

Wellbeing and Sustainable Development Bill - Consultation Submission from the Children and Young People's Commissioner Scotland

February 2024

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

This response was originally submitted via the Scottish Government's Consultation Hub.

Defining wellbeing – Is a statutory definition of 'wellbeing' required?

The office Children and Young Peoples Commissioner for Scotland are supportive of some of the principles contained within the proposed legislation on sustainability and wellbeing, however, we see a number of potential difficulties in attempting to define the term 'wellbeing'.

During the parliamentary process surrounding the Children and Young People (Scotland) Act 2014, these concepts were explored in detail. We note that as opposed to the attempts there to define a concept of personal wellbeing – the intentions of the proposed legislation appear to speak more to a definition of 'societal wellbeing'.¹ However, the distinction is not entirely clear from our reading of the consultation document, which provides little insight into how the government might be proposing to address this issue.

The exercise of defining wellbeing is complex, primarily because it is a relative term and its meaning can change over time. Trying to define it as a standalone concept is difficult. The difficulties can come from trying to put aspirational policy goals and standards into the format of legislation and law. Researchers have commented that;

*'Many attempts at expressing its nature have focused purely on dimensions of wellbeing rather than one definition. Definitions can be too broad or fuzzy and end up losing meaning. Wellbeing is a multidimensional construct.'*²

The 2014 Act attempted to introduce legislation based on the principles of UNCRC but fell short of incorporation. Our view, based on that experience, is that direct

¹ [The Wellbeing & Sustainable Development Bill is an opportunity to transform Scotland's future \(weallscotland.org\)](https://weallscotland.org)

² Dodge et al 'The Challenge of Defining Wellbeing' (2012) - [The challenge of defining wellbeing | International Journal of Wellbeing](#)

incorporation is needed to give rights real meaning and we're pleased that this has been achieved with the UNCRC. If human rights, under the ECHR, the UNCRC etc, are fulfilled then this creates the conditions for wellbeing to be fulfilled, at a personal and societal level. As such we promote the use of a rights-based approach in order to secure and fulfil human rights for all.

The use of the SHANARRI wellbeing indicators in the 2014 Act provided flexibility but can also cause confusion or unintended consequences. There have been instances, where this has led to unnecessary intervention and an overly paternalistic approach which takes away autonomy, even pathologising individuals.³

Whilst the focus of this consultation is a wider concept of societal wellbeing, the continued use of the SHANARRI wellbeing indicators by children's services means that there is a significant risk of confusion between these and the concept of wellbeing proposed in this consultation.

We note that WEALL Scotland have proposed the following definition of wellbeing -

“Collective wellbeing is the progressive realisation of social, economic, environmental and democratic outcomes which enable people to meet their needs, as identified through consultation with the people of Scotland, pursued in a way that reduces inequalities in wellbeing between different groups. It also recognises the importance of protecting the interests and needs of future generations and fostering intergenerational equity.”

Where this refers to social, environmental and democratic 'outcomes' these should be rights. Our view is that the upcoming Human Rights Bill which sets out to incorporate treaties which include these types of economic and environmental rights, would provide the best route to ensuring these rights are protected and therefore to improve wellbeing.

Do you have any views on how 'wellbeing' can be clearly defined in legislation?

We do not see added value in wellbeing being defined in legislation as a standalone concept and as stated above feel that human rights offer a preferred framework.

Defining sustainable development - Is a statutory definition of 'sustainable development' required?

Creating a statutory definition of 'sustainable development' within Scottish legislation would be a welcome and positive step. This could serve to provide clarity to public authorities and to individuals. Some of the challenges that exist when trying to define wellbeing are not applicable here. Defining 'sustainable development' would set a clear principle and set of standards and provide guidance to policy makers.

³ In the case of the 2014 Act, the decision in *The Christian Institute and others (appellants) v The Lord Advocate (Respondent) (Scotland)* found that the 'named person' scheme was in breach of children's ECHR Article 8 rights. [The Christian Institute and others \(Appellants\) v The Lord Advocate \(Respondent\) \(Scotland\) - The Supreme Court](#)

We envisage that this law could have the effect of influencing behaviour change at a societal level. We have seen the effects laws can have on changes to behaviour in examples such as the introduction of charges for plastic bags, it has been shown that there is less plastic bag waste as a result. Since the smoking ban there are also decreasing numbers of cigarette smokers. On a connected point, there could be legislation introduced to challenge the sale, use and littering of vapes, something which children and young people have told us they are concerned about.

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”?

We are supportive of this definition being used. We note that this is a common and widespread definition and is also the one that is used in the Well-being of Future Generations (Wales) Act 2015. We note that the 2015 legislation goes further than this definition to provide additional clarification in S5(2), giving some matters a public body must take into account which includes the principle that the public body must consider;

‘How deploying resources to prevent problems occurring or getting worse may contribute to meeting the body’s well-being objectives, or another body’s objectives.’

This is also the definition which is used by the United Nations through their sustainable development agenda which encapsulates 17 sustainable development goals. This was adopted as a resolution at a General Assembly in 2015.⁴ Adopting this definition would keep us in line with international standards.

If this legislation is effectively implemented, then it has the potential to help address a very wide range of issues for our future and that of future generations. There is a pressing need to anticipate global trends and mitigate the impact of these. Scotland should be a better place to live for future generations. There are a number of threats to this – both domestically and at a global level and Scotland should be part of a solution to make a more optimistic future. The main areas where this legislation could have an effect are in the environment, the economy, health and education. There is also a focus that should be given to recognising our place on an international level – as part of a global community and looking to maintaining peace.

The UN has been leading the way in the protection of future generations through their ‘sustainable development agenda’ which sets out the 17 sustainable development goals. They have held a future generations summit called the Pact for the Future. A number of useful briefings resulted from this.⁵ They are looking to appoint a UN envoy to represent and advocate for future generations.⁶ This would sit

⁴ [Unanimously Adopting Historic Sustainable Development Goals, General Assembly Shapes Global Outlook for Prosperity, Peace | UN Press](#)

⁵ UN (2023) ‘Policy Brief 1: Future Generations’ - [PB11 UN 2-0 SOF](#)

⁶ Ibid

alongside the newly drafted Pact for the Future⁷ and the anticipated Declaration on Future Generations. We should look to these standards and be an active participant in ensuring these protections.

Children and young people are an important part of this and the UN have highlighted just how essential they are to this movement. They describe young people as the “torchbearers” of the Sustainable Development Goals. Children and young people account for two thirds of the world’s poor and suffer disproportionately from the goals being off track.⁸ ‘Young people have become a driving force for societal change through social mobilization - pushing for climate action, seeking racial justice, promoting gender equality and demanding dignity for all.’

Environment

The most obvious challenge we face relates to the combined climate and nature emergencies. We are currently using resources at rates we cannot sustain.⁹ The long term effects this has have been well established and spoken to by the IPCC.¹⁰ These include the long-term impacts on health, the increase in severe natural weather occurrences, the impact on availability of food and other resources.

Children and young people consistently tell us that climate and nature related matters are a priority concern for them. They highlight high levels of anxiety and worry about the planet. It should be the role of Governments to take the steps that are needed to protect them against these threats. They often tell us how powerless they feel, they have made their voices heard through the Fridays for Future movement or attending COP 26 but nothing changes and they feel unheard and frustrated. One young person told us;

“I have almost just accepted that it (climate change) is happening and I can’t do anything.”

Another told us:

“Its ‘frustrating’ we change our lifestyles but its discouraging when nothing happens on a larger scale, its caused by big companies – not by average people”.

Economy

Poverty is the most significant children’s rights issue we are facing in Scotland. The Scottish Fuel Poverty Advisory Panel highlight that in Scotland around 850,000 households (34% of households) are currently living in fuel poverty and 23% of households are living in extreme fuel poverty. The latest Concluding Observations from the UN Committee on the Rights of the Child noted a ‘deep concern’ that 250,000 children are living in poverty in Scotland, which equates to around one in four children.

⁷ UN ‘Pact for Future – Zero Draft’ - [sof-co-facilitators-zero-draft_pact-for-the-future.pdf \(un.org\)](https://www.un.org/development/desa/pact/zero-draft)

⁸ [our-common-agenda-policy-brief-youth-engagement-en.pdf \(un.org\)](https://www.un.org/development/desa/pact/zero-draft_pact-for-the-future.pdf)

⁹ [We’re gobbling up the Earth’s resources at an unsustainable rate \(unep.org\)](https://www.unep.org/news-story/2021-03-23-we-re-gobbling-up-the-earths-resources-at-an-unsustainable-rate)

¹⁰ [Climate Change 2021: The Physical Science Basis - IPCC Working Group I contribution to the Sixth Assessment Report](https://www.ipcc.ch/report/ar6/wg1/)

Experiencing poverty can severely affect a child's development and have a negative impact on their rights to mental and physical health, education, family relationships, standard of living, aspirations and life chances - both in childhood and adult life. It interferes with their rights to attain the highest attainable standard of health (Art 24 UNCRC), to benefit from social security (Art 26 UNCRC) and to an adequate standard of living (Art 27 UNCRC).

The UN has stated that:

"The intergenerational transmission of poverty and inequality, including gender inequality, is well documented. The more equitably we distribute resources and opportunity today, the better the outcomes for future generation."¹¹

Taking a different outlook on the economy should be part of sustainable development. Considering what it will take to really lift people out of poverty. As stated by the UN "We need a paradigm shift in what we measure as progress, so that we can capture data on the activities and outcomes that a society truly values and then use the data to better inform our policy and financial decisions."¹²

Strengthening duties for the National Outcomes and sustainable development - How could a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?

We recognise that there is an implementation gap between the National Outcomes and their use in policy areas. There appears to be a lack of follow through and it is not always apparent that they have been given their full consideration. The current duties placed on public authorities by the Community Empowerment (Scotland) Act 2015 to 'have regard' could be strengthened, although it should be recognised that duty bearers would require additional resources to comply with enhanced legal requirements.

There is insufficient evidence of leadership provided by the Scottish Government and Scottish Parliament in terms of holding themselves to account in meeting the National Outcomes. There is a need to provide greater clarity on how they used as a lens through which to determine Government business. Or as a scrutiny framework within the parliament.

There are a number of pieces of legislation in Scotland which refer to 'sustainable development' and transfer a duty to act within them. The Climate Change (Scotland) Act 2009 requires public bodies to act "in a way that it considers is most sustainable". The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, which amended the Climate Change Act sets out the duties conferred on public bodies relating to climate change – that public bodies must act "in a way that it considers is most sustainable", and that emissions target setting must consider the "likely impact of the target on the achievement of sustainable development".

¹¹ UN (2023) 'Policy Brief 1: Future Generations' - [PB11 UN 2-0 SOF](#)

¹² [our-common-agenda-policy-brief-beyond-gross-domestic-product-en.pdf \(un.org\)](#)

However, what these provisions lack to give them sufficient focus is a clear definition of what sustainable development means.

Clarifying to whom the duties apply - Should any duty apply to Scottish Government?

We think that the duties should apply to the Scottish Government.

Do you have any views on the range and type of organisations that any duty should apply to?

We submit that the range and type of organisations that the duties should apply to are in line with the UNCRC (Incorporation) (Scotland) Act 2023 and include Government Ministers and public authorities.

7.5 Defining ways of working - 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?

Clear accountability and scrutiny requires coherence and proportionality.

Pressures on public authorities is significant. Through the UNCRC (Incorporation)(Scotland) Act and the forthcoming Human Rights Bill, they are being asked to implement a human-rights based approach to decision making and accountability. There is a danger of dilution if too many frameworks are created, without adequate resource and support for them to be embedded by public authorities.

There is an opportunity to articulate how wellbeing objectives align and are integrated within the development of Minimum Core Obligations (through the Human Rights Bill) and human rights reporting duties for public bodies.

7.6 Determining an approach for future generations - Should Scotland establish an independent Commissioner for Future Generations?

We do not believe there is a clear case for a need for an independent Commissioner for Future Generations, and that this requires further exploration and scrutiny. We have set out our rationale for this below.

Whilst the Welsh Future Generation's Commissioner has been proposed as a good model for Scotland, we would note that there are some very real differences between the landscape in Scotland compared to Wales which could result in overlap of functions. In Scotland we have both the Poverty and Inequality Commission and the Just Transition Commission, neither of these publicly funded bodies exist in Wales.

The Poverty and Inequality Commission provides independent advice to Scottish Ministers on Poverty and Inequality, they monitor the current rates of poverty and propose solutions to reduce it. They have 'established a reputation as a trusted and authoritative voice providing evidence, insight and ideas to tackle poverty and

inequality in Scotland.¹³ They have been key agents in the introduction of the Scottish Child Payment. A clear overlap exists here with any remit of a Future Generation Commissioner to reduce poverty.

The Just Transition Commission provides independent scrutiny and advice on how to deliver a transition to a low carbon economy. Again, there is an overlap of remits here on the environment and the economy. They are currently consulting in relation to the announced closure of the Grangemouth Refinery¹⁴ and are mindful of weighing the competing needs of tackling climate change with the implications of large-scale job loss for individuals and the overall economy.

It is also important to draw a distinction between the role of specialist bodies which are set up to fulfil a policy aim, and that of National Human Rights Institutions (NHRIs) and Independent Children's Rights Institutions (ICRI). As an ICRI, the work of our office is framed and guided by the principles contained in General Comment no.2 (CRC Committee, 2002)¹⁵ and the UN Paris Principles (UN, 1993)¹⁶. In working to ensure respect for the rights contained in the UNCRC, General Comment no.2 recommends that ICRI have the power to, amongst other things: undertake investigations into any situation of violation of children's rights; conduct inquiries on matters relating to children's rights; and review the adequacy and effectiveness of law and practice relating to the protection of children's rights. In addition to having these functions, our office places children's voices, and experiences at the heart of our work, thereby ensuring direct accountability to children and young people across Scotland, while working on their behalf.

We can see the potential of overlap in our remit and that of a potential Future Generations Commissioner. Our statutory function to promote and safeguard the rights of children and young people covers a broad range of areas, some of which are also covered by the remit of other bodies. We have and foresee a requirement to continue to carry out work that touches on matters which would potentially fall within scope of this proposed Commissioner.

For example, as required under paragraph 13 of General Comment 2 (CRC Committee, 2002),¹⁷ our office has the power to carry out 'general investigations' and 'individual investigations' into whether a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people (or a specific child or young

¹³ [Looking forward with the Poverty and Inequality Commission - Poverty & Inequality Commission \(povertyinequality.scot/\)](https://povertyinequality.scot/)

¹⁴ [Statement on proposed closure of Grangemouth refinery – Just Transition Commission](#)

¹⁵ General comment no. 2 (2002), The role of independent national human rights institutions in the promotion and protection of the rights of the child. Available here: <https://digitallibrary.un.org/record/490983?ln=en>

¹⁶ Principles relating to the Status of National Institutions (The Paris Principles), General Assembly resolution 48/134, available here: <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>

¹⁷ The General Comment provides that NHRIs must have the power to “consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children,” and have the necessary powers to do so effectively.

person for individual investigations).¹⁸ However, our office is prevented from exercising this power where to do so would duplicate the investigatory function of another body in Scotland.¹⁹ Our office is required to report to Parliament following the conclusion of any investigation, including any recommendations arising from any investigation.²⁰

This proposal will likely result in an overlap with our office's power to investigate a service provider's decisions and actions in relation to children and young people. The proposals risk constraining our office's ability to investigate issues which are brought to our attention. We are expressly prohibited from exercising these functions where there would be duplication of work and as such an overlap in functions is a real concern.

We note that one of the achievements of the Welsh Future Generations Commissioner has been in respect of education reform and they have encouraged the adoption of 'a new purpose-driven curriculum with the Well-being of Future Generations Act at its core, with an emphasis on mental health and developing well-rounded ethically informed young people taught eco-literacy'²¹. This is an example of a clear potential overlap with our remit to promote educational rights of children and young people. We have been at the forefront of advocating for reform of the SQA, had consistent consultation with young people on this matter and championed their concerns. From our most recent consultation with children and young people education reform continues to be one of the top priorities children and young people have asked us to prioritise with our new strategic plan.

Overall, we feel there is a real need to avoid adding unnecessary complexity to the current landscape of commissioner's roles and of legal duties on public authorities.

We have a number of concerns about the current proliferation of proposals for Commissioners.

At present within Scotland there are seven 'officeholders' or commissioners who are directly responsible to the Scottish Parliament. There are currently proposals to potentially introduce around 10 new commissioner roles within Scotland.²² This number does not include the Victims and Witnesses Commissioner which is set to be established by the Victims Witnesses and Justice Reform Bill.

We note and welcome the Scottish Human Rights Commission paper "At a Crossroads - Which Way Now for the Human Rights System in Scotland?".²³ The Commission identifies the risk of complicating the accountability landscape with

¹⁸ Section 7, Commissioner for Children and Young People (Scotland) Act 2003

¹⁹ Section 7(2A), 2003 Act

²⁰ Section 11, 2003 Act

²¹ [Wales – where well-being isn't just a buzz word, it's the law – reflects on seven years of its world-leading Future Generations Act – The Future Generations Commissioner for Wales](#)

²² [crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf \(scottishhumanrights.com\)](#)

²³ [crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf \(scottishhumanrights.com\)](#)

overlapping roles and remits, the lack of intersectional understanding/work where a body has a restricted mandate, and the potential for an under-resourced body to be unable to meet the expectations of rights-holders. We consider that all these risks are worth consideration by the Committee and discussion with Scottish Government and stakeholders.

There are concerns that the proliferation of Commissioners offices will be a costly exercise and perhaps not be good value for money for taxpayers, especially if there are multiple bodies tasked with intervening on similar or identical matters. The expected creation of additional Commissioners across a range of discrete policy areas may impact on the availability of budget and resources for offices like ours which have broader roles and remits linked to the international human rights framework.

Overall, we feel there is a real need to avoid adding unnecessary complexity to the current landscape of commissioner's roles and of legal duties on public authorities.

This is of concern, and we are obliged to take it into consideration when expressing a view on the Bill. We ask that MSPs take a holistic approach to this type of legislation where proposals for additional Commissioners are considered rather than considering each proposal individually.

Are there alternative ways we can increase the accountability, scrutiny, and support for decision making?

We note that the Scottish Parliament/ Government and Local Government/ public authorities all have a role to play in their budget allocation and in achieving the National Outcomes, including sustainable development. Rather than look to additional external means of accountability and scrutiny, there are ways in which these bodies could work to improve their decision making.

This could include carrying out assessments about the impact of their decisions on future generations and for fulfilling principles of sustainable development, this could potentially look like the process of Child Rights Impact Assessment and serve as a useful tool to focus decision-making in this light. Decision-making or actions relevant to sustainable development could also be captured and scrutinised within the reporting mechanisms which will be established through the forthcoming Human Rights Bill.