

# Wellbeing and Sustainable Development (Scotland) Bill - Consultation Guidance

The Scottish Government has recently launched its consultation on a proposed Wellbeing and Sustainable Development (Scotland) Bill. This guidance is intended to share our learning and help you prepare your own response to the consultation.

This guidance has been put together by a diverse group of organisations interested in furthering wellbeing and sustainable development in Scotland. The group is convened by Scotland's International Development Alliance and includes Carnegie UK, Oxfam Scotland and Wellbeing Economy Alliance Scotland and others representing the health, social care, environment and nature sectors.

In general we agree with the measures proposed in this consultation. Our suggestions for responses to the consultation questions are in blue text. We have added further detail for some questions in an appendix. You are welcome to copy and paste, or edit, any suggestions that you feel are pertinent, but we also encourage all respondents to include their own ideas. There is no need to answer every question.

Submit your response here, by 14 February 2024: [Wellbeing and Sustainable Development \(Scotland\) Bill - Scottish Government consultations - Citizen Space](#)

## Overview: What is the point of the Bill?

The aim of the Bill is to create a clear and shared narrative of progress for Scotland along with an overarching structure for decision making and accountability that enables public bodies and other organisations to work together collaboratively and coherently towards that narrative. This could trigger a step change that ensures sustainable development and wellbeing become the unequivocal drivers of policy and practice across public life in Scotland, making Scotland a world leader in this important area.

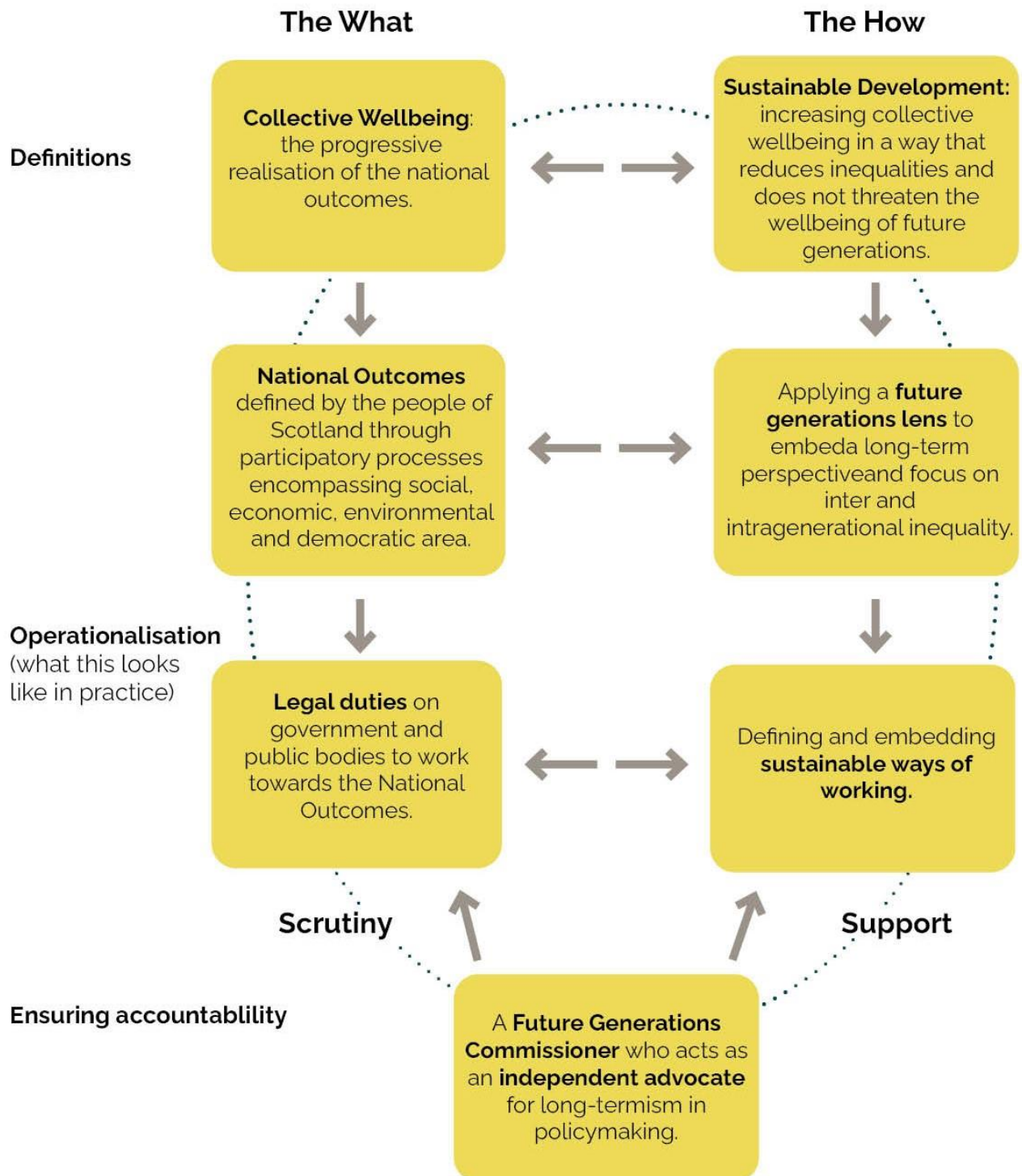
In a world characterised by urgent social and environmental challenges and ever more frequent crises, such a narrative and structure is essential to enable effective government and societal responses and to use them to enhance our collective wellbeing. But while some elements of such a structure already exist, progress is currently hampered by the lack of clear definitions and competing frameworks and goals.

In order to make such a decision-making structure effective requires a number of interacting and supporting elements, which are reflected in the different sections of the consultation and the Bill. All of these elements are important in their own right, but the Bill will only be successful if they work together. Missing out on any one of the elements will weaken the effectiveness and coherence of decision making that is the goal of the Bill.

The graphic below provides an overview of the different elements of the Bill and how they fit together.

**Definitions** of *collective wellbeing* and *sustainable development* are key for setting clear overarching goals that we want to achieve as a society. Both of these concepts are already used in legislation in Scotland, but they are not defined clearly which prevents

their effective implementation. The two concepts are overlapping and complementary, with *collective wellbeing* setting out what we want to achieve to enable everyone to have a good life and *sustainable development* emphasising the need to work towards these goals in a way that is collaborative, coherent, increases equity and considers the interests of future generations, people elsewhere and not just in Scotland, and planet..



**The National Outcomes**, as currently set out in the National Performance Framework, set out in more detail what outcomes we want to achieve to realise the ambition of collective wellbeing in Scotland. They are also supposed to be Scotland's delivery mechanism for the UN Sustainable Development Goals.

The National Outcomes come with **legal duties for public bodies** to work towards these outcomes aimed to achieve consistent implementation. But the existing duties are too weak to establish the National Outcomes as key drivers of decision making and the outcomes are currently not based on a strong participatory process. The duties are also not streamlined with other duties creating a complicated, and sometimes contradictory, landscape of duties for public bodies. A key goal of the Bill is to strengthen and streamline duties to promote the National Outcomes and to ensure that the outcomes are developed in a more democratic way.

Setting outcomes and duties on its own will not be enough. To achieve collective wellbeing in a way that is sustainable requires a **future generations approach** and different **ways of working** for public bodies and beyond. We need to learn to work in a way that is based on long-term thinking, that is collaborative and reaches across silos, that can effectively resolve trade-offs and deal with complexity, and that considers our impacts in other parts of the world. The Bill seeks to aid such a transformation by setting out high level ways of working in legislation and which should then be accompanied with more comprehensive support, training and toolkits for implementation.

The final piece of the puzzle is a **Future Generations Commissioner**, an independent institution that can provide practical support to decision makers in implementing the National Outcomes and sustainable ways of working but also hold them accountable if necessary. There is currently no institution in Scotland that has the remit and capacity to take a helicopter view, offer a longer-term perspective, and make sure that we are working effectively together towards our goals. Without this independent advice and scrutiny the Bill will fail to achieve its full potential for transformation.

# Proposed responses to consultation questions

## Defining wellbeing

### Question 1

Is a statutory definition of 'wellbeing' required?

- Yes
- No
- Don't know

### Question 2

Do you have any views on how 'wellbeing' can be clearly defined in legislation?

## Key points

- A legal definition of wellbeing is vital in order to **provide greater clarity and specificity around public sector duties and thus help to improve accountability**. It is also important for setting out the overarching goals we expect the government to deliver.
- It is important that the definition of wellbeing is complementary and overlapping with the definition of sustainable development to avoid any potential conflicts.
- A definition should also be built on the principles of equity, long-termism and citizen engagement.

## Our proposed definition

We propose the following definition: "Collective wellbeing is the progressive realisation of social, economic, environmental and democratic outcomes which enable people to meet their needs, as identified through consultation with the people of Scotland, pursued in a way that reduces inequalities in wellbeing between different groups. It also recognises the importance of protecting the interests and needs of future generations and fostering intergenerational equity."

## Further considerations

When responding to this question you might also want to consider

- The distinction between 'personal' and 'collective' wellbeing and which one is more appropriate in this context.
- How the definition can make clear *whose* wellbeing, should be considered, making sure the act is not just about people in Scotland and about both current and future generations. The wellbeing the Bill is concerned with, again, is not *just* of future generations – and not *just* of people in Scotland.
- How wellbeing outcomes should be developed.
- The interconnected relationship between "collective wellbeing" and "sustainable development."
- Using principles to make the definition more 'real'.
- Learning from legislation passed in Wales, where wellbeing was used to capture the imagination of the Welsh public.

For example, we consider that understanding wellbeing does not stop with a definition and it is important to locate it in time and place. That means governments engaging citizens in a conversation about what matters to them, and using this to inform their wellbeing goals. In order to understand wellbeing, it is also critical that citizen engagement has depth and breadth, and that it represents a diversity of voices including those who are further away from policy making processes, and that it has a tangible influence on decision-making.

In Scotland, we capture our wellbeing goals in the form of our National Outcomes, which is why we want to see the National Outcomes transposed from the Community Empowerment (Scotland) Act 2015 to the Wellbeing and Sustainable Development Bill.

More details on how requirements for participation could be built into the Bill can be found in the Appendix.

## Defining sustainable development

### Question 3

Is a statutory definition of 'sustainable development' required?

- Yes
- No
- Don't know

### Question 4

Do you agree with our proposal that any definition of sustainable development should be aligned with the common definition: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"?

- Yes
- No
- Don't know

### Question 5

Do you have other views on how 'sustainable development' can be clearly defined in legislation?

## Key points

- **A clear and rigorous definition** of sustainable development should be set out.
- As Scotland's International Development Alliance have argued, a clear definition will provide **clarity and support accountability**, given that there are already a number of references to sustainable development in existing legislation.<sup>1</sup>
- Any definition should acknowledge the impact of our decisions **beyond Scotland's borders** and the need for any development to be **equitable**.

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<sup>1</sup> Scotland's International Development Alliance, 2021. [Towards a Wellbeing and Sustainable Development \(Scotland\) Bill](#).

- Sustainable development does not just concern future generations, but also **wellbeing and equity now, in Scotland and globally**. Any definition of sustainable development adopted in the Bill should explicitly link present and future generations.
- A definition of sustainable development should be accompanied by a defining **'policy coherence for sustainable development'** to ensure that sustainable development is pursued in a joined-up way.

### Our proposed definition:

- "Sustainable Development can be defined as the development of human societies based on fair shares of planetary boundaries, and which equitably support the capability of present and future generations across the world to meet their needs."

### Further considerations

When responding to this question you might also want to consider:

- How sustainable development is currently understood amongst your stakeholders
- The implications of a Bill without a clear definition
- The changed understanding of sustainable development since the Brundtland report in 1987 (where the proposed definition for the Bill is taken from)

The definition we are proposing is different from the one proposed by the government because we consider it important to:

- include an explicit reference to the need for equity
- make clear that sustainable development in Scotland is only possible as part of a global movement to sustainability in which we play our part
- reference planetary boundaries as a more up-to-date and measurable framework for defining environmental sustainability and safeguarding future generations.

More details on the thinking behind our proposed definition can be found in the Appendix.

The inclusion of **principles** in addition to the definition might help to clarify further how sustainable development should be implemented, so you can consider suggesting their inclusion.

Potential principles to consider would be:

- The principle of enhancing ecological and planetary systems through regenerative approaches.
- The principle of intra- and inter-generational equality and equity – to meet the needs of present generations without compromising the ability of future generations to meet their needs.
- The principle of (human or social-ecological) wellbeing instead of economic growth as the core societal objective.
- The principle of interdependence and indivisibility across public policy, meaning that policies are inextricably linked and require policy coherence for sustainable development in response.
- The principle of doing no harm internationally and good global citizenship.
- The principle of evidence-based policymaking.
- The principle of openness and transparency – the availability of information on efforts to achieve sustainable development is vital to engagement and accountability.
- The principle of participation – to recognise that everyone in society has a role to play in working together to achieve sustainable development.

## Defining policy coherence for sustainable development

We consider that any effort to define and embed sustainable development as a key principle in Scotland will only be successful if it is combined with a clear mandate for policy coherence. In order to ensure that domestic and international policy coherence for sustainable development is understood and implemented as a core principle of sustainable development, as listed under the definition of sustainable development, we also propose it should be clearly defined, in the Bill as follows:

Policy coherence is the consistency of public policy, whereby:

- no policy undermines any other policy
- where policy conflicts occur, the root cause of the conflict should be identified and efforts made to resolve it in a manner which:
  - minimises trade-offs
  - maximises synergies.

Policy coherence for sustainable development must:

- support ecological integrity and social equity within Scotland, and elsewhere in the world
- support the self-defined sustainable development of other countries.

## Question 6

What future wellbeing issues or challenges do you think legislation could help ensure we address?

### Key points

- The Bill could trigger a step change that **ensures sustainable development and wellbeing become the unequivocal drivers of policy and practice across public life** in Scotland.
- The Bill would naturally **link with the National Outcomes** in the National Performance Framework, which is Scotland's wellbeing framework and the way we measure progress towards the Sustainable Development Goals.
- This legislation also provides an opportunity to put **primary prevention** (stopping problems from happening in the first place) at the forefront of decision making, protecting the health, economic and social wellbeing of future generations, and the sustainability of our environment and public services for all.

### Further considerations

When responding to this question, you might also want to consider:

- How does your organisation interact with the National Performance Framework?
- Do you think legislation to support its use would be a positive measure?
- How similar legislation has affected decisions in other countries, such as the Wellbeing of Future Generations Act in Wales.

We believe that the Bill has the potential to help Scotland tackle a wide range of wellbeing issues and challenges. You might also want to consider which issues that are relevant for your organisation. Examples of some of the issues we are considering are:

- Opportunity to be a world leader in sustainable development
- Tackling the nature & climate crisis using actions to restore our natural environment and leaving the planet in a better condition for future generations.

- Contributing to global justice
- Tackling the cost of living crisis and poverty
- Invest in prevention and reducing inequalities
- Efficiency towards achieving Sustainable Development Goals

More detailed descriptions of the issues we think the legislation might help address can be found in the Appendix.

## Question 7

We are aware that the term ‘sustainable development’ has been set out in various legislation of the Scottish Parliament since devolution in 1999 and that careful consideration will need to be given to how any new definition will impact on these. What impact, if any, would the proposed definition have on other areas of legislation?

### Key points

- Having a clear definition of ‘Sustainable development’ does not necessarily mean introducing a new duty or concept, but rather **properly defining what is already in place** across other legislation, in order **to improve delivery**.
- In particular, the WSD Bill could **strengthen the existing duty in the Climate Change (Scotland) Act 2009 which** requires all Scottish public bodies to, in exercising their functions, act in the way they consider ‘most sustainable’. This existing duty has been shown to be not well-implemented, possibly due to the wording of the Act and a lack of parallel capacity building, support and accountability requirements.

### Further considerations

When responding to this question you might also want to consider:

- Whether your organisation is familiar with a specific piece of existing legislation referencing sustainable development and how the new definition would affect this legislation and/or your work.
- Whether you think that the new definition of sustainable development proposed would create any conflicts.

For example, in some cases, public bodies may find duties conflict, based on their founding legislation. One such example might be the economic growth imperative for Scottish Enterprise, set out in the Enterprise & New Towns (Scotland) Act 1990. Hence, provisions should be made to resolve any conflicts. This could be pursued on a ‘case-by-case’ basis, especially where there are prominent conflicts.

Another option would be for the proposed Bill to amend the Climate Change (Scotland) Act 2019 so that, once conflicting duties have been identified, the Act outlines a requirement for a transparent process that seeks to resolve this conflict as far as possible, reflecting the imperative of ‘policy coherence for sustainable development’. Certain ‘exemptions’ may be necessary for extreme circumstances, however, in theory, this amendment could apply in all cases.

More details on how the definition of sustainable development might impact other areas of legislation can be found in the report “Towards a Wellbeing and Sustainable Development (Scotland) Bill” published by Scotland’s International Development Alliance.<sup>1</sup>



# Strengthening duties for the National Outcomes and sustainable development

## Question 8

How could a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?

### Key points

- The existing duty on public authorities to “have regard to the National Outcomes” in the Community Empowerment (Scotland) Act 2015 is **not strong enough to deliver their ambition**<sup>2</sup>.
- As such, the duty should be amended to use more **tangible, directional and affirmative language relating to the delivery of the National Outcomes, wellbeing and sustainable development**. This would help ensure that public authorities take account of, and effectively work towards, wellbeing, sustainable development, and the delivery of the National Outcomes.
- We propose to rephrase the duty so that public authorities are required to **“promote and deliver sustainable development while protecting the wellbeing of current and future generations ensuring that they take all reasonable steps to support the realisation of the National Outcomes, minimise trade-offs, and resolve policy conflicts in a way that does not undermine sustainable development or the wellbeing of current and future generations.”**

### Further considerations

When responding to this question you might also want to consider:

- how the legal duties in the Bill can be defined in a way that does not add *unnecessary* extra reporting requirements on public authorities, and instead **strengthens, clarifies and streamlines existing duties around sustainable development, wellbeing and the National Outcomes**.
- whether **further requirements on public authorities relating to the National Outcomes would help narrow the implementation gap in the delivery of the National Outcomes**. Further requirements could include:
  - *“regularly publish how they contribute to each of the National Outcomes”* and
  - *“set out how they support a coherent approach to delivering sustainable development and wellbeing”*
- the value in **relocating the legal duties with regard to the National Outcomes from the Community Empowerment (Scotland) Act 2015 into the new Bill**.
- whether existing duties to pursue sustainable development should be strengthened in other existing legislation, such as the Climate Change Act 2009, as previously mentioned. (see also Question 7) For example, public authorities might be better able to mainstream sustainable development, as defined in the WSD Bill, by amending Section 44 of the Climate Change Act 2009 to include references to ‘sustainable development’ and a new clause which serves to resolve existing conflicts in public bodies’ statutory duties. For example, a clause

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<sup>2</sup> Finance and Public Administration Committee, 2022. [Report on the National Performance Framework: Ambitions into Action](#). Scottish Parliament.

after 44(1), stating that ‘where the implementation of any other statutory duty appears to conflict with 44(1)(c), a transparent resolution must be sought with regard to policy coherence for sustainable development as defined in the Wellbeing and Sustainable Development (Scotland) Act 202X’.

More details on how legal duties could be defined or strengthened in the Bill can be found in the Appendix.

## Question 9

Are there specific areas of decision making that should be included or excluded from the Bill?

### Key point

- Excluding different areas of decision making from the Bill would **threaten the coherence and clarity** of the legislation and impede effective implementation.

### Further considerations

We consider that the purpose of the Bill is to define wellbeing and sustainable development, as expressed in the National Outcomes, as overarching goals of decision making in Scotland and to create the necessary institutions and processes that allow decision makers to pursue these goals in a joined-up and holistic manner. It is therefore important that the Bill covers all areas of decision making.

Moreover, excluding certain areas of decision making would undermine the holistic definitions of both sustainable development and wellbeing as laid out in this guidance and the corresponding need to achieve better policy coherence across government in pursuit of the National Outcomes, wellbeing and sustainable development.

## Question 10

What issues, if any, may result from strengthening the requirement to have regard to National Outcomes?

### Key points

- It is important to accompany strengthened duties with a comprehensive support ecosystem to aid public authorities in implementation, emphasising the ‘how’.
- The other parts of the proposed Bill are an important part of this support ecosystem, including clear definitions, ways of working and a Future Generations Commissioner that can hold public authorities accountable, provide support and build capacity.

### Further considerations

When responding to this question you might also want to consider:

- Whether your organisations can foresee any specific issues that the strengthening of duties could produce and how they could be resolved.
- Whether you have proposals for how public bodies could best be supported in implementing the strengthened duties.

One of the potential challenges of making the Bill effective is the additional strain it might put on the stretched capacity of the public bodies subject to the strengthened duties

proposed in the Bill. However, it is important that the Bill does bring about changes to how public bodies see the National Outcomes, sustainable development and wellbeing. In this sense, the Bill should seek to embed new ways of working, thinking and reporting by public bodies in Scotland that encourages more joined-up processes and coherence towards the goals of wellbeing and sustainable development. While these changes are crucial, they will not be achieved if duties are not accompanied with the relevant support, training and guidance for public bodies.

Therefore, it is important that the Bill goes beyond simply imposing duties and puts in place a support ecosystem built on the other parts of the legislation working together.

This includes:

- Defining wellbeing and sustainable development to clearly set out the ultimate outcomes and priorities that are being sought.
- Provide guidance on how to resolve trade-offs with existing duties or between different National Outcomes by establishing a clear definition of policy coherence for sustainable development.
- Defining ways of working to establish a coherent approach to pursuing the duties and outcomes set in the Bill, supported by detailed guidance on how to implement those ways of working in different contexts.
- Creating an independent 'Future Generations Commissioner' with the capacity to offer support to public bodies, to build capacity, to provide scrutiny and to provide a forum for sharing learning across the public sector.

Given the complexity of implementing policy coherence for sustainable development in practice, and the likelihood that public bodies will have to shift to new ways of working and thinking, a capability-maturity approach as used by Adaptation Scotland seems well suited to the WSD Bill in terms of providing public bodies with a step-by-step process of change.

Duty-bearers could be supported by new bodies, or existing bodies such as the Sustainable Scotland Network, which might be well placed to take on these additional roles. The latter would be particularly useful in the context of creating more synergies across policy domains and lowering the burden on public bodies if the reporting can also be integrated with existing systems and reports.

## Clarifying to whom the duties apply

### Question 11

Should any duty apply to the Scottish Government?

### Key points

- It is important that duties apply to the Scottish Government as well as public bodies.
- The Bill should **build on, and strengthen, current duties on Scottish Ministers to take account of, and effectively work towards, wellbeing, sustainable development, and the delivery of the National Outcomes.**

- These duties should include requirements for the Scottish Government to **report more regularly, at least biennially, and to publish delivery plans** for how they will work towards the National Outcomes.
- Duties on the Scottish Government should help ensure that the National Outcomes, and broader 'National Wellbeing Framework' in which they sit, becomes **a roadmap, rather than a vision, for the Scotland we want to see.**

## Further considerations

To strengthen the duties on the Scottish Government, we propose this Bill should amend duties in relation to the National Outcomes that the existing Community Empowerment (Scotland) Act 2015 has conferred on Scottish Ministers, so that:

- Scottish Ministers will be required to produce a framework for the delivery/implementation of National Outcomes
- Scottish Ministers will be required to report on the delivery of National Outcomes annually.
- When Scottish Ministers are setting new National Outcomes, or revising existing ones, they will have to support meaningful public participation. Specifically, clauses around engagement should require 'participation' rather than 'consultation'.
- When Scottish Ministers set new National Outcomes, they must be able to show how they will support wellbeing, Sustainable Development and PCSD.
- Before Scottish Ministers set new, or revise existing, National Outcomes, the Parliament will have to be allowed 90 days to scrutinise draft versions.

Further aspects you can consider when answering this question are:

- What other duties conferred on Scottish Ministers would help ensure that the National Outcomes becomes a roadmap, rather than a vision, for the Scotland we want to see?
- whether improving the frequency and quality of reporting on National Outcomes would enhance accountability and boost the status of the outcomes within decision-making.
- what the role of parliament should be in scrutinising the duties on ministers

You can find detailed suggestions on how such duties on the Scottish Government could be formulated in legislation in the appendix.

## Question 12

Do you have any views on the range and type of organisations that any duty should apply to?

### Key point

- The purpose of the Bill is to define wellbeing and sustainable development, as expressed in the National Outcomes, as overarching goals of decision making in Scotland, so it is important the duty **should apply across all public bodies in Scotland including Scottish ministers.**

## Further considerations

When responding to this question, you might want to consider whether you want to highlight any public bodies that you think are especially important but might not be immediately thought of, for example Community Planning Partnerships.

## Defining ways of working

### Question 13

Do you have any views on how we can better report the achievement of wellbeing objectives which supports clear accountability and scrutiny of public bodies in Scotland?

#### Key points

- To enable stronger accountability Ministers should be required to report more regularly on progress towards the National Outcomes to parliament, and parliament should be giving ample time to scrutinise these reports.
- In addition government reporting should be complemented by an institution capable of providing independent assessments of Scotland's progress towards wellbeing and sustainable development. Our preferred option for this would be a Future Generations Commissioner.

## Further considerations

Further aspects you can consider when answering this question are:

- how often and in what format public bodies and the government should be required to report progress.
- whether we currently have the necessary data to support scrutiny and accountability.
- in which way independent support and scrutiny can best be provided.

A more detailed description of how reporting could be improved can be found in the appendix.

### Question 14

What additional steps are needed to ensure collaboration and working across boundaries?

#### Key points

- Defining 'policy coherence for sustainable development' is key for ensuring a coherent approach to policy making in Scotland.
- Further defining some high-level 'ways of working' in the legislation would help public bodies to implement the strengthened duties in a way and support a coherent and collaborative implementation across the public sector in Scotland.
- These high-level 'ways of working' should be supported by more detailed guidance.

## Our proposed 'ways of working'

- **participation:** recognising that everyone in society has a role to play and actively engaging quiet voices that often go unheard

- **integration:** achieving policy coherence for sustainable development by aligning public bodies' efforts, collaborating and committing to shared learning
- **long-term:** balancing the needs of today with those of future generations
- **global citizenship:** considering the impact of our decisions and doing no harm internationally
- **prevention:** focusing on early action rather than just reacting to problems
- **openness:** enabling engagement and accountability through openness and transparency
- **evidence-based:** making decisions based on the best evidence available

## Further considerations

### Defining policy coherence for sustainable development

One of the key goals of the Bill is to promote policy coherence. You might therefore want to consider whether it is useful to define policy coherence in the legislation, together with sustainable development. Scotland's International Development Alliance proposes to define policy coherence as the consistency of public policy, whereby:

- no policy undermines any other policy
- where policy conflicts occur, the root cause of the conflict should be identified and efforts made to resolve it in a manner which:
  - minimises trade-offs
  - maximises synergies.

### Setting out 'ways of working'

When answering this question you might want to consider

- whether your organisation considers any ways of working as particularly important.
- whether you have examples of support and/or toolkits that can help implement some of the proposed ways of working.
- who should be responsible for supporting public bodies to implement ways of working.
- whether you know about examples from other countries who have done similar things in your field of work.

For example the ways of working that we are proposing have been inspired by the the Christie Commission recommendations<sup>3</sup> and Scotland's International Development Alliance<sup>1</sup>, as well as drawing on the ways of working defined in the Welsh Wellbeing of Future Generations (Wales) Act 2015.

More details on why it might be useful to set out ways for working can be found in the appendix.

## Question 15

Do you have any views on whether any duty related to ways of working could create conflicts with duties currently placed on you?

If you are a public organisation that currently has duties placed on you, please consider where they might produce conflicts. You might also want to consider proposing on how these conflicts could be resolved and emphasising the need for policy coherence. Feel free to ignore this question if you are not part of an organisation that currently has duties placed on it.

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<sup>3</sup> [Report by the Commission on the Future Delivery of Public Services](#), 2011. Scottish Government.

## Question 16

Do you have any views on the additional resource implications necessary to discharge any wellbeing duty in your organisation?

If you are a public organisation that currently has duties placed on you, please consider the additional resource implications of the Bill. You might also want to consider proposing on how these additions could be minimised. Feel free to ignore this question if you are not part of an organisation that currently has duties placed on it.

## Determining an approach for future generations

### Question 17

Should Scotland establish an independent Commissioner for Future Generations?

#### Key points

Yes. The key roles of the Commissioner would be:

- to provide a **visible, institutional base within Scottish public life** for activity to promote issues of wellbeing and sustainable development for present and future generations.
- to **support systemic change** around activity for wellbeing and sustainable development across Scottish public bodies.
- to **improve and ensure accountability** around the duties in the Bill.
- to **represent the interests of future generations** in the Scottish political system and work with the deputy first minister to ensure policy coherence.

#### Further considerations

The following considerations might be useful when responding to the question.

#### Wellbeing, sustainable development and future generations

The relationship between wellbeing, sustainable development, and thought around 'future generations' must be clearly understood and articulated for a commissioner for future generations to perform these functions effectively. Notably, promoting a long-term approach to political decision-making and the representation of future generations are important considerations: however, the sustainable development and wellbeing agenda that this Bill should present goes much further.

If the 'future generations' mandate of a commissioner is articulated and understood narrowly, the role will not serve to protect and advance the agenda of the Wellbeing and Sustainable Development Bill and solutions to these gaps should be considered.

#### Wider context for a commissioner

The effectiveness of the commissioner is dependent not just on the mandate bestowed on the commissioner in the legislation, but also the wider framework established by the Bill, in particular the strength and specificity of definitions and duties.

It is also dependent on effective resourcing so that the commissioner has the capacity to perform its functions.

Lastly, the commissioner, though independent, must not be isolated – the role must have public legitimacy and be linked effectively to key elements of the Scottish political system.

Read some reflections from Wales' first Future Generations Commissioner, here. <https://carnegieuktrust.org.uk/blog-posts/should-scotland-establish-an-independent-commissioner-for-future-generations/>

## Question 18

In what ways could an independent Commissioner for Future Generations increase the accountability, scrutiny, and support for decision making?

### Key points

There are a number of important ways in which an independent Commissioner for Future Generations could increase accountability, scrutiny and support for decision making. These roles can be written into the text of the Bill, together defining the powers and responsibilities of the Commissioner role:

- Effective accountability is guaranteed by specifying *who* is accountable, *to whom*, in respect of *what responsibilities*, and with *what potential sanction*.
- The WSD Bill must consider all these elements, making clear *who* (potentially all Scottish public bodies) have *what responsibilities* (e.g. to act or report in ways consonant with wellbeing and sustainable development objectives) to be assessed by the commissioner *through what mechanisms* – (e.g. key reports sent to commissioner for approval; commissioner empowered to demand responses; commissioner's assessment to be tabled in parliament).
- To ensure support for decision-making, the Bill could make it mandatory for key decisions (e.g. laws, budgets) to be presented for consideration by the Commissioner and the assessment and recommendations made public.
- One key question is whether the commissioner should be given more 'active', investigate powers (and matching capacity) or whether the accountability role should be more 'passive' – scrutiny activated by a report or decision placed before the commissioner, say. The strongest commissioner has the mandate and capacity to investigate, but evidence from other countries suggests the commissioner must be widely perceived as legitimate for this role to be sustained.
- The commissioner has a role in wider thought leadership, developing the understanding of wellbeing and sustainable development in Scotland, advising informally and creating resources that support public bodies in carrying out their duties, and in developing governance infrastructure and multi-stakeholder partnerships around wellbeing and sustainable development over time.

## Question 19

Are there alternative ways we can increase the accountability, scrutiny, and support for decision making?

### Key points

- Given the Scottish context already has a number of existing commissioners, it may be possible to adapt the functions of some of these to cover some elements of wellbeing and sustainable development accountability. However, no existing



commissioner, or 'patchwork' of commissioners, could do this without (i) significant changes to their remit and (ii) additional resource.

- It is important to note that all of these approaches themselves involve resourcing demands. The capacity to undertake scrutiny; support and learning resource development; promotion or voice for this agenda, all come with resource implications regardless of the institutional form they take. Likewise, accountability and system change must involve the creation or transfer of authority, agency, and capacity within the Scottish political system. How far resource and power are to be put behind the wellbeing and sustainable development agenda, in whatever form, should be a key metric for judging the success of the Bill.

## Further considerations

When responding to the question it might be useful to consider how other countries have approached similar functions:

- Many countries with commissioners do not rely on commissioners alone to achieve these functions. Advisory councils and commissions, and parliamentary groups and committees are widely employed alongside commissioners or ombudsmen as part of (present or envisioned) WSD governance ecosystems.
- Certainly, some functions have been approached in other ways in other national contexts. More formal government sustainable development reporting through a formalised Parliamentary process can be a method of ensuring accountability. Canada's sustainable development act, for example, obliges government to publish a sustainable development strategy and obliges a parliamentary committee to scrutinise that strategy. National audit bodies can also be mandated with accountability duties (e.g. in Belgium, also explored in Wales). Accountability could also be mandated to citizen bodies – e.g. periodic citizens' assemblies or citizen panels.
- A national advisory council or commission, representing a wide spectrum of civil society actors, is tasked in some countries with 'thought leadership' and supporting policymakers. Linking this body formally to the prime/first minister is a way to guarantee a role in promoting, establishing and safeguarding wellbeing and sustainable development concerns. With a specific intergenerational lens, giving meaningful authority to a council of younger and older generations could serve a similar purpose of promotion and voice.
- Wellbeing and sustainable development accountability - as well as representation of the interests of future generations – can be enshrined in stronger systems rather than a new body or institution – e.g. improved impact assessment processes and revised cost/benefit analysis that gives greater weight to environment, equity and future people's wellbeing accompanied by increased, specific 'watchdog' responsibilities for relevant bodies. Representation for future generations within political debate could also be achieved through democratic innovations such as citizens' assemblies or revisions to parliamentary procedures.

# Appendix

## Additional information for Question 2

The definition of collective wellbeing that we propose includes the qualified ‘as identified through consultation with the people of Scotland’ - which requires engagement to identify the outcomes that matter to the people of Scotland at this particular time, and regularly into the future. That’s why we want to see new and strengthened duties on Scottish Ministers to do the following (also see Question 11):

- engage with a broad and diverse range of people and communities from across Scotland to determine the shared social, economic, environmental and democratic outcomes that constitute national wellbeing. This review of National Outcomes should continue to be held carried out by Scottish Ministers at least every 5 years.
- report annually to the Scottish Parliament on the progress towards National Wellbeing with reference to both national statistics and the lived experience of the people of Scotland.
- enhance the public participation requirements for the determination of National Outcomes; in particular, clauses around engagement should be amended to require ‘participation’ rather than ‘consultation’.

## Additional information for Question 5

### Reasoning behind our proposed definition

We believe that the definition is similar to the one proposed in Question 4, but is more suitable and up-to-date because it reflects important advances in our understanding of sustainable development since the publication of “Our Common Future”.

- a well-established shortcoming of the definition proposed in Question 4 is the lack of **reference to equity**. It does not make clear that sustainable development needs to enable all people of current and future generations to meet their needs in a way that is equitable and recognises differences in the responsibility for environmental damage and in the capability to deal with these at present.
- the definition proposed in Question 4 has been developed to **apply at a global level**. To tailor for a national application in Scotland, we consider it important to include a specific reference to the rest of the world, to make clear that sustainable development in Scotland cannot be achieved without consideration of sustainable development across the world.
- the **planetary boundaries framework is now well established** as a robust way of setting out the environmentally sustainable development space for humanity (references). Continuously crossing these boundaries will create a considerable risk that large parts of future generations will not be able to meet their needs. Planetary boundaries were not defined at the time “Our Common Future” was written. We therefore consider it useful to include a specific reference to planetary boundaries to make the conditions for sustainable development as explicit and robust as possible.

## Additional information for Question 6

### More detailed descriptions of the issues the legislation might help address.

- **Opportunity to be world-leading:** The Bill presents an opportunity for Scotland to become a genuine leader in sustainable development and in embedding wellbeing as a goal in policymaking.
- **Tackling the nature & climate crisis:** To ensure the Scottish Government does not contribute to making our planet uninhabitable through irreversible biodiversity loss and climate chaos, leave anyone behind or lose sight of what is important in terms of our own individual and collective wellbeing, it is vital that we find a way to make sure we work together in a more joined-up and systematic way, especially in government, and also across the whole of society.
- **Contributing to global justice:** This Bill could avoid negative social, economic, and environmental impacts here in Scotland and significantly reduce negative impacts on the lives and livelihoods of people elsewhere, particularly in 'majority world' and low-income countries. Acknowledging and responding to our current and historical role in creating global inequality between and within countries is vital. This will require active procedures that ensure access to information, public participation, and access to justice in decision-making.
- **Tackling the cost of living crisis and poverty:** With global poverty on the rise once more, the global crises resulting from the ongoing impacts of the COVID-19 pandemic have laid bare the social and economic determinants of public health. Using and building upon existing frameworks, like the SDGs, to ensure a more resilient future is vital.
- **Invest in prevention and reducing inequalities:** By actively considering issues and their long-term impact this legislation provides an opportunity to put primary prevention at the heart of the decision-making process. Primary prevention means investing to stop problems occurring in the first place. This is the most-cost-effective way of protecting the health, economic and social wellbeing of future generations and for reducing inequalities. It will require more joined up, cross-government working to ensure that policies deliver the best results for current and future communities, focusing on the building blocks of community wellbeing for all.
- **Efficiency towards achieving Sustainable Development Goals:** The legislation would assist in setting objectives towards achieving all the SDGs, and the linked National Outcomes, equally and ensuring that doing so impacts positively on communities and people's wellbeing and the environment here in Scotland and globally. The legislation should ensure that all public bodies are working towards all of the outcomes, not just a select few.
- **Need for resources/commissioner:** The Bill would create an independent commission and knowledge exchange network to support public bodies to work towards sustainable development and wellbeing goals across their policy remits, monitor progress in setting realistic and achievable objectives, and review their outcomes. This will require new and better data to measure wellbeing and sustainable development progress.

## Additional information for Question 8

Legal duties in the Bill should be defined in a way that does not add *unnecessary* extra reporting requirements on public authorities, and instead, in a way that strengthens, clarifies and streamlines existing duties around sustainable development, wellbeing and the National Outcomes.

In the case of sustainable development, this could mean strengthening existing duties in other legislation, where sustainable development duties already exist, such as the Climate Change Act 2009, as previously mentioned. This Act requires all Scottish public authorities to, in exercising their functions, act in the way they consider ‘most sustainable’. However, research<sup>4</sup> from Scotland’s International Development Alliance, shows that this duty does not appear to be well-implemented, possibly due to the wording of the Act and a lack of parallel capacity building, support and accountability requirements.

Public authorities would be better able mainstream sustainable development, as defined in the WSD Bill, by amending Section 44 of the Climate Change Act 2009 to include references to ‘sustainable development’ and a new clause which serves to resolve existing conflicts in public authorities’ statutory duties. For example, a clause after 44(1), stating that ‘where the implementation of any other statutory duty appears to conflict with 44(1)(c), a transparent resolution must be sought with regard to policy coherence for sustainable development as defined in the Wellbeing and Sustainable Development (Scotland) Act 202X’.

The National Outcomes, currently set out in the National Performance Framework, are the key to translating the overarching goals of sustainable development and wellbeing into concrete outcomes for Scotland. Recent evidence<sup>5</sup> suggests that the existing duty on public authorities to “have regard to the National Outcomes” in the Community Empowerment (Scotland) Act 2015 is not strong enough to deliver their ambition.

These duties, in Part 1 of the Community Empowerment (Scotland) Act 2015, should therefore be relocated into the WSD Bill, and be amended in order to support a more unified approach to delivering the National Outcomes and to support greater clarity over the contribution made by different actors towards the delivery of all of the National Outcomes, as a complete wellbeing framework, rather than particular National Outcomes in isolation.

To do this, requires the duty to use more tangible, directional and affirmative language. One approach might be to adopt similar wording to the Well-being of Future Generations (Wales) Act 2015 which requires each public body “*to carry out sustainable development*”, and includes requirements for “*Setting and publishing objectives [in relation to the wellbeing goals]*” and “*taking all reasonable steps to meet those objectives*”. However, it could be argued that even this wording is not strong enough,

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<sup>4</sup> Scotland’s International Development Alliance, 2021. [Towards a Wellbeing and Sustainable Development \(Scotland\) Bill](#). p.27

<sup>5</sup> Finance and Public Administration Committee, 2022. [Report on the National Performance Framework: Ambitions into Action](#). Scottish Parliament.

and does not emphasise the need to ensure policy coherence in pursuit of the National Outcomes, wellbeing and sustainable development.

Alternatively, the existing duty on the National Outcomes could be rephrased so that public authorities are required to *“promote and deliver sustainable development while protecting the wellbeing of current and future generations”*, ensuring that they *“take all reasonable steps to support the realisation of the National Outcomes, minimise trade-offs, and resolve policy conflicts in a way that does not undermine sustainable development or the wellbeing of current and future generations.”*

To help narrow the well-documented implementation gap in the delivery of the National Outcomes, the Bill could provide additional requirements for public authorities to *“regularly publish how they contribute to each of the National Outcomes”* and *“set out how they support a coherent approach to delivering sustainable development and wellbeing”* as defined in the Bill.

Crucially, these latter requirements would require guidance and support to be provided to public authorities to minimise increased reporting burdens and to ensure meaningful engagement with the National Outcomes. This should be provided by a commissioner, as discussed later.

## **Additional information for Question 11**

### **Strengthening the duties on the Scottish Government with regard to the National Outcomes.**

- In relation to providing more time for the Parliament to scrutinise draft versions the National Outcomes:
  - In 2018, the convenor of the lead Scottish Parliament committee said, due to a shortage of time (only 40 days), the committee was “unable to give any consideration to other committees’ responses” and issued a “plea for more scrutiny time in the future”.
- In relation to reporting requirements on the delivery of National Outcomes:
  - Currently, they “must prepare and publish reports about the extent to which National Outcomes have been achieved”. However, reports must only be prepared and published “at such times as the Scottish Ministers consider appropriate”. Improving the frequency and quality of reporting on National Outcomes would enhance accountability and boost the status of the outcomes within decision-making. For example, in relation to the Child Poverty (Scotland) Act 2017, Scottish Ministers must prepare annual progress reports, detailing progress: (a) towards meeting the child poverty targets, and (b) in implementing the relevant delivery plan..
- In relation to producing a framework for the delivery/implementation of National Outcomes:
  - This could involve time-bound delivery plans for each national outcome that follow the same 5-year life cycle as the National outcomes themselves, including clarity over the policy and spending decisions taken to support their implementation, and enhanced clarity over the timescales for delivering specified progress. Such an approach could echo the delivery plan requirements within the Climate Change (Scotland) Act 2009

and the Child Poverty (Scotland) Act 2017. For example, in relation to the latter, Scottish Ministers must set out: the measures they propose to take during the period of the plan for the purpose of meeting the child poverty target; an assessment of the contribution the proposed measures are expected to make; an explanation of how that assessment has been arrived at, and; an assessment of the financial resources required to fund the proposed measures. The WSD Bill should adopt a similar approach to drive ongoing progress towards the National Outcomes.

- In relation to public participation in setting National Outcomes:
  - The Bill should significantly strengthen the existing consultation requirements on Scottish Ministers when they set new, or revise existing, National Outcomes. The existing Community Empowerment (Scotland) Act 2015 requires Scottish Ministers to review the National Outcomes every five years and to consult “such persons who appear to them to represent the interests of communities in Scotland” and “such other persons as they consider appropriate” have led to insufficiently narrow consultation processes. The WSD Bill should increase the statutory public engagement requirements. It is critical that citizen engagement has depth and breadth, that it represents a diversity of voices including those who are further away from policy making process, like carers, minoritised ethnic groups and people on low incomes, and that this engagement has a tangible influence on decision-making.

### **Additional information for Question 13**

We agree that it is important to establish better ways of reporting progress against the achievement of wellbeing outcomes and sustainable development, as captured in the National Outcomes, in order to aid accountability and learning. We propose a combination of different ways in which this can be achieved.

Firstly, as set out in our answer to Question 11, Ministers should be required to report more regularly on the progress towards the National Outcomes to Parliament. And Parliament should be given ample time to scrutinise these reports. We suggest that such reports should be made at least biannually. We consider that such reporting to Parliament constitutes the minimum level of scrutiny provided by Parliament. In other countries dedicated parliamentary committees play an important role in reporting against achievement of wellbeing outcomes and the sustainable development goals. Even though the Bill cannot establish such committees such options should be explored further (more details can be found in the answer to Question 19).

Secondly, we consider it important to complement Government reporting with an institution capable of providing independent assessments of Scotland’s progress towards wellbeing and sustainability development. For example this could take the shape of regular reports setting out historic progress against the National Outcomes and assessing the likelihood of future progress, similar to the reports produced by the Scottish Fiscal Commission. Our preferred option for providing this type of scrutiny would be the establishment of a Future Generations Commissioner (see Question 17).

The current set of indicators associated with the National Performance Framework and the Wellbeing Economy monitor can provide a good starting point for this kind of reporting. However, the reporting needs to be made more coherent and digestible, including more timely data.

## Additional information for Question 14

### Setting out ways of working

Even if the Bill is mostly aimed at strengthening existing duties, it will be vital that public bodies are given clear guidance, sufficient support and the necessary tools in order to implement them.

We believe that the definition of ‘ways of working’ has to be a key part of this support, and has been one of the key drivers of success of the Future Generations (Wales) Act 2015. It would therefore be beneficial to define a small number of core ways of working in the legislation, but complement these with more detailed guidance and support in other formats. Setting out those core ways of working will help public bodies to adhere to the new duties, it will help to streamline new duties with existing ones and it will ensure coherence in how the new duties will be implemented across Scotland.

We believe that a combination of defining ways of working in legislation and more detailed non-legislative guidance will be the most effective combination to allow both for stability over time and the flexibility to them over time. We believe that the ways of working will be less effective if they are solely set out in guidance, because there is a risk that they will be changed too frequently.

The proposed Future Generations Commissioner can play an important role in providing the support including the development of more detailed guidance on the ways of working. Public bodies can also be supported around implementation through the provision of impact assessment tools and toolkits. Scotland’s Adaptation Capability Framework is useful for what might be needed in terms of support for public bodies to implement specific duties, including ‘understanding the challenge’. However, it may be worth considering how a bespoke Scottish toolkit will combine support to implement specific aspects of duties with the broader implementation of wellbeing and PCSD. There are already toolkits on the latter available.

We propose that the legislation should define the following ways of working:

- **participation:** recognising that everyone in society has a role to play and actively engaging quiet voices that often go unheard
- **integration:** achieving policy coherence for sustainable development by aligning public bodies’ efforts, collaborating and committing to shared learning
- **long-term:** balancing the needs of today with those of future generations
- **global citizenship:** considering the impact of our decisions and doing no harm internationally
- **prevention:** focusing on early action rather than just reacting to problems
- **openness:** enabling engagement and accountability through openness and transparency
- **evidence-based:** making decisions based on the best evidence available

These ways reflect the recommendations by the Christie Commission<sup>6</sup> and Scotland's International Development Alliance<sup>7</sup>, as well as drawing on the ways of working defined in the Welsh Wellbeing of Future Generations (Wales) Act 2015.

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<sup>6</sup> [Report by the Commission on the Future Delivery of Public Services](#), 2011. Scottish Government.

<sup>7</sup> Scotland's International Development Alliance, 2021. [Towards a Wellbeing and Sustainable Development \(Scotland\)](#)