

Wellbeing and Sustainable Development Bill: Consultation

December 2023

Wellbeing and Sustainable Development Bill: consultation information pack

The Scottish Government is gathering views to help inform the scope of any legislation for a proposed Wellbeing and Sustainable Development Bill.

The Bill aims to further improve decision making and the implementation of the National Performance Framework to ensure that all policy and delivery is focused on increasing the wellbeing of people living in Scotland, both now and in the future. This consultation also explores scope for further improving accountability and scrutiny of the National Outcomes including the case for a Future Generations Commissioner.

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1. Ministerial foreword



Why your views matter

“The Scottish Government is committed to ensuring Scotland is a country where people, businesses and communities realise their full potential through opportunities and choice, while handing the next generation a country of which we can be proud.

The First Minister has set out our missions on equality, opportunity, and community, and described these as the driving ambition of the government as we build a Scotland which can withstand the difficult times through which we are all living. Each of these missions are connected and when delivered together they will make a real and positive difference to the lives of people across Scotland.

The National Outcomes ensure we make connections that create opportunities which are fair, green, and focused on delivering high quality public services that unleash potential; empowering people, communities, and businesses to thrive. In this consultation we are seeking your views on how this approach should develop, and on how best to ensure that the interests of future generations are respected in decision making.

In responding to this consultation, I encourage you to share ideas that better enable collaboration, decision making, accountability, and scrutiny across boundaries to deliver Scotland’s National Outcomes while maintaining financial sustainability.”

Shona Robison MSP
Deputy First Minister and Cabinet Secretary for Finance

2. What we want to achieve

The focus on this consultation is the future. The National Outcomes describe the ambitious vision we all have for Scotland and the desire for all of society to work together to protect our environment and improve the quality of people's lives.

Our ambition to put people and planet at the heart of our economy has never been more important than in the current moment as we tackle the cost of living and climate crises.

We recognise that we need to make greater improvements to the effectiveness of our decision-making to ensure that it is focused on the wellbeing of our people and our planet, in a way that is sustainable and considers the needs of future generations.

The aims of the proposed Wellbeing and Sustainable Development Bill reflect the priorities of the Scottish Government. The 2023 Policy Prospectus 'Equality, Opportunity, Community'¹ sets out the government's priority to deliver a Wellbeing Economy for people and planet. The 2023-24 Programme for Government² recognises that each mission is connected and, when delivered together, will make a real and positive difference to the lives of people across Scotland.

Continually improving the National Outcomes is one of the ways we can achieve these aims and ensure that we are able to deliver long-term and sustainable policy and delivery approaches. To do this, we need responses from people and organisations across Scotland.

We look forward to considering your views on the questions set out in this consultation, which will shape development of legislative proposals for the proposed Wellbeing and Sustainable Development Bill in a way that ensures that all decision making is focused on achieving the National Outcomes for current and future generations.

¹ [Equality, opportunity, community: New leadership - A fresh start - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/equality-opportunity-community-2023/pages/introduction.aspx)

² [Programme for Government 2023 to 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/programme-for-government-2023-to-2024/pages/introduction.aspx)

3. Policy background

A Proposed Wellbeing and Sustainable Development Bill

The Scottish Government Policy Programme recognises the duty to protect the interests of future generations. It also recognises that our ability to have a thriving society and economy is derived from the health of the planet.

The 2023-24 Programme for Government progresses this commitment by stating that we must aim to be “...continually improving the way the NPF (National Performance Framework) is used, across government and more widely”. To do this, the government is continuing to explore the development of legislative proposals for a Wellbeing and Sustainable Development Bill, in order to support achievement of the National Outcomes, and to ensure the interests of future generations are taken into account in decisions made today (p.54).³ The focus on wellbeing is central to the National Outcomes.⁴

Alongside the statutory review⁵ of the National Outcomes which is currently underway, we also have an important opportunity to consider how we might embed necessary changes in law. Since this Bill was first announced in the 2021-22 Programme for Government, we have been engaging widely to understand how best to ensure wellbeing and sustainable development are at the heart of all policy and delivery decision making.

The NPF is an internationally recognised wellbeing framework (Annex A), however widespread engagement has told us that the current legal duties need to be strengthened to ensure that we achieve our shared vision for Scotland’s future. We want to consider how we put in place better accountability and support for the NPF to be fully effective in shaping policy and delivery decisions. We also want to encourage a focus on wellbeing, sustainable development and long-term outcomes across all policy making.

The proposed Wellbeing and Sustainable Development Bill is intended to address this challenge and further improve the delivery of the National Outcomes.

We propose to achieve this by:

- defining ‘sustainable development’ in law or regulations
- defining ‘wellbeing’ in law or regulations
- strengthening the existing National Outcomes and sustainable development duties
- extending these duties to explicitly include Scottish Ministers (and any other public authorities for whom this is necessary)

We are also considering setting out the ‘ways of working’ whereby public authorities embed wellbeing and sustainable development in their decisions.

³ [Equality, Opportunity, Community - Our Programme for Government \(www.gov.scot\)](https://www.gov.scot)

⁴ [National Performance Framework | National Performance Framework](#)

⁵ [Review of the National Outcomes - Scottish Government consultations - Citizen Space](#)

Future Generations:

We recognise that support may be needed in order for public bodies to embed sustainable development as a central organising principle. In this vein, the proposed Bill's measures may also include the necessary accountability and scrutiny to promote sustainable development, share good practice and inspire the transformation needed. We are keen to learn how we can better ensure that public bodies and those who make policy in Scotland think about the long-term impact of their decisions. What additional accountability and scrutiny would be necessary to achieve the above aims?

National Performance Framework:

The Scottish Government is committed to publishing an implementation plan for the NPF.⁶ This will be informed by evidence, including that gathered during the Review of National Outcomes, and this consultation. The Implementation Plan could support the Bill through several non-legislative measures – such as guidance, tools, and other means to strengthen accountability – to improve the use of the National Performance Framework in policy and delivery decisions. We intend to engage widely on this. This consultation therefore focuses specifically on legislation.

⁶ [Scottish Government Response to FPAC 'Ambitions Into Action' Report](#)

4. Learning from others to develop our proposals

In developing the proposed Bill, we have considered the extensive work of others to explore how wellbeing and sustainable development can be better reflected in policy and delivery decisions.

We have:

- listened to the views of various Third Sector organisations with an interest in sustainable development
- carefully considered the findings of the Scottish Parliament Finance and Public Administration Committee's (the "Committee") inquiries into the NPF⁷ and effective decision-making⁸
- started to engage across the public sector on how the interests of future generations can be better considered in policy
- learned from similar work in Wales,⁹ Gibraltar and others internationally who are working to uphold the interests of future generations

We have valued the insights, advice, and recommendations gained through these engagements.

The Finance and Public Administration Committee gathered and considered extensive evidence from various bodies. This included COSLA, Carnegie UK, the Equality & Human Rights Commission, Public Health Scotland, the Auditor General, Oxfam, the Scottish Council for Voluntary Organisations, the Scottish Leaders Forum, and several more.¹⁰

The Committee have recommended that, in line with the Welsh Government's approach, the Scottish Government should consider the combination of 'hard' statutory powers alongside 'softer' measures (such as relationship-building and promoting best practice) in the proposed Bill to improve the implementation of the National Outcomes. The Committee also recommended that the Scottish Government should consider how a Bill could give legal effect where necessary to the findings of the Review of National Outcomes, including stronger accountability for public authorities' contributions to the National Outcomes and use of the NPF.¹¹

The Committee stated that there needs to be a refocussing of scrutiny onto the NPF to reposition it at the heart of Government – with primary legislation as one potential means of achieving this. In their recent inquiry on 'Effective Scottish Government Decision-Making', the Committee also noted that the Well-being of Future Generations (Wales) Act provides a mechanism to independently assess how well

⁷ [National Performance Framework Ambitions into Action | Scottish Parliament Website](#)

⁸ [Inquiry into Public Administration - Effective Scottish Government decision-making | Scottish Parliament Website](#)

⁹ [Well-being of Future Generations \(Wales\) Act 2015 – The Future Generations Commissioner for Wales](#)

¹⁰ [National Performance Framework Ambitions into Action | Scottish Parliament Website](#)

¹¹ [Report on the National Performance Framework: Ambitions into Action \(azureedge.net\)](#)

their 'framework' for decision making has been used in practice, and that the Scottish Government is considering similar legislation.¹²

We also acknowledge the extensive work of Sarah Boyack MSP (Labour) in engaging widely on this issue and developing a final proposal for a Wellbeing and Sustainable Development (Scotland) Bill.

Ms Boyack's proposal has set out a case for a Bill which ensures 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.

From Wales, we have learned about their Well-being of Future Generations Act and Future Generations Commissioner. We have also learned about various international examples of similar legislation and bodies and recommendations at a United Nations level.

You can read more about this in Annex B, C, D and E.

¹² [Report on Public Administration - effective Scottish Government decision-making \(azureedge.net\)](#)

5. The changes we are considering

The Scottish Government is committed to ensuring that all decisions reflect the values and aspirations of the people of Scotland and are focused on their wellbeing in a way that is sustainable into the future, ensuring that:

- children grow up loved, safe and respected so that they realise their full potential
- we live in communities that are inclusive, empowered, resilient, and safe
- we are creative and our vibrant and diverse cultures are expressed and enjoyed widely
- we have a globally competitive, entrepreneurial, inclusive, and sustainable economy
- we are well educated, skilled and able to contribute to society
- we value, enjoy, protect, and enhance their environment
- we have thriving and innovative businesses, with quality jobs and fair work for everyone
- we are healthy and active
- we respect, protect, and fulfil human rights and live free from discrimination
- we are open, connected and make a positive contribution internationally
- we tackle poverty by sharing opportunities, wealth, and power more equally

It is proposed that the Wellbeing and Sustainable Development Bill will clearly establish in legislation principles that ensure government and public bodies act in a way that improves how we use and implement the National Outcomes and meet the values and aspirations of the people of Scotland.

To achieve this, we are considering several specific legislative measures.

5.1 Defining wellbeing

As a minimum, we propose that the Bill set out clearly that the National Outcomes are Scotland's expression of national wellbeing. However, we are considering whether a clear legislative definition of 'wellbeing', alongside the National Outcomes, would also be needed and would welcome views on whether (and how) this should be done.

We have provided supplementary information at Annex F to assist with any response you are considering.

- Is a statutory definition of 'wellbeing' required?
- Do you have any views on how 'wellbeing' can be clearly defined in legislation?

5.2 Defining sustainable development

In thinking about how we can define sustainable development in legislation, we are considering closely aligning with the common definition - ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.¹³

This concept is expressed internationally in the UN’s Sustainable Development Goals (SDGs).¹⁴ The NPF, as Scotland’s wellbeing framework, applies the UN SDGs to Scotland through the National Outcomes.

We believe that the voices and interests of future generations should be heard today. This means considering the wellbeing for people not yet born as much as that of those alive today and their later life.

There are several current issues that we know will be of great concern to future generations, such as protecting the environment; protecting ability of young people to own a home, raising a family, and retiring; and preventing harm in the future.

We invite your views on whether the definition of sustainable development cited above is sufficient, or whether changes are needed to adapt this to Scotland.

We also welcome any views on how this could best be achieved in a way that complements any other duties that a Bill may strengthen, to ensure that all policy and decisions are focused on achieving the National Outcomes both now and into the future.

- Is a statutory definition of ‘sustainable development’ required?
- 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”?
- Do you have other views on how ‘sustainable development’ can be clearly defined in legislation?
- What future wellbeing issues or challenges do you think legislation could help ensure we address?
- 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?

¹³ [Sustainable Development | International Institute for Sustainable Development \(iisd.org\)](https://www.iisd.org/)

¹⁴ [THE 17 GOALS | Sustainable Development \(un.org\)](https://www.un.org/sustainabledevelopment/)

5.3 Strengthening duties for the National Outcomes and sustainable development

The Community Empowerment (Scotland) Act 2015,¹⁵ in broad terms, requires all public authorities in Scotland to “have regard to” the National Outcomes in carrying out their work. (Further details are provided at Annex G). However, several public and third sector organisations report that the National Outcomes are not sufficiently used to shape policy and delivery decisions in a way that is focused on taking all reasonable steps to achieve any wellbeing and sustainable development opportunities. The “have regard to” duty could therefore be strengthened to more explicitly require this.

We are also considering opportunities to strengthen existing duties whereby bodies must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

This would ensure that we take all reasonable steps to carry out sustainable development. This may include stipulating that instead of requiring public authorities in Scotland to “have regard to the National Outcomes”, we expect collaboration and any decision making to be undertaken in a manner that maximises our collective contributions to achieving wellbeing and sustainable development.

We welcome views on whether the current duty is sufficient, and if not, how it could be strengthened.

- How could a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?
- Are there specific areas of decision making that should be included or excluded from the Bill?
- What issues, if any, may result from strengthening the requirement to have regard to National Outcomes?

5.4 Clarifying to whom the duties apply

Alongside strengthening duties to achieve the National Outcomes, we are considering extending these duties to explicitly include Scottish Ministers (and any other public authorities for whom this is necessary), to ensure more effective and specific accountability for the National Outcomes, wellbeing, and sustainable development.

We welcome your views on this proposed approach and have provided supplementary information at Annex G to assist with any response you are considering.

¹⁵ [Community Empowerment \(Scotland\) Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2015/12)

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

5.5 Defining ways of working

Strengthening the ways of working is a key consideration of this consultation. We want to hear your ideas on how organisations can go beyond the current “have regard to” rule established in the Community Empowerment Act 2015.

This means being clear on identifying the best ways we can work together to achieve our National Outcomes including the necessary accountability and scrutiny for upholding sustainable development ensuring the interests of future generations feature in policy and delivery decisions.

We are therefore considering the case for setting out ‘ways of working’ for sustainable development, following the precedent set by Wales. This would define the ways in which public authorities should embed the principles of wellbeing and sustainable development in their decision making. However, we also need to consider whether such ways of working, and this level of detail on public authorities’ processes, needs to be set out in the legislation itself, or could instead be provided in statutory guidance.

We have provided supplementary information at Annex H to assist with any response you are considering.

- 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?
- What additional steps are needed to ensure collaboration and working across boundaries?
- Do you have any views on whether any duty related to ways of working could create conflicts with duties currently placed on you?
- Do you have any views on the additional resource implications necessary to discharge any wellbeing duty in your organisation?

5.6 Determining an approach for future generations

We recognise that increasing the accountability, scrutiny and support for decision making is essential to ensure that together, we deliver on our wellbeing, sustainable development, and future generations outcomes.

One method for increasing and improving accountability could be through the establishment of a Future Generations Commissioner, who acting on behalf of future

generations would be empowered to hold public bodies, including Ministers, to account. A Future Generations Commissioner could also provide support in relation to the delivery of wellbeing, sustainable development, and future generations outcomes.

- Should Scotland establish an independent Commissioner for Future Generations?
- In what ways could an independent Commissioner for Future Generations increase the accountability, scrutiny, and support for decision making?
- Are there alternative ways we can increase the accountability, scrutiny, and support for decision making?

6. Find out more about the National Outcomes

nationalperformance.gov.scot has information on the National Outcomes and Indicators, performance data, and examples of how the National Performance Framework is used by organisations and government in Scotland.

7. What do we want to know?

The Scottish Government is gathering views to help inform how we will take forward a Wellbeing and Sustainable Development Bill. The proposed Bill aims to support further improvement in the implementation of the National Performance Framework which ensures that all policy and delivery is focused on increasing the wellbeing of people living in Scotland, both now and in the future.

7.1 Defining wellbeing

- Is a statutory definition of 'wellbeing' required?
- Do you have any views on how 'wellbeing' can be clearly defined in legislation?

7.2 Defining sustainable development

- Is a statutory definition of 'sustainable development' required?
- 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"?
- Do you have other views on how 'sustainable development' can be clearly defined in legislation?
- What future wellbeing issues or challenges do you think legislation could help ensure we address?
- 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?

7.3 Strengthening duties for the National Outcomes and sustainable development

- How could a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?
- Are there specific areas of decision making that should be included or excluded from the Bill?
- What issues, if any, may result from strengthening the requirement to have regard to National Outcomes?

7.4 Clarifying to whom the duties apply

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

7.5 Defining ways of working

- 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?
- What additional steps are needed to ensure collaboration and working across boundaries?
- Do you have any views on whether any duty related to ways of working could create conflicts with duties currently placed on you?
- Do you have any views on the additional resource implications necessary to discharge any wellbeing duty in your organisation?

7.6 Determining an approach for future generations

- Should Scotland establish an independent Commissioner for Future Generations?
- In what ways could an independent Commissioner for Future Generations increase the accountability, scrutiny, and support for decision making?
- Are there alternative ways we can increase the accountability, scrutiny, and support for decision making?

8. How to complete this consultation

We are inviting responses to this consultation by 14 February 2024.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 14 February 2024.

If you are unable to respond using our consultation hub, please send a completed Respondent Information Form, published alongside this document, to:

Wellbeing and Sustainable Development Bill Team
National Performance Framework Unit
Scottish Government
2W
St Andrews House
Edinburgh
EH1 3DG

We also welcome written submissions to wdsbill@gov.scot.

9. Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>.

10. Next steps in the process

Following the closing date, all responses will be analysed and considered along with any other available evidence. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will also be made available to the public on the Scottish Government's consultation site along with the analysis report.

We will bring together evidence from this consultation and stakeholder meetings.

If you use the consultation hub to respond, you will receive a copy of your response via email.

11. Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to wdbill@gov.scot.

12. Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online on the Scottish Government's consultation site. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

13. Supplementary reading

13.1 Annex A: The National Performance Framework (NPF) in legislation

The NPF is Scotland's wellbeing framework, setting out a vision of the country we want to be. It is intended to shape policy and delivery decision making across all levels of government, public bodies, and public services, and encourage collaboration towards the achievement of shared National Outcomes.

The National Outcomes have a statutory basis in the Community Empowerment (Scotland) Act 2015.¹⁶ The key existing duty related to the National Outcomes is as follows:

- “The persons mentioned in subsection (2) [a cross-border public authority; any other Scottish public authority; any other person carrying out functions of a public nature] must have regard to the national outcomes in carrying out the functions mentioned in subsection (3) [any such function that is exercisable in or as regards Scotland and does not relate to reserved matters].”

This means that all public authorities are required to “have regard to” the national outcomes in carrying out their work. The Act also requires Scottish Ministers to determine National Outcomes for Scotland, consult on these National Outcomes, review them every five years, and publish reports about the extent to which the National Outcomes have been achieved.

However, several public sector and third sector stakeholders and organisations – particularly those who contributed to the Finance and Public Administration Committee inquiry on the NPF – reported an ‘implementation gap’ between the National Outcomes and their use in policy areas. We also heard similar feedback from some of those who responded to the Scottish Government’s Review of National Outcomes consultation.

Several stakeholders have also argued that the “have regard to” duty does not go far enough to ensure sustainable development and wellbeing are central to decision making, as it does not explicitly require consideration during policy development and delivery on how to achieve the National Outcomes.

This has highlighted that whilst the NPF has broad support as a vision for national wellbeing, further measures may be needed to encourage all public authorities, both national and local, to focus their policy and decisions on achieving the National Outcomes in a coherent and joined-up way. We are consulting to make sure that the provisions of the WSD Bill achieve this as effectively as possible.

¹⁶ [Community Empowerment \(Scotland\) Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)

13.2 Annex B: Stakeholder views

As lead Minister supporting policy development for the WSD Bill, the Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights, Mr Harvie, has engaged across public organisations and third sector groups to hear views on the Bill. This included the first Future Generations Commissioner for Wales, Sophie Howe.

The Deputy First Minister has also discussed the Bill with key organisations who have an interest in this area.

Alongside this, Scottish Government officials have engaged with a range of organisations and stakeholders nationally, UK-wide, and internationally to develop our understanding of emerging 'future generations' policy at a UN and country level, and to gain further insights into how the National Outcomes shape policy and delivery decisions.

We also note that in July 2023, over 200 charities, economists, businesses, trade unions, and academics (including Carnegie UK, Wellbeing Economy Alliance, Scottish International Development Alliance, and Oxfam UK) sent an open letter to the First Minister calling on action to fully realise a Wellbeing Economy.¹⁷ They recommended that clearer sustainable development duties should be defined in a Bill to ensure the interests of future generations are central to decision making. They also called for the creation of a new Future Generations Commissioner to provide advocacy, accountability, and support for public bodies to work towards these sustainable development duties and the National Outcomes.

Similarly, the Auditor General for Scotland has stated that a long-term approach to policy and decisions is needed to address deep-seated issues such as climate change, low and falling life expectancy, and widening health inequalities.¹⁸ These feed demands on health and social care and risk the sustainability of services – a concern shared by Public Health Scotland.¹⁹

We have engaged closely with several of these groups and are also seeking the views of others through this consultation. In the engagement undertaken to date it has become clear to the Scottish Government that we need to consider:

- strengthening duties to ensure all policy and delivery decisions are focused on achieving wellbeing and sustainable development
- more effective accountability to ensure all decisions sufficiently uphold the interests of future generations

In developing the Bill, we therefore have an opportunity to consider how legislation can ensure better decision making which has a focus on sustainable long-term outcomes.

¹⁷ [200 charities, economists, businesses, and unions call on FM to turn Wellbeing Economy into reality \(weallscotland.org\)](https://weallscotland.org)

¹⁸ [Audit Scotland submission to FPAC](#)

¹⁹ [20220414_npf_publichealthscotland.pdf \(parliament.scot\)](#)

13.3 Annex C: Learning from others

The Scottish Government has also examined several current examples of similar legislation from outwith Scotland. In developing the Bill proposal, we have learned from the successes and challenges of these examples, and carefully considered how such proposals could be adapted to Scotland.

The Welsh Government established a Future Generations Commissioner for Wales (FGCW) through the Well-being of Future Generation (Wales) Act 2015.

The FGCW has a constructive challenge role backed by statutory powers of investigation, which has (in some cases) had prominent effects on policy decisions. The Act's statutory 'Ways of Working' have been effective in embedding sustainable development principles in public decision making. In developing proposals for the Bill, the Scottish Government has learned that a combination of 'hard' statutory powers, coupled with supportive 'soft' powers such as those in the Welsh Act can be a highly effective approach.

Arrangements in Wales have also been comparatively more successful in influencing policy discourse, and more durable than other international examples, primarily because their wellbeing framework and Commissioner are enshrined in law as institutions and governance mechanisms, thus overcoming short-term instability. As the World Future Council notes, the Well-being of Future Generations (Wales) Act 2015 (WFG Act), and Future Generations Commissioner, have a "broad policy remit closer to a holistic protection of living conditions for future generations" rather than mandates "limited to the protection of the environment". This has impact across the public sector.

Countries and territories such as Canada, Hungary and Gibraltar have taken similar approaches to build prevention and long-term impacts into their decision making processes. For example, Canada's Commissioner of the Environment and Sustainable Development is embedded within the Auditor General of Canada to provide parliamentarians with analysis and recommendations on the federal government's efforts to foster sustainable development. It monitors the sustainable development strategies of federal departments and the government's management of environmental and sustainable development issues.

However, the Act and Commissioner in Wales, due to their broader policy remit and firmer statutory basis, are widely recognised as a highly effective model for promoting wellbeing and sustainable development.

To learn from the Welsh approach in more detail, the Scottish Government has engaged with several stakeholders who have direct experience of the Act and Future Generations Commissioner for Wales, including Welsh Government officials; Sophie Howe, the former Commissioner; officials in the Commissioner's office; Jane Davidson, the Minister who originated the Act in the Senedd and several public and third sector organisations.

The main features of the Well-being of Future Generations (Wales) Act 2015 are as follows:

1. Sustainable development: The Act defines sustainable development as “Acting in a manner which seeks to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs.”
2. Well-being Goals: The Act defines seven Well-being Goals to inform the work of public bodies. Ministers must publish ‘national indicators’ to measure progress.
3. Duties on Ministers and public bodies: Public bodies are required to set ‘well-being objectives’ towards achieving the well-being goals, including actions and timescales. Ministers and public bodies must publish annual progress reports.
4. Public Services Boards (PSBs): The Act creates PSBs to ensure local authorities and local public bodies work together towards the well-being goals. Each PSB must set out ‘local objectives’ for its contribution to the well-being goals. Once per local election cycle, they must produce a ‘local well-being plan’.
5. Future Trends Report (produced every five years by the Welsh Government) used to inform public bodies on how they can undertake the Act’s Ways of Working and also helping them to consider the long-term impacts of decisions.

The individuals and organisations in Wales engaged with had diverse views on the main successes and challenges of the Act and the Commissioner’s office. However, there was general agreement that the Act has been largely successful in encouraging organisations to reflect wellbeing and sustainable development in their ways of working.

The Act’s defined Ways of Working (long-term, prevention, integration, collaboration, and involvement) are seen as having been highly effective in defining how decision making can best uphold the interests of future generations, ensuring these principles are embedded in processes, not just final decisions. This is seen as an efficient approach because the Commissioner does not have the capacity to advise on the results of every individual decision.

Furthermore, the Commissioner’s ‘soft power’ has given future generations and sustainable development issues a more prominent place in national discourse, meaning the Act does not usually need to be enforced through ‘hard’ legal mechanisms.

13.4 Annex D: United Nations recommendations

The UN Secretary General's 'Our Common Agenda' report (2021)²⁰ includes proposals for a UN Declaration on Future Generations, and a UN Special Envoy on Future Generations, to "ensure that policy and budget decisions take into account their impact on future generations" (p.4).

In terms of national decision making, the report notes that despite increasing international recognition of future generations' needs, this has "not necessarily resulted in meaningful steps to account for the interests of future generations" and that "Short-term calculations continue to dominate policymaking". The Report therefore invites States to consider specific steps to account for the interests of future generations, including "building long-term thinking into important policies and decision-making; and creating specific forums and instruments to protect the interests of future generations at all levels of governance" (p.44).

The Report recommends that States should consider adopting similar mechanisms to those countries who have already "established committees for the future or future generations commissioners who advise governments and public bodies on the effects of present decisions on people in the future" (p.45).

Similarly, the UN's 'Our Future Agenda' Report (2021)²¹ states that countries must "reimagine international institutions as a platform for next and future generations", including "a Contract for the Future setting out obligations to future generations" (p.44).

²⁰ [Our Common Agenda](#)

²¹ [Our Future Agenda](#)

13.5 Annex E: Scottish Parliament engagement

The Finance and Public Administration Committee, in their inquiry on the National Performance Framework (NPF), took evidence from a range of organisations, including COSLA, Carnegie UK, the Equality & Human Rights Commission, Public Health Scotland, the Auditor General, Oxfam, the Scottish Council for Voluntary Organisations, and the Scottish Leaders Forum.

The Committee's report²² set out the following recommendations relating to the working of the National Performance Framework across policy areas:

- 41. We recommend that all government (national and local) policies, strategies and legislation explicitly set out how each will deliver on specific NPF outcomes, their expected/intended impact on NPF outcomes and approaches to monitoring and evaluation.
- 51. We seek clarification from the Scottish Government as to how its review of the NPF will take account of and impact on its proposals for a Wellbeing and Sustainable Development Bill and for a Future Generations' Commissioner. We also seek confirmation of the extent to which the consultation which will form part of the NPF review, will include consideration of potential 'hard' statutory approaches alongside 'softer' powers as described to us.
- 82. The Welsh approach of using both 'hard' statutory powers alongside 'softer' encouragement, relationship building and sharing good practice has much to commend it. We therefore seek confirmation of the extent to which this approach will be considered as part of the review of National Outcomes and the proposed Wellbeing and Sustainable Development Bill.
- 98. We recommend that the next NPF review should consider the extent to which the Scottish Government, local government and others should be more systematically and consistently held to account for their contribution towards the National Outcomes. As we have recommended earlier in this report consideration should be given about whether organisations should have to be more explicit as to how their activities contribute to the NPF so as to support scrutiny.
- 114. Our view is that there needs to be a refocussing of scrutiny onto the NPF and as we have stated in previous reports "a repositioning of the NPF at the heart of Government."
 - We also recommend that the Scottish Government, along with local government and scrutiny bodies, consider the extent to which scrutiny, audit and regulatory regimes are aligned with the NPF.

²² [Report on the National Performance Framework: Ambitions into Action \(azureedge.net\)](https://www.azureedge.net)

- 156. We recommend the Scottish Government and COSLA review the organisations subject to the Community Empowerment (Scotland) Act 2015 “have regard to” duty to ensure it captures the range of bodies that receive public funding, and which are now operating in Scotland.

In a letter to the Finance and Public Administration Committee (FPAC) inquiry on the National Performance Framework (NPF) in December 2022, the previous Deputy First Minister, John Swinney, stated that policy development for the proposed Bill would consider:

- how to further embed the NPF, and the principles of wellbeing and sustainable development, across government and public bodies’ decision-making
- placing strengthened duties on Scottish Ministers (not explicitly mentioned in current duties), public bodies, and local authorities, for accountability to the National Outcomes
- the means of support, scrutiny, and accountability for any new duties, including the case for a Future Generations Commissioner in Scotland

The Scottish Government’s response to the Finance and Public Administration Committee (December 2022) stated that as part of developing the Bill, it was considering how to provide a clear definition of wellbeing, sustainable development, and future generations.

This was reaffirmed in the Scottish Government’s response²³ to the Committee’s inquiry Report on ‘Effective Scottish Government Decision-Making.’²⁴

²³ [Deputy First Minister and Cabinet Secretary for Finance \(parliament.scot\)](https://www.parliament.scot/Document/Deputy-First-Minister-and-Cabinet-Secretary-for-Finance)

²⁴ [Report on Public Administration - effective Scottish Government decision-making \(azureedge.net\)](https://www.azureedge.net/Report-on-Public-Administration-effective-Scottish-Government-decision-making)

13.6 Annex F: Defining wellbeing and sustainable development

Wellbeing:

The National Performance Framework (NPF) is Scotland's wellbeing framework – “increased wellbeing’ is a core part of its stated purpose. The NPF combines measurement of how well Scotland is doing in economic terms with a broader range of wellbeing measures, giving equal importance to economic, social, cultural, and environmental wellbeing, both individually and collectively. The national indicators incorporate many different types of data – from social attitudes and perceptions to economic and environmental statistics – to form this picture of the wellbeing of Scotland’s people.

The NPF recognises that progress towards all National Outcomes is required for Scotland to be a more successful country with opportunities for all to flourish through increased wellbeing.²⁵ These National Outcomes are undergoing a statutory review, backed by widespread consultation, to make sure they continue to reflect the type of nation that the people of Scotland want to see, and measure the right aspects of our wellbeing.²⁶

The NPF is a clear and comprehensive vision for national wellbeing, embedded in law through the Community Empowerment (Scotland) Act 2015. The WSD Bill is intended to build on this foundation.

We are keen to hear your views on how we can better embed wellbeing as a concept in legislation.

Sustainable development:

In developing the Bill, we recognise that ‘sustainable development’ is a term widely used in existing policy and legislation in Scotland. Analysis from the Scottish Parliament Information Centre (SPICe) also shows that over 30 Scottish Parliament Acts contain references to sustainable development. However, there is no single definition of sustainable development set out in Scottish legislation.

The Bill therefore presents an important opportunity to ensure that sustainable development is properly defined, to enable it to be fully built into policy and delivery decision making processes.

Sustainable development is commonly defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.²⁷ The definition has its origins in the UN World Commission on Environment and Development 1987 report, ‘Our Common Future’.²⁸

²⁵ [What it is | National Performance Framework](#)

²⁶ [Review of the National Outcomes - Scottish Government consultations - Citizen Space](#)

²⁷ [Sustainable Development | International Institute for Sustainable Development \(iisd.org\)](#)

²⁸ [Our Common Future: Report of the World Commission on Environment and Development \(un.org\)](#)

Sustainable development is already an important aspect of the NPF which localises the UN's Sustainable Development Goals (SDGs) to Scotland by applying them at a national level. The NPF is therefore aligned with the common international framework for the wellbeing of current and future generations. However, several stakeholders have told us that alignment alone is not sufficient, and that without a definition, full implementation and monitoring of sustainable development is not possible.

The Well-being of Future Generations (Wales) Act 2015 is a prominent example of how sustainable development can be embedded more clearly in law. The Act states: "any reference to a public body doing something 'in accordance with the sustainable development principle' means that the body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs... In order to act in that manner, a public body must take account of... the importance of balancing short-term needs with the need to safeguard the ability to meet long term needs, especially where things done to meet short term needs may have detrimental long-term effect."²⁹

From widespread engagement and research, we have assessed that the Bill could embed the interests of future generations in law by defining 'sustainable development', strengthening the NPF duties, and (if necessary) extending those to whom these apply. This would also bolster the standing of the NPF in law.

We are therefore proposing that the common definition of sustainable development as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs' could fulfil the Government's future generations policy objective. We also recognise that the support of a Future Generations Commissioner may be considered important in securing the full intent of this approach. This aspect, however, remains subject to further policy development.

We also recognise that we need to consider the potential wider effects of a statutory definition of sustainable development on the wider framework of legislation.

We are also considering how a WSD Bill could set out the 'ways of working' for public authorities to further embed wellbeing and sustainable development in their decisions. This follows the approach in Wales.

We are seeking your views on how we can best address this matter through the Bill, to ensure sustainability and the interests of future generations are fully considered in all policy and delivery decision making processes.

²⁹ [Well-being of Future Generations \(Wales\) Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)

13.7 Annex G: Strengthening duties for wellbeing and sustainable development

In the Community Empowerment (Scotland) Act 2015, the duty related to the use of the National Outcomes in policy and decision making is as follows:

“The persons mentioned in subsection (2) [a cross-border public authority; any other Scottish public authority; any other person carrying out functions of a public nature] must have regard to the national outcomes in carrying out the functions mentioned in subsection (3) [any such function that is exercisable in or as regards Scotland and does not relate to reserved matters].”

All public authorities are therefore required to “have regard to” the National Outcomes in carrying out their work, as it pertains to Scotland.

However, several stakeholders have argued that this duty is general and interpretive and does not explicitly require consideration of how policy and delivery decision making can better achieve the National Outcomes, meaning it is therefore difficult to hold organisations to account.

This has highlighted that, whilst the National Outcomes have broad support as a vision for national wellbeing, further measures may be needed to encourage all public authorities, both national and local, to focus their policy and decisions on achieving wellbeing and sustainable development in a coherent and joined-up way. We are consulting to make sure that the provisions of the Bill achieve this as effectively as possible.

As noted above, the current duty to ‘have regard to’ the National Outcomes is seen as being interpretive and non-specific, which may be limiting its effect on policy and decision making processes. We are therefore consulting on how this duty could be strengthened to ensure wellbeing and sustainable development principles more consistently shape policy development. Strengthening existing duties would avoid the complexity of establishing a separate duty or additional impact assessment. This strengthened duty would be intended to change the way in which public authorities use the NPF, by ensuring they focus on achieving the National Outcomes into the longer term.

The Wellbeing and Sustainable Development Bill is an opportunity to review this. We want any legislative duties to help ensure that sustainable development and wellbeing are central to all decision making and close the reported ‘implementation gap’ between the National Outcomes and their use in policy development.

However, given the need to avoid adding unnecessary complexity to the current landscape of legal duties on public authorities, we must do so in a way that complements and strengthens the existing approach, rather than creating a wholly separate duty. That is why we propose to strengthen the existing “have regard to” duty to ensure that the National Outcomes – and in that, wellbeing and sustainable development – are built into all policy and decision making processes.

We are therefore seeking your views on how the Bill can achieve this. We would welcome insights on what the Bill should specifically require public authorities to do; how (or whether) any current legal duties could be improved; and how the Bill could do so in a way that upholds wellbeing, sustainable development, and the interests of future generations.

13.8 Annex H: On whom duties should apply

It is important to ensure that all public authorities in Scotland – including the Scottish Government – carry out any strengthened duties.

Explicitly including Scottish Ministers under any duties may help to clarify that a wellbeing and sustainable development approach should be used by all public authorities in Scotland to shape their policy development and delivery. This would help to re-establish the National Performance Framework as a common framework across Scotland. The development of the Wellbeing and Sustainable Development Bill also presents an opportunity to review which other bodies should be more clearly included under the duties, to ensure this is up to date and comprehensive.

The Community Empowerment Act 2015 currently defines who is covered by the duties in broad terms as: ‘a cross-border public authority; any other Scottish public authority; any other person carrying out functions of a public nature’.

In terms of its legal scope, this may already be sufficient, but the Wellbeing and Sustainable Development Bill is an opportunity to consider whether this needs to be stated more clearly to explicitly include Scottish Ministers under these duties. Currently, the Scottish Ministers are required to set out and review the National Outcomes but are not explicitly mentioned under the “have regard to” duty.

Before the introduction of the Bill, we will continue to engage widely on the issue of how the Wellbeing and Sustainable Development Bill duties can build upon the current National Performance Framework and not add an unnecessary administrative burden or extra reporting requirement, to ensure the Bill reflects the needs of public bodies and local authorities.

We are therefore seeking your views on the range and type of organisations that any duty should apply to.

13.9 Annex I: Strengthening ways of working

We are also considering the case for setting out ‘ways of working’ for sustainable development, following the precedent set by Wales. This would define the ways in which public authorities should embed the principles of wellbeing and sustainable development in their decision-making.

The closest precedent for this approach is the Well-Being of Future Generations (Wales) Act 2015, which sets out that public bodies must follow five ‘Ways of Working’ in enacting the overarching Sustainable Development Principle:

- long-term: balancing the needs of today with those of future generations
- prevention: focusing on early action rather than just reacting to problems
- integration: aligning public bodies’ efforts in relation to well-being goals
- collaboration: working together towards well-being objectives
- involvement: involving the community where the public body operates

Although these broadly align with existing principles in the Scottish Government for how the National Performance Framework should be used in policy development, defining this in law may help to support clearer accountability for any strengthened duties.

It is important that we consider this option, as the model established in Wales is internationally recognised as the leading approach to wellbeing, sustainable development, and future generations.

These requirements may also need to be supported by defining stronger mechanisms for accountability in law, such as auditing and scrutiny of public bodies’ processes and ‘ways of working’ towards sustainable development.

From our engagements, we have heard feedback that the Ways of Working in Wales’ legislation has helped to embed ‘future generations thinking’ in the work of public authorities, though this is also due to the accountability and support provided by their Future Generations Commissioner through a constructive challenge role, backed by statutory powers.

However, we also want to ensure the Wellbeing and Sustainable Development Bill is as focused as possible on its most effective changes – particularly defining sustainable development and strengthening duties. We are therefore considering whether such Ways of Working, and this level of detail on public authorities’ processes, needs to be set out in the legislation itself. This could potentially be set out in statutory guidance supporting a broader Wellbeing and Sustainable Development Bill, meaning the Ways of Working could be more easily adapted in future, where necessary, without the need to revise the Act itself.



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