

LINK Consultation Response

Proposed Wellbeing
and Sustainable
Development
(Scotland) Bill

24 March 2023



Scottish
Environment
LINK

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Introduction to Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. This consultation response was written by LINK's Governance Group and Sustainable Economics Group and is supported by the members listed at the end of the response. Individual LINK members are also submitting responses, which will contain additional detail in specific areas.

The Proposed Bill

As described in the consultation paper, there are three broad aims to this proposal:

1. The proposed Bill would place new definitions of sustainable development and wellbeing into legislation.
2. The proposed Bill would establish a Wellbeing and Sustainable Development Commissioner;
and
3. The proposed Bill would introduce new public duties in relation to sustainable development and wellbeing based on these new definitions.

Each of these aims is discussed, in turn, below.

1. Definitions

The term “sustainable development” and/or “wellbeing” are used widely in both legislation and policy. Annexe B of the consultation lists the many uses of the term sustainable development in legislation; many of which have been the result of advocacy by LINK and/or its members (e.g., National Parks Act, Land Reform Act, WEWS Act, Planning Act, Marine Act, etc!).

However, Sarah Boyack asserts in the paper that:

“it is my belief that current legislation that references, or simply includes, clauses related to sustainable development do not go far enough and that sustainable development and wellbeing, although referenced as policy outcomes, are not given sufficient focus in policy delivery due to the lack of a statutory definition setting out what these terms mean in application. It is my view that a separate piece of legislation setting out these definitions and public duties in relation to sustainable development and wellbeing would strengthen that focus and build on this existing legislation, and that this new legislation should have the effect of requiring that any existing legislation that references these terms is updated to ensure coherent legislation”.

Subject to the suitability and operability of the definition proposed and included in legislation, this is a positive proposal and one that LINK supports.

However, this leads onto the challenging question of what definition to use. The consultation paper refers to various definitions that exist in the legislation of other jurisdictions (e.g., Wales, South Korea, Minnesota) and to a proposed definition supported by SIDA.

“Wellbeing” or “wellbeing economy” does not occur frequently in legislation but is used frequently in policy documents. For instance, there are 12 references to a ‘wellbeing economy’ in the 2021-22 Programme for Government. However, as the consultation paper notes, two divergent statements in the Programme, highlight that the Scottish Government itself has no clear interpretation of the term; as it says both:

“building a wellbeing economy which secures sustainable, inclusive growth for everyone, in all parts of Scotland”; and

“a wellbeing economy: one that is environmentally sustainable, enables businesses to thrive and innovate, and tackles the social inequalities that have been exacerbated by the pandemic”.

The consultation paper asserts that “by establishing definitions of both wellbeing and sustainable development, this proposed Bill seeks to underpin Scotland’s wellbeing economy to ensure that both principles are central to its development”. In relation to wellbeing, it does not offer definitions used in other legislation, or make any proposal for a definition. Annexe A does, however, set out considerable further information – based heavily on Kate Raworth’s “Doughnut economy”.

Given that “sustainable development” does frequently occur in legislation, LINK is supportive of work to find an appropriate definition, and for this definition to be added to statute and applied to the existing statutory uses of this term. LINK is less convinced that a statutory definition of “wellbeing” is, as yet, necessary – and would prioritise work to better define and apply wellbeing in and through policy.

2. Commissioner

The second part of the consultation paper (and second aim of the proposed Bill) relates to the proposal to create a “Wellbeing and Sustainable Development Commissioner for Scotland. While

very much based on the Welsh Future Generations Commissioner, the proposed name “aligns with the recommendation made by SIDA that sustainable development be at the heart of the Commissioner’s work, which [it is asserted] is essential to ensuring the Commissioner can establish themselves as champion of sustainable decision making to help further our nation’s collective wellbeing both now and for the future”.

That said, the name of such a Commissioner is an issue for consultation, and the paper also adds: “the term “Future Generations” encapsulates the interplay between sustainable development and wellbeing, and the use of this term not only in a Welsh context but across some areas of the Scottish policy landscape”.

The consultation sets out the proposed functions of such a commissioner as:

- Powers of investigation and scrutiny, to ensure that the duties conferred by this Bill are being upheld and public bodies held to account.
- Powers of investigation and scrutiny for oversight of other relevant Acts that confer sustainable development and wellbeing duties.
- Build policy coherence across the public sector, ensuring that there is full understanding of how existing Acts will interact with the new sustainable development and wellbeing definitions this proposed Bill would establish;
- Build the capacity of public bodies to implement their duties under section 44 of the Climate Change (Scotland) Act 2009 and undertake the role conferred by section 47 (in relation to the establishment of an oversight body) to monitor the implementation of climate change duties of public sector bodies;
- Carry out research into devolved matters where these relate to sustainable development and wellbeing, and provide advice to the Scottish Government and the Scottish Parliament as required;
- Make recommendations to the Scottish Government and other public sector bodies.
- Promote awareness and understanding by encouraging a change in culture to ensure the wellbeing of current and future generations is embedded within decision making;
- Promote best practice and learning across the public sector in relation to wellbeing and sustainable development.
- Be involved in legislative reviews and reform, and policy development where this relates to wellbeing and sustainable development.
- Report to the Scottish Parliament.

Lay out a vision of how, cutting across government workstreams, sustainable development and wellbeing ought to look in the current, and future, legislative landscape

This list appears to mix powers, functions, objectives/aims and structure and, while referring to ‘investigation and scrutiny,’ it is light on any enforcement powers. At present, it appears that, should the Commissioner identify any inadequacies, remedy would be a matter for those to whom the recommendations are addressed and/or the Parliament. However, these proposed ‘functions’ do seem to parallel the work of the Welsh Commissioner.

While the above ‘functions’ are stated, the consultation paper also discusses (but does not reach conclusions) about the roles of existing bodies/other Commissioners but does express a view that there should not overlap or duplication.

LINK therefore supports the principle of establishing a Commissioner to “champion sustainable decision making to help further our nation’s collective wellbeing”, as proposed, but this support is subject to the need for considerably greater detail and clarity on how it will operate in practice. This greater clarity needs to address the question in relation to powers and functions, as well as the interactions (overlaps and/or complementarity with inter alia Environmental Standards Scotland, the Climate Change Commission and the Scottish Human Rights Commission).

3. Public sector duties

The third aim of the proposed Bill is “to confer new duties on public bodies in relation to sustainable development and wellbeing, to ensure consideration of both is embedded in public sector policy, decision making and implementation”.

Subject to the appropriateness of the definitions introduced by Part 1 of the Bill, this duty would clearly be desirable – and could become a focus for the work of any Commissioner. That said, there would also need to be clarity regarding (a) the strength and enforceability of the duty and (b) its interaction with other duties (not least, those related to climate change, biodiversity and good food).

One issue with all ‘general duties’ on public bodies is that they are often expressed in a weak or unenforceable manner. This should be avoided. Secondly, the new duty should build on and expand/clarify existing duties rather than purely add a new (seen as additional) burden. This latter point is recognised by the consultation which suggests: “the imposition of the duties conferred by [the] proposed Bill build coherence and simplify existing related duties, rather than overburden public bodies”.

In this regard the Bill could, as well as ensuring better coherence of existing (positive) duties, also be an opportunity to repeal or amend (outdated) duties that can contribute to public bodies acting in a manner that undermines sustainable development and/or wellbeing. Such duties would be, for example, those referring to economic growth (even if incorrectly caveated as sustainable economic growth). In addition to existing duties, this coherence aspect will need to consider the interface with proposed duties – such as the duties under the forthcoming Human Rights Bill, which is expected to include a Human Right to a Healthy Environment.

LINK is therefore supportive in principle to the concept of the proposed public sector duties. However, this support is subject to the (a) the appropriate definitions (see part 1) and (b) further work that delivers clarity as to the duty’s effective and associated amendments to existing duties so as to enhance coherence and adapt those duties (or their elements) that can serve to undermine sustainable development and wellbeing.

Scottish Government policy in this area

While the above sets out the issues consulted on in relation to a proposed member’s bill, LINK notes that, in relation to some aspects, the Scottish Government have, of course, made similar proposals.

For instance, the Scottish Government and Scottish Green Party [Shared Policy Programme](#) included a commitment to:

“We will agree a new approach to ensuring the interests of future generations are accountable in decisions made today, including exploring a Future Generations Commission.

This is now reflected in the [2021-22 Programme for Government](#) with a (virtually identical) commitment to: -

“We will also consider a new approach to ensuring the interests of future generations are taken into account in decisions made today, through a Future Generations Commission.”

The 2021-22 Programme for Government also indicated that the Scottish Government would consult on introducing a Wellbeing and Sustainable Development Bill, saying:

“We will further develop the use of our National Performance Framework through the upcoming review of National Outcomes and through consultation on a Wellbeing and Sustainable Development Bill.”

As the consultation paper notes, this commitment did not explicitly feature in the [2022-23 Programme for Government](#), although the First Minister did say:

“We will also explore how to ensure the interests of future generations are taken into account in decisions made today. This may include placing duties on public bodies and local government to take account of the impact of their decisions on wellbeing and sustainable development, and the creation of a Future Generations’ Commissioner.”

It therefore remains unclear whether or when the Scottish Government plans to bring forward a Bill in this area. The consultation paper indicates that Sarah Boyack is seeking to lodge her proposal for this Bill “to ensure that this issue is moved forward and progressed”.

LINK has no view as to how these ideas should be further considered – that is, as part of a Member’s Bill process or as part of the Programme for Government, but would be pleased to work with either/both processes.

ANNEX

The consultation questions in relation to the proposed Wellbeing and Sustainable Development Bill; together with initial thoughts on a LINK response.

Aim and Approach

Q1 Which of the following best expresses your view of the proposed Bill

(Please note, this is question is compulsory.)

c Fully supportive

c Partially supportive

c Neutral (neither support nor oppose)

c Partially opposed

c Fully opposed

c Do not wish to express a view

Please explain the reasons for your response.

LINK fully supports the general principles and ambitions of this proposed Bill to strengthen the legislative and policy foundations in relation to wellbeing and sustainable development. Notwithstanding that general support, however, there remain a number of questions in relation to the details of the three proposals which are discussed in the remainder of this response.

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.

Yes, in particular a statutory definition for a term widely used in legislation cannot be created by any means other than legislation. In addition, the creation of a statutory role, with legal powers, cannot be achieved other than by legislation. Similarly, statutory public duties can only be amended/created by legislation.

Thus, if the Bill's aims are agreed, they can only be achieved by legislation. Other measures would have no legal effect.

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

c Fully supportive

c Partially supportive

c Neutral (neither support nor oppose)

c Partially opposed

c Fully opposed

c Do not wish to express a view

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

Subject to a substantive and satisfactory definition being agreed, LINK is fully supportive of this proposal.

The term 'sustainable development' is widely used in legislation, as demonstrated by annexe B of the consultation paper. While LINK has been strongly supportive of its inclusion in such legislation, we are also aware that it is interpreted and applied in a very inconsistent manner and even, at times, in a manner inconsistent with the intent of the legislation.

LINK will not, at this stage, indicate that any particular definition should be used, but central to any acceptable definition would be the concepts of environmental sustainability, of living within planetary boundaries, including in relation to the mitigation of climate change and ensuring the protection and recovery of nature. As such, it is important that any definition is such that it is clearly linked to achieving the UN's Sustainable Development goals.

Notwithstanding the above, LINK considers there is considerable merit in the definitions suggested by Scotland's International Development Alliance, including that "Sustainable Development can be defined as the development of human societies in ways which do not threaten planetary boundaries, and which equitably support the capability of present and future generations across the world to meet their needs."

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

- c Fully supportive
- c Partially supportive
- c Neutral (neither support nor oppose)**
- c Partially opposed
- c Fully opposed
- c Do not wish to express a view

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

Unlike sustainable development, wellbeing is not a frequent term in legislation, but is widely used in policy. While LINK is, in principle, supportive of the development of a clear definition and its consistent application, we are less convinced that such a definition is required in statute.

That said, there may be arguments for such a statutory definition and if introduced it will need to demonstrate how its application in policy can be assured.

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

- c Fully supportive
- c Partially supportive**
- c Neutral (neither support nor oppose)
- c Partially opposed
- c Fully opposed
- c Do not wish to express a view

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.

LINK supports this proposal, in principle, but this support is subject to more information and clarity in relation to powers and functions. If the Commissioner is to be effective, it should have a role that has sufficient powers to generate change, and to hold the Government/public bodies to account for any failures/inadequacies.

This role should probably be considered and the powers/functions determined in parallel with the review of environmental governance under s.41 of the Continuity Act, and in particular take account of the role of ESS and proposals for an Environmental Court or Tribunal. In any event, greater clarity is needed on the interactions, such as the overlaps and/or complementarity with *inter alia* Environmental Standards Scotland, the Climate Change Commission and the Scottish Human Rights Commission.

Q6. What, in your view, should the title of the proposed Commissioner be? Please explain the reasons for your response.

LINK has no strong view on the name. The focus should be on clarifying remit, powers, functions and the interactions (or otherwise with existing bodies), as well as the definitions of sustainable development and wellbeing (for which the Commissioner will be responsible). Once these issues are addressed, an appropriate name for the role will be more obvious.

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?

c Fully supportive

c Partially supportive

c Neutral (neither support nor oppose)

c Partially opposed

c Fully opposed

c Do not wish to express a view

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.

Subject to the appropriateness of the definitions introduced by the Bill, LINK fully supports this proposal.

However, there would also be need for greater clarity regarding (a) the strength and enforceability of the duty and (b) its interaction with other duties (not least, those related to climate change, biodiversity and good food).

The new duty should build on and expand/clarify existing duties rather than purely add a new (seen as additional) burden. In this regard the Bill could, as well as ensuring better coherence of existing (positive) duties, also be an opportunity to repeal or amend (outdated) duties that can contribute to public bodies acting in a manner that undermines sustainable development and/or wellbeing. Such duties would be, for example, those referring to economic growth (even if incorrectly caveated as sustainable economic growth). In addition to existing duties, this coherence aspect will need to consider the interface with proposed duties – such as the duties under the forthcoming Human Rights Bill, which is expected to include a Human Right to a Healthy Environment.

Financial Implications

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

c significant increase in costs

c some increase in costs

c no overall change in costs

c some reduction in costs

c a significant reduction in costs

c don't know

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.

The introduction of statutory definitions would be (other than Parliamentary time) cost-free.

While there might be some (administrative) cost on Parliament and/or Government in the establishment and operation of a Commissioner role, these could be offset by improved efficiency/efficacy of the public sector (as well as fewer challenges to decisions etc). The net effect of this expenditure would be improved sustainability and wellbeing which, while being non-monetary, would further offset these limited costs.

While there might be some (administrative) cost on public bodies in complying with a new duty, these could be offset by the Bill clarifying/adding coherence to the existing range of duties. The net effect of this expenditure would be improved sustainability and wellbeing which, while being non-monetary, would further offset these limited costs.

Given the unclear nature of the costs/benefits described above, our response is "don't know". However, we would reiterate that we do not consider the costs to be significant – and the potential benefits (including non-monetary benefits) are considerable.

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.

This proposal, if taken forward, has a potentially positive impact on equalities issues.

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

The potential for a positive impact is based on the principle that equality (and/or equity) both within and between generations is a key component of sustainable development and wellbeing.

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 the next question.

These proposals are potentially significantly beneficial to these outcomes.

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?

Improved sustainability is self-evidently a key objective of these proposals.

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)?

LINK looks forward to further development of these proposals, as well as further information as to how they inter-relate to the similar Scottish Government proposals.

LINK would be pleased to discuss these issues in more detail and/or comment on more detailed proposals, as well as work with those seeking to develop any more detailed proposals.

This response is supported by:

Froglife
Scottish Wildlife Trust
Environmental Rights Centre for Scotland
Scottish Wild Land Group
RSPB Scotland
Keep Scotland Beautiful
Friends of the Earth Scotland

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