

## **Scotland Excel**

**To: Executive Sub-Committee**

**On: 26 January 2024**

**Report by:  
Chief Executive of Scotland Excel**

### **Wellbeing and Sustainable Development (Scotland) Bill**

#### **Consultation Response**

#### **1. Introduction**

The Scottish Government published a consultation to help inform the scope of any legislation for a proposed Wellbeing and Sustainable Development Bill in December 2023.

This consultation covers a broad spectrum of considerations for public bodies; how decisions taken will influence the wellbeing and sustainable development of those living in Scotland now, and in the future.

The draft response has a particular emphasis on procurement. With £14.5 billion public procurement spend in 2020-2021<sup>1</sup>, any duties embedded by the proposed Bill have relevance for improving outcomes for citizens, underpinning the National Performance Framework.

#### **2. Consultation Response**

A draft response to the consultation has been prepared and is presented to the committee in Appendix 1.

#### **3. Recommendation**

Committee members are requested to review and comment on the content of the draft submission. Comments will be considered for inclusion in the submission to the Scottish Government before the deadline for this consultation.

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<sup>1</sup> [Ministers report infographic updated 20 Jan \(www.gov.scot\)](https://www.gov.scot/ministers-reports/infographic)



# **Wellbeing and Sustainable Development (Scotland) Bill**

## **Consultation Response**

**Prepared January 2024**

### **1. Is a statutory definition of 'wellbeing' required?**

Yes.

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

This response is in the context of collaborative procurement acting as a mechanism for delivering public sector outcomes. Scotland Excel is the centre of procurement expertise for the local government sector serving Scotland's 32 local authorities and over 150 associate members from the public and third sector.

The organisation was established in 2008 in response to the McClelland Review of Public Procurement in Scotland, which recommended increased collaboration and improved procurement capability across the public sector. Over the past 15 years, Scotland Excel has worked closely with the Scottish Government and other centres of expertise on initiatives to raise the profile of public procurement and maximise the social, economic and environmental benefits it can bring.

Any legislative definition of "wellbeing" should align with the existing obligations under the sustainable procurement duty. A clear legislative definition would aid in establishing clarity for businesses, charities, and other providers of goods, works and services to the public sector on the obligations conferred on them by public contracts.

The Procurement Reform (Scotland) Act 2014 is underpinned by the National Performance Framework (NPF). It sets out the sustainable procurement duty which requires that a contracting authority must consider how it can improve the social, environmental, and economic wellbeing with a focus on reducing inequality.

The current definition in the context of the NPF, where wellbeing is defined as *"living well" as individuals and, collectively, as a society* could be extended in line with the World Health Organisation's definition. This more closely aligns with the sustainable procurement duty which states:

*"Well-being is a positive state experienced by individuals and societies. Similar to health, it is a resource for daily life and is determined by social, economic, and environmental conditions."*

### **3. Is a statutory definition of 'sustainable development' required?**

Yes

### **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"?**

Yes. Definition should be more aspirational "development that meets the needs of the present **and enables** future generations to meet their own needs".

## 5. Do you have other views on how 'sustainable development' can be clearly defined in legislation?

As above, consideration should be given as to how the new definition will align with duties already placed on public authorities under the Procurement Reform Act (Scotland) 2014.

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

Providing a common definition of wellbeing and legislating for alignment of public services with the definition creates clarity of purpose for public contracting. By setting out how any procured solution must consistently enhance wellbeing, there is potential to support the delivery of the national procurement strategy.

The recently published Public Procurement Strategy for Scotland 2023-2028 aligns with the National Performance Framework and places public procurement *"...at the heart of a sustainable economy to maximise value for the people of Scotland"*. The strategy is structured around the four primary areas:

- Good for businesses and employees
- Good for society
- Good for places and communities
- Open and connected.

Clear and consistent language in respect of wellbeing and community development could be used in support of the following strategic factors as set out below:

- Good for businesses and employees
  - **Suppliers** - bringing clarity to the role suppliers play in meeting the needs of citizens
  - **Supply Chain and Resilience** - articulating the importance of ethical supply chains in the national context
  - **SMEs, Third Sector and Supported Businesses** - evidencing the additional value the third and voluntary sector brings to societal outcomes when public contracts are formed in that sector
  - **Contract Management** - ensuring ongoing delivery of procured solutions continue to deliver for citizens.
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- Good for society
  - **Economic Wellbeing** - decision making in public procurement supports wellbeing and community development
  - **Emergency Situations** – managing societal risks to the benefit of all citizens through decision making that prioritises wellbeing
  - **Food Security** - articulating the role that responsible food production has within health and wellbeing, and procuring accordingly

- Good for places and communities
  - **Community Wealth Building – Fair Work First and Community Benefits** - Strengthening the links between these established mechanisms and their role in enhancing wellbeing
  - **Supporting a sustainable built environment** - recognising the importance of the built environment in the quality of peoples’ lives and establishing measures which move the construction procurement from a focus on cost management to outcomes
  - **Whole life costing** - including wellbeing considerations in measuring the benefits of public investment had potential to contribute to the success of several of these listed factors
  - **Community Participation** - involving citizens in public spending decisions to ensure measurable improvements in their experience of public services
  - **Climate Crisis and Environment** - linking specifications in contracts to climate change mitigation for society will be helpful. By defining tangible outcomes for suppliers more measurable change will follow.
- Open and connected.
  - The factors here are **Global Reach, Connectivity and Consistency**– all of these are improved by bringing greater clarity and common language to the expected outcomes from public procurement.

**7. 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?**

As above, consideration should be given as to how the new definition will align with duties already placed on public authorities under the Procurement Reform Act (Scotland) 2014.

**8. How should a legal duty be defined to ensure that public authorities uphold sustainable development and the interests of future generations?**

Public procurement in Scotland has a proven record of delivering sustainable outcomes. This is embedded legislatively through the sustainable procurement duty as part of the Procurement Reform (Scotland) Act 2014. The opportunity from a more defined approach to wellbeing is to bring greater clarity, consistency and accountability in delivery of public services.

**9. Are there specific areas of decision making that should be included or excluded from the Bill?**

The focus of this response to the consultation is on the role public procurement can play. The proposals on definitions and legislative clarity are welcomed. The extent to which Local Government decision making should be included within the Bill is beyond the scope of our response.

Once the decision to procure is made by councils, Scotland Excel facilitates collaboration to deliver national arrangements to optimise sustainable outcomes.

There are existing mechanisms through the sustainable procurement duty which legislates for a balance between environmental, social and commercial considerations in public contracts. The weightings apportioned to each is determined by the market and the outcomes required from the procurement exercise. Determination of appropriate weightings are made using tools and guidance published alongside the sustainable procurement duty, including life cycle impact mapping, sustainability test and prioritisation tool.

The opportunity afforded by the Wellbeing and Sustainable Development Bill is to bring enhanced clarity, consistency and language to contractual relationships. The potential exists to clearly link those outcomes delivered through procured solutions to those delivered by public bodies directly.

#### **10. What issues, if any, may result from strengthening the requirement to have regard to the National Outcomes?**

Scotland Excel welcome this development as in alignment with the existing legislative and policy landscape of procurement.

#### **11. Should any duty apply to the Scottish Government?**

Yes.

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

All public bodies in Scotland.

#### **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?**

The Procurement Reform (Scotland) Act 2014 requires contracting authorities to prepare an annual procurement report summarising regulated procurement activity in each financial year. The annual procurement report template contains a range of measures including summary of current/future regulated procurements, compliance with procurement strategy, community benefits, fair work first, Real Living Wage, payment performance and spend and savings summary.

In addition, Procurement Benefits Reporting Guidance was published in 2019 with detailed directions on the reporting of savings and benefits. Methodologies for recording Benefit Types and Best Practice Indicators are set out in recognition of the need to articulate value more broadly.

It is essential that the benefits of procurement are quantified through robust contract management and reporting mechanisms. While economic and social measures are well embedded in policy and procedure, environmental measures are under-represented. There is a need to increase consistency in what is being measured, how this is defined and to develop an appropriate national repository for data. This will strengthen the sector's ability to evidence delivery aligned to the provisions of the National Performance Framework.

**14. What additional steps are needed to ensure collaboration and working across boundaries?**

A robust level of commitment to collaborative approaches is essential to ensure efficiency, outcomes and value for money are maximised. This can be achieved while recognising diverse local economic requirements.

**15. Do you have any views on whether any duty related to ways of working could create conflicts with duties currently placed on you?**

This response is informed on the basis of the proposals being an enhancement to the current legislative framework while bringing clarity to the reporting landscape.

**16. Do you have any views on the additional resource implications necessary to discharge any wellbeing duty in your organisation?**

New legislative duties will likely come with additional reporting requirements which in turn require resources to be allocated appropriately.

**17. Should Scotland establish an independent Commissioner for Future Generations? (Yes/No/Don't Know)**

Don't know.

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

This is not yet clear in the context of public procurement and has not therefore formed part of this response.

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

Commentary on this topic is beyond the context of public procurement and does not form part of this response.