

The background of the page is a photograph of the Edinburgh University Law School building, a grand neoclassical structure with a prominent dome and a large courtyard with a green lawn. The sky is blue with scattered white clouds. The title text is overlaid on a white rectangular area on the left side of the image.

Recommendations and Notes on Scottish Children's Rights and Wellbeing Impact Assessments

MAY 2019

LLM Human Rights Clinic, Edinburgh
University Law School

Authored by: Ivane Chitashvili,
Helene LJ Combes, Katie Gillespie,
Klára Kipielová, Sania Khan, Kenya Murakami,
Nurjan Rakymova, Leonie Schmid,
Guncha Sharma.

Table of Contents

I. Introduction	3
II. Why advocate for children’s rights?	4
III. The role of Impact Assessments in advancing children’s rights	5
IV. Examining Scottish CRWIA models	8
<i>Assessment Styles</i>	<i>8</i>
<i>Well-Being Indicators (SHANARRI).....</i>	<i>10</i>
V. The UNCRC General Principles as basis for the impact assessment practice .	12
<i>Article 2: Non-Discrimination.....</i>	<i>12</i>
<i>Article 3: Best-Interest</i>	<i>15</i>
<i>Article 6: Life, Survival and Development.....</i>	<i>17</i>
<i>Article 12: Principle of Participation</i>	<i>19</i>
VI. Template Recommendations	20
VII. Further Recommendations	28
<i>Fitting Stage 2 Into Stage 3 Template:</i>	<i>28</i>
<i>Published Information</i>	<i>28</i>
<i>Child Friendly Versions.....</i>	<i>29</i>
<i>Training.....</i>	<i>29</i>
<i>Resources</i>	<i>30</i>
<i>Child Budgeting</i>	<i>31</i>
VIII. Conclusion	31
Bibliography	33
Annex 1: Updated Template with Recommendations	42
Annex 2: CRWIA Self-Review Checklist.....	54

I. Introduction

The following research report seeks to analyse Scotland's Children's Rights and Well-being Impact Assessment (CRWIA) practice, in order to assess its effectiveness in advancing the four general principles enshrined within the United Nations Convention on the Rights of the Child¹ (UNCRC). The following two Scottish CRWIAs will anchor the research analysis: the Stop and Search Code 2017² and the Unsuitable Accommodation Amendment Order 2017³. Based on our findings, further recommendations will be given to help improve the present CRWIA practice in Scotland and enable it to become effective in upholding and safeguarding the rights of children, in accordance with the UNCRC.

There is no such thing as a child-neutral policy – whether intended or not, every policy positively or negatively affects the lives of children.

~ Lisa Payne, 'Child Rights Impact Assessment as a policy improvement tool'
The International Journal of Human Rights, 2019

¹ General Assembly of the United Nations (1989) The Convention on the Rights of the Child, Adopted by the General Assembly of the United Nations on 20 November 1989.

² Safer Communities Directorate, 'Stop And Search Code Of Practice (Appointed Day) (Scotland) Regulations 2017 CRWIA' (Scottish Government 2017).

³ 'The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017' CRWIA (2017) <<https://www.gov.scot/publications/homeless-persons-unsuitable-accommodation-scotland-amendment-order-2017-child-rights-9781788512251/>> accessed 8 April 2019.

II. Why advocate for children’s rights?

Far from the historical conceptualization of children as “dependent and passive objectives of concern”⁴, children are in fact active social actors who deserve to be respected as meaningful contributors to society.⁵ Fundamentally, children’s rights devolve from their inherent human dignity.⁶ As such, the rights of the child are of a “universal, indivisible, interdependent and interrelated nature.”⁷ Scotland as a party to the UNCRC has a duty to recognize children as right-bearers and the obligation to “respect, protect and fulfil all the rights in the Convention.”⁸ While children are active right-bearers, it should be understood that they constitute a vulnerable group⁹, whose physical, mental and spiritual integrity, as well as moral, psychological and social development should be ensured by the state through attention, protection, care, respect, and participatory rights.¹⁰ In most instances, children do not directly hold much political power, nor do they own resources or have independence as sole autonomous decision-makers in their own lives.¹¹ As such, structural support is crucial when advocating for children’s rights. The 2006 report of the Scottish Commissioner on Children and Young People (SCCYP) reiterates that, “as some of the biggest recipients of public services, children will benefit enormously from government action and investment but, equally, are especially

⁴ Gadda, Harris, Tisdall and Millership, ‘Making Children’s Rights Real: Lessons from Policy Networks and Contribution Analysis’ (2019) 24 *International Journal of Human Rights*, at 1.

⁵ Making Children’s Rights Real (n 4), at 1.

⁶ Moshe Shner, “Why Children have Rights: Children Rights in Janusz Korczak’s Education Philosophy” (2018) 26 *International Journal of Children’s Rights*, at 741.

⁷ UN Committee on the Rights of the Child (CRC), General Comment no. 14: On the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, para 16 (a).

⁸ General Comment No. 14 (2013) (n 7), at para 16 (d).

⁹ Elaine E. Sutherland, Lesley-Anne Barnes MacFarlane, *Implementing Article 3 of the United Nations Convention on the Rights of the Child – Best interests, Welfare and Well-being* (Cambridge, 2016), at 21 and 35.

¹⁰ UN Committee on the Rights of the Child (CRC), General Comment no. 5: General measures of implementation of the Convention on the Rights of the Child CRC/C/2003/5, 27 November 2003, para 12. and General Comment 14 (n 7), para 5.

¹¹ Helen Stalford “The Broader relevance of features of children’s rights law: the best interest of the child principle” in *Children’s Rights Law in the Global Human Rights Landscape – Isolation, Inspiration, Integration?*, ed. Brems, Desmet and Vandehole (2017), at 40 and Why Children have Rights (n 6), at 741.

susceptible to government failures.”¹² In this way and as already recognized in the 1959 Declaration of the Rights of the Child: “the child, by reason of his [their] physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”¹³ Children's Rights Impact Assessments (CRIA) are a crucial mechanism through which states must ensure the safeguarding of children's rights. The Scottish Government, to further this goal and as part of the 2014 Getting It Right For Every Child (GIRFEC) Policy, added wellbeing indicators (SHANARRI) to their CRIAs creating the unique Children's Rights and Wellbeing Impact Assessment (CRWIA). We will be assessing this Scottish model directly stating in section IV.

III. The role of Impact Assessments in advancing children's rights

Within the past 25 years, Impact Assessments¹⁴ have gained popularity as important mechanisms through which children's rights can be advanced at the state level. In General Comment 5, the Committee on the Rights of the Child explains that Convention rights are best ensured through a continuous Child Rights Impact Assessment.¹⁵ CRIAs can predict the impact of any proposed policy, legislation, regulation, budget or other administrative decisions that subsequently affect children and the enjoyment of their rights.¹⁶ Most CRIAs are conducted during the policy-making process (*ex- ante* analysis models¹⁷) and should be included as early as possible and at all stages of government

¹²Scottish Commissioner for Children and Young People, Children's Rights Impact Assessment: The SCCYP Model' (2006)

<https://www.cypcs.org.uk/uploaded_docs/children%27s%20rights%20impact%20assessment.pdf> accessed 14 April 2019.

¹³ General Assembly of the United Nations 'UN Declaration on the Rights of the Child' (1959) (Resolution 1386 (XIV) < <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0142/09/IMG/NR014209.pdf?OpenElement>>, Preamble.

¹⁴ OECD 'What is an impact assessment' (2014) <<https://www.oecd.org/sti/inno/What-is-impact-assessment-OECDImpact.pdf>> accessed 12 April 2019. and European Commission 'Definition Impact Assessment' <https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en> accessed 10 April 2019.

¹⁵ General comment No. 5 (n 10), at para 45.

¹⁶ General comment No. 5 (n 10), at para 45.

¹⁷ Lisa Payne, 'Child Rights Impact Assessment (CRIA): A review of comparative practice across the UK' (2017), <https://downloads.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-CRIA-comparative-review_FOR-PUBLICATION.pdf?_ga=2.109135109.1665929290.1551666636-827286966.1551666636>, p.7.

processes.¹⁸ Successful CRIAs are important tools rendering children's interests visible throughout decision making processes that are otherwise overtaken by adults.¹⁹ CRIAs have proven to be most effective when they are conducted with a clear mandate and strategy, and are supported across government departments and levels. The earlier a CRIA is conducted, the better chances it has to inform policy.²⁰

The 2006 SCCYP Report on Children's Rights Impact Assessment is widely recognized as one of the best earlier CRIA models.²¹ This legacy of excellence in Scotland has continued to include the Children and Young People (Scotland) Act of 2014 which directly references the UNCRC and places a duty on the Scottish ministers to take steps to further the implementation of the UNCRC where they consider it appropriate to do so.²² The Scottish ministers also renewed their commitments for the full incorporation of UNCRC rights in the 2018-2019 Programme for Government, aiming to deliver this duty by 2021.²³

While CRIAs can be successful tools for improving policy proposals, they run the risk of becoming tick-box exercises if they are simply applied to an already completed policy proposal.²⁴ Such an approach and misuse of the impact assessment practice can lead to

¹⁸ General Comment No. 14 (2013) (n 7), at para 99.

¹⁹ Helen Stalford (n 11), at 39.

²⁰ Lisa Payne, "Child Rights Impact Assessment as a policy improvement tool" (2019) 24 *The International Journal of Human Rights*, at 8-9.

²¹ The SCCYP Model is mentioned in many of the recent models and flagged by the UNICEF Research Office as 'innovative' (A global study of independent human rights institutions for children, UNICEF Office of Research, Florence https://www.unicef-irc.org/publications/pdf/c950_ccrbook_130903web_noblanks.pdf (2011) p.58) and more recently by the

Children's Rights Network Switzerland 'Questionnaire sur les droits des enfants' (2015) <http://droits-enfant.ch/fileadmin/nks-kampagne/downloads/Kampagne-Kinderrechte-Leitfaden-FR.pdf> p.7

²² Scottish Government 'Children and Young People (Scotland) Act 2014' (2014), at Part 1 (1), <<https://www.legislation.gov.uk/asp/2014/8/section/1>>

²³ Scottish Government, 'Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019' p.5, <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/> accessed 20 May 2019; for more information about the importance of incorporating the UNCRC: Children and Young People's Commissioner Scotland and Together Scotland 'Briefing Paper: Incorporation in Context' <https://www.cypcs.org.uk/downloads/Incorporation_/Briefing_-_Scottish_Context.pdf> accessed 20 May 2019

²⁴ Eurochild "Mainstreaming Children's Rights" (2014) <https://www.cnape.fr/documents/document-paper_eurochild_mainstreaming-childrens-rights/> accessed April 5, 2019.

policies having a negative impact on children's rights as well as to inconsistencies in the implementation of children's rights across government sectors.

Although the Scottish 2006 SCCYP model has, in the past, positively influenced international practice, recent developments in cross-disciplinary and international best practices should now in turn inform and improve the way CRIAs are conducted within Scotland. Therefore, in order to strengthen Scottish CRIA practices, international models such as those found in New Brunswick, New Zealand and Australia were compared against Scottish practice. These models require a systematic analysis of positive and negative impacts of policies on children's rights, thereby creating increased consistency. This also allows the assessment to contextualize the rights of children in various circumstances in order to better understand and predict the impact of the policy in practice. Contextualized impact assessments allow room for identifying potential legislative alternatives, including those with more positive impacts on the fulfilment of children's rights.²⁵

Moreover, the increasing interaction between business and human rights has also resulted in the development of impact assessments with a monitoring component based on specific indicators. These indicators are established to provide concrete data points for future-oriented planning which then allows for better measurement in review and monitoring processes. This idea is reflected in the Welsh model²⁶, with an addition of clear deadlines for review of the data. This is essential in developing post-implementation review and insuring continuous review of the processes. If implemented fully within Scotland, the SHANARRI indicators (assessed in the next section) could be used to gain and monitor this information.

²⁵UNICEF and Danish Institute for Human Rights, "Children's Rights in Impact Assessments"(2013) <https://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf> accessed April 5, 2019

²⁶ Wales Government CRIA on the Right to Buy (2014) <<https://beta.gov.wales/sites/default/files/consultations/2018-01/150301-cria-right-to-buy-level-of-discount-en.pdf>> accessed April 6, 2019

For policy improvement and in order to increase the relevance of CRIAs in ensuring children's rights, several international models include direct questions on the general principles (UNCRC Art. 2, 3, 6 and 12). For instance, the New Brunswick model²⁷ includes a full screening of all rights in the assessment phase while the New Zealand model has a separate category for the principles. This allows for an in-depth and wide-reaching analysis of the principles and rights engaged in the policy, and therefore better understanding of the potential impacts.

Although impact assessments run the risk of becoming tick-box exercises, when conducted effectively they allow governments to centralize important and relevant data pertaining to legislative and governmental policy impacts, as well as create review mechanisms and strengthen the potential of CRIAs to act as enforcement mechanism. To best serve the diverse needs of children in Scotland, the Scottish CRWIA model would be most effective if continuously adapted in order to reflect and serve the children's rights landscape of Scotland.

IV. Examining Scottish CRWIA models

Assessment Styles

In the past, Scottish CRWIA practices have demonstrated inconsistencies in identifying and assessing UNCRC rights impacted by policy and legislation. In particular, different assessment styles have led to some of the general principles of the UNCRC being overlooked. As the former CRWIA template was divided into different stages (screening, scoping, evidence gathering, published version, etc...), they will be referred to as stages. When identifying articles affected by the proposed policy, there are three distinct styles of assessment in the original CRWIA model (prior to Feb. 2019), namely;

²⁷ 'Children's Rights Impact Assessment - Government of New Brunswick, Canada' (Template, 2015) <http://criacommunity.org/wp-content/uploads/gravity_forms/1-1baf9042c4fceeee12b9dcd57a5f0b68/2015/10/13.11CRIAInitialScreeningFormInitialFullAssessment-e.pdf> accessed 14 April 2019.

the listing style, the describing style, and the table style.²⁸ CRWIAs that employed the listing style did not indicate how the assessment would affect articles under the Convention. CRWIAs that do not include sufficient details are likely to be ineffective.²⁹ The describing style, on the other hand, provides well-detailed assessments of the impact of bills on UNCRC rights. However, this style only assesses a limited number of articles within the Convention and often overlooks the general principles.³⁰ As a result, this CRWIA model fails to deliver further assessment and data collection in the relevant stages of the CRWIA.³¹ Finally, the table style is used in relatively new CRWIAs and is adopted in the new CRWIA template (version 2, from Feb. 2019). The Age of Criminal Responsibility (Scotland) Bill CRWIA uses the table style and assesses seven articles with a well-described analysis and even refers to General Comment No.10. In the table style, the CRWIA assesses five elements (i.e. aims of measure, likely to impact on, compliance with UNCRC requirements, and contribution to wellbeing indicators) with each article of the Age of Criminal Responsibility Bill.³² While the CRWIA is executed adequately and the assessment is detailed, the CRWIA overlooks some of the general principles, such as non-discrimination which is a fundamental principle in realizing the other rights under the Convention.

Our analysis reveals that the Scottish CRWIA practice prior to Feb. 2019 lacks consistency and inadequately identifies articles impacted by the policy and legislation in

²⁸ CRWIAs analysed: Describing style: Child Poverty Bill, Best Start Grant, Fuel Poverty (Targeting, Definition and Strategy) Bill & Fuel Poverty Strategy; Listing style: The Homeless Persons (Unsuitable Accommodations) Amendment Order 2017, Stop & Search Code of Practice (Appointed Day) Regulations 2017, Access to Free Sanitary Products for Those at School, College or University, Child Protection Improvement Programme, Strategic Police Priorities for Scotland; Table style: Age of Criminal Responsibility Bill, Human Tissues (Authorisation) Bill, Health & Care (Staffing) Bill, Vulnerable Witnesses (Criminal Evidence) Bill

²⁹ Payne 2017 (n 17), p. 12.

³⁰ Scottish Government 'Child Poverty (Scotland) Bill CRWIA front sheet' (Scottish Government, 14 February 2017) <<https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessment-child-poverty-scotland-bill/>> accessed 3 March 2019, p6-7.

³¹ 'Child Poverty (Scotland)' (n 30) p14.

³² Scottish Government 'Age of Criminal Responsibility (Scotland) Bill: children's rights and wellbeing impact assessment' (Scottish Government, 14 Mar 2018), <<https://www.gov.scot/binaries/content/documents/govscot/publications/report/2018/03/age-criminal-responsibility-scotland-bill-childrens-rights-wellbeing-impact-assessment/documents/00532702-pdf/00532702-pdf/govscot%3Adocument>> accessed 3 March 2019, p6-15.

question. Misidentification of relevant articles of the UNCRC during the initial stages of the CRWIA process is often accompanied with inefficient data collection, unsatisfactory evidence gathering, failure to consult general comments, and lack of involvement in consultations with stakeholder groups in later stages of the CRWIA process. To address these issues, it is important to develop stronger safeguards in the new CRWIA template with adequate supportive guidance in order to ensure consistency and effectiveness in the impact assessment practice.³³

Well-Being Indicators (SHANARRI)

The Scottish GIRFEC policy introduced the idea of wellbeing indicators into Scotland's child policies. These indicators are named SHANARRI for safe, healthy, achieving, nurtured, active, respected, responsible, and included.³⁴ However, equating well-being indicators and rights, is detrimental to the purpose of CRIAs. This can lead to a misunderstanding of the strength that rights have through their legal basis and the duty they place on government.³⁵ The term well-being is an 'umbrella concept'³⁶ that is not well defined or conceptualized in a unified manner.³⁷ If evaluated in an uncritical or disaggregated manner, the evaluation of a country's well-being indicator statistics allows for the possibility of enacting policies that will continue or increase inequitable well-being within vulnerable demographics of youths, something which is overlooked with some statistical measures.³⁸ Rights, however, are a minimum agreed upon standard that the state is obligated to protect.³⁹ In some instances, focusing more on the well-being indicators when conducting an impact assessment is more appropriate. Arguably, hard quantitative data, such as the literacy rates of children and young people, are a more indicative measure of rights being fulfilled. However qualitative data, such as student

³³ Payne 2019 (n 20), at 10.

³⁴ 'Getting It Right for Every Child (GIRFEC): Wellbeing (SHANARRI)' (Scottish Government) <<https://www.gov.scot/policies/girfec/wellbeing-indicators-shanarri/>> accessed 11 April 2019. SHANARRI Indicators are; safe, healthy, achieving, nurtured, active, respected, responsible, and included

³⁵ E. Kay M. Tisdall, 'Children's Rights and Children's Wellbeing: Equivalent Policy Concepts?' (2015) 44 *Journal of Social Policy*, p 807.

³⁶ Tisdall (n35), p 807.

³⁷ Tisdall (n35), p 809.

³⁸ Nicola Ansell, John Barker, & Fiona Smith, 'UNICEF Child poverty in perspective report: A view from the UK' (2007) 5 *Children's Geographies* 325, at 5.

³⁹ Tisdall (n35), p811.

perception of how well their teachers listen to them, is a more indicative measure of child well-being. Both are important, but they are fundamentally different entities.

In an evaluation conducted on the child rights impact assessments used throughout the UK, Lisa Payne expressed concern for the impact and the implications the ‘*Well-being of Future Generations Act (Wales) 2015*’ could have on, what she described as “the furthest advanced and most widely used of the CRIA models in the UK”.⁴⁰ However as idealistic and well-intentioned the Welsh “well-being community objectives”⁴¹, and the SHANARRI indicators are in Scotland, employing these standards as the overarching framework from which to evaluate the well-being of children within the country is difficult. In the explanation of the indicators, as well as the principles and values of the policy, the language and standards of human rights is not broached; thus, making it easy to conflate the two concepts, or inaccurately evaluate data during the CRWIA process, looking at wellbeing measures instead of implementation of rights.

Nevertheless, the condensing of complex data can distort the actual value of the data it is expressing. Namely, the trap is of mistaking qualitative data for quantitative data, due to the encapsulation of any type of data into simplistic numerical evaluations easily relatable to the non-expert and the general public.⁴² This does not mean we should not gather qualitative data, such as engaging with youth; instead, this is merely to point out that knowing and evaluating the methodology of these qualitative studies, specifically the acknowledgment of their limitations, is just as important as incorporating the knowledge gleaned from the input of children and young people.

In short, an evaluation of the Scottish government’s duty to ensure that children’s rights are met by a proposed policy or legislation is the primary goal of conducting an impact assessment. Therefore, if the minimum standard of children’s rights is not met first and foremost, a conversation of how to improve the well-being of children is fundamentally an

⁴⁰ Payne 2019 (n 20), at p. 8.

⁴¹ Payne 2019 (n 20), at p. 8.

⁴² Sally Engle Merry, ‘Governing Through Indicators’ [American Society of International Law, Proceedings of the Annual Meeting, 27 March 2009], at 239-40.

impossible assessment to make through a CRWIA. In conclusion however, the wellbeing indicators are a very relevant concept if they are regarded as separate indicators and not equated with the rights. As discussed above they create a solid baseline reference for monitoring and evaluating of policies over time. They are also especially relevant when looking at standards of access to developmental rights in relation to Article 6 principles of the UNCRC.

V. The UNCRC General Principles as basis for the impact assessment practice

The Committee of the UNCRC has identified four *guiding* or *general* principles especially instrumental to the realization of the rights of the Child. They are: the principle of non-discrimination (article 2); the best interest principle (article 3); the right to life, survival and development (article 6); and the right to be heard (article 12). As discussed previously, best practice in international CRIAs include direct and systematic evaluation of these principles. These principles should be used to inform the evaluation of the other UNCRC rights. Therefore, to ensure the effective implementation of children's rights states party to the UNCRC are obligated to situate these foundational principles. This section examines how these principles have informed both Scottish and international incorporation of the UNCRC. This assessment also served as a basis for the recommendations found in the sections VI and VII.

Article 2: Non-Discrimination

The principle of non-discrimination is guaranteed through the inclusion of both positive and negative obligations, mainly by way of legislative and judiciary means.⁴³ Negative obligations, also referred to as *duties of respect*, require state parties not to interfere in the “enjoyment of children's rights.”⁴⁴ Should the UNCRC Committee decide that a state is in violation of the Convention, signatories are obligated to promptly and

⁴³ Samantha Besson 'The Principle of Non-Discrimination in the Convention on the Rights of the Child' (2005) *The International Journal of Children's Rights* 13, p446

⁴⁴ Sharon Detrick 'A Commentary on the United Nations Convention on the Rights of the Child' (1999) The Hague: Martinus Nijhoff, p68-69

impartially conduct investigations into the alleged violations of children’s rights. Simultaneously, positive obligations, also referred to as *duties of result*, require that states take all necessary steps to ensure the enjoyment of all the Convention rights to all children equally within their jurisdiction.⁴⁵ As the primary duty-bearer of protecting children’s rights, the state is obligated to prevent discriminatory behaviour from both private and governmental actors.⁴⁶

Article 1 of the UNCRC defines a child as, “every human being below the age of 18 years,” unless domestic law determines a different age for the children’s majority. The UNCRC right-bearers are normally all children up to the age of 18. In spite of this, the Scottish Government determines children’s majority age as 16 years old under the Age of Legal Capacity (Scotland) Act 1991. Due to this discrepancy, young people between the ages of 16 and 17 are subsequently often excluded from the Convention altogether. As a result of this potential ground for discrimination, the Committee has repeatedly recommended in its Concluding Observations that the minimum age within Scottish legislation be raised in order to ensure protection for all children and young people under the age of 18.⁴⁷ Our analysis of “The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017” CRWIA illustrates that not ensuring the protection of the Convention to all children can negatively impact Scottish children. The current amendment leaves out a significant group of young people, who are not benefitting from the reduction of restricted time spent in unsuitable accommodation and are hence left exposed to circumstances infringing on various Convention rights.

⁴⁵ UNICEF ‘The Implementation Handbook for the Convention on the Rights of the Child’ (UNICEF, 2007) <https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_1_of_3.pdf> accessed 3 March 2019, p21-22

⁴⁶ Besson (n 43), p. 454

⁴⁷ See Section 20, 78, 79, 84, 85 of the Committee on the Rights of the Child ‘Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (OHCHR, 12 July 2016)

<<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskHOj6VpDS%2f%2fJgg2Jxb9gncnUyUgbnuttBweOlyfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpixij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>> accessed 3 March 2019, paras 20-21

In order to comply with the UNCRC obligations, states are required to first identify vulnerable groups who may require protection, namely persons who are identified and/or fall within the intersections of gender, race, sexuality and class.⁴⁸ To effectively respond to the diverse needs of vulnerable groups, data collection may be necessary in order to identify potential issues requiring further action.⁴⁹ Identification of vulnerable groups is vital in order to combat discrimination. Nevertheless, this exercise was not performed in the Screening and Scoping stage of the Unsuitable Accommodation CRWIA, resulting in inaction, where affirmative steps might have been necessary. The New Brunswick model proposes a further developed model, in which the conductors of the CRIA are asked about positive and negative impacts of their suggested policy on different groups.⁵⁰ Admitting that different groups are affected in distinct ways, as well as spelling out the impacts will contextualize and apply the theoretical rights to a real-life impact on children's rights.

In addition to Article 2, the UNCRC outlines further protection for groups who are particularly vulnerable to discrimination. Article 22 stipulates that states shall ensure the protection of children seeking asylum.⁵¹ Furthermore, article 23 obligates state parties to take additional positive measures in order to ensure the equitable distribution of rights to differently-abled children.⁵² Article 30 also emphasizes the right for minority and/or indigenous children to practice their own language, culture, and religion without interference by the majority population within the region.

In summary, state parties are required to ensure through both positive and negative obligations that the general principle of non-discrimination is implemented within national legislation. State parties are also responsible for eliminating all forms of discrimination from within the government sphere, including but not limited to state legislation, policies and the like.

⁴⁸ General comment No. 5 (n 10), at para 12; 30., General Comment No. 14 (2013) (n 7), at para 55.

⁴⁹ General comment No. 5 (n 10), at para 12.

⁵⁰ New Brunswick model (n 27), section 1, question 7

⁵¹ Besson (n 43), p 457

⁵² Committee on the Rights of the Child 'General comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (1 July 2003) CRC/GC/2003/4, para 6.

Article 3: Best-Interest

States party to the Convention are required to give primary consideration to the advancement and protection of the child's best interests "in all decisions and actions" that may directly or indirectly impact them.⁵³ The best interest of the child is designated as a "general principle" by the Convention, which situates it as foundational to the implementation of all other rights under the Convention.⁵⁴ Article 3(1) is to be seen as "a right, a principle and a rule of procedure."⁵⁵

It is first and foremost a substantive right that must be considered throughout any decision that may affect children. As it is applicable to a wide variety of circumstances, the definitional scope is context-dependant and thus both requires and allows for flexibility in its implementation.⁵⁶ While the best interest principle as a substantive right is undisputed, the interpretation and application of the principle is notably difficult to determine, as there exist ambiguities surrounding the fundamental and legal interpretations of this principle in practice.⁵⁷ Inconsistencies regarding the interpretation and subsequent implementation of the best interest principle can have direct and long-lasting implications if codified within national legislative policies.⁵⁸

The procedural nature of article 3(1) therefore ensures that the decision maker provides evidence and reasoning in order to lessen the potential for arbitrary subjectivity.⁵⁹ By weighing possible outcomes and effects of proposed policy measures, the best interest principle acts as a balancing mechanism to ensure the widest implementation of the Convention.⁶⁰ As a rule of procedure, its ultimate purpose is the full and effective

⁵³ 'Implementing Article 3'(n 9)

⁵⁴ Zermatten, J. (2010). The Best Interests of the Child Principle: Literal Analysis and Function. The International Journal of Children's Rights.

⁵⁵ General Comment No. 14 (2013) (n 7), at para 6.

⁵⁶ General Comment No. 14 (2013) (n 7), at para 6 (a) and 'Implementing Article 3' (n 9), at 22.

⁵⁷ Michael D. A. Freeman, "A Commentary on the United Nations Convention on the Rights of the Child, Article 3 : The Best Interests of the Child" (Brill 2007), at 39

⁵⁸ Freeman (n 57), at 28.

⁵⁹ Freeman (n 57), at 28.

⁶⁰ 'Implementing Article 3' (n 9), at 60.

enjoyment of all UNCRC rights.⁶¹ It “must be seen both as informed by and constrained by the rights, and the other principles, provided under the Convention,”⁶² as it is a primary consideration among others.⁶³ A proposed outcome that conflicts with other rights cannot be said to reflect the best interest of a child.⁶⁴ In the Unsuitable Accommodation CRWIA many rights affected by the policy were not taken into account or identified. The policy accordingly fell short of guaranteeing the full range of UNCRC rights to homeless children. Furthermore, our analysis showed that it did not seem like alternative approaches were considered. Accordingly, the CRWIA fell short of addressing the underlying problem of allowing for unsuitable accommodation in the first place, when it is known that even suitable temporary accommodation has proven disruptive for children’s “physical and mental health and their educational attainment.”⁶⁵ Approaching Art 3(1) in a holistic manner might have yielded a measure offering an approach tackling the equally damaging suitable temporary housing situation instead. Finally, article 3(1) is an interpretive legal principle which should provide a basis of clarity in instances where there is more than one interpretation of the UNCRC.⁶⁶

The UNCRC Committee states that employing child-centred participatory methodologies (article 12) when collecting and assessing relevant data is an important mechanism to ensure the child’s best interests are being prioritized.⁶⁷ For instance, the “UK and devolved governments” are instructed to ensure that the best interests of the child are a primary consideration in “all legislation [...] administrative and judicial decisions concerning the child” which must be determined on an individual and needs-based approach where “due weight” is given to the child’s views. Incorporating children’s views when determining their best interest should hence be part of a successful CRWIA.

⁶¹ General Comment No. 14 (2013) (n 7), at para 51.

⁶² Freeman (n 57), at 5.

⁶³ Freeman (n 57), at 60-61.

⁶⁴ Freeman (n 57), at 5-6.

⁶⁵ Shelter Scotland, “Topic briefing: Children experiencing homelessness” (2018), at 5.

⁶⁶ General Comment No. 14 (2013) (n 7), at para 6 (b).

⁶⁷ General Comment No. 14 (2013) (n 7), at para 1.

In conclusion, in order to ensure that the best interest principle is being fulfilled as a primary consideration throughout the development of policy and legislation, rights-based monitoring in relation to the well-being of the child is required. In General Comment 5 §45 the Committee explains that the UNCRC rights are best ensured through a continuous CRIA process and a commitment to article 3(1) “in all actions concerning children.”⁶⁸ Through the monitoring process, both the positive and negative outcomes of a selected policy are assessed, and alternatives explored, so that potential consequences of the policy are mitigated and the best interests of the child are protected.

Article 6: Life, Survival and Development

Article 6 of the UNCRC highlights the right to life, survival and development. This three-pronged right includes more than simply the right to live. It reflects the core principles articulated as early as 1959⁶⁹ around the right for a child to thrive. As explained by the UNCRC Committee, the right to development under Article 6 is “one that encompasses all aspects of development, and that a young child’s health and psychosocial well-being are in many respects interdependent.”⁷⁰ The Committee therefore expects the states “to interpret ‘development’ in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development”. Implementation measures should be aimed at achieving the optimal development for all children.⁷¹ At its core, this means that states must create an environment in which human dignity is ensured and a child is able to develop in a holistic manner.⁷²

⁶⁸ General comment No. 5 (n 10), at para 45.

⁶⁹ UN Declaration on the Rights of the Child (n 13), Principle 2 ‘The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.’

⁷⁰ UN Committee on the Rights of the Child, ‘General Comment 7(2005) Implementing Rights in Early Childhood’ CRC/C/GC/7/Rev.1 [para. 10]

⁷¹ General comment No. 5 (n 10), para 12.

⁷² General comment No. 5 (n 10), para 12.

Although the right to life, survival and development has not been examined as extensively as the other general principles, it reflects the complexity of enabling the full realization of a right which is neither fully civil or political nor fully economic or social in nature.

In the Scottish practice, the right to life, survival and development is interpreted too narrowly, as can be seen with the limited engagement with Article 6 even when looking at SHANARRI.⁷³ These wellbeing indicators, if used in a holistic manner, could provide data about access to development rights as they look at the areas which are essential to realising the right to thrive. Often this right is only looked at from a health and adequate housing perspective.⁷⁴ Worryingly, however, neither the Unsuitable Accommodation CRWIA nor the Child Poverty Bill CRWIA engage with this right, whereas there is direct proof that the practices regulated by these laws can have lasting and negative impact on the development of the child⁷⁵. This is representative of the Scottish practice. Very few of the Scottish CRWIAs include or engage with Article 6. Those which did, such as the Stop and Search CRWIA or the Health and Care (Staffing) (Scotland) CRWIA, only looked at the right in a superficial manner with a brief mention. Since children's rights should be analysed holistically and extensively, most laws have indirect implications for the realization of the Article 6 rights.

To better engage with the right to life, we look to international practice for suggestions. Only models which encourage a broad understanding of children's rights engage with Article 6. The New Brunswick model does this by refocusing on the general principles in its table analysis, whereas the New Zealand model does so by using a descriptive analysis with a specific question on the general principles.

⁷³Professor Jane Aldgate for the Scottish Government 'UNCRC: The Foundation for Getting Right for Every Child' (2013) <<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2013/03/uncrc-the-foundation-of-getting-it-right-for-every-child/documents/uncrc-the-foundation-of-girfec/uncrc-the-foundation-of-girfec/govscot%3Adocument/UNCRC%2B-%2Bthe%2Bfoundation%2Bof%2Bgetting%2Bit%2Bright%2Bfor%2Bevery%2Bchild.pdf>> pp.8-12, accessed 15 May 2019

⁷⁴ Manfred Nowak, CRC Commentary: Article 6 of the UNCRC (Brill, 2006), at p 73-76.

⁷⁵ Most recently in report by Crisis (2018) on Unsuitable Temporary Housing in Scotland <https://www.crisis.org.uk/media/239523/i_wont_last_long_in_here_experiences_of_unsuitable_temporary_accommodation_in_scotland_-pdf.pdf> accessed 10 April 2019

Although the right to life, survival and development has not been interpreted individually, it is central to the ability of children to thrive and therefore it must be given due consideration in any impact analysis models.

Article 12: Principle of Participation

The principle of participation is enshrined in article 12 of the Convention, which establishes the right of a child to be heard.⁷⁶ According to the principle, children who are capable of expressing their views should be able to do so in all aspects and issues concerning their lives.⁷⁷ The phrase “capable of forming his or her own view” should not be interpreted as a limitation.⁷⁸ Children do not have to prove their capacity in order to be heard.⁷⁹ There must be a presumption that children are capable of forming their own views and expressing them.⁸⁰ Therefore, their expressed views should be given due weight in decision-making, policy-making and the like, according to their age and maturity.⁸¹ In order to guarantee children’s right of participation, the state must ensure that the participation process is as follows: transparent and informative; voluntary; respectful; relevant; child-friendly; inclusive; supported by training; safe and sensitive to risk; and accountable.⁸²

While there are strong examples of the engagement of children and young people in Scottish CRWIAs (e.g. the CRWIA on the Age of Criminal Responsibility)⁸³, other CRWIAs like the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017⁸⁴ could benefit from more participation of children and young people. The CRWIA on the Code of Practice on the use of Stop and Search (general) and

⁷⁶ General Assembly of the United Nations Committee on the Rights of the Child (2009). General Comment 12: The right of the child to be heard CRC/C/GC/12.

⁷⁷ UN Convention on the Rights of the Child (n 1).

⁷⁸ General Comment 12 (n 76), p. 9.

⁷⁹ General Comment 12 (n 76), p. 9.

⁸⁰ General Comment 12 (n 76), p. 9.

⁸¹ General Comment 12 (n 76), paras 12 and 15.

⁸² General Comment 12 (n 76), para 134.

⁸³ Age of Criminal Responsibility (n 32).

⁸⁴ Unsuitable Accommodation (n 3).

Stop and Search for alcohol possession also demonstrates inconsistent⁸⁵ participation of children in consultation. The consultation processes on Stop and Search for alcohol possession mostly complied with the requirements of the participation process set by the Committee on the Rights of the Child, except for the fact that children who took part in consultations received no feedback on their views and results of their participation in the policy discussion.⁸⁶ However, the consultation process on the general Code of Practice included several flaws and omissions. Particular groups of children, especially younger ones were left out during the consultation process⁸⁷ and in some circumstances children were limited in the ways they could express their views on the matter (non-flexible format of the consultation).⁸⁸ Even in cases where children did participate in consultations, the requirements of the participation process as established by the General Comment 12⁸⁹ were inconsistently applied. Overall, it can be concluded that one of the main problems in the incorporation of the participation principle in the Scottish CRWIAs is the inconsistency, unsustainability and ad-hoc basis in which the principle is being engaged with.

VI. Template Recommendations

Note: These recommendations have been compiled into Annex 1. Furthermore, Annex 2 was developed as a checklist to help improve consistency and understanding of the CRWIA process.

This section only refers to the newest version of the Scottish Government's CRWIA Template (version 2 since Feb. 2019) and corresponding guidance documents (Guidance). Stage 1 of the new template is an initial assessment meant to determine the

⁸⁵ Alison Platts and Dawn Griesbach, Scottish Government, Consultation on a draft Code of Practice for Stop and Search: Analysis of Responses, October 2016.

⁸⁶ Alison Platts and Dawn Griesbach (n 85)

⁸⁷ Scottish Police Authority 'A qualitative study of the impact of Stop and Search on individuals and communities in Scotland', April 2016
<<http://www.spa.police.uk/assets/128635/352708/spaqualitiveresearchapril2016>> (Accessed on 1 March, 2019).

⁸⁸ Alison Platts and Dawn Griesbach (n 85)

⁸⁹ General Comment 12 (n 76) para 134.

need for a full CRWIA whereas Stage 2 is the full CRWIA. Additionally, in order to reduce repetition, interdependent questions from Stages 1 and 2 will be discussed concurrently, meaning that not all questions will be discussed in a chronological order.

Proposed Changes to Stage 1.2, Stage 2.1, & 2.2

The first proposed change to Stage 1.2 is the addition of a New Brunswick style UNCRC rights checklist.⁹⁰ This checklist is an adapted version and will be a simple ‘Yes’ or ‘No’ indication if the right in the article is impacted or not, as there is not enough data to make a determination on the type of impact that will occur. Additionally, to help mainstream the CRWIA, finding ways to make the CRWIA a politically advantageous tool for those within government is essential. Creating a hurdle in the legislative process that would unfairly depict a policy or legislative proposal is not the intent. These recommendations present the possibility for change and evolution in the writing process.

Additionally, it should be advised that the way in which to fill out the rights checklist is through the context of the four General Principle of the UNCRC. An example of how to conduct this initial determination is by asking the question; “Will the policy or measure I am proposing affect the right to health and health services of children and young people in a discriminatory way?”. This would be an example of how to conduct a non-discrimination determination of Article 24 of the UNCRC, similar questions reflecting the other principles should be used. Stage 2.1 is the further analysis of the initial determinations made in Stage 1.2, which should also employ the context of the General Principles in its research and analysis, and thus determine the evaluation of Stage 2.2.

Proposed Changes to Stage 1.3

In 1.3 we propose that two separate charts be used to better reflect the difference between determining and evaluating a direct and an indirect impact. This evaluation does not ask for those conducting the assessment to make comparisons of the impact between different groups of children and young people. Instead it asks for a more general comparison between children and young people, as more of a homogenous group, and

⁹⁰ New Brunswick Model (n 27), at 3-4.

adults. Therefore, we propose that two separate charts be made to better reflect the difference between determining and evaluating a direct, or obvious, impact and an indirect, or less obvious, impact. By providing two separate areas to make these two separate initial evaluations we believe that more time will be invested into determining the answer to these different questions, and thus provide a more measured evaluation at the end of Stage 1 were it is determined whether or not it is necessary for a full CRWIA process to be conducted.

Proposed Changes to Stage 1.4

In stage 1.4 those responsible for conducting the CRWIA will identify and make an initial evaluation of the effect of the impact found in Stage 1.3 on the identified groups of children and young people directly or indirectly impacted by the policy or measure. It should be noted that while the wording of the original question could be understood to simply ask for a listing of groups of children and young people, the Guidance provided by the Scottish government requires an evaluation of the significance of the impact and the anticipated level of the impact to be considered. Thus, we are of the opinion that the template should reflect this additional information needed in the evaluation, and specifically in order to come to a final conclusion as is needed in question 1.5 of whether or not to conduct a full CRWIA process.

Proposed Changes to Stage 1.5

It is important to emphasise that a well-reasoned argument should be made if it is determined by the creators of the CRWIA, that a full impact assessment is not necessary for that particular policy or legislation. We suggest that this quote from Lisa Payne; “There is no such thing as a ‘child-neutral’ policy, whether intended or not, every policy positively or negatively affects the lives of children.”,⁹¹ be added to the template in Stage 1.5 as a reminder to those decision-makers of the affect almost any policy can have on their

⁹¹ Payne 2019 (n 20), at 1

youngest constituents.⁹² These initial questions in Stage 1 are a “preliminary check”,⁹³ but should be made with care and due diligence. A rushed or superficial initial analysis should be discouraged,⁹⁴ especially since this can be viewed as a symptom of failing to undertake the assessment “too far into the policy formulation and development process”, thus preventing or limiting the “capacity to influence the final shape of the policy or legislation”.⁹⁵ If there is a desire for Scotland to be the “best place in the world to grow up”,⁹⁶ then a CRWIA should be viewed as essential and a politically advantageous way in which to ensure child rights are being considered⁹⁷ by the government.

Stages 2.1 and 2.2 are considered previously (see Stage 1.2)

Proposed Changes to Stage 2.3

The first recommendation is the addition of a requirement to conduct mandatory consultations with groups who are directly impacted by the policy or measure. This should be done in addition to consulting children generally. When consultation was not conducted, compelling justification must be provided. This would help to embed children’s rights into decision-making.⁹⁸

For Stage 2.3 the next recommendation is to add a New Brunswick style table where, next to the list of groups of children and young people affected by the policy or measure, decision-makers will determine the type of impact, whether that be positive, negative, or

⁹² Payne 2019 (n 20), at 1.

⁹³ ‘When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance’ (Guidance for Scottish Government Officials - Version 2, 2019), at 7.

⁹⁴ Payne 2017 (n 17), at p.11.

⁹⁵ Payne 2019 (n 20), at 11

⁹⁶ ‘Children and Young People (Scotland) Act 2014: National Guidance on Part 12: Services in Relation to Children At Risk of Becoming Looked After, etc.’ (Scottish Government, 2016)

<<https://www.gov.scot/publications/children-young-people-scotland-act-2014-national-guidance-part-12/pages/3/>> accessed 11 April 2019.

⁹⁷ Payne 2019 (n 20), at 2.

⁹⁸ Ministry of Health and Social Affairs and Ministry for Foreign Affairs, Sweden, ‘Child Impact Assessment, Swedish Experience of Child Impact Analyses as a tool for implementing the UN Convention on the Rights of the Child’ (January 2001)

<http://www.manskligarattigheter.se/dm3/file_archive/020523/d18c33283b29d7cbb15d9bb65d1db726/bar_n%20Child%20Impact%20Assessments.pdf> accessed 14 April 2019

neutral.⁹⁹ Since the same policy or measure affects different groups in different ways, these findings will be useful for the determination of changes or other mitigating measures, allowing for a consideration of the impact comprehensively and in detail.

Proposed Changes to Stage 2.4

Due to the nature of some policies/measures, it is important to remember that not all policies or legislation will affect individuals immediately upon entering into force. It is also important to consider if these outcome-focused impacts were developed in a rigorous and data driven manner. We recommend the addition of two questions, as per the South Wales Metro Program CRIA 2018.¹⁰⁰ It should also be noted that ‘tackling needs early’ is one of the principles of GIRFEC.¹⁰¹ Asking those who are creating the CRWIAs to think about medium and long-term outcomes, is a practical way in which to imbed this principle into Scottish practice.

Proposed Changes to Stage 2.5

GIRFEC and SHANARRI are useful tools to frame the approach to child rights-based policy and legislation. However, it should be emphasized that well-being indicators, while based on the UNCRC general principles,¹⁰² are not a substitute for an evaluation of the realization of UNCRC rights. For this reason, we suggest creating a similar evaluation structure for the well-being indicators, as that of the UNCRC rights in question 1.2 and 2.1, and the addition of questions similar to that of those proposed for question 2.4.¹⁰³ It will provide an additional avenue for critical analysis of the policy and could also provide an additional metrics for further review and monitoring.

⁹⁹ New Brunswick Model (Template, 2015) (n 27).

¹⁰⁰ “Have you considered the short, medium, and long term outcomes?”, and “Have you developed an outcomes framework to measure the impact?”

¹⁰¹ ‘Getting It Right for Every Child: Policy Update - Delivering the Getting It Right for Every Child’ (Scottish Government GIREFC Resource, 2017)

<<https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2017/08/getting-it-right-for-every-child-girfec-update-july-2017/documents/2707e490-89b1-4138-9509-f76525d7dea7/2707e490-89b1-4138-9509-f76525d7dea7/govscot%3Adocument>> accessed 9 April 2019.

¹⁰²When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance (Version 2) (n 93), at 5.

¹⁰³ Welsh CRIA (n 26)

Proposed Changes to Stage 2.6

The Guidance provided for Stage 2.6 is fairly robust with regards to UN Committee documents it advises referencing in this Stage, and the further explanation of the General Comments and the Concluding Observations of the UNCRC Committee found in Annex 2 and 3.¹⁰⁴ However, this summary and list of resources would be more useful if it was also available as a resource link on the government’s website, allowing for any additional UN documents on this subject to be easily accessible to those in the Scottish government. A better explanation, whether in writing or in person and/or through online training, about the General Comments and how to best understand and apply them would be helpful for those who are not as well versed in child’s rights and international jurisprudence.

Proposed Changes to Stage 2.7

As stated in the updated CRWIA Guidance, both quantitative and qualitative data should be used in the review process.¹⁰⁵ However, further guidance or resources in how to obtain good evidentiary data should be provided, in particular, so that anecdotal evidence is not mistaken for robust quantitative, and in some cases qualitative, data. To accomplish the goal of obtaining a wide range of both quantitative and qualitative data, the evidence requested in question 2.7 should be clearly defined and made distinct from the qualitative data being asked for in the following two questions. Thus, it is our recommendation that a change be made to the wording of this question to reflect the desired distinction; “What *quantitative evidence* have you used to inform your assessment? What does it tell you?”.

Additionally, we would also recommend creating a non-exhaustive, but comprehensive, list of resources for those creating CRWIAs providing quick and easy access to appropriate resources, stakeholders, and expert consultation. Further, as others within the Scottish Government may also be working on the same or similar policy areas,

¹⁰⁴ When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance (Version 2) (n 93), at 28-36.

¹⁰⁵ When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance (Version 2) (n 93), at 13

disseminating information about and encouraging the exchange of data and knowledge between those who have readily available information can help consolidate the CRWIA practice in the legislative writing process. This change can help the Scottish government foster an environment that views CRWIAs as a key asset in political and legislative pursuits, and not a cumbersome burden.

Identifying gaps in the data is useful and informative information for later reviews of the policy.¹⁰⁶ While it may not always be applicable or feasible for all impact assessments, studies to assess these gaps before the conclusion of an impact assessment and prior to implementation should be encouraged.

Proposed Changes to Stage 2.8 & 2.9

It is important to obtain both quantitative and qualitative data. One of the issues with the current CRWIA template, specifically in Stage 2 where data is supposed to be gathered, is that none of the questions clearly define what type of data is appropriate for which question. Even within the guidance, there is no elaboration to distinguish the type of data needed to appropriately fulfil the requirements for each question, making it likely that, unwittingly, both forms of data will not be appositely gathered for the assessments. This is distinctively apparent in the context of questions 8 and 9 in Stage 2, owing to the similar language used in the actual question, and the easily misinterpreted directions enumerated in the Guidance.

That is why we believe that these final two questions should have their description clarified to reflect that the information collected is to be qualitative in nature only. Per the instructions in the Guidance, the information required for Stage 2.8 is the results from any consultation processes taken on behalf of and by the government itself, for the specific purposes of gaining the views of stakeholders on the specific subject being studied in a particular CRWIA, not results of any third party. Due to these stated goals in the

¹⁰⁶ Payne 2017 (n 17), at 19; Laura Lundy, Ursula Kilkelly, Bronagh Byrne, & Jason King, 'The UN Convention on the Rights of the Child: A study of legal implementation in 12 countries' (UNICEF UK, 2012) <<https://www.unicef.org.uk/publications/child-rights-convention-2012-report/>> accessed 11 April 2019, at 10-12.

Guidance, it would be our recommendation to slightly alter the wording of question 8 to; “Have you consulted with relevant stakeholders, *specifically groups of children and young people, as a consultation processes conducted and held by the Scottish Government?*”. In short, question 8 is asking for the results of qualitative evidence collected directly by the government.

Additionally, it is also proposed that a broader of range of stakeholders be consulted on the policy or measure, including experts and professionals, such as general practitioners, social workers, academics and teachers. Although they are mostly not directly affected by the policy or measure, they have knowledge and expertise of the topic and Children’s rights more generally and their consultation could be beneficial to ensure fewer gaps in data persist after the consultation process.¹⁰⁷

Consultations should also be conducted in a child-friendly,¹⁰⁸ inclusive and accessible manner (i.e. Braille, text-to-word speakers, and materials in different languages). Children of different ages, maturity and capacities will need different level of support and different forms of involvement, therefore working methods and environment must be adjusted.¹⁰⁹

Finally, it is important to emphasise the importance of providing participants of consultations processes formal feedback, so as to inform those participants on the ways in which their views have been interpreted into law or policy. This will ensure that children and young people’s participation is not tokenistic or decorative. Feedback should be communicated in an accessible¹¹⁰ and appropriate manner.

¹⁰⁷ Scotland’s Commissioner for Children and Young People, Children’s Rights Impact Assessment: The SCCYP Model (October 2006).

¹⁰⁸ General Comment no. 12 (n 76), “Adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views.”

¹⁰⁹ General Comment no.12 (n 76).

¹¹⁰ General Comment no. 12 (n 76).

VII. Further Recommendations

Fitting Stage 2 Into Stage 3 Template:

While we are currently unable to assess the content of published CRWIAs using this revised template as we have yet to see it in practice, there are some potential deficiencies that could easily be mitigated. The new Guidance for Stage 3 still does not address where information gathered in Stage 1 and 2 should be included within the publishable data. We highlight this issue because the original CRWIA template would repeat a significant amount of the same summarized and less substantive information throughout all the published sections, while neglecting to fully provide the substantive findings from the research conducted. Therefore, indicating clearly where the information from stages 1 and 2 should be included in the publishable template would help reduce redundancy and improve consistency.

Additionally, for the 'CRWIA for legislation' the information provided in the Guidance is generally applicable for both templates, however, there are a few key differences that should be clarified. Specifically, it should be explained why the five additional columns at the bottom of the page ask for some of the same information provided in the more generalized boxes above them. Presumably, this is because these key issues are of particular importance, and the information obtained on these key areas should be highlighted and have their results expanded upon.

Published Information

While it is important that the published versions be accessible to the public,¹¹¹ it does not seem as though there is a consensus on what type of information best fulfils these aims. For CRWIAs using the original template, it seemed as though the thought was that using a significant amount or any data and statistics gathered throughout this process would make the published CRWIA less understandable for the public. If it is

¹¹¹When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance (Version 2) (n 93), at 17.

difficult to display data charts within the template in a way that is accessible to the general public, consider using an attached annex at the end of the document or a hyperlink within the text so those who want a more complete assessment of the data have the ability to easily access such information.

Child Friendly Versions

Creating 'Child-Friendly' versions of CRWIAs is listed as a possible determination that those creating and publishing the CRWIAs can decide to make, but there is no emphasis placed on it or reasons for its importance made.¹¹² Available in Annex 4 of the revised Guidance, there is a section describing some of the benefits of a child-friendly CRWIAs. However, it should be noted that the explanation given about its benefits is not about how children and young people can be helped by the government through these assessment versions.¹¹³ While it is understandable that child-friendly versions are difficult to produce in all circumstances, the government should at a minimum emphasize and encourage these versions of assessments during CRWIA training sessions, or even change the suggestive language used¹¹⁴ to that of requirement in certain or all circumstances.

Training

There is a need for those undertaking CRWIAs to have a good understanding of children's rights, as well as knowledge of the procedure for undertaking the CRWIA.¹¹⁵ 'This requires an 'ongoing - initial training and re-training'¹¹⁶ which would provide a broader understanding of the general principles, the UNCRC, and their importance in creating a meaningful and effective CRWIA.¹¹⁷ A guide without the proper training will

¹¹² 'Getting It Right for Every Child (GIRFEC): Wellbeing (SHANARRI)' (Scottish Government) <<https://www.gov.scot/policies/girfec/wellbeing-indicators-shanarri/>> accessed 11 April 2019.

¹¹³ When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance (Version 2) (n 93), at 39.

¹¹⁴ When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance (Version 2) (n 93), at 39 & 17

¹¹⁵ Payne 2019 (n 20)

¹¹⁶ General Comment no. 5 (n 10), para 53.

¹¹⁷ Payne 2019 (n 20)

have little to no impact.¹¹⁸ Thus, we believe that the online twenty-minute training program should be made compulsory for all policy makers. Furthermore, although ‘e-learning courses are helpful, they are insufficient on their own’.¹¹⁹ Therefore, in person training sessions should be established, as well as ongoing and more in-depth training for any officials involved in the development of the CRWIAs.¹²⁰

Resources

Apart from having access to appropriate training, all officials conducting CRWIAs should have access to appropriate resources and people with comprehensive knowledge and expertise who could advise them on any inquiries with regards to children’s rights and the CRWIA process.

In an evaluation of the Welsh Government’s Child Rights Impact Assessment, it was found that the Implementation Team, which provides knowledge on children’s rights and relevant expertise to government officials, helped improve CRIA outcomes and analyses.¹²¹ However, increased capacity and support was needed, something which the ‘Central Team’ in Scotland could do.¹²² Additionally, some Directorate’s offices could potentially have a ‘Point Person’ with more extensive training and expertise in the UNCRC and CRWIA conduct, to guide those within their office. Lastly, fostering engagement with the Children and Young People’s Commissioners Office should be encouraged as a useful and approachable resource for any information or expertise needed.

¹¹⁸ Payne 2017 (n 17)

¹¹⁹ Payne 2017 (n 17)

¹²⁰ Payne 2017 (n 17)

¹²¹ Simon Hoffman ‘Evaluation of the Welsh Government’s Child Rights Impact Assessment procedure under the Children’s Rights Scheme pursuant to the Rights of Children and Young Persons (Wales) Measure 2011’ (2015) <<https://cronfa.swan.ac.uk/Record/cronfa30963>> accessed 4 March 2019.

¹²² Payne 2017 (n 17)

Child Budgeting

CRWIAs can be aligned with the practice of child budgeting, in order to create a comprehensive framework. The UNCRC Committee has recommended using rights-based budget monitoring and analysis, as well as impact assessments on how investments in any sector may serve “the best interests of the child”.¹²³ During the JoKER evaluation (Belgian CRIA), it was argued that the importance given to a youth perspective in policy can only be clearly observed through tracking the money invested in it.¹²⁴ In South Africa, to make the Child Justice Bill more pragmatic, cost effectiveness of proposed juvenile system was carried out.¹²⁵ Further research should be undertaken to see how budgeting can complement CRWIAs in Scotland.

VIII. Conclusion

While ‘implementing a human rights treaty is an imprecise art,’¹²⁶ a child rights impact assessment is one of the most essential tools to help facilitate the realisation of children’s rights.¹²⁷ As children and young people constitute a vulnerable group, they are more likely to be victims of unlawful actions. The arbitrary, unduly and superficial evaluation of the nature and intensity of legislative impact, along with clear discrepancies in fulfilling UNCRC and Committee requirements, have negative consequences for children’s rights. This research report sought to not only provide an in-depth analysis of the CRWIA practice in Scotland, but to further provide a comprehensive list of recommendations to ensure that the Scottish CRWIA model is as effective as it can possibly be. By re-shaping the CRWIA practice from a predominantly fragmented process toward an effective tool that critically evaluates ongoing policies, issues useful

¹²³ Ellen Desmet & Hanne Op De Beeck, 'Strategic Decisions in Setting Up Child Rights Impact Assessments' (2014) 44 *Revue générale de droit*, at 147.

¹²⁴ Ellen Desmet (n 123), at 148.

¹²⁵ Innocenti Research Centre, 'Reforming Child Law in South Africa: Budgeting and Implementation Planning' (UNICEF, 2009) <https://www.unicef-irc.org/publications/pdf/reformingchildlaw_reprint.pdf> accessed 19 February 2019, at 24.

¹²⁶ McCall-Smith, 'To Incorporate the CRC or Not – Is this Really the Question?' 24 *International Journal of Human Rights* (2019), at 12.

¹²⁷ General Comment no. 5 (n 10) para 45.

recommendations, and effectively advocates for children's needs,¹²⁸ Scotland can very well become 'the best place for children to grow up.'¹²⁹

¹²⁸ General Comment no. 5 (n10) paras 10-11.

¹²⁹ 'Scotland's Commissioner for Children and Young People, Scottish Government Debate: 'Scotland – the Best Place to Grow Up' (2013) <<https://www.cypcs.org.uk/ufiles/Best-Place-to-Grow-Up-Briefing.pdf>> accessed 12 April 2019.

Bibliography

Treaties:

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (UNCRC).

General Comments and Concluding Observations:

Committee on the Rights of the Child 'Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland' (OHCHR, 12 July 2016)

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskHOj6VpDS%2f%2fJqg2Jxb9qncnUyUgbnuttBweOlylfyYPkBbwffitW2JurgBRuM MxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL> accessed 3 March 2019.

UN Committee on the Rights of the Child (CRC), General Comment no. 5: General measures of implementation of the Convention on the Rights of the Child CRC/C/2003/5, 27 November 2003.

UN Committee on the Rights of the Child (CRC), 'General Comment 7(2005) Implementing Rights in Early Childhood' CRC/C/GC/7/Rev.1, 20 September 2006.

UN Committee on the Rights of the Child (CRC), General Comment No. 14: The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration CRC/C/GC/14, 29 May 2013.

UN Committee on the Rights of the Child (CRC), General Comment no. 12: The right of the child to be heard CRC/C/GC/12, 20 July 2009.

United Nations General Assembly:

General Assembly of the United Nations 'UN Declaration on the Rights of the Child' (20 November 1959) Resolution 1386 (XIV) < <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/142/09/IMG/NR014209.pdf?OpenElement>>.

Legislations, Laws and Other Government publications:

'Access to Free Sanitary Products for those at school, college or university: CRWIA' (Scottish Government, 2018) <https://www.gov.scot/publications/access-free-sanitary-products-those-school-college-university-child-rights/>.

'Getting It Right for Every Child: Policy Update - Delivering the Getting It Right for Every Child' (Scottish Government GIREFC Resource, 2017) <https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2017/08/getting-it-right-for-every-child-girfec-update-july-2017/documents/2707e490-89b1-4138-9509-f76525d7dea7/2707e490-89b1-4138-9509-f76525d7dea7/govscot%3Adocument> .

Children's Rights Impact Assessment - Government of New Brunswick, Canada' (Template, 2015) http://criacommunity.org/wp-content/uploads/gravity_forms/1-1baf9042c4fceeee12b9dcd57a5f0b68/2015/10/13.11CRIInitialScreeningFormInitialFullAssessment-e.pdf .

'Children and Young People (Scotland) Act 2014: National Guidance on Part 12: Services in Relation to Children At Risk of Becoming Looked After, etc.' (Scottish Government, 2016) <https://www.gov.scot/publications/children-young-people-scotland-act-2014-national-guidance-part-12/pages/3/> .

'CRWIA Template - Version 2' (Scottish Government, 2019) <https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessments-crwia-templates/> .

'Getting It Right for Every Child (GIRFEC): Wellbeing (SHANARRI)' (Scottish Government) <https://www.gov.scot/policies/girfec/wellbeing-indicators-shanarri/> accessed 11 April 2019.

'Rights and Wellbeing Impact Assessment (CRWIA) The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017' (2017)

<https://www.gov.scot/publications/homeless-persons-unsuitable-accommodation-scotland-amendment-order-2017-child-rights-9781788512251/> .

Platts, A. and Griesbach, D. Scottish Government, Consultation on a draft Code of Practice for Stop and Search: Analysis of Responses, October 2016.

Safer Communities Directorate, 'Stop And Search Code Of Practice (Appointed Day) (Scotland) Regulations 2017 CRWIA' (Scottish Government 2017).

Scottish Government 'Child Poverty (Scotland) Bill CRWIA front sheet' (Scottish Government, 14 February 2017) <https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessment-child-poverty-scotland-bill/> .

Scottish Government 'Age of Criminal Responsibility (Scotland) Bill: children's rights and wellbeing impact assessment' (Scottish Government, 14 Mar 2018),

<https://www.gov.scot/binaries/content/documents/govscot/publications/report/2018/03/age-criminal-responsibility-scotland-bill-childrens-rights-wellbeing-impact-assessment/documents/00532702-pdf/00532702-pdf/govscot%3Adocument> .

Scottish Government 'Children and Young People (Scotland) Act 2014' (2014), <https://www.legislation.gov.uk/asp/2014/8/section/1>.

Scottish Government, 'Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019', <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/> accessed 20 May 2019

Scottish Government 'When and how to best use the CRWIA: Guidance for Scottish Government Officials' (Scottish Government, June 2015)

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2015/06/childrens-rights-wellbeing-impact-assessments-crwia->

[guidance/documents/84365681-6563-47bd-9ab7-f336d20d68a1/84365681-6563-47bd-9ab7-f336d20d68a1/govscot%3Adocument](https://beta.gov.wales/sites/default/files/consultations/2018-01/150301-cria-right-to-buy-level-of-discount-en.pdf) .

Welsh Government CRIA on the Right to Buy (2014)

<https://beta.gov.wales/sites/default/files/consultations/2018-01/150301-cria-right-to-buy-level-of-discount-en.pdf> .

Books

Sharon Detrick 'A Commentary on the United Nations Convention on the Rights of the Child' (1999) The Hague: Martinus Nijhoff.

Michael D. A. Freeman, "A Commentary on the United Nations Convention on the Rights of the Child, Article 3 : The Best Interests of the Child" (Brill 2007).

Manfred Nowak, CRC Commentary: Article 6 of the UNCRC (2006) (Martinus Nijhoff Publishers).

Elaine E. Sutherland, Lesley-Anne Barnes MacFarlane, Implementing Article 3 of the United Nations Convention on the Rights of the Child – Best interests, Welfare and Well-being (Cambridge, 2016).

Journals

Besson Samantha 'The Principle of Non-Discrimination in the Convention on the Rights of the Child'(2005) The International Journal of Children's Rights 13.

Collins, T.M., 'The General Measures of Implementation: Opportunities for Progress With Children's Rights' [2018] The International Journal of Human Rights, <https://www.tandfonline.com/doi/abs/10.1080/13642987.2018.1558976> .

Desmet, E. & Op De Beeck, H., 'Strategic Decisions in Setting Up Child Rights Impact Assessments' (2014) 44 Revue générale de droit.

Gadda, Harris, Tisdall and Millership, 'Making Children's Rights Real: Lessons from Policy Networks and Contribution Analysis' 24 *International Journal of Human Rights* (2019).

Lundy, L., "Voice is not enough': Conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Education Research Journal*, vol. 33, no. 6, 2007, pp. 927–942.

McCall-Smith, 'To Incorporate the CRC or Not – Is this Really the Question?' 24 *International Journal of Human Rights* (2019).

Payne, L. "Child Rights Impact Assessment as a policy improvement tool" (2019) 24 *The International Journal of Human Rights*.

Shner, Moshe "Why Children have Rights: Children Rights in Janusz Korczak's Education Philosophy" (2018) 26 *International Journal of Children's Rights*.

Stalford Helen, "The Broader relevance of features of children's rights law: the best interest of the child principle" in *Children's Rights Law in the Global Human Rights Landscape – Isolation, Inspiration, Integration?*, ed. Brems, Desmet and Vandehole (2017).

Tisdall, E.K.M., 'Children's Rights and Children's Wellbeing: Equivalent Policy Concepts?' (2015) 44 *Journal of Social Policy* 807.

Zermatten, J. (2010). The Best Interests of the Child Principle: Literal Analysis and Function. *The International Journal of Children's Rights*.

Reports

Aldgate, Jane OBE for the Scottish Government 'UNCRC: The Foundation for Getting Right for Every Child' (2013)

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2013/03/uncrc-the-foundation-of-getting-it-right-for-every-child/documents/uncrc-the-foundation-of-girfec/uncrc-the-foundation-of-girfec/govscot%3Adocument/UNCRC%2B-%2Bthe%2Bfoundation%2Bof%2Bgetting%2Bit%2Bright%2Bfor%2Bevery%2Bchild.pdf>

accessed 15 May 2019.

Ansell, N., Barker, J, & Smith, F., 'UNICEF Child poverty in perspective report: A view from the UK' (2007) 5 Children's Geographies 325.

Eurochild 'Mainstreaming Children's Rights in EU Legislation, Policy and Budget' (2014)

https://www.cnape.fr/documents/document-paper_eurochild_mainstreaming-childrens-rights/ .

Hoffman, S. 'Evaluation of the Welsh Government's Child Rights Impact Assessment procedure under the Children's Rights Scheme pursuant to the Rights of Children and Young Persons (Wales) Measure 2011' (2015)

<https://cronfa.swan.ac.uk/Record/cronfa30963> .

Innocenti Research Centre, 'Reforming Child Law in South Africa: Budgeting and Implementation Planning' (UNICEF, 2009) https://www.unicef-irc.org/publications/pdf/reformingchildlaw_reprint.pdf .

Laura Lundy, Ursula Kilkelly, Bronagh Byrne, & Jason King, 'The UN Convention on the Rights of the Child: A study of legal implementation in 12 countries' (UNICEF UK, 2012)

<https://www.unicef.org.uk/publications/child-rights-convention-2012-report/> .

Lisa Payne, 'Child Rights Impact Assessment (CRIA): A review of comparative practice across the UK' (2017) https://downloads.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-CRIA-comparative-review_FOR-PUBLICATION.pdf?_ga=2.109135109.1665929290.1551666636-827286966.1551666636 .

Ministry of Health and Social Affairs and Ministry for Foreign Affairs, Sweden, 'Child Impact Assessment, Swedish Experience of Child Impact Analyses as a tool for implementing the UN Convention on the Rights of the Child' (January 2001) http://www.manskligarattigheter.se/dm3/file_archive/020523/d18c33283b29d7cbb15d9bb65d1db726/barn%20Child%20Impact%20Assessments.pdf .

Scottish Police Authority, 'A qualitative study of the impact of Impacts of Stop and Search on individuals and communities in Scotland', April 2016 <http://www.spa.police.uk/assets/128635/352708/spaqualitiveresearchapril2016> (Accessed on 1 March, 2019).

Shelter Scotland, "Topic briefing: Children experiencing homelessness" (2018), https://scotland.shelter.org.uk/data/assets/pdf_file/0003/1547292/Children_who_are_homeless_final.pdf/nocache accessed 4 March 2019.

UNICEF and Danish Institute for Human Rights 'CHILDREN'S RIGHTS IN IMPACT ASSESSMENTS; A guide for integrating children's rights into impact assessments and taking action for children' (2013) https://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf .

UNICEF 'The Implementation Handbook for the Convention on the Rights of the Child' (UNICEF, 2007) https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child_Part_1_of_3.pdf accessed 3 March 2019.

UNICEF Office of Research 'A global study of independent human rights institutions for children'(Florence, 2011) https://www.unicef-irc.org/publications/pdf/c950_ccrbook_130903web_noblanks.pdf accessed May 15 2019.

'When and how to best use the Child Rights and Wellbeing Impact Assessment (CRWIA): Guidance' (Guidance for Scottish Government Officials - Version 2, 2019) <https://www.gov.scot/publications/childrens-rights-wellbeing-impact-assessments-crwia-guidance/> accessed 9 April 2019.

Other Sources

'CHILD RIGHTS IMPACT ASSESSMENTS: A PRIMER FOR NEW BRUNSWICK'
http://www.cyanb.ca/images/PDFs/CRIA_Primer_New_Brunswick.pdf .

Children's Rights Network Switzerland, 'Questionnaire sur les droits des enfants' (2015) <http://droits-enfant.ch/fileadmin/nks-kampagne/downloads/Kampagne-Kinderrechte-Leitfaden-FR.pdf> accessed 10 May 2019.

Children and Young People's Commissioner Scotland and Together Scotland 'Briefing Paper: Incorporation in Context'
https://www.cypcs.org.uk/downloads/Incorporation_Briefing_-_Scottish_Context.pdf
accessed 20 May 2019

Crisis (2018) on Unsuitable Temporary Housing in Scotland
https://www.crisis.org.uk/media/239523/i_wont_last_long_in_here_experiences_of_unsuitable_temporary_accommodation_in_scotland_-pdf.pdf accessed 10 April 2019.

European Commission; Impact Assessments https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en .

Merry, S. E, 'Governing Through Indicators' [American Society of International Law, Proceedings of the Annual Meeting, 27 March 2009].

OECD 'What is an impact assessment' (2014) <https://www.oecd.org/sti/inno/What-is-impact-assessment-OECDImpact.pdf> .

'Scotland's school pupils in second mass climate strike' *BBC* [15 March 2019] <https://www.bbc.co.uk/news/uk-scotland-47572585> .

'Scottish Commissioner for Children and Young People, Children's Rights Impact Assessment: The SCCYP Model' (2006) https://www.cypcs.org.uk/uploaded_docs/children%27s%20rights%20impact%20assessment.pdf .

Scotland's Commissioner for Children and Young People, Scottish Government Debate: 'Scotland – the Best Place to Grow Up' (2013) <https://www.cypcs.org.uk/ufiles/Best-Place-to-Grow-Up-Briefing.pdf> accessed 12 April 2019

UNICEF, 'EU-UNICEF Child Rights Toolkit: Integrating Child Rights in Development Cooperation' (2014) <https://www.unicef.org/eu/crtoolkit/downloads/Child-Rights-Toolkit-Web-Links.pdf> accessed 9 April 2019.

Stage 1, Question 2

What aspects of the policy/measure will affect children and young people up to the age of 18?

	UNCRC Articles	Check All that Apply	
		Yes	No
General Principles	Article 2: Non-discrimination		
	Article 3: Best Interests of the Child		
	Article 6: Life, Survival, & Development		
	Article 12: Respect for the Views of the Child		
Civil Rights & Freedoms	Article 7: Birth Registration, Name, Nationality, & Care		
	Article 8: Protection & Preservation of Identity		
	Article 13: Freedom of Expression		
	Article 14: Freedom of Thought, Conscience, & Religion		
	Article 15: Freedom of Association & Assembly		
	Article 16: Right to Privacy		
	Article 17: Access to Information & the Role of Mass Media		
Violence Against Children	Article 19: Protection from All Forms of Violence		
	Article 28(2): Right to Education <i>(human administration of school discipline)</i>		
	Article 34: Protection from Sexual Exploitation		
	Article 37(a): Inhuman Treatment & Detention <i>(torture, cruel, inhuman, degrading treatment/punishment, capital punishment, life imprisonment)</i>		
	Article 39: Recovery & Rehabilitation of Child Victims		

Family Environment & Alternative Care	Article 5: Respect for Parental Guidance & Child’s Evolving Capacities		
	Article 9: Separation from Parents		
	Article 10: Family Reunification		
	Article 11: Abduction & Non-Return of Children		
	Article 18(1)(2): Parental Responsibilities & State Assistance (common responsibilities of both parents/legal guardians in development of child & their best interest; state responsibilities in development through services)		
	Article 20: Protection of Children Deprived of a Family		
	Article 21: Adoption in the Best Interest of the Child		
	Article 25: Review of Treatment in Care		
	Article 27(4): Adequate Standard of Living (recovery of parental financial assistance, specifically from abroad)		
Disability, Basic Health, & Welfare	Article 18(3): Parental Responsibilities & State Assistance (child-care services for working parents)		
	Article 23: Special care of Disabled Children		
	Article 24: Health & Health Services		
	Article 26: Social Security		
	Article 27(1)(2)(3): Adequate Standard of Living (development of physical, mental, moral, & social development; financial responsibility of parents in child development; state support of programs for nutrition, clothing, & housing within its means)		
	Article 33: Drug Abuse (Protection from Use & Abuse)		
Education, Leisure, & Cultural Activities	Article 28: Right to Education (1)(a)(b)(c)(d)(e) (equal opportunity; free/compulsory primary education; free/financial assistance for different forms of secondary education; accessibility to higher education; information/guidance for education & vocation availability; measures for greater attendance & fewer drop-outs)		

	Article 29: Goals of Education		
	Article 31: Play, Recreation, Rest, Leisure, Cultural, and the Arts		
Special Protection Measures	Article 22: Special Protection of Refugee Children		
	Article 30: Children of Minorities/Indigenous Groups (Culture, Religion, & Language)		
	Article 32: Child Labour		
	Article 33: Drug Abuse (Protection from Participation in Trafficking & Production)		
	Article 35: Protection from Sale, Trafficking, & Abduction		
	Article 36: Protection from Other Forms of Exploitation		
	Article 37(b)(c)(d): Inhumane Treatment & Detention (arbitrary/unlawful deprivation of liberty & detention as a last resort; human/respectful treatment, detained separately from adults, & contact with family; legal assistance, right to challenge detention, & prompt decision)		
	Article 38: Protections from War & Armed Conflicts		
Article 40: Juvenile Justice			
General Measures of Implementation	Article 4: Government Protection of Rights		
	Article 41: Respect for Higher National Standards		
	Article 42: Knowledge of Rights Through Government Dispersion		

Stage 1, Question 3

What likely impact — direct or indirect — will the policy/measure have on children & young people?

Direct or Obvious Impact	Initial evaluation of the likely impact

Indirect or Less Obvious Impact	Initial evaluation of the possible impact

Stage 1, Question 4

Which groups of children & young people will be affected?

Groups of Children Affected by Policy/ Measure	Initial evaluation of the significance of the impact (as per the list provided on page 8 of the Guidance)	Initial evaluation of the anticipated level of the impact (as per the list provided on page 8 of the Guidance)

Stage 2, Question 1

Which UNCRC Articles are relevant to the policy/measure?

Rights from Stage 1, Question 2 Chart Marked as 'Yes'	Further Analysis on the expected effect

Stage 2, Question 2

What impact will the policy/measure have on children's rights?

✓	Type of Impact	Justification for Argument
	Positive	
	Negative	
	Neutral	

Stage 2, Question 3

Will there be different impacts on different groups of children & young people?

Group of Children Affected	Initial Analysis of the Positive Impact on Rights	Initial Analysis of the Negative Impact on Rights

Stage 2, Question 4

If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?

Negative Impact Assessed	What options have you consider to modify the proposal or mitigate the impact?	Have you considered the short, medium, & long term outcomes?	Have you developed an outcomes framework to measure the impact?

Stage 2, Question 5**How will the policy/measure contribute to the well-being of children & young people in Scotland?**

Well-Being Indicators	Description of Indicator	Will it contribute to the well-being of CYP? Yes or No	Outline how the implementation of the policy/measure will support public bodies to meet their duties to safeguard, support, and promote the well-being of CYP as defined by the 8 indicators.	Have you considered the short, medium, & long term outcomes?	Have you developed an outcomes framework to measure the impact?
Safe	Protected from abuse, neglect & harm by others at home, at school & in the community				
Healthy	Having the highest attainable standards of physical & mental health, access to suitable healthcare, & support in learning to make healthy & safe choices				
Achieving	Being supported & guided in their learning & in the development of their skills, confidence & self-esteem at home, at school & in the community				
Nurtured	Having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting				
Active	Having opportunities to take part in activities such as play, recreation & sport which contribute to healthy growth & development, both at home & in the community				

Respected	Having the opportunity, along with career, to be heard & involved in decisions which affect them				
Responsible	Having opportunities & encouragement to play active & responsible roles in their schools & communities &, where necessary, having appropriate guidance & supervision & being involved in decisions that affect them				
Included	Having help to overcome social, educational, physical & economic inequalities & being accepted as part of the community in which they live & learn				

Stage 2, Question 6

How will the policy/measure give better or further effect of the implementation of the UNCRC in Scotland?

Portion of UNCRC being further implemented through the policy/measure	Describe how the effect be attained through the policy/measure	UN Documents used to make the Assessment (UNCRC Articles, UN Committee Concluding Observations, General Comments, Optional Protocols, etc.)

Stage 2, Question 7

What ***quantitative evidence*** have you used to inform your assessment? What does it tell you?

(Quantitative Evidence)

Evidence Collected	Where does the evidence come from?	Explanation of the importance?	Are there any gaps in the data? What are they?

What missing information/evidence would have been beneficial to your analysis?

Stage 2, Question 8

Have you consulted with relevant stakeholders, specifically groups of children and young people, as a consultation processes conducted and held by the Scottish Government? (Qualitative Evidence Collected by Government)

Groups Consulted	If Group consists of Children & Young People		Has Feedback Been Provided?	Results of Consultation			
	✓	Was an age appropriate consultation process used? Yes or No	Please Provide a brief description of process.	✓	Please provide a brief description of the form.	What were the results of the consultation?	What is the significance to the development of the policy/measure?

Stage 2, Question 9

Have you involved evidence from third party consultation processes of children and young people in the development of the policy/measure?

(Qualitative Evidence Collected from Outside Sources)

Group Indirectly Consulted	Information on Outside Source		What type of information was obtained? (per list provided in the guidance)	Results of Consolation	
	Source of Information	When was the information gathered?		What results did this outside source derive from the consultation? Did you derive anything different or more focused?	What is the significance to the development of the policy/measure?

Stage 3 (CRWIA for non-legislative policy/measure)

Template CRWIA for non-legislative policy/measure	
Summary of policy aims & desired outcomes	
Executive Summary	
Background	
Scope of the CRWIA, identifying the children & young people affected by the policy, & summarizing the evidence base	Stage 1: Questions 3 & 4 Stage 2: Questions 3, 4, & 7
Children & young people’s views & experiences	Stage 2: Questions 8 & 9
Key Findings, including an assessment of the impact on children’s rights, & how the measure will contribute to children’s wellbeing	Stage 1: Question 2 Stage 2: Questions 1, 2, 5, & 6
Monitoring & Review	
CRWIA Declaration	
Authorization	
Policy Lead Name, Title, Division	Date
Deputy Director or Equivalent Name, Title, Division	Date

Stage 3 (CRWIA for Legislation)

Template CRWIA for Legislation				
Executive Summary		<p style="text-align: center;">Stage 1: Questions 3 & 4 Stage 2: Questions 3, 4, & 7</p> <p style="text-align: center;">Stage 2: Questions 8 & 9</p> <p style="text-align: center;">Stage 1: Question 2 Stage 2: Questions 1, 2, 5, & 6</p>		
Background				
Scope of the CRWIA, identifying the children & young people affected by the policy, & summarizing the evidence base				
Children & young people’s views & experiences				
Key Findings, including an assessment of the impact on children’s rights, & how the measure will contribute to children’s wellbeing				
Monitoring & Review				
Bill - Clause	Aims of Measure	Likely to Impact on ...	Compliance with UNCRC Requirements	Contribution to local duties to safeguard, support & promote child wellbeing
		Stage 1: Questions 3 & 4 Stage 2: Questions 2 & 3	Stage 2: Question 6	Stage 2: Question 5
CRWIA Declaration				
Authorization				
Policy Lead Name, Title, Division			Date	
Deputy Director or Equivalent Name, Title, Division			Date	

Children's Rights and Wellbeing Impact Assessment Checklist

This checklist is a tool to assist those writing CRWIAs to self-review their work throughout the process. This list is non-exhaustive and is not a substitute to the actual CRWIA.

Before Starting:

- I reviewed the training tools and guidance
 - On CRWIA ([Full Guidance Document](#) / [20 min Training](#))
 - [7 Golden Rules for Participation by the CYPES](#)
- If needed, I consulted with the UNCRRC/CRWIA specialist in my department

Stage 1: Screening

At this stage the goal is to evaluate the need for a full CRWIA to be done. Here we look at the potential impacts in a general manner to assess the necessity for conducting a CRWIA.

In developing this CRWIA, I looked at:

- all the General Principles of the Convention on the Rights of the Child
- all the Rights of the Child (UNCRRC)
- Getting It Right For Every Child ([GIRFEC Principles & Values](#)) & SHANARRI Wellbeing indicators

I evaluated:

- all vulnerable populations potentially affected
- all potential impacts before making my recommendation for a full CRWIA

Stage 2: CRWIA

This stage is the substantial stage of the CRWIA process. The goal is to understand the implications of proposed laws and policies on Children's rights. It can also serve as a place to centralize information available on the impacts of the proposed amendment on children, both positive and negative. The CRWIA should be seen as a policy tool and a risk reduction tool to promote the rights of children in Scotland.

I have:

- analysed in depth all the articles and principles highlighted in stage 1 and any additional which may be involved
- explained the positive, negative or neutral impacts of the proposed policy
- differentiated impacts for vulnerable groups
- evaluated and considered alternative policy options to reduce any negative impacts on children's rights
- briefly addressed which well-being indicators should be monitored for evaluation in a review process.
- looked at relevant Concluding Observations and General Comments and know what impact the policy will have on this
- consulted with and encouraged the participation of relevant stakeholders on qualitative and quantitative data (including civil society)
- made use of the resources and information available to me
- cooperated with others in the Scottish Government who are assessing the policy through EQIAs, HIAs and BRIAs

Stage 3: Publication

This final stage of the CRWIA process serves to disseminate the information gathered to both the legislators and the public. Feedback should be provided in the form of a child friendly summary to children consulted. This helps people understand the process the proposed bill, amendment or policy has gone through to minimize negative impacts on the realization of Children's Rights in Scotland.

- I referred to the guidance on where to include information from each stage of the CRWIA in the publication version
- I have, to the maximum extent possible, made this CRWIA accessible to people of all ages and abilities.
- I have communicated these results and the publication with stakeholders involved (including child friendly version)