

WELSH GOVERNMENT INTEGRATED IMPACT ASSESSMENT

White Paper consultation: “A New Tribunal System for Wales”

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WHAT ACTION IS THE WELSH GOVERNMENT CONSIDERING AND WHY?

Context

The body of devolved tribunals in Wales are characterised by their piecemeal development over many years spanning the pre and post devolution periods. Several of our devolved tribunals were initially established before devolution by the then government for the United Kingdom and were administered by the departments that had established them.

The Government of Wales Act 1998 devolved certain subject fields to the National Assembly for Wales, including functions for tribunals associated with those fields.

Principally, this was because tribunals were then seen as being a function of the executive arm of government, established by government departments they were created to serve, rather than a judicial function.

In recognising that tribunals carry out judicial functions, steps have been taken to separate the devolved tribunals from the areas they are designed to exercise judgment over. The post of the President of Welsh Tribunals, the first senior judicial role relating solely to Wales, was created by the Wales Act 2017 with functions relating to training, guidance and welfare for a grouping of tribunals defined as the “Welsh Tribunals”.¹ There are other tribunals, however, that operate in Wales, in devolved fields, but are not defined as Welsh Tribunals, and which fall outside of the supervision of the President of Welsh Tribunals.

In terms of the Welsh Tribunals, administrative steps have been taken to ensure day-to-day operational responsibilities are separate from the Welsh Government’s policy functions through the creation of a Welsh Tribunals Unit. The Unit is responsible for administrative and operational support to the Welsh Tribunals. But structurally, the Welsh Tribunals Unit is part of and is embedded in Welsh Government.

The current system of devolved tribunals is therefore characterised by a lack of coherence and structural cohesion, notwithstanding the steps that have been taken to make the current system operate as effectively as it can within the confines of existing legislative frameworks.

Summary of proposals

The White Paper sets out our proposals for primary legislation to bring separate devolved tribunals in Wales into a unified and coherent structure comprising of a First-tier Tribunal for Wales and an Appeal Tribunal for Wales.

The main proposals in the White Paper are:

¹ The Welsh Tribunals are defined in section 59(1) of the Wales Act 2017. They are: the Agricultural Land Tribunal for Wales; the Mental Health Review Tribunal for Wales; the Residential Property Tribunal for Wales; the Education Tribunal for Wales; the Adjudication Panel for Wales; and the Welsh Language Tribunal.

- A statutory framework for a single, unified and coherent tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The system will be organised by type of jurisdiction into chambers, with clear and consistent onward rights of appeal and will be capable of accommodating additional jurisdictions over time.
- Statutory duties to uphold the independence of the new tribunal system and greater structural independence for the way in which it is administered.
- Judicial leadership for the new tribunal system under the aegis of the President of Welsh Tribunals and Chamber Presidents and Deputy Presidents.
- Clear and efficient processes for setting procedural rules for the new tribunal system.
- Consistent arrangements for appointing tribunal members and clear processes including for determining remuneration, deployment and dealing with complaints and/or disciplinary matters.

What work underpins the proposals?

The proposals set out in this White Paper are informed by a significant body of work and by the reform undertaken in other jurisdictions, most notably:

- a) The report by Sir Andrew Leggatt (the Leggatt Report)² and proposals for reform for tribunals in England and Wales, excluding devolved tribunals, which were enacted by the Tribunals, Courts and Enforcement Act 2007 to put in place a unified First-tier Tribunal and an appellate Upper Tribunal, each divided into chambers;
- b) the Administrative Justice and Tribunals Council (AJTC) Welsh Committee review of tribunals operating in Wales;³
- c) the Committee for Administrative Justice and Tribunals Wales (CAJTW) report on the administrative justice landscape in Wales;⁴
- d) the Commission on Justice in Wales (the Thomas Commission) report;⁵ and
- e) the Law Commission report.⁶

² Sir Andrew Leggatt (2001) [Tribunals for Users One System, One Service: Report of the Review of Tribunals](#).

³ Administrative Justice and Tribunals Council Welsh Committee (2010) [Review of Tribunals Operating in Wales](#), implementation of which the Welsh Government reviewed in 2014.

⁴ Committee for Administrative Justice and Tribunals Wales (2016) [Administrative Justice: A Cornerstone of Social Justice in Wales](#).

⁵ Commission on Justice in Wales (2019) [Justice in Wales for the People of Wales](#).

⁶ Law Commission (2021) [Devolved Tribunals in Wales Report](#), (Law Com No 403).

The Law Commission's review examined all aspects of the current system of devolved tribunals and provided a blueprint for reform to create a unified and coherent system of devolved tribunals in Wales. In *Delivering Justice for Wales*⁷ we endorsed the principles of the Law Commission's recommendations. The recommendations have formed the basis for our on-going engagement with stakeholders on the tribunal reform agenda and they underpin our proposals for reform set out in the White Paper.

Why is primary legislation required?

The devolved tribunals within the scope of our proposals for reform are each governed by their own separate legislative frameworks that have developed piecemeal over time. Unlike many reserved tribunals which were reformed by the Tribunals, Courts and Enforcement Act 2007, the devolved tribunals have each largely remained as they were constituted on their creation. Recent developments have seen the creation of the office of the President of Welsh Tribunals by the Wales Act 2017. But that legislation overlays the existing legislative frameworks, under it the President's statutory functions are limited and it does not create a coherent whole.

Primary legislation is therefore required to address the issues arising from the largely disconnected current legislative frameworks to put in place a clearer, simpler, more effective and coherent way of operating Wales' devolved tribunal system.

Impact

This is a draft Integrated Impact Assessment (IIA) of the proposals contained in the White Paper. The draft IIA is a developing document, and we are seeking additional and alternative evidence to help inform our proposals. A revised IIA will be published alongside any future Bill to take forward the proposals.

The most significant positive impacts of our proposals include:

- placing the principle of judicial independence at the heart of Wales' tribunal system;
- making devolved tribunals more accessible for tribunal users through the more coherent unified structure and means to set modern and up-to-date tribunal rules;
- enhancing and promoting access to justice for the people of Wales over the long-term by future-proofing the tribunal system so that as devolved law continues to grow, further routes of appeal can be absorbed with very little disruption, enabling our tribunal justice infrastructure to grow and evolve over time; and
- laying the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

⁷ Welsh Government (2022) [Delivering Justice for Wales](#).

The most significant negative impacts of our proposals will be the cost of operationalising the reforms made by the legislative change we propose and the recurring annual costs to resource the new tribunal system. These costs will fall to the Welsh Government.

Costs and benefits

A draft Regulatory Impact Assessment (RIA) is published alongside the White Paper, together with this draft IIA. The draft RIA sets out an initial cost and benefit assessment of the options to reform the current system of devolved tribunals in Wales and to shape them into a coherent and unified system.

The Well-being of Future Generations (Wales) Act 2015

The five ways of working in the Well-being of Future Generations (Wales) Act 2015 are being applied to the development and implementation of the proposals for reform of the system of devolved tribunals in Wales contained in the White Paper.

Long term

The White Paper proposals aim to introduce a coherent and unified tribunal system in Wales. Proposals are informed by a significant body of work, as outlined above, that has set out the evidence base and rationale for reform. The White Paper builds particularly on the Law Commission's recommendations for reform published in December 2021.

The objectives for proposing a new structure for Wales' tribunals look to the long-term, and they are twofold. First, to create a modern tribunal system for Wales focused on access to justice and the needs of tribunal users who can be confident the system operates with independence and in a way that adjudicates on their disputes justly, efficiently and expeditiously. Second, to lay the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

Prevention

The current system of devolved tribunals lacks coherence and structural cohesion. It has been made to work within the confines of the legislative frameworks that govern each individual devolved tribunal.

We are not aware of any significant practical concerns about the effectiveness or fairness of the current system. However, the existing arrangements are clearly not optimal. The legislation governing each tribunal in Wales does not recognise the way we treat them today. Consequently, we have a set of individual tribunals that were never intended to exist in anything other than in isolation.

The proposals in the White Paper therefore address the fundamental structural issues found in the current system. The objective of tribunal reform is set out above, namely to create a modern tribunal system that is both responsive to tribunal users needs and capable of growing and evolving in response to future legislative change.

Integration

The Thomas Commission commented that the Welsh tribunals have been under-used as a means of enforcing Welsh legislation.⁸ In the Commission's view:

Welsh tribunals should be used for dispute resolution relating to future Welsh legislation. There has been a tendency in the legislation passed by the Assembly for it to specify that dispute resolution should take place in the County Court or in the non-devolved courts and tribunals. We regard this as anomalous when specialist Welsh tribunals exist that have the competence and capability to determine disputes.⁹

The Thomas Commission also concluded:

Justice should be determined and delivered in Wales so that it aligns with its distinct social, health and education policy and services and the growing body of Welsh law.¹⁰

Proposals set out in the White Paper for reform of the devolved tribunals are important in and of themselves. They are cross-cutting in nature and impact on devolved policy areas, including health, education and housing. But the proposals are also important steps on a longer journey, which the Welsh devolution settlement is taking, towards a sustainable constitutional framework which has the greatest possible democratic legitimacy and is best placed to meet the needs of the people of Wales. The proposals therefore connect and contribute across the Welsh Government's policy agenda. They will make a significant contribution to the improved operation of the justice system in Wales and lay the foundation for how a courts and tribunals serviced would operate in Wales.

Collaboration

The proposals in the White Paper draw upon the Law Commission's report and recommendations, which were formulated following discussions with key stakeholders and a public consultation which ran between 16 December 2020 and 31 March 2021. We have engaged with stakeholders during the development of the White Paper and will continue to do so as we develop the legislative proposals for primary legislation following the consultation exercise.

Involvement

This will be the second consultation on proposals for reform of the devolved tribunals system in Wales. The first consultation was undertaken by the Law Commission to inform its review of the law governing the operation of the devolved tribunals and considerations for reform. The White Paper proposals draw on the Law Commission's consultation and the recommendations in its final report in December 2021. In addition, recommendations

⁸ Commission on Justice in Wales (2019) [Justice in Wales for the People of Wales](#), Executive Summary, see paragraph 16.

⁹ Commission on Justice in Wales (2019) [Justice in Wales for the People of Wales](#), paragraph 6.59.2, page 284.

¹⁰ The Commission on Justice in Wales (2019) [Justice in Wales for the People of Wales](#), Executive Summary, see paragraph 4.

for reform of the Welsh Tribunals were made as part of the wider review of the justice system in Wales undertaken by the Thomas Commission, which reported in October 2019.

We will continue to engage with stakeholders as we develop this draft IIA and will publish a revised IIA alongside any future Bill to take forward these proposals.

CONCLUSION

How have people most likely to be affected by the proposal been involved in developing it?

The Law Commission issued its “Devolved Tribunals in Wales Consultation Paper”¹¹ on 16 December 2020 and the consultation exercise ran until 31 March 2021. The Law Commission received 42 responses to the consultation. In addition, during the consultation period the Law Commission attended a number of events and meetings. Nicolas Paines KC, Commissioner for Public Law and the Law in Wales, gave evidence to the Senedd’s Legislation, Justice and Constitution Committee on 22 February 2021 as part of the Committee’s inquiry into “Making justice work in Wales”.

The Law Commission published its recommendations for reform of the devolved tribunals in Wales in December 2021. The proposals set out in the White Paper build upon those recommendations. They also build upon a significant body of work that has called for reform of the system of devolved tribunals in Wales, including the Thomas Commission, chaired by Lord Thomas of Cwmgiedd, that reported in October 2019.

During preparation of the White Paper, we have engaged with key stakeholders who have provided valuable input to enable us to shape the proposals now set out in the White Paper. We will continue to engage with stakeholders during the consultation period and seek to encourage the participation of a wide spectrum of consultees. Responses to the White Paper and to the accompanying draft RIA and draft IIA will inform and shape the legislative proposals necessary to reform Wales’ system of devolved tribunals.

We welcome suggestions of any groups representing those who may be impacted by our proposals – especially those with protected characteristics, young people and relevant Welsh language groups – for further engagement during the consultation period and the development of future legislation.

What are the most significant impacts, positive and negative?

The objective of the proposals set out in the White Paper are twofold. First, to create a modern tribunal system for Wales focused on access to justice and the needs of tribunal users who can be confident the system operates with independence and in a way that adjudicates on their disputes justly, efficiently and expeditiously. Second, to lay the

¹¹ [Devolved Tribunals in Wales Consultation Paper](#) (Consultation Paper 251).

foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

The proposals address issues around the piecemeal development of devolved tribunals in Wales, the lack of consistency of approach to the rules and procedures that govern them and the need for greater structural independence in the way that they are administered. We propose to create a unified tribunal structure with a First-tier Tribunal for Wales divided into chambers and an Appeal Tribunal for Wales. This new tribunal system will enable the tribunal justice in Wales to better accommodate developments arising from future legislation. It will be a structure that is flexible by design and capable of absorbing new jurisdictions with relatively little disruption.

We consider the proposed reforms will have significant positive impacts. These include:

- i. placing the principle of judicial independence at the heart of Wales' tribunal system;
- ii. making devolved tribunals more accessible for tribunal users through the more coherent unified structure and means to set modern and up-to-date tribunal rules;
- iii. enhancing and promoting access to justice for the people of Wales over the long-term by future-proofing the tribunal system so that as devolved law continues to grow, further routes of appeal can be absorbed with very little disruption, enabling our tribunal justice infrastructure to grow and evolve over time; and
- iv. laying the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

The most significant negative impacts of our proposals will be the cost of operationalising the reforms made by the legislative change we propose and the recurring annual costs to resource the new tribunal system. These costs will fall to the Welsh Government, and we have carried out a preliminary assessment of them in the draft RIA.

In light of the impacts identified, how will the proposal:

- **maximise contribution to our well-being objectives and the seven well-being goals; and/or,**
- **avoid, reduce or mitigate any negative impacts?**

The proposals set out in the White Paper contribute to our Programme for Government commitment to pursue the case for the devolution of policing and justice. The proposals contribute to this commitment because they demonstrate the action we are taking in our

existing areas of responsibility to improve justice in Wales. As such, the proposals are a benchmark of what can be achieved. The Programme for Government commitment to pursue the case for the devolution of policing and justice sits within the constitution ministerial portfolio rather than within the grouping of commitments that directly contribute to our ten well-being objectives.¹² The proposals do, however, contribute to five of the seven well-being goals prescribed in section 4 of the Well-being of Future Generations (Wales) Act 2015, as summarised in the list below:

- **A prosperous Wales.** The proposals take a whole system approach to creating a modern structure for Wales' tribunal system that, for the first time in legal history, creates a Welsh appellate body, the Appeal Tribunal for Wales. We see this as contributing to Wales' infrastructure as a nation and a means of further developing the devolved law of Wales in a coherent and uniquely Welsh way.
- **A healthier Wales.** The effective delivery of justice is a conduit which enables the people of Wales to make their respective voices heard and enforce their basic rights. To do so supports people's mental and physical health.
- **A more equal Wales.** The proposals apply pan-Wales to create a modern tribunal system for Wales focused on access to justice and the needs of tribunal users who all can be confident the system treats them equally and operates with independence and in a way that adjudicates on their disputes justly, efficiently and expeditiously.
- **A Wales of cohesive communities.** The proposals are laying the foundation for our tribunal infrastructure enabling the tribunal system to evolve over time as devolved law grows. The proposals are also laying the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals. All of this contributes to Wales' infrastructure as a nation and supports its communities to be viable, safe and well-connected.
- **A Wales of vibrant culture and thriving Welsh language.** The proposals are building Wales' justice institutions. A single and cohesive system for devolved tribunals creates the optimum environment to facilitate the provision of tribunal services through the medium of the Welsh language. Whilst the impact on the Welsh language will be indirect, we consider it will be a beneficial impact and one that contributes to our strategy, Cymraeg 2050.

¹² [Programme for Government - Update](#), see pages 2, 9 and 15.

How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

This draft IIA accompanies the White Paper, together with the draft RIA setting out an initial cost and benefit assessment of the options to reform the current system of devolved tribunals in Wales.

All responses to the consultation will be reviewed and used to refine the proposals further as part of the process to develop legislation in this area. Revised versions of the IIA and RIA will be published to accompany any future Bill.

We will develop an implementation plan for the proposals through the phases of the tribunal reform project, including the legislative development phase, and at its conclusion. This will include monitoring and evaluating impacts.

DECLARATION

Declaration

I am satisfied that the impact of the proposed action has been adequately assessed and recorded.

Name of Senior Responsible Owner / Deputy Director: **James Gerard, Deputy Director, Justice Policy Division**

Department: **Economy, Treasury and Constitution**

Date: 19 June 2023

A. CHILDREN'S RIGHTS IMPACT ASSESSMENT

1. What decision are you impact assessing?

- 1.1. This draft Children's Right Impact Assessment relates to proposals set out in our White Paper "A New Tribunal System for Wales", a public consultation on proposals for a modern system for Wales' devolved tribunals.
- 1.2. The body of devolved tribunals in Wales are characterised by their piecemeal development over many years spanning the pre and post devolution periods. A number of our devolved tribunals were initially established before devolution by the then government for the United Kingdom and were administered by the departments that had established them. The Mental Health Review Tribunal for Wales, for example, was administered by the Health Department of the former Welsh Office. Whilst the tribunal system in Wales provides a commendable service to the people of Wales, the legislative frameworks which underpin it are outdated, inflexible and lack coherence. Recent developments have seen the Wales Act 2017 create the office of the President of Welsh Tribunals with functions in relation to the Welsh Tribunals. But that legislation overlays the existing frameworks and does not create a coherent whole.
- 1.3. A clearer, simpler, more effective and coherent way of operating Wales' tribunal system is essential to the cause of delivering justice for the people of Wales. The main reforms proposed in the White Paper are:
 - a) a statutory framework for a single, unified and coherent tribunal system comprising of the First-tier Tribunal for Wales organised by type of jurisdiction with clear and consistent onward rights of appeal to the Appeal Tribunal for Wales;
 - b) statutory duties to uphold the independence of the new tribunal system and greater structural independence for the way in which it is administered;
 - c) judicial leadership for the new tribunal system under the aegis of the President of Welsh Tribunals and Chamber Presidents and Deputy Presidents;
 - d) clear and efficient processes for setting procedural rules for the new tribunal system; and
 - e) consistent arrangements for appointing tribunal members and clear processes including for determining remuneration, deployment and dealing with complaints and/or disciplinary matters.

- 1.4. The devolved tribunals in scope of the proposals for reform include the seven individual devolved tribunals grouped together by the Wales Act 2017 as the “Welsh Tribunals”, together with the Valuation Tribunal for Wales, school admission appeal panels and school exclusion appeal panels. Of particular relevance to children and young people are the jurisdictions of the Education Tribunal for Wales, the Mental Health Review Tribunal for Wales, school admission appeal panels and school exclusion appeal panels.
- 1.5. The Education Tribunal for Wales is one of the “Welsh Tribunals”, all of which are currently administered by the Welsh Government. The Education Tribunal for Wales makes decisions on appeals about additional learning needs or special educational needs and claims of disability discrimination in schools.
- 1.6. The Mental Health Review Tribunal for Wales (MHRTW) is another of the Welsh Tribunals. The MHRTW hears applications by or on behalf of those detained in a hospital in Wales, or a person residing in Wales who is subject to conditional community discharge or guardianship under the Mental Health Act 1983, as amended by the Mental Health Act 2007. The MHRTW handles the largest volume of applications of all the Welsh Tribunals. Due to the nature of the MHRTW’s work, most of its hearings take place in psychiatric hospitals.
- 1.7. The jurisdictions of the Welsh Tribunals will transfer to the new First-tier Tribunal for Wales, the work of which will be organised into chambers. We propose the jurisdiction of the Education Tribunal for Wales transfers to the Education Chamber and the jurisdiction of the MHRTW transfers to the Mental Health Chamber of the First-tier Tribunal for Wales.
- 1.8. School admission appeal panels and school exclusion appeal panels are administered by the local authority responsible for the school in question. School admission appeal panels hear and determine appeals against admission authority decisions. Admission appeal panels can direct that a child be given a place at a particular school. That decision is binding on both the admissions authority and the governing body of a community or voluntary controlled school at which the panel determines the child should be placed. School exclusion appeal panels hear appeals against decisions of governing body discipline committees on permanent exclusions. Exclusion appeal panels issue binding decisions and can order that a pupil be reinstated.
- 1.9. We have no doubt that those involved in the decision-making of school admission and school exclusion appeal panels do so with the best interests of the child in mind. We have no doubt they will be mindful, for example, that the consequences of school exclusion for a child and for a school are of the highest significance. But current arrangements could be better. The Thomas Commission has commented:

We are concerned that school admissions and exclusions appeals panels operate without any kind of judicial scrutiny save in those very rare cases in which an exclusion leads to an application for judicial review. The role of judges in determining disputes relating to the education of pupils has steadily increased over time as functions of public bodies have increased.

We consider that a thorough appraisal of the operation of local authority appeal panels and oversight by the President of Welsh Tribunals of their decision-making processes is required.¹³

- 1.10. The Law Commission also heard evidence that in some cases there were doubts about the independence of these panels, and therefore that decisions were being taken properly in the interests of the child. It concluded that, at least for the time being, school admission appeal panels, could remain outside of the new unified tribunal system, but that the jurisdiction of school exclusion appeal panels should be transferred to the First-tier Tribunal for Wales.
- 1.11. It is important on practical grounds that the accumulation of new jurisdictions within the First-Tier Tribunal for Wales is phased and that there is a degree of prioritisation, based on the importance of the subject matter and the logistical complexity among other factors. School exclusion decisions are of particular significance to the child in question. We agree with the Law Commission's recommendation that school admission appeal panels continue to be administered by local authorities at this time. We propose, however, to make provision for a right of appeal to the Education Chamber of the First-tier Tribunal for Wales on points of law from decisions of school admission appeal panels.
- 1.12. With regard to school exclusions, it is essential that decision-making in respect of is consistent and unquestionably independent. We therefore agree with the Law Commission's recommendation, and propose to transfer the jurisdiction of school exclusion appeal panels to the Education Chamber of the First-tier Tribunal for Wales to sit with the jurisdiction of the current Education Tribunal for Wales.
- 1.13. One of the objectives of the proposals set out in the White Paper is to design flexibility into the new tribunal system capable of absorbing jurisdictions in the Welsh justice system that may arise in the future. The Commission on the UK's Future (commonly referred to as the Brown Commission) established by the UK Labour Party has, for example, recommended the devolution of youth justice to Wales. A tribunal setting could in many ways be better than a court setting for youth justice matters, because tribunals are a more informal approach to adjudicating on matters compared to courts. We therefore propose to continue to consider the devolution of youth justice and the fit of it with the new tribunal system, for example dovetailing youth justice with a broader range of issues concerning the child including welfare, health and education.

¹³ Commission on Justice in Wales (2019) [Justice in Wales for the People of Wales](#), paragraph 6.47, page 280.

2. Gathering evidence and engaging with children and young people

- 2.1. The Law Commission's recommendations for reform of the devolved tribunals were informed by a public consultation between December 2020 and March 2021. The National Deaf Children's Society Cymru responded to the consultation and highlighted that in considering changes there is a need to ensure that in taking on the functions of the now Education Tribunal for Wales, the First Tier Tribunal retains capacity and specialism to assist with Additional Learning Needs matters. The Society agreed with the Law Commission's proposals for school admission appeal panels to remain outside of the unified tribunal system for the time being because of the impact the number of such appeals would have on the now Education Tribunal for Wales.
- 2.2. The proposals set out in the White Paper will be open for public consultation and will be published on the Welsh Government's website alongside a draft RIA and draft IIA. During the consultation period we will consider how we better and further engage with children and young people about the proposals for tribunal reform and particularly those elements of the reform agenda that have greater relevance to them, their access to justice and their ability to enforce their rights.
- 2.3. We are developing our approach for how we will seek to engage with children and young people or their representatives during the consultation period, particularly in relation to those elements of the reform agenda that have greater relevance to them. As part of this we propose to engage with the Children's Commissioner for Wales's office and to work with the relevant specialists within Welsh Government for input and advice.
- 2.4. As we develop legislative proposals, we will keep this draft Children's Right Impact Assessment under review.

3. Analysing the evidence and assessing the impact

3.1. We have considered how the proposals set out in the White Paper impact on the United Nations Convention on Rights of a Child (“the UNCRC”). The Articles we consider could apply are Articles 1, 2, 3, 4, 5, 6, 12, 13, 16, 18, 23 and 28. The remainder of the Articles have been assessed as not applicable. We have concluded there are no identified negative impacts for children or young people arising from the proposals set out in the White Paper. The proposals are intended to create a modern tribunal system where judicial independence is the guiding principle for the way in which the new judicial institutions will be supported in Wales.

UNCRC Articles or Optional Protocol	Enhances	Challenges	Explanation
Article 1: Everyone under 18 years of age has all the rights in this Convention.	X		The proposals set out in the Whiter Paper will put in place a modern tribunal system where judicial independence will be the guiding principle for the way in which judicial institutions in the new system will be supported in Wales. The proposals will place decision-making about issues affecting children and young persons in the tribunal system, for example school exclusion decisions which are of great significance to the child in question and to the school. Whilst, for the time being, school admission appeal panels will remain administered by local authorities, we propose to make provision for a right of appeal to the Education Chamber of
Article 2: The Convention applies to everyone whatever their race, religion, abilities, whatever they think or say and whatever type of family they come from.	X		
Article 3: All organisations concerned with children should work towards what is best for each child.	X		
Article 4: Governments should make these rights available to children.	X		
Article 5: Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.	X		
Article 6: All children have the right of life. Governments should ensure that children survive and develop healthily	X		
Article 12: Children have the right to say what they think	X		

UNCRC Articles or Optional Protocol	Enhances	Challenges	Explanation
should happen, when adults are making decisions that affect them, and to have their opinions taken into account.			the First-tier Tribunal for Wales on points of law from decisions of school admission appeal panels, building judicial oversight into decision making on those matters.
Article 13: Children have the right to get and to share information as long as the information is not damaging to them or to others	X		
Article 16: Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.	X		
Article 18: Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments should help parents by providing services to support them, especially if both parents work.	X		
Article 23: Children who have any kind of disability should have special care and support so that they can lead full and independent lives.	X		
Article 28: Children have a right to an education. Discipline in schools should respect children's human dignity. Primary education should be free. Wealthy countries should help poorer countries achieve this.	X		

4. Monitoring and Review

- 4.1. As we develop legislative proposals, we will keep this draft Children's Rights Impact Assessment under review.

4.2. Primary legislation is a key deliverable of the tribunal reform project and is the only way in which the proposals set out in the White Paper can be delivered. We will develop an implementation plan to operationalise the reforms made by the legislative changes we propose. We will work closely with key stakeholders to design and develop a post implementation review of the legislative changes our proposals will deliver, as well as a review of the delivery of the tribunal reform project. In the long-term, success will be measured by the experience of tribunal users, including children and young people, and the access to justice the new tribunal service provides.

B. EQUALITY IMPACT ASSESSMENT

1. Describe and explain the impact of the proposal on people with protected characteristics as described in the Equality Act 2010.

- 1.1. The Equalities Act 2010 places a 'General Equality Duty' on Welsh public authorities to have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation, as well as to advance equality of opportunity and to foster good relations between people who share a protected characteristic and those who do not.
- 1.2. The Equality Act 2010 protects people against discrimination because of the protected characteristics that everyone has. People are protected from discrimination in the workplace, when they use businesses and other organisations that provide services and when they have contact with public bodies.
- 1.3. The proposals set out in the White Paper will bring currently separate devolved tribunals in Wales into a unified and coherent structure. It will comprise a First-tier Tribunal for Wales and an Appeal Tribunal for Wales under the supervision and judicial leadership of the President of Welsh Tribunals.
- 1.4. We envisage the proposals will make devolved tribunals more accessible for users generally, particularly as procedural rules are revised. The proposals will also allow the Welsh Ministers to more easily move functions out of the courts and into a tribunal jurisdiction. We consider this will have a positive impact as tribunals are considered to be generally more accessible, in particular they are more cost effective, operate in a generally less formal manner and have processes and procedures that are easier to understand.
- 1.5. Our assessment is that, overall, the proposals are unlikely to have a significant impact on individuals with protected characteristics over a general improvement in accessibility for all tribunal users. We have not identified any adverse impacts as a result of our assessment of the impact of the proposals on persons with protected characteristics as recorded in the table below.
- 1.6. The Equality Act 2010 requires public sector bodies to comply with the public sector equality duty and we would expect this to apply to the new proposed arms-length body to be responsible for the administration of the new tribunal system.

- 1.7. We will keep the Equality Impact Assessment under review as legislative proposals develop. We welcome comments from consultees, including as to whether there are any impacts we have not identified.

2. Record of Impacts by protected characteristic:

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
Age (think about different age groups)	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to age.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system, and currently disparate approaches to matters including judicial recruitment and setting of tribunal rules and procedures will be streamlined to apply across the tribunal system as a whole rather than as designed for individual tribunals.	The proposals are anticipated to generally have positive impacts and hence no mitigations are assessed as being required.

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
Disability (consider the social model of disability ¹⁴ and the way in which your proposal could inadvertently cause, or could be used to proactively remove, the barriers that disable people with different types of impairments)	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to people with disabilities.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.
Gender Reassignment (the act of transitioning and Transgender people)	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to people who have undertaken or are in the process of gender reassignment.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.

¹⁴ Welsh Government uses the social model of disability. We understand that disabled people are not disabled by their impairments but by barriers that they encounter in society. Ensuring that your proposal removes barriers, rather than creating them, is the best way to improve equality for disabled people. For more information, go to the intranet and search 'social model'.

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
		incorporated into the new tribunal system.	
Pregnancy and maternity	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to people who are pregnant or who are on maternity or paternity leave.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.
Race (include different ethnic minorities, Gypsies and Travellers and Migrants, Asylum seekers and Refugees)	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to race.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
Religion, belief and non-belief	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to race.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.
Sex / Gender	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to people's sex or gender.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.
Sexual orientation (Lesbian, Gay and Bisexual)	While we expect our proposals to generally have positive impacts for everyone, we have not identified any	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved	The proposals are generally anticipated to have positive impacts and hence no mitigations are

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
	specific implications with regard to people's sexual orientation.	tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	assessed as being required.
Marriage and civil partnership	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to marriage or civil partnership	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.
Children and young people up to the age of 18	A Children's Rights Impact Assessment has been completed and is at Annex A. While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of	The proposals are generally anticipated to have positive impacts hence no mitigations are assessed as being required.

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
	with regard to children and young people.	devolved tribunals will transfer to and be incorporated into the new tribunal system.	
Low-income households	While we expect our proposals to generally have positive impacts for everyone, we have not identified any specific implications with regard to low-income households.	The proposals set out in the White Paper seek to create a unified and coherent structure for devolved tribunals comprising the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The existing jurisdictions of devolved tribunals will transfer to and be incorporated into the new tribunal system.	The proposals are generally anticipated to have positive impacts and hence no mitigations are assessed as being required.

3. Human Rights and UN Conventions

Do you think that this policy will have a positive or negative impact on people's human rights?

- 3.1. The European Convention on Human Rights ("the ECHR") protects basic human rights and freedoms as set out in its 14 articles. It protects the right to liberty and security (Article 5) and the right to a fair trial, including in the determination of civil rights and obligations (Article 6), and prohibits discrimination (Article 14). The ECHR is incorporated into UK law by the Human Rights Act 1998.
- 3.2. The Welsh Ministers cannot act in a way that is incompatible with any of the Convention rights by virtue of section 81 of the Government of Wales Act 2006.
- 3.3. The proposals set out in the White Paper are to bring separate devolved tribunals into a unified and coherent structure comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The proposals are intended to create a

modern tribunal system for Wales focused on access to justice and the needs of tribunal users who can be confident the system operates with independence and in a way that adjudicates on their disputes justly, efficiently and expeditiously.

- 3.4. Our initial assessment is that the proposals are compatible with Convention rights and do not have a negative impact on people's human rights.

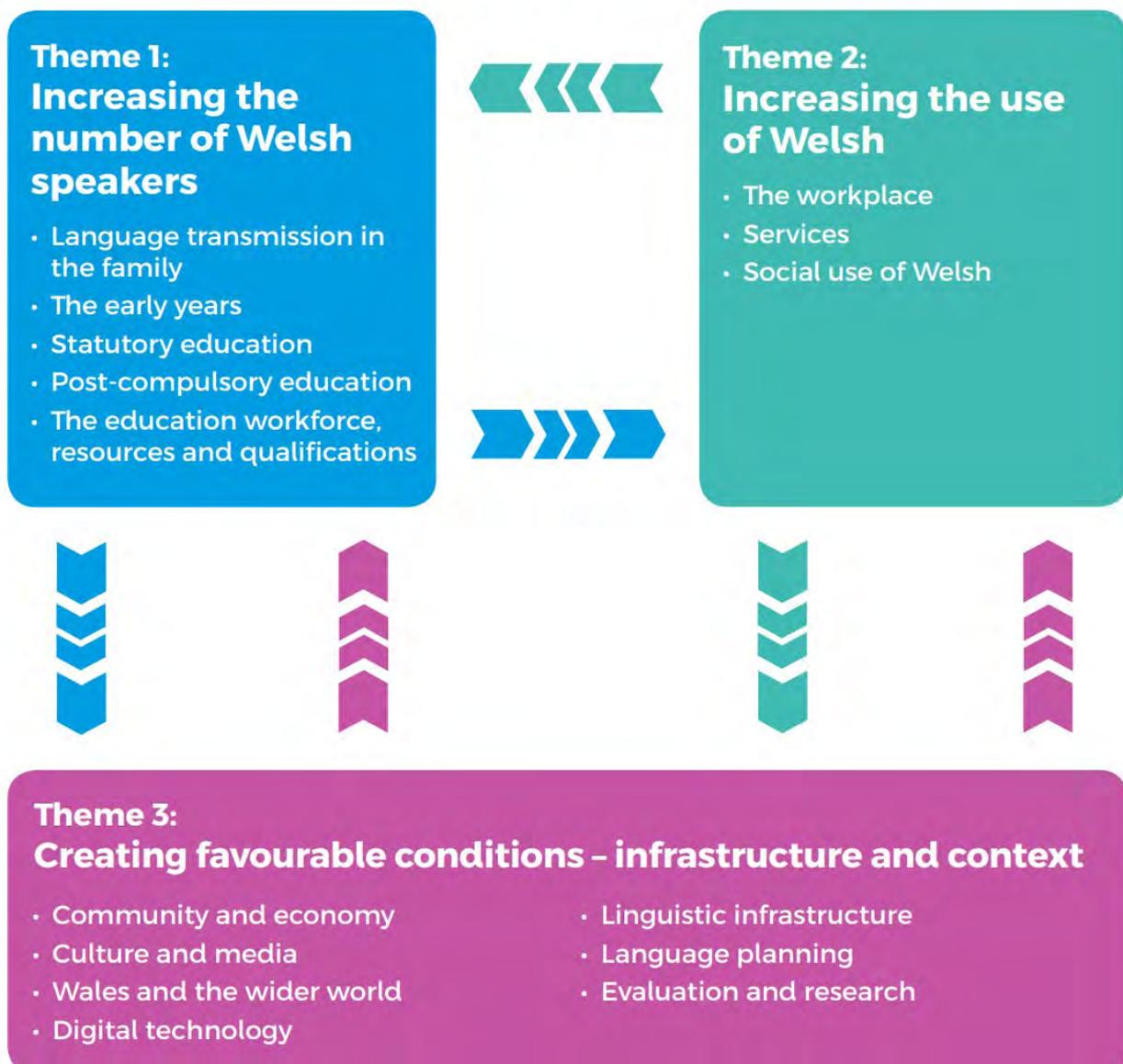
C. WELSH LANGUAGE IMPACT ASSESSMENT

Cymraeg 2050 is our national strategy for increasing the number of Welsh speakers to a million by 2050.

The Welsh Government is fully committed to the new strategy, with the target of a million speakers included in its Programme for Government. A thriving Welsh language is also included in one of the 7 well-being goals in the Well-being of Future Generations (Wales) Act 2015.

We also have a statutory obligation to fully consider the effects of our work on the Welsh Language. This means that any Welsh Government policy should consider how our policies affect the language and those who speak it.

The [Cymraeg 2050 strategy](#) has three interrelated themes:



The headings under each theme outline the scope of activities that can affect the language.

As a general rule, if your policy has the potential to impact on people, it will impact in some way on Welsh speakers and therefore on the Welsh language.

1. Welsh Language Impact Assessment reference number: 04/06/2023

2. Does the proposal demonstrate a clear link with the Welsh Government's strategy for the Welsh language? – *Cymraeg 2050 A million Welsh speakers* and the related Work Programme for 2017-2021?

- 2.1. The proposals set out in the White Paper are to bring separate devolved tribunals into a unified and coherent structure comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. The proposed Appeal Tribunal for Wales is of notable significance as it will be the first appellate body in Welsh legal history. As such, it will be a vehicle for developing the devolved law of Wales in a coherent and uniquely Welsh way. The new tribunal system will therefore operate as a coherent whole with disputes and onward appeals being considered and determined by Welsh institutions.
- 2.2. These proposals have a clear link to “Cymraeg 2050 A million Welsh Speakers” and the vision for the Welsh language to be used in every aspect of life. In particular, the proposals align with the third strategic theme of the strategy. The new tribunal system will help to build the infrastructure and conditions in Wales where the Welsh language and its speakers can thrive.
- 2.3. We see one of the roles of the proposed arms-length body with responsibility for the administration of the new tribunal system being to gather data and monitor key performance indicators. We see this as including indicators on use of the Welsh language across the tribunal system.

3. Describe and explain the impact of the proposal on the Welsh language, and explain how you will address these impacts in order to improve outcomes for the Welsh language. How will the proposal affect Welsh speakers of all ages (both positive and/or adverse effects)? You should note your responses to the following in your answer to this question, along with any other relevant information:

- **How will the proposal affect the sustainability of Welsh speaking communities¹⁵ (both positive and/or adverse effects)?**
 - **How will the proposal affect Welsh medium education and Welsh learners of all ages, including adults (both positive and/or adverse effects)?**
- 3.1. The impact of the proposals set out in the White Paper on the Welsh language will be indirect.
 - 3.2. In summary, the proposals will see the incorporation of existing devolved tribunals into a unified and coherent tribunal system with common provision for matters including appointment of tribunal members, complaints and discipline and for the making of procedural rules; and the new tribunal system will be under the supervision and judicial leadership of the President of Welsh Tribunals who will have an enhanced role. In addition, the principle of judicial independence will be the central tenet for the way in which the new tribunal system is administered through a new arms-length body structurally separate from the Welsh Government.
 - 3.3. The Welsh Language Tribunal is amongst the body of Welsh Tribunals that will be incorporated into the new tribunal system. The current jurisdiction of the Welsh Language Tribunal will be organised into the Welsh Language Chamber of the First-tier Tribunal, and there will be onward rights of appeal to the Appeal Tribunal for Wales, the first Welsh appellate body in legal history. The positive long-term impacts of our proposals will accrue for users of the Welsh Language Tribunal as they will for other tribunal users. These arise, for example, from the greater structural independence that we propose for the new tribunal system, and the development over time of distinct Welsh jurisprudence through the decisions of the Appeal Tribunal for Wales.
 - 3.4. A single and cohesive system for devolved tribunals creates the environment to facilitate the provision of tribunal services through the medium of the Welsh language. Whilst the impact on the Welsh language will be indirect, we consider it will be a beneficial impact. We do not consider that there are adverse impacts for the Welsh language arising from the proposals.
 - 3.5. We do not anticipate the proposals will have a significant impact on the sustainability of Welsh speaking communities.

¹⁵ These can be close-knit rural communities, dispersed social networks in urban settings, and in virtual communities reaching across geographical spaces.

3.6. The proposals to incorporate the jurisdiction of school exclusion appeal panels in the proposed Education Chamber of the First-tier Tribunal for Wales may have an indirect impact for the Welsh language on access to Welsh medium education in areas where provision may be of more limited availability. We do not consider that those involved in the exclusion of a child from a school approach those decisions lightly, but the consequences of school exclusion for a child and for a school are of the highest significance. It is therefore essential that decision-making is consistent and unquestionably independent, and we consider our proposals will deliver this.

- **How will the proposal affect services¹⁶ available in Welsh (both positive and/or adverse effects)? (e.g. health and social services, transport, housing, digital, youth, infrastructure, environment, local government etc.)**

3.7. The Agricultural Land Tribunal for Wales, the Mental Health Review Tribunal for Wales, the Residential Property Tribunal for Wales, the Education Tribunal for Wales and the Valuation Tribunal for Wales are subject to the Welsh Language Standards¹⁷. The languages of the Welsh Language Tribunal are English and Welsh which the Tribunal must treat equally.¹⁸ The Adjudication Panel for Wales states it is committed to ensure equality to the Welsh and English languages in the services provided.¹⁹

3.8. We do not anticipate the proposals set out in the White Paper will have an adverse impact on the provision of services available in the Welsh language.

- **How will you ensure that people know about services that are available in Welsh and are able to access and use them as easily as they can in English? What evidence / data have you used to inform your assessment, including evidence from Welsh speakers or Welsh language interest groups?**

3.9. The existing devolved tribunals are providing services in the Welsh language and are subject to, or are complying with, relevant Welsh Language Standards.

¹⁶ The Welsh Language Strategy aims to increase the range of services offered to Welsh speakers, and to see an increase in use of Welsh-language services.

¹⁷ Schedule 6 to the Welsh Language Standards (No.4) Regulations 2016 (SI2016/405 (W.125)). The Education Tribunal follows the same standards as set for the Special Educational Needs Tribunal for Wales (see [The Education Tribunal for Wales Welsh Language Standards Annual Report April 2021 to March 2022](#)).

¹⁸ Rule 3 and 6 of the Welsh Language Tribunal Rules 2015 (SI2015/1028 (W.76)).

¹⁹ [Welsh language | The Adjudication Panel for Wales \(gov.wales\)](#).

Information about the Welsh Tribunals is available through the website for each individual tribunal and those websites are available in the Welsh language. We anticipate that on the creation of the proposed arms-length body and as jurisdictions of existing devolved tribunals transfer to the First-tier Tribunal for Wales, information will be similarly available in both English and Welsh languages.

- **What other evidence would help you to conduct a better assessment?**

3.10. We will keep the Welsh Language Impact Assessment under review as legislative proposals develop. We welcome comments from consultees, including as to whether there are impacts, whether positive or adverse, on the Welsh language we have not identified.

- **How will you know if your policy is a success?**

3.11. As part of the tribunal reform project, of which primary legislation is a key deliverable, we will develop an implementation plan to operationalise the reforms made by the legislative changes we propose. We will work closely with key stakeholders to design and develop a post implementation review of the legislative changes our proposals will deliver, as well as a review of the delivery of the tribunal reform project. In the long-term, success will be measured by the experience of tribunal users and the access to justice the new tribunal service provides, including those accessing services through the Welsh language.

D. BIODIVERSITY IMPACT ASSESSMENT

Questions 1 to 9 are relevant for all policies.

Questions 10 to 16 are relevant where policies or proposals concern construction or management of land and/or sea.

Embedding biodiversity

1. How will your proposal integrate biodiversity into decision making?

- 1.1. Section 6 of the Environment (Wales) Act 2016 (“the 2016 Act”) imposes a duty on a public authority to seek to maintain and enhance biodiversity in the exercise of its functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions. This duty applies to the First Minister, Counsel General and the Welsh Ministers. This Biodiversity Impact Assessment documents the impacts and positive opportunities for action for biodiversity arising from the proposals set out in the White Paper for a new tribunal system for Wales.
- 1.2. “Biodiversity” is defined in section 26 of the 2016 Act to mean the diversity of living organism, whether at the genetic species or ecosystem level. The proposals set out in the White Paper do not relate to living organisms or to land or water. In the work undertaken to develop the White Paper and the accompanying draft RIA and draft IIA, no specific evidence has been collated on the impact of proposals, whether negative or positive, on biodiversity.
- 1.3. Our conclusion in this draft IIA is our proposals are unlikely to have an impact on biodiversity. We will keep the matter under review as legislative proposals develop.

2. Has your proposal ensured biodiversity is accounted for in business decisions?

- 2.1. As noted, the First Minister, Counsel General and Welsh Ministers are subject to the duty under section 6 of the 2016 Act to maintain and enhance biodiversity and the resilience of ecosystems. Our preliminary conclusion is that the proposals set out in the White Paper are unlikely to have an impact on biodiversity.
- 2.2. The draft RIA prepared alongside the draft IIA makes an assessment of the costs and benefits of the proposals.

3. How does your proposal improve understanding and raise awareness of the importance of biodiversity, encouraging others to act?

- 3.1. In the work undertaken to develop the White Paper and the accompanying draft RIA and draft IIA, no specific evidence has been collated on the extent to which

the proposals raise awareness of the importance of biodiversity or encourage others to act.

Improving our evidence, understanding and monitoring

4. Have you used the best available evidence of biodiversity to inform your proposal and this assessment?

4.1. The lists of species and habitats of principal importance published under Section 7 of the 2016 Act and the State of Natural Resources Report have been considered and there are no direct issues arising.

5. Have you used up to date knowledge of the key impacts on biodiversity to make evidence-based decisions?

5.1. The work we have undertaken to date has not identified any evidence that suggests the proposals set out in the White Paper give rise to specific drivers of change or other negative or positive factors that impact on biodiversity.

6. Can your proposal contribute to our body of knowledge for biodiversity?

6.1. It is unlikely the proposals set out in the White Paper will contribute to our body of knowledge for biodiversity.

Governance and support for delivery of biodiversity action

7. Can your proposal support biodiversity action in any way?

7.1. It is unlikely the proposals set out in the White Paper will support biodiversity action.

8. Can your proposal help to build capacity for biodiversity action?

8.1. It is unlikely the proposals set out in the White Paper will build capacity for biodiversity action.

9. Have you recorded decisions and actions to maintain and enhance biodiversity?

9.1. In the work we have undertaken to date to develop proposals to reform the tribunal system in Wales, we have not identified decisions to maintain and enhance biodiversity. As we develop legislative proposals, we will keep the matter under review and record any decisions appropriately.

Questions 10 to 16 of the Biodiversity Impact Assessment relate to the land and sea environments. The proposals set out in the White Paper do not consider the land or sea environments and the questions are therefore not applicable.