

Finance Committee

# **Inquiry into the financial estimates accompanying legislation**

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October 2017



**National Assembly for Wales**  
Finance Committee

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**National Assembly for Wales**  
Finance Committee

# Finance Committee

To carry out the functions of the responsible committee set out in Standing Order 19; the functions of the responsible committee set out in Standing Orders 18.10 and 18.11; and consider any other matter relating to the Welsh Consolidated Fund.

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## Current Committee membership:



**Simon Thomas AM (Chair)**  
Plaid Cymru  
Mid and West Wales



**Neil Hamilton AM**  
UKIP Wales  
Mid and West Wales



**Mike Hedges AM**  
Welsh Labour  
Swansea East



**Steffan Lewis AM**  
Plaid Cymru  
South Wales East



**Eluned Morgan AM**  
Welsh Labour  
Mid and West Wales



**Nick Ramsay AM**  
Welsh Conservative  
Monmouth



**David Rees AM**  
Welsh Labour  
Aberavon



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## Recommendations

**Recommendation 1.** The Committee recommends that the Welsh Government should ensure that a summary of financial information be included in RIAs for each of the Bills it introduces, and that a distinction be made as to whether costs are capital or revenue..... Page 21

**Recommendation 2.** The Committee recommends that the Welsh Government should ensure that RIAs are explicit in their division between cash costs and savings and monetised costs..... Page 21

**Recommendation 3.** The Committee recommends that the Welsh Government continue to cost cultural change and ensure that this is assessed and considered as far as is possible in RIAs. This should include broadening its RIAs to ensure they account for the aspirations of the legislation and not just the processes required to implement the change..... Page 21

**Recommendation 4.** The Committee recommends that the Welsh Government should confirm whether it intends to use the Well-being of Future Generations Act as a framework for preparing RIAs, including measuring impact over a longer term. .... Page 21

**Recommendation 5.** The Committee recommends that the Welsh Government thoroughly consider the financial implications for all stakeholders in Regulatory Impact Assessments, including ensuring the financial implications for the private sector are fully considered. .... Page 21

**Recommendation 6.** The Committee recommends that the Welsh Government improve its quality assurance processes by ensuring more thorough internal scrutiny of RIAs before they are laid. .... Page 22

**Recommendation 7.** The Committee recommends that where there are changes to RIAs after Stage 2, that the Member in charge should provide the Finance Committee and the relevant scrutiny committee with a summary of these changes, including the financial implications. .... Page 22

**Recommendation 8.** The Committee recommends that the Welsh Government should provide draft RIAs as part of the consultation it undertakes in developing legislative proposals, and that it should review its wider strategy and advice to

**Bill teams regarding engagement with stakeholders to emphasise that this should be undertaken as early as possible. .... Page 25**

**Recommendation 9. The Committee recommends the Welsh Government ensures that relevant stakeholders are engaged with the process when it creates costings and that stakeholders are able to comment and input on those costings and confirm whether they're in agreement. .... Page 25**

**Recommendation 10. The Committee recommends that the summary information included in RIAs contain explicit reference to how any costs identified in the RIA will be funded and by whom. .... Page 28**

**Recommendation 11. The Committee recommends that the Welsh Government should build evaluation periods into its assessment of the costs of legislation to allow for review and evaluation of transitional funding. .... Page 28**

**Recommendation 12. The Committee recommends that the Welsh Government notify it where subordinate legislation laid before the Assembly significantly alters the costs of the associated primary legislation. .... Page 31**

**Recommendation 13. The Committee recommends that the Welsh Government commit to providing as full a picture of the costs of subordinate legislation as possible when proposing primary legislation. .... Page 31**

**Recommendation 14. The Committee recommends that the Welsh Government consider options to monitor and evaluate the financial implications of legislation in order to:**

- Ensure that relevant public bodies are not routinely incurring more cost or less benefit than was anticipated in the relevant RIA.**
- Assure itself of the accuracy of its processes for creating RIAs and to use this information to improve its estimating techniques (where appropriate). .... Page 34**

**Recommendation 15. The Committee recommends that the Welsh Government ensure costs are a consideration of future post-implementation reviews and that the Economic Appraisal Team is involved in policy team evaluation of legislation in order to ensure costs are considered. .... Page 34**

**Recommendation 16. The Committee recommends that future RIAs set-out a clear process for post-implementation review of the financial estimates, including when and what will be assessed..... Page 34**

# 01. Background

1. As required by Standing Order 26.6, legislation put before the National Assembly for Wales must be accompanied by adequate financial information describing the impact of the legislation in terms of its costs and benefits/savings. For Bills introduced by the Welsh Government, this information is provided in the Regulatory Impact Assessment (RIA), which forms part of the Explanatory Memorandum (EM).
2. The Assembly's Stage 1 scrutiny procedure for primary legislation provides the opportunity for scrutiny of the financial implications of a Bill. The Finance Committee decide what level of scrutiny they will undertake in relation to each Bill and the level of scrutiny can range from a review of the RIA to formal scrutiny with the Member in charge. The Committee may make recommendations regarding the financial implications of a Bill. The policy Committee considering a Bill may also considering the financial implications of a Bill.
3. The Finance Committee of the Fourth Assembly made three recommendations relating to the costs of legislation in its **Legacy report**:
  - **Recommendation 16.** The Committee recommends that any future responsible committee considers how the cost implications of amendments can be scrutinised, and further recommends that the Business Committee may wish to consider the timings for amendments to ensure sufficient scrutiny is afforded to amendments which may result in significant cost changes.
  - **Recommendation 17.** The Committee recommends that any future responsible committee undertakes a piece of work in order to ascertain the accuracy of the costs of Acts introduced in the Fourth Assembly.
  - **Recommendation 18.** The Committee recommends that any future responsible committee is afforded the opportunity to review the Welsh Government commissioned Public Policy Institute for Wales (PPIW) report on impact assessment processes following publication.
4. In relation to Recommendation 18, Public Policy Institute for Wales (PPIW) published its report **Reducing Complexity and Adding Value: A Strategic Approach to Impact Assessment in the Welsh Government** in April 2016.
5. The Committee agreed to undertake an inquiry into the accuracy and reliability of estimated costs provided by the Welsh Government in the RIAs accompanying legislation.
6. The terms of reference for the inquiry were:
  - To examine the costs of legislation, with specific reference to the costs associated with the selected sample of Acts, namely the:
    - **Social Services and Wellbeing Act 2014**;
    - **Qualifications (Wales) Act 2015**;
    - **Housing (Wales) Act 2014**; and,
    - **Well-Being of Future Generations Act 2015**.

- To examine the current reporting and monitoring arrangements for legislative costs after implementation.
- To establishing the effectiveness and quality of the Regulatory Impact Assessments that have been produced and how this informs cost monitoring.

**7.** The Committee held formal evidence sessions with stakeholders associated with the legislation outlined in the terms of reference, as well as an informal stakeholder event with representation from a wide range of bodies affected by the four case study Acts. As well as the four Acts outlined in the terms of reference, the Committee welcomed evidence and information relating to other legislation.

**8.** The Committee also received evidence from stakeholders who have a broader role, including officials from the Welsh Government and Wales Audit Office. These sessions provided an overview of how the Welsh Government prepares its costs estimates and how these are monitored and evaluated. In its final evidence session, the Committee heard from the Cabinet Secretary for Finance and Local Government.

## 02. Regulatory Impact Assessments

### Preparation of Regulatory Impact Assessments

9. Standing Order 26.6(viii) sets out what financial information must be included in the EM that accompanies a Bill, and states it should set out the best estimates of:

- the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;
- the administrative savings arising from the Bill;
- net administrative costs of the Bill’s provisions;
- the timescales over which all such costs and savings would be expected to arise; and,
- on whom the costs would fall.

10. Standing Order 26.6(ix) also states that the information should contain “any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially”.

11. The Committee took evidence on the Welsh Government’s RIA preparation process, including the views of stakeholders in regard of the content, accessibility and usefulness of the documents.

12. The Welsh Government outlined the roles and responsibilities of its officials in the RIA process. It set out that the RIA is the responsibility of the relevant Bill team, policy department and Senior Responsible Officer (SRO) for the Bill and that policy teams receive input, advice and technical support from Welsh Government economists and other specialist analytical teams, including the Knowledge and Analytical Services division and Legislative Programme and Governance Unit. The Welsh Government emphasised that the Bill teams owned the process of producing RIAs, a representative from the Knowledge and Analytical Services team explained:

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“Responsibility for preparing each RIA rests with the relevant policy department. They have the specific policy knowledge; they have the relationship with the relevant stakeholders. Our role is to advise and support the policy teams as they develop their RIAs, setting out the requirements at the outset, discussing broad methodology, talking with them about potential alternative options, groups that may be impacted by the proposals, and then discussing potential sources of evidence to help inform their RIA.”<sup>1</sup>

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13. The Committee heard that the central team acts as the “critical friend”<sup>2</sup> during the preparation process and undertakes a final review of the RIA to ensure it meets Standing Order and HM Treasury Green book requirements.

14. The Cabinet Secretary told the Committee he believed that this approach is the correct way to prepare RIAs:

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“I think the basic architecture of the way that RIAs are produced is the right one. I do think it is right that the portfolio Minister, and the team of people who

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<sup>1</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 132

<sup>2</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 133

support them, have a major responsibility for making sure that explanatory memorandums and the regulatory impact assessments that they contain are as close a reflection as possible of the proposals that the Assembly is scrutinising. I think the work that goes on at the centre should not dilute the responsibilities that portfolio Ministers have for making sure that that information is as good as it can be and that it is regularly updated as the process of scrutiny proceeds.”<sup>3</sup>

**15.** The Cabinet Secretary also said that the work undertaken by the Welsh Government economists “in scrutinising the methodology that is adopted by teams in preparing RIAs is very reliable and effective in the way that it is provided”.<sup>4</sup> He went on to tell the Committee that “that degree of oversight from the centre is important”, but that he was not persuaded any suggestion “that RIAs should be taken over by some sort of central unit that would be responsible for producing them across the Welsh Government”.<sup>5</sup>

**16.** The Welsh Government’s written evidence referred to its handbook on Assembly Bills, which provides guidance for Bill teams when preparing RIAs. The evidence noted that the guidance sets out a staged approach to the development of an RIA, including an expectation that RIAs will evolve throughout the Bill process as the policy becomes clearer, the evidence base develops and feedback from stakeholders is accounted for. It states that the process contains four key stages:

**“Policy Development Stage:** This early stage is focused on defining the policy problem, establishing a rationale for government intervention, identifying alternative options and developing the evidence base. At this stage the Welsh Government suggests there should be an initial attempt at cost-benefit analysis, including an initial estimate and identification of who the Bill will affect.

**Consultation/Draft RIA:** A draft RIA should be published in line with the publication of a draft Bill for consultation. The option appraisal should provide a more detailed, quantified assessment of costs and benefits for each option.

**Final RIA:** The Final RIA should focus on the preferred option and should include an updated cost-benefit analysis that reflects the final policy details and evidence and feedback gathered from stakeholders at consultation stage. The RIA is included as Part 2 of the Explanatory Memorandum and laid alongside the Bill.

**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 that has been received during the scrutiny of a Bill.”<sup>6</sup>

**17.** The Welsh Government advised the Committee that its legislative handbook had been updated to reflect a number of changes, including changes to Standing Orders made in the Fourth Assembly and that it intends to publish the updated handbook during the summer of 2017. The Cabinet Secretary shared a draft version of the updated guidance with the Committee for

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<sup>3</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 6

<sup>4</sup> Ibid

<sup>5</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 8

<sup>6</sup> National Assembly for Wales, Finance Committee, FIN(5)-15-17P2

information. An official from the Welsh Government’s Economic Appraisal and Analysis Team told the Committee that, in revising the guidance, the formal stages of the process had been amended to ensure the RIA is a key consideration throughout the policy process:

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“Certainly, in the formal documentation of the evidence it was only required at the end of the process with the introduction of it as part of the explanatory memorandum. The work to develop the evidence base, to look at the costs and benefits, that was certainly being done. But we’re trying to formalise the process for there to be key stages when a documented RIA will be required, and, as I say, consulted upon.”<sup>7</sup>

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**18.** The Welsh Government’s evidence also outlined how it anticipated the new process would strengthen the overall RIA process and the final RIA:

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“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.”<sup>8</sup>

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**19.** Representatives from the Wales Audit Office (WAO) told the Committee that generally they have a limited role in the development and consideration of RIAs, although they can be invited to look at a draft version “from time to time”.<sup>9</sup> The Director of Performance Audit for the WAO referred to the study undertaken by the Auditor General for Wales (AGW) on the RIA accompanying the Well-being of Future Generations (WFG) Bill during the Fourth Assembly, which had highlighted:

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“broader questions around the processes within Welsh Government for quality review...those were issues that we felt a good-quality quality review process should and could have picked up within the Welsh Government before the RIA and explanatory memorandum were published. So, we wouldn’t routinely do it, but I think there were some issues that fell out from our previous work that raised questions around whether the Welsh Government could itself strengthen that whole process.”<sup>10</sup>

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

**20.** During the Fourth Assembly, the First Minister requested that PPIW conduct a review of the Welsh Government’s impact assessment system. The findings of the review, led by Dr Clive Grace,

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<sup>7</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 181

<sup>8</sup> National Assembly for Wales, Finance Committee, FIN(5)-15-17P2

<sup>9</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 13

<sup>10</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraphs 20 & 21

were outlined in the February 2016 report *Reducing Complexity and Adding Value: A Strategic Approach to Impact Assessment in the Welsh Government*, which considers the broad range of impact assessments prepared by the Welsh Government, including but not limited to, RIAs.

**21.** The Committee heard that there had been a delay in the implementation of the recommendations made by PPIW since the publication of its report in 2016. Whilst accepting that it had taken some time to implement, the Cabinet Secretary told the Committee that the Welsh Government was “very keen” to take forward the advice in the PPIW report, he said:

“Its advice on trying to have a more proportionate and coherent way in which we use impact assessments is something we are very keen to take forward. It is taking a while. It probably is taking longer than we would have liked—. There are always reasons, Eluned, as you will know, why: intervening elections, retirement of one Permanent Secretary, recruitment of another. I think what I’d like to say to the committee is that I believe there is a new energy behind the implementation of some of the recommendations in the PPIW report and that the interest that this committee has taken in it will have played its part in that. I now feel confident that we do have a purposeful plan to make sure that we’re able to respond to the recommendations of that report.”<sup>11</sup>

## Presentation of Regulatory Impact Assessments

**22.** In evidence to the Making Laws in Wales inquiry undertaken by the Constitutional and Legislative Affairs Committee during the Fourth Assembly, the AGW stated that, in many cases, information required by Standing Orders is not “readily apparent” in RIAs, due to their length and complexity.<sup>12</sup> These issues, combined with the range of options that are generally included in the RIA, led the AGW to conclude that:

“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.”<sup>13</sup>

**23.** In the report of his study of the WFG Bill, the AGW made a number of recommendations including revisiting costings for presentation in a clear summary table. The Welsh Government accepted his concern regarding the clarity and consistency of RIAs and the suggestion that a standardised summary table should be included in RIAs. An official from the Economic Appraisal and Analysis Team of the Welsh Government advised that guidance had been amended so that all RIAs now include a summary table:

“We’ve certainly tried to take steps in that direction, and as I say, the standard summary table is intended to set out the additional costs associated with post-legislation cost savings—if there’s compliance cost and if there are any benefits. Those are all recorded separately to try to be as clear as possible. We’ve also tried to improve the signposting within RIAs, so that front summary

<sup>11</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 76

<sup>12</sup> National Assembly for Wales, Constitutional and Legislative Affairs Committee, [ML20 Annex A](#)

<sup>13</sup> Written evidence, Finance Committee, FIN(5)-15-17P1

table will identify which is the preferred option, and where within the detailed RIA the corresponding analysis can be found.”<sup>14</sup>

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**24.** The Committee heard that the RIAs published so far during the Fifth Assembly went some way to addressing stakeholder concerns regarding the Welsh Government’s presentation of RIAs in the Fourth Assembly. The Law and Ethics Manager for the WAO reiterated the views expressed in the AGW’s written evidence:

“I would say that the RIAs for Bills in the fifth Assembly are better, certainly on presentational terms. You now have a summary table, which you can relatively easily find in the RIA, which just wasn’t there before.”<sup>15</sup>

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**25.** Dr Clive Grace, author of the report by PPIW, also suggested that the inclusion of a summary table in RIAs was a step forward, but that there was potential for this to include a much broader idea of the costs and benefits, he said:

“You’ve devised a new finance table at the front of the regulatory impact assessment. Clearly, that’s a step forward. But when I look at that table and I think about what I know legislators here think has value, that table, to me, doesn’t reflect the value that you as legislators bring to your deliberations, you’re interested in a much wider range of benefits and potential costs. At the minute, you don’t seem to be able to get into that terrain, and that’s the terrain you ought to get into.”<sup>16</sup>

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**26.** In response to queries from the Committee on whether capital and revenue costs should be explicitly identified in the summary information and whether the impact on businesses should be more apparent, the official from the Welsh Government’s Economic Appraisal and Analysis Team said:

“the summary table has been designed to reflect Standing Order requirements. So, it’s very much designed to deliver each piece of information required under Standing Orders. There are sections within the table where you can insert text, and certainly you’d expect there to be a differentiation between capital and revenue costs or savings explained within the narrative of the summary table. The feedback in the fourth Assembly was that the summary table should reflect Standing Orders and clearly set out the information required under Standing Orders.”<sup>17</sup>

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## Costs and benefits

**27.** In its legacy report, the Finance Committee of the Fourth Assembly raised concerns regarding the method of calculating costs and benefits in RIAs. During this inquiry, a representative of the Welsh Local Government Association (WLGA) suggested that calculating benefits was “more of an art than it is a science”. He went on to say that whilst some benefits are easier to cost, providing the example of

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<sup>14</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 168

<sup>15</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 76

<sup>16</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 247

<sup>17</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraphs 209 and 2011

reorganisation under the draft local government Bill, monetising benefits such as “improved air quality” was described as more of an “exotic economic practice than, say, just estimating the cost”.<sup>18</sup>

**28.** The Welsh Government considered that its current approach to monetising benefits was in line with standard approaches:

“the presentation of monetised benefits alongside costs is a standard approach in economic appraisal and is intended to support the value for money assessment.”<sup>19</sup>

**29.** However, the official from the Welsh Government’s Economic Appraisal and Analysis Team outlined how it has attempted to improve its presentation of RIAs, noting that monetised costs and benefits are now presented separately in the summary information.<sup>20</sup>

**30.** Witnesses also provided evidence regarding differences in the actual costs and benefits of legislation, when compared to the estimates contained in RIAs. In her written evidence, the Future Generations Commissioner for Wales outlined that her office costs had been lower than anticipated in the RIA. A primary reason given for this was that the RIA states first year costs as full year, whereas in actuality the Commissioner’s office was only established for two months of 2015-16. Regarding the lower cost profile, the Future Generations Commissioner stated:

“My actual set up costs and running costs for the first 14-month period of operation was £1,116,331 which represents 68% of RIA Estimates for 2015-16 and 2016-17 combined. Actual costs are less than estimated largely because whole year estimates figures are provided for 2015-16 and I was in operation for only two months of this financial year. Actual running costs against the estimate for 2016-17 only were over 80 per cent and the underspend relates mainly to the length of time taken to recruit staff during set up and my attempt to drive down the costs of office equipment through a more sustainable approach.”<sup>21</sup>

**31.** The Commissioner also provided information on some of the other cost estimates in the RIA:

“We’ve been through in quite a lot of detail the RIA and the administrative costs in there. Some of them we can’t quite understand the basis upon which they came out. For example, I have no idea why the insurance costs, which were based on Qualifications Wales, I think, were as high as they were.”<sup>22</sup>

**32.** The Chief Executive of Qualifications Wales told the Committee that the RIA provided “quite a realistic estimate” of the costs of its establishment and the anticipated future costs of the organisation and went on to say that the RIA “was very accurate and hasn’t presented any issues” for the organisation.<sup>23</sup>

<sup>18</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 47

<sup>19</sup> Written evidence, Finance Committee, FIN(5)-15-17P2

<sup>20</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 166

<sup>21</sup> National Assembly for Wales, Finance Committee, FIN(5)-18-17P3

<sup>22</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 225

<sup>23</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 292

**33.** Qualifications Wales also told the Committee that some work to establish the organisation was carried out in parallel to the legislation being developed, including the employment of its Chief Executive by the Welsh Government in time to allow involvement in key decisions regarding the establishment of the organisation (such as preferred premises, staff recruitment etc).<sup>24</sup>

**34.** The Committee also heard that Qualifications Wales' staff structure was agreed after the RIA had been published and so is different to that anticipated in the RIA. Representatives of the organisation explained differences in staff costs, giving the example of the decision to delay recruitment of the Research and Statistics team until after establishment, which reduced staff costs for 2015/16 and delayed research expenditure. It also noted that staffing costs had been higher than anticipated due to the RIA had assuming that the structure of the new organisation would reflect what had existed in the Welsh Government qualifications function prior to the Act, which was not the case.<sup>25</sup> Qualifications Wales also went on to say a key assumptions in the RIA related to the transfer of staff from the Welsh Government to the new organisation, which did not occur as anticipated in the RIA.<sup>26</sup>

**35.** At the Committee's stakeholder event on 21 June 2017, it heard the Residential Landlords Association's (RLA) view that the Welsh Government did not adequately convey the purpose and implications of legislation to all stakeholders and sectors, citing the example of changes to the costings associated with Part 1 of the Housing (Wales) Act 2014. The RLA told the Committee that there was no notification of the changes between agent licensing fee scheme outlined in the RIA as being approximately £250, and the fee scheme that was implemented - initially set at £3,728 (currently set at a minimum of £1,890).<sup>27</sup> The Committee was told by the Operational Manager for Rent Smart Wales that the scheme that was considered in the RIA was different to the scheme that is being implemented:

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“When the memorandum of understanding was first developed, it was very much based on a voluntary accreditation scheme that was in place prior to legislation being brought in. That was effectively a scheme where people volunteered to undertake training. So, the memorandum of understanding that was prepared was really based on a registration scheme where landlords told us of the fact that they were landlords and the properties that they owned and training that was associated with that. But, of course, as the legislation was developed, that very much became more of a licensing scheme, which required far more checks and balances to be put in place and a cost regime associated with that.”<sup>28</sup>

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**36.** The representative from Rent Smart Wales went on to explain that the way in which charging could be undertaken had been affected by the *Hemming v. Westminster* court case.<sup>29</sup> She explained that in relation to the costing of the scheme, Cardiff Council (who operate the scheme on behalf of the 22 local authorities in Wales) created its own financial model, separate to the RIA, which suggested that the Welsh Government's RIA overestimated the total number of landlords in Wales.<sup>30</sup>

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<sup>24</sup> Written evidence, Finance Committee, FIN(5)-17-17P4

<sup>25</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 304

<sup>26</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 369

<sup>27</sup> [Rent Smart Wales Fee Policy from 25 April 2016](#)

<sup>28</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 386

<sup>29</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 389

<sup>30</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 393

**37.** The representative from Rent Smart Wales also told the Committee that its staff structure is different to what was envisaged in the RIA. She explained that the RIA estimated the organisation would require 10 staff, however, at its highest requirement it will require 100 staff, which will change from year to year, with the average approximately 50 staff.<sup>31</sup>

**38.** Dr Clive Grace told the Committee that he was surprised by the inclusion of specific figures in RIAs rather than a range of estimates:

“going back to this table at the front of the RIAs, one of the things that surprises me is that these are given as firm numbers. It seems to me the idea that there isn’t a range—in some cases, a very significant range, in some cases, a narrow range, but always a range—is one of the things, when I look at it, I think, ‘Well, this doesn’t reflect the reality that you deal with as legislators’.”<sup>32</sup>

**39.** The Committee explored this issue further with the Cabinet Secretary, who said that using a range rather than a specific figure would allow “a different appreciation of risk”, adding:

“Maybe that would be a way of trying to make some of this more contestable area more sensibly visible to people.”<sup>33</sup>

**40.** An official accompanying the Cabinet Secretary explained that the reason for including a specific figure was down to interpretation of the requirement within Standing Orders to provide a ‘best estimate’ of costs, but suggested that a move towards providing a range would be considered in future.<sup>34</sup>

## Measuring cultural change

**41.** The Committee heard of a number of examples where the effect of cultural change was a key component required to deliver the provisions of legislation, but where RIAs had not adequately costed this aspect of the implementation. The difficulty with quantifying cultural change was acknowledged by the Welsh Government, with the Chief Economist stating:

“As an economist, I really am very keen on the idea of quantification, putting things in monetary terms, having definite figures, but, on the other hand, there’s an inherent unavoidable uncertainty in a number of these areas. One of the things we do think about and we try and manage is how you balance the need for precision and quantification with an acknowledgement and recognition of the inherent uncertainty.”<sup>35</sup>

**42.** A representative from the WLGA also expressed the difficulty in assessing the cultural change associated with the Social Services and Well-being (Wales) Act 2014, stating:

“if you look at the fundamental concepts behind the social services and well-being Act, they are very much around a cultural shift. It’s about us having different conversations with people who use our services and, actually, trying

<sup>31</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraphs 405 - 412

<sup>32</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 279

<sup>33</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 20

<sup>34</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 26

<sup>35</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 154

to signpost people away from statutory services to services within their own communities, and a huge focus on a preventative agenda, trying to keep people away from statutory services for as long as is practically possible. To go away and do a calculation around the impact of that is hugely, hugely difficult, and it isn't through lack of trying.”<sup>36</sup>

**43.** The Committee heard that this issue was also relevant in implementing the WFG Act. The Future Generations Commissioner suggested that whilst cultural change was difficult to measure, RIAs should not focus solely on the “mechanistic” features and processes associated with legislation.<sup>37</sup> In her written evidence, she suggested that the revisions to the RIA following amendments at Stage 2 and the review undertaken by the Auditor General for Wales, may not have gone far enough and was concerned that the re-assessment of the RIA was limited, saying:

“the updated RIA only considered re-calculations of the salary costs of officers as well as the transitional costs associated with additional tasks and activities required to implement and comply with the Act.”<sup>38</sup>

**44.** Referring to the Social Services and Well-being Act, a representative of the Association of Directors of Social Services (ADSS) Cymru also referred to challenges of factoring in the impact of culture change, saying:

“I think that it's difficult to cost cultural change. I don't think that it's possibly been met fully within the legislation.”<sup>39</sup>

**45.** The Cabinet Secretary acknowledged the challenges in expressing the financial impact of cultural change in RIAs, but believed that efforts should be made to capture this information, he said:

“If I tried to quantify cultural change and behavioural change, I could do it and try, but it would be inherently contestable, wouldn't it? Any one person's thoughts about it are probably no more objectively very viable than anybody else's. So, I think the effort's important and I think we need to keep on doing it, but I think we need a realistic sense of what the limitations will be in trying to turn some of those things into the sort of figure work that an RIA otherwise depends on.”<sup>40</sup>

## Timescales

**46.** The Committee heard concerns regarding the timescales over which the costs and benefits are planned as part of the RIA costing process. The WAO noted that between the RIA accompanying the WFG Bill as introduced at Stage 1 and the RIA as amended following stage 2 proceedings, and following recommendations from the WAO, the Welsh Government updated the analysis from five years to ten years.<sup>41</sup> A representative of the WAO questioned whether a standard five-year appraisal period was adequate for all Bills:

<sup>36</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 62

<sup>37</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 169

<sup>38</sup> Written evidence, Finance Committee, FIN(5)-18-17P3

<sup>39</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 13 July 2017, paragraph 124

<sup>40</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 15

<sup>41</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraphs 45 and 47

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“The one area that we remain a bit concerned about—and perhaps we weren’t clear enough about this at the time when we were talking to the Constitutional and Legislative Affairs Committee—was the tendency to pick a standard five years for costing the effects of the Bill. That doesn’t seem, intuitively, terribly meaningful.”<sup>42</sup>

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**47.** The Future Generations Commissioner concurred and reiterated that RIAs should consider the long term, rather than just considering the short-term processes that need to change due to the legislation, saying:

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“So, the regulatory impact assessment needs to look at the longterm cost of meeting the aspirations of a piece of legislation, rather than the short-term mechanistic costs of implementing a process.”<sup>43</sup>

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**48.** The Commissioner also outlined that the WFG Act considers planning on a generational basis (25 years).<sup>44</sup> A representative of the Future Generations Commissioner’s office went on to say:

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“It is very challenging, but large corporations regularly plan on that kind of horizon, and if they don’t, their investors ask questions. So, there are lessons to be learnt out there. No one’s saying it’s easy, but we need to start challenging the assumption that we can’t do this stuff, and start looking at where we can learn lessons and figure out how to do it.”<sup>45</sup>

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**49.** The WLGA suggested that there might be issues in accurately measuring and monitoring costs and benefits over the long term, its representative told the Committee:

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“we were speaking to consultants who had done some work down with Cornwall, where there’d been quite a large, comprehensive reorganisation of that authority. They said, after a couple of years, you can’t find—it’s difficult to identify the savings, because, actually, other programmes come along, other transformation programmes, and saving streams stop being attributed to the original reorganisation years back. They start to be attributable to other transformation programmes, as these things naturally evolve.”<sup>46</sup>

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**50.** The Welsh Government stated that the guidance for assessing the appropriate timescale for an RIA had been strengthened and now emphasised that a “steady-state should be reached” regarding costs and benefits, before the end of the appraisal period.<sup>47</sup>

## Alignment with Well-being of Future Generations (Wales) Act

**51.** One of the recommendations made in the report by PPIW was that the WFG Act could provide an integrating framework for impact assessments. The report identifies a risk that an overly elaborate framework could be developed, but that the WFG Act “leaves the door open to stronger integrated financial reporting and a clearer accountability framework through the review role of the AGW”.

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<sup>42</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 96

<sup>43</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 252

<sup>44</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 273

<sup>45</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 275

<sup>46</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 52

<sup>47</sup> National Assembly for Wales, Finance Committee, FIN(5)-15-17P2

**52.** The PPIW report recommended that the Welsh Government should consider the use of the WFG Act as a mechanism to improve the integration of Impact Assessments with the objectives of national policy.<sup>48</sup> The report suggested that the Scottish Government’s national performance framework provided a point of reference that allows policy to link clearly to delivery.<sup>49</sup> It went on to say that public bodies are currently trying to understand how the Well-being of Future Generations Act impacts them and that a clear statement from the Welsh Government regarding the Act as an overarching framework would be of benefit to the system.<sup>50</sup>

**53.** In the Future Generations Commissioner’s written evidence, she agreed with the recommendation made by PPIW. The Commissioner suggested that the **National Indicators** could also form a reasonable starting point for post-implementation review,<sup>51</sup> a representative accompanying the Commissioner reiterated the importance of this:

“in terms of the indicators, it’s quite important, of course, that the indicators are about tracking the progress of Wales as a whole. So, in terms of review, it’s going to be very important for public bodies to come up with meaningful ways of assessing their own progress and how they are maximising their contribution to those overall goals, which are tracked by the national indicators.”<sup>52</sup>

**54.** The Cabinet Secretary told the Committee that he had discussed with the Future Generations Commissioner how the “lens” of the WFG Act could be applied to the various impact assessments considered by Ministers.

## Committee view

**55.** The Committee welcomes the improvements made by the Welsh Government to the presentation of RIAs, including the use of summary information in the RIAs published so far in the Fifth Assembly. It believes that the Welsh Government should continue to present the information in this way in all future Bills it introduces.

**56.** The Committee notes that the consideration of monetised costs and benefits is integral to gaining a full picture of value when costing legislation. It acknowledges the challenges in accurately monetising some of the benefits that could be expected to arise as a consequence of legislating and believes that there should be more consistency in the Welsh Government’s approach to doing this.

**57.** The Committee notes the importance of costing the financial implications of cultural change, including changes in demand as a result of implementing legislation, and welcomes the Cabinet Secretary’s assurances that the Welsh Government will continue to attempt to measure this in producing its RIAs.

**58.** The Committee notes the evidence it received regarding estimating costs within a range to highlight uncertainty, and acknowledges that estimating a range allows for an understanding of risk associated with figures. It notes the rationale for this provided by the Cabinet Secretary’s official.

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<sup>48</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 219

<sup>49</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 250

<sup>50</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 253

<sup>51</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 257

<sup>52</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 262

**59.** The Committee notes the evidence it received regarding the timescales RIAs should consider, and specifically the evidence from the Future Generations Commissioner regarding the requirements of the Act to consider long term planning. The Committee shares concerns that timescales under five years may be too short a period over which to assess financial implications of legislation, but that appraisal periods will differ between legislation. It also notes that measuring the implications over a longer time period would be more aligned with the Well-being of Future Generations Act.

**60.** The Committee notes that the cost implications of legislation for the private sector are not always included in RIAs, which it believes to be an omission but are necessary to understanding the full financial impact of legislating.

**61.** Although the Committee scrutinises the financial implications of legislation during the Stage 1 scrutiny of a Bill, it has concerns that no specific financial scrutiny is undertaken of the changes made to a Bill during the amending process. Whilst acknowledging that the Member in Charge of a Bill will likely publish a revised Explanatory Memorandum to take account of the changes made during Stage 2, the Committee is concerned that it is not notified of the details of any consequential changes to the financial estimates and that there is limited scrutiny of changes made to the costs following the amending stages.

**62.** The Committee recently undertook financial scrutiny of the Additional Learning Needs and Education Tribunal (Wales) Bill, and reported its concerns regarding the discrepancies with the financial information provided, which resulted in a revised Explanatory Memorandum being published prior to agreement of the financial resolution on that Bill. On that occasion, the Committee requested that the Member in Charge provide details of how the financial information in the revised version had changed.

**63.** The Committee notes that the Welsh Government's legislation handbook, including guidance on the preparation of RIAs, has been updated and **published** in August 2017, and is grateful to the Cabinet Secretary for sharing a draft version to assist with this inquiry. The Committee is encouraged by the Cabinet Secretary's assurances that the updated guidance will improve the quality and consistency of RIAs.

**Recommendation 1.** The Committee recommends that the Welsh Government should ensure that a summary of financial information be included in RIAs for each of the Bills it introduces, and that a distinction be made as to whether costs are capital or revenue.

**Recommendation 2.** The Committee recommends that the Welsh Government should ensure that RIAs are explicit in their division between cash costs and savings and monetised costs.

**Recommendation 3.** The Committee recommends that the Welsh Government continue to cost cultural change and ensure that this is assessed and considered as far as is possible in RIAs. This should include broadening its RIAs to ensure they account for the aspirations of the legislation and not just the processes required to implement the change.

**Recommendation 4.** The Committee recommends that the Welsh Government should confirm whether it intends to use the Well-being of Future Generations Act as a framework for preparing RIAs, including measuring impact over a longer term.

**Recommendation 5.** The Committee recommends that the Welsh Government thoroughly consider the financial implications for all stakeholders in Regulatory Impact

Assessments, including ensuring the financial implications for the private sector are fully considered.

**Recommendation 6.** The Committee recommends that the Welsh Government improve its quality assurance processes by ensuring more thorough internal scrutiny of RIAs before they are laid.

**Recommendation 7.** The Committee recommends that where there are changes to RIAs after Stage 2, that the Member in charge should provide the Finance Committee and the relevant scrutiny committee with a summary of these changes, including the financial implications.

## 03. Stakeholder engagement

### Engagement when preparing legislation / Regulatory Impact Assessments

**64.** A number of stakeholders raised issues with the Welsh Government’s strategy for engagement when it creates and costs legislation. The Welsh Government also identified in its evidence to the Finance Committee’s Fourth Assembly legacy inquiry that stakeholder engagement was “an area which could be improved upon further”. A representative of the WAO suggested why it was important for the Welsh Government to ensure stakeholders are clear on the policy intent of legislation:

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“certainly based on the experience in the fourth Assembly, I think there was scope to be much more proactive in terms of consulting at an early stage. And also—and we touch on this again in our report on the WFG Bill—there was a sense of: to what extent was the Welsh Government keen to keep its cards close to its chest on what it actually intended doing? So, as part of that consultation, I think there’s a kind of onus on the Welsh Government to be as open as possible, to give those it’s consulting with a fairly clear idea of what it’s actually talking about doing. I think we made an observation in that case that it wasn’t always clear to those it was engaging with what the real policy intent was, or, certainly, that then changed significantly over time.”<sup>53</sup>

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**65.** The official from the Welsh Government’s Economic Appraisal and Analysis Team told the Committee that the revised guidance on RIAs suggests that a draft RIA should accompany any consultation, he explained the rationale for that:

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“There’s a number of reasons for that, not least trying to improve stakeholder engagement, and it benefits us—their ability to improve the information within the RIA. It also gives stakeholders the opportunity to scrutinise an RIA at an early stage rather than sometimes just when the Bill is introduced. That, I think, may take time to come in.”<sup>54</sup>

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**66.** NFU Cymru provided a consultation response that questioned the quality of some of the RIAs that have accompanied consultations:

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“NFU Cymru’s concerns about the Welsh Government’s current approach to RIAs are two-fold. Firstly we are concerned about the total lack of RIAs that have accompanied some consultations, even when what is proposed by the consultations gives rise to a significant and extensive regulatory and financial burden. Secondly we would question the quality of RIAs which accompany some consultations.”<sup>55</sup>

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**67.** The WLGA stated that a key feature of good practice when introducing legislation is early engagement with all stakeholders. The WLGA told the Committee that, generally, the first time that

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<sup>53</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 81

<sup>54</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 179

<sup>55</sup> Written evidence, Finance Committee, FEAL01, NFU Cymru

the WLGA will view an RIA will be when it is published, and that RIAs are mostly presented as a “fait accompli”.<sup>56</sup> Its representative outlined how the WLGA provides feedback to the Welsh Government:

“We might feed back through an early outing of the legislation at one of the scrutiny committees; I think this happened with the welfare of future generations Bill. Otherwise, to be perfectly honest, it tends to be when the RIA’s published in the draft Bill. There generally isn’t that early engagement and, by the time we do engage, it can be quite an exercise, even if we can identify those costs, to get it done in short order.”<sup>57</sup>

**68.** The Cabinet Secretary acknowledged that stakeholder engagement was an area in which the Welsh Government could learn from its experience to improve the way it worked. He told the Committee that the update to the legislation handbook would attempt to put a greater emphasis on the production of financial estimates earlier in the policy development process:

“So, we’ve tended to focus RIA activity around the publication of the Bill itself, and one of the ways I think that we’ve learned about stakeholder engagement is that, if we were to publish a draft RIA, either alongside a draft Bill or even alongside a White Paper, then there would be much better opportunities for stakeholders to be able to see the way the thinking is developing, and then to be able to provide their advice as to whether or not we are identifying the right costs, the right benefits, and whether we are attaching values to those in a way that stakeholders would regard as reasonable.”<sup>58</sup>

**69.** The Cabinet Secretary went on to explain that publishing a draft RIA would provide an opportunity to explore the costings of wider policy options at an early stage, thereby allowing the final RIA to focus on the cost of the preferred policy option, he said:

“A second benefit, we think, of the new process in the chapter is that if you have a wider range of policy options at draft RIA stages, by the time we come to the actual Bill, the RIA in the Bill would be able to focus more on the option that has now been decided upon for the Bill. So, I think another criticism that you have heard and which, again, I think we recognise and would like to respond to, is that if you reserve your RIA until the Bill period, they can often be very unwieldy, because they’ve got to not simply show the preferred option; they’ve got to show the do-nothing option, and sometimes they’ve got two or three other options as well. From the point of view, certainly, of a general reader, they can be very unwieldy and difficult to find your way through. So, if we were to move to a wider exploration of RIA possibilities earlier in the process, we’d then be able to focus more in the final RIA on the preferred option and the do-nothing option, and therefore they ought to be more accessible and easier for committees and other stakeholders to follow.”<sup>59</sup>

<sup>56</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 15

<sup>57</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 77

<sup>58</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 48

<sup>59</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 52

## Committee view

**70.** The Committee notes the acknowledgement by the Cabinet Secretary that the Welsh Government's engagement with stakeholders on the cost of implementing its legislation is an area which could be improved upon, and welcomes the desire shown by the Cabinet Secretary to do so. The Committee supports the proposal to publish a draft RIA as part of the consultation on a Bill, and believes this to be a measure of good practice which it would expect to see as part of all future consultations. The level of detail and accessibility within RIA will be crucial in enabling stakeholders to effectively assess the accuracy of the information provided.

**Recommendation 8.** The Committee recommends that the Welsh Government should provide draft RIAs as part of the consultation it undertakes in developing legislative proposals, and that it should review its wider strategy and advice to Bill teams regarding engagement with stakeholders to emphasise that this should be undertaken as early as possible.

**Recommendation 9.** The Committee recommends the Welsh Government ensures that relevant stakeholders are engaged with the process when it creates costings and that stakeholders are able to comment and input on those costings and confirm whether they're in agreement.

## 04. Funding for new legislative costs

### Funding pressures

**71.** The WLGA outlined that austerity, combined with increased pressure from laws made by the Welsh, UK and European legislatures can be “just as impactful if they create pressures that ultimately must be absorbed by local government”. It went on to say that, the “haphazard” approach to costing and funding new legislation (and “new burdens”) creates a risk that services will suffer if adequate funding is not provided.<sup>60</sup>

**72.** The WAO raised the issue that the Welsh Government is not consistently clear as to whether new functions will be accompanied by, or require funding, in reference to the WFG Act 2015, its representative stated:

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“in some of our value for money reporting recently, we’ve been commenting on situations where public bodies like Natural Resources Wales, for example, through various pieces of legislation, have been required to take on new functions, and one of the challenges for them is: is there clarity around whether any additional resources are coming with those new functions, or are they being expected to absorb that?”

I think even, again, with WFG Bill, there was a sense of the Welsh Government saying, ‘Well, this will replace what people are already doing,’ but the argument was, ‘Well, actually, do they need to do something differently and better and do more of something?’ But it then becomes a question of: if there aren’t additional resources—so, if you can only afford it by not doing something else—what’s the disbenefit? What are you losing by not doing the other stuff that you might otherwise be doing with that resource as well?”<sup>61</sup>

**73.** When discussing invest-to-save initiatives, the WLGA raised the potential opportunity costs that could occur due to a lack of clear funding streams for new legislation:

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“If there isn’t a cashable saving from upfront invest-to-save funding, then Dave’s absolutely right—there’s an opportunity cost, and it’s a cut somewhere else.”<sup>62</sup>

**74.** The WLGA included a schedule of unfunded burdens in its written evidence which identifies that, due to UK and Welsh Government proposals, the average local authority will experience unfunded pressures of £7.9 million in 2017-18, £10.6 million in 2018-19 and £13.3 million in 2019-20. The WLGA suggested that these financial implications should not be considered in isolation and that there should be “a clear reinstatement of a set of core principles for funding new burdens”.<sup>63</sup> In its written evidence the Society of Local Authority Chief Executives (SOLACE) reiterated the WLGA’s view that the Welsh Government should commit to fully funding new legislative obligations.<sup>64</sup>

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<sup>60</sup> Written evidence, Finance Committee, FIN(5)-16-17P1

<sup>61</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 40

<sup>62</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 69

<sup>63</sup> Written evidence, Finance Committee, FIN(5)-16-17P1

<sup>64</sup> Written evidence, Finance Committee, FIN(5)-19-17P2

**75.** During the Committee’s stakeholder engagement session, concerns were raised regarding transitional funding. Stakeholders felt that in some situations transitional funding might be required beyond the implementation period and suggested that the Welsh Government should periodically assess this funding and if necessary should consider extending or tapering funding, if a need is identified. Specifically, the Committee heard that money from the Intermediate Care Fund was being used to fund the integrated team model required under the Social Services and Well-being Act. Participants noted that the ICF is allocated annually and that this funding was not guaranteed for future years, which posed uncertainty for those bodies reliant upon the grants.

**76.** The Committee received two contrasting views regarding funding of new organisations established by legislation. With regard to the estimated operational costs outlined in the relevant RIAs, Qualifications Wales said that the RIA provided “quite a realistic estimate”,<sup>65</sup> whereas the Future Generations Commissioner said that the relevant RIA was “way off the mark”.<sup>66</sup> In the Commissioner’s written evidence, she notes:

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“The staffing cost estimate for my Office was based on the Office of the Older People’s Commissioner and yet my statutory remit and functions are very different. Whilst the Older People’s Commissioner, like other Commissioners does have a casework and enforcement function, which I do not, the area of focus of the role overall is considerably narrower in scope.”<sup>67</sup>

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**77.** The Commissioner’s written evidence also said:

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“It appears that little consideration has been given to the breadth of this remit in the RIA estimates nor to the level of support that some public bodies might require in order to change embedded behaviours which have grown over very many years.”<sup>68</sup>

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**78.** The Commissioner also provided an assessment of the RIA’s estimated future cost of the office, her written evidence stated:

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“Moving forward I do not believe that the estimate for the annual running of my office matches the actual costs of meeting the statutory duties conveyed on me. Clearly, I can only work within the budget provided and have already implemented innovative ways of securing additional resources through partnership working but it remains the case that delivering again the breadth of the role in policy and functional terms is very challenging based on the allocated budget.”<sup>69</sup>

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## Committee view

**79.** The Committee acknowledges that legislation passed by the National Assembly can pose a financial burden to those on whom the requirement to implement the provisions will fall, in particular local government. It is aware of the agreement between previous Welsh Governments and the WLGA to fund new responsibilities before they are passed on to local government, and previously

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<sup>65</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 29 June 2017, paragraph 292

<sup>66</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 5 July 2017, paragraph 223

<sup>67</sup> National Assembly for Wales, Finance Committee, FIN(5)-18-17P3

<sup>68</sup> Ibid

<sup>69</sup> Ibid

recommended in its report on the financial implications of the Public Health (Wales) Bill that additional funding should be provided by the Welsh Government to cover the additional costs faced by local government as a consequence of implementing its obligations from that Bill.

**80.** The Committee notes with some concern the contrasting experience of two organisations established through recent legislation passed by the National Assembly. It is aware that, in the case of Qualifications Wales, work was carried out in parallel to the legislation being developed and that its Chief Executive was employed by the Welsh Government in time to allow involvement in key decisions regarding the establishment of the organisation, whereas the estimated costs for the establishment of the office of the Future Generations Commissioner was based on comparisons with other bodies considered similar, such as Qualifications Wales and the Older People's Commissioner. The Committee is concerned that this approach may risk inadequate consideration of the purposes of the relevant piece of legislation.

**81.** Whilst acknowledging the innovative ways in which organisations fund its new legislative obligations, such as by making use of the Intermediate Care Fund, the Committee is concerned that this does not provide a sustainable method of funding in the long term.

**Recommendation 10.** The Committee recommends that the summary information included in RIAs contain explicit reference to how any costs identified in the RIA will be funded and by whom.

**Recommendation 11.** The Committee recommends that the Welsh Government should build evaluation periods into its assessment of the costs of legislation to allow for review and evaluation of transitional funding.

## 05. Subordinate legislation

### Code of practice for subordinate legislation

**82.** The Government of Wales Act 2006 (GOWA), Section 76(2) requires the Welsh Government to make and lay a Code of Practice setting out their policy on undertaking RIAs in relation to Welsh Subordinate Legislation. The Welsh Government published its Code of Practice in October 2009.

**83.** The PPIW report notes that whilst the Code’s description of an RIA is a “potentially important and powerful statement”, in practice “the code appears to be little used other than as a threshold guide for whether an RIA is required for a piece of proposed secondary legislation”.<sup>70</sup>

**84.** The Cabinet Secretary outlined to the Committee that he intended to review the Code, and how it applied:

“Well, Chair, the code is, in our terms, fairly elderly. It was produced in 2009. It is being revised. It needs to be revised. There’s been lots more experience since then, and I’m happy to say today that we’ll take the opportunity of that revision to look actively at the question of whether or not it should apply not just to secondary but to primary legislation too.”<sup>71</sup>

### Regulation making powers and RIAs

**85.** The Committee received information from witnesses regarding the difficulty in assessing legislation that contains uncosted regulation making provisions. In its written evidence, ADSS Cymru outlined that with regard to the Social Services and Well-being (Wales) Act 2014 that “the enabling nature of the legislation meant that it was difficult to analyse, with any degree of accuracy, true costs involved”. In its written evidence SOLACE reiterated those issues:

“In some respects of course primary legislation is largely enabling in that it outlines principles and outcomes which it will enable. The Well-being of Future Generations (Wales) Act 2014 is a classic example as is the Social Services and Well-being (Wales) Act 2014 both fall into this category, with the latter containing rather more in the form of how the outcome is to be achieved than the former.”<sup>72</sup>

**86.** SOLACE also stated that where the detail of costs are contained in subordinate legislation there is a risk of “creeping onset of costs which have not been identified”.

**87.** A key issue raised by stakeholders with regard to the Social Services and Well-being (Wales) Act 2014 was the lack of information contained in the RIA due to the enabling nature of the legislation and the lack of information regarding cultural change. ADSS Cymru raised concerns about the costs of the legislation:

“ADSS Cymru and the Welsh Local Government Association (WLGA) are very supportive of the principles and ambitions of the Act, but believed the costs

<sup>70</sup> Public Policy Institute for Wales, Reducing Complexity and Adding Value: A Strategic Approach to Impact Assessment in the Welsh Government, April 2016

<sup>71</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 93

<sup>72</sup> Written evidence, Finance Committee, FIN(5)-19-17P2

were understated. In evidence to the Health and Social Care Committee, during scrutiny of the SSWB Bill, serious concerns were expressed about resource impacts of the Bill. The enabling nature of the legislation meant that it was difficult to analyse, with any degree of accuracy, true costs involved.”<sup>73</sup>

**88.** ADSS Cymru also noted that the RIA for that Bill was limited in scope:

“We highlighted concerns over the limited scope of the RIA in that it underestimated the financial impact of the proposed changes. The costs identified in the Bill’s RIA were limited to analysis around additional training costs and cost benefits in relation to reduced administration, complaints and litigation.”<sup>74</sup>

**89.** Welsh Government officials told the Committee that where possible it will include a best estimate of the costs associated with subordinate legislation, the official from the Economic Appraisal and Analysis Team advised that the Welsh Government’s guidance suggests that the costs of any relevant subordinate legislation should be identified in the RIA of the relevant piece of primary legislation:

“We recognise that, for effective scrutiny of a Bill, you need to have an understanding of the costs associated with the subordinate legislation. So, the guidance is clear that, as far as possible, the costs and benefits of any associated subordinated legislation should be included within the RIA for the Bill.”<sup>75</sup>

**90.** The Cabinet Secretary reiterated the Welsh Government’s commitment, in producing RIAs for primary legislation, to “the basic strategy” of trying:

“as much as possible, to provide an estimate of the costs of subordinate legislation as well.”<sup>76</sup>

**91.** The Cabinet Secretary did however acknowledge that it was not always feasible to provide an estimate of the costs of subordinate legislation at the primary legislative stage. He cited an example from the Landfills Disposals Tax (Wales) Bill, where it had not been possible to make provision for a specific test within the primary legislation as the test had not been fully developed, therefore subordinate legislation would be required to legislate for that test.<sup>77</sup>

**92.** The Cabinet Secretary went on to explain that when secondary legislation is brought forward under an affirmative procedure, a separate RIA will accompany that legislation.

## Committee view

**93.** The Committee has previously commented in some reports on the financial implications of individual Bills on the lack of sufficiently robust scrutiny by the Assembly of the amending of primary legislation through subordinate legislation. In its report on the Public Health (Wales) Bill, the Committee recommended that the Welsh Government should develop a more consistent approach

<sup>73</sup> Written evidence, Finance Committee, FIN(5)-19-17P1

<sup>74</sup> Written evidence, Finance Committee, FIN(5)-19-17P1

<sup>75</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 246

<sup>76</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 79

<sup>77</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 79

across Bills to provide costs associated with subordinate legislation. The Committee therefore welcomes the Welsh Government's intention to strengthen its RIA guidance relating to the costing of subordinate legislation in RIAs and recommend that the Welsh Government commit to providing as full a picture of the costs of subordinate legislation as possible when proposing primary legislation.

**94.** The Committee acknowledges the point made by the Cabinet Secretary in relation to subordinate legislation being brought forward under an affirmative procedure being accompanied by a separate RIA, however the Finance Committee would not routinely be made aware whether that legislation significantly alters the costs of primary legislation.

**Recommendation 12.** The Committee recommends that the Welsh Government notify it where subordinate legislation laid before the Assembly significantly alters the costs of the associated primary legislation.

**Recommendation 13.** The Committee recommends that the Welsh Government commit to providing as full a picture of the costs of subordinate legislation as possible when proposing primary legislation.

## 06. Post-implementation review of costs

### Requirement for review and evaluation

**95.** The Committee heard that there was a need for greater evaluation of the actual costs of delivering legislation, the AGW stated in his written evidence that “the examination of the costs of legislation is of great importance given the Assembly’s role in determining Welsh public expenditure”. He suggested that this work should be a regular feature of Assembly Business, rather than “a few isolated exercises”.<sup>78</sup> The report by PPIW outlined that there should be integration of the ex ante and ex post processes associated with Impact Assessments to “test empirically the accuracy of the IA predictions in relation to the chosen policy/legislative option, and as an aid to evaluation generally”. The WLGA also suggested that in the context of austerity there needed to be monitoring of the costs of legislation to understand the accuracy of estimates.<sup>79</sup>

**96.** The Welsh Government’s Chief Economist told the Committee that the responsibility for tracking the costs and benefits incurred due to legislation was “absolutely core to the function of the policy team”.<sup>80</sup> When asked if significant differences between the estimated and actual costs of legislation was something the central team would consider, the Chief Economist stated:

“That would be a matter for the accounting officer and the Minister in that department. Sorry—I don’t mean to come back to the same point, but they’re allocated the money and are responsible for the way that money is spent. So, if it turns out that legislation is not working in the way it was intended, they would need to assess that and make a judgment about whether to revise the legislation, to change it in some way, or to put in place some other policy measures.”<sup>81</sup>

### Potential processes

**97.** In his written evidence, the AGW referred to the process of undertaking post-legislative scrutiny of costs as “not a simple task”, primarily due to a significant amount of the baseline costs in RIAs that are unlikely to be routinely recorded by stakeholders (such as costs associated with staff time). The written evidence went on to say that:

“Post-legislative costing therefore requires estimation work, in much the same way as is needed for pre-legislative costing in explanatory memoranda.”<sup>82</sup>

**98.** The AGW suggested that a more appropriate method of undertaking post-legislative review of Welsh Government legislation would be for the Welsh Government to conduct retrospective estimation work, within this process, the role of the Finance Committee would be to scrutinise those estimates. The WAO representative suggested that the Welsh Government should be responsible for compiling this information:

<sup>78</sup> Written evidence, Finance Committee, FIN(5)-15-17P1

<sup>79</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 50

<sup>80</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 216

<sup>81</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 222

<sup>82</sup> Written evidence, Finance Committee, FIN(5)-15-17P1

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“we would see it as the responsibility of Government to produce the analysis to inform scrutiny in that regard, rather than those scrutinising having to almost generate that information through the scrutiny process itself.”<sup>83</sup>

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**99.** The Chief Economist told the Committee that post-implementation review of costs is an expectation within the legislative guidance produced by the Welsh Government, although the timing will be dependent on the legislation considered and this is more likely to take the form of episodic review, rather than regular monitoring:

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“there is an expectation in guidance. Guidance sets out a requirement for post-implementation reviews to take place. But the question is—. But that’s not a matter of collecting data through some kind of repeated return. This would be an episodic process, where you would review the legislation and you would look at the implications in terms of costs and benefits.”<sup>84</sup>

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**100.** A representative from the WLGA suggested that any review of the costs of legislation should be carried out independently of the policy team, stating:

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“I think when we said ‘independent’, it could be—I mean, that could be civil servants doing that, it could be the—I’ve forgotten the name of it; the KAS team, knowledge and analytical services. They’re all professionals, who have—. I think the framework for the way they work means that they have a degree of objectivity.”<sup>85</sup>

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**101.** The Cabinet Secretary told the Committee that the Welsh Government recognises that post-legislation evaluation is an area which could be improved upon, saying that there was:

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“a varied pattern of how post-legislative evaluation has been planned into the pieces of legislation that have gone through the National Assembly.”<sup>86</sup>

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**102.** He went on to say that where evaluation had taken place, its focus had been in the policy impact rather than tracking whether the costs that were set out in the RIA turn out to be the costs that are incurred on implementation, adding that the work being done to update the guidance in the legislation handbook aimed to:

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“draw that more to the surface and make that a more routine part of the way that we do evaluation in the future.”<sup>87</sup>

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## Other review and evaluation activities being undertaken

**103.** The Committee heard evidence from the WAO and Welsh Government regarding post-implementation review activity, either planned, underway or completed. The WAO advised that it was undertaking work in 2018-19 to assess the implementation of certain pieces of legislation in a local government context. Whilst these reviews are not currently due to consider the financial implications

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<sup>83</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 117

<sup>84</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 234

<sup>85</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 21 June 2017, paragraph 119

<sup>86</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 108

<sup>87</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 July 2017, paragraph 110

of legislation, a representative from the WAO noted that if required, the WAO could consider expanding the scope of the studies.<sup>88</sup>

**104.** The Welsh Government also outlined five areas of post-implementation review currently underway or complete.<sup>89</sup>

**105.** The Cabinet Secretary provided further written evidence outlining the post-implementation review activity being undertaken or due to be undertaken in regard of the four Acts the Committee has used as case studies during this inquiry.<sup>90</sup>

### Committee view

**106.** The Committee notes the acceptance by the Cabinet Secretary that post-legislative evaluation is an area which the Welsh Government can improve upon, and acknowledges the intention to put greater focus on tracking actual costs against the estimates in its updated guidance.

**107.** The Committee believes that understanding the actual costs of legislation is integral to assessing how well the Welsh Government is managing its resources and that a process to consider this would provide valuable lessons that would aid the improvement of the overall costing process. The Committee believes that an emphasis on evaluating the financial implications should be embedded into the post-legislative evaluation undertaken by the Welsh Government on each piece legislation it introduces which is agreed by the National Assembly.

**Recommendation 14.** The Committee recommends that the Welsh Government consider options to monitor and evaluate the financial implications of legislation in order to:

- Ensure that relevant public bodies are not routinely incurring more cost or less benefit than was anticipated in the relevant RIA.
- Assure itself of the accuracy of its processes for creating RIAs and to use this information to improve its estimating techniques (where appropriate).

**Recommendation 15.** The Committee recommends that the Welsh Government ensure costs are a consideration of future post-implementation reviews and that the Economic Appraisal Team is involved in policy team evaluation of legislation in order to ensure costs are considered.

**Recommendation 16.** The Committee recommends that future RIAs set-out a clear process for post-implementation review of the financial estimates, including when and what will be assessed.

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<sup>88</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 7 June 2017, paragraph 122

<sup>89</sup> National Assembly for Wales, Finance Committee, FIN(5)-15-17P2

<sup>90</sup> Finance Committee, Letter from the Cabinet Secretary for Finance and Local Government, July 2017 [FIN\(5\)-20-17PTN1](#)

## Annex A – List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee’s website.

Date	Name and Organisation
7 June 2017	Matthew Mortlock, Wales Audit Office Martin Peters, Wales Audit Office Jonathan Price, Welsh Government Andrew Hobden, Welsh Government
21 June 2017	Jon Rae, Welsh Local Government Association Dave Street, Caerphilly County Borough Council Chris Moore, Carmarthenshire County Council
29 June 2017	Dr Clive Grace, UK Research and Consultancy Services Ltd Dan Bristow, Public Policy Institute for Wales Philip Blaker, Qualifications Wales Kerry Price, Qualifications Wales Alison Standfast, Qualifications Wales Bethan Jones, Rent Smart Wales
5 July 2017	Sophie Howe, Future Generations Commissioner for Wales Michael Palmer, Office of the Future Generations Commissioner for Wales
13 July 2017	Jenny Williams, Association of Directors of Social Services Alwyn Jones, Association of Directors of Social Services Dilwyn Williams, Society of Local Authority Chief Executives
19 July 2017	Mark Drakeford AM, Cabinet Secretary for Finance and Local Government Jonathan Price, Welsh Government Andrew Hobden, Welsh Government

## Annex B – List of written evidence

The following people and organisations provided written evidence to the Committee. All consultation responses and additional written information can be viewed on the Committee’s website.

<b>Organisation</b>	<b>Reference</b>
NFU Cymru	FEAL 01
Residential Landlords Association	FEAL 02
Welsh Local Government Association	FEAL 03
Rent Smart Wales	FEAL 04
Qualifications Wales	FEAL 05
Future Generations Commissioner for Wales	FIN(5)-18-17 P3
Association of Directors of Social Services Wales	FIN(5)-19-17 P1
Society of Local Authority Chief Executives	FIN(5)-19-17 P2
<b>Additional information</b>	<b>Reference</b>
<u>Cabinet Secretary for Finance and Local Government – July 2017</u>	FIN(5)-20-17PTN1
<u>Future Generations Commissioner for Wales – 21 July 2017</u>	FIN(5)-21-17PTN10