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Independent Age also conducted polling as part of its '*Minds that matter*': *Understanding mental health in later life* report and found that only 1 in 8 (13%) of people aged 65+ think that 'older people are well represented in marketing/ adverts to improve mental health.'<sup>27</sup>

## **Physical Health**

The pandemic has made it harder for older people to look after their physical health. Isolation and social distancing reduced opportunities for older people to be physically active and restrictions led to the closure of community and leisure facilities, which many older people relied on to keep fit.<sup>28</sup>

The Physiological Society and Centre for Ageing Better have set out a range of impacts that may result from the decline in physical activity seen during the pandemic.<sup>29</sup>

Immediate impacts include:

- Cardiovascular, respiratory, and metabolic deconditioning
- Wider impacts of COVID-19 on physical activity, deconditioning and falls in older adults
- Loss of strength and balance
- Insulin resistance and increased fat mass
- Increased social isolation
- Worse mental health and wellbeing

Medium and long-term impacts include:

- Falls
- Depression
- Type II diabetes
- Cardiovascular disease
- Musculoskeletal problems

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<sup>26</sup> Ibid

<sup>27</sup> Independent Age, '*Minds that matter*': *Understanding mental health in later life*', 2020, available here: <https://www.independentage.org/policy-and-research/mentalhealth/minds-matter-report>

<sup>28</sup> Ibid, Page 5

<sup>29</sup> Wider impacts of COVID-19 on physical activity, deconditioning and falls in older adults' 2021, Page 16-17, Public Health England, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1010501/HEMT\\_Wider\\_Impacts\\_Falls.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010501/HEMT_Wider_Impacts_Falls.pdf)

There is also evidence that reduced physical activity among older people during the pandemic has had an impact upon the ability of many of them to carry out everyday activities, with many likely to struggle to perform activities that were previously easily doable.<sup>30</sup>

The role that a dedicated Commissioner could play in raising awareness of these issues will be fully explored under the 'detail of the proposed bill' section of this document.

## Digital Exclusion

The Centre for Ageing Better has conducted research funded by the British Academy/Leverhulme Trust into some of the barriers faced by older people when it comes to using technology.<sup>31</sup> They identified the following key barriers:

1. Self-confidence - some participants experienced low confidence and perceived themselves as being novices and not 'technology minded', while some lacked patience with technology.
2. Fear - some were fearful that they would break the devices, do something 'wrong' that they did not know how to fix, or they were worried about privacy issues.
3. Physical functioning - some also experienced physical barriers around the accessibility of technology. For example, for some the text was too small, making it difficult to read, or the buttons were too small.
4. Culture and communication - they found that cultural differences around communication impacted the way older adults used social media and their online connections. Some worried about how they would come across using social media or didn't like the way others communicated via social media.
5. Lack of social capital - finally, an individual's social network was highly influential in getting them started with using technology and was important for ongoing support and maintenance of using digital devices and social media. If an older person did not have this existing social network, they were less likely to have received a digital device and often did not have any support to use technology.

The COVID-19 pandemic has caused many of us to rely on technology a lot more than usual. Online platforms such as Zoom, Facetime, and WhatsApp, have become our main source of communication for both work and personal use, and online banking and health services are more important than ever. Unfortunately, not everyone, including older people, has access to these tools and those who do, sometimes do not have the necessary skills to use them.

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<sup>30</sup> Ibid, Page 17.

<sup>31</sup> 'How the digital divide affects older adults' use of technology during COVID-19', 2020, Dr Gemma Wilson, Centre for Ageing Better, <https://ageing-better.org.uk/blogs/how-digital-divide-affects-older-adults-use-technology-during-covid>

I believe that it is vital that everyone has access to technology and that those who struggle to use tech or get online, particularly the older generation, are not left behind. It is also vital that everyone has 'digital choice' and that those who wish to access technology are properly supported to do so. How a dedicated Older People's Commissioner could raise awareness of these issues will be explored in greater detail later in this document.

## Older People in Employment

Older workers now make up around a third (33%) of the Scottish workforce, and this is projected to increase over the next few decades.<sup>32</sup> With ageism and discrimination still being faced by many in this group, employers must improve their understanding of the experiences and considerations of older workers.

The Centre for Ageing Better surveyed employees over the age of 50 for its report, *Becoming an age-friendly employer*. One in five of those polled believed that other people see them as less capable due to their age and nearly half said that their age would disadvantage them in applying for a job.<sup>33</sup>

The National Institute of Economic and Social Research conducted research on behalf of the Fair Work Convention, which found that women over 50 in Scotland require greater support in the workplace to address persistent inequalities in pay and progression.<sup>34</sup>

The report recommended that employers should increase their monitoring of pay, progression and training by age and would benefit from 'increased support and guidance in addressing age discrimination in the workplace'.<sup>35</sup> I believe that this is the kind of information and assistance a Commissioner could offer to employers to ensure that they are creating the best workplace possible through reducing barriers and tackling age discrimination.

## Public Opinion

Recent polling led by Age Scotland demonstrated strong support for an Older People's Commissioner from adults of all ages all over Scotland. The data was analysed and collected by YouGov during the period 23-30 March 2022.

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<sup>32</sup> CIPD, 'Understanding older workers in Scotland', 2022, [https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/understanding-older-workers-in-scotland\\_tcm18-107807.pdf](https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/understanding-older-workers-in-scotland_tcm18-107807.pdf)

<sup>33</sup> Centre for Ageing Better, 'Becoming an age-friendly employer', 2018, <https://ageing-better.org.uk/resources/becoming-age-friendly-employer>

<sup>34</sup> Fair Work Convention, 'Exploration of the pay and career progression experiences of women aged over 50 in Scotland', 2022, <https://www.fairworkconvention.scot/wp-content/uploads/2022/10/Experiences-of-pay-and-progression-among-women-over-50-in-the-workplace-in-Scotland.pdf>

<sup>35</sup> Ibid.

## **Methodology**

The survey was conducted using an online interview administered to members of the YouGov panel who agreed to take part in surveys. Emails were sent to panellists selected at random from the base sample. Once a member clicked on the link, they were sent to the survey that they are most eligible for, according to the sample definition and quotas. (The sample definition could be 'GB adult population' or a subset such as 'GB adult females').

The responding sample was weighted to the profile of the sample definition to provide a representative reporting sample. The profile is normally derived from census data or, if not available from the census, from industry accepted data.<sup>36</sup>

The following question was asked:

**VPI\_Q1.** 'An Older People's Commissioner would stand up for the rights of current and future older people in Scotland. They would be independent and hold government to account. They would have legal powers to challenge age discrimination and push for positive change. This does not exist in Scotland, but Wales and Northern Ireland each have one. To what extent do you support or oppose the introduction of an Older People's Commissioner in Scotland?'

## **Results**

The data was translated into graphs (see Figure 1 and Figure 2).

Every region of Scotland and all age ranges expressed significant support for the establishment of a Commissioner for Older People, with 71% of the total respondents asked stating that they were in favour of the establishment of a commissioner office.<sup>37</sup>

In the 55+ age group, 82% of respondents are in favour of a Commissioner for Older People.<sup>38</sup> This includes the demographic that the remit of the Commissioner would cover, and it is significant that an overwhelming majority of this age group support its establishment. It is also significant that the establishment of a Commissioner for Older People in Scotland is supported by 68% of respondents aged 18-24.<sup>39</sup> It shows that there is clear consensus from the people of Scotland across all ages to ensure that the rights and needs of older people are safeguarded and championed.

My own region of South Scotland was most strongly in favour of an Older People's Commissioner, with 76% of respondents supporting its introduction.<sup>40</sup>

This research demonstrates the support of the relevant demographic for an Older People's Commissioner and there is also clear support across age groups and Scotland as a whole for the introduction of this role.

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<sup>36</sup> Copy of Results for Age Scotland, 2022, YouGov.

<sup>37</sup> Figure 2

<sup>38</sup> Figure 1

<sup>39</sup> Figure 1

<sup>40</sup> Figure 2



**Q1. To what extent do you support or oppose the introduction of an older people's commissioner in Scotland?**

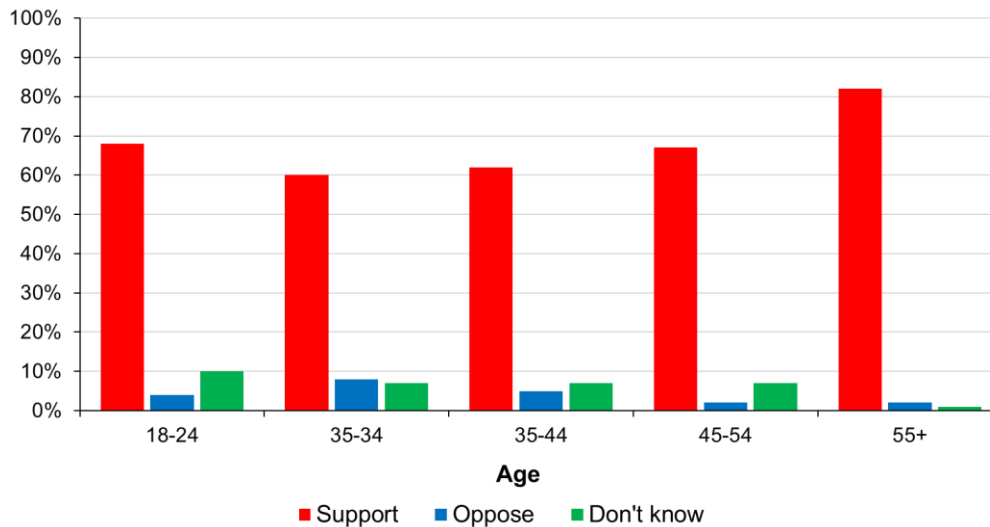


Figure 1

**Q1. To what extent do you support or oppose the introduction of an older people's commissioner in Scotland?**

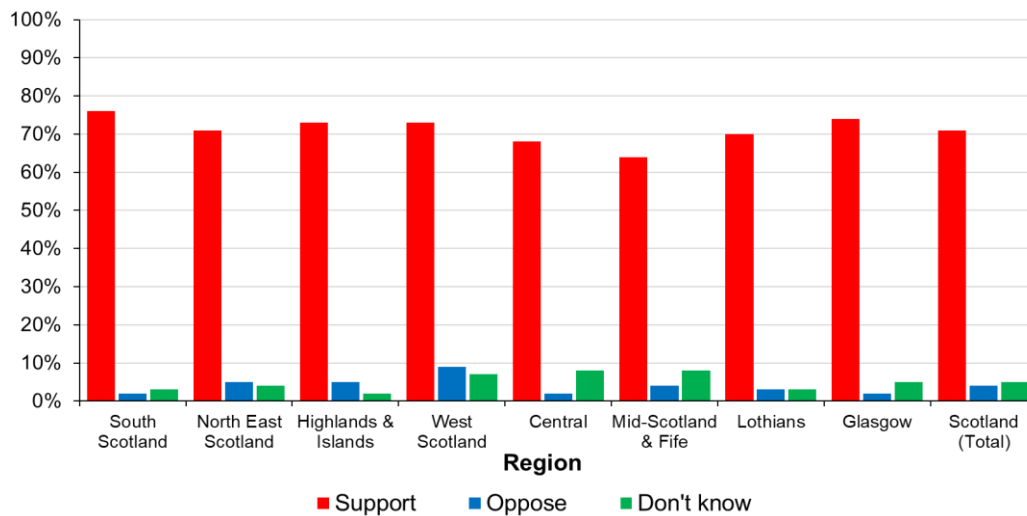


Figure 2

## Stakeholders

There are a number of organisations in Scotland and across the UK that represent the interests of older people, including charities, unions and forums. There have been growing calls from such stakeholders for the establishment of Commissioners for Older People in both England and Scotland.

In its 2021 Scottish Parliament election document, Age Scotland called for the Scottish Government to establish an Older People’s Commissioner for Scotland, appointed through the Scottish Parliament and with the power to hold public bodies to account and take up casework on behalf of older people. The organisation highlighted that a key theme of the Commissioner’s work should be to advance and safeguard the rights of people living with dementia, and that the Commissioner would be a key figure helping to tackle age discrimination and ageism across Scottish society.<sup>41</sup>

In May 2023, Independent Age published a consensus statement which called on the Scottish Government to ‘establish an Older People’s Commissioner for Scotland to act as an independent champion for older people and ensure that policy and practice across government considers the long-term needs of people in later life’.<sup>42</sup> The consensus statement was signed by more than 30 organisations, some of which are included below:



The views of stakeholders already working to support older people in Scotland are invaluable, and I would welcome comments from all engaged bodies on my proposed bill to ensure their expertise is factored-in to the policy from the outset.

<sup>41</sup> 'Action for Older People', Scottish Parliament election 2021, Age Scotland, <https://www.ageuk.org.uk/globalassets/age-scotland/documents/election-2021/action-for-older-people---scottish-parliament-2021-election-asks---age-scotland.pdf>

<sup>42</sup> Independent Age Commissioner for Older People Scotland Consensus Statement, 2023, <https://www.independentage.org/news-media/press-releases/more-than-30-organisations-call-for-an-older-peoples-commissioner-for>

## **Existing UK Commissions**

Upon the establishment of a Commissioner for Older People there will likely be some areas of similarity in relation to the remit of the new Commissioner and the remits of bodies which already exist in both Scotland and the UK. However, this is no different than the existing Children's Commissioners across the UK as well as Older People's Commissioners in Wales and Northern Ireland. As is the case in the rest of the UK, it will be important that any Older People's Commissioner for Scotland has a close and productive working relationship with all relevant bodies, and guards against duplication of effort. I would welcome responses to this consultation on how this can best be achieved.

### **Equalities and Human Rights Commission**

The Equality and Human Rights Commission (EHRC) was established by the Equality Act 2006 and is the UK's independent national equality body, awarded an 'A' status as a National Human Rights Institution (NHRI) by the United Nations.<sup>43</sup>

The aim of the Commission is to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain. It enforces equality legislation in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation – these are known as protected characteristics.

The EHRC uses a range of powers to do this, including by publishing guidance, reviewing the effectiveness of the law, and taking legal enforcement action to clarify the law and address significant breaches of rights.<sup>44</sup>

The proposed Commissioner for Older People would have a close working relationship with the EHRC, modelled closely on the arrangement that it holds with the Scottish Human Rights Commission. In addition, the successful functioning of the Children and Young People's Commissioner Scotland alongside the EHRC demonstrates the ability for other officeholders with a remit focused on the protected characteristic of age to complement, rather than clash with, the work of the EHRC in Scotland.

### **Scottish Human Rights Commission**

The Scottish Human Rights Commission (SHRC) was established by the Scottish Commission for Human Rights Act 2006 and is an independent public body, accountable to the people of Scotland through the Scottish Parliament. The SHRC is accredited as an 'A Status' National Human Rights Institution (NHRI) within the United Nations (UN) system and is the only Scottish organisation that can make direct contributions to the UN Human Rights Council.<sup>45</sup>

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<sup>43</sup> Equality Act 2006, Part 1, <https://www.legislation.gov.uk/ukpga/2006/3/part/1>

<sup>44</sup> Equality and Human Rights Commission, 2022, <https://equalityhumanrights.com/en/about-us/what-we-do>

<sup>45</sup> Scottish Human Rights Commission, 2022, <https://www.scottishhumanrights.com/about/>

The Commission has a general duty to promote awareness, understanding and respect for all human rights in Scotland and encourage best practice in relation to these human rights.

The SHRC has powers to recommend changes to law, policy and practice; promote human rights through education, training and publishing research; and to conduct inquiries into the policies and practices of Scottish public authorities.<sup>46</sup>

The SHRC agreed a Memorandum of Understanding (MoU) with the EHRC in 2009 with a view to 'enhancing the effectiveness of the two Commissions and in particular to facilitate the understanding of the general public about how the two Commissions function in relation to each other.'<sup>47</sup>

My belief is that a MoU between the Commissioner for Older People and the SHRC and EHRC could be a possibility but may not be a necessity. The SHRC has had an effective working relationship with the Commissioner for Children and Young People without an MoU, through joint strategic planning and open communication.

### **Ensuring complementary working between Commissioners**

Ensuring complementarity of remit and effective joint working between officeholders, rather than duplication of focus, is particularly important in light of the response of the EHRC to the consultation for Jeremy Balfour MSP's proposed Disability Commissioner (Scotland) Bill. In its response, the EHRC emphasised that the principle of legal certainty means that any 'cross-over in remit and responsibilities' of officeholders must be avoided when pursuing legislation.

Additionally, the EHRC highlighted the importance of ensuring that, should any new commissioner have investigatory powers, it is critical that these do not stray into consideration of conduct which is prohibited by the Equality Act 2010, as this would fall out with the devolved competence of the Scottish Parliament.<sup>48</sup>

It is important to factor-in all such concerns at the outset of policy development. While I am reassured by the successful operation of the Older People's Commissioner for Wales alongside the EHRC Wales, I would welcome any and all views on how effective collaboration between officeholders works in practice and also how duplication of work can be avoided where appropriate. This will be explored further under the 'Detail of the Proposed Bill' section of this consultation document.

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<sup>46</sup> Scottish Human Rights Commission, 2022, <https://www.scottishhumanrights.com/about/>

<sup>47</sup> Memorandum of Understanding between the Scottish Commission for Human Rights (SHRC) and the Equality and Human Rights Commission (EHRC), [C:\Users\R806389\Downloads\mou\\_with\\_shrc\\_nov2016.pdf](C:\Users\R806389\Downloads\mou_with_shrc_nov2016.pdf)

<sup>48</sup> Equality and Human Rights Commission Scotland, Consultation Response: Proposed Disability Commissioner (Scotland) Bill, <https://www.jeremybalfour.org.uk/sites/www.jeremybalfour.org.uk/files/2022-12/EHRC%20Submission.pdf>

## Other Commissioners

### Older People's Commissioner for Wales

In 2006, the Welsh Labour administration established the Older People's Commissioner for Wales.<sup>49</sup> This Welsh Commissioner works to protect older people's rights, end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.<sup>50</sup>

The Older People's Commissioner for Wales produces annual reports detailing strategic priorities and the main achievements over the previous year. In 2021-22 these achievements included work across the following key areas:

- Increasing security of tenure for care home residents by developing a rights-based contract and through strengthening legal protections.
- Creating new guidance on visiting in care homes which is based on the legal framework of Human Rights.
- Working with service and workforce regulators to embed Human Rights in inspection frameworks and within social care practice.
- Increasing care home residents' and their families' awareness of their rights.
- Increasing care home residents' access to independent advocacy, in particular for those residents without family or friends.
- Developing a strategic approach to using complaints data to improve practice.
- Developing a new guide for older people living in care homes and their families, which provides information about the rights they have during different stages of their care journey, and how these rights relate to different legislation.
- Establishing a Black, Asian and Minority Ethnic Advisory Group of key organisations and networks to support the Commissioner's work to capture the lived experiences of Black, Asian and Minority Ethnic older people, which are often not captured by existing data sources, to ensure that the issues that affect their lives are better understood by policy- and decision-makers.<sup>51</sup>

Further to the outcomes set out above, the Commissioner's broader functions include the following areas:

- Review of the discharge of public bodies functions where these pertain to older people
- Review of advocacy, whistleblowing or complaints arrangements
- The provision of assistance to older persons in making a complaint about or representation to public bodies
- Producing and issuing guidance on best practice in connection with any matter relating to the interests of older people.

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<sup>49</sup> Commissioner for Older People (Wales) Act 2006, <https://www.legislation.gov.uk/ukpga/2006/30/contents>

<sup>50</sup> Older People's Commissioner for Wales, 2022-2024 Work Programme, <https://olderpeople.wales/about/commissioners-strategy/>

<sup>51</sup> Older People's Commissioner for Wales Annual Report and Financial Statements 2021-2022, 2022, Page 15, <https://senedd.wales/media/4o3oyr1r/gen-ld15284-e.pdf>

## **Commissioner for Older People for Northern Ireland**

The Commissioner for Older People for Northern Ireland was established in 2011.<sup>52</sup>

Since its establishment, the Commissioner has published a series of reports and investigations. These include the *Appreciating Age* report,<sup>53</sup> *Crime and Justice: The experience of older victims of crime in Northern Ireland*,<sup>54</sup> and *Home Truths, the Commissioner's Investigation into Dunmurry Manor Care Home*.<sup>55</sup>

The 2019-20 annual report produced by the Commissioner detailed the work that had been carried out and provided examples of individual cases the Commissioner had assisted with.<sup>56</sup>

The Commissioner for Older People for Northern Ireland works closely with agencies and charities. For example, the Commissioner's partnership with Scamwise Northern Ireland tackles the issue of scams and unethical commercial practice targeting older people. It manages social media accounts to raise awareness of scams, providing advice and guidance to older people in how to avoid being scammed. This partnership also encourages the identification and reporting of live scams so that these can be highlighted to all vulnerable groups.<sup>57</sup>

The 2019-20 annual report also outlined instances where the Commissioner has provided legislative advice to the Northern Ireland Executive. For example, the Commissioner has commissioned advice on Adult Safeguarding legislation required for Northern Ireland. This report will be used to update the 2014 report to provide pre-legislative advice to government ahead of the Adult Safeguarding Bill.<sup>58</sup>

## **The Children and Young People's Commissioner Scotland (CYPCS)**

The Commissioner for Children and Young People's office was established in Scotland in 2003.<sup>59</sup> The Children and Young People (Scotland) Act 2014 gave the Commissioner powers to investigate cases affecting the human rights of an individual child or young person.<sup>60</sup> There are also Children's Commissioners in England, Wales and Northern Ireland.

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<sup>52</sup> Commissioner for Older People Act (Northern Ireland) 2011, <https://www.legislation.gov.uk/nia/2011/1/contents>

<sup>53</sup> Commissioner for Older People Northern Ireland, [https://www.copni.org/media/1123/appreciating\\_age\\_valuing\\_the\\_positive\\_contributions\\_made\\_by\\_older\\_people.pdf](https://www.copni.org/media/1123/appreciating_age_valuing_the_positive_contributions_made_by_older_people.pdf)

<sup>54</sup> Commissioner for Older People Northern Ireland, <https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf>

<sup>55</sup> Commissioner for Older People Northern Ireland, <https://www.copni.org/media/1478/copni-home-truths-report-web-version.pdf>

<sup>56</sup> Commissioner for Older People for Northern Ireland, Annual Report and Financial Statements for the year ended 31<sup>st</sup> March 2020, [copni-annual-report-2019-2020.pdf](https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf)

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Commissioner for Children and Young People (Scotland) Act 2003, <https://www.legislation.gov.uk/asp/2003/17/contents>

<sup>60</sup> Children and Young People (Scotland) Act 2014, Part 2, <https://www.legislation.gov.uk/asp/2014/8/part/2/enacted>

The function of the Commissioner is to promote and safeguard the rights of children and young people in Scotland.<sup>61</sup> To achieve this, the Commissioner reviews law, policy and practice to ensure the rights of children and young people are being observed; promotes best practice when it relates to the rights of children and young people; conducts research into issues around children and young people's human rights; and where the law allows, investigates issues affecting individual human rights.<sup>62</sup>

My proposal for a Commissioner for Older People for Scotland will seek to emulate and learn from the examples set by equivalent commissioners elsewhere in the UK, and from the work of Children and Young People's Commissioners in Scotland and elsewhere in the UK – all of which demonstrate the positive impact that targeted support for certain age groups can have.

I would welcome views on whether any of the functions of the related Commissioner offices set out above should be included within the remit of proposed Commissioner for Older People for Scotland.

## **A Commissioner for England**

There is currently no Commissioner for Older People in England. In 2003, former MP for Wrexham, Ian Lucas, brought forward a Private Members' Bill to establish an Older People's Commissioner for England and Wales (prior to the establishment of the separate Welsh Commissioner).<sup>63</sup>

More recently, renewed calls have been made for the establishment of a Commissioner for England, with the Centre for Ageing Better highlighting recent attempts by Lord Foulkes of Cumnock to raise the issue in the House of Lords,<sup>64</sup> and there is currently a growing campaign for Commissioner in England.<sup>65</sup>

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<sup>61</sup>The Children and Young People's Commissioner website, 2022, <https://www.cypcs.org.uk/about/commissioner/#:~:text=Protecting%20and%20promoting%20rights,and%20young%20people%20in%20Scotland.>

<sup>62</sup> Ibid.

<sup>63</sup>Older People's Commissioners Bill, 2003/04, House of Commons Publications, <https://publications.parliament.uk/pa/cm200304/cmbills/034/04034.1-7.html>

<sup>64</sup>Centre for Ageing Better, 2022, *Calls for an Older People's Commissioner in England made in House of Lords*, <https://ageing-better.org.uk/news/calls-older-peoples-commissioner-england-made-house-lords>

<sup>65</sup> AgeUK, 2023, *More than 70 organisations call for a commissioner to ensure older voices are heard as population ages*, <https://www.ageuk.org.uk/latest-press/articles/2023/more-than-70-organisations-call-for-a-commissioner-to-ensure-older-voices-are-heard-as-population-ages/>

## Previous Attempts in Scotland

In September 2006, the former SNP MSP, Alex Neil, introduced a bill to establish a Commissioner for Older People for Scotland. The Commissioner for Older People (Scotland) Bill was introduced in September 2006 and the Communities Committee was designated as the lead committee.<sup>66</sup>

Alex Neil's bill sought to 'establish a Commissioner for Older People with duties to protect and further their rights and interests'.

The provisions of the bill were summarised by the Scottish Parliament Information Centre as follows:

'The bill if passed would have established a Commissioner for Older People, nominated by the Parliament and appointed by the Sovereign. The Commissioner would have powers to investigate how service providers take account of the rights, interests and views of older people in the decisions they take and the work they do. The Commissioner would not be able to carry out investigations if the issues related to a reserved matter, an individual older person or a decision or proceedings in a court of tribunal. Under the powers outlined in the Bill, a Commissioner would be able to 'require any person' to give evidence or produce documents. The Commissioner would be publicly funded by the Scottish Parliamentary Corporate Body from the Scottish Consolidated Fund.'<sup>67</sup>

Alex Neil gave evidence to the Scottish Parliament's Finance Committee as part of its scrutiny of the Financial Memorandum for the bill in October 2006. In his evidence, he emphasised his intention for the Older People's Commissioner to closely parallel the structure of the office of the Children and Young People's Commissioner for Scotland. He also emphasised the importance of the Commissioner's independence from Government and that, in his view, the Scottish Parliamentary Corporate Body (SPCB) should decide and control the budget of the proposed Commissioner's office.<sup>68</sup>

The Parliamentary Bureau did not propose a timetable for the bill and the Communities Committee decided that it was not in a position to conduct scrutiny of the bill given its workload and the approach of the end of the parliamentary session.<sup>69</sup> The bill fell at Stage 1 on 2 April 2007 at the dissolution of Parliament.<sup>70</sup>

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<sup>66</sup> Commissioner for Older People (Scotland) Bill as introduced, 2006, [https://archive2021.parliament.scot/S2\\_Bills/Commissioner%20for%20Older%20People%20\(Scotland\)%20Bill/b71s2-introd.pdf](https://archive2021.parliament.scot/S2_Bills/Commissioner%20for%20Older%20People%20(Scotland)%20Bill/b71s2-introd.pdf)

<sup>67</sup> Commissioner for Older People (Scotland) Bill, SPICe Briefing, 2006, [https://archive2021.parliament.scot/S2\\_Bills/Commissioner%20for%20Older%20People%20\(Scotland\)%20Bill/71-CommissionerforOlderPeopleBillsummary.pdf](https://archive2021.parliament.scot/S2_Bills/Commissioner%20for%20Older%20People%20(Scotland)%20Bill/71-CommissionerforOlderPeopleBillsummary.pdf)

<sup>68</sup> Finance Committee, 2006, Official Report: <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=1593>

<sup>69</sup> Commissioner for Older People (Scotland) Bill, SPICe Briefing, 2006, [https://archive2021.parliament.scot/S2\\_Bills/Commissioner%20for%20Older%20People%20\(Scotland\)%20Bill/71-CommissionerforOlderPeopleBillsummary.pdf](https://archive2021.parliament.scot/S2_Bills/Commissioner%20for%20Older%20People%20(Scotland)%20Bill/71-CommissionerforOlderPeopleBillsummary.pdf)

<sup>70</sup> Commissioner for Older People (Scotland) Bill, Scottish Parliament Archive, <https://archive2021.parliament.scot/parliamentarybusiness/Bills/25503.aspx>



Following the appointment of the first Welsh Commissioner for Older People in 2008, it was reported that Alex Neil decided not to pursue his Member's bill for a Scottish Older People's Commissioner in the third session of the Parliament following assurances from the then First Minister, Alex Salmond, that the Scottish Government would fulfil the bill's objectives by introducing a Commissioner post. However, the Scottish Government later committed to the established of a 'National Forum on Ageing' to 'act as a champion for older people and robustly tackle ageism and improve the delivery of services appropriate to their needs'. A spokesperson confirmed that 'therefore there are no plans to legislate for a Commissioner for Older People.'<sup>71</sup>

## Scottish Government Policy

The Scottish Government subsequently established The Older People's Strategic Forum. The forum was established 'to ensure that the views of older people, those that support them, and their representative groups are heard.'<sup>72</sup> Membership of the Forum includes Age Scotland, the Scottish Pensioners' Forum, Faith in Older People and LGBT Age Project.

Informed by the Forum, the Scottish Government published *A Fairer Scotland for Older People: A Framework for Action* in 2019, which was developed with the aim of challenging inequalities older people face and to 'celebrate older people in Scotland'. Priorities set out in the framework centred around the themes of Communities, Accessing Services and Financial Security.<sup>73</sup> An update towards achieving the outcomes set out in the framework was published in March 2021, in which the then Cabinet Secretary for Social Security and Older People (Shirley-Anne Somerville MSP) set out that the Annual Report for 2020 had been delayed 'due to the immediate response that was required to address the COVID-19 impacts', and adding that 'a more strategic approach is now required to consider the framework, in conjunction with the wider recommendations for Scotland's recovery' from the impacts of COVID-19.<sup>74</sup> As of May 2023, no subsequent updates on progress towards achieving these outcomes are available on the Scottish Government's webpages.<sup>75</sup>

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<sup>71</sup> The Herald, 2008, *Campaigners call for pensioners' czar in wake of Welsh move*, [https://www.heraldscotland.com/default\\_content/12749575.campaigners-call-pensioners-czar-wake-welsh-move/](https://www.heraldscotland.com/default_content/12749575.campaigners-call-pensioners-czar-wake-welsh-move/)

<sup>72</sup> Older People's Strategic Action Forum, <https://www.gov.scot/groups/older-peoples-strategic-action-forum/>

<sup>73</sup> The Scottish Government, 2019, *A Fairer Scotland for Older People: A Framework for Action*, <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2019/04/fairer-scotland-older-people-framework-action/documents/fairer-scotland-older-people-framework-action/>

<sup>74</sup> The Scottish Government, 2021, *Cabinet Secretary's letter to Older People's Strategic Action Forum: March 2021*, <https://www.gov.scot/publications/cabinet-secretarys-letter-to-older-peoples-strategic-action-forum-march-2021/>

<sup>75</sup> The Scottish Government, *Older People's Strategic Action Forum*, <https://www.gov.scot/groups/older-peoples-strategic-action-forum/>

The Scottish Government has also recently set out in response to written questions lodged in Parliament that it does not intend to introduce legislation to create a Commissioner for Older People in Scotland.<sup>76</sup>

My Labour colleague, Monica Lennon MSP, submitted a written question in October 2020 to ask the Scottish Government whether, in light of the impact of COVID-19, it would reconsider its position regarding the establishment of a Commissioner for Older People. In her response, the then Minister for Older People and Equalities, Christina McKelvie MSP, pointed to the work of the Older People's Strategic Action Forum and the Framework, reiterating that the Scottish Government's position on the creation of a Commissioner post had not changed.

However, the Minister added:

'I would refer to the process which led to the establishment of the Commissioner for Children and Young People. This role was established by the Parliament and is accountable to Parliament. It would therefore be for the Scottish Parliament to explore if there is now a need for a Commissioner for Older People, and if they deem it so, what the roles and responsibilities of a Commissioner would be.'<sup>77</sup>

My proposed Member's Bill would therefore provide the Scottish Parliament with the opportunity to properly scrutinise my belief, and that of the public and stakeholders, that we need a dedicated Commissioner for Older People in Scotland.

I believe that the specific challenges faced by older people, and the impact of COVID-19 on the work of the Older People's Strategic forum, further demonstrate the benefits that a dedicated Commissioner for Older People could provide for Scotland.

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<sup>76</sup> The Scottish Parliament, S5W-29789 <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S5W-29789>

<sup>77</sup> The Scottish Parliament, S5W-32242 <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S5W-32242>

# Detail of the Proposed Bill

My proposal is for a bill to establish a Commissioner for Older People with duties to protect and further their rights

Much of the background work on the detail of a proposed Commissioner for Older People Bill was undertaken when Alex Neil introduced his bill in 2006.

While my proposed bill will be informed by the work undertaken by Alex Neil in Session 2, the policy landscape for and challenges faced by older people have evolved in the 17 years since his bill was introduced, for example, it pre-dates the establishment of the Scottish Human Rights Commission. Through this consultation process, my proposed bill will both be informed by and build upon the work undertaken previously in session 2 of the Scottish Parliament.

## Age of an ‘Older Person’

There is no legal or universally-accepted definition of an ‘older person’, indeed, there is disparity between the remits of the current UK Commissioners and the Scottish Government’s *Framework for Action* as to the minimum age of an ‘older person’.

The remit of the Older People’s Commissioner for Wales is to protect and promote the rights of people aged 60 and over.<sup>78</sup> The Northern Irish Commissioner also defines an ‘older person’ as a person aged 60 or over, although the 2011 Act that established the Commissioner makes provision for the Commissioner to deal with a matter raised by someone aged 50 or over ‘if it was an issue that raised a question of principle affecting people age 50 or over generally or there were exceptional circumstances.’<sup>79</sup>

The Scottish Government publication, *A Fairer Scotland for Older People: A Framework for Action*, defines the span of older age as being ‘from age 50’, a range which it suggests ‘emphasises the breadth of diversity in this population’.<sup>80</sup> Elsewhere, research from the House of Commons’ library primarily focuses on the population aged 65 or over,<sup>81</sup> while the United Nations defines an older person as:

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<sup>78</sup> Welsh Government, Older People’s Commissioner for Wales, <https://www.gov.wales/older-peoples-commissioner-wales#:~:text=The%20Older%20People's%20Commissioner%20for,people%20aged%2060%20and%20over>

<sup>79</sup> Commissioner for Older People Act (Northern Ireland) 2011, <https://www.legislation.gov.uk/nia/2011/1/notes>

<sup>80</sup> Scottish Government, 2019, *A Fairer Scotland for Older People: A Framework for Action*, <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2019/04/fairer-scotland-older-people-framework-action/documents/fairer-scotland-older-people-framework-action/fairer-scotland-older-people-framework-action/govscot%3Adocument/fairer-scotland-older-people-framework-action.pdf>

<sup>81</sup> ‘Housing an ageing population: a reading list’, research briefing, House of Commons Library, 2021, <https://commonslibrary.parliament.uk/research-briefings/cbp-9239/#:~:text=The%20UK%27s%20ageing%20population&text=Around%20one%2Dfifth%20of%20the,population%20only%20increased%20by%207%25>.

‘A person who is over 60 years of age. However, families and communities often use other socio-cultural referents to define age, including family status (grandparents), physical appearance, or age-related health conditions. The psychological and psychosocial toll of traumatic experiences, combined with poor nutrition and exposure to disease, can cause refugees and IDPs to ‘age’ faster than settled populations.’<sup>82</sup>

In line with the previous bill introduced by Alex Neil and the Commissioner landscape operating across the rest of the UK, I propose that persons in Scotland who are aged 60 years or over would fall within the remit of the Scottish Commissioner. However, I would be keen to hear views from respondents to the consultation as to their preferred age remit of the Commissioner.

## **Appointment and Accountability**

My proposal is for a Commissioner that would be independent of Government and appointed by the SPCB, which is the means by which the existing seven independent officeholders (Commissioners and Ombudsmen) are appointed, including the Commissioner for Children and Young People. Appointments subsequently require the approval of the Scottish Parliament.<sup>83</sup> I recognise that the establishment of a new officeholder post requires the SPCB to provide the required additional resource to support that officeholder, however I am keen to ensure consistency with the governance arrangements of other independent officeholders currently operating in Scotland and propose that the Older People’s Commissioner would therefore follow this pre-established model.

The Commissioner would be accountable to the Scottish Parliament and subject to a duty to publish and lay before the Parliament an annual report. I propose that this report would set out the following:

- A review of current issues relevant to older people.
- A review of the Commissioner’s activity over the previous year.
- An overview of work to be undertaken over the following year.
- A strategy for actively engaging older people in the work of the Commissioner.
- A review of engagement with older people to date.
- Any other information that the Commissioner considers to be relevant.

The Commissioner could also lay before the Parliament any other reports on the Commissioner’s functions that they consider necessary or appropriate.

The Commissioner should publish any report laid before the Parliament and may also publish any other reports they decide are relevant to their functions. The information must be easily accessible.

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<sup>82</sup> UNHCR, <https://emergency.unhcr.org/entry/43935/older-persons>

<sup>83</sup> Commissioner for Children and Young People (Scotland) Act 2003, Section 2, <https://www.legislation.gov.uk/asp/2003/17/section/2>

I consider this duty and mechanism of reporting to be a crucial element in the Commissioner's accountability in terms of annual reports and reports on specific issues and investigations. It will enable the Parliament to find out what the Commissioner is doing and assess how well they have been undertaking their functions.

## **Key Functions of the Commissioner**

As with Alex Neil's proposal, I consider that the overarching, general function of the Commissioner would be to promote and safeguard the rights and interests of older people.

In exercising that key function, the Commissioner would:

- Promote awareness of the rights and interests of older people in Scotland and of the need to safeguard those interests.
- Promote the provision of opportunities for, and the elimination of discrimination against, older people in Scotland.
- Encourage best practice in the treatment of older people in Scotland.
- Keep under review the adequacy and effectiveness of law affecting the interests of older people in Scotland.

The work of the Commissioner would be informed by the views of older people, with an input from those organisations working with and for older people. The Commissioner would adhere to the principles of consultation, participation and accessibility when carrying out their duties.

This would require the Commissioner to take steps to:

- Ensure that older people are made aware of the functions of the Commissioner and how the Commissioner may be contacted.
- Consult older people on the work to be undertaken by the Commissioner.
- Consult organisations working with and for older people on the work to be undertaken by the Commissioner.
- Prepare and keep under review a strategy for involving older people in the work of the Commissioner.

I would welcome views from those responding to the consultation on the breadth of these proposed functions and whether they would ensure the Commissioner has the requisite statutory duties to uphold their key purpose.

The purpose of effective consultation is to not be overly prescriptive and to gather the views of interested parties. In that vein, I would appreciate views on whether any of the functions of other Commissioner offices should be absorbed into those of the Older People's Commissioner.

## **Campaigning for and Championing the Rights of Older People**

The Children and Young People's Commissioner for Scotland serves as an example of how an officeholder can serve as an effective champion and advocate for the rights of a key age group. My proposal for an Older People's Commissioner seeks to emulate this example by performing a public facing role which promotes and safeguards the rights and interests of older people.

For example, and as detailed earlier in this document, the COVID-19 pandemic had a devastating effect on many older people. As we move forward and continue with COVID-19 recovery, the Commissioner for Older People could play a crucial role in championing the rights of vulnerable older people, with the aim of helping support them to return to society in a full and active way. This could be achieved by calling on existing bodies and the Scottish Government to learn from the experience of the pandemic to make certain that Scotland is better prepared to support our older generation in the future.

The Commissioner for Older People could also play a key role in closing the digital divide by raising the profile of this issue and calling for the provision of accessible support to aid older people in navigating the use of digital technology. This is vital to ensuring that older people have easy access to important information which is largely now online, such as bills, health advice and services, and banking.

To aid this work, we can look to the Welsh Older People's Commissioner's Advice and Assistance Team, which helps connect older people with support and services throughout Wales, in addition to upholding their rights.<sup>84</sup> The team provides support in instances where the person concerned is aged 60+, lives in Wales, believes their rights may have been breached, or if they have experienced problems with services, such as health, social care, community services or housing. I would welcome views on whether a similar service should be provided by the Scottish Commissioner.

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<sup>84</sup> Older People's Commissioner for Wales, <https://olderpeople.wales/advice-and-assistance-team/>

## Legislation

In a similar vein to the high-profile role of the CYPCS, the Commissioner would scrutinise legislation in relation to the rights and interests of older people as well as carrying out post-legislative scrutiny.

This might include issuing press statements or publishing reports on the possible impact of legislation and proposed legislation on older people, giving evidence to parliamentary committees and advising the Scottish Government on issues which affect older people, thereby influencing policy.

The Commissioner would also be required to consider existing policy and institutional practice, in relation to its impact on the rights and interests of older people. This could include consideration of Scottish Government policy, Scottish Parliament practice, local authority practice, practice in voluntary organisations or practice in private companies and health boards.

## Power to Investigate Individual Cases

I propose that the Commissioner would have powers to investigate how service providers take account of the rights, interests, and views of older people in the decisions they take and the work they do in relation to devolved matters. However, I am open-minded as to how this might work in practice and am keen to hear the views of stakeholders through this consultation exercise.

In developing this proposal, the work of the CYPCS provides useful background and inspiration. The Children and Young People (Scotland) Act 2014 amended the Commissioner for Young People (Scotland) Act 2003 to give the post powers of investigation into cases relating to children and young people.<sup>85</sup> The 2014 Act sets out that the CYPCS may carry out investigations into:

- Whether, by what means and to what extent a service provider has regard to the rights, interests, and views of younger people in making decisions or taking actions that affect those younger people (general investigation).
- Whether, by what means and to what extent a service provider had regard to the rights, interests, and views of a younger person in making a decision or taking an action that affected that person (individual investigation).

Further, the CYPCS could carry out a general investigation only if the Commissioner has considered the available evidence on the matter and is satisfied that the case has significance to younger people generally or particular groups of young people.

The investigation must only be carried out if the Commissioner determines that the case cannot be resolved without an investigation and the investigation does not duplicate the work that is the function of another person. The CYPCS cannot investigate any matter if:

- it relates to matters reserved to the UK Government,

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<sup>85</sup> Children and Young People (Scotland) Act 2014, Part 2, <https://www.legislation.gov.uk/asp/2014/8/part/2/enacted>

- it concerns the decision-making of a court or tribunal in a particular case, or
- it concerns a case currently before a court or tribunal.
- another body in Scotland is able to investigate it (including the EHRC and the Scottish Public Services Ombudsman).<sup>86</sup>

I would envisage that the Commissioner for Older People would follow the operational example set by the CYPCS in its investigatory powers and the ways and means by which it operates alongside other commissioners. Avoiding duplication of activity will be explored more fully below.

## **Criteria for Establishing New Independent Public Bodies**

In 2006, the Scottish Parliament's Finance Committee published a report setting out the *Six Design Principles* that it considered should be factored-in to the consideration of any future proposal for an officeholder position.<sup>87</sup> These principles have been considered in developing this proposal, and consideration under each of the individual criteria is set out below—

### **1. Clarity of Remit: a clear understanding of then office-holder's specific remit**

The Commissioner's remit would be to promote and safeguard the rights and interests of older people – this purpose remains distinct from that of other officeholder posts, given its limited focus on older people specifically. As set out in the background to this document, other officeholder and commissioner teams will be engaged with as this proposal develops to ensure that their working is complementary.

### **2. Distinction between functions: A clear distinction between different functions, roles and responsibilities including audit, inspection, regulation, complaint handling and advocacy.**

I recognise the importance of ensuring that the various functions and responsibilities of the Commissioner are distinct, as this will ensure the coherent delivery of the Commissioner's work.

The Commissioner teams of Wales and Northern Ireland are both well established in their posts and will serve as inspiration for ensuring clarity of function.

### **3. Complementarity**

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<sup>86</sup> Investigations - The Children and Young People's Commissioner Scotland, [https://www.cypcs.org.uk/our\\_investigations/](https://www.cypcs.org.uk/our_investigations/)

<sup>87</sup> The Scottish Parliament, Finance Committee Report: Inquiry into Accountability and Governance, 2006 <https://archive.parliament.scot/business/committees/finance/reports-06/fir06-07-Vol01-00.htm>



This would require dovetailing of jurisdictions which would create a coherent system with appropriate linkages with no gaps, overlaps or duplication. This document has already set out my recognition of the need to ensure no duplication of remit with existing officeholder positions. While the SHRC and the EHRC will undoubtedly consider issues that impact the older population, it is the intention of this proposal to fill what I consider to be a gap in the current commissioner landscape to ensure that the needs of the rapidly-increasing older population are prioritised by a dedicated, independent voice.

For example, if the EHRC or SHRC are not engaged in work in an area which also falls within the remit of the Older People's Commissioner, the latter could serve to fill that gap by undertaking targeted and focused work or investigation. Similarly, if the EHRC or SHRC were covering a specific issue which also fell within the remit and functions of the Older People's Commissioner, the Older People's Commissioner would not seek to duplicate this work (although may support it, if engaged by the other Commissions).

Looking to Wales, its Older People's Commissioner can use its powers of 'examination' to investigate an issue before calling for further action to be taken by the EHRC.<sup>88</sup> This example of successful cooperation demonstrates that overlap of remit should not in itself be a barrier to the establishment of an officeholder post where there is scope for the new body to support and supplement the work of the EHRC.

The successes of the CYPCS demonstrates that a dedicated officeholder with a focus on a specific age group can sit alongside existing human rights bodies, and I encourage any and all responses on how this complementarity of remit can work in practice.

#### **4. Simplicity and Accessibility: Simplicity and access for the public to maximise the 'single gateway'/'one-stop-shop' approach.**

As the proposed Commissioner will have a sole focus on the needs of Scotland's older generations, it will be best placed to raise awareness of the support services available to assist older people with issues such as healthcare and access to digital facilities.

#### **5. Shared services: Shared services and organisational efficiencies should be built in from the outset.**

I am open to suggestions as to how the proposed Commissioner could share services or facilities with other officeholders. For example, the sharing of accommodation or staffing resources should be considered. Not only would such an arrangement serve to maximise organisational efficiency, but also help to ensure and support effective collaboration. There are clear benefits to

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<sup>88</sup> Local Government Lawyer, 2020, <https://www.localgovernmentlawyer.co.uk/adult-social-care/391-adult-care-news/43766-older-people-s-commissioner-calls-for-investigation-into-welsh-government-s-policy-on-testing-in-care-homes>

the pooling together of resources, not least to ensure the most cost-effective use of public funds.

**6. Accountability: There should be an establishment of clear, simple, robust, and transparent lines of accountability appropriate to the nature of the office.**

As set out earlier in this document, my vision is for a Commissioner with operational independence which is accountable to the Scottish Parliament. The Commissioner would report annually on its progress towards achieving outcomes, expenditure and use of resources, and other operational matters. The Commissioner would be expected to give evidence to relevant Scottish Parliament committees in relation to relevant enquiries and legislation, and to provide updates on the work of their office.

## Equalities

It is standard good practice to consider the impact of any proposed Member's Bill on equalities, and I believe that the establishment of a Commissioner for Older People would have a clear, positive effect on equalities in Scotland.

Age is a protected characteristic as defined by the Equality Act 2010 and discrimination on the basis of age is prohibited under the Act.<sup>89</sup> However I believe that more-targeted, focused action is required to ensure the rights of older people are consistently upheld and actively considered in the development of public policy.

Given the demographic challenges posed by Scotland's ageing population, I believe that the need to better-support older people will become more pertinent as time goes on and the average age of the population increases further.

The key aim of this proposal – to promote and safeguard the rights and interests of older people by establishing an independent Commissioner post – is centred on ensuring this key demographic is not disadvantaged due to their age.

Through the establishment of a dedicated Commissioner office, older people would have an independent champion tasked with representing their perspectives and highlighting issues associated with ageing.

Since the onset of the pandemic, and perpetuated by the cost-of-living crisis, the specific challenges faced by older people have been thrown into sharper focus, particularly due to them being more likely to suffer longer-term, or lose their lives, because of the wider impacts of COVID-19.<sup>90</sup>

The proposed Commissioner would champion equality of opportunity through a post-COVID lens, so that lessons are learned, and the risks faced by older people due to unpredictable health or economic global challenges are factored-in to both decision making and the policy landscape.

Issues which are more likely to affect older people include susceptibility to illness, deterioration of health, social isolation and loneliness, and digital exclusion, in addition to financial, employment and workplace discrimination on the basis of age. Stakeholders, including Age Scotland, agree that the establishment of a dedicated Commissioner would be a positive step forward in tackling these issues and supporting older people in Scotland.

The EHRC has highlighted the importance of considering intersectionality when establishing a new Commissioner post which focuses on a specific protected characteristic, e.g. how other characteristics such as ethnicity, disability status or sex can affect their lived experience, and that such a Commissioner must 'be cognisant of such intersections and build this into their work.'<sup>91</sup>

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<sup>89</sup> Equalities and Human Rights Commission, <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>

<sup>90</sup> Wider Impacts of COVID-19 on Health (WICH) monitoring tool, 2022, Office for Health Improvement and Disparities, <https://analytics.phe.gov.uk/apps/covid-19-indirect-effects/>

<sup>91</sup> Equality and Human Rights Commission Scotland, Consultation Response: Proposed Disability Commissioner (Scotland) Bill, <https://www.jeremybalfour.org.uk/sites/www.jeremybalfour.org.uk/files/2022-12/EHRC%20Submission.pdf>

I recognise the importance of ensuring that any new Commissioner for Older People is mindful of identities which intersect with age to ensure that black and minority ethnic, LGBTQ+ and older people with other protected characteristics are also championed, given the specific challenges and disadvantages that these, and other minority groups, can experience.

## **Sustainable Development**

It is also important to consider whether any proposed Members' Bills could, if passed, impact positively on sustainable development, and whether the proposed new law could be delivered in a sustainable manner. This includes consideration of whether a proposed law could help deliver a stronger, healthier, and more just society.

I believe that my proposal to establish a Commissioner for Older People tasked with promoting and upholding the rights and interests of older people, who holds Government and public bodies to account in relation to issues affecting older people, would serve to make society more just.

For example, the Commissioner would support older people by serving as an independent voice for their concerns and interests, in addition to promoting the availability of support and services to aid them in their daily lives. This would benefit not just older people, but those who support and care for them too.

I believe that my proposal is a fair and just one, in that all older people, regardless of circumstance, would be represented and championed by the Commissioner.

With such a focused remit, the Commissioner would improve representation for older people in an ageing society where demographic challenges will only become more acute as time goes on. A society in which the older generation is respected, represented and championed could positively benefit individuals and groups supported through the Commissioner's investigatory powers, but also strengthen communities by highlighting and tackling issues which affect individual towns, areas or regions.

Working to achieve a sustainable economy is also a key consideration in terms of what constitutes a 'just society'. This document has already explored the ways in which older people can be economically disadvantaged, including in the workplace and financially. The Commissioner could raise awareness of these issues by being a public campaigner for older people's employment rights and the value that older people contribute to society. I believe that establishing a Commissioner for Older People with a specific focus on the wellbeing of and opportunities for the older age group would be the most effective way to ensure that this key and ever-increasing demographic is sufficiently supported in both policy and decision-making.

## **Financial Implications**

The cost implications for the creation of a Commissioner for Older People are envisaged to be similar to those for the Commissioner for Children and Young

People. Included in these costs will be staff wages (including the Commissioners own remuneration); training costs; office costs; and research and publications.

Since its establishment, the CYPCS has published annual financial records. For reference, in year 2020-21 the funding was as follows:

The Scottish Parliament allocated a budget of £1,311,000 and the Commissioner drew down £1,086,933. The annual accounts are prepared on an accruals basis meaning that expenses are recognised in the year in which they were incurred rather than when the cash payment is made.<sup>92</sup>

On this basis, the Commissioner's net expenditure on operating activities for the year ended 31 March 2021 totalled £1,076,000. This was on:

- Staffing costs: £866,000
- Other operating expenditure: £194,000
- Depreciation and amortisation: £14,000

Excluding notional expenditure (depreciation and amortisation) of £14,000, total expenditure was calculated as £1,097,000.<sup>93</sup>

## **Resource Efficiency**

As set out previously, financial savings could be made if the Commissioner was to co-locate with an existing body, such as the Commissioner for Children and Young People.

In evidence to the Finance Committee in 2006, Alex Neil emphasised that his proposal for a Commissioner would include co-location with another Commissioner's office by design,<sup>94</sup> and his Commissioner for Older People (Scotland) Bill introduced in session 2 included provision that 'the location of the Commissioner's office premises is subject to the approval of the Parliamentary corporation'. As such, it would be my intention that the provisions of my proposed bill would give powers to the Scottish Parliament Corporate Body (SPCB) to determine details such as the location of the Commissioner's office. Therefore, the SPCB could ensure that the Commissioner co-locates its premises with another Commissioner or agency. This could reduce costs for both parties on both office rent and staff expenditure.

A further example of the savings that could be made include posts such as the Legal and Parliamentary Officer, Administration Manager and Receptionist being shared between relevant officeholder organisations, which could provide a reduction in the estimated operating costs. This could also provide potential savings to the organisation co-locating with the Commissioner.

## **Previous Commissioner for Older People (Scotland) Bill**

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<sup>92</sup> Annual Report and Accounts, Year ended March 2021, Page 26, Children and Young People's Commissioner Scotland, [https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2021/11/Accounts\\_20-21\\_CYP\\_CS.pdf](https://www.cypcs.org.uk/wpcypcs/wp-content/uploads/2021/11/Accounts_20-21_CYP_CS.pdf)

<sup>93</sup> Ibid.

<sup>94</sup> Finance Committee 2006, Official Report: <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=1593>

In 2006, the Finance Committee was presented with a Financial Memorandum (FM) for Alex Neil's Bill, which set out a proposed staffing structure and other associated costs, including estimated staff salaries, equipment, staff training, travel, and the cost of promotion and awareness raising.<sup>95</sup>

While this predecessor bill serves as a helpful historic comparison, given the length of time elapsed between it and my proposal, I consider that comparison with the annual costs incurred by the Cis more helpful at this stage of policy development. However, I will have due regard to preceding proposed costings should I earn the right to introduce my proposed Bill.

The Finance Committee published its report on the FM ahead of the end of the parliamentary session. It included the following points:

- That 'a bill which clearly defines the nature of each constituent part of the proposed commissioner's workload and an FM which thoroughly details the associated costs of each part of the role is crucial in enabling judgements to be made about appropriate spend for a commissioner. This process of clearly defining the role of the commissioner is also vital in ensuring the independence of the commissioner's role can be protected.'
- The importance of including efficiencies of spend in the legislation by design, including in relation to co-location of the Commissioner's office;
- The establishment of any Commissioner post could lead to an increase in workload for SPCB staff.

The response also included a submission from the SPCB in relation to the FM for the bill. It set out the following conclusions:

- That the 'SPCB believes that it is essential that the establishment of any new office needs to be carefully considered at the outset in terms of value for money; whether an existing body could undertake the functions; and the constitutional nature of any such body.'
- That provisions which require SPCB approval of the Commissioner's determination on staffing and location was to be welcomed;
- For consideration to be given to an explicit provision in the Bill to give the SPCB the power to approve the Commissioner's budget;
- That allowing the SPCB to set the Commissioner's budget would 'ensure proper accountability for the use of public funds';
- 'Given that the SPCB, the Parliament and the Scottish Executive will not be under the jurisdiction of the Commissioner, and the Commissioner's functions are of an advocacy nature, the SPCB would invite the Finance Committee and the subject Committee which will scrutinise the Bill to ensure that, if the will of Parliament is to support the establishment of a Commissioner, they are satisfied as to whether, constitutionally, the Commissioner should be a Royal appointee with the costs falling on the Scottish Parliament or whether by the nature of the functions discharged then

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<sup>95</sup> Commissioner for Older People (Scotland) Bill, Explanatory Notes (And other accompanying documents), 2006, [b71s2-introd-en.pdf \(parliament.scot\)](https://www.parliament.scot/b71s2-introd-en.pdf)

this should be a Ministerial appointment and therefore charge to the Scottish Executive.<sup>96</sup>

As with this previous FM, it will be important to ensure the considerations in relation to my proposed bill are contextualised by modern-day concerns, budgets, and financial considerations. I recognise the importance of continued engagement with the SPCB in relation to my proposals and its updated position with regards the conclusions it set out in relation to Alex Neil's proposal of 2006.

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<sup>96</sup>The Scottish Parliament, Finance Committee, 2006 Report on the Financial Memorandum of the Commissioner for Older People (Scotland) Bill, [https://archive2021.parliament.scot/S2\\_EuropeanExternalRelationsCommittee/Reports/commissionerolderpeople.pdf](https://archive2021.parliament.scot/S2_EuropeanExternalRelationsCommittee/Reports/commissionerolderpeople.pdf)

# Questions

## About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
  - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
  - Professional with experience in a relevant subject
  - Academic with expertise in a relevant subject
  - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
  - Commercial organisation (company, business)
  - Representative organisation (trade union, professional association)
  - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
  - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:
- I am content for this response to be published and attributed to me or my organisation
  - I would like this response to be published anonymously
  - I would like this response to be considered, but not published (“not for publication”)



If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. **Data protection declaration**

I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

Please **ONLY** tick this box if you are **UNDER 12** years of age.

# Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

## Aim and approach

1. Which of the following best expresses your view of the proposed Bill? **Please note that this question is compulsory.**

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed

Please explain the reasons for your response.

2. Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

3. Which of the following best expresses your view on whether there is a need for a specific, dedicated Commissioner focusing solely on older people's rights and interests?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including your views on the list of proposed functions set out between pages 29 and 32 of the consultation document, and any additional functions you think the commissioner should have.

4. Which of the following best expresses your view on the age range of the proposed Commissioner's remit covering all those in Scotland aged 60 and over?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response.

5. Which of the following best expresses your view on whether the proposed Commissioner should hold powers of investigation?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response including how the powers of investigation would work in practice.

6. Given a number of other bodies have similar functions to some of those proposed for the Commissioner, which of the following best expresses your view on whether the proposed Commissioner's work can avoid duplication with existing officeholders?

- Strongly agree
- Tend to agree
- Neutral (neither agree nor disagree)
- Tend to disagree
- Strongly disagree
- Do not wish to express a view

Please explain the reasons for your response, including any views on how the Commissioner and existing officeholders can operate to ensure they do not replicate each other's work.

7. Which of the following best expresses your view on whether the proposed Commissioner should be independent of Government?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response, including any views on what the accountability and governance arrangements should be for the Commissioner.

## Financial implications

8. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- skip to next question

Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

## Equalities

9. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question.

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

## Sustainability

10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

Do you think the proposal could impact in any of these areas?  
If you do not have a view then skip to next question.

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

## General

11. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?





## **Deadline for responses**

All responses should be received no later than **Monday 23 October 2023**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

## **How responses are handled**

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than 'not for publication' responses) on my website: <https://www.colinsmythmsp.com/>

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament's Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member's Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than 'not for publication' responses) to the Scottish Parliament's Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

## **Requests for anonymity or for responses not to be published**

If you wish your response to be treated as anonymous or 'not for publication', please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

## **Other exceptions to publication**

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content.

If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

## **Data Protection**

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: [www.ico.gov.uk](http://www.ico.gov.uk).

## **Freedom of Information (Scotland) Act 2002**

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

[www.itspublicknowledge.info](http://www.itspublicknowledge.info).

