

DATA LABEL: PUBLIC



COUNCIL EXECUTIVE

SCOTTISH GOVERNMENT WELLBEING AND SUSTAINABLE DEVELOPMENT (SCOTLAND) BILL CONSULTATION

REPORT BY CHIEF EXECUTIVE

A. PURPOSE OF REPORT

To seek Council Executive approval for the proposed response to the Scottish Government Wellbeing and Sustainable Development (Scotland) Bill consultation, as detailed in Appendix 1.

B. RECOMMENDATION

To approve the council's response to the Scottish Government consultation.

C. SUMMARY OF IMPLICATIONS

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| I Council Values | Caring and Compassionate; Open, Honest and Accountable; Collaborative, Inclusive and Adaptive |
| II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment) | None. |
| III Implications for Scheme of Delegations to Officers | None. |
| IV Impact on performance and performance Indicators | None. |
| V Relevance to Single Outcome Agreement | None. |
| VI Resources - (Financial, Staffing and Property) | None. |
| VII Consideration at PDSP | Corporate Policy and Resources PDSP, 29 February 2024. |
| VIII Other consultations | None. |

D. TERMS OF REPORT

| 5.1 Defining Wellbeing | |
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| <p>Is a statutory definition of wellbeing required?</p> | <p>Yes, a statutory definition is required as the definition of wellbeing is open to subjectivity which could result in high levels of variance or inconsistency service provision. Quality assurance of services, clarity of responsibilities, rights-based practice and clear expectations would all be particularly challenging if there is no statutory definition.</p> <p>In the absence of a statutory definition, courts will look to the plain language meaning of the word, and then to dictionary meanings. Dictionary meanings are mostly about personal wellbeing, involving individual rights and benefits, rather than community or collective wellbeing which is the target of this proposed legislation.</p> <p>The imposition of a statutory duty, especially one which will involve the use of public money and other resources, must make the requirements and limits of that duty clear. A set of guiding principles would also be welcome with the ability to apply local circumstances.</p> |
| <p>Do you have any views on how 'wellbeing' can be clearly defined in legislation?</p> | <p>Any definition should be simple, clear and workable and should avoid confusion, conflation and/or overlap with wellbeing where it is found in other legislation</p> <p>It should be accompanied by a list of relevant factors and considerations by which actions to implement the duty can be designed and assessed.</p> <p>There is merit in providing Ministers with the power to issue statutory guidance, but only after consultation on its terms. Councils already have a power to advance wellbeing (sections 20-22 of the Local Government in Scotland Act 2003). For councils, it is possible and would be preferable to make links to that power so that the legal power and the legal duty are aligned. In doing so, the statutory guidance on the wellbeing power should be revisited and updated from its still current original 2004 form.</p> <p>The legal duty should not be a stand-alone duty. That will add an unnecessary burden to councils and other public bodies who will have the duty imposed on them. It may lead to "Departments of Wellbeing". The better approach would be to require councils to have regard to the duty to advance wellbeing (as defined) when carrying out their public functions. That would be the same approach taken in relation to the Fairer Scotland duty, and in relation to green/environment duties to address climate change.</p> <p>There are various national approaches to improve the wellbeing of people that are familiar to local governments and which local authorities already have a power to advance. Significant consultation was undertaken when these were being developed and therefore consideration needs to be given to what is already in existence which includes GIRFEC and GIRFE and wellbeing indicators.</p> |

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| | Any wellbeing definition should be rights based, strengths based and holistic. |
| 5.2 Defining sustainable development | |
| Is a statutory definition of 'sustainable development' required? | <p>Yes, but not without understanding the impact that such a definition may have on current legislation and practice where the term sustainable development (probably undefined) is already used. For example, The Town and Country Planning (Scotland) Act 1997 Section 3ZA – Purpose of Planning states:</p> <p>(1) The purpose of planning is to manage the development and use of land in the long term public interest.</p> <p>(2) Without limiting the generality of subsection (1), anything which—</p> <p style="padding-left: 40px;">(a) contributes to sustainable development, or</p> <p style="padding-left: 40px;">(b) achieves the national outcomes (within the meaning of Part 1 of the Community Empowerment (Scotland) Act 2015),</p> <p>is to be considered as being in the long term public interest</p> <p>(3) This section applies only to the Scottish Ministers' and planning authorities' exercise of functions under Parts 1A and 2.</p> <p>In addition, consideration needs to be taken on how local authorities will be required to report back and evidence that something that is delivered or any policies developed 'meets the needs of the present without compromising the ability of future generations to their own needs'.</p> |
| 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"? | <p>There should be alignment with the common definition. However, that definition is already used within National Planning Framework 4, which although not itself a statute, is part of the Statutory Development Plan.</p> <p>Care would need to be taken to ensure that the definition did not act contrary to other legislative or regulatory frameworks or change the implementation of these frameworks.</p> |
| Do you have other views on how 'sustainable development' can be clearly defined in legislation? | <p>See responses above on statutory definitions of wellbeing and sustainable development. There are already existing definitions of sustainable development and care would need to be taken to ensure that any 'new' legal definition was consistent with existing definitions.</p> <p>Legislation needs to enable local circumstances and factors to be taken into account.</p> |
| What future wellbeing issues or challenges do you | The determinants of wellbeing and sustainable development have an impact on and are impacted on through a range of factors already |

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| <p>think legislation could help ensure we address?</p> | <p>covered by policy areas and legislation. There are already powers contained within various pieces of legislation which allow local authorities to advance wellbeing of people as well as national approaches. Any future legislation needs to ensure it is consistent with what is in existence and does not conflict.</p> <p>From a planning perspective, legislation should address environmental wellbeing.</p> |
| <p>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?</p> | <p>See responses above on statutory definitions of wellbeing and sustainable development. There is a need to avoid confusion with the term where it appears in other legislation, and the preference for adopting an existing definition if that is possible.</p> <p>There is a risk of definitions which are inconsistent in law and a greater risk of a national definition which essentially supersedes existing legislative definitions. This runs the risk of practical changes to the implementation and effect of legislation. It is not possible to say what these changes may be at this stage.</p> |
| <p>5.3 Strengthening duties for the National Outcomes and sustainable development</p> | |
| <p>How could a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?</p> | <p>It is already defined in legislation – for example in the Planning Acts and that may provide a model for wider a duty.</p> <p>See above on defining wellbeing (5.1) and sustainable development (5.2).</p> |
| <p>Are there specific areas of decision making that should be included or excluded from the Bill?</p> | <p>No.</p> |
| <p>What issues, if any, may result from strengthening the requirement to have regard to National Outcomes?</p> | <p>Note that local authorities are already operating under severe financial pressures, and any additional requirements would need to have regard to this.</p> |
| <p>5.4 Clarifying to whom the duties apply</p> | |
| <p>Should any duty apply to the Scottish Government?</p> | <p>Yes.</p> |
| <p>Do you have any views on the range and type of organisations that any duty should apply to?</p> | <p>There is an argument that it should apply to all organisations including Scottish Government, councils, community planning partnerships and devolved public bodies carrying out public functions in Scotland.</p> <p>It would be prudent to use the list of public bodies subject to the Fairer Scotland duty.</p> |

| 5.5 Defining ways of working | |
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| 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? | Reporting needs to match the resources required to deliver the duty. It needs to be simple and enable local circumstances to be taken into account. The imposition of a complicated and onerous reporting or monitoring system has no obvious benefits and would add to the already severe financial pressures under which councils operate. The approach taken to the Fairer Scotland duty would be sensible, whereby public bodies covered by the duty demonstrate their compliance through and during the decision-making process. |
| What additional steps are needed to ensure collaboration and working across boundaries? | No additional steps are required. Reporting and requirements need to be simple and unless any changes come with additional resources they cannot be too challenging to undertake. |
| Do you have any views on whether any duty related to ways of working could create conflicts with duties currently placed on you? | The duty could create additional workload in terms of reporting when the aims and principles of wellbeing and sustainable development are already factored into local authority service delivery. |
| Do you have any views on the additional resource implications necessary to discharge any wellbeing duty in your organisation? | <p>The imposition of a complicated and onerous reporting or monitoring system has no obvious benefits and would add to the already severe financial pressures under which councils operate. Assessing proposals against the wellbeing/sustainable development duty could be reasonably readily absorbed into the existing process of equality impact and Fairer Scotland assessments.</p> <p>Resources will need to be provided to support the additional reporting and any monitoring requirement should new legislation or a duty be placed on local authorities.</p> |
| 5.6 Determining an approach for future generations | |
| Should Scotland establish an independent Commissioner for Future Generations? | No. The Scottish Government's paper on commissions and commissioners (The role of commissions and commissioners in Scotland and the UK, March 2023) stated that there is very little published research on commissioners, no handbook or blueprint within government for designing the role, and little evaluation exploring the pros and cons of different approaches, powers or ways of working for commissioners. It is not apparent what value a commissioner would add where such a wide-ranging duty of universal application is concerned. A commissioner is likely to bring with it a regime of advice, guidance, monitoring and reporting, and possibly investigation, direction and sanction. The complexity and added cost in time and financial resources for both Scottish Government (maintaining the office) and public bodies (compliance and reporting) outweigh what might be hoped to be benefits but which cannot be guaranteed. The operation of "wellbeing" duties in other contexts generally do not require that kind of regime. Public |

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| | bodies should be required to have regard to the duty in their decision-making and service delivery and face the consequences in terms of complaint, litigation and reputational harm should they fail to do so. |
| In what ways could an independent Commissioner for Future Generations increase the accountability, scrutiny, and support for decision making? | See previous question and answer. |
| Are there alternative ways we can increase the accountability, scrutiny, and support for decision making? | See previous answer and references in earlier answers to similar and comparable legal regimes. |