

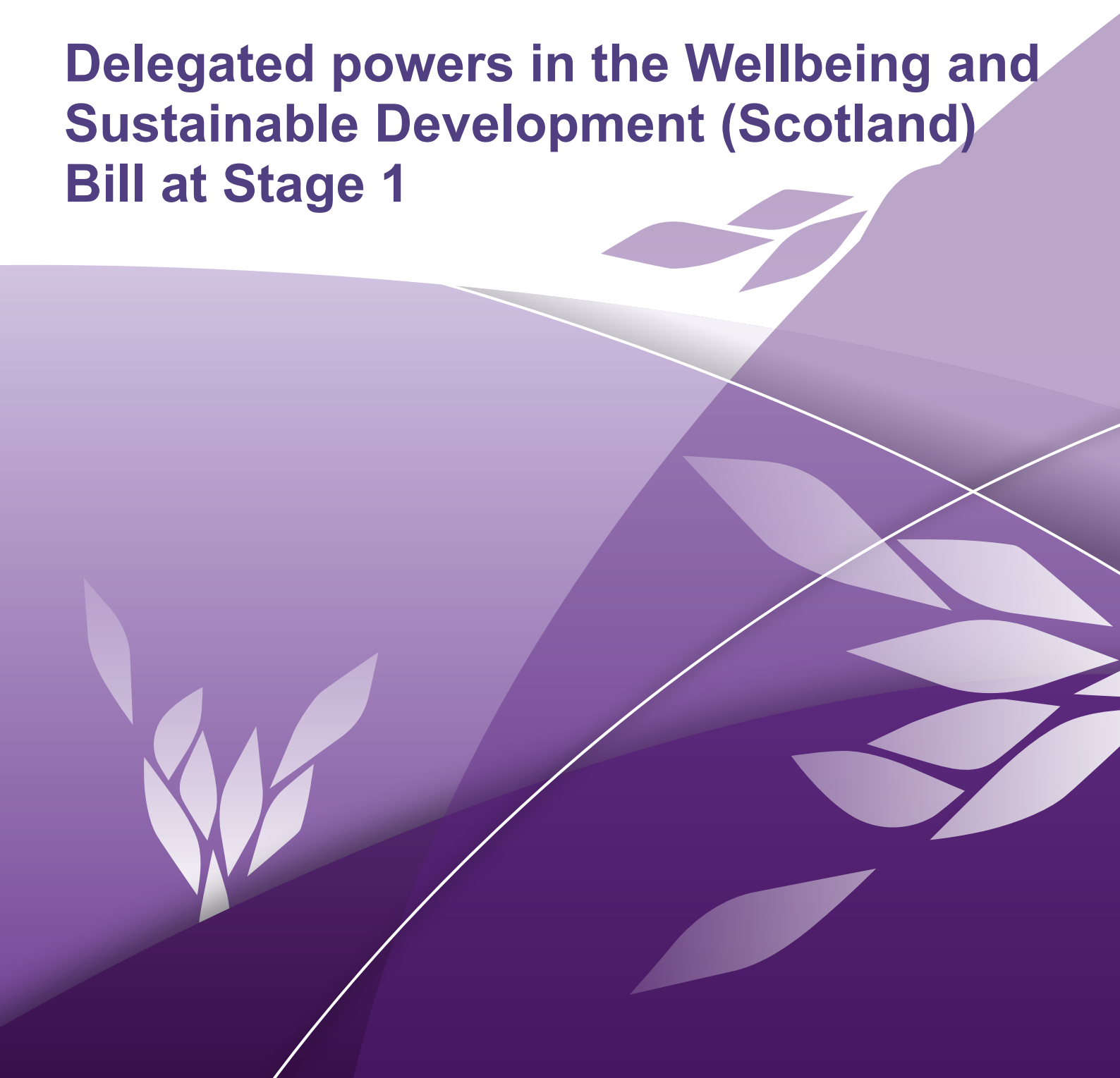


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Wellbeing and Sustainable Development (Scotland) Bill at Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meetings on 10ⁱ and 24 June 2025, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers in the Wellbeing and Sustainable Development (Scotland) Bill ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

Overview of the Bill

3. This is a Member's Bill which was introduced by Sarah Boyack MSP on 27 March 2025. The lead committee is the Social Justice and Social Security Committee.
4. The Bill introduces a duty on public bodies to have due regard for the need to promote wellbeing and sustainable development. The Bill establishes the office of the Future Generations Commissioner for Scotland. The Commissioner's general function is to promote the wellbeing of future generations by promoting sustainable development in all aspects of the decisions, policies and actions of public bodies. As part of the Commissioner's general function, they are to prepare guidance for public bodies.

ⁱ Katy Clark MSP submitted apologies for this meeting.

Delegated Powers

5. The Bill confers one power to make subordinate legislation on the Scottish Ministers. It also confers one power on the Future Generations Commissioner for Scotland to issue guidance.
6. The Member has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen.
7. At its meeting on Tuesday, 10 June, the Committee agreed to write to the Member about:
 - Section 3(2) – a power to amend section 3(1) to add, remove or vary the factors included within the definition of wellbeing.
 - Section 5(2)(a) – a power for the Future Generations Commissioner for Scotland to prepare and publish guidance for public bodies about the exercise of their duty to promote wellbeing and sustainable development under section 1(1) of the Bill.
8. The Committee [wrote](#) to the Member on 11 June and received a [response](#) on 17 June 2025.

Review of relevant powers

Section 3(2): definition of wellbeing

Power conferred on: Scottish Ministers

Power exercisable by: Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

9. Section 3(1) defines the term "wellbeing" for the purpose of the Bill as:
 - ” the ability of individuals, families and other groups within society to enjoy—
 - (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,
 - (f) access to the natural environment for health, leisure and relaxation.
10. Section 3(2) enables the Scottish Ministers to add, remove or vary the factors included within the definition.

Committee consideration

11. In the [Delegated Powers Memorandum](#), the Member explains that the term wellbeing is an amorphous concept which is challenging to fully define. The Bill sets out the key factors which the Member considers essential to individual and societal wellbeing. The purpose of delegating a power to the Scottish Ministers to amend the definition is to ensure that the definition remains relevant and that the Scottish Ministers can respond to emerging needs and priorities.
12. The power to amend the definition is subject to the affirmative procedure which will allow scrutiny at the higher level by the Parliament.
13. The Committee noted that the definition of wellbeing in section 3(1) is wide and that it may have consequences for the Bill as a whole, including on the general functions of the Future Generations Commissioner for Scotland as set out in section 5 of the Bill. The Committee asked the Member if more consideration has been given to a more detailed definition of wellbeing. It also asked why more detail had not been included in section 3 of the Bill.
14. The Member responded that the approach taken in the Bill is to focus the definition

of wellbeing on the “outcomes as experiences by individuals and groups within society”. This is done by reference to key factors that are recognised as contributing to wellbeing. The Member further explains that those factors are drawn from the definition in the Care Act 2014 and some references to wellbeing principles in the Future Generations (Wales) act 2015, the United Nations Sustainable Developments Goals and the International Covenant on Economic, Social and Cultural Rights.

15. The Member also acknowledged that careful consideration had been given to the definition, and that it does not lack detail in her view.
16. Finally, the Member invites suggestions for how the definition might be improved, and that she remains open to amending the definition in light of debate on the Bill during its passage through the Parliament.
17. The Committee considers that the Member has provided additional helpful context to understand how the definition in the Bill was developed. The Member points to definitions in legislation passed by the Welsh Assembly and the UK Parliament, and in international standards. The Member has also indicated that she would welcome suggestions to improve the definition.

18. **The Committee accepts the further information that has been provided by the Member is helpful context for how the term ‘wellbeing’ has been defined in the Bill, including the need for a power to amend it. However, it highlights this to the lead committee so that the policy intention behind the definition can be more fully examined. Finally, the Committee also highlights to the lead committee the Member’s willingness to consider improvements to the definition.**

Section 5(2)(a): guidance for public bodies about the exercise of their duty in section 1(1)

Power conferred on: Future Generations Commissioner for Scotland

Power exercisable by: guidance

Parliamentary procedure: none

Provision

19. Section 5(2)(a) requires the Future Generations Commissioner for Scotland to prepare and publish guidance for public bodies about the duty in section 1(1) of the Bill to have due regard to the need to promote wellbeing and sustainable development. Section 5(2)(b) allows the Commissioner to update the guidance from time to time.

Committee consideration

20. The Committee asked the Member why the Bill does not contain any specification of the detail of the content of the guidance. The Committee also asked why the guidance is not subject to any formal scrutiny by the Parliament.

21. The Member responded that it is commonplace for Commissioners to have powers to issue guidance. The Member stresses that the Commissioner can only issue guidance about the exercise of the duties placed on public bodies in section 1(1) of the Bill.
22. The Member responded that guidance is not normally subject to any form of parliamentary procedure. The Member highlights that the guidance does not create any obligation to comply if the circumstances do not require a public body to do so.
23. The role of the Commissioner is to promote the wellbeing of future generations by promoting sustainable development by public bodies in the decisions that they take (section 5(1)). In exercising that role, the Bill requires the Commissioner to prepare and publish guidance for public bodies. The Member has highlighted that the power is limited.
24. The Committee is aware that the power to issue guidance is closely linked to the definition of wellbeing. As the Member has invited suggestions to improve that definition, and as the Committee is content to invite the lead committee to consider the policy intention of the definition further, it is therefore content that the policy behind the power to issue guidance will also be closely considered by the lead committee.

25. The Committee accepts that the power given to the Future Generations Commissioner for Scotland to issue guidance is acceptable in principle.

26. The Committee reiterates that scrutiny of the policy intention behind the definition of wellbeing by the lead committee will play a crucial role for the whole Bill, including the extent of the Commissioner's powers to issue guidance. It therefore highlights the importance of this scrutiny to the lead committee in relation to this power.

