

Scottish Parliament Social Justice and Social Security Committee

Wellbeing and Sustainable Development (Scotland) Bill

Supplementary Written submission by Prof Colin T Reid

1. In considering this topic I found two of the items mentioned in the committee papers to be of particular value in relation to how the objective of furthering wellbeing and sustainability can be achieved and to the challenges of making progress with issues that cut across many authorities and areas of policy and action:

- Audit Wales, *No Time to Lose: Lessons from our work under the well-being of Future Generations Act* (April 2025)

[No time to lose: Lessons from our work under the Well-being of Future Generations Act | Audit Wales](#)

- M. French and J. Wallace, *Putting Collective Wellbeing and Sustainable Development into Action: An options paper for Scotland* (Carnegie UK et al, December 2024)

[Putting collective wellbeing and sustainable development into action: An options paper for Scotland - Carnegie UK](#)

Both of these consider in more detail the valuable role that can be served by legislation but also show that it is neither the only possible approach nor by itself sufficient. A key point is that a supportive framework of other legislation, policy, resources, and most importantly political will and culture, must be present if there is to be the transformation necessary to make significant improvements in providing wellbeing and sustainability across the whole population.

2. The sense that some further steps should be taken is enhanced when one considers the history. When the Scottish Parliament and Executive/Government were founded, there was lots of rhetoric about the importance of sustainability but this does seem to have been a primary consideration in much of their work over past decades. Examples of the initial rhetoric include:

- “The Parliament and Scottish Executive should demonstrate committed leadership. Priority should be given to put sustainable development at the heart of its policy making”

- Report to the Secretary of State for Scotland from his Advisory Group on Sustainable Development, *Scotland the Sustainable: 10 action points for the Scottish Parliament* (March 1999, ISBN 0 7480 7275 6) at p.14 (this report also recommended establishing a Sustainable Development Commission, setting targets and establishing priority areas for action).

- The claims that “In Scotland we have moved forward rapidly to make sustainable development a mainstream issue for Government, for local authorities, for business and for the people of Scotland” and that “This is a moment of opportunity for Scotland to make its future a sustainable future.”

- Scottish Office, *Down to Earth: A Scottish perspective on sustainable development* (February 1999, ISBN 0 7480 7171 7) at pp.3 (Lord Sewel) and 40 (Donald Dewar).

Although some steps have been taken to ensure that attention is paid to sustainability and related issues (e.g. the various statutory duties referred to in my previous submission), they do not seem to have made a big difference. Likewise, although the Scottish Parliament Standing Orders require an assessment of the effects of a Government Bill on sustainable development (Rule 9.3(3)(d)), the quality of these assessments in terms of breadth and depth of analysis is often poor and they do not seem to feature strongly in the Parliament's consideration of Bills as they progress. This is a missed opportunity for the Parliament to do more.

3. A specific question was raised about the definition of "a public body" in setting the scope of any new duty. As a general observation, the complexities of modern institutional structures, including partnership arrangements, publicly owned companies and "contracted-out" delivery mean that any definitions are problematic at the margins, whilst the division between devolved and reserved matters and the existence of cross-border authorities add further complications. The context is also important. Defining a precise boundary is less important in the context of a general duty to "have due regard" than it would be if the legislation were imposing "sharper" obligations giving rise to clear rights that individuals might enforce or exposing authorities to financial or other sanctions if they fail to comply.

As my former colleague Professor Alan Page has helpfully pointed out, some explanation is provided by the *Public Bodies Handbook* produced by the Cabinet Office - [Public Bodies Handbook – Part 1. Classification Of Public Bodies: Guidance for Departments](#) – but this also highlights the complexities. In legislation there are varying approaches to defining the scope of the term "public body/authority" for different purposes. Some legislation provides an exclusive list of the bodies covered,¹ some use a broad term which will be interpreted on its own,² others a broad term that has to be interpreted in a way that is compliant with external obligations,³ and any definition or term may be supplemented by express inclusions⁴ or exclusions.⁵ The definition of a "Scottish public authority" in the Interpretation and Legislative Reform (Scotland) Act 2010, Sch.1, concentrates on what makes it Scottish rather than public (referring to the Scotland Act 1998).

If there is a desire for more certainty as to the bodies affected by the proposed duty, one approach, both to avoid repeating past debates and to enhance consistency, would be to adopt a definition set out in existing legislation. Consistency with the scope of the proposed new human rights framework covering economic and social rights would be highly desirable, but at present the position on that is too uncertain to offer any guidance. Accordingly, leading candidates for the core definition to adopt would be those in the Human Rights Act 1998 or the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, both of which use the

¹ Freedom of information (Scotland) Act 2002, s.3; Islands (Scotland) Act 2018, s.7.

² Community Empowerment (Scotland) Act 2015, s.1.

³ Human Rights Act 1998, s.6, taking heed of decisions of the European Court of Human Rights; Freedom of Information (Scotland) Regulations 2004, reg.2, taking heed of decisions of the Court of Justice of the European Union on the underlying Directive.

⁴ Human Rights Act 1998, s.6(3); Freedom of Information (Scotland) Regulations 2004, reg.2, Sch.5; Scottish Languages Act 2025, s. 36; United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, s.6.

⁵ United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, s.6 and as proposed in s.17 of this Bill.

term “public authority” with some specific inclusions; this would still leave scope for distinct inclusions and exclusions to match the aims of this Bill (compare s.17(2)(b) of this Bill with s.6(5)(a)(ii) of the 2024 Act).

4. The reference to the Commissioner being able to investigate particular decisions, policies or actions is helpful in clarifying that it is not just general functions that can be considered but also how these are carried through into practice; it might be useful if it were explicitly provided that a failure to act in particular circumstances could also be investigated. The Commissioner will face a challenge in deciding which of the many relevant issues (systemic and specific) should be given attention, but this is a challenge shared by the existing parliamentary commissioners in Scotland and other oversight bodies such as Environmental Standards Scotland. All of these have to select where their attention and limited resources are to be focused in the face of many potential matters identified by their own work or drawn to their attention by altruistically motivated or individually disgruntled groups and individuals. It would be expected that the strategic plan required by section 12 will help to set priorities and establish criteria guiding this selection, while the annual report will provide an opportunity for reflecting on and challenging the choices made.

5. A question was raised over what might be entailed by the power to “take such steps as the Commissioner considers appropriate” in resolving a matter without recourse to an investigation. My impression is that such a provision is designed to show that once an issue has been identified as worthy of attention, the Commissioner is not restricted to undertaking a full investigation (nor to pursuing one to the end once it has begun), but can follow it up in other ways. Experience from the Ombudsman and Environmental Standards Scotland shows that informal approaches can often be an effective and efficient way of dealing with matters, and even regulatory bodies with more formal enforcement powers (and indeed the police) often rely on guidance, advice and warnings rather than having recourse to formal investigations and sanctions. Especially in the early days as authorities come to terms with their new obligations, it is easy to imagine the Commissioner achieving a lot through simple dialogue with authorities, pointing out areas of oversight, providing advice or training, or just questioning what they are doing, prompting an internal reconsideration. The steps that the Commissioner can take will be limited by the absence of direct legal powers of intervention, so that the broad phrase does not open the door to the Commissioner being able to take drastic and intrusive action.