

## Agenda – Finance Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: Wednesday, 7 June  
2017

Meeting time: 09.30

For further information contact:

Bethan Davies

Committee Clerk

0300 200 6372

[SeneddFinance@assembly.wales](mailto:SeneddFinance@assembly.wales)

### Informal Pre Meeting (9.30)

#### 1 Introductions, apologies, substitutions and declarations of interest

(9.40)

#### 2 Paper(s) to note

(9.40)

(Pages 1 – 3)

Letter from the Cabinet Secretary for Communities and Children – Abolition of the Right to Buy and Associated Rights (Wales) Bill – 17 May 2017

(Pages 4 – 7)

Letter from Cabinet Secretary for Finance and Local Government – First Supplementary Budget 2017–18 – 22 May 2017

(Page 8)

#### 3 Inquiry into the financial estimates accompanying legislation:

##### Evidence Session 1

(9.40–10.25)

(Pages 9 – 34)

Matthew Mortlock – Director of Performance Audit, Wales Audit Office

Martin Peters – Law and Ethics Manager, Wales Audit Office

Paper 1 – Wales Audit Office – Written Evidence

Research brief



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

## **Break (10.25–10.30)**

### **4 Inquiry into the financial estimates accompanying legislation: Evidence Session 2**

(10.30–11.15)

(Pages 35 – 70)

Johnathan Price – Chief Economist, Welsh Government

Andrew Hobden – Economic Appraisal and Analysis Team, Welsh Government

Paper 2 – Welsh Government – Written evidence  
Research brief

### **5 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

(11.15)

### **6 Inquiry into the financial estimates accompanying legislation: Consideration of evidence**

(11.15–11.25)

### **7 Abolition of the Right to Buy and Associated Rights (Wales) Bill: Consideration of the draft report**

(11.25–11.40)

(Pages 71 – 79)

Paper 3 – Draft report

### **8 Oversight of the Wales Audit Office Board Recruitment**

(11.40–12.10)

(Pages 80 – 81)

Paper 4 – Oversight of the Wales Audit Office Board Recruitment

## Concise Minutes – Finance Committee

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Meeting Venue:

Committee Room 4 – Tŷ Hywel

Meeting date: Wednesday, 17 May 2017

Meeting time: 09.02 – 11.31

This meeting can be viewed

on [Senedd TV](#) at:

<http://senedd.tv/en/4161>

## Private

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### Attendance

Category	Names
Assembly Members:	Simon Thomas AM (Chair) Mike Hedges AM Eluned Morgan AM David Rees AM Steffan Lewis AM Nick Ramsay AM
Committee Staff:	Bethan Davies (Clerk) Georgina Owen (Deputy Clerk) Gemma Gifford (Deputy Clerk) Martin Jennings (Researcher) Joanne McCarthy (Researcher) Owen Holzinger (Researcher) Katie Wyatt (Legal Adviser) Gareth Howells (Legal Adviser)



## **1 Introductions, apologies, substitutions and declarations of interest**

1.1 The Chair welcomed Members to the meeting.

## **2 Paper(s) to note**

2.1 The Committee noted the papers.

## **3 Consideration of the Draft Public Services Ombudsman (Wales) Bill**

3.1 The Committee considered the draft Public Services Ombudsman (Wales) Bill and agreed to write to the Ombudsman to seek clarification on the use of certain provisions.

## **4 Scoping paper: Legislative budget process**

4.1 The Committee considered a scoping paper on a legislative budget process.

## **5 Amending Standing Orders: Budget Process**

5.1 The Committee agreed to the Chair writing to Business Committee with the revised Budget protocol.

## **6 Assembly Commission Budget 2016–17 – Remuneration Board Determination underspend**

6.1 The Committee agreed to write to the Commission requesting further information and to invite the new Chief Executive to a Committee meeting.

## **7 Oversight of the Wales Audit Office Board Recruitment**

7.1 The Committee agreed to write to the First Minister and the Chair of the Wales Audit Office Board.

## **8 Statutory limitations on the employment of a former Auditor General for Wales**

8.1 The Committee agreed the limitations and agreed to write to the Auditor General for Wales prior to publication.

## **9 Auditor General Wales: Natural Resources Wales Annual Accounts 2015–16: Consideration of draft report**

9.1 The Committee agreed the report with minor changes.

## **10 Inquiry into the Great Repeal Bill and its implications for Wales**

10.1 The Committee agreed to write to the Chair of the External Affairs and Additional Legislation Committee with areas Finance Committee will be interested in.

# Agenda Item 2.1

Carl Sargeant AC/AM

Ysgrifennydd y Cabinet dros Gymunedau a Phlant  
Cabinet Secretary for Communities and Children



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-L-CS-0327-17

Simon Thomas AM  
Chair  
Finance Committee  
National Assembly for Wales

17<sup>th</sup> May 2017

Dear Simon

## **ABOLITION OF THE RIGHT TO BUY AND ASSOCIATED RIGHTS (WALES) BILL**

Thank you for your letter of 3 May following my attendance at the Committee's meeting earlier that day on the Abolition of the Right to Buy and Associated Rights (Wales) Bill.

In your letter, you asked for further details of the estimated staff costs to the Welsh Government and the modelling used to measure the financial impact of the Bill on social landlords. Details of both matters are set out in the annex attached.

I should also like to take this opportunity to clarify the position on research which was discussed during the meeting (and referred to in paragraphs 60 to 63 of the transcript). The research undertaken by the Welsh Government looking at housing benefit claims was based on past Right to Buy sales (those since 1997) and estimated an annual cost to the public purse of £4.4 million. The research was not extended to look at the potential savings from preventing future Right to Buy sales. Given the evidence in the research it does seem likely that, if the Right to Buy were allowed to continue, some properties sold under the scheme in the future would eventually find their way into the private rented sector and be subject to a claim for housing related benefits. This would add to the existing cost to the public purse.

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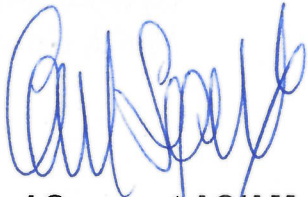
Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

**Pack Page 4**

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I hope this is helpful. If you would like any further information, please let me know.

Yours sincerely



**Carl Sargeant AC/AM**  
Ysgrifennydd y Cabinet dros Gymunedau a Phlant  
Cabinet Secretary for Communities and Children

**Details of the estimated staff costs to the Welsh Government**

Set out below are details of the calculation of the estimated staff costs to the Welsh Government for the preferred option 5 in the RIA (ie £57,000 which comprises £42,000 in 2017-18 and £15,000 in 2018-19).

The following estimates identify the transitional costs, covering: the drafting and resultant communication of the policy change, the production of guidance clarifying how the law has changed as a result of the 'Act' and the impact of the legislation for social housing tenants.

<u>Year 1 (2017-18)</u>	<u>Year 2 (2018-19)</u>
Policy input – MB2 x 50%    £27,044	Policy Input – MB2 x 25%   £13,522
Team Support x 10%        £ 2,711	Team Support x 5%         £ 1,355
Legal - G7 x 10%          £ 7,130	
Translation – MB2 x 5%    £ 2,704	
Comms - MB2 x 5%        £ 2,704	
£42,293	£14,877
rounded @ <b>£42,000</b>	Rounded @ <b>£15,000</b>

These are annual gross costs, including on-costs (NI & employer's pension contribution) using the normative methodology of daily cost of working days multiplied by the expected number of days input at each pay grade.

Year 2 costs envisaged residual enquiries, calls for clarification from social housing landlords and responding to new applicants and tenant communication/enquiries and the potential need for a follow-up exercise prior to expiration of the one-year period.

In line with the description in the Explanatory Memorandum (and RIA) the costs to the Welsh Government are estimated to require a relatively small time input from policy officials (consolidated as a single officer in a mid-range policy post) and respective input from lawyers, communications and translation officials.

**\* Key**

MB2 – Management Band 2

G7 – Grade 7



## **Details of the modelling used by the Welsh Government to measure the financial impact of the Bill on social landlords**

1. The modelling presented in the Regulatory Impact Assessment (RIA) compares the impact on Local Authority and RSL's finances of alternative options in which the Right to Buy is abolished to a baseline option in which the Right to Buy remains in place.
2. The model captures the following competing financial impacts resulting from the sale of a property under the Right to Buy. Upon selling the property, the landlord receives a capital receipt equal to the market value of the property *less* any discount which the tenant is entitled to. In addition, the landlord will no longer be responsible for managing or maintaining the property. Against this, the social landlord will incur a cost in having to administer the Right to Buy application and no longer receives a rental stream from the property.
3. The model incorporates a number of variables, including:
  - the number of sales in the baseline option;
  - the market value of properties sold under the Right to Buy;
  - the value of the discount;
  - the rent on the property (if the property is retained in the social sector);
  - the repair, maintenance and management costs that would be incurred if the property is retained in the social sector;
  - how long each property is expected to last;
  - the impact on the number of sales of a 12-month notice period (i.e. the potential spike in sales)
4. While data is available for these variables for previous years, the number of properties which will be sold under the Right to Buy in future years is clearly unknown, as are the characteristics of those properties (value, age, state of repair, rent etc.). As such, a number of assumptions were required. Given the degree of uncertainty around some of the variables, it was considered prudent to adopt a scenario modelling approach which considered alternative levels for rents, repair and maintenance costs and management costs (these scenarios are set out in paragraphs 6.27 to 6.29 and Table 3 of the RIA). Alternative periods of 30, 40 and 50 years for the remaining useful life of the properties (the period over which the rental surplus would continue to accrue if a property was retained in the social sector) were also included in the modelling. Finally, 'spikes' of 20% and 50% were included in the modelling to reflect the expectation that sales will increase in the lead-up to abolition.
5. It is this scenario based approach which has resulted in the broad range of financial estimates in the RIA. The Welsh Government considers that, due to the uncertainties involved, the modelling adopted is the best approach and that presenting the potential financial impacts as a broad range is more robust than presenting a single point estimate.

**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government

Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref: MA-P/MD/1691/17

Simon Thomas AM,  
Chair, Finance Committee,  
The National Assembly for Wales,  
Cardiff Bay,  
Cardiff  
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22 May 2017

Dear Simon

I wrote on 9 May informing you of my intention to table and publish a supplementary budget motion on 20 June. However, there has been a revision to the timings.

I will now table a First Supplementary Budget 2017-18 on 27 June. The debate will now take place on 18 July. I understand the committee will liaise with my officials to arrange a date for a scrutiny session after the first supplementary budget has been laid.

Yours sincerely



**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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Date: 24 May 2017  
Our ref: HVT/2717/caf  
Page: 1 of 5

Mr Simon Thomas AM  
Chair of the Finance Committee  
National Assembly for Wales  
Cardiff Bay  
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Annwyl Simon

#### **INQUIRY INTO THE FINANCIAL ESTIMATES ACCOMPANYING LEGISLATION**

Thank you for your invitation to give evidence to the Finance Committee as part of its inquiry into the financial estimates accompanying legislation.

As I have indicated before in my evidence to the Fourth Assembly's Constitutional and Legislative Affairs Committee's inquiry into 'Law Making in Wales', (written submission of 13 April 2015 and oral evidence on 18 May 2015), I think the examination of the costs of legislation is of great importance given the Assembly's role in determining Welsh public expenditure. Clearly, this importance will only increase with the development of fiscal devolution.

In examining the costs of a sample of legislation, together with the reporting and monitoring arrangements for costs after implementation, and seeking to establish the effectiveness and quality of regularity impact assessments, the Committee has set itself a wide-ranging and challenging terms of reference. Even the more limited invitation to me to provide views on the process used by the Welsh Government in compiling regulatory impact assessments and the consistency and accuracy of financial estimates provided, covers a very substantial set of issues, and I can therefore at this stage only provide some initial thoughts.

At a strategic level, the main point I would make is that as well as considering the estimated cost of proposed legislation (so as to make sure that it legislates responsibly), I think it would be appropriate for the Assembly to be examining the costs of legislation retrospectively as part of its post-legislative scrutiny work. In my view, such post-

legislative scrutiny should not be a matter of a few isolated exercises, but a regular feature of Assembly business. I recognise, of course, that Assembly resources, including in terms of Assembly Member time, are limited.

A further complication is that the retrospective consideration of the costs of legislation is not a simple task. The majority of expenditure estimated to be incurred by virtue of Welsh legislation is public sector staff time (salaries and wages). I gather that most such activity is not systematically recorded—certainly generally not allocated to particular legislation—so outturn figures are generally not readily available. Post-legislative costing therefore requires estimation work, in much the same way as is needed for pre-legislative costing in explanatory memoranda.

While there is probably scope for debate, in the case of Welsh Government-sponsored legislation, which is, of course, the majority of legislation, I do not think it would be realistic for the Assembly to undertake such post-legislative estimation itself. Instead, I think that at least for Welsh Government-sponsored legislation, as part of its role of managing the Welsh public finances, the Welsh Government should undertake such estimation work. This would seem to be an appropriate part of the activity of a Welsh Treasury function. The appropriate role of the Finance Committee would be to review the Welsh Government's work. I therefore think that the Committee may wish to explore the compilation of outturn figures for Welsh Government-sponsored legislation with the Welsh Government.

In terms of my views on the process used by the Welsh Government in compiling regulatory impact assessments, I have not undertaken any substantive work in this area since undertaking my study on the Regulatory Impact Assessment of the Well-being of Future Generations (Wales) Bill and a small amount of work building on that and some existing processes so as to contribute to the Constitutional and Legislative Affairs Committee's inquiry into 'Law Making in Wales'. I therefore do not have much to add the evidence that I provided to the Constitutional and Legislative Affairs Committee. I can, however, provide some limited comment on the results of that work.

The inquiry report included an extract from my written evidence which provided a suggestion on how the requirements of Standing Order 26.6 could be amended to provide for clearer presentation of financial information in explanatory memoranda. Most aspects of these suggestions were reflected in the Business Committee's recommendations to amend Standing Order 26, which were approved by the Assembly in March 2016. While the specific suggestion that a template summary table of costs be required in explanatory memoranda was not included in the revised Standing Order, I note that all Bills introduced into the Fifth Assembly include such a summary table.

While I have not undertaken extensive work to assess the quality and effectiveness of such tables, and I do have some concerns as to the time periods for which recurring amounts are analysed, it does seem to me that estimates of the costs of Bills in the fifth Assembly are much more readily apparent from their explanatory memoranda than has been the case in the past.

Following my report on the Regulatory Impact Assessment of the Well-being of Future Generations (Wales) Bill, the Welsh Government prepared a revised Explanatory Memorandum on the Bill. Most of the recommendations in my report related specifically to the presentation of the Regulatory Impact Assessment for that Bill. However, I recommended that the Welsh Government review and strengthen its overall arrangements for the development and internal review of future regulatory impact assessments. I also recommended that the review consider the protocols for engaging with key stakeholders during the development of regulatory impact assessments. Staff of the WAO met with Welsh Government officials to discuss taking forward this and other recommendations from that report and also my suggestions to the Constitutional and Legislative Affairs Committee. I have not, however, examined the extent to which the Welsh Government has acted upon this recommendation.

I should perhaps make clear that I do not routinely examine the quality of regulatory impact assessments. While it would be open to me to examine assessments in exercising my power to undertake studies, I do not consider that it would be an appropriate use of that power to undertake studies in respect of assessments on an ongoing basis. I consider that it is for the Welsh Government in the first instance to ensure good stewardship of public resources, and that an important element of that stewardship is the Welsh Government's Treasury role of ensuring that legislative developments amount to good management of public resources. My studies are principally a mechanism for reporting to the Assembly and the public on the Welsh Government's stewardship of resources. Using study powers as routine assistance to the management of resources could amount to encroaching on the role of the Welsh Government.

As I emphasised in my December 2014 report, my examination of the Regulatory Impact Assessment for the Future Generations Bill was the first time that I had formally examined the detail of an impact assessment. I was not therefore able to comment on whether the overall estimation and presentation of the costs in that case was any better or worse than for previous Bills. Nor have I since undertaken any equivalent audit review in respect of any other Bill.

My other work in relation to Bills is also quite limited in focus and does not represent a source of extensive information on the quality of costing of legislation. As I explained to the Constitutional & Legislative Affairs Committee, we review Bills for two main reasons.

First, we check for provisions that enable direct charges on the Welsh Consolidated Fund. (Such provisions are appropriate for such matters as indemnities and pensions, where, for example, it would not make sense to make the funding of such items subject to Assembly budget motions.) Standing Order 26.6 (xi) requires me to provide a report on whether such provisions are reasonable. We also have to be aware of such provisions so as to be prepared to consider requests to draw from the Welsh Consolidated Fund. Second, we review Bills so as to help ensure that appropriate audit provisions are in place, as, for example, are necessary with the establishment of new bodies.

We also aim to provide useful responses to consultations on Bills and their regulatory impact assessments, and staff of the WAO endeavour to engage with Bill teams to help ensure, for example, that appropriate audit provisions are included. For example, on the Housing (Wales) Bill, I provided a stand-alone response to the consultation on the Bill which commented, in part, on matters arising from the regulatory impact assessment. Again, however, while such responses may query the absence of a particular cost, or query the levels of the estimates of particular costs, these do not represent comprehensive analyses of the quality of assessments.

I should perhaps, however, mention that in relation to the Qualifications Wales Act, WAO staff engaged with Welsh Government officials regarding the audit clauses of the Bill. However, it appears that instead of asking us for an estimate of the audit fee, the bill team devised their own estimates: £25,000 in 2015-16 and £42,000 “ongoing” (i.e. each subsequent year). The actual audit fee for 2015-16 was £20,091 and that for 2016-17 is calculated to be £18,141. While these amounts make little difference to the overall cost of the Act, this example indicates the need for Bill teams to consult with relevant parties so as to obtain reasonable estimates.

Finally, the Committee may be interested to know that I am currently planning to include in my 2018-19 programme of local government work a series of studies focusing on the implementation of legislation. Specifically, the Social Services and Well-being (Wales) Act 2014, the Planning (Wales) Act 2015 and the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015. Wales Audit Office staff gathered some initial evidence from public bodies on their response to these Acts during 2016. We did not seek specific feedback on issues relating to the costs of delivering new functions, although in some cases public bodies commented in general terms on their concerns about the availability of funding to support delivery. Should the Committee’s inquiry highlight particular issues or concerns about the costs of implementing any of these three pieces of legislation when compared with the original estimates then there may be scope for me to consider those issues in more detail as part of the work I plan to start during 2018-19.

I hope that this initial response is helpful to the Committee. I have asked my colleagues to discuss with you the prospect of their attendance before the Committee to provide oral evidence on these issues. There may, however, be relatively little that they can add at this point to the evidence already available from their contributions in support of the work of other committees in the Fourth Assembly.

Yn gywir



**HUW VAUGHAN THOMAS**  
**AUDITOR GENERAL FOR WALES**



## THE FINANCIAL CONTENT OF EXPLANATORY MEMORANDA FOR ASSEMBLY BILLS

1. In order to support wider work on contributing to National Assembly consultations on Assembly Bills, the WAO's Compliance Section has undertaken a brief review of the financial content of the Explanatory Memoranda that have accompanied Assembly Bills since November 2011.
2. Two main findings arise from the review:
  - a. a general lack of clarity in the presentation of estimates of costs and timescales within Explanatory Memoranda regarding the proposed legislation;
  - b. variations in the completeness of estimates of costs, leading to a lack of an overall view of the cost of the legislation
3. This paper explains these findings and suggests some potential means of addressing them.

### Lack of clarity of estimates of costs and timescales within Explanatory Memoranda

4. Standing Order 26.6 requires the Member in charge of a Bill to lay an Explanatory Memorandum to accompany the Bill. Standing Order 26.6 (vi) requires the Explanatory Memorandum to set out:

*...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...*
5. This requirement is entirely appropriate, given that the Assembly does not just make laws but also determines overall how much money the Welsh Government and other relevant bodies can spend on particular purposes. Clearly, the Assembly needs information on the expected costs that arise from its legislation if it is to legislate responsibly and for the overall benefit of the people of Wales.
6. The Explanatory Memoranda are all quite extensive documents containing sections labelled "Costs and Benefits". In most cases, those sections together with supporting annexes run to some 30 pages. Yet the information required by Standing Order 26.6(vi) is usually not readily apparent. Much relevant information is provided, but even for a Bill of limited scope, the reader has to do a fair amount of work to arrive at an overall understanding of the estimates of (a) the costs, (b) the timescales and (c) on whom the costs would fall.



7. Examples of this include:
- a. **The Qualifications Wales Bill Explanatory Memorandum**—this provides a table that, at first reading, could be taken to summarise the costs of the Bill (Table 4 on page 56). However, in order to identify the real cost of the Bill, the totals in Table 1 (on page 52) must be subtracted from the totals in Table 4. The need for this is only evident from a careful reading of para 228, which says, “the highest costs shown relate to staffing costs which, for functional staff, are largely already met from Welsh Government budgets”. Table 4 also does not have a title to make clear what it is setting out, although its position in the text indicates that it is the costs of “option 3”, which is elsewhere indicated as the option pursued by the Bill. And to find the table requires the reader to consider most of the Costs and Benefits section of the Memorandum. The five year period for costs is also not explained, which could lead to an inference that costs will only be incurred for five years, unlikely though that may seem.
  - b. **The Renting Homes (Wales) Bill Explanatory Memorandum**—this identifies costs for 2015-16 to 2019-20 for the Welsh Government, private landlords, community landlords, third sector organisations and legal professionals. It considers these costs in some detail not just in terms of the option represented by the Bill but also in terms of an alternative option, as well giving some cost consideration to the “do nothing option”. Consequently, the cost information covers 27 pages, and unfortunately there is no summary table to encapsulate the estimated cost of the Bill. Again, a five year costing is given without explanation.
  - c. **The Higher Education (Wales) Bill Explanatory Memorandum**—this provides extensive cost analysis for three options. The 36 page “Costs and benefits” section provides 22 tables, and, as a result, table 8, which provides an estimate of the cost of the Bill from 2015-16 to 2019-20, is rather lost in the detail.
8. As indicated by these examples, the cost information provided in Explanatory Memoranda is in practice set out as part of an analysis of options, with such options generally including “do nothing”, “introduce legislation” (ie introduce legislation as per the Bill) and often a mid-way or enhanced variation on this. The complex and inconsistent layout means that the reader needs to exercise considerable care to avoid confusing costs that are attributable to other options with those attributable to the Bill as introduced.
9. Such detailed option analysis is not strictly required by Standing Order 26.6, though it is relevant to Standing Order 26.6(iii), which requires the Explanatory Memoranda to:
- ...set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted...*

10. It therefore appears that, as the detail of the option analysis that meets Standing Order 26.6(iii) provides material that is relevant to requirements of Standing Order 26.6(vi), those who draft Explanatory Memoranda consider that Standing Order 26.6(vi) is adequately met by such option analysis. However, it is arguable that even where such option analysis does contain all the relevant estimates, this is not a satisfactory approach because of the considerable burden it places on the reader, as explained above. It risks creating confusion amongst AMs when considering Bills and hampers effective scrutiny.
11. Given the importance of Assembly Members being informed of the cost of legislation, it is a matter of some concern that identifying the estimates of costs, timescales and those on whom costs fall in respect of individual Assembly Acts and Bills from looking at the Explanatory Memoranda laid before the Assembly is not straightforward. One solution to this problem would be amendment of Standing Order 26.6(vi) so as to provide greater clarity. Such an amendment could specifically require the completion of a table summarising the estimates of (a) the costs of the legislation, (b) the timescales for those costs and (c) on whom the costs would fall. Such a table, in a standard format, should enable all AMs to be clear about the main cost implications of each Bill that they vote on. A potential template is set out in the Annex to this paper.
12. As indicated in the Annex, given the recent passage of the Well-being of Future Generations (Wales) Bill, it might also be appropriate for there to be an additional cell to summarise the environmental and social dis-benefits that cannot be quantified financially. However, this would require an addition to the list of items currently contained in Standing Order 26.6(vi).
13. Though in some cases it might be appropriate to include a summary table for each main policy/Part of a Bill, in any event it would be helpful to have one overall summarising table for each Bill as a whole.

#### **Variations in the completeness of estimates of costs**

14. Explanatory Memoranda frequently say that estimates cannot be made for some effects of the legislation, and, as a consequence, no figures are given for those effects. It is certainly the case that it can be difficult to provide estimates when, for example, the level of take-up of a new programme is not known. However, the complete omission of any costing for some effects alongside the provision of detailed figures for other aspects (those that can be relatively easily estimated) can lead to a rather misleading picture of the overall costs of the legislation.
15. For example, the costing set out in the **Explanatory Memorandum for the Local Government (Wales) Bill** of January 2015 does not give a full overview of the likely gross or net costs of the Bill. This is not because of the understandable uncertainty about the future shape of local government in Wales, but because rather than clearly allowing for that uncertainty the Memorandum gives partial and not well-signposted information:

- a. Appendix A on page 104 of the Memorandum has the title “Costing the Options” but appears to be confined solely to the (relatively modest) cost of transition committees;
  - b. Tables 17 and 18 on pages 96 and 97 could be taken to summarise Welsh Government and local government costs, but para 208 on page 95 says “there are a few areas (notably policy intention 4) where it has not been possible to produce an estimate at this stage”;
  - c. The tables give the total additional costs for the Welsh Government and Local Government for the period 2015-16 to 2020-21 as £1.1 million and £1.2 million respectively (i.e. £2.3 million in total) on the basis of one voluntary merger. However, the Bill appears to provide complete primary legislative provision for voluntary mergers, and it would therefore be appropriate for the Explanatory Memorandum to give broad cost estimates for one or more such voluntary mergers (with the uncertainty noted);
  - d. The Memorandum provides no figures for an estimate of ongoing savings.
16. It is worth noting that, in contrast, the Assembly’s Research Service paper on the Local Government (Wales) Bill includes far more comprehensive cost estimates for local government restructuring overall. The Research Service paper refers to Chartered Institute of Public Finance & Accountancy (CIPFA) estimates for the transition costs of local government mergers (in terms of people, property, systems and programme costs) that range between £159.7 million and £267.9 million for nine mergers involving 19 authorities (and annual savings of £64.7 million a year after two or three years).
17. While not included in either CIPFA’s report or the Research Service paper, this would indicate broad brush costs of some £20 million for one merger (and annual savings of some £6 million). This indicates that the Explanatory Memorandum probably rather understates the likely initial cost, while also omitting to provide a figure for ongoing savings.
18. The Auditor General’s *Review of the Regulatory Impact Assessment of the Well-being of Future Generations (Wales) Bill* (4 December 2014), concluded that there was likely cost understatement within the Explanatory Memorandum, and that it did not present the estimates clearly enough. Furthermore, the Welsh Government’s view that the additional costs of the bill may need to be absorbed within existing resources, as expressed during the Environment and Sustainability Committee’s evidence session on 29 September 2014, was not made clear in the Explanatory Memorandum.
19. As the examples above show, there is a tendency for Explanatory Memoranda to provide an incomplete view of overall costs. To be fit for purpose, i.e. so that Assembly Members have an overall idea of the cost of the legislation, Explanatory Memoranda should give overall estimates of the costs. Clearly, this can be difficult for some effects, but it would also be more meaningful and useful for Explanatory Memoranda to give an overall broad brush estimate of a Bill’s gross cost (while acknowledging areas of

considerable uncertainty) than to provide very detailed figures on certain aspects but no overall estimate.

20. The current formulation of Standing Order 26.6 (vi) perhaps does not help ensure that an overall view of costs is given. The Standing Order requires the Explanatory Memorandum to set out "...best estimates of...the gross administrative, compliance and other costs to which the provisions of the Bill would give rise", but it does not specifically require the identification of such costs overall. It would seem relatively straightforward to include such a requirement in the Standing Order.
21. In order to improve the reasonableness of overall cost estimation it may be helpful for the Assembly to undertake or obtain some retrospective reviews of the actual costs arising against the estimates given in the relevant Explanatory Memorandum. Such reviews might well help identify some means of improving the cost estimation processes and presentation used. Another approach that might help ensure that Explanatory Memoranda include appropriate cost information would be for Standing Order 26.6 to require the inclusion of some form of certification that this is the case, as this would help AMs better understand the overall costs of the legislation they are being asked to vote on.

STANDING ORDER 26.6(vi) COST ESTIMATE SUMMARY TABLE TEMPLATE

	One-off amounts (eg initial set up costs, disposal proceeds and decommissioning costs) £M	Average annual recurring amounts £M	Number of years applying to annual recurring amounts	Total lifetime amount (lifetime of the legislation) (at Net Present Value) £M
A. Gross administrative cost of the Bill's provisions (ie the additional public expenditure arising as a consequence of the Bill before any financial savings): i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies <b>Total</b> of i), ii) and iii)				
B. Estimate of administrative savings arising from the Bill: i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies (specify) <b>Total</b> of i), ii) and iii)				
C. Net administrative cost of the Bill's provisions (i.e. the net additional public expenditure that will arise as a consequence of the Bill): i) WG and related bodies, including NHS ii) Welsh local government iii) Other public bodies <b>Total</b> of i), ii) and iii)				
D. Compliance costs (i.e. costs arising to members of public etc from complying with the Bill's requirements): i) general public; ii) businesses; iii) other non-public sector bodies (eg voluntary organisations) <b>Total</b> of i), ii) and iii)				
E. Any other financial costs (include brief description here)				
F. Brief description of environmental and social dis-benefits arising from the Bill that cannot be quantified financially: i) one-off ii) ongoing (Include estimates of tonnes of CO <sub>2</sub> )				

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted



Llywodraeth Cymru  
Welsh Government

Swyddfa'r Prif Weinidog a'r Swyddfa Cabinet  
Office of the First Minister and Cabinet Office

Simon Thomas AM  
Chair of the Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

26<sup>th</sup> May 2017

Dear Mr Thomas,

**Finance Committee inquiry – The financial estimates accompanying legislation**

Thank you for the invitation to give evidence to the Finance Committee's inquiry into the accuracy and reliability of the Regulatory Impact Assessments (RIAs) prepared by the Welsh Government to accompany legislation.

Please find attached a paper updating the Committee on current processes and changes made to the Welsh Government's RIA guidance since the Fourth Assembly. I look forward to discussing this with the Committee on the 7<sup>th</sup> June.

Yours sincerely,

**Andrew Hobden**  
Economic Advisor  
Welsh Treasury

*Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.*

*We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.*



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## Finance Committee Paper on Regulatory Impact Assessments (RIAs)

### Introduction

1. This paper provides an update to an earlier Welsh Government paper about Regulatory Impact Assessments (RIAs) which was submitted to the previous Finance Committee in January 2016.
2. The Welsh Government's Legislation Handbook on Assembly Bills, a guidance document for Welsh Government staff, has been revised to reflect a number of changes, such as those made to Standing Orders since the Fourth Assembly. This includes the chapter on RIAs, which reflects changes to SO 26.6. The intention is to publish the revised handbook in the summer.
3. In addition, a number of changes have been made to the guidance and processes around RIAs to reflect feedback received during the Fourth Assembly.

### Roles and responsibilities

4. Responsibility for preparing the RIA for an Assembly Bill rests with the Bill team in the relevant policy department and the Senior Responsible Officer (SRO) for the Bill. Advice and technical support is provided to policy teams by Welsh Government economists and other analytical teams (such as the Statistical Directorate and the social research team).
5. Prior to the introduction of a Bill, the Chief Economist's team is responsible for reviewing each RIA on behalf of the relevant Accounting Officer/Additional Accounting Officer to ensure it meets HM Treasury Green Book and Standing Order requirements. The intention of this review is to provide assurance that the methodology adopted to identify and assess costs and benefits is appropriate; the evidence on costs and benefits has been presented in a proportionate and balanced way and that key uncertainties and any effects that could not be quantified have been highlighted. The review does not involve the examination of individual calculations or checking the raw data within an assessment.

### Process for developing an RIA

6. The development of an RIA should be a continual part of the policy-making process and started as early as possible. To reinforce this, the revised RIA guidance sets out a more clearly defined, staged approach to the development of an RIA. It is expected the RIA will evolve throughout the Bill process as the policy becomes clearer; the evidence base is developed and feedback from stakeholders is included. The following is a summary of the key stages in the process:
  - i. **Policy Development Stage** – work on the RIA should begin early in the policy-making process. The first stage should focus on defining the policy problem, establishing the rationale for government intervention, identifying alternative options (both legislative and non-legislative) and developing the



evidence base. There should also be an initial attempt at a cost-benefit analysis including the identification of the main parties likely to be affected by the proposals and an initial estimate of the likely costs and benefits.

- ii. **Consultation/Draft RIA** – the initial option appraisal should be firmed up to provide a more detailed, quantified assessment of the costs and benefits associated with each option. The draft RIA should be published as part of any consultation or draft Bill exercise.
  - iii. **Final RIA** – at this stage, the RIA should focus on the preferred option with the cost-benefit analysis updated to reflect final policy details and any evidence or feedback received from stakeholders during the consultation process. The RIA forms Part 2 of the Explanatory Memorandum and is laid alongside the Bill.
  - iv. **Amending stages** – The Explanatory Memorandum (including the final RIA) should be revised to reflect any amendments made to the Bill during Stage 2 proceedings. This also provides an opportunity to incorporate any new evidence which has been received during the scrutiny of a Bill.
7. The adoption of this staged approach strengthens the process and final RIA in a number of ways. Firstly, policy teams will be encouraged to start documenting their analysis at an earlier stage of the policy-making process and ensure that the analysis can be used to inform policy decisions. Secondly, publishing a draft RIA alongside any consultation document will improve stakeholder engagement by providing stakeholders with an opportunity to review the assessment and underlying assumptions and enable them to provide additional/alternative evidence to help inform the final RIA. Finally, publishing a rigorous options appraisal at the consultation stage will enable the final RIA to focus on the costs and benefits of the preferred option (the proposed legislation). This should reduce the length and complexity of the final RIA.

#### Improving the clarity and consistency of RIAs

8. In evidence presented to the previous Constitutional and Legislative Affairs Committee's Making Laws in the Fourth Assembly inquiry, the Auditor General for Wales expressed concern about the clarity and consistency of RIAs and suggested this would be improved by the inclusion of a standard summary table alongside each RIA.
9. The Welsh Government accepted this suggestion and introduced a standard summary table, which has been used in all RIAs for Welsh Government Bills introduced in the current Assembly term. The summary table has been included at the start of each RIA and has been designed to clearly present all the information required by Standing Orders as well as key information from a value for money (VFM) perspective. The inclusion of brief explanatory text is intended to allow the reader to gain an understanding of the costs and benefits without having to refer to the detailed analysis.

10. Explanatory memoranda produced for Bills introduced this Assembly term have also featured improved 'signposting'. In the case of RIAs, this has included clearly identifying the preferred option in the summary table and directing the reader to where in the RIA the relevant analysis of costs and benefits can be found.

### Subordinate legislation

11. Another concern raised during the Fourth Assembly was that RIAs did not always include an assessment of the costs and benefits of associated subordinate legislation and that this impinged on the Assembly's ability to effectively scrutinise the legislation.

12. It has always been the case the RIA should include a best estimate of the costs and benefits of any associated subordinate legislation and the relevant section of the RIA guidance has been re-written to strengthen this point. Policy teams will (in most cases) be expected to prepare an RIA to accompany the subordinate legislation when it is laid in the Assembly. This is in line with the Welsh Ministers' RIA Code.

13. While every reasonable effort is made to express costs and benefits in monetary terms, there are circumstances in which it is very challenging to identify certain costs or benefits in such terms with any precision – for example, where there is a significant degree of uncertainty about the potential impact of a proposal or where the detail in subordinate legislation depends on decisions which are yet to be made. The options in such circumstances are to provide a range for possible monetary values or, exceptionally, to express effects in qualitative terms. It is important to be transparent about the existence and nature of such potential impacts.

### Presentation of costs and benefits

14. During the Fourth Assembly, the Auditor General for Wales and the Finance Committee expressed concern that the presentation of monetised costs and benefits in certain RIAs was potentially misleading. As explained at the time, the presentation of monetised benefits alongside costs is a standard approach in economic appraisal and is intended to support the value for money assessment.

15. Nevertheless, the Welsh Government has considered the presentation of costs and benefits in RIAs. For complete transparency, the standard RIA summary table has been designed to report costs, cost-savings and benefits separately and in both undiscounted and present value terms. Net present value (NPV) is also recorded on the RIA summary table to support the assessment of value for money. A similar approach will be taken to reporting costs and benefits in the main body of the RIA.

### Appraisal period

16. Consideration will be given to the appropriate appraisal period in an RIA on a case-by-case basis. While the standard appraisal period is expected to remain five to ten years, it is acknowledged that in some cases – in particular, where the

legislation has a longer-term focus – it would be more appropriate for the RIA to feature a longer appraisal period. The RIA guidance has been strengthened to cover this issue.

17. The key point explained in the guidance is that a steady-state should be reached on costs and benefits before the end of the appraisal period. Where costs and benefits are expected to continue beyond the end of the appraisal period, this will be explained in the RIA.

#### Public Policy Institute for Wales (PPIW) report on impact assessments

18. In April 2016, the Public Policy Institute for Wales (PPIW) published a report looking at the use of impact tests in Welsh Government<sup>1</sup>. It was commissioned by the then Permanent Secretary as part of the Reducing Complexity programme. The project touched on RIAs but focused on impact assessments (IAs) more generally, including those on equalities, rights of children and young people, Welsh language and biodiversity.
19. The report highlighted a complex system of IAs in Wales, with more assessments required than in any of the other jurisdictions considered by the author. It was considered the complexity of the system meant IAs were often not completed at the right time or properly and undermined the value that IAs add to the policy-making process.
20. The report made a number of recommendations including, improving the stewardship of the overall IA process in Wales; developing a clearer statement of purpose around IAs; aligning IA processes with the requirements of the Well-being of Future Generations (Wales) Act 2015 and improving the integration and design of IAs.
21. The previous Permanent Secretary established a working group in Welsh Government to consider the PPIW report and take this work forward. A number of workstreams have been set-up to re-design IA processes; improve the integration of IAs with the policy-making process and improve training. The elements of this work related to IAs more generally is expected to be completed by spring 2018 and the aspiration is that improvements thereafter to the ways in which such impact assessments are conducted will have a positive impact on the future preparation of RIAs.

#### Post-Implementation Reviews

22. As noted in the previous paper, there are a number of different aspects which could feature in a post-implementation review and the scope, timing and coverage of any review will vary from one piece of legislation to another.
23. Welsh Government policy departments have been asked to provide an update on post-implementation reviews to inform this section of the paper. The following is a summary of the reviews which have been completed or are nearing completion:

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<sup>1</sup> [http://ppiwi.org.uk/files/2014/10/Reducing-Complexity-and-Adding-Value\\_FINAL-30-Apr.pdf](http://ppiwi.org.uk/files/2014/10/Reducing-Complexity-and-Adding-Value_FINAL-30-Apr.pdf)

- A review of the operation of the Further and Higher Education (Governance and Information) (Wales) Act 2014 has been undertaken and was published in August 2016;
- The implementation of the Agriculture Sector (Wales) Act 2014 is currently being reviewed in line with the statutory requirement stipulated by the Act. The review will include the impact on agricultural workers, employers and the agricultural sector in general. The report is expected to be published in the autumn;
- An independent review is currently underway looking at the Control of Horses (Wales) Act 2014;
- Reviews have been commissioned on parts of the Housing (Wales) Act 2014:
  - PACEC have been commissioned to undertake an evaluation of Part 1 of the Act (Rent Smart Wales), the final report is expected to be published in the autumn.
  - The University of Salford is in the process of evaluating Part 2 of the Act (homelessness). An interim report is expected shortly with the final report expected by spring 2018.
- The impact evaluation for the Human Transplantation (Wales) Act 2013 is being undertaken by GfK and will be completed by December 2017. Qualitative work involving members of the public and medical staff has also been undertaken, the final report for this component is expected by the summer.

24. A number of pieces of legislation enacted during the Fourth Assembly are still in the process of being implemented and will be subject to review at the appropriate time. Given the early stage of this work, there are no generalisable findings available from post-implementation reviews at this point. This is something which will be considered as the body of evidence grows.

25. The section of the legislation handbook covering post-implementation reviews has been updated by the social research team in Knowledge and Analytical Services (KAS). The list of issues which may be considered by a post-implementation review includes consideration of financial impacts and whether there are significant differences between forecast costs, cost-savings and benefits and outturn costs, cost-savings and benefits.

Welsh Government  
May 2017

Sir Derek Jones KCB  
Ysgrifennydd Parhaol  
Permanent Secretary



Llywodraeth Cymru  
Welsh Government

Jocelyn Davies AM  
Chair of the Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

*2016* January 2016

*Dear Jocelyn,*

### **Finance Committee's legacy – Financial scrutiny of legislation**

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

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



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

Yours,  
Derek

## **Finance Committee Paper on Regulatory Impact Assessments (RIAs)**

### **Introduction**

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

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

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

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

6. The following is a summary of the process for developing an RIA as set out in the current guidance:
- The first stage of the RIA process is to set out all credible options which could achieve the stated policy objectives. The list of options will include a 'Do Nothing' option to act as the baseline scenario. Policy teams are also recommended to consider any realistic 'Do Minimum' options to test whether a large proportion of the claimed benefits under the preferred option could be delivered at a lower cost.
  - Having identified a set of options, the next stage is to consider which organisations and/or sectors are likely to be affected under each option. They could include the public sector, private business, the voluntary sector and the general public. While the focus of the RIA should be on impacts within Wales, the assessment should also consider impacts at the UK level (for example, if the proposals impact on the Ministry of Justice).
  - Each RIA seeks to identify the cost in the 'Do Nothing' (or baseline scenario) and the additional costs associated with each option. These costs may be economic, social or environmental and can be transitional or recurrent. The preferred approach is to monetise all costs, although a qualitative description of costs will be included where monetisation is not practicable. An appraisal period is selected which is considered long-enough for a 'steady state' to be reached on costs. For most Assembly RIAs, this has tended to be 5 years although this has been extended to 10 years for some RIAs. Where costs are expected to continue beyond the selected appraisal period, this is identified in the RIA narrative.
  - Having identified and monetised costs, the next part of the analysis is an assessment of the anticipated benefits. As with costs, the benefits can be economic, social or environmental. The benefits are monetised where possible to enable an objective decision to be made on Value for Money, although, in practice this tends to be more difficult than monetising costs. Where it is not possible to monetise benefits, RIAs are expected to provide the best possible evidence on the nature and scale of those benefits in order to ensure that the trade-offs between costs and benefits across the various options are made as explicit as possible.
  - The monetised costs and benefits are discounted (using the HM Treasury central discount rate) to reflect the social rate of time preference<sup>1</sup>. This is a standard approach in economic appraisal.
  - In addition to the cost-benefit analysis there are a number of specific policy impact assessments that form part of the policy development process. Some of these impact assessments are a legal requirement (for

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



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

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

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

### **How costs and benefits are currently presented in RIAs**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Welsh Government  
January 2016

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# Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

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