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22 August 2025

Convener

**CALL FOR VIEWS: WELLBEING AND SUSTAINABLE DEVELOPMENT (SCOTLAND)
BILL**

I am enclosing a memorandum setting out the Scottish Government's position on the general principles of the above Bill, introduced by Sarah Boyack MSP on 27 March 2025.

I hope this memorandum assists the Committee in its consideration of the Bill. Please get in touch if I can be of any further assistance.

I am copying this letter to the Finance and Public Administration Committee in response to their call for views on the Bill's Financial Memorandum.

Yours sincerely,

RICHARD LOCHHEAD

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MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE

Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Social Justice and Social Security Committee of the Wellbeing and Sustainable Development (Scotland) Bill (“the Bill”), which was introduced by Sarah Boyack MSP on 27 March 2025.

Background

2. The policy intention of the Bill is to establish wellbeing and sustainable development (“WSD”) as primary considerations in public bodies’ actions and decisions, to improve outcomes for current and future generations. This seeks to address a perceived short-termism in public service delivery, which undermines public services’ capacity to deliver better outcomes for Scotland’s people. The Government considers that the Bill is within the competence of the Scottish Parliament and would be compatible with UNCRC requirements.
3. The Bill defines the terms ‘wellbeing’ and ‘sustainable development’ for the purposes of the Bill. While the Bill does not seek to amend previous legislation which references these terms, the definitions are intended to fill the gap of overarching public policy definitions and they provide the legal basis for the proposed duties and the powers of a Future Generations Commissioner (FGC).
4. The Bill imposes a duty on public bodies to have due regard for the promotion of WSD in the exercise of their functions and a duty to have regard to the FGC’s guidance. The Bill’s duties apply to all Scottish public bodies, including public authorities and cross-border public authorities (apart from regarding reserved matters), all local authorities and Ministers. The accompanying documents do not specify how bodies must demonstrate compliance with the duties, apart from having regard to the FGC’s guidance. Public bodies would determine their individual processes for this, but it is envisaged they may conduct impact assessments on WSD to demonstrate compliance.
5. The Bill establishes the FGC with a general function to ‘promote the wellbeing of future generations by promoting sustainable development by public bodies in all aspects of their decisions, policies and actions’. While the FGC ‘should enjoy significant freedom in determining how to exercise this general function’ they must:
 - a) Produce guidance for bodies on the exercise of the duty;
 - b) Review and update such guidance as appropriate;
 - c) Promote awareness and understanding of WSD among bodies;
 - d) Keep under review the law, policy and practice relating to WSD with a view to assessing its adequacy and effectiveness in giving effect to WSD;
 - e) Promote best practice by public bodies; and
 - f) Promote, commission, undertake and publish research on WSD.
6. The power outlined at d) above enables the FGC to engage with the work of the Parliament including influencing policy development, engaging with Ministers, making submissions to or giving evidence to committees, responding to consultations and

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publishing reports on legislation. This function is significant and includes expressing views on existing or upcoming legislation or policy. It is possible the FGC's views could form part of their guidance, which bodies are required to have regard to, meaning their assessments may influence public bodies' actions.

7. The Bill provides the FGC with powers to conduct general investigations to examine whether a public body has had regard to WSD in their actions or decisions. It can also conduct individual investigations into a specific decision, policy or action. These powers are similar to other commissioners (e.g. the Children and Young People's Commissioner). During an investigation the FGC can require a body to respond, and witnesses to provide evidence and documents within scope.
8. The Bill's policy intentions have significant crossover with the National Performance Framework (NPF), which is the Government's wellbeing framework. The DFM announced a reform of the NPF to Parliament on 8 January 2025 to make it stronger, more strategic and impactful. The NPF implementation plan, which the Government committed to putting in place following the FPAC inquiry *Ambitions into Action* (2022), is now being taken forward as part of NPF reform. Reform aims to, over time, address issues of accountability of public bodies, the content of the national outcomes and indicators and aligning and embedding the NPF into the budget, the Programme for Government and Public Service Reform (PSR) strategy.

Financial Impact

9. There are uncertainties regarding the costs included in the Bill's Financial Memorandum. Costs are likely to be incurred by the Government, local authorities and public bodies, as well as set up and running costs for the Scottish Parliamentary Corporate Body (SPCB) to establish the FGC. Estimates of the costs to the Scottish Administration are:
 - £437,000 - £850,000 of initial set up costs
 - £741,000 to £1.812 million each year for ongoing running and familiarisation.
10. There are potential financial implications related to back office functions, where there is uncertainty on staff numbers and associated administrative costs; costs to public bodies of fulfilling duties, and uncertainty over the cost to public bodies of investigations undertaken by the FGC, given it can charge 'reasonable sums' for costs incurred. The creation of an FGC cannot, for now, be said to represent a last resort. Creating the FGC will bring additional costs to the Government at a time of significant budgetary pressures. This is pertinent when considering the ongoing PSR work and the uncertainty over some cost proposals.

Scottish Government's Position

11. The Government's considerations regarding the Bill concerns the necessity, cost and burden of statutory definitions, additional duties, a new commissioner and potentially a new impact assessment. Particular consideration has been given to the misalignment with the duty to have regard to the national outcomes from the Community Empowerment Act 2015 ("CE Act"), as well as NPF reform and the possibility of alternative approaches.
12. NPF reform presents an opportunity to more firmly embed WSD in policy and budget decision making in national and local governments and across the public sector. The

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implementation plan will support bodies to align their policy and strategic objectives, and budget decisions to the national outcomes and vision for Scotland.

13. The Bill's wellbeing definition covers some but not all of the areas of the current national outcomes. This current, and potential future, crossover is likely to cause confusion and uncertainty for public bodies. This may be exacerbated by the fact that bodies would be required to 'have due regard' to the Bill's duty to promote WSD, while also being under the similar duty to 'have regard' to the national outcomes. Where the definition covers the same areas, this will, in effect, duplicate the national outcomes. The Bill enables Ministers to amend the wellbeing definition by regulations, which is similar to the CE Act's duty on Ministers to review the national outcomes every five years.
14. The Government wishes to avoid adding additional burden or duties to public bodies where possible, instead focusing on enhancing current arrangements. Rather than enhancing the existing NPF, founded upon the CE Act duty, the Bill adds additional duties and a new expression of WSD; creating a parallel framework. The policy memorandum notes the Bill does not work within existing duties, instead establishing a new 'overarching statutory duty'. The existing CE Act duty is already sufficient to require bodies and Ministers to have regard to WSD, particularly since the national outcomes are expressed in the NPF – Scotland's wellbeing framework.
15. The policy memorandum envisages that the Bill will 'complement' and 'strengthen' the NPF, but does not outline how this will be implemented. Instead it would be for Ministers 'to consider the interaction between this Bill and the NPF', including how it can 'complement and strengthen these existing obligations'. It argues that by improving application of WSD, this will improve progress towards the national outcomes. While the FGC could 'improv[e] understanding... of the NPF and progress towards meeting the National Outcomes', since the Bill makes no reference to the existing duty, it seems at the FGC's discretion how to factor them in.
16. In discussing alternatives, the policy memorandum says an approach to achieve the Bill's aims could have been to 'directly amend the NPF as the means through which to measure and improve Scotland's national wellbeing'. However, it does not address why improving implementation and accountability of the existing duty would be insufficient to advance WSD. Instead it states that WSD is 'central to the policy objectives of the NPF', which 'sets out a vision for collective wellbeing'.
17. Stakeholders have previously raised the issue of an NPF implementation gap, which the Government aims to address through NPF reform. It is not clear that legislation is necessary to effect the required culture change. While an FGC would be a scrutiny mechanism for bodies to report to, officials wish to consider alternative non-legislative accountability systems which could be taken forward at less cost.
18. Feedback from Government policy teams suggests that the Bill adds a layer of additional regulatory complexity on bodies, instead of offering an integrated and coherent framework. This would result in increased expenditure and burden upon the policy-making process, with a particular strain on bodies involved in an investigation.
19. Duplication in purpose and overlap with existing legislation was also raised as a concern. For example, priorities such as child poverty are already supported by the Child Poverty (Scotland) Act 2017, which has an emphasis on prevention and is focused on delivering

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wellbeing improvements in the present without compromising the wellbeing of future generations. The Bill is therefore unnecessary to progress various priorities, including child poverty goals. Furthermore the proposed new duty may cause confusion and be felt to overlap or duplicate elements of the existing climate change duty in section. 44 of the Climate Change (Scotland) Act 2009.

20. The policy memorandum envisages public bodies may carry out a WSD impact assessment to demonstrate compliance. While not mandatory, this is likely to be a preferred option, particularly if recommended by the FGC. Bodies are likely to want to complete assessments to demonstrate compliance. Any new assessment, which may have to be specific to individual bodies, would substantially add to the burden already imposed upon them, including cost implications and potentially slowing down policy development. Since WSD is cross-cutting, it would be a significant undertaking to evidence and assess impact of all actions and decisions.
21. An internal review of the Government's use of impact assessments and statutory duties is underway until January 2027. The DFM is the lead minister for this review, which seeks to improve effectiveness and efficiency and to ensure impact assessments are high quality, proportionate, accessible, and timely. The Government believe that there is value in the review concluding before new assessments are introduced, and that we should avoid new duties and assessments being a default response to implementation gaps. Alternative approaches, such as integrating WSD principles into existing assessments may be preferable and should be considered.
22. It is argued that the Bill's definitions will improve policy coherence, providing a shared public sector understanding to align policies. The Government does not consider new legislation as necessary to achieve this. The NPF represents a coherent WSD framework and a shared vision for Scotland which is intended to outlast individual governments. Improvements in implementation and accountability are needed, which are key considerations for reform.
23. Potential overlaps in remit or purpose have been identified with the Children and Young People's Commissioner, the Human Rights Bill, Procurement Reform (Scotland) Act 2024, Community Wealth Building, Scottish Law Commission, and the Scottish Human Rights Commission. The Bill could conflict with existing guidance, definitions, or obligations. The Bill also does not offer a plan for integrating with existing law, guidance or obligations. It is therefore a further addition, not a whole system change which would coherently improve policy coherence.
24. In their 19 June report, the SPCB Supported Bodies Landscape Review Committee ("SPCB Committee") concluded that the landscape should not be expanded to include new advocacy type bodies. They recommended new criteria for proposals, including that a new body should be a last resort; with all alternative models having been exhausted. The Government believes its opposition to the Bill is in line with the SPCB Committee's findings, particularly since alternatives have not been exhausted. It is possible that by working with public bodies to promote and implement the NPF, alongside other non-legislative measures, strong working practices, scrutiny and accountability could be established to address the issue. This must be explored and exhausted before a new body is proposed.

Conclusion

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25. While the Government is supportive of the policy intention, for the reasons outlined above, it opposes the Bill. There are significant concerns that the proposals are not the most effective way of achieving the policy intentions. This includes the Bill's misalignment with NPF reform, which seeks to achieve similar aims.
26. The Bill is considered unnecessary and new statutory definitions, duties and potentially a new impact assessment will disproportionately burden public bodies. In the Government's view, the creation of a new commissioner is not in line with SPCB Committee findings and there are uncertainties whether it represents value for money. Alternatives have not been fully explored and exhausted. NPF reform and the statutory duties and impact assessment review should be completed before considering new legislation. For a coherent approach, legislation would need to avoid additional burdens where possible, instead aligning with existing obligations.
27. The NPF already offers a shared vision of WSD and is founded upon years of development and stakeholder engagement. The Government views these matters as crucial and is prioritising NPF reform to both renew the outcomes and improve implementation and accountability across the public sector. In progressing reform and non-legislative approaches first, the Government will determine whether future legislation in this area is necessary and specifically what it would need to achieve.

The Scottish Government
August 2025

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