

Wellbeing and Sustainable Development Bill Scottish Government consultation

Response from Obesity Action Scotland Closing date: 14 February 2024

Defining Wellbeing

Question 1 – Is a statutory definition of ‘wellbeing’ required?

Yes, a statutory definition of wellbeing is required.

Wellbeing can be a subjective concept, with varying understandings and interpretations into its meaning and applicability to policy. Without a clear definition, it will be more challenging to embed it into legislation and make it statutory. A definition makes it clear to all actors involved what is involved and is required to measure outcomes – without a definition it is very challenging to monitor and measure outcomes. We will discuss how wellbeing can be defined in legislation in our response to question 2 below.

The Getting it Right for Every Child (GIRFEC) framework already provides precedence for providing a statutory definition of wellbeing. It defines wellbeing in statutory guidance based on eight principles which include healthy, safe, included and active¹. Given that this definition and principles exist for child wellbeing, it is therefore reasonable to expect a definition for (collective) wellbeing for all citizens to be defined in statutory processes.

Section 5 on page 9 of the consultation document outlines a long list of ways that wellbeing will be ensured in the future. This is welcome, but it will be important to ensure that some areas in this list aren't prioritised over others. For example, the list contains commitments to ensure we are healthy and active, alongside ensuring Scotland has a globally competitive economy. There is a risk that the former could be deprioritised in favour of the latter. Having a statutory definition in place could help to address this and ensure relevant actors are held to account to deliver on improving wellbeing as defined in legislation.

It is welcome the proposed approach for defining wellbeing is being linked to the National Outcomes. However, we are unsure how the National Outcomes in their current form will help to achieve wellbeing. In June 2023 a consultation to Review the National Outcomes² was held. As acknowledged in the document for this consultation, the results and summary report from this consultation have still to be published so we cannot yet be sure what if any changes will be made to

¹ Scottish Government (2022) Getting it right for every child Statutory Guidance – Assessment of Wellbeing 2022 – Part 18 (section 96) of the Children and Young People (Scotland) Act 2014 <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2022/09/getting-right-child-girfec-statutory-guidance-assessment-wellbeing-2022-part-18-section-96-children-young-people-scotland-act-2014/documents/getting-right-child-statutory-guidance-assessment-wellbeing-2022-part-18-section-96-children-young-people-scotland-act-2014/getting-right-child-statutory-guidance-assessment-wellbeing-2022-part-18-section-96-children-young-people-scotland-act-2014/govscot%3Adocument/getting-right-child-statutory-guidance-assessment-wellbeing-2022-part-18-section-96-children-young-people-scotland-act-2014.pdf>

² <https://consult.gov.scot/national-performance-framework-unit/review-of-the-npf/>

the National Outcomes and associated indicators. In our response³ to the Review of National Outcomes consultation we called for some of the indicators to be updated to better reflect health and wellbeing. In particular, we called for the current economic growth indicator to be updated away from GDP, as measuring economic growth and overall economic performance by GDP alone is no longer appropriate. In terms of measurement of an updated indicator, the 14 measures outlined in the Wellbeing Economy Monitor⁴ could be used as the initial basis for this. The 14 measures focus on the areas of human, natural, social, and produced and financial capital, and include measures on inequality, preventable deaths and poverty. We also called for health to be added as a focus to many Outcomes where it is currently missing and outlined where we would like to see changes to current Outcomes and indicators. We also set out a range of proposed additional outcomes including - child healthy weight, maternal weight, and free school meals, all of which significantly contribute to improving wellbeing.

Current indicators within the National Outcomes need to be amended if we are to achieve a national policy agenda focused on improving national wellbeing. This needs to be a first action, as without these changes, the National Outcomes and indicators are unlikely to deliver improved wellbeing. We await the findings from the Review of National Outcomes consultation to be published and hope these will outline necessary updates which will support Scotland's journey towards a wellbeing-focused policy approach.

Question 2 – Do you have any views on how ‘wellbeing’ can be clearly defined in legislation?

The definition of wellbeing in the legislation should acknowledge that wellbeing needs to support improved human and planetary health. As outlined in our response to question 1, in relation to the economy, this needs to look beyond simply concentrating on growth and, as a result, GDP is no longer appropriate as the sole measure of economic performance/outcomes.

The World Health Organization (WHO) and others provide definitions for wellbeing, which could offer a foundation for developing a clear definition for the legislation in Scotland. The WHO define wellbeing as “... a positive state experienced by individuals and societies... it encompasses quality of life, as well as the ability of people and societies to contribute to the world in accordance with a sense of meaning and purpose”⁵. This closely links with and complements their definition of health as “a state of complete physical, social and mental wellbeing, and not merely the absence of disease and infirmity”⁵.

These definitions are widely recognised, evidence based, and accepted globally, and would provide a clear foundation for developing a definition of wellbeing for legislation in Scotland.

Defining sustainable development

Question 3 – Is a statutory definition of ‘sustainable development’ required?

Yes, a statutory definition of sustainable development is required. As with a definition for wellbeing, discussed in question 1, this is required to ensure it is properly understood and fairly and consistently implemented and applied in all policies and legislation.

³ <https://www.obesityactionsotland.org/media/4r5oz5ma/obesity-action-scotland-response-review-of-national-outcomes-call-for-evidence-final.pdf>

⁴ Scottish Government (2022) The Wellbeing Economy Monitor – December 2022 update <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2022/12/wellbeing-economy-monitor-december-2022-update/documents/wellbeing-economy-monitor-december-2022-update/wellbeing-economy-monitor-december-2022-update/govscot%3Adocument/wellbeing-economy-monitor-december-2022-update.pdf>

⁵ World Health Organization (2021) Health Promotion Glossary of Terms 2021 <https://iris.who.int/bitstream/handle/10665/350161/9789240038349-eng.pdf?sequence=1>

Question 4 – 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”?

The proposed definition provides a good basis for defining sustainable development. It is the definition used by the United Nations and promotes further alignment with the Sustainable Development Goals. Such a definition could make it easier to understand and apply to policy and legislation, and could also help ensure consistency across and between policy areas. The definition proposed in the consultation also aligns with the definition in the Welsh Well-being of Future Generations (Wales) Act 2015.

The definition could be further expanded to include concepts of fairness and equity, to ensure that any decisions made are done in so in a way which doesn’t undermine fairness and equity, and doesn’t widen inequalities.

Question 6 – What future wellbeing issues or challenges do you think legislation could help ensure we address?

The legislation could help to ensure a range of future wellbeing issues and challenges are addressed. One of these issues is the growing challenge of worsening public health outcomes. Over recent years, Scotland has witnessed a continued flattening and decline of both life and healthy life expectancy, with growing levels of inequality between our most and least deprived citizens. Looking specifically at obesity, this pattern is replicated, with rates projected to continue to rise if nothing is done to address the current trajectory, with rates of obesity-related non-communicable diseases (NCDs) projected to rise by as much as 10% by 2026⁶.

This links closely with a second issue, which is the significant economic challenge and impact posed by worsening population public health outcomes and growing inequality. A thriving sustainable economy which actively promotes wellbeing is a critical part of creating a Scotland which delivers wellbeing and sustainability in all policies for all, but high levels of population ill health are making this increasingly challenging to achieve. Recently published analysis outlined the economic cost of obesity in Scotland in 2022 to be a staggering £5.3 billion and a sizable proportion of this cost arose from wider economic costs, including lost productivity from increased absenteeism due to obesity-related ill health⁷. This is supported by recent findings from labour market analysis which found that Scotland has the highest proportion of working age people out of work due to ill health in the four UK nations⁸.

The legislation could help with addressing these issues, as it would place a statutory duty on all relevant actors to consider wellbeing in any policy decisions made, and so strengthen the likelihood of wellbeing being prioritised in decision-making. The issues outlined above cannot be addressed in isolation or by only one government department. They require a systemic, cross-government approach. The legislation could help support this by ensuring wellbeing and sustainable development are core focuses across government and beyond.

⁶ NCD Alliance Scotland (2022) Trend projection of predictable risk factors in Scotland <https://www.bhf.org.uk/-/media/files/what-we-do/in-your-area-scotland-pages/ncd/scotland-trend-projections.pdf?rev=bf18fb8533f04e419a0e104f642e01bb&hash=48CB25EDB4DAB657DCE0B6F69D50B5ED>

⁷ Nesta (2023) Costs of obesity in Scotland <https://www.nesta.org.uk/feature/counting-the-cost-of-obesity-in-scotland/>

⁸ <https://fraserofallander.org/economic-inactivity-and-ill-health-in-scotland/>

Strengthening duties for the National Outcomes and sustainable development

Question 8 – How could a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?

The current position within the Community Empowerment (Scotland) Act 2015 which requires all public authorities to “have regard to” the National Outcomes is weak and needs to be strengthened, to ensure the legislation is effective, and the interests of current and future generations are upheld. This should be a statutory duty to ensure full compliance. Section 13.1 in Annex A of the consultation document acknowledges that several stakeholders have expressed concern that “have regard to” doesn’t go far enough to ensure wellbeing and sustainable development are central to decision making, and we support these concerns. “Have regard to” is subjective which can therefore make it difficult to know if wellbeing and sustainable development have been fully considered in decision-making processes.

We propose that “have regard to” is replaced with something more concrete such as “must comply...” with the principles of wellbeing, sustainable development, and the interests of current and future generations, as defined in the Act. This would require a clear set of measures and/or matrices to monitor and measure outcomes against. The National Outcomes and the indicators within them should also be updated to better reflect the principles of wellbeing and sustainable development.

Question 10 – What issues, if any, may result from strengthening the requirement to have regard to National Outcomes?

We don’t believe the National Outcomes are sufficient in their current form to deliver on the principles of the Bill and so need to be updated as a first step.

We outlined how we believe the National Outcomes can be updated and strengthened in our response⁹ to the consultation *Review of National Outcomes* held in June 2023, as discussed in our response to question 1.

Clarifying to whom the duties apply

Question 11 – Should any apply to the Scottish Government?

Yes, the duties within the Bill should apply to the Scottish Government. It is important they are seen as an exemplar for the Bill and set the standard for others to follow.

It is also important for the duties of the Bill to apply to the Scottish Government in order to also cover private sector actors. In order to protect citizens from the actions of commercial actors that damage wellbeing, the government should introduce legislation to regulate these private actors to protect citizens and ensure wellbeing.

We will comment more on this in our response to question 12.

Question 12 – Do you have any views on the range and type of organisations that any duty should apply to?

Any duty should apply to as wide a range and as many types of organisations and stakeholders as possible.

⁹ <https://www.obesityactionsotland.org/campaigns-and-policy/consultation-responses/our-response-to-scottish-government-call-for-evidence-on-review-of-national-outcomes/>

As outlined in our response to question 11 above, we understand that duties from the legislation are unlikely to be able to be directly imposed on private actors/corporations, as the consultation document only makes reference to public authorities. The actions and activities of many of these private actors can significantly impact on wellbeing and sustainable development outcomes and so it therefore vital that any duties apply to them.

We note the third sector is not mentioned in the consultation document. The third sector makes a significant and important contribution in a range of ways to promoting and ensuring wellbeing and sustainability, including holding government to account. We would like to see the third sector acknowledged and recognised as a key actor in delivering wellbeing and sustainability objectives and outcomes.

Defining ways of working

Question 13 – 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?

We would welcome the development of a ways of working approach for Scotland, to support achievement of wellbeing objectives and to support accountability and scrutiny. The Welsh Ways of Working approach set out in the Well-Being of Future Generations (Wales) Act 2015, as detailed in Annex I of the consultation document, is a helpful model which could be used as the basis for a similar approach in Scotland. In particular, it is welcome that the Welsh approach outlines prevention and a long-term focus as two of the five overarching sustainable development principles¹⁰. We would like to see these principles applied as core principles for any framework in Scotland. As outlined throughout our response, prevention is an essential component of delivering wellbeing and sustainable development principles, and is identified as one of the four core principles of a wellbeing economy¹¹, alongside pre-distribution, people powered, and purpose, which we would also like to see applied as principles of wellbeing and sustainable development in Scotland.

Section 5.5 on page 12 of the consultation document outlines whether a ways of working approach needs to be set out in legislation, or whether the approach could instead be provided in statutory guidance. Whilst we agree that the ways of working approach doesn't necessarily need to be set out in primary legislation, we would argue that, if such an approach is implemented, it does need to be more than statutory guidance, to ensure compliance with it. It could for example, sit as secondary legislation, through regulations, which are easier to amend and change than primary legislation, but still have a legal/statutory legislative element to them, rather than being just guidance. In Wales, the ways of working approach is embedded within legislation.

Also, we note section 5.5 of the consultation document states that setting out a ways of working for sustainable development would define the ways in which public authorities should embed the principles and sustainable development in their decision making. We believe this could be strengthened to say must rather than should, to ensure compliance, and this could be achieved via a stronger legislative basis.

Determining an approach for future generations

Question 17 – Should Scotland establish an independent Commissioner for Future Generations?

Looking to the example from Wales, where they have an independent Commissioner, can provide important learning and demonstrates how a Commissioner can help to deliver the correct balance of harder legislative action alongside softer more persuasive action needed to ensure the actions of all

¹⁰ <https://www.futuregenerations.wales/about-us/future-generations-act/>

¹¹ Wellbeing Economy Alliance (2022) Bold, vital and entirely possible. 2040 Strategy <https://weall.org/wp-content/uploads/WEAll-Strategy-April-2022.pdf>

actors help to deliver on wellbeing and sustainable development principles. The Welsh example can provide the basis for a framework to be used to create and adapt a suitable equivalent for Scotland.

An independent Commissioner is particularly important if the Scottish Government are to be included as having duties apply to them. This will help to ensure the independence of decisions taken and can be used as a mechanism for holding the Scottish Government to account. In this regard, the Commissioner should report to the Scottish Parliament, rather than the Scottish Government, as is the protocol with other currently established Commissions and Commissioners in Scotland.

We note Sarah Boyack's Private Members Bill proposes the introduction of a Wellbeing and Sustainable Development Commissioner as part of this. The proposed remit of this Commissioner is broadly similar to that of the Future Generations Commissioner proposed in this consultation. There could therefore be potential to consider what the Commissioner resulting from this consultation should be titled and if the remit of it should cover not just future generations, but also wellbeing and sustainable development of current generations.

We are aware that the Scottish Parliament are currently holding an inquiry on Commissioner roles in Scotland, to assess if any additional Commissioners are required¹². The proposed Future Generations Commissioner is included on this list as a recognised Commissioner proposed in legislation, as is the Wellbeing and Sustainable Development Commissioner proposed in Sarah Boyack MSP Wellbeing and Sustainable Development private members Bill¹³.

Question 18 – In what ways could an independent Commissioner for Future Generations increase the accountability, scrutiny, and support for decision making?

The independence of the Commissioner role is critical for achieving accountability, scrutiny and support for decision making. Other Commissioners in Scotland already provide this independent role, such as the Children and Young People's Commissioner, which set a precedent and whose experience could be built upon and learned from. An independent Commissioner can play an important role in promoting and supporting long(er)-term thinking in decision-making, encouraging politicians and governments to think beyond political cycles, and can contribute to depoliticising decisions.

As outlined in our response to question 17, the Commissioner would report and be responsible to the Scottish Parliament rather than the Scottish Government, as is the protocol with the seven Commissioners currently in place – this is vital to ensure the activities of the Commissioner are accountable and subject to the appropriate scrutiny to ensure decisions made are not subjective and can be widely supported.

Lessons can be learned from the Welsh Commissioner. Their Commissioner has set out an implementation and impact approach/framework, which outlines how activity will be implemented, delivered, measured and evaluated¹⁴. This approach/framework could be utilised and adapted in Scotland to be used as the basis for monitoring and measuring accountability and scrutiny, and as a foundation to support decision making.

¹² <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/business-items/scotlands-commissioner-landscape-a-strategic-approach>

¹³ <https://www.parliament.scot/bills-and-laws/proposals-for-bills/proposed-wellbeing-and-sustainable-development-scotland-bill>

¹⁴ <https://www.futuregenerations.wales/work/implementation-and-impact/>

About us

Obesity Action Scotland provide clinical leadership and independent advocacy on preventing and reducing overweight and obesity in Scotland.

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