Written submission from the Andrea Ross

Introduction to the Submitter
Andrea Ross is Professor of Environmental Law at the University of Dundee. She is the author of *Sustainable Development Law in the UK – from Rhetoric to Reality* (Earthscan / Routledge) and has written widely on the role of legislation (the UK, Scottish, Welsh and Canadian) in implementing sustainable development.

Scope of this response to consultation
I have the benefit of following the responses produced by the Law Society for Scotland and my colleague Professor Reid and strongly agree with the content of both. I would however, like to more specifically respond to the proposals to introduce a duty on selected public bodies to contribute to sustainable economic growth in section 4 and section 38 of the Bill.

(a) The use of the phrase sustainable economic growth

1. The Scottish Government, very usefully in my opinion, has set out a central purpose which is to ‘create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth’. This has been shortened by the Government to be a central purpose of ‘sustainable economic growth’. I believe this shortened version puts the emphasis on the wrong part of the full purpose. Indeed, Scots want to be successful, they want to flourish, how that happens is most likely to be of secondary concern to them. Sustainable economic growth (or see below, the broader term of sustainable economy), like good governance and sound science are key ingredients to that success and flourishing; they are enablers but they should not be the true purpose of Government.

2. It is possible that the Scottish Government could achieve sustainable economic growth without Scotland being successful. Conversely, Scotland could be very successful and most Scots flourishing without growth. As such, the term sustainable economic growth is too narrow and restrictive an economic goal and detracts from the real objective of ‘a successful Scotland with opportunities for all to flourish’. The message to the public sector is skewed by the inclusion of growth and marginalizes success or failure of Government to meet the real purpose of a successful Scotland. A broader economic goal of sustainable economy is preferred and this would allow growth (so long as it is sustainable), plateauing (only if sustainable) or even a shrinking of the economy (so long as it is sustainable) and, of course, all lead to a successful Scotland with opportunities for all to flourish. This is true regardless of the interpretation given to ‘sustainable’ (see below) and this broad approach is consistent with the phrasing used for the other enablers - ‘good’ governance and ‘sound’ science.

3. As noted by both Prof Reid and the Law Society, sustainable economic growth is capable of at least two very different interpretations. Is it simply the pursuit of growth avoiding large booms and busts (thus sustainable) or is it the pursuit of economic growth within the limits
of ecological and social sustainability. As discussed above, to be successful and flourish, Scotland needs an economy that operates within the ecological and social limits of the Earth for the benefit of its inhabitants now and in the future. Regardless of how this government interprets sustainable economic growth, there is no guarantee that a future government or the courts will not interpret it to mean a stable economy with no mention of its impact on ecological and social sustainability. History has shown that where key decisions need to be made the need to address immediate pressures (including war, economic recession, disaster, or an upcoming election) will very often outweigh concerns about long term effect.

4. This is a good reason to consider legal duties which require public bodies to consider the long term effects of their actions.

(b) The role of sustainable development and the value of general duties

5. The evidence shows that a policy approach supported by only minimal legislation has not led to long term sustainability, nor has it acted to protect innovative and crucial procedures, institutions and goals from electoral short-termism. The more we erode the Earth’s carrying capacity, the more the ability of leaders to provide just answers to economic and social crises diminishes.

6. Sustainable development, for all its definitional failings, has proven its resilience as a widely accepted, and now expected and measured, policy objective: internationally, in the EU, in Scotland and elsewhere in the UK. Most versions of sustainable development make decision makers at least consider the long term effects of their actions on the ecological limits of the Earth and its inhabitants, now and in the future.

7. Properly drafted duties on public bodies can create a meaningful framework for decision making based on sustainable development, while ensuring that this framework is iterative and flexible. They can serve to promote cultural change within government and beyond and unlike, procedures on their own, duties can be very symbolic. A significant amount of legislation already requires some authorities in Scotland to contribute to the achievement of “sustainable development”, however, it is hindered by a lack of clarity in the definition of sustainable development.

8. It is recommended that the Scottish Government re-focus its efforts to properly define sustainable development for Scotland in line with its central purpose of ‘a successful Scotland with opportunities for all to flourish’ with the health and wellbeing of Scotland’s people and environment, now and in the future, at the forefront of the definition. Scotland’s current approach to governance using Economic Strategy is ideally suited to this approach, as is the central purpose of ‘a successful Scotland with opportunities for all to flourish’. The inclusion of a clear, forward looking definition of sustainable development into such a clear approach to governance would, I believe, be world leading.
9. If this occurred, then a general duty on public bodies ‘to contribute to the achievement of sustainable development’ would be very valuable. Past experience in Scotland with specific duties and in Northern Ireland and Canada with general duties shows that in order to have any impact these duties need to be supported by legal procedures such as obligations to report, produce strategies or assessments, consult and review which are easier to enforce and monitor than the duties themselves.

Further reading