

Annexe A: Task 1 - Conduct a review of existing national legislation and policies that promote/encourage assessment of Scotland's global impact across different sustainable development outcomes.

Review and analysis of Scottish legislation, policy and duties was carried out by Ishani Erasmus, Zoe Russell and John Davis.

A.1 Review of national legislation that promotes assessment of Scotland's global impact

Four searches were conducted, as follows:

Search 1. A search of academic literature, using the Scopus database: A small number of results were returned pertaining to global impact assessment, mainly from the environment and health fields. None were felt to be significantly relevant to this research.

Search 2. A broad search of primary legislation (Acts of the Scottish Parliament) using legislation.gov.uk: 66 results were returned which included the term 'impact'. Apart from the Climate Change (Scotland) Act 2009 (as amended by the Climate Change (Emissions Reductions Targets) (Scotland) Act 2019), none included explicit requirement for consideration of impacts outwith Scotland.

However, some could be interpreted to require such consideration by various public authorities. A few examples are provided below:

Air Departure Tax (Scotland) Act 2017

'7 Tax bands and tax rate amounts to be set by regulations

(1) The Scottish Ministers must by regulations—

(a) define one or more tax bands by reference to the final destination (as defined in section 16(5)) of a chargeable passenger carried on a chargeable aircraft, and

(b) for each band defined in accordance with paragraph (a), set the amount, or the method for calculating the amount, of each tax rate described in section 16(3).

(2) In preparing a draft of any regulations under subsection (1), the Scottish Ministers must have regard to the projected economic, environmental and social impacts of the proposed tax bands and tax rate amounts.

(3) The Scottish Ministers must keep under review the economic, environmental and social impacts of the tax bands defined and tax rate amounts set by regulations under subsection (1).'

Here, the problematic convention of referring to sustainable development on the basis of the 'three pillars, drawn from the UN World Commission on Environment & Development can be seen. The report emphasizes repeatedly that the social and ecological caused by economic

growth should be remedied through economic growth ' - growth that is forceful and at the same time socially and environmentally sustainable' (Brundtland *et al* 1987, Chairman's Foreword).

Transport (Scotland) Act 2019

'73 Prior consultation and impact assessment

(1) Before making, amending or revoking a workplace parking licensing scheme, a local authority must—

- (a) prepare and publish—...
- (iii) an assessment of the impacts of the proposal'

Scottish National Investment Bank Act 2020

'5 Balanced scorecard

(1) The articles of association must provide that the Bank must prepare and update a document ("the balanced scorecard") to assist its preparation of reports under this Act.

(2) The articles of association must provide that, in preparing and updating the balanced scorecard, the Bank is to have regard to—

- (a) the economic impact of the performance of its investments over time,
- (b) the social impact of the performance of its investments over time,
- (c) the environmental impact of the performance of its investments over time,
- (d) any other impact (financial or non-financial) of the performance of its investments over time as the articles may provide.'

Consumer Scotland Act 2020

'2 The general function of providing consumer advocacy and advice

(1) Consumer Scotland has the general function of providing consumer advocacy and advice with a view to...

...

- (d) promoting—
 - (i) sustainable consumption of natural resources, and
 - (ii) other environmentally sustainable practices, in relation to the acquisition, use and disposal of goods by consumers in Scotland,
- (e) otherwise advancing inclusion, fairness, prosperity and other aspects of wellbeing in Scotland....

...7 General provision about functions...

...(6) Consumer Scotland must have regard to the environmental impact of the actions of consumers.'

UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

'26 Improvement report

- (1) Environmental Standards Scotland may prepare an improvement report if it considers that, in exercising its functions (including regulatory functions), a public authority has failed to—
- (a) comply with environmental law,
 - (b) make effective environmental law, or
 - (c) implement or apply environmental law effectively...

... 28 An improvement report must—

- (c) set out the impact of the failure (including any environmental harm, risk of environmental harm or missed opportunity to improve the quality of the environment)'

Search 3: A search of primary and secondary legislation containing the terms 'global', 'transboundary', 'international' or 'coherence': returned very little. One example of tangential relevance is a series of pre-devolution Orders made under the UK Criminal Justice (International Co-operation) Act 1990. The one made in 1999 enabled co-operation with certain countries in proceedings relating to drug trafficking and other offenses. It did not require consideration of Scottish impacts within those countries (now partially revoked).

Search 4: A manual survey of the 337 Acts of the Scottish Parliament which had been given royal assent by that time. Acts from a range of policy areas which appeared to have global consequences were manually checked for global impact / policy coherence clauses.

Convention Rights (Compliance) (Scotland) Act 2001
Animal Health and Welfare (Scotland) Act 2006
Planning etc. (Scotland) Act 2006
Scottish Commission for Human Rights Act 2006
Public Health etc. (Scotland) Act 2008
Marine (Scotland) Act 2010
Public Services Reform (Scotland) Act 2010
Wildlife and Natural Environment (Scotland) Act 2011
Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011
Child Poverty (Scotland) Act 2017
South of Scotland Enterprise Act 2019
Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020
UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021
Budget (Scotland) Act 2021

As in Search 2, some of these Acts included clauses which could be construed as requiring consideration of extra-national impacts, but not explicitly so. One example is the Scottish Commission for Human Rights Act:

'2 General duty to promote human rights

- (1) The Commission's general duty is, through the exercise of its functions under this Act, to promote human rights and, in particular, to encourage best practice in relation to human

rights.

(2) In this Act, “human rights” means—

(a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998 (c. 42), and

(b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

(3) In this section, “promote”, in relation to human rights, means promote awareness and understanding of, and respect for, those rights.

(4) In deciding what action to take under this Act in pursuance of its general duty, the Commission must have regard, in particular, to the importance of exercising its functions under this Act in relation to—

(a) the Convention rights, and

(b) human rights of those groups in society whose human rights are not, in the Commission's opinion, otherwise being sufficiently promoted...'

Of all the legislation reviewed, only the Climate Change (Scotland) Act 2009 (as amended) appears to explicitly require consideration of extra-national impacts. Following are the relevant sections, as amended by the Climate Change (Emissions Reduction Targets)(Scotland) Act 2019.'

Climate Change (Scotland) Act 2009

'35 Climate change plan¹

(1) The Scottish Ministers must lay a climate change plan before the Scottish Parliament—...

(18) The plan must also set out the Scottish Ministers' proposals and policies for taking, or supporting, action to reduce emissions of greenhouse gases (whether in Scotland or elsewhere) which are produced by or otherwise associated with the consumption and use of goods and services in Scotland.

(19) The plan must also set out the Scottish Ministers' proposals and policies for supporting, including by the sharing of expertise and technology, action in developing countries to reduce emissions of greenhouse gases and adapt to the effects of climate change...

(22) In preparing a plan under subsection (1), the Scottish Ministers must have regard to—...

(b) the climate justice principle.

(23) In subsection (22)(b), the “climate justice principle” is the importance of taking action to reduce global emissions of greenhouse gases and to adapt to the effects of climate change in ways which—

(a) support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects, and

¹ Ss. 35-35C and cross-heading substituted for s.35 (23.3.2020) by Climate Change (Emissions Reduction Targets) (Scotland) Act 2019.

(b) help to address inequality.

(24) Each plan under this section must explain—...

(b) how the implementation of the plan is expected to contribute to the achievement of sustainable development, including the achievement of the United Nations sustainable development goals.

(25) Each plan under this section—

(a) must contain an assessment of the progress towards implementing proposals and policies set out in the immediately preceding plan, and

(b) may make such adjustments to those proposals and policies as the Scottish Ministers consider appropriate...

37 Reports on emissions attributable to Scottish consumption of goods and services²

(1) The Scottish Ministers must lay before the Scottish Parliament a report in respect of each year in the period 2010–2050 containing the following information.

(2) The report must, in so far as reasonably practicable, set out

(a) the emissions of greenhouse gases (whether in Scotland or elsewhere) which are produced by or otherwise associated with the consumption and use of goods and services in Scotland during that year....

...53 Programmes for adaptation to climate change...

...(2) The Scottish Ministers must lay a programme before the Scottish Parliament—

(a) setting out—

(i) their objectives in relation to adaptation to climate change...³

...(2A) In setting out their objectives under subsection (2)(a)(i), the Scottish Ministers must include an objective in relation to Scotland's contribution to international climate change adaptation in line with international best practice.'

A.2 Analysis of the passage of the Climate Change (Emissions Reduction Targets)(Scotland) Act 2019

To gain some insight into political positions that may affect the passage of a bill where amendments for global policy coherence are proposed, the passage of the 2019 Act was analyzed, based on grouped and marshalled lists of amendments, and official reports. As detailed above, the 2019 Act amended the 2009 Act to include such provisions in sections 35 and 53. The following table summarizes relevant amendments proposed, associated debate, and final outcome.

² Words in s. 37(2) renumbered as s. 37(2)(a) (23.3.2020) by Climate Change (Emissions Reduction Targets) (Scotland) Act 2019

³ Added by Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 asp 15 (Scottish Act) Pt 4 s.25

Stage	MSP	Amendment	Influence cited	Outcome
	To be inserted before s.1			
2 (first meeting), 18 June 2019.	Claudia Beamish (Lab)	91. Climate Justice Principles	Stop Climate Chaos Scotland	Withdrawn - Cabinet Secretary suggested that the 2009 Act as passed already included international and social justice criteria for target-setting (s.2(5). 4(4)), and that the Gov had lodged amendments for just transition criteria in the preparation of climate change plans. Further she contended that 91 would alter Ministers' relationship with the CCC, and she would work with CB to explore how principles of 91 could be embedded in the 2009 Act.
	Maurice Golden (Con)	104. Purpose of this Act (not moved) - that Scotland makes its fair share of global emissions reductions, and ensures 'planet, its people and wildlife avoid the worst effects of climate change'	Stop Climate Chaos Scotland	Not moved. Cabinet Secretary stated that it would place competing duties on Ministers.
	Stewart Stevenson (SNP)	50. In the long title to state the objective of 'contributing appropriately to the world's efforts to deliver on the Paris Agreement'.	?	Not moved?
	Target setting criteria			
	Claudia Beamish	93. target-setting criteria to include climate justice principles	Stop Climate Chaos Scotland	Not moved - as 91
	Claudia Beamish	103. Ministers must have regard to the climate justice principles in preparing the climate change plan.	Stop Climate Chaos Scotland	Not moved? As 91
	Maurice Golden	107 the objective of target-setting criteria should include that	?	Moved, then withdrawn - Cabinet Secretary committed to explore options for an amendment at Stage 3 regarding the technical aspects of calculation of ecosystems capacity.

Stage	MSP	Amendment	Influence cited	Outcome
		Scotland doesn't exceed 'the capacity of Scotland's ecosystem to regenerate the resources it consumes and absorb its waste'		
	Claudia Beamish	108. target setting criteria should include 'impact on international development, in particular the likely impact of the target on the ability of other countries to achieve the sustainable development goals'	Scottish International Catholic Aid Fund (SCI AF), Stop Climate Chaos Scotland.	withdrawn - Cabinet Secretary committed to work with CB to bring back at Stage 3, but in a form 'better technically aligned to the wider framework' (col.31) of the Act
Climate change plan				
	Claudia Beamish	127. climate change plan must set out how it contributes to 'effort of developing country parties to UNFCCC on net zero economics and adaptation.	Scottish International Catholic Aid Fund (SCI AF), Stop Climate Chaos Scotland.	'In relation to amendments 127 to 129, which relate to adding links to international efforts to tackle climate change to Scotland's domestic climate change plans, I would like the opportunity to explore exactly how that would best be done within the framework under the 2009 act. (Roseanna Cunningham). Ministerial commitment as above
	Claudia Beamish	128. as above re: 'sharing expertise and technology'	as above	as above
	Claudia Beamish	129. Must set out how it is aligned with UNFCCC agreements, coherence with Scottish international development strategy and aligned with SD.	as above	as above
Adaptation				
	Claudia Beamish	152. Now in 2019 Act (s.25) and	as above	Supported by Cab. Sec., so presumed to have been agreed by the Committee/

Stage	MSP	Amendment	Influence cited	Outcome
		2009 Act (s.53) - programmes for adaptation (contribution to international adaptation).		
Sustainable development				
	Claudia Beamish	153. Scottish Ministers and the advisory body to have regard to the impact of exercising their functions under this Act on the ability of other countries to meet climate commitments and to achieve SD.	as above	Cab. Sec. 'content in principle but would like to explore technical aspects of its implementation' (col.30).
Fair and safe emissions budget				
	Claudia Beamish	95. That this should be equitable, in line with common but differentiated responsibility, taking account of capabilities.	Stop Climate Chaos	CB sought to define a 'fair and safe emissions budget' in terms of equity and capabilities as well as limiting temperature rise as per the Paris Agreement. The Cab. Sec.'s amendment (54) sought to define it only in terms of temperature. The Cab. Sec argued that since both amendments could not be agreed at the same time, CB should not press her amendment, and member should support the Government amendment. She repeated that she had said in relation to previous groups of amendments that she would be 'happy to work with Claudia Beamish towards achieving a sensible and effective way of reflecting considerations of climate justice and international development in the bill at stage 3.' CB replied that 'both amendments 'mirror each other' and that both amendments should be withdrawn, pending 'a substantive conversation.' Both amendments were moved, with Green and Labour votes for CB's amendment and SNP and Con votes against it, resulting in it being disagreed to by 2 to 5. The Government amendment garnered 6 votes, with only CB abstaining, so being agreed to.
Consumption emissions				
Stage 2, 2nd meeting - 25 June 2019	Mark Ruskell (Grn)	122. Proposed amendments to the 2009 Act to the effect that goods and	?	The Cab. Sec. invited 'Mark Ruskell to not press amendment 122, however, because there is scope for it to be improved in advance of stage 3', adding that 'I also have concerns, which I would like to discuss with Mark Ruskell, that a separate

Stage	MSP	Amendment	Influence cited	Outcome
		<p>services contributing most to Scotland's consumption emissions, and actions Ministers had taken to reduce consumption emissions, would have to be reported to the Parliament. A Ministerial statement would have to be made about the report.</p>		<p>statement in relation to consumption statistics might be disproportionate. We must bear it in mind that international reporting practice is based on territorial rather than consumption-based emissions, and that there are substantial uncertainties around the data and methods that are involved in the latter.'</p> <p>The amendment was withdrawn by agreement.</p>
<p>Stage 3 debate, 25 September 2019</p>	Target setting criteria			
	<p>Claudia Beamish</p>	<p>19. To include the climate justice principle among the criteria for setting the Scottish emissions budget.</p>	<p>SCIAF</p>	<p>Amendment disagreed (for - Lab, Grn, LD; against - SNP, Con). The Cab. Sec. stated that amendment was 'unnecessary and potentially counterproductive... that ground is sufficiently covered by the existing set of criteria and... adding further principles to that would at best add no value and at work cause confusion' (OR, col.33). She argued that the just transition principle was not included, so it would be inconsistent to include the other climate change plan principle.</p>
	<p>Claudia Beamish</p>	<p>4. and 20. To ensure that 'a fair and safe emissions budget' is set on the basis of equity and common but differentiated responsibility responsibilities, and differing capabilities, with 'developed' countries taking the lead, as set out in Article 3 of the UNFCCC.</p>		<p>Amendment 4 (reference to UNFCCC) agreed to; amendment 20 disagreed (common, but differentiated responsibilities) (voting in blocs as above). The Cab. Sec. argued that 20 'risks creating presentational and legal hierarchies, by suggesting that those elements are more important than others' (OR, col.33).</p>
	<p>Mark Ruskell</p>	<p>24. To require report to Parliament of those goods and services which</p>		<p>Agreed.</p>

Stage	MSP	Amendment	Influence cited	Outcome
		contributed most to consumption emissions.		
	Claudia Beamish	6. The climate change plan must set out Ministers' proposals and policies for supporting action on mitigation and adaptation in 'developing' countries, including through the sharing of expertise and technology.		Agreed
	Mark Ruskell	34. The plan must set out proposal and policies for taking or supporting action to reduce GHGs produced by or associated with Scottish consumption.		Agreed.
	Claudia Beamish	10. In preparing a climate change plan, Ministers must have regard to the climate justice principle of taking action to mitigate and adapt to climate change in ways which support those most affected but least responsible, and least equipped to cope, and which help to address inequality		Inserted into 2009 Act.
	Claudia Beamish	12A. To amend amendment 12, so that the contribution of the climate change plan to SD does not negatively impact the ability		Amendment 12, that the implementation of the climate change plan is expected to contribute to SD, including the SDGs, agreed. 12A, that the plan's proposals and policies do not negatively impact the ability of other countries to achieve SD.

Stage	MSP	Amendment	Influence cited	Outcome
		of other countries to achieve SD.		
	Claudia Beamish	14A To amend amendment 14 so that adaptation programmes do not negatively impact other countries ability to achieve the SDGs.		These mirror 12 and 12A. 14 was agreed to, but 14A was disagreed.

A3: List of existing sustainable development clauses in Scottish Acts

To consider how the WSD Bill could interact with existing legislation, a list of Scottish Acts was updated. A table containing the relevant clauses found is provided in a separate document. This list cannot be guaranteed to be complete, or to include all amendments made to the clauses included.

A4. Review of the outcomes of legal cases in Scotland where SD is a key concept

A brief synopsis of legal outcomes of cases which have served to test the concept of SD is provided, based on doctoral research carried out by Ishani between 2016 and 2019. It is as yet unpublished, but can be provided on request.

A5. Review of Scottish Government policies

In order to cover a wide range of policies, and to examine a number which the Alliance may not be familiar with, the review of policies focussed on the 117 set out at <https://www.gov.scot/policies>, and those that they linked to. They cover numerous issues, from access to justice, to young people.

A rapid review of selected policies and those they linked to, which might have international elements and/or extra-national impacts was carried out, including:

- Access to Justice
- Agriculture and the Environment
- Agricultural Payment: CAP
- Animal Health and Welfare
- Aquaculture
- Biodiversity Strategy
- Climate Change
- Community Empowerment
- Environment Assessment
- Faith and Belief
- Food and Drink: sustainable procurement action plan
- Gender Equality
- Growing the Economy
- Gypsy / Travellers
- Human Rights
- Improving Public Services
- Inshore Fisheries and Coastal Communities
- International Development
- International Relations
- International Trade and Investment
- Investment Finance
- Language
- Local Government
- Marine Environment
- Marine & Fisheries Compliance
- Marine Planning
- Nuclear Energy
- Oil and Gas
- Poverty and Social Justice
- Public Sector Procurement
- Science and Research
- Sustainable Performance

First the selected policies were scanned for any statement regarding international elements or impact. Those that did mention international aspects were examined more closely. Observations and conclusions from this are outlined in the main text. Some examples which illustrate different approaches are briefly outline here:

1. Should include international considerations but doesn't, e.g. Agriculture and Environment. This policy should consider global impacts as according to planetary boundaries data (Steffen *et al* 2015), global nitrogen and phosphorus cycles are already severely disrupted. This is not considered in the 'agriculture and the environment policy' which is mainly focussed on climate and on Scottish Nitrate Vulnerable Zones, the latter being concerned with the more local effects of nitrate over-application, rather than the global ones.

2. A clear focus on self-interest, e.g. International Relations, whose main focus is on business. There is mention of SDGs, but nothing explicit on global impact. The same applies to International Trade and Investment (emphasis on export). It appears that the International Development team sits under International Relations, but given the very different foci, the latter appears to be a discrete silo.

3. Some international consideration, e.g. Animal Health and Welfare - requires non-human animals and animal products to be produced at least to EU equivalent standards. The focus of the policy is mainly on protecting Scotland against pathogens, etc., so the emphasis is on domestic interests. There is a loose policy regarding pet trading/travel, whereby Pet owners are (only) 'encouraged... to check whether they are required to obtain any permits or documentation relating to the [Convention on International Trade in Endangered Species](#)'.

4. Implementation of international agreements in Scotland, e.g. Biodiversity Strategy - framed as 'A strategy for the conservation and enhancement of biodiversity in Scotland, published in September 2004.' Corresponding policy - <https://www.gov.scot/policies/biodiversity/> - does make reference to international agreements, but focus seems to be on implementation in Scotland, so does not connect, e.g. to imports which damage biodiversity elsewhere.

5. Does include international considerations, e.g. Food & Drink: Sustainable Procurement Action Plan - international consideration based on e.g. life cycle assessment, and fair and ethical trade. References the 2009 [Public Bodies Duties](#) including s.44(1)(c).

Other examples, along with some commentary are included in the main text.

A6. Complementary legislation

A brief review of selected complementary legislation is provided in a separate document

A7. Learning from existing duties

A review of learning from existing duties is provided in a separate document