



Llywodraeth Cymru  
Welsh Government

PUBLICATION

# Regulatory impact assessment code for subordinate legislation: summary of responses

Summary of consultation and Welsh Government responses.

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## Background

Section 76(1)(a) of the Government of Wales Act 2006 (GOWA 2006) requires the Welsh Ministers make a code of practice setting out their policy on the carrying out of regulatory impact assessments (RIA) in connection with relevant Welsh subordinate legislation. Section 76(3)(a) provides that the Welsh Ministers must keep the RIA Code under review.

The Welsh Government reviewed the Code during 2020. This consultation on a draft Code ran for 12 weeks, opening on the 8th December 2020 and closing on the 4th March 2021. The consultation was published on the Welsh Government website and provided interested parties with an online form, postal address and email address through which they could provide a response.

## Summary

One response to the consultation was received. The low number of responses is likely to reflect the technical nature of the consultation and the fact the draft Code proposed only relatively minor changes to update and clarify parts of the existing Code. The policy set out in the draft Code of undertaking an RIA in relation to most pieces of relevant Welsh subordinate legislation is the same as

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in the existing Code.

The respondent provided comments on certain sections of the draft Code and in relation to three of the exceptions set out in paragraph 3.2 of the draft Code. The following is a summary of the respondent's comments about the draft Code and the Welsh Government's response to those comments.

## Comments

### Comment 1

The respondent considered that some useful clarification in the existing Code about the purpose of an RIA had been omitted from the definition of an RIA in paragraph 2.2 of the draft Code and expressed a belief that the clarification should be retained.

### Welsh Government response

Paragraph 2.2 of the draft Code sets out the definition of an RIA as provided in s.76 of the Government of Wales Act 2006. Further explanation about the purpose of an RIA is included in paragraph 3.1 of the draft Code, including most of the text from the existing Code which the respondent highlighted.

### Comment 2

The respondent disagreed with the omission of the following line (which is in the existing Code) from the draft Code and stated that the RIA Code must ensure that the process of impact assessment of any proposed subordinate legislation is considered when the options for the development of the policy are being considered.

“ Except in the cases outlined below, an assessment of the impact of any proposed subordinate legislation must be considered when the options for

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the development of the policy are being considered. ”

## Welsh Government response

The draft Code refers to the RIA being ‘part of an ongoing process that begins with an assessment of whether legislation is necessary to implement a new policy’ and guidance is clear that work on an RIA should begin early in the policy development process. However, to emphasise this point further, the draft Code will be amended to include a line directing officials to assess impacts when the options for the development of the policy are being considered.

## Comment 3

The respondent requested that a link to the Welsh Government’s Code for Integrated Impact Assessment (IIA) be included in the Section 4 of the revised RIA Code.

## Welsh Government response

There is no IIA equivalent to the RIA Code. Internal IIA guidance provides Welsh Government officials with advice about carrying out an Integrated Impact Assessment, including when one is required.

## Comments about the exceptions in section 3 of the draft Code

The relevant exception, the respondents comment and the Welsh Government’s response are set out in the table below.

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<b>Exception in the draft Code</b>	<b>Summary of the respondent's comment</b>	<b>Welsh Government response</b>
<p>Where factual amendments are being made to update subordinate legislation and which do not alter the policy in any significant way or how it is applied in a given situation.</p>	<p>The respondent suggested greater clarity or more restrictive wording was required around the exception to make it clear that the scale of any impact resulting from the amendments should be considered when deciding whether the exception applies or not.</p>	<p>This exception is similar to one in the existing Code. It is already the case that the impact of an amendment(s) is the main consideration when determining whether or not the current exception applies. This will not change under the revised Code. This point will be made clearer in the revised Code.</p>
<p>Where the subordinate legislation is urgently required to:</p> <ul style="list-style-type: none"> <li>i. negate or mitigate a serious threat to human, animal or plant health or serious damage to property, OR</li> <li>ii. properly respond to circumstances resulting from such a threat.</li> </ul>	<p>The respondent queried how 'property' was being defined and whether the exception could be applied to legislation which would have a detrimental impact on the sector they represent. They also stated the use of the exception should be reserved for genuine emergencies.</p>	<p>In terms of the definition of 'property', the natural and ordinary meaning will apply with both real property and moveable items included. The intention is that the exception will only be used in emergency situations where the delay that would be caused by requiring the preparation of an RIA would risk exacerbating the situation. It is theoretically possible that the exception could be applied to future emergency legislation which would have a detrimental impact on the sector represented by the respondent, this is no different to any other sector.</p>
<p>Where the subordinate legislation is a Commencement Order</p>	<p>The respondent expressed a concern that the exception could</p>	<p>This exception is unchanged from the existing Code. The exception would not apply in the</p>

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<b>Exception in the draft Code</b>	<b>Summary of the respondent's comment</b>	<b>Welsh Government response</b>
or Commencement Regulations or Regulations which also make consequential provision or savings, etc.	be applied in situations where there are cost-savings for one party (e.g. Welsh Government or a regulator) but only as a result of additional costs being incurred by another party.	scenario described by the respondent due to there being an additional cost incurred by one or more party. The wording of the exception will be amended to clarify this point.

## Next steps

The intention is to lay a revised RIA Code (incorporating the changes identified above) in the Senedd early in the new term.

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