



Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
By email
c/o Clerk to the Committee

Sarah Boyack MSP

17 June 2025

Dear Stuart,

Wellbeing and Sustainable Development (Scotland) Bill

Thank you for your letter of 11 June 2025 regarding the delegated powers in the Wellbeing and Sustainable Development (Scotland) Bill.

The Committee's questions were as follows:

- (i) The Committee asks the Member if consideration has been given to a more detailed definition of wellbeing and why more detail has not been included in section 3 of the Bill.
- (ii) The Committee also asks why the power of the Future Generations Commissioner for Scotland to prepare and issue guidance in section 5(2) of the Bill does not provide any specification of the detail of the content of the guidance or is subject to any type of formal scrutiny by the Parliament.

I would respond as follows:

(i) *Definition of wellbeing*

As the Committee noted, wellbeing is a concept which is challenging to define comprehensively. However, the approach taken in the Bill is to focus the term "wellbeing" on the outcomes as experienced by individuals and groups within society, with reference to some of the key factors recognised as contributing to wellbeing in that sense (security, health, opportunity and so on). Those factors are drawn from the definition of wellbeing in the Care Act 2014, adapted for a wider context; and with some reference to the wellbeing principles in the Well-being of Future Generations (Wales) Act 2015, the UN Sustainable Development Goals and the International Covenant on Economic, Social and Cultural Rights.

Careful consideration has been given to how best to define wellbeing. Subsection (1) defines “wellbeing” as the ability of individuals, families and other groups within society to enjoy a range of factors. These factors are: (a) personal dignity, including respect for their choices and beliefs; (b) freedom from fear, oppression, abuse and neglect; (c) good physical, mental and emotional health; (d) participation in meaningful activity including work, education, training and recreation; (e) an adequate standard of living including suitable and affordable accommodation, food, clothes and energy; and (f) access to the natural environment for health, leisure and relaxation.

I would argue that this definition is not lacking in detail; it comprises 6 sub-paragraphs, each containing factors which are considered to be essential elements of what one might reasonably expect wellbeing to encompass and has been inspired by other legal sources.

Whilst great care has been taken in constructing the definition, I would welcome suggestions regarding how this definition might be improved and remain open to amending the Bill in light of debate during its passage through Parliament. Section 3(2) of the Bill enables the Scottish Ministers to amend the factors included within the definition to ensure that the definition remains relevant and that the Scottish Ministers can respond to emerging needs and priorities.

(ii) Guidance-issuing powers of the Commissioner

I would start by stressing that it is commonplace for commissioners to have powers to issue guidance and for public bodies to be required to have regard to such guidance in the performance of their functions.

I do not consider that any further specification is required regarding the guidance which may be issued by the Commissioner. I would stress that the Commissioner can only issue guidance to public bodies about the exercise of their duty under section 1(1). This power is specific and tied to the duty created by the Bill. It follows that the Commissioner does not have free rein to issue guidance on matters which have not been envisaged during the development of the Bill.

While it will be a matter for the Commissioner to determine what ought to be included in their guidance for public bodies, as set out in paragraph 82 of the Policy Memorandum, I envisage that the guidance would contribute to the fulfilment of the Commissioner’s function by including information on matters such as:

- How public bodies will be expected to demonstrate compliance with their duty under the Bill;
- Detail of best practice in the promotion of wellbeing and sustainable development by public bodies, including examples within Scotland and from other countries; and
- How organisations can work collaboratively across the public sector to build policy coherence for sustainable development.

Finally, guidance is not normally subject to any form of parliamentary procedure because it does not have the force of law, it can only guide and the public bodies to whom it may be addressed are only under a duty to “have regard” to it. This does not

amount to an obligation to comply; public bodies subject to the duty could consider the guidance and reject its application in a particular set of circumstances.

I hope you will find this response helpful, and I would be happy to answer any further questions which the Committee may have.

Yours sincerely,

Sarah Boyack MSP