

Scottish Community Alliance: Response to consultation on proposed Wellbeing and Sustainable Development Bill

Introduction

The Scottish Community Alliance (SCA) welcomes the opportunity to respond to the consultation on a proposed Wellbeing and Sustainable Development Bill. Wellbeing and sustainable development are at the heart of the work of SCA networks and their members, and we support the Bill's aim "to ensure that all policy and delivery is focused on increasing the wellbeing of people living in Scotland, both now and in the future".

We recognise that the proposed legislation provides opportunities to:

- increase accountability and scrutiny of decision making by Ministers and public authorities;
- help close the gap between rhetoric and action on e.g. climate change and inequalities of wealth and health.

However, there are risks that:

- poorly framed or overly prescriptive definitions might have negative impacts on key legislation such as the 2003 and 2016 Land Reform Acts;
- statutory requirements placed on public authorities may be delivered by cascading additional duties onto suppliers and clients, including the third sector, rather than effecting change within the public authorities themselves.

Our greatest concern, however, is that the major obstacles to achieving the objectives of the proposed bill are not statutory but cultural: as the limited impact of previous legislation such as the Community Empowerment (Scotland) Act 2015 has demonstrated, it is very difficult to change the way that public authorities work. Experience suggests that imposing additional (and often unfunded) duties without any sanction for non-compliance is unlikely to achieve very much.

Our view is that if a thing is worth doing, it's worth doing well: if there is to be any value in a Wellbeing and Sustainable Development Act then it must be designed to deliver meaningful change, including significant culture change, within public authorities and the Scottish Government itself, and crucially, the legislation must be backed with adequate powers and sanctions.

Additionally, the route map to a wellbeing and sustainable development society must be clear, comprising not only our long term aspirations but an honest appraisal of the main obstacles to be overcome. Whether, and how, wellbeing and/or sustainable development are defined in legislation matters little if the overall outcome is to simply to validate a version of business as usual: the legislation must not perpetuate the delusion that radical change in society can be achieved without radical action.

Last year SCA published its Shared Vision and Manifesto for Action,¹ which argued that the community sector could and should take a leading role in delivering a wellbeing economy. The manifesto laid out four principles central to the achievement of wellbeing and sustainable development which we consider must underpin future policy and action:

- The principle of subsidiarity must be hard-wired into economic and other governance structures, with power, responsibility and budgets devolved to the most local level possible.
- Scotland's land assets and natural resources, together with the wealth that flows from them must be owned and managed by and for the benefit of the many not the few.
- Scotland's economy must be decentralised, circular and designed to serve its citizens.
- Scotland's most important resource is its people, who must be invested in and recognised as the key stakeholders and beneficiaries of the economy.

¹ https://scottishcommunityalliance.org.uk/wp-content/uploads/2023/11/SCA002_The-Manifesto_18pp_S4_V1.pdf

Defining wellbeing

Question 1

Is a statutory definition of 'wellbeing' required?

- Yes
- No
- Don't know

Question 2

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

The definition of wellbeing is a complex area which has drawn a range of responses from SCA member networks. Whilst there is some support for the proposed approach, the role of the proposed definition is unclear. Wellbeing is a multifaceted concept that is both broadly understood and fundamentally nebulous and contextual: providing a universally accepted definition that is clear and robust enough to be enshrined in law is inevitably challenging.

We note that the consultation document proposes that the Bill "set out clearly that the National Outcomes are Scotland's expression of national wellbeing", whilst also considering whether a legislative definition is required. A statutory review of the national outcomes is currently underway, with revised outcomes due to be published later in 2024. Although it seems unlikely that the review will bring major changes to the national outcomes, there is uncertainty about their future content and phrasing, so it is difficult to offer unequivocal support to them as an "expression of national wellbeing".

The current national outcomes are very broad and largely aspirational statements, designed to be difficult to object to, rather than offering a coherent vision of what needs to change in order for a wellbeing society to be achieved. In particular, the Scottish Government has to date shied well away from a radical interpretation of e.g. "empowered communities" or "sharing...wealth and power more equally", or from the adoption of measures designed to deliver these objectives.

Additionally, the eleven outcomes are placed alongside each other without weighting or recognition of their interrelationships and potential conflicts. In particular, economic and business considerations are given equal value to environmental and social outcomes, with economic "success" presented as desirable in its own right, rather than as a means to achieve greater wellbeing.

The national outcomes are backed by 81 indicators (some of which are still in development) designed to provide empirical measures of performance, but in practice these metrics are detached from the political programme: there is little sense of process or action to address the underlying and systemic issues which inhibit their achievement, nor any clarity as to how they link to policy or what specific measures are to be taken when indicators demonstrate a worsening performance, as is the case with wealth inequality.

Other definitions of wellbeing are available. We note that the World Health Organisation characterises wellbeing thus:

"Well-being is a positive state experienced by individuals and societies. Similar to health, it is a resource for daily life and is determined by social, economic and environmental conditions. Well-being encompasses quality of life and the ability of people and societies to contribute to the world with a sense of meaning and purpose. Focusing on well-being supports the tracking of the equitable distribution of resources, overall thriving and sustainability. A society's well-being can be determined by the extent to which it is resilient, builds capacity for action, and is prepared to transcend challenges."²

² <https://www.who.int/activities/promoting-well-being>

We consider that this definition, whilst still imprecise and non-empirical, is rather less abstract than the current national outcomes. Critically, it is backed by the recognition that fundamental changes are needed to achieve wellbeing: the Geneva Charter for Well-being³ specifies that creating well-being societies requires coordinated action in five areas:

1. value, respect and nurture planet earth and its ecosystems;
2. design an equitable economy that serves human development within planetary and local ecological boundaries;
3. develop healthy public policy for the common good;
4. achieve universal health coverage; and
5. address the impacts of digital transformation.

An alternative approach would be to turn the consultation on its head. If we start with the proposal to establish an independent Commissioner for Future Generations empowered to hold Ministers and public bodies to account with respect to the achievement of a wellbeing society, then this question could be rephrased as “what formal definition of wellbeing, if any, would be of most use to the Commissioner in the delivery of their duties?”

We note that the Well-being of Future Generations (Wales) Act 2015 requires Welsh public bodies to set and publish wellbeing objectives that are designed to maximise its contribution to achieving each of the wellbeing goals, and take all reasonable steps to meet those objectives. This model appears to introduce an important element of context into the definition and pursuit of wellbeing (i.e. what does “achieving wellbeing” mean for each specific public body), but whether this actually helps achieve wellbeing will depend on the objectives being suitable challenging, rather than simply validating current practice.

Defining sustainable development

Question 3

Is a statutory definition of ‘sustainable development’ required?

- Yes
- No
- Don’t know

Question 4

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

- Yes
- No
- Don’t know

Question 5

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

As with Q2 above, this question drew a range of responses from SCA member networks. Whilst there is some support for a formal definition the value and impact is unclear and there are additional complications due to the widespread references to sustainable development in legislation. Again,

³ <https://www.who.int/publications/m/item/the-geneva-charter-for-well-being>

one starting point might be to ask what definition of sustainable development, if any, would be of assistance to an independent Commissioner for Future Generations in holding public authorities to account with respect to the achievement of sustainable development.

The common definition of sustainable development: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”, which is proposed as the basis for any formal definition, derives from the 1987 Brundtland Report.⁴ Whilst this definition has served well, its longevity is at least partly due to the way it has come to say and mean all things to all people, without requiring any clear commitments or action; it is uncertain whether such a vague statement is viable as a statutory definition, or what impact its adoption might have, e.g. in the work of the independent Commissioner for Future Generations.

However, this definition is at least well recognised; there is a risk that developing a new “Scottish” definition would add confusion rather than clarity. Attempts to pin sustainable development down further may limit the legislative impacts by narrowing its application, whilst the focus of public authorities will inevitably shift from delivering the policy intent to meeting the sustainable development test. As noted in our response to Q6 below, a more precise definition will likely be less flexible or nuanced and won’t age well.

One particular issue is that sustainable development is often characterised as finding an appropriate balance between economic, environmental and social considerations: the three “pillars” of sustainability.⁵ The extent to which any public (or private) body is aligned to furthering sustainable development can only be meaningfully assessed in aggregate, by looking at the totality of an organisation’s activities. Individual decisions or actions, even where desirable from a sustainability perspective, are much more likely to be focussed on a single pillar rather than meeting a minimum standard against all three (or four) pillars.

Our view is that sustainable development is inherently contextual and legislation empowering the independent Commissioner for Future Generations is best served through a contextual/case specific/policy outcomes approach.

Question 6

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

We anticipate that the future sustainability and wellbeing challenges are likely to be essentially the same as those of the present: tackling the global climate and biodiversity crises and reversing the growing inequalities of wealth and health in Scottish society.

There is also a danger that trying to future-proof legislation in any prescriptive way not only fails to predict the unforeseen (the COVID-19 pandemic being a good recent example), but also bakes in inappropriate measures: we note that the consultation document identifies “protecting ability of young people to own a home” as a key sustainability issue, a phrasing which betrays a specific neo-liberal perspective, rather than the more appropriate (from a wellbeing and sustainability perspective) “access for all to secure, warm housing”.

Question 7

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

⁴ <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

⁵ A fourth pillar: “cultural” is sometimes added

The SCA considers that imposing a new definition of sustainable development which goes beyond the common definition quoted above might have negative impacts on key legislation such as the 2003 and 2016 Land Reform Acts. We are not aware that the lack of a formal or detailed definition has caused issues with the operation of the legislation to date, and it is unclear what problem the proposal is intended to fix here.

When the Land Reform Acts were before Parliament there were calls for the term to be explicitly defined (often by those opposed in principle to the legislation), but this was resisted on the basis that sustainable development is inherently contextual, and that if necessary Scottish Ministers could reach a decision based on the circumstances of an individual case.

There are three specific but related issues that might arise from the adoption of a more detailed definition of sustainable development.

The first is that the Land Reform Acts refer to both sustainable development as the primary purpose of the community body and the sustainable development of the land. A statutory definition – assuming this is more detailed than the common definition – might not allow for these two contexts.

The second is that referred to in our answer to Q5 above: that whilst sustainable development is understood as encompassing social, economic and environmental issues coherently and equally, and is best assessed in the round, in reality individual organisations (especially small scale community bodies) and in particular specific projects often focus on aspects of one or two of the pillars. To date the general understanding has been that each community project can be viewed as one small piece of a much bigger picture, with sustainable development furthered and achieved in aggregate; imposing a more detailed definition may have the effect of demanding that every community body or project delivers against each pillar.

The third issue is that many community bodies are charities: the requirement for the community body's main purpose to be consistent with sustainable development was for a while seen by the Office of the Scottish Charity Regulator (OSCR) as somewhat at odds with the legal requirement that "a body meets the charity test if its purposes consist only of one or more of the charitable purposes." Considerable work was needed to ensure that OSCR was comfortable with this position; revisiting the definition of sustainable development could jeopardise the status quo, which would be a major concern for the community land sector.

Strengthening duties for the National Outcomes and sustainable development

Question 8

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

As noted above the national outcomes are underpinned by 81 indicators which collectively could be taken as a measure of progress towards wellbeing and sustainable development. A statutory duty could be placed on Government (or other public bodies where appropriate) to improve performance against these indicators.

This would have to be carefully scrutinised to ensure that policies and actions weren't designed simply to meet the indicator, without addressing the underlying issue, and also to ensure there were effective sanctions for failure.

As noted above the Well-being of Future Generations (Wales) Act 2015 requires Welsh public bodies to set and publish well-being objectives that are designed to maximise its contribution to achieving each of the well-being goals, and take all reasonable steps to meet those objectives. If well-defined and challenging these could provide criteria against which a Commissioner for Future Generations could hold public bodies to account.

Question 9

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

We do not consider that there are any areas of decision making that should be excluded from these provisions.

Further, we consider that the Bill must explicitly include all Scottish Government decision making, including the budget and the Programme for Government.

Question 10

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

In principle these seem sensible proposals which should be supported, but there is little clarity as to what actual benefits they will deliver and there is a risk that local authorities and government agencies will simply pass on additional duties in the form of extra bureaucracy to clients, suppliers and contractors, including the third sector, who are increasingly delivering essential public services.⁶

Clarifying to whom the duties apply

Question 11

Should any duty apply to the Scottish Government?

Yes.

We consider that it was the clear intention of the Community Empowerment (Scotland) Act 2015 that the duty to “have regard to the National Outcomes” applied to ALL Scottish public authorities including Scottish Ministers.⁷

Nonetheless, if it is considered necessary to state this explicitly then we would support such a measure; this is an area where Scottish Ministers must lead, not reluctantly follow.

Question 12

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

Any such duties should apply to all Scottish public authorities.

This should include Scottish Ministers, all public agencies and departments, Local Authorities and their Arms-Length External Organisations

Defining ways of working

Question 13

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

⁶ Recent examples are the way that a blanket approach to “fair work” has been applied, however inappropriately, to funding recipients, and the proposed extension of FOISA regulations to voluntary organisations which step in to manage facilities such as public toilets which have been closed by Councils.

⁷ We note that the 2015 Act explicitly excludes the Scottish Parliament and Scottish Parliamentary Corporate Body from the requirement to have regard to the national outcomes. We consider that if the intention had been to exclude Ministers then similar provision would have been made in the Act.

This question asks how the achievement of wellbeing objectives can be reported: we note that it is the continued failure to achieve wellbeing objectives which necessitates clearer accountability and scrutiny of public bodies in Scotland.

We understand that the Scottish Government is considering the case for setting out “ways of working” for sustainable development, following the precedent set in Wales, where the Well-being of Future Generations (Wales) Act 2015 defines these as “long-term, prevention, integration, collaboration, and involvement”.

As with the national outcomes, it is difficult to argue against these five principles, indeed they are so obviously desirable that it begs the question as to why they aren’t already underpinning decision-making. The answer, of course, is that the current ways of working: “short-term, reactive, siloed, unilateral and disengaged” are not an unfortunate and easily-remedied side-effect but an inevitable consequence of the architecture of Government and public administration.

The consultation document states that in Wales the ways of working “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,” but it doesn’t provide any specific examples of resulting policy change or enhanced service delivery.

As the consultation document suggests, defining ways of working is unlikely to be sufficient by itself: “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” although the mechanisms by which legislation can, for example, enforce collaboration are unclear.

Whilst we agree with the intentions of this element of the proposed bill, and endorse the view that governance and administration should be “long-term, prevention, integration, collaboration, and involvement” we question how effective any legislation will be without concomitant structural change: as outlined in the four principles of our Manifesto the achievement of wellbeing and sustainable development requires a fundamental devolution of powers and a reconfiguration of the economy, not performative statements of intent.

Question 14

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

As noted previously, the main obstacles to collaboration and working across boundaries are largely cultural rather than legislative, and are too often reinforced rather than reduced by the siloed nature of public administration, where public bodies and individual departments within those bodies are tightly focused on objectives and targets which have little relevance to wellbeing and sustainable development.

Question 15

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

n/a

Question 16

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

Whilst the proposed duties are focused on public authorities and would not explicitly apply to SCA networks and their members, our experience is that public authorities “deliver” new duties by cascading them to suppliers and clients, including the third sector, in the form of additional requirements. This enables the public body to tick a box and claim it has delivered its duty, whilst

community organisations face extra bureaucratic hurdles and concomitant costs, often simply to demonstrate that their existing practices already meet the “new” standards.

Determining an approach for future generations

Question 17

Should Scotland establish an independent Commissioner for Future Generations?

- Yes
- No
- Don't know

The Scottish Community Alliance supports the proposal to establish an independent Commissioner for Future Generations who “acting on behalf of future generations would be empowered to hold public bodies, including Ministers, to account”.

The impact of such a post will depend on the degree of independence the Commissioner is allowed and the extent to which they are empowered to hold public bodies and Ministers to account. Unless the office is genuinely independent, equipped with far-reaching powers and adequately resourced to tackle major challenges it will serve only as a fig-leaf for inaction: a toothless Commissioner will be worse than none at all.

We note that the Future Generations Commissioner for Wales has “a constructive challenge role backed by statutory powers of investigation.” We consider that this is the bare minimum required for effective operation: to adequately provide accountability and scrutiny the Scottish Commissioner must have the power and resources to investigate and challenge public authorities, including Ministers, at all levels, up to and including the budget and the Programme for Government.

Question 18

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

It's unclear exactly what is meant here by “support for decision making”. Is this intended to mean helping public authorities reach decisions that further wellbeing and sustainable development, or helping garner public support for decisions? If the latter, we note that whilst “accountability” and “scrutiny” are largely compatible, “support for decision making” may not be.

It's not the Commissioner for Future Generations' role to increase public support for decision making, indeed it is likely that some decisions will be unpopular: one of the main reasons the role is needed in the first place is the essential parochialism, short-termism and generational selfishness of political actions, regardless of who is in power.

Question 19

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

The remit of the Commissioner for Future Generations should not be constrained to oversight of what Government/public authorities do (or propose to do), but should also extend to cover significant policy omissions: the areas where action could be taken but Government and/or public bodies fail to do so, for whatever reason.