

### **Submitted by the Observatory on Human Rights of Children, Swansea University**

1. The Observatory on Human Rights of Children is based at Swansea University and Bangor University. The Observatory supports children's human rights through research on ways to put into practice rights guaranteed by the UN Convention on the Rights of the Child (CRC). This submission is on behalf of the Observatory at Swansea University.
2. This is the Observatory's second submission to this inquiry. The first was made on 27<sup>th</sup> May 2020 (CYPE Cov 106). In this submission we focus on Children's Rights Impact Assessment during the pandemic.
3. We observed in our first submission that the UN has warned that the current public health crisis could become a 'child rights crisis'. The UN argued for special attention to be given to all children when emergency measures are introduced in response to Covid-19. Emergency measures taken in response to the pandemic have had a severe adverse impact on children and children's rights, in the UK and in Wales.<sup>1</sup>

### **The Need for Children's Rights Impact Assessment**

4. In our first submission we noted that the UN Committee on the Rights of the Child required any restrictions on children's rights in response to the pandemic to be 'imposed only when necessary, be proportionate and kept to an absolute minimum'. In order to meet these requirements we argued that the Welsh Government should carry out Children's Rights Impact Assessment (CRIA) of all emergency measures. The UN Committee on the Rights of the Child strongly recommends CRIA so that children's rights are fully safeguarded when governments introduce new laws and policies.<sup>2</sup> The need for CRIA is even more pressing in times of emergency when children's rights are likely to be overlooked.

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<sup>1</sup> For example: Children's Commissioner for Wales, 2020, *Coronavirus and Us; Coronavirus and Me: Experiences of children from Black, Asian and minority ethnic groups in Wales; Coronavirus and Me: Understanding how disabled children and young people have experienced the pandemic in Wales*; and, *Coronavirus and Me: Survey responses from young people aged 15-18*, all available at: <https://www.childcomwales.org.uk/categories/research-reports-and-other-publications/>. Recent reports include: Equality and Human Rights Commission, October 2020, *How coronavirus has affected equality and human rights*, available at: <https://www.equalityhumanrights.com/en/publication-download/how-coronavirus-has-affected-equality-and-human-rights> and, Joseph Rowntree Foundation, November 2020, *Poverty in Wales*, available at: <https://www.jrf.org.uk/report/poverty-wales-2020>.

<sup>2</sup> UN Committee on the Rights of the Child, General Comment No.5, 2003, *General Measures of Implementation of the UNCRC*.

5. Currently CRIA is carried out as part of the Welsh Government's Integrated Impact Assessment (IIA). The IIA also includes a Well-being Assessment and an Equality Impact Assessment. In evidence to the Committee's inquiry into Children's Rights in Wales (submission CRW 04), we expressed concern that the introduction of an IIA would dilute the focus on children's rights.<sup>3</sup>
6. The Welsh Government should be aware of good practice requirements when undertaking CRIA: including through research carried out for Ministers in 2015.<sup>4</sup> Good practice includes publication of CRIA. We have struggled to confirm which Coronavirus measures have been subject to CRIA, and which have been published.
7. Up to 4<sup>th</sup> November 2020 (the date of preparation of this submission) we were unable to find any CRIA on the Welsh Government's webpage which provides links to published impact assessments on Coronavirus measures (Impact Assessment: Coronavirus<sup>5</sup>). On the 4<sup>th</sup> November we observed that three CRIA were added to the webpage, all of which are dated 1<sup>st</sup> June 2020.
8. We are concerned that the failure to published CRIA on Coronavirus measures which have been subject to CRIA leads to a lack of transparency, but also signals a lack of engagement with relevant stakeholders in the CRIA process. Involvement of stakeholders as CRIA is carried out is another aspect of DIA good practice. As we have all adapted to the conditions imposed by the pandemic new mechanisms have emerged for meetings, evidence gathering and consultation. We question why the Welsh Government has not sought to use available mechanisms to reach out and engage with stakeholders in either IIA or CRIA of new emergency measures.
9. On 4<sup>th</sup> November 2020, in preparation for this submission we carried out a snapshot review of the impact assessments available via the Welsh Government's Coronavirus webpage. There are 13 published IIAs covering emergency measures, 12 of which refer to measures which are having or are likely to have a direct or indirect impact on children.<sup>6</sup> The potential impact of the proposed Coronavirus measure on children was recognised in 11 of the IIAs. Despite this, none of the IIA include a CRIA. Instead children's rights are dealt with as an aspect of EIA. We note that in an IIA published on 29<sup>th</sup> June there is reference to a 'full CRIA' on school reopening.<sup>7</sup> We have been unable to find this CRIA (as at 4<sup>th</sup> November).
10. We are concerned that IIA/EIA is being used as a substitute for CRIA and that as a result possible impacts on children and children's rights will be overlooked in the development of measures in response to Coronavirus.
11. It has not been possible to undertake a comprehensive evaluation of the published IIA (x13) and CRIA (x3) available via the Welsh Government's webpage on 4<sup>th</sup> November 2020.

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<sup>3</sup> CYPEC, Inquiry into Children's Rights in Wales, CRW 04, para.27.

<sup>4</sup> S.Hoffman and C.Morse, 2015, *An evaluation of the Welsh Government's CRIA*.

<sup>5</sup> Available at: <https://gov.wales/impact-assessments-coronavirus> .

<sup>6</sup> The exception is: 'All Wales Covid-19 Workforce Risk Assessment Tool'.

<sup>7</sup> IIA on 18<sup>th</sup> June review of emergency measures, at p.20. Available at: <https://gov.wales/impact-assessments-coronavirus> .

However, from our snapshot review we have identified a number of areas where they fall short of CRIA good practice.<sup>8</sup> In summary:

- a. Two of IIA covering measures likely to have a direct or indirect impact on children fail to identify or analyse their impact on children or children's rights.<sup>9</sup>
- b. Ten of the IIA identify some potential impact on children. This should trigger a full CRIA. However, none of the published IIA/EIA includes a CRIA (with the published document) carried out in accordance with the Welsh Government's CRIA template (forming part of IIA).
- c. In both the CRIA and IIA there is limited use of evidence to inform an analysis of the impact of particular measures on children or children's rights, or on specific groups of children. A number of the EIAs refer to the Coronavirus and Us/Me carried out by the Children's Commissioner for Wales.<sup>10</sup> This is an excellent source of information about how children feel about the pandemic but it is cannot provide all the information necessary to carry out a comprehensive analysis of the impact of specific measures.
- d. The CRIA (x3) and EIAs (x12) carried out in substitution of CRIA undertake very limited analysis of the impact of Covid-19 measures on children, and hardly any meaningful analysis of their impact on children's rights.
- e. There is a tendency in the EIAs to list and summarise a number of rights from the UN Convention on the Rights of the Child which may be affected by a proposal, but these are not accompanied by substantive evidence-based analysis of how children, and different groups of children may be affected.
- f. The published CRIA also tend to list rights without full analysis of how these are likely to be affected by a proposal. There is tendency to focus on the positive intention of the proposal and to assume no negative impacts. Each of the CRIA concludes with the statement 'No conflicts with UNCRC articles were identified.' While we have not carried out a detailed 'shadow' CRIA to confirm gaps in analysis, we are concerned that officials may be too quick to assume there is no conflict with children's rights.
- g. The lack of in-depth analysis means that some negative impacts may be overlooked. This also means the opportunity to amend the proposal or to introduce mitigating steps at an early stage is lost.

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<sup>8</sup> CRIA good practice is summarised in: S.Hoffman, 2020, 'Ex ante child rights impact assessment of economic policy', *International Journal of Human Rights* 1-20, author's manuscript available here: <https://www.swansea.ac.uk/staff/law/hoffman-s/>.

<sup>9</sup> These are: 'Impact of Shielding on Vulnerable Individuals' and 'Food Boxes for Shielded People'.

<sup>10</sup> See Fn.1.

