

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Simon Thomas AM
Chair
Finance Committee
National Assembly for Wales

19 December 2017

Dear Simon,

I would like to thank the Committee for its report, *Inquiry into the financial estimates accompanying legislation* and welcome the opportunity to respond to the recommendations. The full response is attached to this letter.

The Welsh Government recognises the importance of continuing to develop and improve our approach to assessing and presenting the financial implications of legislation. Since the end of the Fourth Assembly, a number of changes have been made to the guidance on developing Regulatory Impact Assessments (RIAs) for Assembly Bills. It was pleasing to note the Committee's report recognised the improvements made to the presentation of RIAs during the Fifth Assembly.

There are a number of common areas in the recommendations made in the report and the Welsh Government's own thinking on how RIAs can be improved going forward. Of the 16 recommendations in this report, we have been able to accept 15 of these in whole or in principle. The advice given to teams working on Assembly Bills will be revised accordingly.

Again, I thank the Committee for this helpful report and for their continued scrutiny of the financial estimates accompanying legislation.

Yours sincerely,

A handwritten signature in black ink that reads "Mark".

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

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

Written Response by the Welsh Government to the report of the Finance Committee entitled *Inquiry into the financial estimates accompanying legislation*

20 December 2017

Detailed responses to the report's recommendations are set out below:

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.

Response: Accept

The Welsh Government developed an RIA summary table during summer 2016 and this has been used in the Explanatory Memorandum for each Assembly Bill introduced during the Fifth Assembly. We will continue to use this summary table for future Bills and will differentiate between capital and revenue costs in the table narrative where appropriate.

Financial Implications: There are no new financial implications for responding to this recommendation.

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.

Response: Accept

In line with the existing guidance, the Welsh Government will continue to quantify and monetise all costs and benefits as far as is practicable. We will ensure that RIAs are clearer when differentiating between cash costs and cost-savings and those costs and benefits which have been monetised.

Financial Implications: There are no new financial implications for responding to this recommendation.

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.

Response: Accept in principle

The Welsh Government will continue to consider and cost cultural change as far as is possible in RIAs. The evidence provided to the inquiry by various stakeholders reinforced how difficult it can be sometimes to monetise culture change and the aspirations of legislation. We will seek an appropriate balance between the need to provide the Assembly and stakeholders with a quantified assessment of these costs and the risk of presenting a spurious exactitude in the assessment.

Financial Implications: Any new financial implications will be met from existing departmental budgets.

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.

Response: Accept

The HM Treasury Green Book and Standing Order requirements will continue to provide the framework for preparing Welsh Government RIAs. A project is under way within Welsh Government to bring the various policy impact assessments together using the framework provided by the Well-being of Future Generations (Wales) Act 2015. This is in response to a recommendation made in the Public Policy Institute for Wales (PPIW) report, Reducing complexity and adding value: A strategic approach to impact assessment in the Welsh Government. While the PPIW report did touch upon RIAs they were not the main focus of the report and consequently, RIAs fall outside of the scope of the current project. The policy impact assessments will, however, inform the analysis presented in the RIA.

In terms of the appraisal period used in RIAs, the Welsh Government believes that the current approach and guidance is proportionate and provides sufficient flexibility to consider and select the correct appraisal period on a Bill by Bill basis. The Welsh Government recognises that where legislation has a long-term focus then it is necessary to consider impacts over a longer period than usual.

Financial Implications: The current project is being taken forward within existing budgets.

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.

Response: Accept

Each Welsh Government RIA presents a proportionate assessment of the likely costs and benefits of legislation. Central to this is the careful consideration of the impact (including financial) of the legislation on all stakeholders. There is a particular focus when developing RIAs on how proposed legislation will affect the private sector and whether there will be any impact on the competitiveness of Welsh businesses.

Financial Implications: There are no new financial implications for responding to this recommendation.

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.

Response: Accept

As discussed during the evidence sessions, the Welsh Government believes that the current approach whereby responsibility for the production of a robust and accurate RIA rests with the relevant Minister and policy department is the correct one. However, we accept there is scope to improve the current processes to ensure that any errors or gaps in an analysis are identified before a Bill is laid in the Assembly. We will consider the current procedures within each policy department and develop a standardised approach.

Financial Implications: This will be considered as part of the work looking at current processes.

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.

Response: Accept

The Welsh Government will inform the Finance Committee and the relevant scrutiny committee of any significant changes to the RIA (including financial implications) when a revised Explanatory Memorandum is published after Stage 2.

Financial Implications: The financial implications for responding to this recommendation will be met from existing departmental resources.

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.

Response: Accept

The Welsh Government recognises that effective stakeholder engagement is essential in order to develop robust RIAs. The review of RIAs undertaken at the end of the Fourth Assembly identified this as an area where improvements could be made and further advice has been given to Bill teams about the importance of stakeholder engagement. The revised *Legislation Handbook on Assembly Bills* (published August 2017) sets out a more clearly defined, staged approach to developing an RIA, one part of which is the inclusion of a draft RIA as part of a consultation. Any additional and/or alternative evidence received during the consultation exercise will be used to inform the final RIA.

Financial Implications: The financial implications for responding to this recommendation will be met from existing departmental resources.

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.

Response: Accept in principle

As above, the Welsh Government will continue to engage with the relevant stakeholders when assessing the likely impacts of legislation. The inclusion of a draft RIA as part of consultations on proposed Bills will give stakeholders the opportunity to comment and input on the analysis.

Each RIA represents the Welsh Government's assessment of the likely costs of the legislation and there may be instances in which the Welsh Government and stakeholders disagree about the scope and or scale of those impacts. Where this is known to be the case, the Welsh Government will set this out in the RIA. The RIA remains, however, a statement made and owned by the Welsh Government and the final responsibility for stakeholder views has to rest with stakeholders themselves.

Financial Implications: There are no new financial implications for responding to this recommendation.

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.

Response: Reject

RIAs are a value for money analysis and already set out upon whom additional costs are expected to fall as a result of legislation. To extend the analysis to consider how those costs will be funded moves beyond the design and intended purpose of the assessment.

Matters of affordability and funding are of course important considerations for the Welsh Government and the Assembly. Such matters will be considered during the development of the legislation and in the Financial Resolution for each Bill.

Financial Implications: None.

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.

Response: Accept in principle

The Welsh Government is unclear as to the meaning of this recommendation. In light of the evidence presented in the Committee report, the Welsh Government has interpreted this recommendation as referring to implementation processes within Welsh Government rather than the way in which RIAs are developed. Where the implementation of legislation includes an interim review of the funding arrangements, the administrative costs associated with that interim review will be captured in the RIA.

Financial Implications: The financial implications for responding to this recommendation will be met from existing departmental resources.

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.

Response: Accept in principle

Where the Welsh Government lays subordinate legislation to commence or implement recently enacted primary legislation and the RIA for the subordinate legislation identifies costs which are significantly different to those presented in the RIA for the primary legislation, this will be identified in the RIA accompanying the subordinate legislation. The main reasons for the cost differences will also be outlined.

Where subordinate legislation is amended outside of the appraisal period considered in the original RIA, the Welsh Government does not intend to re-visit the RIA for the primary legislation. The RIA for the amending subordinate legislation will, however, consider the additional costs and benefits of the amendments against a baseline 'Do Nothing' option.

Financial Implications: There are no new financial implications for responding to this recommendation.

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.

Response: Accept

The revised guidance in the *Legislation Handbook on Assembly Bills* already makes it clear that the RIA for a Bill should, as far as is practicable, include the costs and benefits of any associated subordinate legislation.

Financial Implications: There are no new financial implications for responding to this recommendation.

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).

Response: Accept

The Welsh Government accepts the need for the continuous improvement of its approach to creating RIAs and will consider the options for monitoring and evaluating the financial implications of legislation. We will engage with the key stakeholders as part of this process.

Financial Implications: This will be included as part of the consideration of alternative options.

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.

Response: Accept

The Welsh Government recognises the importance of considering costs in future post-implementation reviews. The *Legislation Handbook on Assembly Bills* identifies a number of 'aims' around the post-implementation review of legislation, including to:

'consider the estimated costs, savings, benefits and dis-benefits – any significant differences between the forecast costs, savings, benefits and dis-benefits included in the RIA and the outturn costs, savings, benefits and dis-benefits should be investigated and explained.'

As was acknowledged in the evidence given to the Committee inquiry, costs are not necessarily recorded against specific pieces of legislation and so determining the costs after legislation has been implemented is often as difficult as when developing the RIA. Nevertheless, we will look to include costs in future reviews where this is feasible.

The Economic Appraisal team may not always be the most appropriate to lead on evaluation. However, there are other analysts based within policy departments and those in Knowledge and Analytical Services (KAS) who are able to advise policy teams as required.

Financial Implications: The cost of evaluating legislation is met from existing departmental budgets.

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.

Response: Accept

This is linked to recommendation 15. Where the Welsh Government has determined that it will be feasible to include a consideration of costs within a post-implementation review, we will set this out in the relevant section of the Explanatory Memorandum.

Financial Implications: Any new financial implications will be met from existing departmental budgets.