



Llywodraeth Cymru  
Welsh Government

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## Children's Rights Scheme 2014

Arrangements for having due regard to the United Nations Convention on the Rights of the Child (UNCRC) when Welsh Ministers exercise any of their functions



## **Further information and related documents**

The Rights of Children and Young Persons (Wales)  
Measure 2011 can be found at:  
<http://www.legislation.gov.uk/mwa/2011/2/contents>

For further information also visit:

UNCRC Lets Get it Right  
<http://www.uncrcletsgetitright.co.uk/>

## **Contact details**

For further information please contact the Measure  
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## **Ministerial Foreword**

We are very proud in Wales to place such importance on the rights of our children and young people. The commitment to mainstreaming consideration of children's rights in order to achieve positive outcomes for all children and young people across Wales is absolute. This has been borne out historically with Wales leading the way in the UK by establishing the Children's Commissioner for Wales and the ground-breaking Rights of Children and Young Persons (Wales) Measure 2011.

The aim of the Measure is cultural change, along with fostering a better understanding and increased awareness.

On 27 March 2012, the first Children's Rights Scheme was approved by the National Assembly for Wales and I am delighted to present our new Children's Rights Scheme in 2014. This is another important step for Wales. As a nation, we continue to drive the agenda of children's rights internationally, but the sense of responsibility is too great to allow for complacency and we must focus on delivering the outcomes for children and young people at a time when they are faced with significant challenges from so many directions.

This new Scheme clearly sets out the arrangements that we have in place as Welsh Ministers to comply with the duty to have due regard to children's rights when exercising any of our functions. We have responded to comments and feedback from the first compliance report on the original Scheme which has resulted in a much strengthened Scheme as we have learnt a significant amount in a very short period.

This Scheme will ensure children's rights are further embedded within Welsh Government, will improve our decision making and policy development which in turn will lead to improved outcomes for children and young people. In reviewing the purpose and content of the Scheme we have benefited from a collaborative approach with our stakeholders. Children and young people also participated as part of this process and I hope they can see their contributions reflected in the Scheme.

As we are breaking new ground we will continue to learn more as we implement the Measure in its formative years. This is why the Scheme is committed to offering transparency and challenge within our processes, reflected in a commitment to publish a compliance report every 2.5 years.

A key focus of attention has been our 'Children's Rights Impact Assessment' (CRIA). This sets out the process for providing the evidence that children's rights are being analysed and considered with appropriate rigour in our work. The new policy of publishing CRIAs affords further transparency and opportunity for others to engage and offer feedback.

The Measure has already clearly made a difference with Ministers explicitly referring to the UNCRC in making their decisions and with Assembly Members using the convention as a scrutiny tool. If the political commitment in

Wales is an indication of the future success of the Measure, we are building on sound foundations.

The big challenge for us all is that as we put children and young people at the heart of our work, we can translate that commitment into the day to day experience of children and young people living in Wales today.

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

**Jeff Cuthbert AC / AM**

Y Gweinidog Cymunedau a Threchgu Tlodi  
Minister for Communities and Tackling Poverty

# Children's Rights Scheme 2014

## 1. Introduction

The Rights of Children and Young Persons (Wales) Measure 2011 (referred to as 'the Measure' in the rest of this document), was passed by the National Assembly for Wales (NAfW) in January 2011. The Measure embeds consideration of the United Nations Convention on the Rights of the Child (UNCRC), and the Optional Protocols, into Welsh law. This is the first time that any government in the United Kingdom has been under a duty to have due regard to children's rights.

Whilst the intended audience for this document is Welsh Government staff, it also has a role in outlining to the Welsh public the practical arrangements that the Welsh Government has in place for ensuring children's rights are considered in the undertaking of their work.

## 2. Wales and the UNCRC?

The UNCRC<sup>1</sup> is an international convention setting out the civil, political, economic, social and cultural rights of children. The text of the Convention on the Rights of the Child was approved by the Member States of the United Nations on 20<sup>th</sup> November 1989.

On the 16<sup>th</sup> December 1991, the Government of the United Kingdom of Great Britain and Northern Ireland ratified the UNCRC and it came into force in respect of the United Kingdom on 15<sup>th</sup> January 1992. The United Kingdom has also ratified two 'Optional Protocols'<sup>2</sup> to the UNCRC.

States that have ratified the UNCRC are required by article 44(1) (b) to report to, and may appear before the United Nations Committee on the Rights of the Child (the Committee) providing details of their progress towards full implementation of the UNCRC and its Optional Protocols.

In 2002 the NAfW, set up by the Government of Wales Act 1998, developed the Seven Core Aims for children and young people which summarised the UNCRC as a basis for planning, decisions on priorities and objectives nationally and on a local level.

In January 2004 the NAfW adopted the UNCRC as the underpinning basis for its policies concerning children and young people. For the purposes of this Scheme however, 'children' and 'young people' refers to children and young people up to the age of 18 years to align with the UNCRC itself.

Following the Government of Wales Act 2006, when the NAfW formally separated from the Welsh Government, the commitment to the UNCRC

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<sup>1</sup> <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

<sup>2</sup> <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

became a commitment of the Welsh Ministers. The Welsh Ministers form the Welsh Government.

### 3. What is the duty on Welsh Ministers?

Section 1 of the Measure states that from 1 May 2014:

Welsh Ministers must, when exercising **any of their functions**, have due regard to the requirements of -

- (a) *Part I of the UNCRC;*
- (b) *Articles 1 to 7 of the Optional Protocol to the UNCRC on the involvement of children in armed conflict, except article 6(2); and*
- (c) *Articles 1 to 10 of the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography.*

The **functions** of Ministers means:

- *Everything that the Welsh Ministers may do because legislation has given the Welsh Ministers the power to do it, and;*
- *Everything the Welsh Ministers must do because legislation has placed a duty on the Welsh Ministers to do it.*

This means the duty on Ministers applies whenever they use any of their powers to make a decision, or there is a duty upon them to make a decision. All actions of the Welsh Government are taken using powers or duties of the Ministers.

The duty imposed by section 1 of the Measure above will be referred to as the **'due regard duty'**.

The Measure places the duty on Ministers and they must be fully aware of the duty when they make their decisions. The due regard duty applies to Ministers even where Welsh Government staff<sup>3</sup> are carrying out functions on behalf of Ministers. The duty also applies to Deputy Ministers.

The term due regard requires a balanced consideration of issues, in this instance the articles of the UNCRC. This means that Ministers must think about how what they are doing relates to the rights and obligations in the UNCRC. In identifying any negative impact on children and young people Ministers must consider how to avoid or minimise this impact. Ministers must also consider how, by using their functions they can improve the way children and young people access their rights. Having considered this, the outcome needs to be given balanced consideration (due regard) against the other factors that the Ministers must take into account in making a decision.

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<sup>3</sup> A person employed in the civil service; a government employee.

#### **4. What is a Children's Rights Scheme?**

A Children's Rights Scheme is made under section 2 of the Measure, which states that Ministers must make such a scheme to set out the arrangements they have in place to ensure they comply with their duty to have due regard to the UNCRC. The Welsh Government believes that its Children's Rights Scheme will:

- establish robust processes to ensure that the Welsh Ministers act in compliance with their duty under section 1 of the Measure; the 'due regard' duty;
- provide transparency about the processes that are being followed;
- enable Welsh Government staff to support the Welsh Ministers to comply with the duty; and
- provide information on how the Welsh Ministers may be held to account in complying with the due regard duty.

This revised Scheme sets out the arrangements that Ministers have in place to make sure that they comply with the duty placed on them by the Measure from 1 May 2014 – to have due regard to the UNCRC when exercising any of their functions. An important element of this is to enable staff to sufficiently support the Ministers to comply with the duty.

#### **5. How will we make sure that we comply with the duty to have due regard to the UNCRC?**

Ministers will ensure they comply with the duty to have due regard in a number of ways, including:

- ensuring appropriate awareness raising and training is in place and actively promoted and taken up (see section 6);
- putting a Children's Rights Impact Assessment (CRIA) process in place (see section 7);
- setting out Accountability and Compliance mechanisms (see section 8);
- providing information and guidance on how Welsh Ministers may be held to account for compliance with the due regard duty (see sections 10-13);
- ensuring that this Scheme is revised when necessary (see section 14); and
- ensuring clear understanding of roles and responsibility in relation to all of these elements (see section 15).

## **6. Raising Awareness and Training**

The Welsh Government is committed to continuing to raise awareness and train staff using the resources that we have developed. A range of training is available to provide staff with knowledge and understanding of the UNCRC and to help them to understand the process they need to follow to support Ministers to comply with the due regard duty.

We have an internal Raising Awareness and Training Strategy that brings together the different training tools and methods, and aligns training needs with staff responsibilities. The Measure Implementation Team lead on progressing this strategy and ensuring staff are kept up to date on developments, as and when they happen.

All staff will be made aware of the range of training available and there is an expectation that staff will engage in the training provided. The Measure Implementation Team monitor training uptake across all Departments and promote the opportunities available. Senior Management ensures staff are provided with the opportunity to undertake training.

A dedicated UNCRC web resource is available on the intranet for staff to access; this includes guidance and information sheets, the full legislation documentation and the full articles of the UNCRC alongside a variety of external children's rights websites. On-going evaluation will ensure that the various training resources and methods are fit for purpose.

The Compliance Report required under section 4 of the Measure will include details of the various forms of training made available and the take up of training reported by Department.

### **Online training for Welsh Government Staff**

The online training plays an important role in providing adequate and systematic training to aid staff to gain a better understanding of the UNCRC. It provides an introduction to the UNCRC and the way it has been embedded into Welsh law.

The training has been updated to ensure that it supports staff to give balanced consideration to how their work can impact on the outcomes for children and young people, as set out in the UNCRC, and provide Ministers with options and advise accordingly.

### **Face to Face training**

Formal presentations about the Measure and its implications are delivered across all Welsh Government Departments by Measure Implementation Team members to inform and advise staff and direct them to relevant sources of information.

More informal sessions are also offered either to teams or individuals and tailored accordingly.

### **Expert training for targeted staff**

Welsh Government will continue to provide targeted and specialised training for staff leading on or involved in the development of policy and legislation.

Specific training has been and will continue to be provided to Welsh Government lawyers.

## **7. The Children’s Rights Impact Assessment (CRIA) process**

A clear process has been set out to assist Ministers and staff in having due regard to the UNCRC – this is set out in flowcharts at annex 1.

The process encourages the user to think about the potential relevance and, if so, impact of their piece of work on children and young people and consider this within the context of children’s rights as set out in the UNCRC. This would apply when they are offering options and advice to Ministers and also when carrying out functions of Ministers.

The process can range from thinking about the impact of decisions on children in the course of day-to-day work activity, through to the formal application of a structured impact assessment template accompanied by a record of the outcome and decisions.

Initially, Welsh Government staff will need to apply a common-sense approach to exercise judgment to determine whether or not that decision is relevant to children and young people and the likely extent of the affect on them. This needs to be done in light of available evidence on impact.

Staff will need to consider whether the information available is adequate for them to form a view on relevance to and impact on children and young people. Staff can approach their colleagues and/or the Measure Implementation Team, and make use of alternative sources of information, to assist in this initial assessment.

### **When decisions are relevant to and impact on children and young people**

If staff come to the view that the decision is relevant to and impacts on children and young people, they will apply the Child Rights Impact Assessment (CRIA) template. The CRIA template has six steps to guide the user through the process of having due regard to the UNCRC and to ensure that Ministers comply with their duty under section 1 of the Measure. A copy of the CRIA template is at annex 2.

Within the CRIA template there are many prompts to support staff in their analysis, to evidence that children’s rights have been considered and that

every opportunity has been taken to identify ways of realising the relevant rights before Ministers make decisions. The CRIA template enables staff to judge the appropriate consideration and weight required as they advise Ministers.

The CRIA template is clearly linked to all stages of Ministerial decision making and is applied by all Departments. Where the decision relates to an existing area of work, staff should refer to any previously completed CRIA that is relevant to the decision and determine whether:

- the assessment remains relevant; or
- the assessment needs updating/amending; or
- a new assessment should be undertaken.

Within procedural guidance, officials are encouraged to utilise the CRIA template as part of consultative practice to engage with stakeholders.

Every completed assessment is required to be forwarded to the Measure Implementation Team for recording and monitoring purposes.

### **When decisions are not relevant to children and young people**

Not all decisions and actions taken by Welsh Ministers, or authorised by Welsh Ministers under existing arrangements, will be relevant to children and young people. An aspect of effective CRIA process is recognising when an impact assessment is required and the CRIA template completed. The impact assessment will not apply in the case of the exercise of every ministerial function (whether exercised directly by the Minister or by Welsh Government staff on the Minister's behalf).

Where the CRIA template is not completed staff will need to consider whether to record any processes leading to the decision not to undertake the impact assessment.

### **Publication Process for CRIAs**

All CRIAs undertaken on legislation will be published. This is also the case for subordinate legislation which includes, for example, regulations made under primary legislation.

For non-legislative decisions, all completed CRIAs will be listed on the Welsh Government website (<http://wales.gov.uk>) and will be made available upon request via the dedicated mailbox [CRIA@wales.gsi.gov.uk](mailto:CRIA@wales.gsi.gov.uk). However, individual Ministers may also choose to publish specific CRIAs.

Ministers will consider how effective engagement with stakeholders can enhance the CRIA process. They will be encouraged to publish CRIAs alongside any public consultation in order to seek feedback on the content and conclusions of the CRIA.

Welsh Government guidance for staff will clearly outline the expectation with regard to the publications of CRIA.

It may well be the case that Welsh Government will change the practical arrangements in place so that CRIsAs can be completed within a wider exercise to assess the impact of proposals.

## **8. Accountability and Compliance**

The NAFW must approve any Children's Rights Scheme and therefore has a role in scrutinising the arrangements Welsh Ministers have in place to comply with their due regard duty.

The Measure requires Ministers to publish a report every 5 years explaining how they have complied with the duty to have due regard to the UNCRC. The Welsh Government published our first Compliance Report on 31 January 2013.

Ministers have reviewed the reporting cycle and have committed to producing mid-term reports. The compliance report will therefore be published every 2½ years. Publishing a mid term report will provide the Welsh Government with an opportunity to reflect on the implementation and effectiveness of the arrangements as set out in this Scheme.

This commitment to transparency and constructive engagement, along with the agreement regarding the CRIA publication process, allows stakeholders and other interested parties an ongoing opportunity to hold the Ministers to account on their application of the Measure, and to express their observations on the progress being made.

Ministers will secure a plenary debate on the content of the next compliance report. Ministers may also be called to give evidence to NAFW committees to explain what they have done and can also be asked to respond to questions from Assembly Members.

As a result of the scrutiny associated with operating the arrangements for complying with the duty, Ministers may identify further actions which the Welsh Government may consider taking.

### **Reporting Requirements**

Welsh Ministers are committed to report on specific elements on compliance with section 1 of the Measure, which include but are not limited to:

- the training available (see section 6 for the specific reporting commitment);
- an overview of the work of the Children's Rights Scheme Implementation group;
- an overview of the work of the Measure Implementation Team;

- the number of CRIAs undertaken, reported on a departmental basis;
- the effectiveness of the CRIA process including specific examples;
- the activities relating to promoting knowledge and understanding of the UNCRC under section 5 of the Measure.

## **Evaluation of the implementation of the Measure**

Once the commencement of the final part of the Measure is in place and embedded, we will look to evaluate how the full range of duties have been implemented across the Welsh Government. Ministers will update on this work as part of the compliance report.

### **9. Promoting knowledge and understanding of the UNCRC**

Section 5 of the Measure places a duty on the Ministers to take appropriate steps to promote knowledge and understanding amongst the public (including children and young people) of the UNCRC and its Optional Protocols. This duty is intended to give effect to obligations which are in article 42 of the UNCRC.

The Measure Implementation Team lead on this area of work on behalf of Ministers. However, other organisations are also committed to raising awareness and promoting knowledge and understanding of the UNCRC, such as the Children's Commissioner for Wales and other external stakeholders and interested parties. The Welsh Government will continue to explore opportunities, where appropriate, to work with others to secure the greatest impact.

As previously noted, there will be an update on developments in relation to this duty included in compliance reports.

Welsh Government believes that promoting knowledge and understanding of the UNCRC is critically important in enabling the public, and in particular children and young people and the professionals who work with them, to understand when an issue which affects them relates to the application of the due regard duty.

It is also important to raise awareness of the mechanisms available to children and young people which can support them in understanding the purpose of the Measure and challenging or questioning the application of the due regard duty.

Ministers will seek to ensure that professionals who work with children and young people are aware of the Measure so that they will be able to appropriately advise children and young people and support them if required.

## **10. What can children and young people (or their representatives) do if they think Ministers have not had due regard to the UNCRC?**

If children and young people feel that Ministers have not considered children's rights when making decisions that affect their lives, they may, individually or in a group, wish to:

- Contact the Welsh Government to raise the issue. We would always want to hear from children and young people, or those who represent them, if something is not right and would want to try to resolve the matter if possible. We would hope to do this quickly and effectively. Information about how to contact the Welsh Government and individual Ministers can be found on the [Welsh Government Website](#).
- Contact the Children's Commissioner for Wales. The Children's Commissioner has the power to review the exercise of functions of Welsh Ministers. If anyone believes that Ministers have not complied with the duty, they are able to approach the Children's Commissioner and make representations.

The Commissioner would then decide on the best course of action which could be:

- to advise accordingly;
- support the person(s) with their challenge of Ministers;
- utilise the Commissioner's legal powers and undertake a review relating to the issue;
- Contact their Assembly Member. Assembly Members can raise issues affecting children and young people with the Welsh Government or in the Assembly. Information on Assembly Members can be found at: [Assembly Members](#);
- Send a petition to the NAfW. If ten or more people have signed a petition, children can use this to draw the Assembly's attention to a decision affecting their lives where they think the UNCRC has not been considered. The Assembly has powers to call Welsh Ministers before it and ask them about how they have had due regard to the UNCRC in exercising any of their functions. This is a link to more information about petitions to the NAfW: [Petitions to the National Assembly for Wales](#);
- Apply to the court to ask them to rule on whether the Welsh Ministers have complied with the due regard duty. This is called a Judicial Review. Applications for a Judicial Review should be made as soon as possible, and usually no later than three months after a Ministerial decision has been made. Sometimes a court will allow a person to make a late application if the person can show a very good reason for not applying earlier. While children and young people are completely within their rights to apply for a Judicial

Review, we would hope that the matter could be resolved through the other arrangements listed previously.

That is why we are seeking to ensure that practical arrangements are put in place which will ensure appropriate consideration and weight to the UNCRC are given. If however, children and young people choose to follow this option, then the organisations below are able to provide advice and assistance. Clicking on the following link provides further explanation about Judicial Reviews: [Judiciary.gov.uk](http://Judiciary.gov.uk).

To pursue a Judicial Review, you would need legal advice. This is a link to further information: [The Law Society](http://The Law Society).

## **11. Support for children who want to complain about or challenge the Welsh Ministers**

When children and young people, as an individual or as a group, want to challenge the Minister when they feel that Ministers have not complied with the due regard duty when making decisions that affect their lives, they may wish to contact:

- **The Welsh Government** has developed a summary version of its corporate complaints procedure for children, young people or their representatives to use. The Complaints Procedure informs the public how to potentially challenge Ministers if it is considered that Ministers have not complied with the duty. The summary Complaints Procedure can be found at: [Summary Version Complaints Procedure](#);
- **The Children's Commissioner for Wales** has power to provide advice, representation and assistance to children and young people who may wish to challenge Ministers. The Children's Commissioner has the power to review how the Welsh Government's work has affected children and young people in Wales. The following is a link to the Commissioner's website: [Children's Commissioner for Wales](#);
- **Any adult that they trust** and who is able to spend time supporting them. This could be a relation, a friend or a professional who works with them. They should be considered an advocate for children and young people;
- At a local level, a number of **advocacy providers** currently exist that could provide support and advice to children and young people. In the main these tend to focus on providing information and advocacy for children and young people who are considered to be vulnerable. However, they could support children and young people within these categories to challenge Ministerial decisions. The following link provides advice on which advocacy providers are in which area: [Advocacy links in your area](#);

- **CLIC** – This is the National Information and Advice service for Young People (11-25) in Wales. It is an online channel offering information, news and advice for all young people aged 11 to 25 in Wales on a wide range of subjects and issues, including where to get support in their local area. The following link takes you to the CLIC website: [CLICOnline](#);
- **MEIC** – This is the Advocacy and Advice helpline for children and young people in Wales. The advocates at MEIC help children and young people to be heard by others. MEIC is available to advise and provide information to children and young people wishing to challenge Ministers. They can even contact others on their behalf. The following is a link to the MEIC website: [MEIC Cymru](#);

## **12. How does the duty to have due regard to the UNCRC fit in with the other Welsh Government legal duties and assessments?**

Compliance with the duty to have due regard to the UNCRC has been firmly embedded alongside other legal duties on Ministers such as the Public Sector Equality Duty under the Equality Act 2010<sup>4</sup>, legislation relating to the Welsh Language and the duty to be compatible with the European Convention on Human Rights.

There are also treaties which have been ratified by the UK Government and are therefore legally binding. Some of the provisions within those treaties are relevant to children and contain more detailed provisions on certain rights than the UNCRC (e.g. on disabilities) and are therefore relevant. A list of relevant international treaties can be found at annex 4.

The Welsh Ministers will ensure that the CRIA processes are aligned and afforded the adequate prominence with other impact assessments carried out by the Welsh Government. If the wider impact assessments arrangements are reviewed or amended, Ministers will ensure that the duty is fully considered and that there is no retrogression in the application of the due regard to the UNCRC.

If there is a realignment of impact assessment processes, Ministers will report on any changes and give an account of how the due regard duty has been aligned and secured within an amended process. These developments will be reflected in the compliance reports.

In accordance with the Measure, the fundamental elements within the Children's Rights Scheme will not be affected unless the process of amending the scheme as set out in section 3 of the Measure is applied.

## **13. Changing this Scheme and Future Schemes**

The Measure requires Ministers to involve and consult children and young people, the Children's Commissioner for Wales and other appropriate people,

<sup>4</sup> <http://www.legislation.gov.uk/wsi/2011/1064/made>

when preparing a new Scheme<sup>5</sup> or changing this existing one. It also requires them to obtain the approval of the NAW before they publish a new or changed Scheme<sup>6</sup>. The Welsh Government will continue to work with key stakeholders, including children and young people, to ensure that they are involved in any changes to the Scheme.

The Measure requires Ministers to have regard to certain documents when preparing a new Scheme or changing an existing one<sup>7</sup>. These include the views of the UN Committee on the Rights of the Child on the progress made by the UK in implementing the UNCRC.

The Committee's last concluding observations<sup>8</sup> about the UK were issued in 2008<sup>9</sup> and regard has been paid to those in preparing this revised Scheme. The next set of concluding observations by the Committee will be issued after the UK submits its next report to the Committee in 2014 on progress in implementing the UNCRC.

The Welsh Government will need to consider whether the Scheme in place at that time needs to be changed in the light of those observations. This is a requirement of the Measure<sup>10</sup>.

In reviewing the Scheme, Ministers must also consider any other reports, suggestions, general recommendations or other document published by the UN Committee on the Rights of the Child.

In preparing this Scheme Ministers had regard to the UN Committee's General Comment No 14<sup>11</sup> (2013) on the right of the child to have his or her best interest taken as a primary consideration. The Welsh Government believes that the Children's Rights Scheme links directly and gives greater effect to the UNCRC articles relevant to General Comment No 14. Further detail on the General Comment No 14 and how Welsh Government believes it is implementing this General Comment can be found at annex 3.

Ministers will continue to have regard to relevant documents as further guidance is developed for staff on the application of the rights within the UNCRC.

The Measure allows Ministers, when preparing a new Scheme or changing an existing one, to have regard to other documents and matters we consider relevant<sup>12</sup>. This is a broad category, and can potentially include any document if its subject matter is relevant to the Ministers' arrangements for having due regard to the UNCRC. For example, it could include reports by the

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<sup>5</sup>[Sections 3\(4\) and 3\(5\), Rights of Children and Young Persons \(Wales\) Measure 2011.](#)

<sup>6</sup>[Section 3\(6\), Rights of Children and Young Persons \(Wales\) Measure 2011.](#)

<sup>7</sup>[Section 3\(1\), Rights of Children and Young Persons \(Wales\) Measure 2011.](#)

<sup>8</sup> Formally called Consideration of Reports submitted by State Parties under article 44 of the UNCRC: Concluding Observations.

<sup>9</sup><http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>.

<sup>10</sup>[Section 2\(4\), Rights of Children and Young Persons \(Wales\) Measure 2011.](#)

<sup>11</sup><http://www2.ohchr.org/english/bodies/crc/comments.htm>.

<sup>12</sup>[Section 3\(2\), Rights of Children and Young Persons \(Wales\) Measure 2011.](#)

Children's Commissioner for Wales or Estyn (Her Majesty's Inspectorate for Education and Training in Wales).

Welsh Ministers will explicitly state within the next compliance report whether it is believed that a revision of the Children's Rights Scheme is required or not outlining the rationale for that position.

The annexes and links to this Scheme are not part of the Scheme but seek to support its implementation. This allows flexibility, for instance, if there was a need for a realignment of processes and a need to sufficiently accommodate the CRIA or other processes.

Amendments to these annexes would not therefore be required to comply with section 3 of the Measure. The fundamental principles and expectations on Ministers and officials are adequately reflected in the Scheme and are not amendable without undertaking the formal mechanisms under the Measure.

Additional annexes may be added provided that they do not change or affect anything which is included in the Scheme.

#### **14. Ministers' powers under the Measure to change existing legislation**

Section 6 of the Measure contains a power for Ministers to amend an enactment or prerogative instrument, if a report published by Ministers under the Measure or the Scheme concludes that it would be desirable, for the purpose of giving further or better effect to the rights and obligations set out in Part I of the Convention and the Protocols.

Ministers may not make an order unless the provision it contains is within the legislative competence of the National Assembly for Wales. Ministers must also consult those persons they think appropriate.

#### **15. Who is involved in ensuring Ministers comply with this duty?**

This section sets out the specific arrangements to make sure Ministers comply with the duty to have due regard to the UNCRC when exercising any of their functions, and the roles of different groups within and outside the Welsh Government.

#### **The Responsibilities and Roles of the Ministers**

The Measure places the duty on Ministers. They must have due regard to the UNCRC when exercising any of their functions and must be fully aware of the duty when they make their decisions.

Ministers are responsible for making sure that they comply with the duty. The law does not allow them to pass this responsibility on to someone else, such as their staff.

Ministers are also responsible for the arrangements set out in this Scheme, and for making sure that those arrangements work effectively.

Ministers are accountable to the NAfW in respect of the duty, as they must present the Welsh Government's report on their compliance with the duty to the NAfW. Ministers may also be called to give evidence to NAfW committees to explain what they have done and can also be asked to respond to questions from Assembly Members.

There are a number of key groups and individuals who support the Ministers to comply with their duty under the Measure.

### **The Responsibilities and Roles of the Children's Rights Scheme Implementation Group**

The Welsh Government maintains an internal group, currently known as the Children's Rights Scheme Implementation Group.

The group contains representatives from Operations Teams\* from all the Director General (DG) Areas within the Welsh Government, and its primary role is to oversee the implementation of this Scheme across those areas. The group's role includes:

- Providing advice and guidance to the Measure Implementation Team to help them to improve the processes to implement the Measure and help steer their work, as well as bring feedback from their area as to how the Measure is being implemented and if there is any good practice to share or any difficulties to address;
- Working together on behalf of DGs to take forward the implementation of the Measure and the Scheme and feedback on how the Scheme is being implemented across each DG area;
- Working together to support and advise on the effective awareness raising of the Measure and its implications across each DG area;
- Acting as 'Champions' of children's rights and to raise awareness of the Measure across DG areas;
- Working together to share best practice and difficulties encountered in order to improve the implementation process and develop the processes to enable and ensure compliance and address any issues relating to implementation;
- Assisting in providing evidence to demonstrate compliance with the due regard duty and the key controls in place which will assist in providing information to the Ministers for reports required on compliance;
- To assist in the formulation and dissemination of any related policies, practices and procedures relating to the Scheme; and

- To input on the development of any further Scheme.

### **\*Operations Teams**

*Each department within Welsh Government has an operations team. The role of these teams is to ensure that the quality of information that is provided to Ministers is robust and compliant with a range of requirements, including procedural and financial.*

### **The Responsibilities and Roles of the Measure Implementation team**

The Welsh Government maintains a team of staff, currently known as the Measure Implementation Team, who lead on the implementation of the Measure. Their work includes developing internal processes that will make sure Ministers comply with the duty. This includes providing information and advice, developing tools and recording mechanisms to help staff to consider the UNCRC in their work and in their options and advice to Ministers.

They are responsible for:

- Raising awareness and understanding of the UNCRC, the Measure and the duties within it;
- Advising on implementing the Measure and the Scheme;
- Commissioning, co-ordinating and supporting training;
- Monitoring uptake and participation of the face to face and e-learning training on the UNCRC and due regard - advising the Implementation Group on ways to increase uptake if necessary;
- Advising Welsh Government staff and directing them to relevant sources of information;
- Advising staff if they are unsure if the CRIA template is required for a particular decision or piece of work;
- Taking samples of decisions about policy and legislation development, as part of monitoring whether the Welsh Government is complying with the due regard duty;
- Producing reports on Minister's compliance with the due regard duty;
- Facilitating the Children's Rights Scheme Implementation Group;
- Commissioning and initiating developmental work such as options for monitoring and evaluation;
- Leading on the promotion of knowledge and understanding of the UNCRC under section 5 of the Measure;

- Advising Departments on the application of section 6 of the Measure and ensuring that any proposed changes to legislation which could give greater effect to the UNCRC are incorporated into the compliance report;
- Set up and maintain the CRIA database and publications process; and
- Monitor the application of the CRIA process across all departments.

The Measure Implementation Team will continue to develop and input into resources and templates which assist staff throughout the process, for example, a legislation handbook for those involved in developing new pieces of legislation.

### **The Responsibilities and Roles of Heads of the Divisions within Welsh Government Departments**

They will be responsible for ensuring that the options and advice that their staff put to Ministers, so that Ministers can make decisions, is of good quality and has paid due regard to the UNCRC. Their responsibilities includes ensuring that all staff, including themselves, have a suitable level of knowledge of the UNCRC and the implications of the Measure on their work.

### **The Responsibilities and Roles of Welsh Government Staff**

The duties within the Measure apply to all Ministers and cover all Ministerial areas. Staff are employed to support Ministers in developing policy and legislation and in taking other decisions. They also implement the decisions of the Welsh Government and are under the ultimate direction of Ministers.

Welsh Government staff support Ministers in having due regard to the UNCRC when Ministers make decisions, as they provide options and advice in relation to Ministerial functions.

Ministers will expect that their staff will have properly considered and have had due regard to the UNCRC before they provide information, advice, options and recommendations. Welsh Government staff will be provided with training and other resources as required to ensure that they provide appropriate Ministerial information and advice.

It is very important that staff give balanced consideration to the UNCRC, before they begin to develop legislation, policies or other pieces of work and then at critical times throughout the process in order to give advice to Ministers. They must be clear about how they should have due regard and the process they have followed for this to be applied before giving options and advice to Ministers.

They will consider the extent to which the UNCRC is relevant to the decision that a Minister is being asked to make and whether a CRIA is required. If staff believe there is an impact on children, they are responsible for:

- Undertaking assessments using the Welsh Government's Children's Rights Impact Assessment (CRIA);
- Considering how to reflect the CRIA process and the outcome/s when presenting options and advice to Ministers and subsequently asking them to make a decision; and
- Ensuring all CRIAs are sent to the Measure Implementation Team for recording and monitoring.

Training will be given to staff to help them understand and carry out their role.

### **Other people outside the Welsh Government**

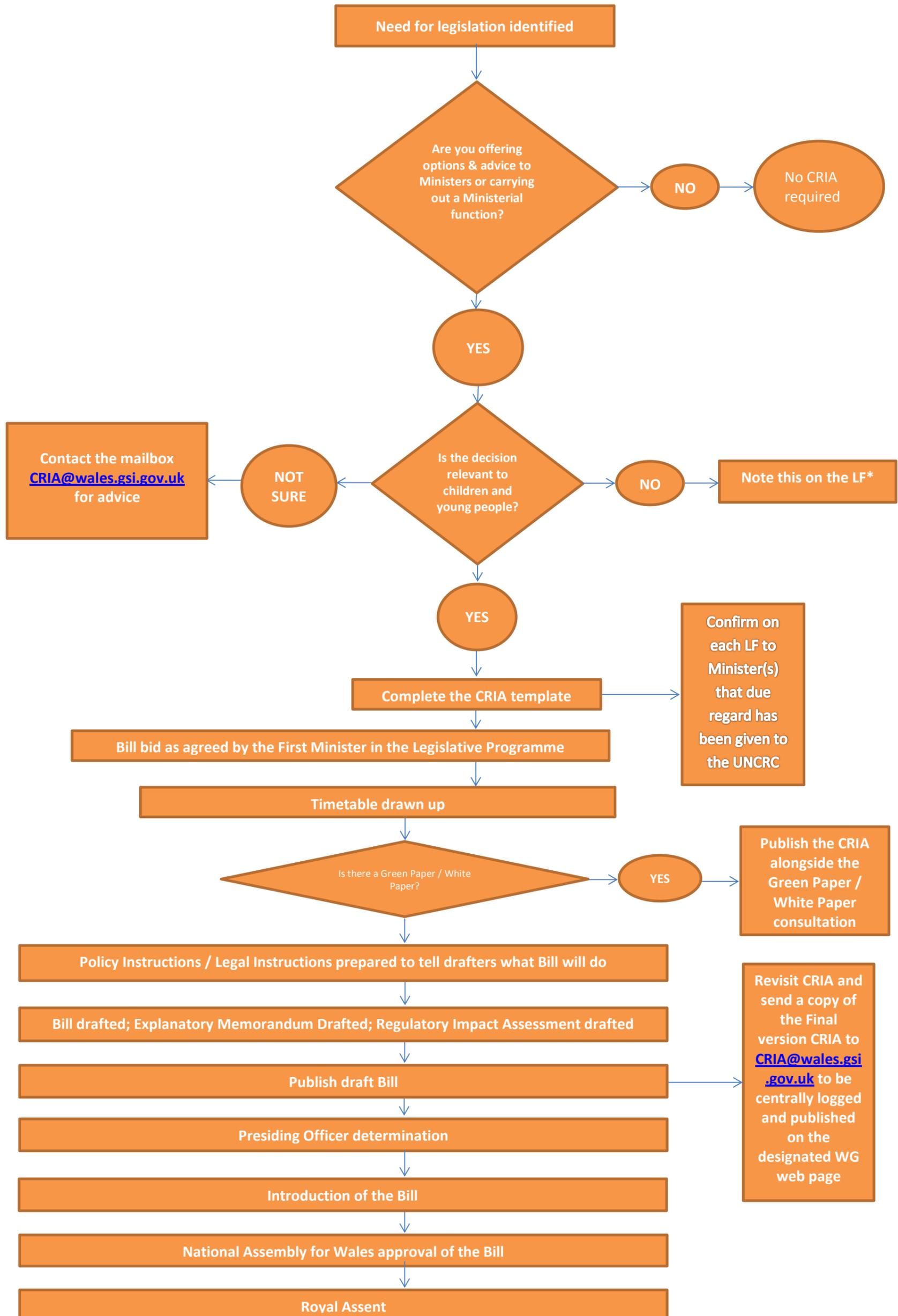
Welsh Government staff work closely with experts on children's rights and the UNCRC. This includes the Getting it Right Network. Membership includes representation from the Children's Commissioner's office, various children's charities, Universities and local government. The Network's terms of reference includes:

- Suggesting ways of working together and exploring opportunities to be innovative in a joint approach to help support positive outcomes for children and young people;
- Providing expertise and advice;
- Identifying and helping to resolve any potential and arising difficulties;
- Identifying responsible lead organisations to work with the Welsh Government;
- Advising the Welsh Government on the practicalities, including identification of potential obstacles and methods for overcoming them; and
- Working with officials on monitoring and reviewing.

## **Annex 1 – Process Flowcharts**

# LEGISLATION – BILLS

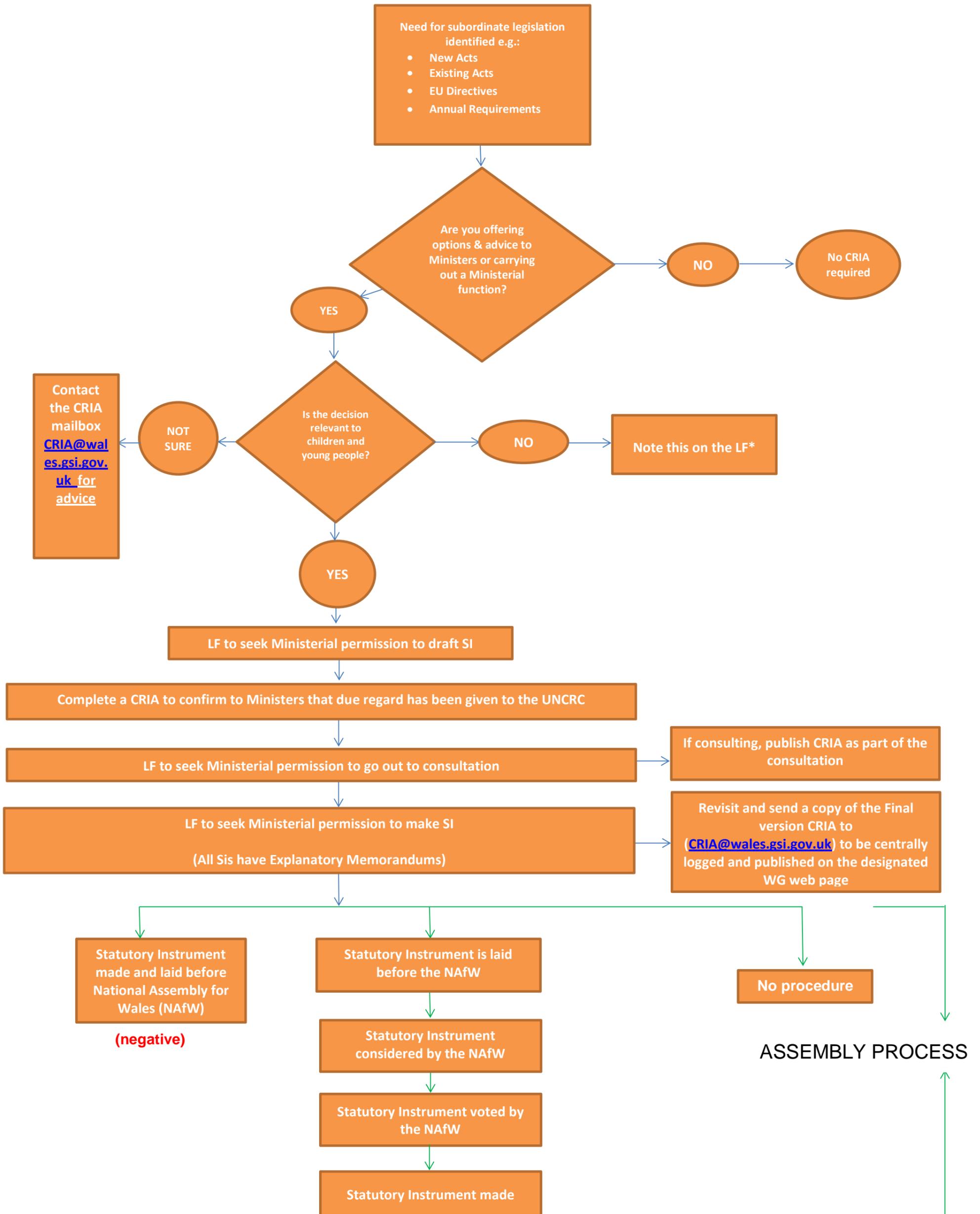
## Do I need to undertake a Children’s Rights Impact Assessment (CRIA)?



\*LF – Legislation Folder; formal written advice to Ministers on legislation

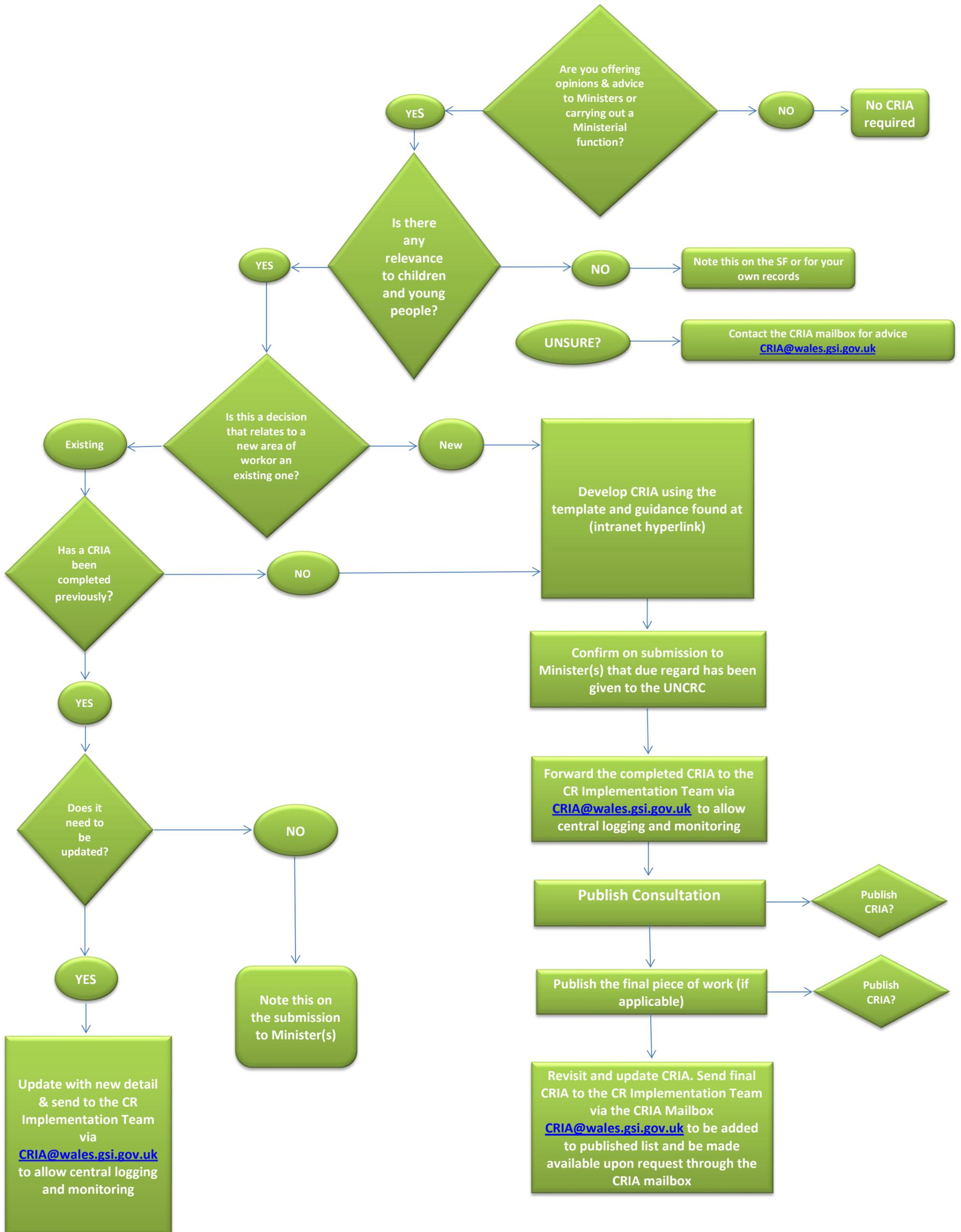
# LEGISLATION – STATUTORY INSTRUMENTS (SI)

## Do I need to undertake a Children’s Rights Impact Assessment (CRIA)?



\*LF – Legislation Folder

# NON-LEGISLATION: Do I need to undertake a Children's Rights Impact Assessment (CRIA)?



## Annex 2



# Children's Rights Impact Assessment (CRIA) Template

|   |  |
|---|--|
| <b>Title / Piece of work:</b>                 |  |
| <b>Related SF / LF number (if applicable)</b> |  |
| <b>Name of Official:</b>                      |  |
| <b>Department:</b>                            |  |
| <b>Date:</b>                                  |  |
| <b>Signature:</b>                             |  |

Please complete the CRIA and retain it for your records on iShare. You may be asked to provide this document at a later stage to evidence that you have complied with the duty to have due regard to children's rights e.g. Freedom of Information access requests, monitoring purposes or to inform reporting to the NAFW.

Upon completion you should also forward a copy of the CRIA to the Measure Implementation Team for monitoring purposes using the dedicated mailbox [CRIA@wales.gsi.gov.uk](mailto:CRIA@wales.gsi.gov.uk)

If officials are not sure about whether to complete a CRIA, they should err on the side of caution and seek advice from the Measure Implementation Team by forwarding any questions to our mailbox [CRIA@wales.gsi.gov.uk](mailto:CRIA@wales.gsi.gov.uk)

You may wish to cross-reference with other Impact Assessments undertaken.

**NB.** All CRIAs undertaken on legislation must be published. All non-legislative CRIAs will be listed on the WG website and must be made available upon request. Ministers are however, encouraged to publish all completed CRIAs.

# Six Steps to Due Regard



## **Step 1. What's the piece of work and its objective(s)?**

You may wish to include:

- A brief description of the piece of work
- What the time frame for achieving it is?
- Who are the intended beneficiaries?
- Is it likely that the piece of work will affect children?
- Will the piece of work have an affect on a particular group of children, if so, describe the group affected?

## **Step 2. Analysing the impact**

- What are the positive and/or negative impacts for children, young people or their families?
- Where there are negative impacts; what compensatory measures may be needed to mitigate any negative impact?
- How will you know if your piece of work is a success?
- Have you developed an outcomes framework to measure impact?
- Have you considered the short, medium and long term outcomes?
- Do you need to engage with children & young people and/or stakeholders to seek their views using consultation or participatory methods?
- Do you need to produce child friendly versions of proposals/consultations?

### **Step 3. How does your piece of work support and promote children's rights?**

Dependant upon the impact of your piece of work, use balanced judgement to assess:

- Which UNCRC articles are **most** relevant to the piece of work? Consider the articles which your piece of work impacts upon.  
<http://uncrcletsgetitright.co.uk/images/PDF/UNCRCRights.pdf>
- How are you improving the way children and young people access their rights?
- What aspects of children's lives will be affected by the proposal?
- What are the main issues that the CRIA should focus on?
- Does the piece of work help to maximise the outcomes within the articles of the UNCRC?
- If no, have any alternatives to the current piece of work been considered?

### **Step 4. Advising the Minister and Ministerial decision**

When giving advice and making recommendations to the Minister, consider:

- The ways in which the piece of work helps to maximise the outcomes within the articles of the UNCRC?
- Has any conflict with the UNCRC articles within the proposal been identified?
- Consider the wider impact; does the proposal affect any other policy areas?
- With regard to any negative impacts caused by the proposal; can Ministers evidence that they have allocated as much resource as possible?
- What options and advice should be provided to Ministers on the proposal?
- In relation to your advice on whether or not to proceed with the piece of work, is there any additional advice you should provide to the Minister?
- Is it appropriate to advise the Minister to reconsider the decision in the future, in particular bearing in mind the availability of resources at this time and what resources may be available in the future?
- Have you provided advice to Ministers on a LF/SF and confirmed paragraph **26**?
- Is the advice supported by an explanation of the key issues?

## **Step 5. Recording and communicating the outcome**

**Final version to be retained on i-share**

Evidence should be retained that supports:

- How the duty has been complied with **(Steps 1-3 above)**
- The analysis that was carried out **(Steps 1-3 above)**
- The options that were developed and explored **(Steps 1- 3 above)**
- How have the findings / outcomes been communicated? **(Step 4 above)**
- 'Tells the story' of how the assessment has been undertaken and the results **(Step 4 above)**

## **Step 6. Revisiting the piece of work as and when needed**

In revisiting the piece of work, consider any monitoring, evaluation or data collection that has been undertaken:

- Has your piece of work has had the intended impact as set out in Step 2.
- Have you engaged with stakeholders to discuss how the policy or practice is working.
- If not, are changes required.
- Identify where improvements can be made to reduce any negative impact.
- Identify any opportunities to promote children's rights, bearing in mind any additional availability of resources at this time.

## Budgets

|  |                 |
|--|-----------------|
| <b>As a result of completing the CRIA, has there been any impact on budgets?</b><br>It is important that where any changes are made to spending plans, including where additional allocations have been made, that this has been assessed and evidenced as part of the CRIA process. | <b>Yes / No</b> |
| <b>Please give any details:</b>  |                 |

## Monitoring & Review

|   |                     |
|---|---------------------|
| <b>Do we need to monitor / review the proposal?</b> | <b>Yes / No</b>     |
| <b>If applicable: set the review date</b>           | <b>Month / Year</b> |



# THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

[www.uncrcletsgetitright.co.uk](http://www.uncrcletsgetitright.co.uk)

The United Nations Convention on the Rights of the Child is an international agreement that protects the human rights of the children under the age of 18. On 16 December 1991, the United Kingdom of Great Britain and Northern Ireland formally agreed to make sure that every child in the UK has all the rights as listed in the convention. The Welsh Government has shown its commitment to the convention by adopting it as the basis for policy making for children in Wales.

Altogether there are 54 articles in the convention. Articles 43-54 are about how adults and governments should work together to make sure all children are entitled to their rights. The information contained here is about articles 1-42 which set out how children should be treated.



Llywodraeth Cymru  
Welsh Government

[www.cymru.gov.uk](http://www.cymru.gov.uk)

## Article 1

Everyone under 18 years of age has all the rights in this Convention.

## Article 2

The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.

## Article 3

All organisations concerned with children should work towards what is best for each child.

## Article 4

Governments should make these rights available to children.

## Article 5

Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.

## Article 6

All children have the right to life. Governments should ensure that children survive and develop healthily.

## Article 7

All children have the right to a legally registered name, the right to a nationality and the right to know and, as far as possible, to be cared for by their parents.

## Article 8

Governments should respect children's right to a name, a nationality and family ties.

## Article 9

Children should not be separated from their parents unless it is for their own good, for example if a parent is mistreating or neglecting a child. Children whose parents have separated have the right to stay in contact with both parents, unless this might hurt the child.

## Article 10

Families who live in different countries should be allowed to move between those countries so that parents and children can stay in contact or get back together as a family.

## Article 11

Governments should take steps to stop children being taken out of their own country illegally.

## Article 12

Children have the right to say what they think should happen, when adults are making

decisions that affect them, and to have their opinions taken into account.

## Article 13

Children have the right to get and to share information as long as the information is not damaging to them or to others.

## Article 14

Children have the right to think and believe what they want and to practise their religion, as long as they are not stopping other people from enjoying their rights. Parents should guide their children on these matters.

## Article 15

Children have the right to meet together and to join groups and organisations, as long as this does not stop other people from enjoying their rights.

## Article 16

Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

## Article 17

Children have the right to reliable information from the mass media, television, radio and newspapers should provide information that children can understand, and should not promote materials that could harm children.

## Article 18

Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.

## Article 19

Governments should ensure that children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else who looks after them.

## Article 20

Children who cannot be looked after by their own family must be looked after properly, by people who respect their religion, culture and language.

## Article 21

When children are adopted the first concern must be what is best for them. The same rules should apply whether the children are adopted in the country where they were born or taken to live in another country.

## Article 22

Children who come into a country as refugees should have the same rights as children born in that country.

## Article 23

Children who have any kind of disability should have special care and support so that they can lead full and independent lives.

## Article 24

Children have the right to good quality health care and to clean water, nutritious food and a clean environment so that they will stay healthy. Rich countries should help poorer countries achieve this.

## Article 25

Children who are looked after by their local authority rather than their parents should have their situation reviewed regularly.

## Article 26

The Government should provide extra money for the children of families in need.

## Article 27

Children have a right to a standard of living that is good enough to meet their physical and mental needs. The Government should help families who cannot afford to provide this.

## Article 28

Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.

## Article 29

Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures.

## Article 30

Children have a right to learn and use the language and customs of their families, whether these are shared by the majority of people in the country or not.

## Article 31

All children have a right to relax and play, and to join in a wide range of activities.

## Article 32

The Government should protect children from work that is dangerous or might harm their health or their education.

## Article 33

The Government should provide ways of protecting children from dangerous drugs.

## Article 34

The Government should protect children from sexual abuse.

## Article 35

The Government should make sure that children are not abducted or sold.

## Article 36

Children should be protected from any activities that could harm their development.

## Article 37

Children who break the law should not be treated cruelly. They should not be put in prison with adults and should be able to keep in contact with their families.

## Article 38

Governments should not allow children under 15 to join the army. Children in war zones should receive special protection.

## Article 39

Children who have been neglected or abused should receive special help to restore their self respect.

## Article 40

Children who are accused of breaking the law should receive legal help. Prison sentences for children should only be used for the most serious offences.

## Article 41

If the laws of a particular country protect children better than the articles of the Convention, then those laws should stay.

## Article 42

The Government should make the Convention known to all parents and children.

For further information on the United Nations Convention on the Rights of the Child please visit: The Welsh Government's UNCRC Website: [www.uncrcletsgetitright.co.uk/](http://www.uncrcletsgetitright.co.uk/)

Clic - The National Information and Advice Service for Young People [www.cliconline.co.uk/news/](http://www.cliconline.co.uk/news/)



### Annex 3: General Comment 14

#### **Publication of the General Comment by Committee on the Rights of the Children's General Comment No 14 (2013) on the right of the child to have his or her best interest taken as a primary consideration**

In the reviewing the Scheme, the Welsh Government has taken into consideration the Committee on the Rights of the Children's General Comment No 14 (2013) on the right of the child to have his or her best interest taken as a primary consideration. The Welsh Government believes that the revised Scheme links directly and gives greater effect to the following sections in particular:

*'The right of the child to have his or her best interests assessed and taken as a primary consideration should be explicitly included in all relevant legislation, not only in laws that specifically concern children. This obligation extends also to the approval of budgets, the preparation and development of which require the adoption of a best-interests-of-the-child perspective for it to be child-rights sensitive'<sup>13</sup>.*

Included within the nature and scope of the obligations under the general commend aimed at state parties is:

*'The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision.'*

Again, the Scheme is a critical mechanism for ensuring this, particularly given the associated reference to Child Rights Impact Assessments below:

*'With regard to implementation measures, ensuring that the best interests of the child are a primary consideration in legislation and policy development and delivery at all levels of Government demands a continuous process of child rights impact assessment (CRIA) to predict the impact of any proposed law, policy or budgetary allocation on children and the enjoyment of their rights, and child rights impact evaluation to evaluate the actual impact of implementation'*

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<sup>13</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

## **Annex 4**

### **A list of other relevant international treaties (non-exhaustive) ratified by the UK Government:**

- UN Convention on the Rights of Persons with Disabilities
- The International Covenant on Civil and Political Rights (1966) and its optional protocols
- The International Covenant on Economic, Social and Cultural Rights (1966);
- The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984)