

Institution: University of Dundee		
Unit of Assessment: UoA 18 Law		
Title of case study: Sustainable Development Law in the UK		
Period when the underpinning research was undertaken: 2008-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g., job title):	Period(s) employed by submitting HEI:
Andrea Ross	Professor of Environmental Law	Nov 1996-present
Period when the claimed impact occurred: 2010-continuing		
Is this case study continued from a case study submitted in 2014? N		

1. Summary of the impact

Professor Ross's research has influenced the interpretation, implementation and monitoring of sustainable development in all the UK administrations. Her comprehensive review of sustainable development law and her authoritative text on sustainable development law in the UK has provided novel solutions for reform. Her work underpinned the introduction of the Wellbeing of Future Generations (Wales) Act 2015 and has been influential in the development of legislation, understanding and implementation of sustainable development law in Scotland. Her work engaged directly with the legislatures, government administrations and their agencies throughout the UK and has been used by environmental NGOs and professional bodies to critique and influence government behaviour.

2. Underpinning research

Professor Ross is a leading expert on sustainable development (SD) law in the UK. SD arose in the 1980s to reconcile the development concerns of poorer countries with the environmental concerns of more developed countries. It was popularly defined in the Brundtland report as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' and became a key objective worldwide.

The distinctiveness of Ross's research is its examination of SD from legal and national perspectives. Firstly, Ross's work has significantly contributed to the understanding and evolution of the term 'SD' by highlighting inconsistencies in its interpretation and use within UK administrations and over time, including: the shifting emphasis within SD between economic, social and environmental concerns; short term and long-term goals, as well as its relationship within the climate change agenda [R6, R4, R3]. Notably her work has shown how interpretations of SD that prioritise growth have led to inconsistency in decision-making, a preference for short term solutions and a lack of progress towards real SD goals [R6, R4, R3].

Ross argues that to meet modern challenges such as climate change, poverty and biodiversity SD must have living within the Earth's limits or 'ecological sustainability' (ES) at its definitional core [R6, R5, R4]. Uniquely, her work has shown that law can be instrumental in delivering this change and innovatively has shown how this approach is consistent with the UK's legal and cultural traditions and how other agendas (notably, Scottish and Welsh nationalism, land reform and human rights) fit within this vision of SD and can contribute positively to successful long-term solutions [R2, R1].

Secondly, Ross's work has uniquely charted and influenced the implementation and delivery of SD in the UK. Ross has critiqued the UK and devolved governments' approaches to SD since the 1990s and provided the first comprehensive assessment of the progress by UK

administrations in implementing SD [R4]. She explored SD as a topic that crosses traditional sectoral boundaries and as a function of devolution [R4, R2]. Funded by the British Academy, she studied the relationship between these duties, strategies for SD and indicators used to measure progress. Her work reveals that much of the institutional and policy architecture for delivering SD is in place in the UK, but that good practice is often ignored, and that strong mechanisms such as the Sustainable Development Commission (SDC) are left unfunded, often because they had little or no legal backing [R4, R5].

From these revelations, Ross has gone on to demonstrate how legislation can drive transformative change. She advocates that SD is best used to provide the framework for sometimes complementary, but often conflicting, factors to be raised and the best solution found within the parameters of ES. This balancing can be done within SD itself or by balancing SD with other factors. The latter, wider process she called the 'sustainable development equation' (SDE) and decisions about what factors should be raised and the priority afforded to each in any given SDE can vary significantly among decision makers [R1].

Ross has documented the character and usefulness of specific SDEs [R4], their relationship with other more entrenched duties and presumptions within wider decision-making processes in practice and their relationship with other agendas (e.g., 'sustainable economic growth' [R5]; Scottish and Welsh nationality [R2]). Her recent work uncovers a new era of SD policy in Scotland where both the meaning of SD and wider decision-making processes are tailored to reflect particular contexts not just in policy but also in law [R1]. Significantly, by showing how bespoke approaches to SD can be effective, Ross makes SD more attractive as a decision-making tool.

Ross designed three novel legislative models to improve implementation of SD using procedural obligations, substantive duties, declarations and legal rules. She demonstrated how making SD 'the central organizing principle of government' could be operationalized through the introduction of certain legal actions [R5, R4]. These models provided the impetus for what became the *Wellbeing of Future Generations (Wales) Act 2015*.

3. References to the research

[R1] Ross A. (2019) 'The evolution of sustainable development in Scotland - a case study of Community Right-to-Buy law and policy 2003-2018' *Sustainability*, 11 (1), pp. 130-148.

DOI: [10.3390/su11010130](https://doi.org/10.3390/su11010130)

[R2] Ross, A., Jones, R. (2016), 'Connections and tensions between nationalist and sustainability discourses in the Scottish legislative process' *Journal of Law and Society*, 43(2), pp. 228-256. DOI: [10.1111/j.1467-6478.2016.00750.x](https://doi.org/10.1111/j.1467-6478.2016.00750.x)

[R3] Ross, A. (2015), 'The future Scotland wants - is it really all about Sustainable Economic Growth?' *Edinburgh Law Review*, 19(1), pp. 66-100. DOI: [10.3366/elr.2015.0251](https://doi.org/10.3366/elr.2015.0251)

[R4] Ross A. (2011) *Sustainable development law in the UK: from rhetoric to reality?* London: Routledge DOI: [10.4324/9780203150085](https://doi.org/10.4324/9780203150085)

[R5] Ross A. (2010) 'It's time to get serious – why legislation is needed to make sustainable development a reality in the UK' *Sustainability*, 2(4), pp.1101-1127 DOI: [10.3390/su2041101](https://doi.org/10.3390/su2041101)

[R6] Ross, A. (2009), 'Modern interpretations of sustainable development' *Journal of Law and Society*, 36(1), pp. 32-54. DOI: [10.1111/j.1467-6478.2009.00455.x](https://doi.org/10.1111/j.1467-6478.2009.00455.x)

Quality of underpinning research

R4 benefited from Ross' success in applying for a British Academy Research and Development Award and the research behind R2 was funded by the Arts and Humanities Research Council (AHRC) following a successful application to their Connected Communities programme. Ross's

publications are widely used in environmental law and SD teaching in universities worldwide and over 190 institutions worldwide have purchased **R4** for their libraries:

https://www.worldcat.org/title/sustainable-development-law-in-the-uk-from-rhetoric-to-reality/oclc/962061100&referer=brief_results (accessed 22 06 2020)

R4 is considered an authority on SD law and has received favourable reviews: One reviewer (2012) noted that *‘the book seeks to move on the agenda on sustainable development law, even if in the current fiscal and economic climate it is arguably, at least in some parts of the UK, ahead of its time.’* Another said, *‘The UK owes Andrea Ross a debt for producing the first comprehensive examination of sustainable development in the UK from a legal perspective’*. A third stated, *‘Ross’ work is an authority in itself and one that not only provokes reflection on the failings of sustainable development in the past but opens the doors of possibility on how such failings might be overcome in the future’* (PDF copies available on request).

4. Details of the impact

Influencing SD legislation in Wales and in Scotland

In Wales

Since devolution in the UK, SD has been an important priority of the Welsh Assembly and Government. In 2011, citing Ross’s 2010 article in *Sustainability*, the then current Environment Minister for Wales announced proposals for a ‘ground-breaking’ Bill to make SD the central organising principle of government in Wales:

“...Andrea Ross published an article last year arguing that ‘the UK is now at a stage where specific legislation is required to drive the implementation of sustainable development further forward.’ Such legislation, she wrote, ‘could potentially address many of the current shortcomings by increasing the priority, support and protection afforded sustainable development across governments as a long-term policy objective’...I absolutely agree with this analysis.” [E1]

After proposals for a draft Bill were introduced in 2014, Ross was commissioned by World Wildlife Foundation (Wales) to assess and provide evidence whether the proposals were ‘ground-breaking’. Ross concluded that, despite some innovative aspects, what was proposed was disappointing. It limited its scope to governance, created weak discretionary aims and failed to deliver on transformational concepts such as ‘living within environmental limits’ and ‘being globally responsible’. Both WWF(Wales) and Ross’s own evidence referred to this work [E2]. The resulting *Well-Being of Future Generations (Wales) Act 2015* addressed these criticisms and has been heralded by the World Health Organisation as ‘groundbreaking legislation’ [E3]. The statutory 5 year review lists many examples of how SD has become central to public sector decision making, including changes to low carbon estate management, changes to procurement and the introduction of global responsibility in training for professionals and into the school curriculum [E4].

In Scotland

In 2015, Dr Jill Robbie (Glasgow University) quoted Ross’s monograph in oral evidence to the Rural Affairs, Climate Change and Environment Committee of the Scottish Parliament about the new community ‘right to buy’ provisions in the Land Reform (Scotland) Bill Part 5 to argue why a consistent understanding is needed to ensure SD is influential. She also noted that: *‘At UK and international levels, people such as Professor Andrea Ross have been doing comparative work on how jurisdictions manage the term.’* Dr Robbie then agrees with Ross’s findings that SD is best used as a forum for balancing different concerns. The Committee’s report emphasizes the need for a clear understanding of SD in legislation and guidance. The *Land Reform (Scotland) Act 2016* Part 5 includes significant detail on the meaning of SD for the purposes of Part 5, giving more certainty to community bodies, landowners and regulators involved in community buy-outs [E5].

In 2018, Ross (with Reid, Dundee) gave written evidence to the Environment, Climate Change and Land Reform Committee of the Scottish Parliament criticising the duty imposed under the Scottish Crown Estate Bill to maintain and enhance value as it did not reflect any obligation in relation to the public interest other than to focus on narrow financial gain and gave undue pre-eminence to pursuing economic interests over other concerns including social and environmental factors. Ross and Reid drafted a solution using SD which was subsequently referred to by two MSPs in their submissions to the Committee and endorsed by Fisheries Management Scotland [E6]. Ross and Reid's proposal is used as the final text of s.7 of the *Scottish Crown Estate Act 2019*. Subsequently, the strategy and practice of the Crown Estate published in 2020 now reflect this legislative shift in purpose and actively promote new sustainable ways of using natural resource and involving people in how land, coastline and seabed are managed [E7].

In addition to legislative change, Ross's work has influenced policy which in turn affects how decisions are made in practice. *The Regulatory Reform (Scotland) Act 2014* imposes a duty on public bodies to promote 'sustainable economic growth' (SEG). The Economy, Energy and Tourism Committee of the Scottish Parliament in its final report on the Bill, expressly referred to Ross's evidence which strongly criticised the use of the term SEG due to its apparent prioritisation of economic growth over social and environmental factors and its confusing relationship to SD. They recommended a definition be included in a statutory code of practice and subsequent guidance [E8]. The Code (2015) defines SEG as '*building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can enjoy a better quality of life too.... Economic growth that exceeds the limits of our environment or damages social and community cohesion is not sustainable.*' This clarification shifts the meaning of SEG away from pure economic sustainability to demand that decisions by all public bodies in Scotland also take into consideration social impacts and environmental limits [E9].

5. Sources to corroborate the impact

[E1] Jane Davidson, former Minister for the Environment in Wales (2011) 'ENDS Annual Lecture: A small country with big sustainability ambitions' *ENDS Report*, 442 (November 2011) Available at <http://www.endsreport.com/31468/a-small-country-with-big-sustainability-ambitions> (Accessed 12 March 2021)

[E2] Written evidence of WWF (Wales) referring to Ross's contribution see section 9. Available at: <http://www.senedd.assembly.wales/documents/s30078/WFG%2064%20WWF%20Cymru.pdf> (Accessed 12 March 2021)

[E3] World Health Organisation (2017) *Sustainable development in Wales and other regions in Europe achieving health and equity for present and future generations* Copenhagen: WHO Available at: http://www.euro.who.int/_data/assets/pdf_file/0007/354580/wales-report-20171116-h1520-web.pdf?ua=1 at vii; xi; 29. (Accessed 13 March 2021)

[E4] Future Generations Commissioner for Wales (2020) *The Future Generations Report 2020* Cardiff: Future Generations Commissioner for Wales Available at: <https://www.futuregenerations.wales/wp-content/uploads/2020/06/Chap-3-Global.pdf> (Accessed 12 March 2021) For specific examples see Chapter 3, at 20, 21, 31

[E5] The Scottish Parliament (2015) Official Report, Land Reform (Scotland) Bill: Stage 1, 26th Meeting, Session 4, Monday 7 September 2015 at 23; Land Reform (Scotland) Act 2016 s. 56. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10075&mode=pdf> (Accessed 12 March 2021)

[E6] The Scottish Parliament (2018) Stage 1 Report on the Scottish Crown Estate Bill, SP Paper 332 3rd Report, 2018 (Session 5), published 29 May 2018 at paras 167, 168; recommendation

at 182. [PDF Available] Written submission from Fisheries Management Scotland, by Dr Alan Wells, "Scottish Crown Estate Bill" at para 3 Available at:

http://www.parliament.scot/S5_Environment/Inquiries/010_Fisheries_Management_Scotland.pdf
(Accessed 12 March 2021)

[E7] The Scottish Parliament (2019) Scottish Crown Estate Act 2019 s. 7 Available at:

<http://www.legislation.gov.uk/asp/2019/1/section/7/enacted> (Accessed 12 March 2021) Crown Estate Scotland (2020) 2020-21 Business Plan

https://www.crownestatescotland.com/bundles/app/downloads/5eea299a5f835_2020-21%20Business%20Plan%20-%20for%20website.pdf see in particular p.3 references to COVID-19 response and 5 strategic objectives.

[E8] Economy, Energy and Tourism Committee (2013) *11th Report, 2013 (Session 4) Stage 1 Report on the Regulatory Reform (Scotland) Bill* 8 Edinburgh: Scottish Parliament (Paper 399 Session 4) at para 82, 104, 105 [PDF Available]

[E9] Scottish Regulators' Strategic Code of Practice 2015 Available at:

<https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2015/01/scottish-regulators-strategic-code-of-practice/documents/scottish-regulators-strategic-code-practice-pdf/scottish-regulators-strategic-code-practice-pdf/govscot%3Adocument/Scottish%2Bregulators%2527%2Bstrategic%2Bcode%2Bof%2Bpractice.pdf> (Accessed 12 March 2021)