (g) Make sure there is no corruption;
- (h) Recognize the rights of all citizens, both young and old, by listening to people's opinions on matters of governance;
- (i) I would like the Government to be more accountable and transparent;
- (j) Publish records of how the money is spent;
- (k) Provide budget information to all children in ways that are easily understood and in media that are popular with children, like social media.

The wording of Article 4 (shall undertake) indicates that this is not optional, and GC 19 notes that all government branches, levels and structures that play a role in devising public budgets shall exercise their functions in a way that is consistent with the Convention.

GC 19 also highlights the four core principles of non-discrimination (article 2), best interests of the child (article 3), right to life, survival and development (article 6) and right to be heard (article 12).

In order for the budget process to be effective, “States parties should constantly assess how budgets affect different groups of children and ensure that their budget decisions lead to the best possible outcomes for the largest number of children, paying special attention to children in vulnerable situations.”

In terms of equity, this “does not always mean spending the same amount on each child, but rather making spending decisions that lead to substantive equality among children. Resources should be fairly targeted to promote equality. States parties are obliged to remove all discriminatory barriers that children may face in accessing their rights.”

Budgets should also be efficient, sustainable and transparent. Transparency is considered “a prerequisite for enabling meaningful participation of the executive, legislatures and civil society, including children, in the budget process.” It is also noted within GC 19 that reflection and audit of the impact of previous decisions is important in order to inform future decision making.

### **Children’s Budgeting**

In October 2009 the then Children, Young People and Education Committee concluded their focused inquiry on children’s budgeting by publishing their report Children’s Budgeting in Wales. In her foreword as Chair of the Committee, Helen Mary Jones stated that children’s budgeting is all about “examining the resources that national and local government allocate to policies and services that affect children and young people, assessing the impact they have, and looking at whether these adequately reflect the needs of children and young people.” At that time Wales was recognised as a lead across the UK having initiated some work around this, but by the Government’s own admission it was “early days”.

The Committee initiated their inquiry due to their concerns that “the ways in which budgets are constructed in Wales made it difficult for us to effectively examine the Welsh Government’s expenditure on children and young people.”

The report made 11 recommendations, around published strategies and action plans for children, statutory guidance on data collection and production of children and young people’s budget statements, monitoring, participation and

improving the information available to the public. The key recommendation (recommendation 4) was for the Welsh Government to produce their own children and young people's budget statement.

In their final substantive response to the Inquiry, in November 2010, the Welsh Government recognised the Committee's concerns, and accepted many of the recommendations, particularly on the publication of children and young people's budget statements and participation. At that time the Government also identified additional benefits of children's budgeting, for example in helping to meet the target to eradicate child poverty by 2020 (a target that has since been abandoned).

I became the Children's Commissioner for Wales in April 2015; in this time I have not seen a single example of a Children and Young People's Budget Statement from the Welsh Government. In addition, the impact assessments for the budget have all been SIIA in this time, despite the Government committing to undertake further work around children's budgeting.

The response also refers to Children and Young People's Plans; these have since been abolished with no replacement or similar requirement created.

The last published Welsh Assembly Government and local authority expenditure - Population group analysis (presenting information on the proportion of budget spent on those aged 0-17, 18-25, 26-64 and those aged 65 and over) is dated 28 July 2010, despite the government committing to revisiting this process every three years.

### **A Children's Rights Approach**

In 2016 I published a guide for all public bodies (including the Welsh Government) on a children's rights approach, entitled The Right Way.

The five principles of a Children's Rights Approach are:

- Embedding children's rights
- Equality and Non-discrimination
- Empowering children
- Participation
- Accountability.

Embedding a children's rights approach includes ensuring that "[p]olicy, procedures and actions, as well as budgets should all be developed and implemented taking into account their impact on children's rights. It should be clear and transparent where children's rights have been taken into account."

Examples of this include developing and making use of performance indicators which reflect children's rights (e.g. should be incorporated in business planning, budgeting and other strategic planning); and children's rights impact assessment i.e. the proofing of any policy and budgetary decisions for their direct or indirect impact on children (or children's rights assessment integrated into Equality Impact Assessment).

Use of CRIA can also help to support equality and non-discrimination, by ensuring that children are involved in the proofing of all budgetary decisions that have a direct or indirect impact on them. In order to do so information needs to be provided to children and young people in a suitable format. Providing opportunities for children and young people to contribute to this process will be empowering in itself, but empowerment can also be extended if you ensure that resources are identified in budgets to support education, training and development opportunities for children, and participation.

Our guide highlights a case study example from the City and County of Swansea. More than 100 children and young people (aged 7 to 18) were invited from local primary and secondary schools to participate in the Council's Big Budget conversation. This was the Council's third annual budget consultation with children and young people in the city. Participation was initiated by city officials as part of a broad policy of giving due regard to the UNCRC in policy-making. Council officials developed consultation tools to engage with a total of 114 pupils from primary and secondary schools in advance of the budget. For example, one workshop presented participants with ten budget headings with resources allocated to each. Participants were asked to consider what they would do as the Council if they had to cut 20 percent of the budget. Participants described their rationale for any suggested cuts, or for protecting spending in some areas. The Council asked in this consultation for children and young people's advice on what to prioritise as the Council reduced the overall budget. It is an example of how children can be involved in decision-making processes where resources are constrained and may not be available for the promotion of children's rights, but where the realisation of children's rights could be better achieved through redirecting or retaining funding for particular services.

The final principle of accountability is important as it can often be overlooked. Accountability can be achieved by encouraging independent monitoring of performance against children's rights standards, including by involving children in monitoring and/or external review/inspection. Public services should be accountable to all those who use them, which includes children and young people.

## **2019/20 Budget**

This year's budget has been prepared in the context of the Well-being of Future Generations (Wales) Act 2015. While I welcome the consideration of policy lines alongside each other under the headings from *Prosperity for All* rather than under Ministerial portfolios this year, there still does not appear to have been strong consideration for children's rights and the impact on children of particular decisions. This legislation is not directly linked to human rights treaties and obligations, and therefore using this as the approach for budget considerations can unfortunately result in rights being overlooked.

Whilst the Well-being of Future Generations (Wales) Act complements many of the aims of children's rights, it does not directly use rights based language. Participation is one example where the terminology aligns; it is important that there is transparency in the budget papers to ensure meaningful participation. The draft budget refers to Participative Budgeting but it is unclear exactly how this has taken place, particularly with children and young people. The narrative refers to explaining the budget process to different groups when the opportunities arise but it doesn't say a great deal beyond that and doesn't mention children at all.

As noted above, a SIIA has been published together with the draft budget, rather than individual impact assessments. Whilst there are mentions of different articles of the UNCRC within that document, I was disappointed to see that these appear to have been used to back up the particular decisions and allocations that have been made rather than analysing the impact of different options. The narrative of the impact assessment (contained within the budget narrative, not published separately) does not follow the questions set out within the government's SIIA guidance on children's rights, nor does it follow the six stage process for CRIA noted above. It is therefore difficult to ascertain exactly how this process has been undertaken in line with the government's own guidance.

Here are some examples where I feel that the analysis is poor or lacking. I should make clear that I do not disagree with allocating funding to particular groups that may be highlighted, but it isn't possible to see the analysis of options within these parts.

The PDG Access programme is stated to "meet the UNCRC" with reference to Articles 26 and 29. Whilst both of these articles are relevant in this area as they relate to additional funding, and young people being able to achieve their full potential through education, it cannot be stated that the provision of £125 to pupils at Reception age and the start of secondary school "meets" the UNCRC. Without analysing the current cost of school uniforms, sports equipment and costs associated with membership of external clubs and societies, it is impossible to state that this funding therefore meets those obligations. There is also no analysis of the impact on children whose family income may be just above the level that makes them eligible for this grant, yet who would still be recognised as living in

poverty using standard measures. It could be said to uphold some of the principles of Articles 26 and 29, but a blanket statement that those articles are somehow completed via this policy cannot be supported.

Within the draft budget narrative, this grant was described as covering articles 26, 27 and 30. There is undeniably a link between the participation in clubs/societies or sporting activities and positive mental health, this is far too simplistic and doesn't take account of whether or not the funding is sufficient for families to afford uniform plus sports kit, subscriptions for clubs, getting to training, attending away matches and competitions.

The full budget narrative refers to £1m additional funding for age 16-18 concessionary travel, which has been "reprioritised" to enhance the existing scheme. Unfortunately as the details of the new scheme are now overdue (expected Sept 2018) it is difficult to understand how this will enhance the scheme. It is therefore impossible to analyse the *impact* of this albeit welcome funding. The funding for free school meals falls into a similar category; there was a consultation in September 2018 about the threshold level for free school meals in the context of Universal Credit. Despite the fact that the response to this consultation has not yet been published, by 2<sup>nd</sup> October when the draft budget was published, the figures included were based on the consultation proposals. It is unfortunate that the consultation was timed for this period when the results could not possibly feed into consideration of the draft budget. This makes the consultation exercise appear less meaningful as it implies there is no intention to alter the thresholds set despite asking respondents to consider this.

The majority of the SIIA justifies each spending decision relating to children by referencing a UNCRC article. Without any wider strategic statement that explains the government's aims in relation to children's policy, or more comprehensive analysis made available to the public on potential impact of each area of funding on different groups of children, there is a risk that this becomes an overly simple equation. For example, as there is additional funding being provided for mental health support, this is seen to satisfy Article 24. Funding for the All Wales School Liaison Programme (School Beat) has been restored and referenced in this context as protecting children from dangerous drugs under Article 33. I should state that I am extremely pleased that this funding stream has been restored following concerns during the year that it may disappear. I do not think, however, that this description does justice to the broad range of work included in the programme. This simplistic analysis risks a misunderstanding of the value of this work and therefore could place it in jeopardy for future years.

Many areas of concern were raised in relation to last year's budget, due to a lack of clarity and transparency. These include the School Beat Funding, the Minority Ethnic Achievement Grant or MEAG, and the school uniform grant. In relation to MEAG, I have recently been contacted by the Neath Port Talbot Youth Council, expressing concerns about how the Education Improvement Grant will affect the Minority Ethnic Services (MEAS) and also the Traveller

Education Service (TES). They were worried that putting all of the grants into one funding pot may risk not reaching all of the different vulnerable groups who would really benefit from this to support educational attainment. The youth council had written to the Cabinet Secretary for Education with their concerns and had asked whether or not a CRIA had been undertaken. The response referred to an integrated approach to impact assessment but went no further to explain how the impact had been considered in relation to these funding streams. The Government had committed to reviewing the Education Improvement Grant in their [response](#) to the CYPE Committee inquiry on the EIG, but we are not aware that this has taken place. The Committee's own view about an amalgamated grant covering outcomes for all learners was that it would be "over-ambitious and unrealistic to expect that a focus on all pupils, even generally on those from deprived backgrounds as measured by eligibility for free school meals, will trickle down sufficiently to specific groups of learners such as Gypsy, Roma and Traveller children and all of the different ethnic groups we have in Wales."

Also within this year's budget there is a notable cut of £5m from the budget previously allocated to the childcare offer. Whilst a CRIA was produced to coincide with publication of the Childcare Funding (Wales) Bill, the CRIA took the approach of measuring the impact of the children who were included in the Offer only. My [written](#) and [oral](#) evidence to the CYPE Committee at Stage 1 of this Bill highlighted that this is not the correct approach for impact assessments. Whilst I am aware that specific commitments were made within the Labour party manifesto for the 2016 election around eligibility for the offer, it is clear to me that a CRIA of that option should have identified significant groups that would be further disadvantaged by exclusion from the Offer, such as children whose parents are not in work, and younger children. The position on this Offer is such that, despite a CRIA having been completed, the actual Offer that is going forward is perpetuating disadvantage rather than seeking to mitigate the circumstances and level the playing field for those children from disadvantaged backgrounds. Further, due to lack of take up during the pilot phase, money is now being removed from this budget line for 2019-20. There is no available evidence as to any considerations around extension of the offer due to additional money being available.

This to me highlights the importance of CRIA being completed at the outset of policy development, to *inform* the policy direction rather than *confirm* that the policy is compliant with rights simply by mentioning rights in the context of the children who have been included only. Decisions to allocate funding, whether for an entirely new pot of funding, cutting previous funding levels or amalgamating a number of grants, are all examples of Ministers exercising their functions. As such I would expect a CRIA to be completed in relation to those decisions and published alongside the budget (or record of the decision if this is taken outside of the budget round). In relation to general policy or legislative decisions, I would expect the CRIA to be completed as part of the broader policy development, and the associated budget to then be clearly linked back to that work as opposed to the CRIA being undertaken once the extent, scope and funding have already been decided upon.

Had a CRIA been undertaken in relation to the budget decision making, I would have expected this point to at least have been identified and considered. As it is, children's rights appear to be an 'add-on' within this budget, as seems to have been the case for a number of years, rather than part of the analysis that led to the budgetary decisions in the first place. If children's rights *were* more integrated into the process this year, then this is not evidenced in the publically available documents.

### **Summary of the approach in Wales**

This submission aims to highlight the dichotomy between the narrative in Wales around children's rights being part of all of the business of government and the reality that at present, impact assessments are not taking account of children's rights in a detailed, open and transparent manner. The result of this is that, unfortunately, it is difficult to identify how Ministers have met their duties under the Measure.

For impact assessments in general, it is not intended that policies should be created and then impact assessments are written to 'fit' around the policies that have already been decided upon.

The evidence within this paper picks up the expectations from Wales and from international perspectives around children's rights and public budgets. Unfortunately I would have to conclude that Wales appears not to have made progress on this, despite the introduction of the Rights of Children and Young Persons (Wales) Measure 2011 and the Children's Scheme 2014. The use of SIIA appears to have weakened the position on children's rights being actively considered as part of decision making processes. This is despite the statements within the Government's own Children's Rights Scheme which stated that in any review or amendment of arrangements, ministers would ensure there would be "no retrogression" in the application of the UNCRC due regard duty.

This echoes the concerns of the CYPE Committee in their [scrutiny of the 2018-19 budget](#). They called for a specific CRIA on the budget and stated "We fear that without a CRIA, resources to support the rights of children and young people may at best be difficult to identify. At worst, the absence of a CRIA could lead to the Welsh Government paying inadequate attention to the rights of children and young people in important financial decisions."

If the duties on Welsh Ministers within that Measure have not been sufficient to create transparent and participatory budgeting and clear account of children's rights, I believe that further incorporation of the UNCRC is required in order to address this point. This is something that I have already raised with the Minister for Children, Older People and Social Care and the First Minister, and I will be pursuing this further with their officials at their direction, in order to ensure that children's rights are properly considered in government decision making, and that decisions can be challenged should this not be the case.

Submitted by:

A handwritten signature in black ink, appearing to read 'Sally Holland', written in a cursive style.

**Professor Sally Holland**

**Children's Commissioner for Wales**