

# The Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation

## 1. Introduction

- 1.1 The purpose of this Code is to set out the Welsh Ministers' policy on carrying out regulatory impact assessments (RIAs) in relation to relevant subordinate legislation which they propose to make. Although the term "the Welsh Ministers" is used in this Code, it is, unless otherwise stated, taken to also include the First Minister and the Counsel General in accordance with section 76(2)(b) of the Government of Wales Act 2006 ("GOWA 2006").
- 1.2 The Code also reaffirms the Welsh Ministers' commitment to consider the impact of subordinate legislation on business, the third sector, local government and others; and on its statutory duties, explained below.
- 1.3 **Details of what constitutes subordinate legislation** can be found on the Senedd Cymru website.

## 2. The Content of this Code

- 2.1 This Code is made under section 76 of GOWA 2006, which provides that the Welsh Ministers must make a code of practice setting out how and in what circumstances they intend to carry out a regulatory impact assessment when making relevant Welsh subordinate legislation.
- 2.2 Section 76(2)(a) of GOWA 2006 provides the following definition for a Regulatory Impact Assessment:  
  
"a regulatory impact assessment is an assessment as to the likely costs and benefits of complying with relevant Welsh subordinate legislation".
- 2.3 Section 76(2)(b) of GOWA 2006 provides the following definition in respect of "relevant Welsh subordinate legislation":  
  
"subordinate legislation is relevant Welsh subordinate legislation if it is made by the Welsh Ministers, the First Minister or the Counsel General and the statutory instrument (or a draft of the statutory instrument) containing it is required to be laid before the Senedd".

2.4 Paragraph 3.3 of this Code also sets out the circumstances in which the Welsh Ministers will voluntarily produce an RIA for subordinate legislation which falls outside of the definition of “relevant Welsh subordinate legislation”.

### **3. Policy for carrying out an RIA**

3.1 RIAs provide the Welsh Ministers, the Accounting Officer, Senedd Cymru and stakeholders with information on the likely costs, benefits and risks associated with alternative policy options. This includes consideration of how the proposed changes would impact on different individuals, groups and organisations etc. Each assessment is intended to help the Welsh Ministers identify a preferred option from a value for money perspective and is designed to present the information needed for Senedd Cymru and stakeholders to be able to scrutinise that decision effectively.

3.2 The Welsh Ministers’ policy will be to always carry out an RIA for relevant Welsh subordinate legislation (as defined) - subject to the following exceptions:

- Where the subordinate legislation simply increases a statutory fee, tax rate, payment, grant or allowance by a predetermined formula (for example, the rate of inflation).
- Where technical amendments are required to change the wording of the law rather than its purpose or effect.
- Where factual amendments are being made to update subordinate legislation and which do not alter the policy (or its impact) in any significant way or how it is applied in a given situation.
- Where the subordinate legislation is a Commencement Order or Commencement Regulations or Regulations which also make consequential provision or savings (provided the savings are not made by imposing an additional cost on an alternative party), etc.
- Where the delay that would be caused by conducting an RIA would defeat the object of making the legislation in question.
- Where the subordinate legislation is urgently required to:
  - i. negate or mitigate a serious threat to human, animal or plant health or serious damage to property; OR
  - ii. properly respond to circumstances resulting from such a threat.
- Where the subordinate legislation is made in the exercise of statutory powers granted by an Act or Measure which does not in any way give the Welsh Ministers discretion as to how those powers should be exercised.

- 3.3 Where an RIA is not required under this Code in respect of a piece of subordinate legislation (either because it falls outside the scope of section 76(2)(b) of GOWA 2006 or it falls within one of the exceptions) the Welsh Ministers may voluntarily conduct an RIA. Each piece of subordinate legislation which does not require an RIA will be assessed individually to determine whether it will nevertheless be accompanied by an RIA. Generally, the greater the impact of a piece of subordinate legislation, the more likely it is that an RIA will be carried out in respect of it.
- 3.4 The development of an RIA is part of an ongoing process that begins with an assessment of whether legislation is necessary to implement a new policy. The impact of the proposed subordinate legislation must be assessed when the options for the development of a policy are being considered. Effective stakeholder engagement is critical for the development of a robust RIA and the approach is consistent with the Welsh Government's policy of consulting and involving others (including business, local government and the voluntary sectors) in the development of policies at the very earliest opportunity.
- 3.5 The RIA is developed in parallel to an Integrated Impact Assessment (IIA). The Well-being of Future Generations (Wales) Act 2015 (WFGA 2015) provides the framework for the IIA, which assesses the social, cultural, economic and environmental impacts (both positive and negative) of policy proposals.
- 3.6 Subordinate legislation is usually concerned with detailed changes to the law made in most cases under powers from an Act of Parliament, an Act of Senedd Cymru or an Assembly Measure. The changes made by subordinate legislation can vary significantly from the technical, like uprating figures in line with inflation; to providing detailed rules necessary for the operation of an Act or Measure. In all cases, the level of detail and depth of analysis in the RIA should be proportionate to the scale of the likely impact.
- 3.7 In line with Standing Order requirements, the completed RIA will be included as part of the Explanatory Memorandum which accompanies a piece of subordinate legislation when it is laid before the Senedd.
- 3.8 Where two or more pieces of subordinate legislation are closely linked and a single RIA could adequately address each of them, a single RIA may be

prepared in respect of all those pieces of subordinate legislation. Where this is the case, the RIA (or an internet link to the RIA) will be included in each Explanatory Memorandum.

#### **4. Consultation in connection with RIAs for subordinate legislation**

##### **The Welsh Ministers' statutory schemes and functions**

4.1 As part of the regulatory process and in compiling any RIA, the Welsh Ministers will carry out the proper and appropriate consultation with those who are likely to be affected, and those who have an interest in the overall impact of the legislation. Such consultation will be consistent with the provisions of the statutory partnership schemes provided for in GOWA 2006:

- Section 73 – **Local government partnership scheme** (Chapter 8)
- Section 74 – **Third sector scheme** (Chapter 3), and
- Section 75 – **Business scheme** (paragraphs 17 – 23)

4.2 In compiling an RIA, the Welsh Ministers will have due regard to their statutory duties including those set out in GOWA 2006.

4.3 It is the policy of the Welsh Government to consult for 12 weeks on new policy proposals unless there is a compelling reason to do otherwise. All public consultations are made available online.

4.4 **Current Welsh Government consultations** are available on the GOV.WALES website.

#### **5. Revision and remaking**

5.1 Section 76(3)(a) of GOWA 2006 requires the Welsh Ministers to keep this Code under review.

5.2 Section 76(4) to (6) of GOWA 2006 provides that if the Welsh Ministers decide they want to revise or remake the Code then they must:

- consult such persons as they consider appropriate
- publish the Code when they remake it
- publish any revisions (either the revisions themselves or the revised Code in its entirety), and

- If the Code is remade or revised, then lay a copy before the Senedd.

## **6. Consultation on the Code**

6.1 A public consultation on a draft version of the revised Code was held between 08 December 2020 and 04 March 2021. The consultation asked that the scope of the draft Code and the proposed exceptions be considered.

6.2 This Code was laid before the Senedd on 29 June 2021.