



Llywodraeth Cymru
Welsh Government

Number: WG48410

Welsh Government
Consultation Document

Health Impact Assessment (Wales) Regulations

Considering draft regulations to mandate the use of Health Impact Assessments

Date of issue: 29 December 2023

Action required: Responses by 29 March 2024

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

Overview

To address the wider determinants of health, the Welsh Government has had a longstanding commitment to a health in all policies approach. To support this approach, the Welsh Government has championed embedding the use of Health Impact Assessments (HIA) and made provision for HIAs in the Public Health (Wales) Act 2017. This consultation asks respondents to consider draft regulations mandating the use of HIAs for specific public bodies in Wales, with an overall aim to reduce health inequity for the population.

How to respond

Submit your comments by 29 March 2024, in any of the following ways:

- complete our form online
- download and complete our response form, and email or post to the addresses below.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Health Inequalities and Healthy Communities
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email: healthimpactassessment@gov.wales

This document is also available in Welsh: [hyperlink](#)

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for Welsh Government consultations and for any personal data you provide as part of your response to the consultation.

Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. The lawful basis for processing information in this data collection exercise is our public task; that is, exercising our official authority to undertake the core role and functions of the Welsh Government. (Art 6(1)(e))

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. In the case of joint consultations this may also include other public authorities. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation and that the Welsh Government may be under a legal obligation to disclose some information.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
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- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
e-mail: dataprotectionofficer@gov.wales

The contact details for the Information
Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel: 0303 123 1113
Website: <https://ico.org.uk/>

Ministerial Forward

As a government, we strive towards building a nation in which we can all be proud to belong, and in which each of us can thrive. Equality, diversity and inclusion are of great importance to the Welsh Government and creating the conditions and opportunities for people and communities to succeed, flourish and thrive is vital if we are to achieve a more equal Wales.



Through the seven well-being goals of the Well-being of Future Generations (Wales) Act 2015 we have a framework for Wales's future: a Wales that is economically, socially, environmentally just, and a Wales we would want our children and grandchildren to inherit from us.

We know that the wider determinants of health, including the social, economic, cultural and environmental conditions in which we live and work, can drive health outcomes, for better or worse. The inequalities which arise from these wider conditions are often associated with poorer health outcomes and as a Welsh Government we are committed to take action to address these discrepancies and help us shape into the Wales we wish to see.

Under the Public Health (Wales) Act 2017 we have a statutory duty to ensure that Health Impact Assessments are made compulsory under certain circumstances. In this regard, Wales will become one of the first countries in the world to place Health Impact Assessments on a statutory footing. I strongly welcome this duty and believe that from a social justice viewpoint assessing the potential health effects of a policy, programme, or project on a population, particularly on vulnerable or disadvantaged groups, can only be seen as a valid assessment to make, regardless of the law.

We know that the practice of conducting a Health Impact Assessment is not a new one. The Welsh Health Impact Assessment Support Unit (WHIASU), in Public Health Wales, has been established for almost two decades now and the support they have provided across the nation is recognised internationally, putting Wales at the forefront, once again, in this regard.

But we cannot rely exclusively on the fantastic work by the WHIASU. I know that many public bodies already consider the impact of their work on the health of the population they serve in some way or another, but it is time to level the playing field and create consistency in the approach to fully maximise positive health impacts and minimise the negative. We must come together as public bodies to work towards a better future for the population of Wales. It is time to galvanise efforts and put health at the centre of our thinking, creating policies and developing communities which prioritise the health of our current and future generations.

Good health is at the heart of a prosperous Wales. I welcome your thoughts on this Health Impact Assessment (Wales) Regulations consultation, and I look forward to using these regulations to develop a fairer and more equal Wales.

About this document

This document sets out the Welsh Government's consultation on the draft Health Impact Assessment (Wales) Regulations ("the draft Regulations").

It is structured into 4 sections.

Section 1 – Introduction and Background.

This section provides an overview of the Public Health (Wales) Act 2017, an explanation of the differences between health inequality and health inequity and explores the current situation in Wales.

Section 2 – The Draft Regulations

This section provides a copy of the draft Regulations for consideration. This is as they will appear in legislation.

Section 3 – Our rationale

This section aims to clarify some of the thinking behind the draft Regulations. The consultation questions are provided at the end of each section to generate a response.

It is set out to address the following points:

- What we want to consider;
- To whom the regulations apply;
- When the regulations will apply;
- How a Health Impact Assessment should be conducted;
- Publishing a Health Impact Assessment;
- and the role of Public Health Wales.

Section 4 - Consultation Response Form

This section provides the space for you to share your thoughts on the draft Regulations. This form can be submitted electronically or printed off and sent to the address shown above.

Section 1 - Introduction and Background

“Fairness does not mean everyone gets the same. Fairness means everyone gets what they need.” (Rick Riordan, 2010).

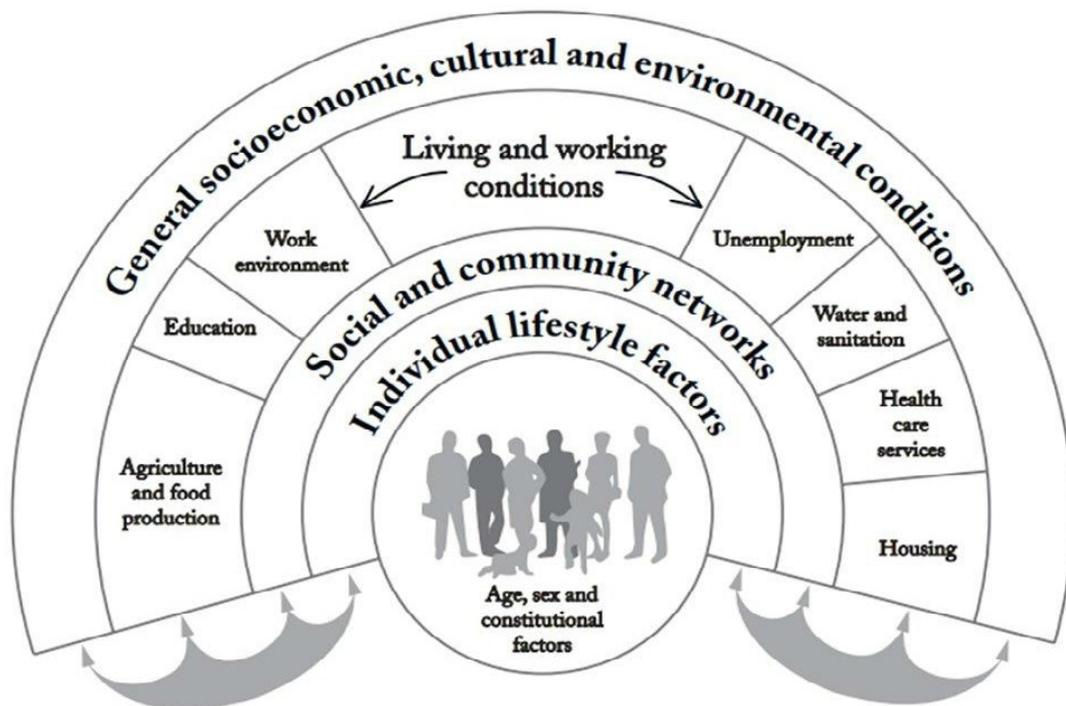
Those in the least deprived areas of Wales can expect to live longer, healthier lives than those in the most deprived. Compared to those living in the least deprived areas, people living in the most deprived areas have a much higher chance of death from avoidable causes (3.7 times for males and 3.8 times for females) (ONS, 2019) and much worse health with fewer years of healthy life expectancy at birth (16.9 years for males and 18.3 years for females) (ONS, 2021). Along with the overriding social justice imperative that action should be taken to close these gaps, there is also an economic argument which supports that action needs to be taken.

A [recent report](#) from Public Health Wales identified that around £9 in every £100 spent in hospitals are as a result of continued health inequalities, amounting in Wales to around £322 billion every year. The report found that the average annual cost of health service provision was generally higher for those living in our more deprived communities. Costs were highest amongst working aged adults in all hospital service categories, except for elective inpatient admissions. The reasons for these gaps are complex and will be explored in further studies to expand understanding of how population differences and deprivation influence health service use in Wales.

Whilst health services have a role to play in addressing this gap, action is required across the breadth of public services to tackle the contribution made by the wider determinants of health. The Dahlgren and Whitehead rainbow model (see Figure 1 below) describes the intricate interaction between the determinants of health. It places individuals at the centre, with various layers of influences on health surrounding them, such as individual lifestyle factors, community influences, living and working conditions, and more general social conditions.

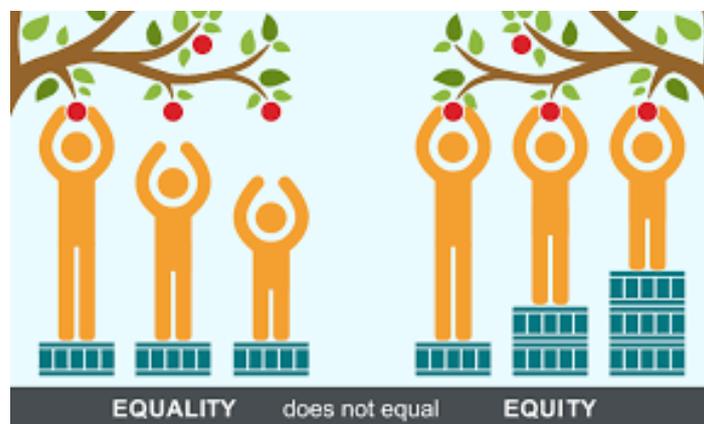
These factors are collectively referred to as the *wider determinants of health* and are the social, economic, cultural and environmental conditions in which people live that have an impact on health. They include income, education, access to green space and healthy food, the work people do and the homes they live in. It is widely recognised that, taken together, these factors are the principal drivers of how healthy people are, and that inequalities in these factors are a fundamental cause of disparities in health outcomes. Addressing these wider socio-economic inequalities is therefore a crucial part of reducing this gap.

Figure 1 - Dahlgren and Whitehead rainbow model



Health Inequality vs Health Inequity

Figure 2 – Equality vs Equity illustration



Equal access in health care has long been a goal, but more recently the focus has turned to equity. Though health equality and health equity both strive to achieve better outcomes and access to health care services, they are not the same. Equality generally refers to equal opportunity and the same levels of support for all segments of society. Equity goes a step further and refers offering varying levels of support depending upon need to achieve greater fairness of outcomes. Health Inequity is unjust and determined by circumstances largely beyond an individual's control. These circumstances do not occur randomly or by chance, they disadvantage people and limit their chance to live longer, healthier lives.

When it comes to allocating resources, we have a choice: Treat all the same (equally) or treat according to unique needs (equitably).

In the short-term aiming at health equality may be good for improving outcomes for patients currently facing medical discrimination. However, aiming at health equity — focusing directly on the roots of social injustice and giving additional resources to at-risk patients — ensures providers and policymakers are better able to determine where to allocate resources and how to support populations that may not have the resources they deserve.

Reducing the health equity gap is a complex, multi-faceted, multi-level challenge and requires tailored understanding and coherent action across different sectors to address the wider determinants of health inequalities. To address these wider determinants, the Welsh Government has had a longstanding commitment to a health in all policies approach. To support this approach, the Welsh Government has long championed the use of Health Impact Assessments (HIAs).

Public Health (Wales) Act 2017

The [Public Health \(Wales\) Act 2017 \(the Act\)](#) received Royal Assent on 3 July 2017. The Act aims to address a number of specific public health concerns, and to create social conditions that are conducive to good health, and where avoidable harms can be prevented. It includes provisions relating to obesity, tobacco and nicotine products, special procedures (acupuncture, body piercing, electrolysis, tattooing), intimate piercing, health impact assessments, pharmaceutical services, and toilets for public use.

The Welsh Government has emphasised that the Act is intended to sit alongside a broader suite of actions for improving public health (including other legislative action, public health services, programmes and campaigns).

Part 6 of the Act places a duty on the Welsh Ministers to make regulations which require public bodies to carry out health impact assessments (HIA) in specified circumstances.

HIA is defined in the Act as:

‘...an assessment of the likely effect, both in the short term and in the long term, of a proposed action or decision on the physical and mental health of the people of Wales or of some of the people of Wales.’

In the Explanatory Memorandum (EM) of the Act, HIAs are described as offering ‘a systematic means of taking health into account as part of decision making and planning processes. They are a tool which can be used in any area of public, private or voluntary sector activity, and at both national and local levels’.

The EM suggests the original intention was for the Regulations to take a proportionate approach in requiring HIAs be carried out only in those circumstances where the resources involved in developing the assessment would deliver health benefits proportionate to the effort involved. On introduction, the EM noted:

'The aim is that the assessments should be limited to policies, plans and programmes which have outcomes of national or major significance, or which have a significant effect at the local level on public health.'

During the scrutiny of the Bill, it remained clear that some lawmakers and those giving evidence to the committee were eager to avoid HIA becoming a 'tick-box' exercise and, instead, were keen to make sure that HIA were mandated only in those circumstances where it would prove of most value. In this sense, we consider the purpose behind mandating HIAs is not merely to increase the number of HIAs carried out. The aim of mandating HIA is to establish a common minimum set of circumstances in which HIA would be required to remedy the current position where uptake is patchy and varies between public bodies.

What is the current position?

HIAs are currently mandated only in limited circumstances. These circumstances include opencast coal operations and areas of planning, and the Welsh Transport Appraisal Guidance process. Despite only being mandated in limited circumstances, engagement with public bodies has shown that the use of HIA (or considering the health impacts of decisions in a general sense without following a specific methodology) is more widespread.

In addition to considering the health impacts of decisions, numerous public bodies have developed practices in carrying out various impact assessments with some considering the impacts against cross-government policy priorities (such as the Welsh language) and others considering the impacts for specified groups (such as children's rights).

The [Well-being of Future Generations \(Wales\) Act 2015](#) (WFG Act) aims to improve the social, economic, environmental, and cultural well-being of Wales through 7 well-being goals in law. They are:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of more cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

This is about ensuring that future generations have at least the same quality of life as we do now. The WFG Act requires a specified list of public bodies to adopt well-being objectives which are designed to maximise their contribution to the well-being goals, and to take all reasonable steps in exercising their functions to meet those objectives. In addition to introducing the well-being goals, the WFG Act also introduced the sustainable development principle which obliged public bodies to adopt 'the five ways of working'. In response to the legislative framework developed by the WFG Act, public bodies have been encouraged to take an integrated approach to impact assessment where the impacts of a policy or programme are considered in the round in relation to how they contribute to achieving each of the well-being goals.

Early engagement with public bodies has indicated that a large number consider the impacts of their decisions using integrated impact assessments. These assessments incorporate the principles of the WFG Act to inform effective decision making and ensure compliance with respective legislation. The assessments can include consideration of the socio-economic duty; as well as impact on Biodiversity; Children's rights; Climate change; Culture; Data protection; Environmental outcomes; Equality, diversity, inclusion, and human rights; Habitat regulations; Health; Justice; Natural resources; Regulatory assessments; Rural proofing; Strategic environmental assessment; and Welsh language.

Done well, Impact Assessments are more than a means to show compliance. They support the growth of a mind-set and culture that put issues of equality at the heart of decision-making and policy development. Looking specifically at the use of Equality Impact Assessments (EIA), a recent [Audit Wales report](#) shows that within individual public bodies there are good examples of aspects of the process of conducting an EIA. However, too often, they seem like a tick box exercise to show that the body has thought about equality issues in case of challenge.

While legal challenge is of course an important risk to manage, we cannot continue to view impact assessments in this way. Within Health Impact Assessments, health is understood as a positive concept which encompasses mental, physical and social well-being and overlooking the full potential of this approach means that we are overlooking the opportunity to improve the health and wellbeing of our current and future generations.

Section 2 - The Draft Regulations

Draft Regulations laid before Senedd Cymru under section 123(2)(c) of the Public Health (Wales) Act 2017, for approval by resolution of Senedd Cymru.

D R A F T W E L S H S T A T U T O R Y I N S T R U M E N T S

202X No. (W.)

PUBLIC HEALTH, WALES

The Health Impact Assessment (Wales) Regulations 202X

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 6 of the Public Health (Wales) Act 2017 (“the Act”) requires the Welsh Ministers to make Regulations about the carrying out of health impact assessments (HIA) by public bodies.

A HIA is an assessment of the likely effect, both in the short and long term, of a proposed action or decision on the physical and mental health of all or some of the people of Wales.

The Act specifies which public bodies are affected (section 110).

Where a public body has carried out a HIA it must take the assessment into account when exercising those functions which require a HIA to be undertaken (section 109(1)).

Regulation 3 provides that a HIA must be carried out by a public body when it proposes to take an action or make a decision of a strategic nature about how to exercise its functions.

Regulation 4 sets out the process which must be followed when conducting a HIA. It sets out what information a HIA must include and the factors a public body must consider.

Regulation 5 provides that Public Health Wales NHS Trust must produce guidance to assist public bodies with carrying out a HIA. The guidance must include provision regarding the circumstances in which a HIA is required and the way in which it must be carried out.

Regulation 6 makes provision about the publication of the HIA, including the timing and manner of publication.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations in Wales. A copy can be obtained from the XX, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

DRAFT WELSH STATUTORY INSTRUMENTS

202X No. (W.)

PUBLIC HEALTH, WALES

**The Health Impact Assessment (Wales)
Regulations 202X**

Made ***

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by sections 108(1), (3), (4), (5) and (6), 109(4) and 123(2)(c) of the Public Health (Wales) Act 2017⁽¹⁾, make the following Regulations.

The Welsh Ministers have considered and consulted with representative persons in accordance with section 108(7) of that Act.

In accordance with section 123(2)(c) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru⁽²⁾.

Title and commencement

- 1.—(1) The title of these Regulations is the Health Impact Assessment (Wales) Regulations 202X.
- (2) These Regulations come into force on XX.

Interpretation

2. In these Regulations—

“health impact assessment” (*“asesiad o’r effaith ar iechyd”*) means an assessment of the likely effect, both in the short term and in the long term, of a proposed action or decision on the physical and mental health of the people of Wales or of some of the people of Wales;

“HIA” (*“AEI”*) means a health impact assessment;

“public body” (*“corff cyhoeddus”*) means those bodies listed in section 110 of the Public Health (Wales) Act 2017.

⁽¹⁾ 2017 anaw 2.

⁽²⁾ The reference in section 123 of the Public Health (Wales) Act 2017 to the National Assembly for Wales now has effect as a reference to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32). See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

Circumstances in which a HIA is required

3.—(1) A public body must carry out a HIA when it proposes to take an action or make a decision of a strategic nature.

(2) In paragraph (1) “take an action or make a decision of a strategic nature” means take an action or make a decision in connection with the exercise of a function affecting how a public body fulfils a statutory function or objective, or if it does not have a statutory function or objective, either a legal responsibility, legal objective or core legal function.

(3) Paragraph (1) does not apply to any action or decision on routine operational or administrative matters.

How to carry out a HIA

4.—(1) A HIA required under regulation 3 must be carried out by a public body in accordance with the provisions of this regulation.

(2) Before carrying out a HIA, a public body must consult with—

- (a) any stakeholders the public body considers appropriate, and
- (b) any persons who appear to be representative of the interests of those likely to be affected by the proposed action or decision referred to in regulation 3.

(3) Having regard to the action or decision proposed under regulation 3, and the purpose of the HIA, the HIA must—

- (a) be in writing and set out in an appropriate manner,
- (b) include any information about and assessment of the matters specified at paragraph (4), and
- (c) include any other information relevant to the HIA in all the circumstances.

(4) The matters specified for the purposes of paragraph (3)(b) are—

- (a) an identification or description of any stakeholders or other persons consulted under regulation 4(2),
- (b) an identification of the sections of the population of Wales or some of the population of Wales affected,
- (c) any intended and unintended consequences,
- (d) any positive and negative impacts on physical and mental health,
- (e) the scale of the impacts referred to in sub-paragraph (d),
- (f) how to mitigate any negative impacts identified at sub-paragraph (d) or unintended consequences identified at sub-paragraph (c),
- (g) how to increase any positive impacts identified at sub-paragraph (d), and
- (h) any matters a public body wishes to include in the HIA, having regard to the matters set out at paragraphs (5) and (8).

(5) (a) If the condition at paragraph (7) is met, when carrying out a HIA, a public body must consider whether any matters within, or part of, the proposed action or decision that is the subject of the HIA, relate to the sustainable development duty.

(b) If any matters referred to in paragraph (5)(a) are identified, the public body must consider whether any of those matters are relevant to the HIA.

(6) As regards any actions or decisions the public body takes after a HIA is carried out, paragraph (5) does not affect—

- (a) the public body’s duty under section 109(2) of the Public Health (Wales) Act 2017, or
- (b) the sustainable development duty, if the condition at paragraph (7) is met.

(7) The public body is listed in section 6(1) of the Well-being of Future Generations (Wales) Act 2015.

(8) When carrying out a HIA, a public body must consider whether any of the following matters are relevant to the HIA—

- (a) the wider determinants of health, and
- (b) the factors relevant to health inequity.

(9) In this regulation—

- (a) “sustainable development duty” means the public body’s duty to carry out sustainable development within the meaning of sections 2 to 5 of the Well-being of Future Generations (Wales) Act 2015⁽³⁾.
- (b) “the wider determinants of health” means the social, economic, cultural and environmental factors that may affect the health of the people of Wales, or some of the people of Wales.
- (c) “factors relevant to health inequity” means any differences in health outcomes and health opportunities between different sections of the people of Wales, or some of the people of Wales, that are likely to be caused by differences between those groups on the grounds of—
 - (i) socio-economic status,
 - (ii) geographic location,
 - (iii) the presence of a protected characteristic, or
 - (iv) any other matter that a public body considers to cause a difference in health outcomes and health opportunities between those groups that the public body considers appropriate.

(10) For the purposes of paragraph (9)(c) “health opportunities” means access to publicly available opportunities or facilities, in which a public body has an interest, which have a purpose or effect of promoting or improving health and well-being.

(11) For the purposes of paragraph (10), a “purpose or effect of promoting or improving health and well-being” does not require this to be an intended purpose.

Assistance by Public Health Wales National Health Service Trust

5.—(1) Public Health Wales National Health Service Trust must publish guidance for public bodies as soon as is reasonably practicable with a view to assisting public bodies carrying out a HIA.

(2) The guidance referred to in paragraph (1) must—

- (a) include provision in relation to—
 - (i) the circumstances in which a HIA is required under these Regulations, and
 - (ii) the way in which a HIA must be carried out under these Regulations, and
- (b) be updated and re-published from time to time as appropriate.

Publishing a HIA

6.—(1) As soon as is reasonably practicable after carrying out a HIA a public body must—

- (a) publish the HIA on its website, and
- (b) ensure it remains available on the website for as long as the action or decision remains relevant.

(2) A public body may determine the most appropriate manner to comply with paragraph (1)(a) and the duty at section 109(1)(a) of the Public Health (Wales) Act 2017.

(3) If a public body does not have a website, a HIA must be published as soon as is reasonably practicable in such manner as the public body considers appropriate to bring it to the attention of persons who may be affected by it.

Name

Minister for Health and Social Services, one of the Welsh Ministers

Date

⁽³⁾ 2015 anaw 2.

Section 3 – Our rationale

What we want to consider

This consultation asks respondents to consider the draft Regulations mandating the use of HIAs for specific public bodies in Wales. A copy of the draft Regulations has been included in [Section 2](#). Throughout the document you will find questions to consider in relation to the draft Regulations and there is a response form with all questions included at [Section 4](#). The draft Regulations support wider action to tackling inequalities and improving population health in Wales. We know that many public bodies already conduct HIAs in some form or another and so the advantage of mandating them through regulations is to ensure consistency across public bodies, and to truly maximise the benefits that performing this duty can have.

Question 1 - Based on the provisions contained in Part 6 of the Public Health (Wales) Act 2017, to what extent do you agree that the draft Regulations address the obligation to mandate the use of Health Impact Assessments for the listed public bodies in Wales?

To whom the draft Regulations apply

There are currently 48 bodies listed under section 110 of the Public Health (Wales) Act 2017 to which the draft Regulations will apply:

Section 110 states that each of the following persons is a “public body” for the purposes of section 108 and 109:

- a) the Welsh Ministers
- b) a local authority
- c) a Local Health Board
(this means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 ;
- d) the following National Health Service Trusts –
 - i. Public Health Wales
 - ii. Velindre
- e) A National Park authority for a National Park in Wales
- f) A Welsh fire and rescue authority
(this means an authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c.21) or a scheme to which section 4 of that Act applies)

- g) the Natural Resources Body for Wales
- h) the Higher Education Funding Council for Wales
- i) the Arts Council of Wales
- j) the Sports Council for Wales
- k) the National Library of Wales
- l) the National Museum of Wales.

The list of public bodies under section 110 predominantly aligns with those listed under section 6 of the WFG Act (with the exception of corporate joint committees). The bodies listed under section 6 of the WFG Act are subject to the sustainable development principle and the well-being duty under that Act. These bodies will also be subject to the social partnership duty under the Social Partnership and Public Procurement (Wales) Act 2023, from 1 April 2024.

Section 110(2) of the Public Health (Wales) Act 2017 provides the Welsh Ministers with a power to make, among other amendments, additions to the list of public bodies to which the draft Regulations will apply, so long as “that person exercises functions of a public nature”. There is scope therefore to ensure that the list of public bodies continues to reflect those within the WFG Act.

Extending the list of public bodies subject to the well-being duty

Last year, the Welsh Government concluded a review of public bodies subject to the well-being duty as listed in section 6 of the WFG Act. This review included a [consultation](#) on extending the well-being duty to an additional eight public bodies. These bodies were selected on the basis that their remit or functions have a significant impact on the economic, social, environmental, and cultural well-being of Wales, and those who have strategic policy and corporate planning functions. The eight public bodies consulted upon are:

- Qualifications Wales
- Social Care Wales
- Health Education and Improvement Wales
- Welsh Revenue Authority
- Transport for Wales
- Centre for Digital Public Services
- Digital Health and Care Wales
- Welsh Ambulance Services NHS Trust

It is proposed that these bodies will be added to section 6 of the WFG Act in 2024 and will subsequently be subject to the social partnership duty. Accordingly, the list in s110(2) of the Public Health (Wales) Act may also be amended in due course and we would welcome the thoughts of those extra public bodies in relation to this consultation.

Question 2 - There will be a requirement for bodies listed under section 110 of the Public Health (Wales) 2017 Act to produce HIAs in line with the draft Regulations. Do you agree that the list of public bodies in section 110 of the Public Health (Wales) Act 2017 should mirror those bodies listed in section 6 of the WFG Act, including any future proposed additional public bodies that are added to section 6?

When the draft Regulations will apply

Regulation 3 of the draft Regulations states that a public body must carry out a HIA when it proposes to take an action or make a decision of a strategic nature.

What we consider to be taking an action or making a decision of a strategic nature

Taking an action or making a decision of a strategic nature means those actions or decisions which are in connection with the exercise of a function affecting how a public body fulfils its statutory functions and objectives. If a public body does not have a statutory function or objective, it includes a legal responsibility, legal objective or core legal function.

The draft Regulations will apply to both new strategic actions or decisions, as well as when reviewing previous strategic actions or decisions. The draft Regulations will not be retrospective, meaning that public bodies do not have to conduct a HIA for actions or decisions which have been made before the Regulations come into force, unless they are being reviewed.

To aid with understanding, we have included some examples below (not an exhaustive list) of some strategic actions or decisions public bodies may make:

- ✓ Strategic directive and intent
- ✓ Strategic financial planning
- ✓ Medium to long term plans (for example, corporate plans, development plans, service delivery and improvement plans)
- ✓ Setting objectives (for example, well-being objectives, Equality Act, 2010 equality objectives, Welsh language strategy)
- ✓ Changes to and development of public services
- ✓ Major procurement and commissioning decisions
- ✓ Strategic policy development

✓ Strategies developed at Regional Partnership Boards and Public Service Boards

✓ Where the Welsh Ministers propose legislation (primary and secondary) to the Senedd

Circumstances to be exempt from the duty to carry out a HIA

The draft Regulations note that any action or decision on routine operational or administrative matters will not be subject to the duty to carry out a HIA. This would usually include routine, day-to-day decisions taken to deliver, by staff, the strategies in the normal course of business.

Question 3 - Do you agree with the policy intent to mandate the use of HIA for the listed public bodies when taking an action or making a decision of a strategic nature?

Question 4 - Are there any additional circumstances in which you believe public bodies should be required to conduct a mandatory HIA?

Question 5 - Are there any additional circumstances in which you believe public bodies should be exempt from complying with the draft Regulations?

How a HIA should be conducted

We recognise that an overly prescriptive approach for carrying out a HIA is unsuitable. As opposed to specifying a prescriptive approach, public bodies will have some discretion in how they consider health impacts in the circumstances where a HIA is required. We believe there is merit in providing flexibility whereby public bodies can consider health impacts as part of an integrated impact assessment process (or similar). However, in order to ensure a degree of consistency in the approach across Wales, we have set out the minimum requirements we believe should be included in a HIA, as well as other factors we believe should be considered if they are relevant to the proposed action or decision.

Regulation 4 - How to carry out a HIA

- (1) A HIA required under regulation 3 must be carried out by a public body in accordance with the provisions of this regulation.
- (2) Before carrying out a HIA, a public body must consult with—
 - (a) any stakeholders the public body considers appropriate, and

(b) any persons who appear to be representative of the interests of those likely to be affected by the proposed action or decision referred to in regulation 3.

(3) Having regard to the action or decision proposed under regulation 3, and the purpose of the HIA, the HIA must—

(a) be in writing and set out in an appropriate manner,

(b) include any information about and assessment of the matters specified at paragraph (4), and

(c) include any other information relevant to the HIA in all the circumstances.

(4) The matters specified for the purposes of paragraph (3)(b) are—

(a) an identification or description of any stakeholders or other persons consulted under regulation 4(2),

(b) an identification of the sections of the population of Wales or some of the population of Wales affected,

(c) any intended and unintended consequences,

(d) any positive and negative impacts on physical and mental health,

(e) the scale of the impacts referred to in sub-paragraph (d),

(f) how to mitigate any negative impacts identified at sub-paragraph (d) or unintended consequences identified at sub-paragraph (c),

(g) how to increase any positive impacts identified at sub-paragraph (d), and

(h) any matters a public body wishes to include in the HIA, having regard to the matters set out at paragraphs (5) and (8).

Ensuring engagement and participation over the course of carrying out a HIA is considered essential to ensuring relevant issues are identified and considered in a meaningful and transparent way. With relevant stakeholders and other representative persons, public bodies should develop an output which considers the likely impact of a proposal on the health of the population affected.

Over the course of carrying out a HIA, public bodies will identify some impacts which are intended because of the subject matter of a HIA and others which are unintended consequences. The assessment will need to ensure both intended and unintended impacts are identified and considered throughout the HIA process.

Physical and mental health are equally important components of overall health and can often influence each other. That is why consideration for both is essential when completing a HIA. Alongside documenting the positive and negative impacts on physical and mental health of the subject matter of a HIA, one of the main outputs should be the identification of measures which a public body may take to maximise the positive, and mitigate the negative impacts identified.

Question 6 - Do you agree that the outputs required as a minimum for a HIA under regulation 4 are appropriate?

Regulation 4 continued

(5) (a) If the condition at paragraph (7) is met, when carrying out a HIA, a public body must consider if any matters within, or part of, the proposed decision or action that is the subject of the HIA, relate to the sustainable development and well-being duties.

(b) If any matters referred to in paragraph (5)(a) are identified, the public body must consider if any of those matters are relevant to the HIA.

(6) As regards any actions or decisions the public body takes after a HIA is carried out, paragraph (5) does not affect—

(a) the public body's duty under section 109(2) of the Public Health (Wales) Act 2017, or

(b) the sustainable development duty, if the condition at paragraph (7) is met.

(7) The public body is listed in section 6(1) of the Well-being of Future Generations (Wales) Act 2015.

(8) When carrying out a HIA, a public body must consider if any of the following matters are relevant to the HIA—

(a) the wider determinants of health, and

(b) the factors relevant to health inequity.

(9) In this regulation—

(a) "sustainable development duty" means the public body's duty to carry out sustainable development within the meaning of sections 2 to 5 of the Well-being of Future Generations (Wales) Act 2015.

(b) "the wider determinants of health" means the social, economic, cultural and environmental factors that may affect the health of the people of Wales, or some of the people of Wales.

(c) "factors relevant to health inequity" means any differences in health outcomes and health opportunities between different sections of the people of Wales, or some of the people of Wales, that are likely to be caused by differences between those groups on the grounds of—

(i) socio-economic status,

- (ii) geographic location,
- (iii) the presence of a protected characteristic, or
- (iv) any other matter that a public body considers to cause a difference in health outcomes and health opportunities between those groups that the public body considers appropriate.

(10) For the purposes of paragraph (9)(c) “health opportunities” means access to publicly available opportunities or facilities, in which a public body has an interest, which have a purpose or effect of promoting or improving health and well-being.

(11) For the purposes of paragraph (10), a “purpose or effect of promoting or improving health and well-being” does not require this to be an intended purpose.

Sustainable development and well-being duty under the Well-being of Future Generations (Wales) Act 2015

Public bodies listed under section 6 of the WFG Act have a duty to carry out sustainable development. The WFG Act defines sustainable development as a process of improving the economic, social, environmental and cultural well-being of Wales by taking action in accordance with the sustainable development principle (see section 5), aimed at achieving the well-being goals (see section 4).

Public bodies must, when they are carrying out sustainable development, set and publish well-being objectives, and take all reasonable steps (in exercising their functions) to meet those objectives (section 3). The well-being objectives must be designed to maximise the contribution of the public body to achieving each of the well-being goals (section 4). Acting in accordance with the sustainable development principle means that public bodies under section 6 must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

- The principle is made up of five ways of working that public bodies are required to take into account when acting in accordance with the sustainable development principle. These are: Looking to the long term so that we do not compromise the ability of future generations to meet their own needs;
- Taking an integrated approach so that public bodies look at all the well-being goals in deciding on their well-being objectives;
- Involving a diversity of the population in the decisions that affect them;
- Working with others in a collaborative way to find shared sustainable solutions;
- Deploying resources to prevent problems occurring or getting worse.

This approach provides an opportunity for innovative thinking, reflecting on the way we live our lives, and what we expect of our public services.

The social partnership duty under the Social Partnership and Public Procurement (Wales) Act 2023

The Social Partnership and Public Procurement (Wales) Act 2023 places a social partnership duty on the public bodies listed under section 6(1) of the WFG Act. This duty provides that, in carrying out sustainable development, a public body must, in so far as is reasonable, seek consensus or compromise with its recognised trade unions or (where there is no recognised trade union) other representatives of its staff on the well-being objectives to be set under section 3(2)(a) of the WFG Act and decisions of a strategic nature to be made about the reasonable steps the body takes (in the exercise of its functions) to meet those objectives under section 3(2)(b) of the WFG Act.

The social partnership duty comes into force on 1 April 2024 pursuant to the Social Partnership and Public Procurement (Wales) Act 2023 (Commencement No. 1) Order 2023.

The sustainability development duty as defined in the draft Regulations

It is important to note that the intention through the draft Regulations is not to create a new “sustainable development duty”. This is a defined term within the draft Regulations (regulation 4(9)(a)) to refer to sections 2 to 5 of the WFG Act. The draft Regulations require a public body to consider if any matters within or as part of the proposed action or decision that is the subject of the HIA relates to sections 2 to 5 of the WFG Act, that being the sustainable development principle, the well-being duty and the relevant associated provisions.. If any matters are identified, the public body must consider if any of those matters are relevant to the HIA.

The draft Regulations also state that this does not affect the requirement in section 109 of the Public Health (Wales) Act 2017 to act in accordance with the sustainable development principle when taking a HIA into account, or the sustainable development duty (as defined in the draft Regulations) for any actions or decisions the public body takes after a HIA is carried out.

Figure 3: The Five Ways of Working that make up the Sustainable Development Principle (Part 2 (s.5), the Well-being of Future Generations (Wales) Act 2015; adapted from Welsh Government, 2015)



Other matters a public body must consider when carrying out a HIA

Regulation 4 of the draft Regulations also requires public bodies to consider whether the wider determinants of health and/or factors relevant to health inequity are relevant to a HIA and if so, this information should be included within the output of the HIA.

The wider determinants of health

A key attribute of HIA is that it is underpinned by a social or holistic understanding of mental and physical health, rather than one which is focussed solely on the avoidance and treatment of disease and illness. Health, in the context of HIA, is to be understood in a broad sense, using the wider determinants of health as a framework against which to consider the impacts.

The wider determinants of health means the social, economic, cultural and environmental factors that may affect the health of the people of Wales, or some of

the people of Wales. For illustrative purposes, we have reproduced some examples as below:

- Social factors including, but not limited to, our education and employment opportunities; our housing; our social networks; where we live and the extent it facilitates exercise, a good diet and social connection.
- Economic factors including, but not limited to, unemployment, income or economic activity.
- Cultural factors including, but not limited to, our community identity, family organisation and roles.
- Environmental factors including, but not limited to, access to green space, housing, air and water quality, access and quality of services – including medical services, transport and matters such as biodiversity and climate.

Factors relevant to health inequity

One of the main benefits of HIA is its potential to contribute to the reduction of health inequalities and health inequities.

Action on health inequalities and health inequities currently features over the course of a HIA through considering the health impacts of a project or proposal and whether or not these health impacts are felt equally by all, or whether they have a disproportionate impact on certain groups of people. These groups of people include groups distinguished by:

- Socio-economic status – i.e. those living in more deprived areas or those who live in households earning below average income, compared with those in the least deprived areas or those living with above average income;
- Geographic location – those living in rural areas compared with urban areas and those living in areas more susceptible to be exposed to risks posed by climate change;
- The presence of a protected characteristics – such age, disability, gender identity, sex, sexual orientation, maternity, race, language (including Welsh).

Given the breadth of organisations covered by the Public Health (Wales) Act 2017, it may be that some public bodies experience unique factors relevant to health inequity which may impact upon their population group and so an additional provision has been included:

(iv) any other matter that a public body considers to cause a difference in health outcomes and health opportunities between those groups that the public body considers appropriate.

This provision is not intended to capture all eventualities, but to ensure that public bodies have autonomy and flexibility in the approach to include what they find most relevant and necessary to address their population groups needs.

Question 7 – Do you agree that the factors set out in regulations 4(8) to 4(11) of the draft Regulations should be considered whilst conducting a HIA? For ease, these factors are;

- (a) the wider determinants of health, and
- (b) the factors relevant to health inequity.

Question 8 - Are there any potential issues you can foresee about the way in which a HIA will need to be carried out under regulation 4 of the draft Regulations?

The role of Public Health Wales

The Wales Health Impact Assessment Support Unit (WHIASU) was established in 2004 to support the development of Health Impact assessment practice in Wales. The unit is based in the World Health Organisation (WHO) Collaborating Centre on “Investment for Health and Well-being” at Public Health Wales (PHW).

Section 108(4) of the Public Health (Wales) Act 2017 provides Ministers with a power to include in regulations provision to require PHW to give assistance to another public body carrying out a HIA. Section 108(5) provides that the regulations may make provision about how the assistance is to be given.

Duty to produce guidance for public bodies

We acknowledge the work that the WHIASU team at PHW have produced since its inception and the understanding of, and leadership towards, improving the practice of HIA which has been recognised internationally. We value the standard of resource available on the WHIASU website and, given their experience, feel that the team would be best placed to produce non-statutory guidance to assist public bodies with understanding their duties under the draft Regulations. There will be a requirement for this guidance to be published and although it will not be mandatory for public bodies to consider the guidance, we hope that this duty will assist public bodies to:

- understand the circumstances in which a public body must carry out a HIA under the draft Regulations;
- understand how a public body must carry out a HIA under the draft Regulations.

Whilst we consider that the guidance issued by PHW will be key to assist public bodies in understanding how they can ensure their HIA complies with the draft Regulations, public bodies will ultimately need to satisfy themselves as to whether a HIA is required in a particular circumstance and that it has been carried out in accordance with the draft Regulations.

Question 9 - To what extent do you agree that publishing guidance is the best way for Public Health Wales to assist public bodies with carrying out Health Impact Assessments?

Question 10 – If you answered “agree” to question 9, what information would be most beneficial to include within the supporting guidance?

Publication of a Health Impact Assessment

The draft Regulations provide that public bodies should be able to publish their HIA in a manner they consider to be most appropriate. This therefore provides the flexibility to publish it either as part of an integrated impact assessment (i.e., included as a defined section within an integrated impact assessment) or as a separate standalone HIA.

The draft Regulations require the HIA to be published on the public bodies' website (or in an appropriate alternative manner if they don't have a website) and ensure it is available for as long as the proposed action/decision remains relevant. It is considered that these provisions provide the public body with fewer processes to meet the obligation and ensures interested stakeholders have a tangible location from which to locate the assessment when required.

The publication of the HIA needs to be completed as soon as is reasonably practicable. In practice, this means when the process in regulation 4 of the draft Regulations is completed to reflect the reality that a HIA can be an iterative process. The publication of a HIA must also comply with other relevant legislation such as GDPR and Data protection legislation.

Question 11 - Do you agree that the option to publish a HIA in a manner it considers most appropriate provides public bodies with enough flexibility to conduct the assessment in the most appropriate way?

Question 12 – Do you foresee any issues with the requirement for publishing the HIA as soon as is reasonably practicable?

Question 13 - Do you have any additional suggestions for how, where and when HIA should be published?

Health Impact Assessments as a valuable policy tool

Conducting a Health Impact Assessment provides a systematic yet flexible and practical framework that can be used to consider the wider effects of local and national policies or initiatives and how they, in turn, may affect people's health. Health Impact Assessments works best when they involve people and organisations who can contribute different kinds of relevant knowledge and insight. The information is then used to build in measures to maximise opportunities for health and to minimise any risks.

In order to truly maximise the benefits, a Health Impact Assessment should be viewed as an ongoing policy tool which is added to and updated for continued policy development and implementation. The assessment itself is only the start of the journey and will act as a key tool to identify impacts that may only be managed, eliminated or mitigated through the implementation of a specific action or decision. Likewise, it can be an invaluable tool for evaluating whether or not an action or decision should be taken in the first place.

Question 14 - In addition to guidance, what other methods and ongoing resource could support public bodies to realise the benefits of HIAs?

Section 4 - Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Are you responding as an individual, or on behalf of an organisation? (select only one option)

- Individual
- On behalf of an organisation
- Other, please specific

Question 1. Based on the provisions contained in Part 6 of the Public Health (Wales) Act 2017, to what extent do you agree that the draft Regulations address the obligation to mandate the use of Health Impact Assessments for the listed public bodies in Wales?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain why you have selected this answer:

Question 2. There will be a requirement for bodies listed under section 110 of the Public Health (Wales) 2017 Act to produce HIAs in line with the draft Regulations. Do you agree that the list of public bodies in section 110 of the Public Health (Wales)

Act 2017 should mirror those bodies listed in section 6 of the WFG Act, including any future proposed additional public bodies that are added to section 6?

- Agree
- Disagree

Please explain why you have selected this answer:

Question 3. Do you agree with the policy intent to mandate the use of HIA for the listed public bodies when taking an action or making a decision of a strategic nature?

- Agree
- Disagree

Please explain why you have selected this answer:

Question 4. Are there any additional circumstances in which you believe public bodies should be required to conduct a mandatory HIA?

Question 5. Are there any additional circumstances in which you believe public bodies should be exempt from complying with the draft Regulations?

Question 6. Do you agree that the outputs required as a minimum for a HIA under regulation 4 are appropriate?

- Agree
- Disagree

Please explain why you have selected this answer:

Question 7. Do you agree that the factors set out in regulations 4(8) - 4(11) of the draft Regulations should be considered whilst conducting a HIA? For ease, these factors are;

- (a) the wider determinants of health, and
- (b) the factors relevant to health inequity.

Please explain why you have selected this answer:

Question 8. Are there any potential issues you can foresee about the way in which a HIA will need to be carried out under regulation 4 of the draft Regulations?

Question 9. To what extent do you agree that publishing guidance is the best way for Public Health Wales to assist public bodies with carrying out Health Impact Assessments?

- Agree
- Neither agree nor disagree
- Disagree

Please explain why you have selected this answer:

Question 10. If you answered "agree" to question 9, what information would be most beneficial to include within the supporting guidance?

Question 11. Do you agree that the option to publish a HIA in a manner it considers most appropriate provides public bodies with enough flexibility to conduct the assessment in the most appropriate way?

- Agree
- Neither agree nor disagree
- Disagree

Please explain why you have selected this answer:

Question 12. Do you foresee any issues with the requirement for publishing the HIA output as soon as is reasonably practicable?

Question 13. Do you have any additional suggestions for how, where and when HIA should be published?

Question 14. In addition to guidance, what other methods and ongoing resource could support public bodies to realise the benefits of HIAs?

Question 15. The draft Regulations will affect the listed public bodies differently. For us to gain a better understanding of these impacts can you tell us what are the costs and benefits, if any, you envisage will arise from the draft Regulations coming into effect?

Question 16. Do you think the proposals in this consultation document might have an effect on the following?

- Those living in rural areas
- Specific socio-economic groups
- Children and young people

- Equality in relation to; – Age – Sex – Race – Religion – Sexual orientation – Pregnancy and maternity – Disability – Gender reassignment – Marriage/civil partnership

Question 17. We would like to know your views on the effects the consultation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 18. Are there any other groups within society not already referenced you think any of the proposals would have an impact on?

Question 19. We have asked a number of specific questions. If you have any additional feedback on the draft Regulations that we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here.