

Proposed Wellbeing and Sustainable Development (Scotland) Bill

Introduction

A proposal for a Member's Bill to ensure policy development and implementation by public bodies is in line with principles of sustainable development and wellbeing by introducing a duty for public bodies to promote these principles and establishing a Commissioner for sustainable development and wellbeing.

The consultation runs from 14 December 2022 to 24 March 2023

All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document.

Questions marked with an asterisk (*) require an answer.

All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response.

Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded.

Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here:

[Consultation Document](#)

[Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice which explains how my personal data will be used.

On the previous page we asked you if you are UNDER 12 YEARS old, and you responded Yes to this question.

If this is the case, we will have to contact your parent or guardian for consent.

If you are under 12 years of age, please put your contact details into the textbox. This can be your email address or phone number. We will then contact you and your parents to receive consent.

Otherwise please confirm that you are or are not under 12 years old.

No Response

About you

Please choose whether you are responding as an individual or on behalf of an organisation.
Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

an individual

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

Academic with expertise in a relevant subject

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation.

I am an academic at Northumbria University who has researched and published on the National Performance Framework, the integration of wellbeing and sustainability frameworks internationally, and broader themes of service reform and outcome-based policymaking

Please select the category which best describes your organisation

No Response

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your Full Name or the name of your organisation. (Only give the name of your organisation if you are submitting a response on its behalf).

(Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Max French, Assistant Professor, Northumbria University

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number.

We will not publish these details.

[Redacted]

Aim and approach - Note: All answers to the questions in this section may be published (unless your response is "not for publication").

Q1. Which of the following best expresses your view of the proposed Bill? (Please note, that this question is compulsory.)

Fully supportive

Please explain the reasons for your response.

Scotland enjoys a positive international reputation as a policy leader in the connected fields of wellbeing and sustainability. However it has become evident that the current spectrum of powers available to pursue these policy objectives are insufficient in delivering the required level of institutional and cultural change.

The recent reports from Scottish Leaders Forum's Accountability and Incentives action group [1] and the Finance and Public Administration Committee's Ambition into Action Inquiry [2] share the conclusion that implementation of the NPF among public bodies and within the Scottish Government has been patchy and slow to progress. My own recent research comparing the integration of National Outcomes and Indicators in Scotland, Northern Ireland and Wales, shows the degree of integration in central government and public bodies in Scotland is significantly lower than in Wales, and even in certain areas (such as the usage of national indicators in Community Planning Partnerships) than in Northern Ireland[3]. The conclusion from my research is that this stems from the lack of 'hard powers' in Scotland, like scrutiny from external organisations and coercive statutory duties.

The proposed legislation has the opportunity to correct the balance of powers available and better integrate wellbeing and sustainability in decision making. There are four core areas where legislation could help build on Wales' relative success, and also capitalise on the particular opportunities in a Scottish context:

Establishing and resourcing a Future Generations Commissioner for Scotland, coupled with an adequately resourced Office, to champion this approach, provide support and guidance for public bodies and government, and where necessary to use harder powers to coerce change
Imposing enhanced statutory duties for government and public bodies to participate effectively in the collective mission of ensuring the enduring wellbeing and sustainability of Scotland

Establishing a golden thread in Scottish public service reform linking the Christie Commission Pillars to a new 'sustainability and wellbeing principle' which can help structure new planning and scrutiny duties for public bodies

Completing the transition of the NPF from a government performance management framework to a whole-of-society Wellbeing Framework.

This would involve rebranding the NPF as 'Scotland's Wellbeing Framework' and updating duties on Scottish Ministers to revise this Wellbeing Framework through a participatory and deliberative 'National Dialogue' every five years.

[1]<https://sp-bpr-en-prod-cdnep.azureedge.net/published/FPA/2022/10/3/a3dd32cb-f846-42db-ada6-11f7e3da9390/FPAS622R8.pdf>

[2]<https://scottishleadersforum.files.wordpress.com/2022/03/leadership-collective-responsibility-and-delivering-the-national-outcomes.pdf>

[3]French, M. and Wallace, J. (2022) Working paper. Performance management for systemic

problems: the enabling role of soft power. Working paper: Northumbria University.

https://researchportal.northumbria.ac.uk/ws/portalfiles/portal/67951363/Working_paper_performance_management_for_systemic_problems.pdf

Q2. Do you think legislation is required, or are there other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

Evidence suggests Scotland's approach to embedding wellbeing in decision making has suffered from a lack of external scrutiny, weak statutory duties, and poor incentives for change [1, 2, 3]. New legislation is critical to achieving the proposed Bill's aims in three ways.

Firstly, legislation is essential to establish and empower a Future Generations Commissioner (FGC) to champion the proposed Bill and work to better integrate the National Outcomes and Indicators in the core decision making processes of Scottish Government and public bodies. The Welsh FGC has also been critical in motivating the broader cultural change necessary to move legislative duties into practice, and provides a model which Scotland should follow.

Secondly, new legislation could introduce more effective statutory duties for public bodies. There is evidence that Scotland's current statutory duties in the Community Empowerment (Scotland) Act 2015 are too weak to deliver the required cultural and institutional change needed, and that the duties set out in the Well-being of Future Generations (Wales) Act 2015 have been more effective in delivering change[1]. This would involve.

Placing the Christie Commission's Pillars on a statutory basis and incorporating these as a cross-cutting component of the NPF

Tasking each public body in Scotland to develop stretching assessments and plans, which contribute to the National Performance Framework and embed the Christie Pillars/Ways of Working.

New legislation should update the statutory position of the National Outcomes to include all elements of the National Performance Framework. The NPF would be better renamed Scotland's National Wellbeing Framework, completing the NPF's journey from a government performance framework to a whole-of-society wellbeing framework. The revised framework should also be reaffirmed as the central guiding framework for

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public policy in Scotland, and positioned at the heart of the proposed Bill.

Finally, the proposed bill could update and enhance statutory duties on Ministers in relation to revising the National Outcomes set out in the Community Empowerment (Scotland) Act 2015. The two reviews conducted by the Scottish Government (firstly in 2018, and currently ongoing in 2023) have involved limited external and community engagement and compare poorly with international practice. The Bill could extend this Ministerial mandate so that the National Outcomes (or better, the whole content and framing of the NPF), is revised through a multi-faceted, participatory and deliberative 'National Dialogue' which is overseen independently by the new FGC and evaluated based on consistency with the new statutory Christie Pillars/Ways of Working.

[1]<https://sp-bpr-en-prod-cdnep.azureedge.net/published/FPA/2022/10/3/a3dd32cb-f846-42db-ada6-11f7e3da9390/FPAS622R8.pdf>

[2]<https://scottishleadersforum.files.wordpress.com/2022/03/leadership-collective-responsibility-and-delivering-the-national-outcomes.pdf>

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Q3. Which of the following best expresses your view on whether 'sustainable development' should be defined in legislation?

Partially supportive

Please explain the reasons for your response, including any views on what the definition should include.

I fully support the introduction of a definition of sustainable development, which would give clarity and accessibility to the concept in practice. My belief is that much more connects the concepts of sustainability and wellbeing than separates them. For example, the NPF is a wellbeing framework which is aligned with the Sustainable Development Goals, a sustainable development framework.

The situation I would caution to avoid is where duties for sustainability are levelled in addition to those for wellbeing, resulting in duplication of effort and confusion. Public bodies should be able to respond to new duties effectively without recourse to close reading of detailed definitions embedded within legislation.

Q4. Which of the following best expresses your view on whether 'wellbeing' should be defined in legislation?

Partially supportive

Please explain the reasons for your response, including any views on what the definition should include.

See response to Question 3

Q5. Which of the following best expresses your view on whether there should be a Commissioner for sustainable development and wellbeing?

Fully supportive

Please explain the reasons for your response, including any views on what the key functions of the proposed Commissioner should be (see pages 19 to 20 of the consultation document), what model of governance could be adopted (see page 22 to 23), and whether the Commissioner could play a role in strengthening existing duties or legislation.

The Future Generations Commissioner (FGC) in Wales has been central to Wales achieving a higher degree of integration of Wales' national outcomes and indicators (Wellbeing Goals and Indicators) than in Scotland [1]. A Scottish FGC could take forward three key roles currently missing from the Scottish policy context.

Q5. Which of the following best expresses your view on whether there should be a Commissioner for sustainable development and wellbeing?

Firstly, an independent champion role. Sophie Howe, the first FGC in Wales, brought visibility and support to the 2015 Act in Wales, helping set a broadly supported national agenda seen as independent from the political administration. I would add one caveat: in Wales, the 2015 Act commands far more discussion than do the Wellbeing Goals and Indicators. I suggest Scotland's FGC be tasked with championing the NPF, not just the proposed legislation, ensuring consistency and cementing the NPF's position as Scotland's (not just the Scottish Government's) Wellbeing Framework.

Secondly, a support role. The Office of Future Generations Commissioner (OFGC) is a vital contributor of support, guidance, training and development to help embed the 2015 Act, which has been critical in enabling public bodies, and other non-statutory organisations, to participate effectively in this agenda. In Scotland, public bodies I have spoken to in my research routinely note a lack of knowledge and confidence in how to effectively embed the NPF. An adequately resourced OFGC in Scotland would facilitate productive engagement amongst public bodies, lower the cognitive load and administrative burden which comes with engaging with new duties, and increase the agenda's accessibility to non-statutory organisations in the social and commercial sectors interested in participating. One additional challenge Scotland will face is cost: Scotland has almost three times the number of public bodies than does Wales. With new duties on public bodies, demand for support could easily be higher than in Wales, and it is critical Scotland's Commissioner is adequately resourced for the task.

Thirdly, a challenge role. The Welsh experience shows the combination of 'Section 19' support powers and 'Section 20' review powers in the 2015 Act to be effective in motivating change. The Wales FGC experience shows how, in practice, formal activation of expensive 'Section 20' review powers rarely had to be used, with the threat of review, or even the distant prospect of a review, additional tools to motivate change. Sophie Howe's successful public opposition to the M4 relief road shows how the prominent public profile of the FGC can also be used to set out opposition to or advocate for key decisions, naming and shaming organisations which contravene the spirit of the legislation.

[1]French, M. and Wallace, J. (2022) Working paper. Performance management for systemic problems: the enabling role of soft power. Working paper: Northumbria University.
https://researchportal.northumbria.ac.uk/ws/portalfiles/portal/67951363/Working_paper_performance_management_for_systemic_problems.pdf

Q6. What, in your view, should the title of the proposed Commissioner be?

Please explain the reasons for your response.

Scotland's Future Generations Commissioner. The connection to the precedent set in Wales is important in linking Scotland directly to an expanding international policy agenda

Q7. Which of the following best expresses your view on whether there is a need for duties for public bodies to promote sustainable development and wellbeing in policy development and implementation?

Fully supportive

Please explain the reasons for your response including views on any barriers to implementation of these duties and on how the effectiveness of implementation could be measured.

New statutory duties are a critical and necessary (though not by themselves sufficient) component of proposed Bill's aims. There is evidence that Scotland's current statutory duties in the Community Empowerment (Scotland) Act 2015 are too weak to deliver the cultural and institutional change needed[1,2], and that the duties set out in the Well-being of Future Generations (Wales) Act 2015 have been more effective in doing so[3].

Firstly, the proposed Bill should establish a statutory set of operational principles comparable to the five Ways of Working in Wales' 'Sustainable Development Principle'. In Wales, the five ways of working (Long Term, Prevention, Integration, Collaboration and Involvement) have provided an effective and flexible means of scrutiny of public bodies' compliance with duties in the 2015 Act. Instead of adopting Wales' five ways of working, I suggest revisiting the Christie Commission's core 'Pillars', Participation, Prevention, People, and Performance (and perhaps the 'fifth Pillar', Place), and setting these on a statutory basis as a cross-cutting element of the NPF. When enacted, this would provide a golden thread linking new legislation with a longstanding trajectory of public service reform in Scotland which, while enjoying broad political and public support, has been poorly implemented in practice.

Secondly, current statutory duties within the Community Empowerment (Scotland) Act 2015 for public bodies to "have regard" for the National Outcomes are too ambiguous, lack practical utility, and lack enforceability. For example, a 2018 Improvement Service report found one third of Community Planning Partnerships did not link to National Outcomes, and those that did were often in a superficial manner (e.g. in an appendix)[4]. Scotland should follow Wales in requiring the production of Wellbeing Assessments and Plans from all public bodies. I would further suggest the statutory Christie Pillars be used in helping structure accountability relationships with public bodies. A newly

Q7. Which of the following best expresses your view on whether there is a need for duties for public bodies to promote sustainable development and wellbeing in policy development and implementation?

established Scottish FGC could assess the performance of new duties against the Christie Pillars as well as the National Outcomes and Indicators (e.g whether there is evidence of a long-term, preventative focus in the case of the 'Prevention' Pillar). This would enable a form of process accountability which is more appropriate in an outcomes-focussed context than either mandating alignment with National Outcomes/Indicators (which can be superficial), or results-based accountability (which can instead encourage risk aversion and gaming). In this way, public bodies in Scotland can be prompted through support and challenge to develop more ambitious, stretching contribution plans which better influence decision making.

[1]<https://sp-bpr-en-prod-cdnep.azureedge.net/published/FPA/2022/10/3/a3dd32cb-f846-42db-ada6-11f7e3da9390/FPAS622R8.pdf>

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[4]https://www.improvementservice.org.uk/__data/assets/pdf_file/0012/8211/loip-stocktake-emerging-findings-may2018-1.pdf

Financial Implications

Q8. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?

some reduction in costs

Please explain the reasons for your response, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

This is a challenging question to answer because of the balance between short term costs (which are likely comparable with other Commissioners in Scotland) and long term financial impact. It is certainly likely that over the very long term, financial costs will reduce owing to the cumulative impact of influence on decision making in Scottish public life, but it is difficult even to hazard a guess at when a break even point will be reached. The FGC (and the associated burden of new duties for public bodies) must be considered a long term investment which balances economic cost with environmental, health, social, cultural and other costs. The Welsh FGC's decision to challenge the construction of the M4 relief road is a key example: while this project may have delivered a short term boost to economic growth (narrowly defined, and at significant financial cost itself), it would have damaged the key social and environmental conditions which determine future prosperity.

In the short term, it remains the case that pursuing an agenda into sustainability and wellbeing has significant start up and operational costs. The Welsh FGC encountered increasing demand year on year, with large proportion of requests for support coming from within the Welsh Government. The Welsh FGC often noted limitations responding to requests for support within her ~£1.5m annual budget[1]. One additional challenge Scotland will face is it has almost three times the number of public bodies than does Wales. Since the scrutiny and support function will likely be applied to each public body, it is likely that Scotland may face higher demand than Wales' FGC, and that the FGC's Office may need a larger workforce, with higher costs, to respond effectively.

[1]<https://senedd.wales/media/4q2idfrj/cr-ld15086-e.pdf>

Equalities

Q9. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

Please explain the reasons for your response and if there are any ways you think the proposal could avoid negative impacts on particular people.

A positive impact: many National Indicators within the NPF for instance can be broken down to analyse distributions of wellbeing amongst all groups defined here and can be used in policy analysis.

Sustainability

Q10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

Do you think the proposal could impact in any of these areas? (If you do not have a view then skip to next question)

Please explain the reasons for your response, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

A positive impact: this is the long-term purpose of the proposed Bill.

General

Q11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

No Response