

**SPCB Supported Bodies Landscape Review Committee**  
**13 March 2025**  
**6th Meeting, 2025 (Session 6)**



## **MSPs proposing new SPCB supported bodies**

### **Contents**

|  |    |
|--|----|
| MSPs proposing new SPCB supported bodies .....   | 1  |
| Introduction .....   | 1  |
| The role of the Non-Government Bills Unit .....  | 2  |
| Theme 1: The role of SPCB supported bodies .....   | 3  |
| Theme 2: Criteria for creating new supported bodies.....   | 5  |
| Theme 3: SPCB supported bodies model .....   | 7  |
| Theme 4: Effective functioning .....   | 10 |
| Annexe A – Further information on the Disability Commissioner (Scotland) Bill .....                        | 13 |
| Annexe B – Further information on the proposed Commissioner for Older People ..                            | 14 |
| Annexe C – Further information on the proposed Wellbeing and Sustainable<br>Development Commissioner ..... | 17 |
| Annexe D – Information provided by the Non-Government Bills Unit .....                                     | 21 |

### **Introduction**

As part of its review into the SPCB supported bodies landscape, the Committee agreed to hear from those MSPs that have either introduced or expect to introduce Bills proposing new commissioners in Session 6.

The purpose of this evidence session is to hear why these MSPs are proposing adding new commissioners to the landscape, what the benefits of such an approach are, and what they considered when preparing their proposal. It will not focus on the merits of each of the commissioners being proposed as these issues will be considered by the relevant committee scrutinising them.

The proposed commissioners and the Members in charge are:

#### **Disability Commissioner (Scotland) Bill**

- Introduced by **Jeremy Balfour MSP** on 8 February 2024. It is at Stage 1.

## Older People's Commissioner

- A final proposal for a bill to establish an Older People's Commissioner as an SPCB supported body was lodged on [25 September 2024](#) by **Colin Smyth MSP**.

## Wellbeing and Sustainability Commissioner

- A final proposal for a bill to establish a Wellbeing and Sustainable Development Commissioner as an SPCB supported body was lodged on [07 November 2023](#) by **Sarah Boyack MSP**.

The SPCB Supported Bodies Landscape Review Committee (SSBLRC) has been established in response to a recommendation in the Finance and Public Administration Committee's (FPAC) report on [Scotland's Commissioner Landscape: A Strategic Approach](#). The Committee called for a review of the SPCB supported bodies, drawing on the evidence and conclusions set out in its report, and that the review should be carried out by a dedicated Parliamentary committee.

The report was debated on 31 October 2024, and the Parliament agreed:

- to the creation of a dedicated committee,
- that it should complete its work by June 2025, and
- "there should be a moratorium on creating any new SPCB supported bodies, or expanding the remit of existing bodies, while recognising that, for proposals within bills that have already been introduced, these are now for the Parliament to take a decision on, respecting the lead committees' roles in scrutinising legislation within their remits."

It is important to note that while the Parliament agreed to a moratorium, this motion is non-binding and the Parliament's rules do not prevent Members Bills with proposals to create a commissioner from being brought forward.

## The role of the Non-Government Bills Unit

Members Bills in the Scottish Parliament are supported by the Non-Government Bills Unit (NGBU). This is a clerking team supported by legal services that provides procedural advice to all members who seek to progress a members Bill.

There are two support models for members Bills, one where NGBU provides in depth resource intensive support, and another where NGBU provides more limited support to members. The NGBU does not support proposals that are outwith the legislative competence of the Parliament.

The three commissioner proposals referenced in this paper all received in-depth support which includes:

- an initial assessment of legislative competence of a proposal for a bill

- an assessment of relevance of the UK Internal Markets Act and more recently consideration in relation to the terms of the Subsidy Control Act;
- initial equality impact assessment, data protection impact assessment and sustainable development impact assessment;
- assistance with policy development and the associated contents of the member's consultation on a proposal for a bill (or assistance with the drafting of a statement of reasons on why a consultation is not necessary);
- summary of responses on the proposal (which needs to be lodged at final proposal stage);
- drafting of the bill and accompanying documents and navigation of the 3 week process (bill drafting is undertaken by external drafters);
- support throughout parliamentary scrutiny.

For non-NGBU supported proposals clerks provide advice and support, templates and guidance to members and their teams to assist them throughout the process. However, they do not provide any of the support in the 7 bullet points above.

## **Theme 1: The role of SPCB supported bodies**

In evidence sessions with existing SPCB supported bodies, the Committee asked what they thought their purpose was and how it differs from the role of Ministers, MSPs or other bodies.

Responses focused on their independence and powers:

The Ethical Standards Commissioner said:

“It is very important that someone who is, and is seen to be, entirely politically neutral is the individual who makes decisions about whether the respective codes of conduct have been followed. If there was not that independence or neutrality, the public could, quite rightly, have concerns that things were not being looked at through an apolitical lens.”

The Scottish Public Services Ombudsman said:

“the biggest difference between me and MSPs is that I am not voted into office but appointed through a Crown appointment via the Parliament—a process with which you will all be familiar. However, my decision making on complaints and complaints handling is completely independent. [...] You could feasibly say that there is some overlap with the role of MSPs, because I am aware from my contact with them that MSPs are also asked to look into things for constituents. The big difference is that I have the power to require information, and I can go all the way to the Court of Session for such information.

The Committee also inquired about the motivations behind establishing new SPCB-supported bodies, referencing the findings of the Finance and Public Administration Committee which in its conclusions said:

“This proliferation appears to have been primarily driven by calls to respond to perceived systemic failures in the delivery of public services, to bring prominence to a specific issue or policy area, seeing similar high-profile Commissioners in Wales and England, and more awareness of, and expectations, around individuals’ rights.”

In the Policy Memorandum or final proposal for each of the three proposed commissioners listed above, the Member in charge sets out the objective and justification for each of the new commissioners. These are set out below.

### **Disability Commissioner (Scotland) Bill**

“The Bill will establish a Disability Commissioner for Scotland, whose primary purpose will be to promote and safeguard the rights of disabled people. The Commissioner will be independent from Government.” The Member’s intention is that the Commissioner will:

- Advocate for disabled people at a national level, promoting awareness and understanding of their rights.
- Review and assess laws, policies, and practices related to disabled people’s rights, and promote best practices among service providers.
- Conduct research, investigate relevant devolved issues, and encourage consideration of disabled people’s rights in decision-making by service providers.

The [draft proposal](#) explains that this is necessary as the absorption of the Disability Discrimination Act into the Equality Act has led to a loss of focus of disability.

Further information is provided in Annexe A.

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

The aim of the proposed Bill is to promote and safeguard the rights and interest of older people through creating a “champion for older people who is specifically responsible for ensuring that their rights and interests are being observed and that any policies or government legislation takes account of their views and lived experience”. The Member’s intention is that the Commissioner will:

- Raise awareness and safeguard the interests of older people in Scotland, promoting opportunities and eliminating discrimination.
- Encourage best practices in the treatment of older people and review the adequacy and effectiveness of relevant laws.
- Investigate how service providers consider the rights, interests, and views of older people in their decisions and actions.

Further information is provided in Annexe B.

## **Proposed Wellbeing and Sustainable Development (Scotland) Bill**

The draft proposal for the Bill states that “a Commissioner with this specific focus would champion a culture change across the public sector that embeds the principles of sustainable development and wellbeing at its heart, ensuring that the long-term impacts of decision making are always considered in the development of policy for the benefit of future generations”. The Member’s intention is that the Commissioner will:

- Powers of investigate and scrutiny to ensure compliance with this Bill and other relevant Acts, holding public bodies accountable for sustainable development and wellbeing duties.
- Build policy coherence across the public sector, ensuring understanding of how existing Acts interact with new sustainable development and wellbeing definitions.
- Enhance the capacity of public bodies to implement climate change duties under the Climate Change (Scotland) Act 2009.

Further information is provided in Annexe C

## **Theme 2: Criteria for creating new supported bodies**

In previous evidence sessions, the Committee has discussed the criteria for SPCB supported bodies that was proposed by the Session 2 Finance Committee. Key evidence and contributions include:

- The Session 6 Finance and Public Administration Committee (FPAC) inquiry into the SPCB Supported Bodies Landscape, found that the criteria were not being applied as intended.
- The Scottish Government is developing a framework designed to ensure that decisions around the creation of new public bodies are made based on evidence and value for money against the backdrop of significant pressure on public spending. The draft Ministerial Control Framework was shared with the FPAC as part of its inquiry.
- The Commissioner for Ethical Standards in Public Life in Scotland and the Standards Commission for Scotland suggested that the focus should be on the intended outcomes rather than simply addressing a need. They also highlighted the importance of affordability, cost effectiveness, and the ability of existing bodies to address any gaps.
- The SPSO proposed three additional criteria that would “update and modernise” the proposed criteria:

- the function or body should either logically sit with the existing functions of a current [SPCB supported body], or be a role that requires the direct relationship with Parliament either because of the nature of the role and/ or international standards.
- what is the demonstrable gap in service/ oversight that the role will address. In oral evidence, the SPSO suggested conducting a “gap analysis” as part of the consideration for any new commissioner.
- what other options for achieving independence from government have been explored and why are they not suitable.

## Non-Government Bills Unit support

Where proposals relate to commissioners, the NGBU advise Members to discuss the proposal with existing commissioners or other bodies operating in the landscape their proposal impacts upon. Additionally, the NGBU also advises Members to consult comparable commissioners elsewhere in the UK or beyond.

The NGBU explained in information provided to FPAC to inform its inquiry in 2023 (Annexe D) that they provide the following advice<sup>1</sup> to Members who are pursuing Bill proposals to create Commissioners independent of Government and supported by the SPCB:

- “The need to ensure the policy set out in the consultation document takes into account the **criteria from the Finance Committee report on Accountability and Governance of SPCB supported bodies** – the criteria are also used as a source of reference during the bill drafting process and in the production of the financial memorandum;
- The merit in ensuring a range of accountability models have been considered (for example the consultation on the proposal for a Commissioner on Sustainable Development and Wellbeing includes a model of accountability and governance more akin to the model for the existing Welsh Commissioner, as well as including the SPCB supported model of accountability and governance);
- The need to inform the SPCB at an official to official level at an early stage of the development of a proposal for a bill;
- The merit in informing the SPCB itself, for example through a letter, a meeting with the Presiding Officer or members of the SPCB (this applies to any proposals where the SPCB’s role is relevant, not just where a new SPCB supported body is being proposed);
- The merit of using available information from the SPCB relating to existing SPCB supported bodies to inform the development of the bill and the accompanying documents including the financial memorandum;

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<sup>1</sup> This advice is provided where NGBU is providing support to the Member in relation to their proposal.

- The merit of sharing details of the relevant provisions of the bill and details of the relevant elements of the Financial Memorandum with the SPCB to seek comment where the SPCB is in a position to do so.”

The Session 2 Finance Committee criteria was used in the development of all three proposed commissioners and referenced specifically in the draft proposals for the Commissioner for Older People and the Wellbeing and Sustainability Commissioner. The FPAC report was referenced in the Disability Commissioner Financial Memorandum and Policy Memorandum. Annexes B and C provide the considerations against the Session 2 Finance Committee criteria.

### **Theme 3: SPCB supported bodies model**

In evidence sessions, the Committee considered the current landscape of SPCB supported bodies and possible alternative models. Previous witnesses have varied in their responses however all acknowledged the difficulty in creating “an optimal model for Commissioners” due to the variety of functions that they each hold.

Models discussed include:

- The Scottish Biometrics Commissioner proposed a ‘hub and spoke’ model, where the core services such as finance, HR and facilities management are centralised into one office, and then each of the Commissioners have their independence to execute their functions. This model could then be refined or expanded regarding the supported bodies, but the core function would still be centrally located.
- The Committee also explored the idea of a “one-stop shop” or an office of public trust. This could help people identify which SPCB supported body to approach for help through a ‘front end’ which could signpost people to the information they need.

In exploring new models, it was also noted that the capacity of the SPCB is already strained in its governance role for the existing landscape. This was highlighted in the Finance and Public Administration Committee’s report on the commissioner landscape, where it said:

“The SPCB has previously indicated to the Committee that the oversight of independent officeholders is now becoming a more significant time commitment for it, as well as accounting for a substantial part of the SPCB’s overall budget. Concerns were also raised in evidence, including by SPCB members, about the capacity of the SPCB to carry out this governance role, particularly as the landscape of supported bodies is expected to grow exponentially.”

The FPAC also noted that the default starting point appeared to be an SPCB supported body, rather than a consideration of alternative options:

“Witnesses noted that the Government and Members often opt for the SPCB-supported body model as a starting point rather than as the outcome of

detailed deliberations on need, added value, and a full range of alternative options.

The SPSO, for example, questioned “why the recommendation often jumps straight to thinking that being independent equals having a parliamentary officeholder, as opposed to analysing what the gap is, what the need is, and whether the work is being delivered somewhere else but could be done better, before creating the right structure to meet the need”

For each of the proposed commissioners, the proposed governance models are outlined below.

## **Disability Commissioner**

The [proposal for the Older People's Commissioner](#) states that this commissioner would be designed to ensure full independence from the Scottish Government by being accountable to the Scottish Parliament. This approach is intended to safeguard the Commissioner's functions and maintain their impartiality.

The Commissioner would be appointed by the Scottish Parliamentary Corporate Body (SPCB) with the approval of the Scottish Parliament. It would be financially accountable to Parliament and are not accountable to the Scottish Government for their actions in order to function independently of Government and hold the Government to account effectively.

It would be responsible for employing its own staff, who are not civil servants, and managing its own budgets from funding provided by the Scottish Parliament.

The [Bill as Introduced](#) also lays out that the Commissioner must lay before the Scottish Parliament:

- reports on investigation,
- a strategic plan every four years,
- annual report annually within 7 months after the end of that reporting year
- any other report the Commissioner considers appropriate.

## **Commissioner for Older People**

The [proposal from the Older People's Commissioner](#) outlines that the Commissioner would be independent of the Government and appointed by the SPCB, similar to the existing seven independent officeholders in Scotland. This approach was chosen as it would “ensure consistency with the governance arrangements of other independent officeholders currently operating in Scotland.”

Additionally, the proposal laid out a duty to publish an annual report covering:

- 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.

## **Wellbeing and Sustainable Development Commissioner**

As laid out in the [draft proposal](#), the proposed Wellbeing and Sustainable Development Commissioner would be independent of the Scottish Government and accountable to the Scottish Parliament. The proposal highlights "there are different options as to what model this accountability could take, whilst protecting the operational independence of the Commissioner."

In the current SPCB supported bodies model, the SPCB appoints officeholders, and sets the terms and conditions of each officeholder's appointment and budget. These appointments must then be approved by the Scottish Parliament.

In Wales, the Future Generations Commissioner operates as "corporation sole", meaning that all the functions (powers and duties) are vested in the office holder – as such, there is no traditional board that takes corporate responsibility for the organisations' performance and governance." Although the office is funded by the Welsh Government, there have [been calls for this funding structure to be reviewed](#).

The Welsh Future Generations Commissioner is accountable to the Welsh Parliament as well as to the Senedd Public Accounts Committee for governance, financial management, and internal control. This Committee can also report on the work of the Commissioner and has conducted inquiries into the implementation of the Welsh Act.

The equivalent Scottish Parliament Committee to the Welsh Senedd Public Audit Committee would be the Public Audit Committee.

Sarah Boyack states in the draft proposal:

"I can see merit in both of the approaches to accountability outlined above, and I am openminded at this stage of the process as to how the Scottish Commissioner's office would be most appropriately supported and the associated governance arrangements. I would therefore welcome views on the SPCB model or the potential role for the Scottish Parliament's Public Audit Committee."

The proposal also states that in addition to preparing annual reports, the Commissioner would be expected to appear before relevant Scottish Parliament Committees to give evidence on both its work and in relation to relevant inquiries.

## Theme 4: Effective functioning

This theme focuses on the suitability of the remit and powers of current and proposed SPCB supported bodies. Contributions from current SPCB supported bodies relating to powers include:

- Ethical Standards Commissioner: confirmed its legislative remit is adequate but again noted the importance of independence in his role.
- Standards Commission: suggested potential changes to their powers to improve efficiency, such as the ability to dispose of cases without a full hearing.
- Scottish Public Services Ombudsman: In written evidence said “I am limited to investigating the complaints made to me. While I can ‘research’ emerging themes and trends, without own initiative powers I cannot require organisations (and individuals if necessary) to provide me with information.”
- Scottish Information Commissioner: Noted the current timeline allows for lag between annual reports and committee scrutiny.
- Scottish Biometrics Commissioner: Highlighted that there is a need to maximise officeholders, and this does not always require increased cost.
- Children and Young People’s Commissioner Scotland: In evidence said “We have a good level of powers that are appropriate for us to deliver our function. We saw that some of the new proposals for commissioners had been modelled on the fact that this office has been delivering extremely well and has been given the appropriate powers.”

The draft proposals for the proposed SPCB supported bodies include information on their potential powers. The proposed Disability Commissioner and Commissioner for Older People both base their powers on the model used by the Children and Young Peoples’ Commissioner Scotland. Further information is provided below.

### Disability Commissioner

In the [proposal for the Disability Commissioner](#) for example, it states:

“The intention is that the investigative powers would be similar to those of the Children and Young People’s Commissioner, as set out in the Commissioner for Children and Young People (Scotland) Act 2003. The Children and Young People’s Commissioner can investigate “service providers” which means any person providing services for children and young people (but does not include a parent or guardian exercising their parental rights and responsibilities. I welcome views on who the proposed Commissioner should be able to investigate in relation to their consideration of the rights, views and interests of disabled people”.

## Commissioner for Older People

Similar to the Proposed Disability Commissioner, The Commissioner for Older People has also used the Children and Young Person's Commissioner as an example, specifically drawing on its investigatory powers. [The proposal states:](#)

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

"I would envisage that the Commissioner for Older People would follow the operational example set by the CYPSC in its investigatory powers and the ways and means by which it operates alongside other commissioners."

Furthermore, [the proposal for the Commissioner for Older People](#) also used the CYPSC as an example of a successful advocacy based commissioner, with the intention of emulating this "by performing a public facing role which promotes and safeguards the rights and interests of older people."

## Wellbeing and Sustainable Development Commissioner

The proposal for the Wellbeing and Sustainable Development Commissioner states the Commissioner would have powers to, relating to public bodies, conduct reviews, scrutinise, investigate and make recommendations. Additionally, the proposal states that "Advocacy would be a key role of the Commissioner in promoting wellbeing and sustainable development."

The [proposal for a Wellbeing and Sustainable Development Commissioner](#) draws heavily on the Future Generations Commissioner for Wales, including the role of the Auditor General for Wales.

The Welsh Commissioner aims to complement the work of the Auditor General for Wales because the Auditor General for Wales also "examines the extent to which sustainable development principles have been applied where public bodies have set wellbeing objectives, investigates how the sustainable development principle fits with value for money".

This is explained in the [Wellbeing and Future Generations report](#):

"The Auditor General must look at the way public bodies have planned and carried out their work, while the Commissioner must look at what they have achieved".

Additionally, a [Memorandum of Understanding](#) exists between the Auditor General and the Commissioner outlining how they must coordinate their work.

The [proposal for the Scottish Wellbeing Commissioner](#) states that given the Welsh example, there is the potential for "joint working to ensure the Scottish Government's sustainable development and wellbeing commitments are realised across the public sector. This could range from the Commissioner advising Audit Scotland on how to expand its work to scrutinise wellbeing, sustainable development

goals and climate change targets, or Audit Scotland and the Commissioner carrying out joint audits.”

The proposal also considers how the Commissioner could work with the CYPSC given it already consider the wellbeing of children and young people as part of its work.

**Kelly Eagle, Senior Researcher, SPICe Research  
March 2025**

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP [www.parliament.scot](http://www.parliament.scot)

## **Annexe A: Further information on the Disability Commissioner (Scotland) Bill**

“The Bill will establish a Disability Commissioner for Scotland, whose primary purpose will be to promote and safeguard the rights of disabled people. The Commissioner will be independent from Government.” The member’s intention is that the Commissioner will:

1. advocate for disabled people at a national level
2. using the functions set out in this Bill to promote awareness and understanding of the rights of disabled people
3. review law, policy and practice relating to the rights of disabled people with a view to assessing their adequacy and effectiveness and promote best practice by service providers
4. promote, commission, undertake and publish research on matters relating to the rights of disabled people
5. have the power to undertake investigations into devolved matters, if they consider that the issue relates to disabled people or a disabled person.
6. encourage the consideration of the rights, views, and interests of disabled people in the decision-making and actions of service providers.
7. have a similar profile and impact as that of the CYP Commissioner, in relation to disabled people.

The [draft proposal](#) explains that this is necessary as the absorption of the Disability Discrimination Act into the Equality Act has led to a loss of focus of disability.

## **Annexe B – Further information on the proposed Commissioner for Older People**

The aim of the proposed bill is to promote and safeguard the rights and interest of older people through creating a “champion for older people who is specifically responsible for ensuring that their rights and interests are being observed and that any policies or government legislation takes account of their views and lived experience”. Colin Smyth’s intention is that the commissioner achieve this through:

1. Raising awareness of the interests of older people in Scotland and of the need to safeguard those interests.
2. Promoting the provision of opportunities for, and the elimination of discrimination against, older people in Scotland.
3. Encouraging best practice in the treatment of older people in Scotland.
4. Keeping under review the adequacy and effectiveness of law affecting the interests of older people in Scotland.
5. Undertaking investigations into 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.

### **Consideration of Session 2 Finance Committee criteria**

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. 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

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](#). 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 CYPSC 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 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.



## **Annexe C – Further information on the proposed Wellbeing and Sustainable Development Commissioner**

The draft proposal for the Bill states that “a Commissioner with this specific focus would champion a culture change across the public sector that embeds the principles of sustainable development and wellbeing at its heart, ensuring that the long-term impacts of decision making are always considered in the development of policy for the benefit of future generations”.

1. Powers of investigation and scrutiny, to ensure that the duties conferred by this Bill are being upheld and public bodies held to account
2. Powers of investigation and scrutiny for oversight of other relevant Acts that confer sustainable development and wellbeing duties
3. Build policy coherence across the public sector, ensuring that there is full understanding of how existing Acts will interact with the new sustainable development and wellbeing definitions this proposed Bill would establish
4. Build the capacity of public bodies to implement their duties under section 44 of the Climate Change (Scotland) Act 2009 and undertake the role conferred by section 47 (in relation to the establishment of an oversight body) to monitor the implementation of climate change duties of public sector bodies Functions of the Commissioner I propose that the Commissioner would carry out the following functions:
  5. Powers of investigation and scrutiny, to ensure that the duties conferred by this Bill are being upheld and public bodies held to account
  6. Powers of investigation and scrutiny for oversight of other relevant Acts that confer sustainable development and wellbeing duties
  7. Build policy coherence across the public sector, ensuring that there is full understanding of how existing Acts will interact with the new sustainable development and wellbeing definitions this proposed Bill would establish
  8. Build the capacity of public bodies to implement their duties under section 44 of the Climate Change (Scotland) Act 2009 and undertake the role conferred by section 47 (in relation to the establishment of an oversight body) to monitor the implementation of climate change duties of public sector bodies

### **Consideration of Session 2 Finance Committee criteria**

In devising this proposal, the [Six Design Principles](#) that should feature in any proposal for an additional body or officeholder, which were developed by the Finance Committee and debated by Parliament in Session 2 of the Parliament, have been taken into account. These principles are set out below, with detail included under each in relation to my vision for the Scottish Commissioner:

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

The Commissioner would focus on the twin principles of wellbeing and sustainable development, which are essential for ensuring decisions are made with the best interests of future generations in mind. The breadth of the Commissioner's remit has been set out earlier in this document. I will seek to learn from the strengths of the [Welsh Commissioner](#), whose general duties are set out as follows:

"Promote the sustainable development principle, in particular to act as a guardian of the ability of future generations to meet their needs and encourage public bodies to take greater account of the long-term impact of the things they do."

"Monitor and assess the extent to which well-being objectives set by public bodies are being met."

The Scottish Commissioner's remit will differ to ensure it best meets the Scottish context. The Commissioner would be required to prepare and publish a report on an annual basis. The report could include details on the following:

- An overall assessment of Scotland's progress in embedding wellbeing and meeting sustainable development goals.
- The activities undertaken by the Commissioner over the reporting period to support and advise the Scottish Government and wider public sector.
- The activities undertaken in line with the Commissioner's power of scrutiny and investigation.

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

In the development of this member's Bill proposal and learning from the input of stakeholders, I will work to ensure that the functions of the proposed Commissioner are clear and distinct. This will include – as set out above – how the Commissioner could work alongside the Auditor General for Scotland.

I envisage that the Scottish Commissioner will have the power to conduct reviews into the implementation of sustainable development and wellbeing duties by public bodies, through its powers of scrutiny and investigation, and could make recommendations in relation to the introduction of specific regulations. Advocacy would be a key role of the Commissioner in promoting wellbeing and sustainable development.

### **3. Complementarity: a dovetailing of jurisdictions creating a coherent system with appropriate linkages with no gaps, overlaps or duplication.**

Policy coherence will be a key consideration of this proposal as it develops. Through this consultation process and continued engagement with stakeholders, including other Commissioners' offices and the experience of the Welsh Commissioner, I will

seek to ensure that the work of the Wellbeing and Sustainable Development Commissioner helps to build policy coherence across the public sector.

While wellbeing and sustainable development issues will undoubtedly be considered within the focus of other Commissioners in Scotland, I believe that the clear focus of my proposed Commissioner and its role in embedding consideration of these across the public sector will complement the work of other Commissioners.

For example, the Children and Young People's Commissioner for Scotland will already consider the wellbeing of children and young people as part of its work. The proposed Wellbeing and Sustainable Development Commissioner would benefit this work through its oversight of the implementation of the duties set out in this proposed Bill, and compelling decision makers to consider sustainability and the wellbeing of young people at the outset of all policy development. Therefore, I see this Commissioner's work as complementary to that of other Commissioners and would welcome views on how this could work in practice.

Public bodies are already required to report on their climate change commitments following passage of the Climate Change (Scotland) Act 2009. I intend for the new Commissioner to support this work, thus enhancing this existing public sector duty, and others which include clauses relating to sustainable development and wellbeing.

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

My proposal for a Wellbeing and Sustainable Development Commissioner will seek to build on the success of Scotland's other Commissioner/Ombudsmen roles in establishing and promoting themselves as the 'one-stop-shop' for issues relevant to their remits. I will also seek to learn from the experience of the Welsh Commissioner who, since the office was established in 2016, has built a strong reputation as one of the ["UK's leading Changemakers"](#).

**5. Shared services: shared services and organisational efficiencies built in from the outset.**

In developing this proposal and engaging with other Officeholders, I am keen to ensure that resources are shared as much as possible. This could include the incorporation of the Wellbeing and Sustainable Development Commissioner and their workforce into a shared workspace with another Commissioner team, and I would welcome views on other practical ways that resources can be shared to maximise organisational efficiency.

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

As set out earlier in this document, the Wellbeing and Sustainable Development Commissioner would have operational independence. The Commissioner's Office would be accountable to the Scottish Parliament and there are two potential approaches to accountability set out in this document. Following the Scottish Parliamentary Corporate Body model, the key duties of the SPCB in relation to appointed officeholders such as Commissioners are generally to 'determine his/her

length of appointment; to set his/her terms and conditions of appointment; approve determinations; pay his/her salary and allowances and any expenses incurred in the exercise of his/her functions'. Commissioners also submit budget bids to the SPCB for scrutiny.

As noted previously, the Welsh Commissioner is accountable to the Senedd Public Audit Committee in relation to its governance, financial management and internal control. The equivalent Scottish Parliament Committee would be the Public Audit and Post-Legislative Scrutiny Committee.

In addition to preparing annual reports, the Commissioner would be expected to appear before relevant Scottish Parliament Committees to give evidence on both its work and in relation to relevant inquiries.

In light of the above, I recognise the importance of ensuring complementarity among all Commissioner office holders operating in Scotland and would welcome views on ensuring that the duties of the proposed Wellbeing and Sustainable Development Commissioner do not duplicate those of other Commissioners or bodies that oversee the implementation of sustainable development and wellbeing duties, and therefore intend to encourage engagement from all relevant bodies working in Scotland to ensure thorough engagement from the beginning of this process.

It has also been highlighted that the ways in which governments work – for example, where the implementation of different policy areas is carried out distinctly and in isolation, even where there is potential to collaborate – impacts negatively on policy coherence. In Wales, research has suggested that this has been exacerbated by a lack of resources and clear decision-making power impeding organisations in making the kind of cross-cutting collaboration envisioned by [the Well-being of Future Generations Act](#). I am keen to ensure the development of my proposed Bill learns lessons from the Welsh experience, with the Scottish Commissioner playing a key role in encouraging collaboration to ensure coherent policy.

## **Annexe D – Information provided by the Non-Government Bills Unit**

**Information provided by the NGBU to FPAC as part of its Scotland's Commissioner Landscape inquiry. November 2023.**

### **Background on the members bill process**

The phases of a members bill proposal are:

1. the draft proposal stage where a member either consults on a proposal or makes the argument to a committee that there is no need to consult again due to existing information (under Standing Orders consultations must run for 12 weeks – they can be longer);
2. the final proposal stage where a member seeks cross party support for a proposal (and at that point the Government can decide to legislate on the proposal meaning the member's proposal falls) - final proposal stage lasts one month and cross-party support required to earn the right to introduce a bill is 18 members including from two parties on the Bureau;
3. the bill drafting stage;
4. bill introduction and parliamentary scrutiny.

### **Background on the Non-Government Bills Unit**

The Non-Government Bills Unit (NGBU) is a clerking team closely supported by legal services. It provides procedural advice to all members who seek to progress a members bill. The team is responsible for ensuring that members bills comply with Standing Orders, for example the team ensures the lodging of all draft proposals and final proposals on all bills comply with Standing Orders.

Under Standing Orders members can progress two proposals for bills per session (and the NGBU support one proposal from one member at any given time – see support model below). In practice given the notable time commitment required for a members bill it would be very rare for a member to pursue more than one bill per session.

There are two support models for members bills, one where NGBU provides in depth resource intensive support, and another where NGBU provides more limited support to members. The NGBU does not support proposals that are outwith the legislative competence of the Parliament.

The NGBU supported model includes:

- an initial assessment of legislative competence of a proposal for a bill
- an assessment of relevance of the UK Internal Markets Act and more recently consideration in relation to the terms of the Subsidy Control Act;

- initial equality impact assessment, data protection impact assessment and sustainable development impact assessment;
- assistance with policy development and the associated contents of the member's consultation on a proposal for a bill (or assistance with the drafting of a statement of reasons on why a consultation is not necessary);
- summary of responses on the proposal (which needs to be lodged at final proposal stage);
- drafting of the bill and accompanying documents and navigation of the 3 week process (bill drafting is undertaken by external drafters);
- support throughout parliamentary scrutiny.

For Non-NGBU supported proposals clerks provide advice and support, templates and guidance to members and their teams to assist them throughout the process. However they do not provide any of the support in the 7 bullet points above.

### **Proposals for Members bills creating a new independent body**

There are three proposals for members bills being progressed this session which seek to establish SPCB supported bodies. These are:

- the [Disability Commissioner \(Scotland\) Bill](#) (Jeremy Balfour MSP - at bill drafting stage);
- the [Wellbeing and Sustainable Development \(Scotland\) Bill](#) (Sarah Boyack MSP - at final proposal stage); and
- the [Commissioner for Older People \(Scotland\) Bill](#) (Colin Smyth MSP - at draft proposal stage – the consultation closed in October 2023).

Summary wordings of the purpose of each proposal, the consultation document and where it has been produced a summary of consultation responses are available on the web pages hyperlinked above.

In addition to proposals for bodies which may be supported by the SPCB, there is also a Bill from Mark Griffin MSP, currently at Stage 1 which seeks to establish the Scottish Employment Injuries Advisory Council. This would be an arms-length body funded by the Scottish Government.

NGBU can seek details from organisations to aid the development of any bill and its accompanying documents including the financial memorandum. For example for previous bills local authorities or health boards have been consulted.

Members are also advised of the merits of informing and involving any organisations notably impacted upon by any bill proposal they are developing. So where proposals relate to commissioners, members are advised, if they have not already done so, to discuss the proposal with other commissioners or other bodies operating in the

landscape their proposal impacts upon. Where possible members are also advised to consult comparable commissioners elsewhere in the UK or beyond.

For proposals seeking to establish an SPCB supported body the SPCB is clearly a very relevant organisation.

## **Engagement with the SPCB**

Where proposals for bills are intended to be independent of Government and supported by the SPCB, and where the members pursuing these proposals are supported by the NGBU, members are advised of the following:

- The need to ensure the policy set out in the consultation document takes into account the criteria from the Finance Committee report on Accountability and Governance of SPCB supported bodies (SPCB officials have also written to NGBU this session to ensure these criteria are highlighted to the relevant members) – the criteria are also used as a source of reference during the bill drafting process and in the production of the financial memorandum;
- The merit in ensuring a range of accountability models have been considered (for example the consultation on the proposal for a Commissioner on Sustainable Development and Wellbeing includes a model of accountability and governance more akin to the model for the existing Welsh Commissioner, as well as including the SPCB supported model of accountability and governance);
- The need to inform the SPCB at an official to official level at an early stage of the development of a proposal for a bill;
- The merit in informing the SPCB itself, for example through a letter, a meeting with the Presiding Officer or members of the SPCB (this applies to any proposals where the SPCB's role is relevant, not just where a new SPCB supported body is being proposed);
- The merit of using available information from the SPCB relating to existing SPCB supported bodies to inform the development of the bill and the accompanying documents including the financial memorandum;
- The merit of sharing details of the relevant provisions of the bill and details of the relevant elements of the Financial Memorandum with the SPCB to seek comment where the SPCB is in a position to do so.

**17 November 2023**