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Reducing Complexity and Adding Value: A Strategic Approach to Impact Assessment in the Welsh Government

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Reducing Complexity and Adding Value: A Strategic Approach to Impact Assessment in the Welsh Government

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Summary

- The Welsh Government's Permanent Secretary engaged with staff to identify ways to improve advice to Ministers and reduce the complexity of internal processes. Impact Assessment (IA) was an area where increasing complexity militated against effective policy advice. The First Minister asked the PPIW to support the Welsh Government in addressing this.
- IAs are a structured understanding of the consequences of governmental actions and interventions, applicable to all the principal governmental intervention instruments. The evidence shows that structural, cultural and contextual factors interact to create the IA 'system' that shapes both the complexity and the value that IAs contribute.
- Improving IAs requires a full understanding of the 'problem'. There is no silver bullet to fix it. The need is for a clear, strategic approach consisting of the following:
 - **Cabinet Statement of Purpose:** The Permanent Secretary to ask the First Minister and Cabinet to consider issuing a clear 'purpose' statement of IA in the Welsh Government;
 - **Well-being of Future Generations (Wales) Act:** The Well-being of Future Generations (Wales) Act 2015 to provide a key integrating framework for all assessments of impact;
 - **Steward:** Creation of the function of 'steward' of the overall IA process;
 - **Aligning the legal framework:** The Welsh Government and the National Assembly for Wales (NAfW) to align their approach to IAs, with other legal IA requirements kept under review where appropriate;
 - **Culture and judgement:** The IA process to emphasise the judgement and responsibility of officials, and a reliance on people rather than procedure;
 - **Process and procedure:** Terminology to be consolidated around 'IA', and a single IA front end template and screening process to be created, data and evidence resources to be identified, and a consolidated and searchable IA archive to be created;
 - **Design:** IA design principles to be developed and (re) promulgated; and
 - **Public bodies and other stakeholders:** They should be party to the changes and able to influence and share Welsh Government materials and guidance on IAs.
- These changes would enable a more integrated approach and reduce complexity, and officials should then be able to approach IAs with more confidence and clarity.

Introduction

The Permanent Secretary led a process of engagement with staff to identify ways of improving advice to Ministers and reducing complexity in the Welsh Government. As part of that, the range of processes of Impact Assessment was highlighted by many officials as being a problem, and action was then taken within a wider 'Reducing Complexity' Programme. A Working Group and internal review identified various aspects of the problem (effectively all of which have been broadly confirmed by this study), and pointed to ways to improve. As a result, some positive progress was made, but not sufficient to satisfy the need. The Welsh Government recognised that deeper and more intractable cultural and/or structural problems lay behind the 'surface' problem of complexity in the impact assessment process. The First Minister asked the PPIW to support the Welsh Government in addressing this.

The overall aim has been to advise the Welsh Government on steps to improve the impact assessment processes as a means of supporting better, simpler and more integrated policy making in Wales. It has attempted to:

- identify evidence of impact assessment activities within the Welsh Government which have been most / least effective and most / least burdensome;
- understand existing practice in other governments, including smaller countries;
- review existing integrated impact assessments/appraisal tools and to identify the characteristics of an improved model for supporting people to carry out high quality analysis and demonstrate that this has been done; and
- identify options to introduce an integrated approach aligned to the seven goals within the Well-being of Future Generations (Wales) Act 2015 and building in other existing impact assessment requirements.

Working with a Steering Group of officials, the approach and method deployed has been:

- Understanding and mapping the existing requirements and the typical processes associated with impact assessments through a mixture of documentary analysis, semi structured interviews with key identified individuals, workshops, and further iteration with the Steering Group, and generally assessing current practice in Welsh Government, including a 'user' test of Welsh Government intranet materials;
- Reviewing similar and alternative international and UK arrangements through both an academic and grey literature search, and also through engagement with practitioner and policy maker experts in other jurisdictions, and generating a thematic analysis and

also a comparative analysis across jurisdictions on key issues such as the Regulatory Impact Assessment (RIA)/IA relationship;

- Interviews/workshop totalling 91 individuals (47 internal to Welsh Government, 3 within National Assembly for Wales, 23 external to Welsh Government although within Wales, and 18 outside Wales);
- (Re-)analysis of the ‘problem’ of impact assessments including understanding the forces acting on and within the impact assessment ‘system’, contextualising the problem developmentally and redefining it in relation to added value and making better policy as well as reducing complexity, and analysis of potential dimensions of both ‘complexity’ and ‘integration’; and
- Developing lines of recommendation and credible alternatives and testing them through bi-lateral and multi-lateral exchanges with the client Steering Group and others with relevant experience, and crafting credible options for consideration.

The following report reviews the ‘landscape’ of impact assessment in the Welsh Government, and also catalogues its functions and its problems. It goes on to consider what insights might be garnered from other jurisdictions, albeit that ‘context is key’ and so lessons from other countries may only be applied with care and re-interpretation to the particulars of the development of the governance of Wales. In light of this, the ‘problem’ of impact assessment is re-analysed, and conclusions and recommendations drawn out.

Finally by way of introduction, it should be noted that whilst this is a report commissioned by the Welsh Government, in seeking to provide a comprehensive analysis it became important to take into account the role of the National Assembly and its requirements, because they are a key part of the landscape. The report therefore addresses these aspects also.

Impact Assessment in the Welsh Government

The role of impact assessment

The field of ‘impact assessment’ in public policy is very broad, and terminology is no sure guide to what an impact assessment is in practice. Its meaning in this context is:

- At heart, IAs are a structured understanding of the consequences (intended and unintended) of governmental actions and interventions which can be applied to legislation (primary and secondary), to significant policy developments, and also (potentially) to significant investments and budgetary decisions (Northern Ireland



Executive, 2007). They are conducted *ex ante* (and ideally early in the policy development/legislative/investment cycle) but potentially linked to *ex post* evaluation (Russel & Turnpenny, 2009; OECD, 2011; Smismans, 2015);

- They are generally associated with wider processes of evidence-based policy making, and of public consultation and stakeholder engagement, and they are variably integrated into other policy/legislative procedures such as policy clearance arrangements and Ministerial submission requirements (Her Majesty's Government, Department of Business, Innovation and Skills, 2015; Australian Government, 2015; Government of Canada, 2012b);
- They are underpinned by statutory or Ministerial or National Assembly for Wales (NAfW) requirements, and given effect through a designated procedure, and with/without associated screening, template, and tools, depending on the IA in question; and
- They are variably policed/enforced administratively within the civil service, and/or by potential legal intervention, and/or by external formal institutional actors, and/or by external stakeholders/publics.

It is important to note that, in a governmental context, the genesis of 'impact assessment' as a major policy making aid comes from two principal currents relating to 'mainstreaming' particular cross-cutting policies. On the one hand there is the often detailed and technical requirements associated with certain kinds of policy initiatives, and especially those with potential environmental consequences. On the other, there are initiatives aimed at tackling regulatory burden on private businesses, and usually styled as 'regulatory impact assessments', although RIAs in the Welsh Government have been only indirectly influenced by the 'reducing red tape' approach to regulatory reform.

The Functions of IAs in the Welsh Government

The Welsh Government distinguishes between RIAs and IAs:

- RIAs are completed for primary legislation (as a requirement of the Assembly's Standing Orders (SOs)) and secondary legislation (as a statutory requirement and pursuant to a Ministerial Code, and also as required by Assembly SOs) (National Assembly for Wales, 2015; National Assembly for Wales, 2009). They concentrate on the economic costs and benefits of proposals (which can include monetised environmental or social benefits);

- ‘IAs’ as a policy instrument include RIAs, but in Wales in practice they sit alongside RIAs to address a whole series of other policy areas, some of which themselves have a statutory underpinning (notably equalities, children’s rights, privacy, and environmental impact assessments) and others which are ‘only’ policy driven (including health, poverty, and rural proofing) but which should be part of the RIA backdrop for policy that is being delivered through legislation. (For examples see: Welsh Government, 2015a; Welsh Government, Fairer Futures Division, 2015a; Welsh Government, Information Security Branch, 2015a).

A list of what is considered to be the current array of IAs is at Annex 3. RIAs are effectively policed by the Legislative Programme and Governance Unit and the Chief Economist’s Office, and by the NAFW. The other IAs are policed by a variety of actors/processes of varying strengths and locations, some of which (such as the various Commissioners¹) are ‘external’ to the Welsh Government *per se* (Welsh Government, Policy Support Unit, 2015d).

The potential opportunities and risks of IAs

The popularity of IAs as a policy instrument across all modern jurisdictions as an aid to evidence based policy making points clearly to their ubiquity in the policy process. There is an obvious and compelling counterfactual – no serious modern policy and legislative body would not undertake an ‘understanding of the likely consequences’ in developing policy or legislation. However, what is also clear is that IAs have multiple (and possibly sometimes conflicting) purposes, and that the benefits associated with them vary in character and scale and realisability from the perspective of the various stakeholders who have an interest in them (Dunlop et al., 2012; Rissi & Sager, 2013; Torriti, 2010; Davies, 2012).

On the positive side, IAs are a core instrument in policy making. They are powerful because they provide focus and can mobilise resource and attention, and because associated IA procedures create channels for action and for potential policing and enforcement mechanisms. They can also identify unintended effects or opportunities. They are potentially very flexible, supporting changes in and a focus on new priorities, and they have strong ‘mainstreaming’ and ‘horizontal’ effect in applying an area of policy priority across the range of governmental responsibilities (Northern Ireland Executive, 2013; Government of Canada, 2012; Government of Canada, 2014). They can bring an important element of democratic accountability and transparency to the policy making process by supporting ‘the public’ and

¹ The Commissioners of particular relevance here are those for Children, Equalities and Human Rights, Older People, Future Generations, and Welsh Language.

other key stakeholders in having their say on proposed policy, which is a critical function in a democratic society (European Commission, 2015; Northern Ireland Executive, 2007; O’Faircheallaigh, 2010). Further, even when they do not lead to changes in policy direction as such, IAs can have collateral benefit in building evidence and understanding on the part of politicians, officials and stakeholders or in the design of mitigating actions where adverse effects are identified. (Jacob et al., 2012; Bartlett, 2013).

On the negative side, however, IAs can too often perform the function of *ex post facto* justification and decision ‘retro-fit’, being weighted down with burdensome procedure and a distraction from officials’ ‘main’ purpose. (Russel & Turnpenny, 2009; Hertin et al., 2009) As officials strive to comply with statutory and non-statutory requirements, and ‘get them done and out of the way’ they can become merely a tick-box exercise, or, conversely, lengthy and obfuscatory (Jacob et al., 2008; European Court of Auditors, 2010). The success of IAs in having strong horizontal effect can encourage multiple and excessive policy demands from other policy entrepreneurs, and there is an ever present risk of IA proliferation. Whilst IAs ought in theory to create an effective platform against which to conduct *ex post* implementation evaluation, that connection is not often made effectively (Smismans, 2015; Jacob et al., 2008).

Problems and Issues with IAs in the Welsh Government

To understand existing practice in Wales, a series of interviews were conducted including with most of the IA ‘owners’, many IA authors, and various types of IA ‘consumers’ within the Welsh Government and amongst external stakeholders. There was no real doubt about the potential benefits of IAs, nor the possibility to realise some of those benefits. Indeed, a number of the IAs that are required reflect important moves forward by the Welsh Government on key policy areas, such as the incorporation of the rights of children and a stronger focus in relation to equalities. However, the interviews and the associated review of internal documentation surfaced a number of preliminary themes. As will be seen from the references in the text below, these reflect IA-related problems which have also been identified in other jurisdictions:

- Overall, IAs are not done as well as they could or should be, as officials recognised in initiating this review. There is evidence from authoritative observers that the quality of RIAs in particular is improving, but it remains variable and patchy. Sometimes they are spread too thin, and so themselves lose impact, and the sheer number of them itself can promote a compliance culture. Respondents in all categories identified few if any IAs which they regarded (albeit from their own perspectives) as adding real value based on evidence. This judgement is also reflected in the judgements of authoritative external observers, including the Auditor-General for Wales and some Commissioners;



- The current weaknesses in IAs include inappropriate timing (usually too late, but sometimes too early) (Jacob et al., 2008; European Court of Auditors, 2010); a ‘compliance’ approach which inhibits value-add (Rothstein & Downer, 2013; Davies, 2012); unclear or inadequate use of evidence (Jacob et al., 2012; Russel & Turnpenny, 2009); failure sufficiently to identify risks (Pope et al., 2013; National Audit Office, 2007; Hertin et al., 2009); and poor standards of presentation (Davies, 2012). They are not always done with the right focus e.g. at programme rather than project level. The current model is experienced as burdensome by those who have to do them;
- The IA landscape in the Welsh Government is undoubtedly very complex. For example there were 60+ IAs produced for the Public Health (Wales) Bill. There is also a comparatively large number of different IA topics. Wales has at least 18. No other jurisdiction is close to that, apart from Northern Ireland which has 14 (Welsh Government, Policy Support Unit, 2015d; Northern Ireland Executive, 2007);
- The current approach focuses mainly on the adverse impact of decisions, rather than on getting the best decisions through exploring benefits in an integrated way. It is not strategic in nature but something of a ‘free for all’ with home grown guidance and templates (see, for example, Welsh Government, 2015a; Welsh Government, Fairer Futures Division, 2015a; Welsh Government, Information Security Branch, 2015a). The various IAs tend to operate as strong silos with stakeholder support which nonetheless seek to exercise mainstreaming and horizontal effect. A number of issues are not covered (or not always), and there is continuing pressure to add new statutory requirements, including health, for example;
- The application of the various duties is often blurred and there are variations in approach which add to complexity (Pope et al., 2013; Morgan et al., 2012; Rothstien & Downer, 2013). It is a struggle for officials to pull the various threads together, even though some of the corporate resources, such as the intranet ‘front end’ address appropriate issues and provide constructive advice. There is some procedural/gateway consolidation through the intranet and some efforts to join up IAs, but a general absence of coordination across IA topic boundaries; and
- There is a perceived lack of high quality sources of data needed to conduct in depth assessment processes for IAs, particularly in certain areas such as economic impacts (European Court of Auditors, 2010; Russel & Turnpenny, 2009; Rothstein & Downer, 2013; Achtnicht, Rennings & Hertin, 2009; Carroll, 2010), and a perceived lack of capacity among practitioners in departments to conduct effectively some of the more ‘specialist’ IAs, especially those that require fundamental knowledge and

understanding of the field in order to make a meaningful assessment (Jacob et al., 2008; Jacob et al., 2011; Jacob et al., 2012; Hertin et al., 2009; Petak, 2015; Howlett et al., 2014; Howlett, 2009; Pope et al., 2013). Actual production of the IAs appears often to be delegated too far down to be done with the requisite level of skill, judgement and experience.

The elements in the policy making process which exacerbate IA complexity in the Welsh Government include:

- The sources of authority vary between the IAs, and their character varies considerably - some are universal, some are not; some are statutorily required, some are 'only' policy; some are treated as compliance matters by the owners as well as the producers; some have associated templates and screening processes, some do not; and some have dedicated or related quality and policing mechanism, some do not (Welsh Government, Policy Support Unit, 2015b; Welsh Government, Policy Support Unit, 2015c; Welsh Government, Policy Support Unit, 2015d). Overall they are not fully connected to the wider policy development process;
- There is a lack of clarity over who owns the overall process. There is no clear steward of the process, and the process is not clearly connected to any significant strategic and corporate approach to IA. It is essentially a decentralised and partially fragmented 'process' which lacks a clear and focussed 'authorising environment'. That is, it lacks a stated organisational framework and approach which guides officials in understanding what they should be trying to achieve in assessing the potential impact of the Government's proposals, and how they ought to go about it in order to give Ministers the best possible advice and the NAFW the best possible evidence to support scrutiny and the legislative process. In the current context, policy entrepreneurs and advocates flourish and (quite legitimately) pursue their particular policy priorities. This then 'invites' others to join in to try and add their own policy priorities to the IA environment. Potential new ones are always in the wings; and
- There are constant changes and developments in the IA landscape as policy priorities emerge and evolve, and as procedures and processes are elaborated, matured, and further developed, and as improvements are made. Training and support is largely in individual IA areas and lacks a central overview.

The above assessment echoes in all material respects to those made by officials themselves in grappling with the problem of how to tackle the complexity of IAs in the Welsh Government.

The task now is to try and go further in understanding some of the root causes, drawing on insights available from other jurisdictions.

Insights from Other Jurisdictions

Impact assessments are a near universal instrument for supporting public policy in all modern jurisdictions, and valuable insights can be drawn from what happens differently elsewhere, and what seems to work well – albeit that a fundamental lesson from the international literature is that ‘context is key’ (Pope et al., 2013; Jacob et al., 2008; Rissi & Sager, 2013; Hertin et al., 2009; Peci & Sobral, 2011; Rissi & Sager, 2013; Torriti, 2010). Why IAs take the form they do in any particular jurisdiction is a function of the many both typical and unique features jurisdictions exhibit, and their combinations. So ‘lessons’ need to be learned cautiously, on any basis, and they have to be focussed at the level at which learning can sensibly be transferred. The focus here is to learn how IAs function in other jurisdictions as part of a wider governmental process, and to see if there are lessons to draw on at that functional level.

This section reviews the functioning of IAs in Northern Ireland, Canada, the European Union, the State of Victoria, Scotland, and the UK. It is important to note that the terms ‘impact assessment’ and ‘regulatory impact assessment’ are not used consistently across jurisdictions and, in the account below, these terms are not a sure guide to the content or form of an IA or RIA.

Northern Ireland

IAs are regarded as key tools, forming an integral part of the policy cycle and effective policy making. IAs are not seen as particularly burdensome. They are situated within the Sustainable Development agenda of the Government (Northern Ireland Executive, 2013), but may not always be framed in that context. Public authorities have a statutory duty to promote sustainability in policy making and service delivery under the *Northern Ireland (Miscellaneous Provisions) Act 2005*.

Policy makers may be required to undertake a range of different IAs for proposals, in some cases to meet statutory obligations (such as Equality Assessments) (Northern Ireland Executive, 2007). Guidance on the policy making process is supplied by the *Northern Ireland Policy Toolkit*, a series of five workbooks that provide a practical overview of the key steps and phases in the policy development process. *Workbook Four - A Practical Guide to Impact Assessment* – contains step-by-step guidance, screening tools, and IA templates for every

kind of IA practitioners may be required to undertake in Northern Ireland. RIA is one form of IA, dealing with economic issues. However, in many cases the social and environmental dimensions will also be included as key factors for the development of policies (Northern Ireland Executive, 2014). RIA is one form of IA to be undertaken depending upon the policy proposal in question, and is included alongside the other kinds of IA in guidance documentation. The same basic methodology applies to all (Northern Ireland Executive, 2013; Northern Ireland Executive, 2007).

Canada

The use and methodological approaches to IA vary between the national (federal) and sub-national levels of government – e.g. Health Impact Assessment is not required federally, but is in Quebec and British Columbia (Mendell, 2011). The federal level has a highly structured, centrally directed approach to the development of regulation, in which RIA plays a crucial role. All federal government departments utilise a common approach, and the process is facilitated through clear guidance on the required procedures (Government of Canada, 2014). The President of the Treasury Board (a senior Cabinet post) has responsibility for implementing overall federal regulatory policy, as directed by the Prime Minister. A committee of Cabinet Ministers (the Treasury Board) reviews and considers all regulatory proposals requiring Governor-in-Council approval. A central directive – *The Cabinet Directive on Regulatory Management 2012* – outlines the obligations of departments in relation to RIA (Government of Canada, 2012). The overall objective is “to maximize net benefits of regulation for current and future generations of Canadians”. Departments undertaking RIA are supported by the Regulatory Affairs Sector of the Treasury Board Secretariat, which acts as a central facilitator, consultant, trainer, and gatekeeper (Government of Canada, 2015b).

RIA is embedded in an overall policy context of the streamlining of regulation and reducing the burden of red tape, reflected in the requirements of a ‘one for one’ rule and the application of a ‘small business lens’ (Government of Canada, 2007; Government of Canada 2012b; Government of Canada 2014). RIA processes are refined over time to achieve greater effectiveness and efficiency. This is thought to have reduced the burden of RIA and fostered cultural acceptance among practitioners – ‘this is just how we do it in Canada’.

EU - European Commission and Parliament

IA in the EU is framed by the need to develop legislation and policy to take into account the plethora of stakeholders it may impact on (Torriti, 2010), to contribute to evidence based policy



making and as a tool for political decision making. The European Commission (EC) uses an Integrated Impact Assessment that evaluates the potential economic, social, and environmental impacts in a single assessment, and which must be completed for most legislative proposals, as well as for non-legislative initiatives, and implementing and delegated acts expected to have significant impacts (European Commission, 2015a; European Commission, 2015b). IAs are an essential element of Better Regulation, and designed to mainstream sustainability to ensure that European Commission proposals meet policy goals and deliver maximum benefits to citizens, businesses, and workers, while avoiding unnecessary regulatory burdens. There is no consensus as to whether undertaking IA to account for the complicated institutional and political context of the EU actually increases efficiency, or if taking an increasing number of impacts into account makes EU IAs unduly complex.

The EC's Better Regulation Guidelines clearly outline the requirements for IA in EU policy development, and include explicit obligations for the process to be embedded in the policy cycle, to be proportionate, and to include stakeholder consultation (European Commission, 2015a). The Regulatory Scrutiny Board acts as a quality control gatekeeping body for IAs (European Commission, 2015c). The EC does not undertake separate RIA, EIA, HIA etc. processes for each initiative, but a single holistic analysis that can account for all impacts (at least in theory). The Principles of Better Regulation are incorporated into the whole of the policy making process (European Commission, 2015a; European Commission, 2015b). The European Parliament now has its own IA services to scrutinise EC IAs against established internal guidelines as well its own criteria, and (increasingly) to initiate and conduct their own IAs.

State of Victoria

In Victoria, Legislative Impact Assessments (LIAs) and Regulatory Impact Statements (RISs) are influenced by a deregulation agenda and an administrative/policy context in which the focus is on developing policies that produce the greatest net benefit (Australian Government, 2015). LIAs are for primary legislation and are confidential to Cabinet, and RISs are conducted separately. RISs in Victoria are used to determine whether the costs (very broadly conceived) of a policy intervention are at least offset by the benefits, with guidance on how to achieve this provided by the *Victorian Guide to Regulation*, which is signed off by the Cabinet (State Government of Victoria, 2014). Victoria has a mature system of IA which is both supported and policed by an independent Commissioner who is responsible for compliance but strives above all to add value. They have reviewed the effectiveness of the IA system and identified

significant avoided cost and improved public consultation. LIAs and RISs are far and away the most important, and there are no other significant IAs, but RISs in particular are very broad.

Scotland

IA operates in the context of a National Performance Framework and the very strong political consensus on the need for such a framework, if not all of its content. Scotland does have examples of requirements for impact assessments set externally to the Government. For example, Parliament requires evidence of impact in relation to legislation. Other IAs conducted include Equalities, Wave and Tidal Development, Children's Rights and Well-being, Privacy, and Environmental.

The service provided by the Better Regulation team in respect of Business and Regulatory Impact Assessments (BRIAs) changed in 2015. BRIAs need to be completed for policy changes and legislation which may have an impact on business or the third sector. They apply to primary or secondary legislation being introduced to the Scottish Parliament, as well as codes of practice or guidance, and are undertaken when considering traditional regulations as well as alternatives such as proposals which encourage self-regulation or opt-in regulation and voluntary guidance. This is seen as helping to ensure through consultation and engagement with business, that the costs and benefits are fully analysed and understood. Guidance is provided, along with the template and toolkit, to provide comprehensive advice on what is involved, the process and sources of further support and advice (Scottish Government, 2015).

Each Directorate is responsible for BRIA quality assurance and monitoring, with each policy area ensuring BRIAs are completed and the assessments are robust, consulting with economists and analytical colleagues and others as appropriate, before seeking Ministerial sign off. The Better Regulation team continues to be available for general advice.

As seen by the Head of Policy Profession in the Scottish Government, understanding impact is less about 'only' policy-making and more about the end to end journey, taking implementation into account, with a strong focus on outcomes and a responsibility on officials to attend to implementation and delivery as well as policy development. Whilst there is concern about the volume of work associated with IA, its value is not in question. A significant factor is that its value is reinforced by Ministers who want to know about the possible consequences of their proposed interventions, and who have an explicit reputational concern for their own and for wider governmental competence.

UK Government

In the strongly centralised UK system IA is a key instrument used to ensure policy makers adhere to the overall policy objective of reducing regulation as outlined in the *Principles of Regulation* – which has a mandatory core and ‘gateway’ delegations to Whitehall Departments (Her Majesty’s Government, 2015). RIAs have become just ‘IAs’, but they remain rooted in the Better Regulation and de-regulatory agenda. IAs are undertaken to determine the necessity of regulation, and present the likely costs and benefits and associated risks of a regulatory proposal. They apply to primary legislation, secondary legislation, and codes of practice and guidance, and are required, *inter alia*, for proposals that will impose additional costs or reduce existing costs on businesses or civil society organisations. Policy makers must also account for the Business Impact Target (BIT).

Clear guidance on the required procedures for IA is provided by the Better Regulation Executive (BRE) through documents such as *Impact Assessment Guidance – When to Do an Impact Assessment* and an associated single template (Her Majesty’s Government, 2011). The BRE works with departments to provide practical support to practitioners undertaking IA, drawing on the Better Regulation Framework Manual (2015). The Regulatory Policy Committee (RPC) – an independent, non-departmental public body – provides independent scrutiny of impact assessments supporting regulatory proposals and validates figures, measuring the impact of these proposals on business and civil society organisations, for the Government’s regulatory account. Independent scrutiny is seen as crucial to increasing the quality of IAs, testing the evidence base (for example against the BIT) and making the system credible for stakeholders. The RPC also supports IA practitioners by providing guidance on its application of the Government’s better regulation framework, in particular relating to the methodology for counting business impacts in the Government’s regulatory account. The regulatory IA process is also quality controlled by the Reducing Regulation Sub-Committee (RRC) which acts as a gatekeeper for IAs (Her Majesty’s Government, 2015; Her Majesty’s Government, 2011). IAs must be submitted to the RRC (alongside relevant RPC opinions on that IA) for approval as part of the Ministerial clearance process for new regulatory and deregulatory measures.

Overall

A number of other jurisdictions are defined by a clearer approach to IAs than Wales’ in relation to both process/procedure and substance. They have stronger ‘vertical’ arrangements and requirements than Wales. Thus, the UK, Canada and Victoria are all highly centralised and have a continued focus on the ‘regulatory burden’ agenda and adverse economic impact,

although Victoria has a wider approach to assessing scope than the UK. Northern Ireland has a sustainable development focus, and the European Union an integrated approach. Scotland's 'vertical' is organised around an outcome and national performance framework focus.

This does not mean that those developing policy or legislation do not have to also have regard to many other factors and issues, for example in the UK Government, possible statutory requirements affecting environmental proposals or State Aid. But those are left to Departments themselves to address. The effect of the IA arrangements is that officials and others are clearer about the purposes as well as the processes of IA. Complexity may not be eliminated, especially in intrinsically complex jurisdictions such as the EU, but is more manageable and, where it persists, has a clearer justification.

The 'Problem' of Impact Assessments

The 'problem' of IAs in the national governance of Wales has been fairly well documented internally, and in the initial appraisal above. But the review of other jurisdictions underlines that the character of IAs relates to deep forces and themes in the approaches of particular governments. The 'problem' of IAs in Wales needs to be re-assessed and re-stated against its own context and history by firstly setting out the IA 'system', and by understanding the many dimensions of 'complexity' it might exhibit and why such complexity has emerged in Wales. That will help focus on key aspects of the IA jigsaw, and how they might be brought into better alignment and integration.

The IA 'System'

In practice, the way that IAs are conducted and the degree of 'success' they enjoy is a function of multiple forces and choices (Pope et al., 2013; Jacob et al., 2008; Rissi & Sager, 2013)). Especially important is the 'authorising environment' which shows officials and others at a fairly high level why the government wants IAs undertaken, who should be doing them, how they should be conducted, and within what policy frame of reference. Other 'structural' aspects include the underlying nature of the legal (or otherwise) requirement and the intervention instrument being deployed, the political context, and the wider policy process, including the degree and character of Ministerial interest (Hertin et al., 2009; Devon County Council, 2013; Chanchitpricha et al., 2011). Features of the particular proposal itself also figure, such as the degree of sensitivity/controversy of the issue and the character and extent of public interest, any technical aspects, and the availability of data/evidence (O'Faircheallaigh, 2010; OECD, 2011). Process aspects include the leadership, capacity and capability of those entrusted with

the IA, the required procedures, the 'cultural attitude' of practitioners towards IA (whether seen as useful or as simply a 'hurdle'), and any quality control or quality assurance processes (Devon County Council, 2013; Howlett, 2014; Jacob et al., 2012).

Recasting the 'problem' of IAs in Wales

This brief description of the IA 'system' helps to locate the various dimensions of complexity which it may exhibit. Thus there may be complexity in the number of different IAs that may have to be completed, and in the authorising environment in terms of who needs to do IA and to what purpose. There may be complexity in what needs to be done and how, with uncertainties around whether and to what extent IAs have to be done, and variation in the level of detail required and the format of the templates and procedures to use. There is complexity in 'when', and at what stage in the policy/legislative cycle to do IA, and in the support mechanisms available. There is complexity in accountabilities, in who an IA is being done for and who ought to benefit, and this is often associated with the way in which the enforcement of some IAs has partially been 'outsourced', for example to Commissioners. There is also, as Williams [Commission on Public Service Governance and Delivery, 2014] pointed out, complexity in the multiple policy mechanisms used across the Welsh Government which do not interact coherently and effectively.

IA in the Welsh Government has all of these complexities, but a key question remains as to why it has become more complex. Context is a key determinant, and the complexity that has arisen in the Welsh Government is not happenstance. It is, rather, deeply rooted in the way in which government in Wales has developed since 1998, and is itself an unintended consequence of otherwise very positive developments in the national governance of Wales. Current IA complexity fundamentally arises from the pace and dynamic of a developing devolved Welsh governance, in which an 'activist' devolved government has successively acquired and exercised new powers. The Government has enjoyed increasing policy 'reach', and it has used IAs as an instrument to exercise that reach, driven in part by Ministerial policy enterprise and well organised stakeholder lobbies. In climbing towards policy goals, Ministers and stakeholders have sought to drive a succession of 'pitons' in the rock face to support progress and so that there would be no going back on key policy commitments.

The complexity of the current processes has its origin in the wide range of IA duties which have been created as a result, and their differences in terms of organisational reach, legislative competence, decision making procedures, standards, output, enforcement, and delivery. The duties have developed in a piecemeal way either through UK, Welsh or EU legislation, and/or policy, and this has been coupled with the sheer usefulness of the IA process to prioritise,



embed, and mainstream policy priorities for the benefit of Wales and its future generations. The current complexity is best understood as an unintended consequence of exercising policy and legislative power in Wales to add value and benefit. It reflects the changing and developing priorities and the developmental character of devolved government in Wales and the successive acquisitions of additional powers which it has actively exercised.

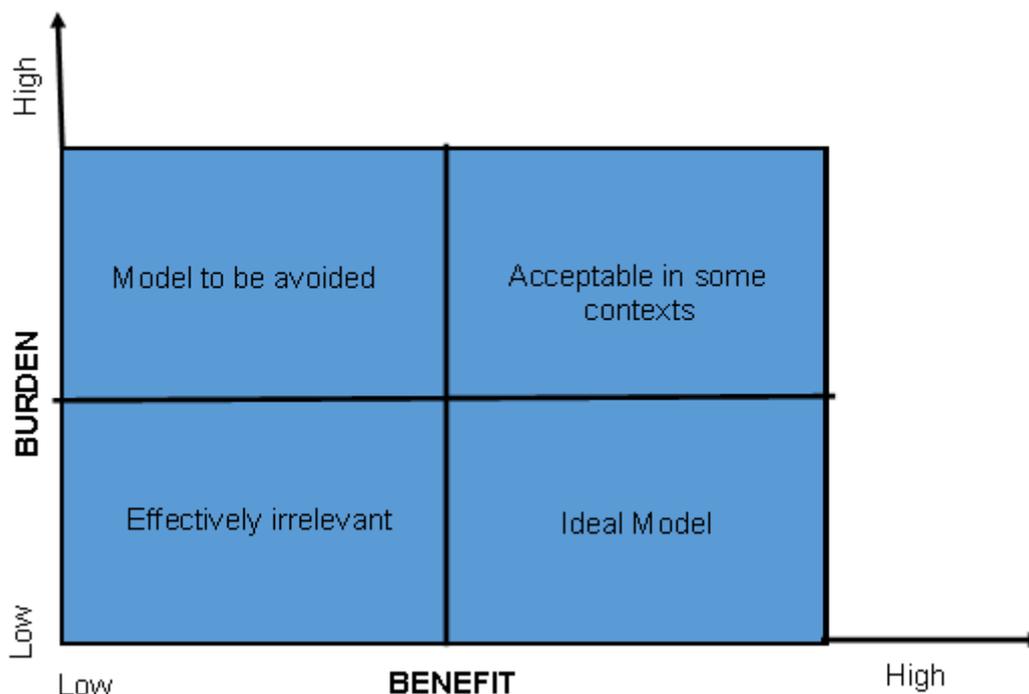
Implications for improving IA in Wales

The underlying problem behind the ‘surface’ problem of IA complexity is therefore structural as well as cultural and operational. There are lines of tension and a degree of fracture in the authorising environment for IA, and an absence of a strong and clear ‘vertical’ sense of purpose capable of marshalling and coordinating the powerful multiple horizontal IA ‘authorising’ forces which operate in and on the policy system. As a consequence, it is unlikely that the problem of IA will ‘naturally’ disappear over time, though it may well attenuate and the perceived burden will probably ultimately reduce with familiarity. The forces aiming to add additional IAs to the mix are likely to remain strong, and there is no current centrally stated strategic purpose to help counter those forces. So any improvement in value may not be significant or enduring. The current compliance culture encouraged by the complexity of the IA process and the lack of clarity in who owns the overall process is unlikely to change, and that complexity may also continue to inhibit the exercise of judgement.

The issue is how to get added value as well as reduce complexity in a small country government which needs to harness all its capabilities and capacities, and to have a coherent framework to guide the deployment of those resources.

Reducing complexity and adding value

Seeking to reduce complexity might suggest reducing the scope and number of IAs, but so doing may also risk sacrificing value. Complexity may not be undesirable in and of itself, but entirely appropriate and necessary in some cases because the character of the problems and the IA process necessarily entail that. There is a danger of conflating complexity with undesirability when the key issue is whether IAs add value and for whom, and at what administrative and other cost. Added value (‘benefit’) and complexity (‘burden’) are in fact variably related, as shown by the diagram below of their relationship.



The two (not necessarily incompatible) ways of improving IAs would be to increase their value in terms of good policy making, delivery, and outcome, or to reduce their associated burden. As the figure suggests, there will be some instances where IAs impose a large burden but be highly valued by the multiple potential beneficiaries of IAs (O’Faircheallaigh, 2010). However, this need not be the case, and adding value might actually depend on reducing complexity. In fact, it is probably the case that reducing complexity is positively related to adding value in many (although not all) circumstances. The reason is that excessive complexity of process undermines the motivation of those who need to do IA well, and excessive complexity of the product of IA undermines the clarity and communicability of the key messages which policy makers and publics need to hear and respond to.

Reducing complexity through integration

The Welsh Government has emphasised ‘integration’ rather than mere ‘simplification’ as a possible way forward in reducing complexity, on the grounds that without a more integrated approach there is a risk of adding further to complexity and administrative cost. However, there are many possible lines of integration of IAs:

- Integrating the terminology of ‘IA’ and ‘RIA’, which appears to be largely historical and to reflect more of an operational than a meaningful difference;
- Integrating the political and the administrative approach to IAs through a Cabinet level statement of purpose to be applied throughout the Welsh Government as a key authorising statement for all IAs;

- Making IAs a more integrated part of the policy making process;
- Integrating the multiple legal requirements for IAs. Such an approach might integrate the purposes for which IAs are conducted, possibly supported through an integrated 'risk' framework, although not all the current legal requirements could be integrated in a single framework because some are beyond the legislative competence of the Government and the NAFW; and,
- This could be associated with an integrated policy framework such as could be provided by the Well-being of Future Generations (Wales) Act 2015, and its 7 ambitious national goals and 5 ways of working as a framework for broad sustainable development.

There are also process and operational forms of integration to consider, including;

- Developing an integrated IA tool which brings together the requirements for all the various IAs which may have to be completed, and an integrated IA procedure, with oversight by a 'steward' of the overall IA process;
- Creating an integrated record/archive of IAs to enable tracking and quality control and learning, with associated accessible data sources and repositories; and
- Integrating ex ante IAs with ex post facto evaluation both to test empirically the accuracy of the IA predictions in relation to the chosen policy/legislative option, and as an aid to evaluation generally.

Key elements of the Welsh IA 'system'

In charting a way forward for a more integrated and less complex IA process it is useful to consider in turn some key aspects of the Welsh context. These are the various intervention 'instruments' at the disposal of the Welsh Government; the sources of legal and institutional authority for IAs; and the (potential) sources of substantive direction.

Instruments:

There are four principal intervention instruments available to the Welsh Government.

1. The first is legislation, both primary and secondary, and this stands at the pinnacle of the 'hierarchy' of intervention instruments, and is increasingly popular. RIAs are prepared for legislation, together with some of the available IAs, depending on the subject matter and other features of a given proposal (Welsh Government, Policy Support Unit, 2015d).



2. The second is major non-legislative policy, for which IAs are prepared, again contingent upon subject matter and character.
3. The third is major capital investments, for which a Five Case Model business case is used to support decision making. (The Five Case Model approach was developed in partnership between HMT and Welsh Government.) (Welsh Government, 2012a; Welsh Government 2012b; Welsh Government 2012c). This model and its application has an unclear relationship to IAs, although some efforts have been made to join up some IAs with the model.
4. Fourthly there are major budget decisions, both in budget setting and significant changes. These are of growing importance at a time of reduced expenditures and hard choices. Budget decisions have an unclear relationship to IAs although the Budget Advisory Group on Equalities provides advice and support to WG in embedding equality into its budgetary processes. This advice informed the Equality Impact Assessment (EIA), and now the Strategic Integrated Impact Assessment (Welsh Government, 2014b). There may be development work to do in creating a mechanism best suited to produce such a comprehensive document, but the fundamental link has already been made between budget decisions and IA.

Legal authority

In terms of the sources of legal authority, RIAs derive from SO 26 (6) of the NAFW for primary legislation, and from SO 27 and the Government of Wales Acts 1998 and 2006 for secondary legislation (National Assembly for Wales, 2015; National Assembly for Wales, 2009). An RIA for primary legislation is intended to provide

“the best estimates of: (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the timescales over which such costs would be expected to arise; and (c) on whom the costs would fall”.

In terms of understanding all aspects of the consequences of a legislative proposal this is not perfect, for it does not include benefits. Such RIAs often have ‘associated’ IAs to address wider policy aspects, but these have an unclear relationship with the RIA and with the Explanatory Memorandum which accompanies a Bill. The Government’s approach to IA and the NAFW requirement for IA are not well aligned with each other, although the Legislative Programme and Governance Unit and the Economic Advice Division headed by the Chief Economist actively try to achieve alignment by recommending that attention be given to benefits as well as costs, and by requiring ‘feeder’ IAs to support the overall RIA.

The requirement for RIAs for subordinate legislation is actually wider than for primary legislation and is founded in Section 76 (2)(a) of the Government of Wales Act 2006 which requires;

“an assessment as to the likely costs and benefits of complying with relevant Welsh subordinate legislation”

This is elaborated by a Ministerial Code approved by the Assembly in 2009 to be:

“a process to help the Welsh Ministers consider the impact of proposed regulation on the interests of individuals, groups, organisations etc.; a tool to enable Welsh Ministers to weigh the costs and benefits of all options available to them before implementing a policy; and a means of presenting for scrutiny the relevant evidence on the positive and negative effects of such interventions.” (National Assembly for Wales, 2009)

This is a potentially important and powerful statement, but in practice the Code appears to be little used other than as a threshold guide for whether an RIA is required for a piece of proposed secondary legislation. Recently, and in connection with consideration of the Public Health (Wales) Bill, the NAFW Finance Committee has made a series of recommendations as to the presentation of costs and benefits in RIAs and the need for the Welsh Government and the Auditor General for Wales (AGW) to work together to agree the best approach, and for the Welsh Government to develop a more consistent approach on RIAs for subordinate legislation in order to support better scrutiny (National Assembly for Wales, Finance Committee, 2015). The NAFW Constitutional and Legislative Affairs Committee has also recommended that the Government considers the information which is provided in Explanatory Memoranda, including financial information (2015),

As to IAs more generally, the sources and types of legal authority vary. For Children’s Rights IAs it is ultimately the ‘due regard’ statutory provisions in the 2011 Measure, translated through preparation of a statutory scheme into secondary legislation (National Assembly for Wales, 2011; Welsh Government, 2015b; Welsh Government, Fairer Futures Division, 2015b). For the Equalities IA, it is in secondary legislation made under the Equalities Act 2010 by virtue of regulations passed by the NAFW that are designed to ensure ‘better performance’ of the general public sector equality duty in the Act. For the Privacy IA it is the framework of data protection legislation and guidance issued by the Office of the Information Commissioner (Information Commissioner’s Office, 2014; Information Commissioner’s Office, 2012). For the Welsh Language IA, it is shortly to be the Welsh Language Standards enshrined in secondary legislation. For environmental matters the ultimate source is often European Regulations. For

older people there is not a specific Welsh Government requirement but one has been promoted for local government and takes its cue from equalities legislation, reinforced by the duties of the Older Peoples Commissioner.

Other potential IAs are in the wings. The Well Being of Future Generations (Wales) Act 2015 requires that public bodies 'must take account of' certain matters, including how the body's well-being objectives may impact upon each of the well-being goals, and how its well-being objectives impact upon each other or upon other public bodies' objectives. The Social Services and Well Being (Wales) Act 2014 contains provisions which could potentially also be translated into a new 'IA'. Placing Health IAs on a statutory footing has also received considerable stakeholder support but HIAs currently remain a matter of 'policy' only.

Institutional authority

The sources of institutional authority for IA overlaps with but is not coterminous with the sources of legal authority. They include the NAFW and the various Commissioners for Welsh Language, Children, Older People, Equalities and Human Rights, and Future Generations, but also individual Ministers, the Legislative Programme and Governance Unit and Chief Economist in relation to legislative RIAs, and various units within the Welsh Government which are focussed on particular areas of policy, and some external lobbies and stakeholder groups. It also includes the requirements placed on the Permanent Secretary as Accounting Officer such as those set out in 'Managing Public Money' (Her Majesty's Treasury, 2015a) which makes explicit reference to the evaluation of proposals in accordance with the Her Majesty's Treasury's Green Book (Her Majesty's Treasury, 2015b: 3.3.3). The Policy Support Unit has a role in the overall IA and policy process, but its non-strategic location and limited capacity limits that role. The Welsh Government at a strategic level appears not to exercise explicit institutional authority on the overall IA process, although it of course contributes to the fundamental underpinning institutional authority for all of the IAs.

Substantive direction

A substantive direction for assessing likely consequences and impacts is (or should be) a key part of any authorising environment for IA. In many jurisdictions the substantive direction is given by the 'better/reducing regulation' theme, with an external focus on avoiding/reducing administrative burden, especially in relation to 'red tape', improving the business environment, and effects on small business (Government of Canada, 2007; State Government of Victoria, 2014; Her Majesty's Government, 2015). Some jurisdictions have an overarching policy framework for example the Scottish Government's National Performance Framework. In

Wales there is not one although the Well-being of Future Generations (Wales) Act 2015 potentially provides an overarching framework, and work is in hand on an improved business planning system and re-shaping the Welsh Government's policy-making guidance in light of the Act.

Conclusions and Recommendations

This section makes a number of recommendations. They seek to build on the initial progress by the Welsh Government in tackling the IA problem. There is already in place a Legislation Handbook which is a model of clarity on IAs (Welsh Government, 2014c), even though it does not amount to a clear and definitive statement of the IA authorising environment. The Legislative Programme and Governance Unit and the Policy Support Unit are also making efforts to align the RIA and the IA process. Both the Poverty and Public Health Divisions have attempted to minimise complexity by aligning consideration of poverty and health impacts with existing policy mechanisms as a better alternative to creating new processes or statutory requirements, the former by embedding poverty considerations into other IAs, and the latter as part of the implementation of the Well-being of Future Generations (Wales) Act 2015. Both Equalities and Children's Rights IAs are changing for the better, and the field work done for this report identified mature and measured thinking by many of the IA process owners.

Given both this progress, and the significant underlying structural, cultural and operational causes, there is no silver bullet to fix the problem because the 'surface' issues reflect deeper causes of the problems in the IA 'system'. The need instead is to develop a clear, strategic direction of travel, which is given effect through a series of steps designed to both add value and reduce complexity. That should consist of the following elements, which are considered in turn below:

- **Cabinet Statement of Purpose:** The Permanent Secretary to ask the First Minister and Cabinet to consider issuing a clear 'purpose' statement of IA in the Welsh Government;
- **Well-being of Future Generations (Wales) Act:** The Well-being of Future Generations (Wales) Act 2015 to provide a key integrating framework for all assessments of impact;
- **Steward:** Creation of the function of 'steward' of the overall IA process;
- **Aligning the legal framework:** The Welsh Government and the NAFW to align their approach to IAs, with other legal IA requirements kept under review as appropriate;

- **Culture and judgement:** The IA process to emphasise the judgement and responsibility of officials, and a reliance on people rather than procedure;
- **Process and procedure:** Terminology to be consolidated around 'IA', and a single IA front end template and screening process to be created, and a consolidated and searchable IA archive to be created;
- **Design:** IA design principles to be developed and (re) promulgated; and
- **Public bodies and other stakeholders:** To be party to the changes and able to influence and share Welsh Government materials and guidance on IAs.

Cabinet Statement of Purpose of IA in the Welsh Government

An ideal framework would start with the articulation of a clear statement of what the Government wants in terms of assessing the potential consequences of its legislative, policy, investment and budget proposals. The Permanent Secretary should ask the First Minister and the Cabinet to consider issuing such a statement. It would set a strategic policy framework in terms of both process and substance as the context for assessing the impacts of all proposed major interventions in these fields. It would underpin the 'authorising environment' for IA, and confirm its function as fundamental to evidence based policy making and stakeholder engagement, the importance of joining up across policy boundaries and of linking policy to implementation, and the intended beneficiaries of the work. The IA process would aim to help:

- Cabinet understand the likely impact of their major proposed interventions;
- The NAfW to have best 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; and
- The public and key stakeholders to be informed, better able to contribute to policy development, and better able to hold Government to account.

The statement would be set in the strategic policy priorities of the Government as the context for and against which to assess impacts of proposed major interventions, and would contribute to an underlying strengthening of the strategic centre in relation to the policy development process. It would signal the style of approach wanted by the Government (e.g. proportionate, avoiding excessive proceduralism, bringing judgement to bear, etc.). It would consolidate terminology as 'Impact Assessments', and give recognition to the increasing importance of budget issues, and of legislation. It would generally prohibit further proliferation of additional IAs without explicit Cabinet approval on the Permanent Secretary's advice. Operationally it would note and endorse the 'steward' function, and give explicit recognition to the Permanent Secretary's responsibilities as Accounting Officer and in relation to HM Treasury's Green Book

and related requirements in delivering the IA process. Part of its aim would be to inform understanding of what is looked for at senior management level, thus helping to change the discourse around IAs so that they could improve the standards of policy and decision making.

Well-being of Future Generations (Wales) Act 2015

It may not be absolutely essential that the Cabinet relates the IA process to a substantive policy direction. It could simply set out the purposes, functions and process of IA. But setting a substantive direction through strategic policy priorities provides a much more powerful 'vertical' around which to marshal the IA process. The Well-being of Future Generations (Wales) Act 2015 is a strong candidate for such a function, with the 7 national objectives and 5 ways of working providing the integrating framework which is relevant to all four of the Government's intervention instruments. Whilst the headline level would still be 7 lines of IA, they potentially have the virtue of relative stability over time. The explicit aim would be to promote policy coherence and a 'whole society' approach across multiple policy and delivery domains, and an approach to policy integration founded on evidence.

It will be easier to integrate some existing IAs than others into such an approach. The 'policy' IAs should be relatively straightforward. Those with separate sources of statutory authority and institutional enforcement will require more effort. The Welsh Government can integrate the way they do them, but not the requirements themselves, some of which are outside competence. Integrating how they are done will also need the co-operation of Commissioners. However, some can be brought within the framework, such as equalities and Welsh language, both of which mirror one of the national objectives in the Act, although the integration of neither is entirely straightforward. Others fit less comfortably. Medium term legal and related changes may be required to ensure fully effective integration.

This role for the Act is potentially very important for its own effectiveness, as well as the value and coherence it can offer the IA process, but there are potential pitfalls. For example, the Social Services and Well-being (Wales) Act 2014 may need special consideration in order to integrate it, and avoid it operating in parallel, although most of the aspects of wellbeing as defined in s2 of the Act can probably be nested within the goals of the Well-being of Future Generations (Wales) Act 2015. Explicit attention will also be needed to avoid a mis-alignment of time horizons. Whereas most IAs operate at a 3-5 year horizon, the Act looks beyond that. It will also be important that the underlying political and national consensus on the Act's aims continues to grow and strengthen.

There is a risk of developing an over-elaborate framework which is too tightly internally connected and so may become resistant to subsequent development and change. But the use of the WFG Act in this way also leaves the door open to stronger integrated financial reporting, and a clearer accountability framework through the review role of the AGW. It will also be important to connect with emerging local authority and other initiatives in this area, and with the positive potential of an integrating framework at Welsh Government level for impact assessment throughout the public service. Local authorities and other stakeholders are likely to value non-prescriptive guidance and access to integrated procedures and tools developed by the Welsh Government in consultation with them.

The steward function

The underlying forces which tend to diversify and fragment the IA system in the absence of strong vertical orchestrating arrangements means that its oversight requires active agency in giving effect to a revised IA process, operating as part of a stronger strategic centre of Government. The precise organisational form of the 'steward' is less important than that the function is clearly established and effectively delivered under the authority of the Permanent Secretary to give effect in part to his Accounting Officer and Green Book 'duties', and his wider civil service responsibilities. The steward of the IA Cabinet statement, charged with giving effect to it through the IA and policy development process, would be an active 'agency' able to provide leadership in giving effect to the Cabinet statement, and in responding to proposed changes in the IA 'system' as a business process owner.

This function should be more than a 'champion'. Rather it should include responsibilities for doing, shaping, cajoling, telling, and encouraging more consistency, rather than simply cheerleading or celebrating. It will involve intervening in matters of culture as well as 'structure' through training, communications and developmental instruments to equip officials and the policy machine to be more effective in IA processes, aiming to promote evidence based and holistic/collaborative policy linked to delivery and implementation. Clarity will be needed as between this function and that of Head of Policy Profession.

There is a case for the steward function also to perform explicitly the functions of quality control and quality assurance in the IA process, either as an *ex ante* 'gateway' function and/or an *ex post* sampling and review function. However, this would best be considered in light of the operation of the revised IA system rather than now, although there should be early thought to whether and how quality control can be strengthened within the IA process as a whole.

Aligning the legal and institutional framework

The NAFW and Welsh Government have a common interest in having the best evidence base to inform major policy and legislative proposals, and in having common instruments applied to ensure that they get it. Ideally they should align their requirements and frameworks. This would mean discussions on what the NAFW needs in terms of evidence of likely impacts of a proposal to do their work effectively, and what the Welsh Government considers appropriate. Assuming agreement could be reached on the principles and procedures to be adopted, they could then be reflected in the proposed Cabinet statement and the NAFW could be asked to revise their SOs and if necessary the underlying legislative requirements in relation to subordinate legislation and member-led Bills. Primary and secondary legislation requirements should be aligned, even if they need not be identical. Any further proposed self-imposed duties of an IA character should be rigorously evaluated by the Welsh Government and the NAFW to assess the wider implications before they are translated (if at all) into additional requirements on themselves and other public bodies.

The other current legal requirements for IAs should be revisited over time as resources allow in order to bring them into a closer 'natural' alignment. Meanwhile the Cabinet statement would make clear the expectation that, within the limits of the law, specific IA requirements should be conducted within the spirit and process specified in the Cabinet statement.

As to other key actors, the various Commissioners also have an especially important role to play because of their institutional and legal authority in relation to IAs and the public duties they discharge, and the AGW will also have an important role in these proposed changes.

Culture, judgement and responsibility

The revised arrangements should emphasise responsibility and judgement on the part of officials in assessing the consequences of the potential interventions on which they are advising, and place reliance on people as much if not more than on procedures. They should recognise and address the need for further underlying cultural change, and encourage a shift away from compliance and towards adding value through the IA process. The cultural shift should be underpinned through a systematic training programme aimed at conveying the generic character of IA processes as well as the particulars of methods and tools, as part of raising the quality and skills of policy professionals more generally.

Process and procedure

The value of procedure, *inter alia*, is to prompt necessary discussion, challenge, and judgements about proportionality. There should be a single generic process at headline level to include screening and threshold arrangements designed to encourage the integration of IAs and not merely their assembly under a common title. The process should, in effect, be injected with the thrust of the Cabinet statement. It should include the consolidation of some ‘groups’ of IAs, including Commissioner-related IAs, all purely ‘policy’ IAs, and those that display an obvious synergy such as equalities and children’s rights. The revised approach should also be explicitly linked to the new Ministerial submission template and the wider policy development process. There should be a commitment to the more effective use of the available technology, including a single searchable archive for IAs and better and more accessible sources and repositories of relevant data, as well as to underpin their improved presentation and communication.

The Welsh Government should also consider whether the time is right to seek a Wales ‘annex’ to the HM Treasury Green Book setting out the ways in which the general principles set out in the Green Book should be applied in the context of the Welsh Government’s values and policy priorities, as exemplified by the Well-being of Future Generations (Wales) Act 2015.

The Welsh Government should make its IA templates and working materials publicly available, especially for use by other public bodies (no doubt ‘tweaked’ as necessary by them), supported by training materials for policy professionals. This should include publication of (re) formulated ‘design principles’ for IAs.

Design Principles

There is no ‘recipe’ for good IAs because so much of what makes them ‘good’ in any particular context is system-dependent. But it is important to articulate a set of design principles for good practice IAs, to be applied with judgement, to include:

- Beneficiaries - clarity of purpose of use for Ministers, NAFW, and public consultation
- Intent – to understand an issue from a range of different perspectives, including how it affects different people in different circumstances
- Approach – firmly rooted in the principles set out in the Cabinet statement
- Timing - IAs are generally best done early but this is also a matter for judgement
- Proportionality – tailoring the amount of IA work done to the scale and character of the issue, and focusing on the aspects of greatest significance



- Tools - appropriate use of tools such as Integrated Reporting, Resource Based Accounting and Cost Benefit Analysis
- Data – drawing on both quantitative and qualitative evidence
- Screening – application of both threshold and topic screening to identify IA scope
- Risk - to be considered for the given proposal itself and for stakeholders
- Presentation – aspects of length, clarity, and ‘fit-for-purpose’ quality presentation
- Evaluation - link IA to subsequent *ex post facto* evaluation

Public bodies and other stakeholders

Wider stakeholders should be party to the revised IA process so they understand the reasoning, and are enabled to influence and share Welsh Government materials and guidance on IAs. The revised process should recognise their role in producing as well as in consuming IAs. The First Minister has emphasised the importance of “*careful evidence gathering and...good engagement and a shared understanding between Government and stakeholders as the basis of decision making and financial planning*” (Welsh Government 2014c, 6.3.3 p.58). Shared confidence in a transparent process is fundamental to that, even though there will not always be complete agreement on the conclusions. The aim should be a common understanding of the IA process across local government, health and Public Service Boards, and the use of common tools and analysis. Ideally, on matters of national reach and significance IA would be done ‘once’ and shared across the wider public service.

What would be different as a consequence?

If the above proposals are implemented there will be a reduction in complexity and enhanced integration in the following areas:

- Clearer and explicit purposes for IA across the range of Government’s intervention instruments within an integrated political/administrative approach, coupled with clear authority in direction and stewarding and with an ongoing declared goal to reduce complexity and emphasise the quality of understanding, evidence, and judgement;
- Integration of the IA process with the substantive direction of the Well-being of Future Generations (Wales) Act 2015, and with reach into the wider public service;

- Integration through the creation of a strong ‘vertical’ approach into which to consolidate some IAs and to marshal ‘statutory’ IAs, together with alignment of Government and NAfW requirements;
- A consolidated process and screening tool and template, common data sources, and a consolidated archive and examples;
- Integration between IA and *ex post facto* evaluation; and
- Avoidance of further proliferation and additional complexity.

The result should be that in 2 years’ time, when an official is asked to lead a proposed intervention, they will find:

- A statement of process, philosophy and substance of the highest authority as to why they must assess the possible consequences of proposals, and to what end, linked to their own clear personal and professional responsibility;
- A process and procedure consolidated around the Well-being of Future Generations (Wales) Act 2015 and an archive to consult of previous examples;
- Clear links to the requirements of the NAfW and/or civil service requirements as appropriate;
- A set of design principles to apply across all IA tasks, supported by training to support their IA knowledge and skills as part of the wider policy development process; and
- A steward to turn to with responsibility for both the smooth operation and the continuous improvement of the IA process (though not the content of each IA).

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Annex 1: Note on Method

This has been an 'expert analysis' rather than a formal research study. It has observed the essential canons of academic research in the approach to and use of evidence, and in the selection of and approach to interviewees.

It has drawn on interview material with care. Many of those interviewed were 'experts' in their own right, either in relation to part of the field of practice of IA, or in some cases academic study of IA. Their accounts and views have been given considered and appropriate weight, especially on matters of current or historical fact. Wherever possible the views of interviewees have been triangulated and tested either against the views of relevant others, and/or against documentary material.



Annex 2: Interviewees

WELSH GOVERNMENT	
Name	Role
Rhodri Asby	Head of Climate Change and Natural Resources Policy Division
Sarah Austin*	Senior Policy Manager, Social Services and Integration Directorate
Karen Bathgate	Regulation and Inspection Senior Policy Manager, Health and Social Services Department
Piers Bisson	Deputy Director, Devolved Services Reform
Andrew Charles	Head of Sustainable Development
Huw Charles	Policy Officer, Curriculum Assessment
Charles Coombs	Head of Policy Support Unit
Ceri Davies	Senior Departmental Liaison Adviser
Andrew Dobbs	DPA and FOI Senior Case Advisor, Information Rights Unit
Carys Evans	Deputy Director Constitutional Affairs & Intergovernmental Relations, & Project Steering Group Chair
Gawain Evans	Director of Finance, Office of First Minister and Cabinet Office
Andrew Felton	Head of Justice Policy, Constitutional Affairs and Inter-Governmental Relations
Caren Fullerton	Chief Digital Officer
Bethan Griffiths	Head of the Welsh Language Improvement Programme
Lisa Griffiths	Eligibility, Assess and Care Planning Policy Manager
Elin Gwynedd	Head of Empowering Children and Young People
Kathryn Helliwell	Senior Research Officer, Welsh European Funding Office
Andrew Hobden	Economist, Welsh Treasury

WELSH GOVERNMENT	
Name	Role
Maureen Howell	Deputy Director, Tackling Poverty
Ruth Hussey	Chief Medical Officer
Kath Jenkins	Head of Information Security Branch
Matthew Jenkins	Head of Performance Management, Budget Effectiveness Branch
Phil Jenkins	Head of Equality Support Unit, Economy, Skills and Natural Resources Group
Amelia John	Deputy Director Fairer Futures and Project Steering Group Member
Sir Derek Jones	Permanent Secretary
Lillian Jones	Deputy Departmental Security Officer
Steve Lazell	Senior Policy Manager, Policy Support Unit
Alison Lott	Senior Manager, Crime and Justice Team
Jo Maddaford	Central Legislation Support Team Manager, Health and Social Services Department
Steve Marshall	Chief Social Research Officer, Knowledge and Analytical Services
Gez Martin	Programme Manager ESF, Peer Mentoring Project, Health and Social Services Department
Deralyn Mawdsely	Children's Rights Manager
Helen Minnice- Smith	Agriculture and Climate Change Policy Adviser
Victoria Minshall-Jones	Transport Legislation Team Leader
Isabel Mortimer	Equality Impact Assessment Reporting and Engagement Manager
Padraig McNamara	Regulation & Inspection Senior Policy Manager, Social Services
Jonathan Price	Chief Economist & Project Steering Group Member

WELSH GOVERNMENT	
Name	Role
Irfon Rees	Deputy Director, Public Health, and Project Steering Group Member
David Richards	Director of Governance & Project Steering Group Chair
David Rosser	Director of Innovation, EST Department
Carl Sargeant AM	Minister for Natural Resources
Andrew Slade	Director, Agriculture, Food and Marine, & Head of Policy Profession
John Spence	Legislative Governance & Improvement Manager
Lyn Summers	Head of Central Legislation Support Team, Health and Social Services Department
Chris Tudor- Smith	Senior Responsible Officer, Public Health Bill
Cathy Weatherup	Head of Health Inequalities and Legislation, Public Health Division
Bethan Webb	Deputy Director Welsh Language
Sharon West	Head of Equality Unit
TOTAL PEOPLE INTERVIEWED = 47	
<ul style="list-style-type: none"> Contributed materials and views, although not interviewed. N = 47 + 1 	

NATIONAL ASSEMBLY FOR WALES	
Name	Role
Sarah Beasley	Clerk to Communities, Equality and Local Government Committee, Policy and Legislation Committee Service
Martin Jennings	Research Team Leader, Research Service, National Assembly for Wales
Owain Roberts	Head of Table Office, National Assembly for Wales
TOTAL PEOPLE INTERVIEWED = 3	

EXTERNAL – WITHIN WALES	
Name	Role or Interest
Kate Bennett	National Director for Wales, Equality and Human Rights Commission
Dan Bristow	Deputy Director, Public Policy Institute for Wales
Daisy Cole	Director of Well Being and Empowerment, Older People's Commissioner for Wales Strategic Management Team
Tracey Cooper	Chief Executive, Public Health Wales
Peter Davies	Sustainable Development Commissioner
Rhian Davies	Chief Executive, Disability Wales
Heather Delonnette	Sustainable Futures Officer, Regeneration, Property and Commissioning, Powys County Council
Dr Eva Elliott	Director of the Wales Health Impact Assessment Support Unit, Cardiff Institute of Society, Health and Wellbeing
Liz Green	Principal Health Impact Assessment Development Officer, Public Health Wales
Liz Grieve	Strategic Planning Team Manager, Denbighshire County Council
Dr Simon Hoffman	Lead on independent evaluation of Children's Rights Impact Assessments, Swansea University
Professor Sally Holland	Children's Commissioner for Wales
Caroline Joll	Economist at Cardiff University, and Member of the Budget Advisory Group for Equality
Calvin Jones (Prof.)	Professor of Economics, Cardiff Business School, Cardiff University
Ruth Marks	Chief Executive, Wales Council for Voluntary Action
Steve Martin	Director, Public Policy Institute for Wales
Tim Peppin	Director of Regeneration and Sustainable Development, Welsh Local Government Association
Professor Stijn Smismans	Director, Centre for European Law and Governance, Cardiff University
Steve Thomas	Chief Executive, Welsh Local Government Association
Huw Vaughan-Thomas	Auditor General for Wales
Paula Walters	Director, NHS Centre for Equality and Human Rights
Iwan Williams	Lead for Communities, Local Government and Well Being, Older People's Commission
Elizabeth Woodcock	Research Officer, Bangor University
TOTAL PEOPLE INTERVIEWED = 23	

EXTERNAL – OUTSIDE WALES	
Name	Role or Interest
Pierre Bascou	Directeur D Soutien Direct, DG Agriculture and Rural Development, European Commission
Yves Plees	Coordinator for Institutional Relations, DG Agriculture and Rural Development, European Commission
Leo Maier	Head of Unit, DG Agriculture and Rural Development, European Commission
Claudio Collova	Policy Analyst, European Parliament Research Service, Ex-ante Impact Assessment Unit
Doug Band	Executive Director, Regulatory Affairs Sector, Treasury Board Secretariat of Canada, Ottawa, Canada
Rex Deighton-Smith	Director and Principal, Jaguar Consulting, Melbourne, Australia
Julian Farrel	Deputy Director and Head of Europe Team, Better Regulation Executive
Michael Gibbon	Chair, Regulatory Policy Committee
Kenneth Hogg	Director for Local Government and Communities, & Head of Policy Profession Scotland
Peter May	Permanent Secretary, Department of Regional Development, & Head of Policy Profession Northern Ireland
Phil McRea	Secretariat, Regulatory Policy Committee
Professor Anne Meuwese	Professor, Tilburg Law School, Tilburg University, Tilburg, Netherlands
Michael Ridley	Assistant Director, Better Regulation Executive
Dr Angus Morrison-Saunders	Associate Professor in Environmental Assessment Murdoch University, Perth, Australia
Vincent Ngan	Director, Cabinet Committee Operations, Treasury Board of Canada Secretariat, Ottawa, Canada
Professor Ciaran O'Fairchealligh	Professor, Griffith Business School, Griffiths University South East Queensland, Australia
Graham Turnock,	Chief Executive, Better Regulation Executive
Andrew Walker	Assistant Director Reviews, VCEC, State of Victoria
TOTAL PEOPLE INTERVIEWED = 18	

OVERALL TOTAL NUMBER OF PEOPLE INTERVIEWED = 91

Annex 3: The IA Landscape in the Welsh Government

The Table below is an internal Welsh Government document which brought together information (autumn 2015) about all the then current IAs.

THE FOLLOWING ASSESSMENTS OR CONSIDERATIONS ARE NEEDED FOR ANY POLICY OR LEGISLATION, TO MEET OUR STATUTORY OBLIGATIONS			
Issue	Nature of requirement	Screening?	Full?
Equality	Complete Part 1 of EIA to decide if a full assessment is needed	Yes	
Rights of children and young people	Complete an assessment, by working through 6 stages	Yes	Yes
Welsh Language	Complete an assessment, by working through 5 stages.	Yes	Yes
Biodiversity	Have regard to conservation of biodiversity. Consider the likely impact of your policy in biodiversity – positive, negative or neutral. If negative, mitigate. If neutral, seek opportunities to make it positive.	Yes	

WG HAS MADE POLICY COMMITMENTS TO CONSIDER AND/OR UNDERTAKE THE FOLLOWING ASSESSMENTS OR CONSIDERATIONS FOR ANY POLICY			
Issue	Nature of requirement	Screening?	Full?
Climate change	Consider the impact. Your policy should be carbon neutral or support reduction of carbon emissions in some way.	Yes	
Health impact	Complete the screening stage to decide if a full assessment (involving 4 more stages) is needed	Yes	
Poverty	Consider impact on poverty. (TO BE UPDATED)	Yes	
Rural proofing	Engage with stakeholders then complete screening tool, and detailed checklist if needed.	Yes	
Communities First	Consider whether there are distinctive issues	Yes	

Economic impact	As per Regulatory Impact Assessment (see below) in relation to business. Engage with business to gather evidence. Consider cumulative impact of policies if possible.		
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THE FOLLOWING ASSESSMENTS OR CHECKS ARE MANDATORY IN CERTAIN CASES, BUT ARE NOT NEEDED ALL THE TIME

Issue	Needed	Nature of requirement	Screening?	Full?
Strategic Environmental Impact Assessment	For certain plans and programmes	Answer the 3 questions on this page to establish whether duty applies. Compile and consult on an Environmental Statement if needed. Procedural and timing requirements apply.	Yes	
Environmental Impact Assessment	For policies affecting uncultivated land and semi-natural areas	Answer the 2 questions on this page . If answer to either is 'Yes', or if you are running a project that involves seeking planning permission, consult Environmental Impact Assessment Unit for advice.	Yes	
Habitat Regulations Assessment	For policies affecting certain sites	If policy will affect an SAC, cSAC, SPA, pSPA or Ramsar Sites ⁵ , complete a Strategic Environmental Assessment	Yes	
Regulatory Impact Assessment	Almost any legislation	Set out short- and long-term costs and benefits, and where they fall. Consider impact on small businesses if relevant. As part of this, apply competition filter, and make detailed competition assessment if needed.		
Justice Impact Assessment	Almost any legislation	Consider if your proposal may impact on the justice system, in any one of a number of ways. If it may, refer to guidance for further advice.		
Privacy	If proposals will involve personal data	Answer initial screening questions, and undertake full assessment if needed.		
State aid (not an impact assessment but needs to be checked)	If supporting an organisation	If organisation is engaging in economic activity, apply criteria to identify if support constitutes State Aid. If it does, State Aid		

		issues will need to be addressed. Discuss with State Aid Unit.		
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There has long been a requirement to consider Sustainable Development, but this is not an impact assessment as such. See also the categories and the list in the Legislation Handbook for a 3-way classification of WG IAs. Note also:

- The above tables may be technically accurate only in a narrow sense
- A number of others than those referred to as such are 'statutory' but do not apply to all Governmental acts or functions
- Certain of them are 'statutory' only in the sense that they are the instrument chosen to give effect to a statutory duty (e.g. 'have regard' to the UN Convention on the Rights of the Child via a statutory scheme in subordinate legislation)
- The list is arguably incomplete e.g. does not include 'Business Impact Assessments' (which are about Governmental rather than commercial 'business').

The Public Policy Institute for Wales

The Public Policy Institute for Wales improves policy making and delivery by commissioning and promoting the use of independent expert analysis and advice. The Institute is independent of government but works closely with policy makers to help develop fresh thinking about how to address strategic challenges and complex policy issues. It:

- Works directly with Welsh Ministers to identify the evidence they need;
- Signposts relevant research and commissions policy experts to provide additional analysis and advice where there are evidence gaps;
- Provides a strong link between What Works Centres and policy makers in Wales; and
- Leads a programme of research on What Works in Tackling Poverty.

For further information, please visit our website at www.ppiw.org.uk

Author Details

Dr Clive Grace O.B.E. advises and researches on public services and public policy in Wales, the UK, and internationally. He was supported in this assignment by Associates Sandra Harris and Liam Whittington.



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