

Wellbeing and Sustainable Development Bill Consultation response

February 2024

A wellbeing and Sustainable Development Bill for Scotland offers a unique opportunity for the country to build world-leading legislation. The Bill would enable the Scottish Government to provide a clear vision and guidance for public bodies and others to put wellbeing at the centre of decision-making.

1. Is a statutory definition of 'wellbeing' required?



Yes

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

Please use this space to provide your views.

We recommend that the Scottish legislation defines the term collective wellbeing and identifies the core outcomes underneath this definition (hereafter referred to as the National Outcomes).

At Carnegie UK we use a modified version of the Organisation for Economic Cooperation and Development (OECD) capitals approach, referring to four pillars of Social, Economic, Environmental, and Democratic Wellbeing. **It is this approach that we recommend to the Scottish Government.**

This includes:

- **Social wellbeing:** Everyone can achieve their potential and contribute to society because they have basic needs met. Our basic needs are having access to health and social care, education, housing, transport, digital and childcare.
- **Economic wellbeing:** Everyone has a decent minimum living standard and can absorb financial shocks. This means financial security now and being able to maintain adequate income throughout their lifetime.
- **Environmental wellbeing:** Everyone has access to green and blue spaces and collectively we live within the planet's natural resources. This means we protect the environment for future generations.
- **Democratic wellbeing:** Everyone has a voice in decisions made that affect them. This means having local and national leaders who support participation, foster trust and encourage diversity¹.

¹ Carnegie UK, 2023. Understanding the SEED Domains: a scoping review of social, economic, environmental and democratic wellbeing. Available at: https://d1ssuo70pg2v9i.cloudfront.net/pex/carnegie_uk_trust/2023/12/09112631/SEED-domain-scoping-review-Final-2.pdf

Building again on the work done by the OECD², we suggest that a legal definition of wellbeing that supports public policy decision-making should include the principles of equity and long-termism. Therefore,



Collective wellbeing is the progressive realisation of social, economic, environmental and democratic (SEED) outcomes. The specific outcome areas (the National Outcomes) are identified through engagement with the people of Scotland.

The National Outcomes should be delivered in a way that reduces inequalities between different groups and which recognises the importance of protecting the interests and needs of future generations and intergenerational equity.

Our recommendation is for the Scottish Government to carry out robust engagement with the public before implementing legislation. The aim of this engagement should be to identify the National Outcomes that reflect what matters to the people of Scotland, in line with the four pillars of collective wellbeing in the overall definition (relating to social, economic, environmental and democratic wellbeing).

The National Outcomes currently sit within the Community Empowerment (Scotland) Act 2015 which places a duty on Scottish Ministers to consult on, develop, and publish National Outcomes for Scotland and to review them every five years. The Community Empowerment (Scotland) Act 2015 also places a duty on public authorities to have regard to the National Outcomes in carrying out their functions.

At Carnegie UK, we believe that 'have regard to' does not go far enough. To strengthen accountability, we believe that a duty to deliver these outcomes should be placed in legislation. **As such, a duty to deliver the National Outcomes should be a core component of the Wellbeing and Sustainable Development Bill.**

At Carnegie UK, we see the National Outcomes as the application of the UN Sustainable Development Goals to a Scottish context. Translating sustainable development into national policy practice requires the identification of a smaller number of relevant outcomes. Setting the National Outcomes for the long-term (as the Sustainable Development Goals themselves are) will ensure that there can be sustained investment in the communications and implementation of the approach.

3. Is a statutory definition of 'sustainable development' required?



Yes

2 OECD, 2024. Measuring Well-being and Progress: Well-being Research. Available at: <https://www.oecd.org/wise/measuring-well-being-and-progress.htm>.

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

5. Do you have other views on how ‘sustainable development’ can be clearly defined in legislation?

Please use this space to provide your views.

Carnegie UK supports the inclusion of a definition of 'sustainable development' in legislation. A clear definition will provide clarity and support accountability.

We agree with the Scottish Government's suggested approach of using the Brundtland definition. This would promote strong alignment with the wider global sustainable development movement. It would also ensure we are using a clear, rigorous, and consistent definition that supports communication with a variety of stakeholders essential to the successful implementation. This builds on evidence of the impact of this approach in Wales in developing and delivering the Wellbeing of Future Generations (Wales) Act. The Act continues to gain traction worldwide because it is underpinned by the Brundtland definition developed by the United Nations. The wellbeing goals defined in the Welsh legislation were also clearly linked to the UN's Sustainable Development Goals.

Whilst we strongly advocate for the use of the Brundtland definition, we believe it would be helpful for the legislation to spell out that:

- we must acknowledge the impact of our decisions beyond Scotland's borders;
- that any development must be equitable; and
- that the definition is about balancing future generations with wellbeing and equity now, both in Scotland and globally.

It should be noted that like other aspects of this proposed Bill, defining sustainable development is not introducing new duties or concepts. Rather, it is properly defining – and maximising - what is already in place through other legislative instruments for example the Climate Change (Scotland) Act 2009, which requires all Scottish public bodies to deliver in the 'most sustainable' way, and the Community Empowerment (Scotland) Act 2015, which placed a duty on creation of Scotland's National Outcomes, to improve delivery and ensure policy coherence.

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

Please use this space to provide your views.

We share the views of others like Oxfam Scotland, WEAll Scotland, and Scotland's International Development Alliance that this Bill could trigger a step change that ensures collective wellbeing and sustainable development become the unequivocal drivers of policy and practice across public life in Scotland. **As we near the end of the current parliamentary term, the Bill presents an opportunity to pass world-leading legislation that goes further than the work of other Wellbeing Economy Governments, including Wales.**

Critically, a Wellbeing and Sustainable Development Bill would put prevention at the forefront of Scottish decision-making in turn protecting the economic and social wellbeing of both current and future generations.

It also provides an opportunity to strengthen leadership, scrutiny and accountability. For example, by establishing a commissioner for future generations. As we describe in our response to question 17 and 18, this new institution would ensure that there is always a voice advocating for the collective wellbeing of the people of the future. We believe this change is especially important as Scotland looks to play its part in tackling the climate crisis and other intergenerational issues. The commissioner's role would be to join the dots between issues and organisations, supporting and monitoring the application of a wellbeing approach.

The Bill also presents the Scottish Government with an opportunity to deliver progress on the issues of today, like deepening poverty and the energy crisis by giving public bodies and other organisations a clear structure, guidance, and accountability mechanism to work coherently and collaboratively towards the national outcomes.

Carnegie UK's recent Life in the UK findings demonstrate how far away we are from putting wellbeing at the heart of decision-making. Based on a representative survey of 1132 people living in Scotland, we found that:

- Disabled people, people on lower incomes, social housing tenants, private tenants and younger people have lower levels of wellbeing.
- The economic wellbeing score for the lowest income group is 58 compared to 80 in the top income quintile (a 22-point gap).
- There is a lack of trust in political systems and institutions including UK Government, Scottish Government and local councils³.

It is important to recognise that this legislation requires significant investment to be effective. The function of this office, however, would be to support policy development that reduces future costs.

In our report, Being Bold: Building Budgets for Children's Wellbeing, we made the fiscal argument for investing in early years and prevention as a way to avoid future costs – from healthcare costs (both mental and physical) to reduced tax revenue and higher welfare

3 Carnegie UK, 2023. Life in the UK 2023: Scotland. Available at: <https://carnegieuktrust.org.uk/publications/liuk2023scotland/>.

spending, and from criminal justice to demand for emergency services. By placing duties on public bodies to promote wellbeing and sustainable development, and by creating a commissioner that supports and scrutinises implementation, this legislation should shift spending upstream to the sorts of policy intervention that reduces demand for public services by creating better outcomes for people and planet.

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?

Please use this space to provide your views.

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, to improve delivery.

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

Please use this space to provide your views.

As explained in our answer to question 2, the duty that exists within the Community Empowerment (Scotland) Act 2015 that public bodies should "have regard to the National Outcomes" does not go far enough to achieve progress. As such, we believe this duty should be relocated and replaced with a more affirmative and directional "duty to deliver the National Outcomes" within the Wellbeing and Sustainable Development Bill legislation.

This would help ensure that public bodies take account of, and effectively work towards, wellbeing and sustainable development through the effective delivery of the National Outcomes.

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

We strongly believe that excluding different areas of decision-making from the Bill would threaten the credibility, coherence and clarity of the legislation and impede effective implementation.

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

Please use this space to provide your views.

It will be important in the implementation of the legislation to provide comprehensive support and guidance to public bodies. This is where provision for a Future Generations' Commissioner is particularly important. Too often, legislation placing new duties on the public sector is passed without providing adequate support for the training, development and longer-term cultural change required to properly implement it. The Finance and Public Administration Committee (FPAC) "National Performance Framework: Ambitions into Action" inquiry⁴ provides strong evidence of this where the Auditor General commented that there is "a major implementation gap between policy ambitions and delivery on the ground."

Despite the National Outcomes being in law since the Community Empowerment (Scotland) Act 2015 was passed, we believe that it has failed in to live up to the expectations of the Scottish Parliament during its implementation.

A significant amount of support will be required to equip people working in public sector with the skills to think long-term, such as foresight training, analysing future trends, and developing long-term delivery plans. There are organisations, such as the School of International Futures, who have developed this training and who could work alongside the Future Generations' Commissioner to act as a constructive challenger and constant champion on whether the rhetoric and bureaucratic requirements of the legislation are driving change in reality⁵.

11. Should any duty apply to the Scottish Government?

Please use this space to provide your views.

The duty to deliver **must** include the Scottish Government otherwise it will be of limited impact.

This duty should include the requirement to report more regularly on progress towards the National Outcomes. We have previously argued for an annual debate in the Scottish Parliament on progress towards the National Outcomes. Our preference would be for this requirement to be on the face of the Bill and to occur in advance of the budget process.

Scottish Parliament committees have taken evidence from the current National Outcomes during their budget consideration, but this consideration comes too far into the process. Evidence on the progress towards outcomes is best taken 'as a whole', rather than relating to Committee remits, and at the point when decisions can be taken on the overall shape and priorities of the budget (ex-anti not ex-post).

4 The Scottish Parliament, 2022. National Performance Framework: Ambitions into Action. Available at: <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/FPA-31-05-2022?meeting=13799>.

5 Carnegie UK, 2024. Should Scotland establish a Future Generations Commissioner? Available at: <https://carnegieuktrust.org.uk/blog-posts/should-scotland-establish-an-independent-commissioner-for-future-generations/>.

The Scottish Government should be required to publish a delivery plan to set out how it expects to deliver improvements to the National Outcomes. In practice, this document may be the Programme for Government (annually) or every three years as the Resource Spending Review. The legislation should make the timescale for delivery plans and review of them clear and subsequent guidance identify the links with these key documents.

To strengthen the duties on Scottish Government, we propose this Bill should amend the 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 of National Outcomes
- Scottish Ministers will be required to report to the Scottish Parliament 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 engagement. 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 and Sustainable Development.
- Before Scottish Ministers set new, or revise existing, National Outcomes, the Parliament will have to be allowed 90 days to scrutinise draft versions.

We recommend that revision of the National Outcomes should be done in the final year of a sitting Parliament to support the development of priorities for the next session.

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

Please use this space to provide your views.

In our view, this duty must apply to every organisation accountable to the Scottish Government. This should also include any private companies procured by Scottish Government, its agencies and local government.

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

Please use this space to provide your views.

To enable stronger accountability Ministers should be required to report more regularly on progress towards the National Outcomes to the Scottish Parliament, and the Scottish 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. This mechanism is working well in Wales where the duty of the Future Generations Commissioner includes assessing the extent to which wellbeing outcomes are currently being met in an overall assessment with recommendations published every five years⁶.

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

Please use this space to provide your views.

The proposed Bill will bring together all of Scotland's commitments on wellbeing and sustainable development into one place, to support more effective implementation.

We note with interest that the Wellbeing of Future Generations (Wales) Act 2015 sets out five statutory ways of working for public services. Those working on the implementation of this legislation repeatedly point to these as the essential components of delivering the Act in practice. In addition, in the 12 years since the Christie Commission⁷, limited progress has been made in shifting to the '4 P's' of:

- **People:** Reforms must aim to empower individuals and communities by involving them in the design and delivery of the services.
- **Partnership:** Public service providers must work more closely in partnership and importantly collaboration, integrating service provision to improve their outcomes.
- **Prevention:** Expenditure must be prioritised on public services which prevent negative outcomes.
- **Performance:** The public services system – public, third and private sectors – must reduce duplication and share services to become more efficient.

The Bill also provides a useful opportunity to place these principles, voluntarily agreed upon by Scottish Government and its partners, onto a statutory footing. **This would re-energise public sector reform, particularly if matched by statutory guidance, training, and other support for public servants. This reform is urgently required in the context of the projected future challenges to Scottish public finances⁸.**

As we have detailed in our answers to other questions, it is important to note that these are not new duties. Legislation is being used to reinstate existing duties (the statutory National Outcomes) which have been informed by the people of Scotland and agreed upon by Parliament, but have fallen short on delivery.

⁶ Welsh Government, 2020. Written Statement: Wales' First Future Generations Report by the Future Generations Commissioner for Wales. Available at: <https://www.gov.wales/written-statement-wales-first-future-generations-report-future-generations-commissioner-wales>

⁷ Christie Commission, 2011. Commission on the Future Delivery of Public Services. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2011/06/commission-future-delivery-public-services/documents/0118638-pdf/0118638-pdf/govscot%3Adocument/0118638.pdf>.

⁸ Scottish Government, 2023. Scottish Budget: 2024 to 2025. Available at: <https://www.gov.scot/publications/scottish-budget-2024-25/>.

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

Please use this space to provide your views.

This question is not applicable to Carnegie UK.

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

Please use this space to provide your views.

This question is not applicable to Carnegie UK.

17. Should Scotland establish an independent Commissioner for Future Generations?



Yes

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

Please use this space to provide your views.

We believe that a fully independent actor providing accountability, scrutiny and support for decision making is a vital feature of this legislation and will be critical for its effective delivery. Former Future Generations Commissioner for Wales, Sophie Howe, has written about this here: <https://carnegieuktrust.org.uk/blog-posts/should-scotland-establish-an-independent-commissioner-for-future-generations/>.

The strongest and clearest way to achieve this is through the introduction of a new Commissioner.

In the Scottish landscape, there is a range of reasons why Commissioners have been introduced. In this case, the primary purpose should be to advocate for people who are not represented in the democratic process - future generations who are not yet born. We know that the decisions we make today will have a lasting impact on the wellbeing of generations to come, and it is vital that their interests are taken into account in decision-making processes.

A Commissioner would also bring much needed visibility to issues brought to the fore through this Bill, and act as a figurehead to inspire and excite, helping to fulfil the vision of this legislation, and bring people and organisations along. They could provide important 'critical friend' guidance and advice.

The creation of this Commissioner would also support the important shift towards long-termism in policy making that is a central feature and ambition of this legislation. We recognise that current political structures can reward short-term policy interventions, even when they incur future costs – for example on health (through inadequate focus on prevention and the future-proofing of services), and the environment (through the approval and delivery of environmentally damaging practices to generate short term profit).

There is currently no other body that delivers this remit (either in theory or practice). The proposal is therefore not duplicative and would not encroach on the work or purpose of any existing entity. We are aware of the think-piece from the Scottish Human Rights Consortium examining the idea of introducing 'rapporteurs' to strengthen focus on groups who would be supported by some of the new Commissioners currently being proposed, including disabled people, older people, people with learning disability, and autistic and neurodiverse people. We broadly welcome this proposal and agree it could be a useful approach to maximise impact and better support marginalised groups.

However we disagree with the suggestion that a Wellbeing and Future Generations rapporteur within the SHRC could deliver the functions of a Future Generations Commissioner – particularly given that the human rights remit of the SHRC by its nature excludes the rights of those who are not yet born.

Building on this suggestion, we believe that increasing the capacity of the Auditor General in Scotland to have dedicated focus on wellbeing and sustainability would strongly complement the role of a Future Generations Commissioner. This would be a proportionate and cost-effective way to deliver all of the functions – including investigatory powers – that will be required for this legislation to truly succeed. The Auditor General would be responsible for auditing whether organisations are fulfilling their legal duties in relation to delivering the National Outcomes.

The Future Generations Commissioner would focus on improving awareness of wellbeing and sustainable development, capacity building within the public sector and actively engaging in research and policy development. **These two functions – a Commissioner and a new, clearer role for Audit Scotland on auditing wellbeing and sustainable development – should work closely together.** It is vital that a Commissioner has suitable powers – including to trigger action by the Auditor General should they uncover issues of concern during their own work.

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

As outlined in our response to question 18, we feel an enhanced function sitting in the office of the Auditor General – with strong linkages to and cooperation between a new Future Generations Commissioner, would comprehensively meet the accountability, scrutiny and support needs associated with this legislation. It is vital that recommendations by the

Commissioner could trigger action from the office of the General Auditor, to ensure maximum collaboration, but also to ensure sufficient powers to meet the Bill's intention.

Duties on the Future Generations Commissioner should include:

- To promote sustainable development and wellbeing and act as a voice for future generations.
- To monitor and assess the extent to which National Outcomes are being met through the development and publication of national indicators. The provision of guidance, advice and training to public body (as defined by the Bill) to support their delivery of the National Outcomes.
- To receive information from public bodies (as defined by the Bill) in relation to how they are implementing their duties under the legislation.
- To provide expert guidance to the Scottish Government, and other public bodies, on the impact of policy and budget proposals on sustainable development and wellbeing.

These powers include:

- The power to recommend to the Auditor General that they carry out a review of the extent to which a public body (as defined by the Bill) is carrying out their duties under the legislation.
- Require a response from the Auditor General to the recommendation for review. The Auditor General should not normally refuse such a request.

This proposal modifies the Welsh legislation to place the majority of the Section 20 powers in the hands of the Auditor General rather than the Future Generations Commission. This will reduce the potential for duplication between these two bodies and create efficiencies. The Auditor General will be under enhanced responsibilities to carry out audits of wellbeing and sustainable development.

Carnegie UK would like to thank Jane Davidson, Pro Vice-Chancellor Emeritus at the University of Wales Trinity Saint David, and Sophie Howe, Wales' First Future Generations Commissioner, for sharing their insights as part of this consultation response.