

Wellbeing and Sustainable Development (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Non-Government Bills Unit, on behalf of Sarah Boyack MSP, the Member in Charge of the Bill, in accordance with Rule 9.3.3B of the Parliament’s Standing Orders in relation to the Wellbeing and Sustainable Development (Scotland) Bill (“the Bill”). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 63–EN);
 - a Financial Memorandum (SP Bill 63–FM);
 - a Policy Memorandum (SP Bill 63–PM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 63–LC).
3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. Part 1 of the Bill places a duty on public bodies, which requires them to “have due regard for the need to promote wellbeing and sustainable development” in the exercise of their functions. In the exercise of this duty, public bodies must have regard to any guidance published by the Future Generations Commissioner for Scotland, the office of which is established by Part 2 of the Bill. Sections 2 and 3 define the key terms “sustainable development” and “wellbeing”, which are connected so that wellbeing is expressed as an outcome of sustainable development.

This document relates to the Wellbeing and Sustainable Development (Scotland) Bill (SP Bill 63) as introduced in the Scottish Parliament on 27 March 2025

5. Part 2 of the Bill establishes the office of the Future Generations Commissioner for Scotland (“the Commissioner”) and, more specifically:

- gives the Commissioner the general function to promote the wellbeing of future generations by promoting sustainable development by public bodies in all aspects of their decisions, policies, and actions (section 5);
- gives the Commissioner the power to carry out investigations into whether, by what means and to what extent public bodies have regard to wellbeing and sustainable development in making decisions, developing policy, or taking actions, including through requiring the provision of evidence and documents (sections 6 – 11 and Schedule 2);
- requires the Commissioner to prepare and publish a strategic plan and annual reports (sections 12 and 13);
- makes detailed provision for the Commissioner’s status, appointment, powers, staff and office and accounting (Schedule 1);
- applies legislation relating to public bodies to the Commissioner (Schedule 3).

Rationale for subordinate legislation

6. The Bill confers one power on the Scottish Ministers to make regulations and one power on the Future Generations Commissioner for Scotland to issue guidance to public bodies regarding their duty under the Bill.

7. The Member has, in considering what matters should be set out in subordinate legislation and the appropriate level of parliamentary scrutiny for subordinate legislation, had regard to the need to:

- strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- make proper use of valuable parliamentary time; and
- take account of the likely frequency of amendment.

8. The delegated powers are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill, and why the selected form of Parliamentary procedure is considered appropriate.

Delegated powers

Section 3(2): Wellbeing

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Provision

9. Section 3(1) of the Bill defines "wellbeing" by referencing various outcomes experienced by individuals and groups within society, considering key factors such as security, health, and opportunity. Section 3(2) grants Scottish Ministers the power to modify these factors through regulations, subject to the affirmative procedure.

Reason for taking power

10. The Member recognises that wellbeing is an amorphous concept, which is challenging to define comprehensively. The definition in the Bill references several key factors essential to individual and societal wellbeing. However, these factors may evolve over time due to societal, economic, and environmental changes. Granting the Scottish Ministers the power to modify these factors will ensure that the definition of wellbeing remains relevant and responsive to emerging needs and priorities.

11. The Member considers that it may be necessary or desirable to amend the definition of wellbeing in response to feedback from public bodies and the Future Generations Commissioner for Scotland during the implementation of the Act. This power provides the flexibility to adapt the definition based on practical experiences and feedback, without the need for primary legislation.

Choice of procedure

12. The definition of wellbeing is central to the Bill. As the exercise of this power is capable of altering one of the key concepts of the Bill and will also textually amend the Act which flows from this Bill, it is therefore considered that the higher level of scrutiny provided by the affirmative procedure is appropriate.

Section 5(2)(a): General function

Power conferred on: the Future Generations Commissioner for Scotland
Power exercisable by: Guidance
Parliamentary procedure: None

Provision

13. Section 5(1) gives the Commissioner the general function “to promote the wellbeing of future generations by promoting sustainable development by public bodies in all aspects of their decisions, policies and actions.” Section 5(2)(a) provides that, in exercise of that general function, the Commissioner is to (amongst other things) prepare and publish guidance for public bodies about the exercise of their duty under section 1(1). Section 1(2) requires that public bodies “must have regard to” any guidance issued by the Commissioner.

Reason for taking power

14. It is commonplace for commissioners to be given powers to issue guidance by the Act which establishes their office. This is acknowledged in the Scottish Government’s report, [‘The role of commissions and commissioners in Scotland and the UK’, March 2023](#), which states (page 19):

“As there is no single role for a commission or commissioner, they are set up in many different ways, with different powers. However, commissions and commissioners are normally provided with powers which stem from legislation relevant to their field. [...] The powers given to a commission or commissioner can be tailored specifically to the situation, and what is needed. However, the range of powers that commissions and commissioners in Scotland have [includes...:]

- [...]
- powers to provide advice, guidance, education, and training
- [...]
- powers to produce statutory guidance”.

15. The Member envisions that the Commissioner will play a crucial role in embedding a culture change within the public sector, away from short-term thinking and towards long-term, sustainable decision-making that maximises wellbeing for current and future generations in Scotland. In order to operate effectively, it is crucial that the Commissioner is equipped with all of the powers needed to fulfil their role, including a power to issue guidance to public bodies to assist them in discharging their public duty under the Bill.

Choice of procedure

16. Guidance is considered the most appropriate means for helping public bodies understand and discharge their duties under the Bill. The type of information intended to be provided in the guidance is not suitable for inclusion in regulations, nor would it be appropriate to set out such detail on the face of the Bill. Typically, guidance is not subject to parliamentary procedure, and this remains the case here. However, the Commissioner must publish the guidance and keep it under review.

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