

Commissioner for Older People (Scotland) Bill

1. Why do we need a Commissioner for Older People?

Scotland has a rapidly ageing population and by 2040, 1 in 4 of us will be over 65.¹ But increases in life expectancy have slowed and now Scotland has the lowest life expectancy of all UK countries.² Too many those older people are spending their later years in poor health and in poverty. As of 2023, 15% of pensioners (almost 1 in 6) in Scotland are living in relative poverty after housing costs.³

Many older people also face multiple forms of discrimination and are too often negatively stereotyped, when we should be celebrating the immense contribution they make to our communities. The profound impact of the covid-19 pandemic also brought home the significant shortcomings in protecting and promoting the rights of older people.

There is significant support among the public for a Commissioner for Older People in Scotland. Two separate Public opinion polls carried out on behalf of Age Scotland and Independent Age both demonstrated that the majority of people across all age ranges and regions in Scotland believe that a Commissioner for older people should be established in Scotland.

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.⁴

In the 55+ age group, 82% of respondents are in favour of a Commissioner for Older People.⁵ It is also significant that the establishment of a Commissioner for Older People in Scotland is supported by 68% of respondents aged 18-24.⁶ 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.

Organisations who work with older people across the country also support a commissioner, with over 30 stakeholders signing a consensus statement calling on the Scottish Government to create one.⁷

Establishing a Commissioner for Older People would ensure that as Scotland's population ages, older people have access to an independent advocate for, and champion of their rights, needs and services. We have Children's Commissioners in all four nations of the UK and Older People's Commissioners in Wales and Northern Ireland, with a big campaign for one in England. Why not Scotland?

¹ National Records of Scotland, 'Projected Population of Scotland': [Projected Population of Scotland \(2018-based\) | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/files/statistics/population-projections-2018-2040)

² National Records of Scotland, 'Life Expectancy in Scotland': <https://www.nrscotland.gov.uk/files/statistics/life-expectancy-in-scotland/19-21/life-expectancy-19-21-report.pdf>

³ Rise in pensioner poverty rates: Action needed to tackle scourge of one in six pensioners living below the poverty line, <https://www.ageuk.org.uk>

⁴ Data available in the consultation document, accessible [HERE](#)

⁵ Ibid.

⁶ Ibid.

⁷ Independent Age, [Older People's Commissioner Scotland consensus statement | Independent Age](#)

No single government department can respond to the needs of older people alone. It needs a joined-up approach. The scale of the demographic change means that the Scottish Government needs to consider how almost all policy changes affect people in later life.

Having an Older People's Commissioner would mean there was someone independent of Government able to look across all Government departments to ensure that the rights of older people were being fully considered.

2. What functions would the Commissioner have?

The proposed functions of the Commissioner are as follows:

- 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.

It is crucial that the Commissioner adheres to the principles of consultation, participation, and accessibility and that their work is informed by the views of older people with input from the organisations which work with older people in Scotland.

These functions are designed to uphold the key purpose of a commissioner- to ensure the rights and interests of older people are being observed and that any policies or government legislation takes account of their views and lived experience.

3. What age range should the Commissioner cover?

There is no legal or universally accepted definition of an 'older person', so in line with the previous bill introduced by Alex Neil and the Commissioner landscape operating across the rest of the UK, persons in Scotland who are aged 60 years or over would fall within the remit of the Scottish Commissioner. But the consultation on the bill seeks views on the age range.

4. Should the Commissioner have powers of investigation?

The Commissioner for Older People should have 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. This could follow the example set by the Commissioner for Children and Young People, who can carry out both general and individual investigations into cases relating to children and young people.

Similarly, the Welsh 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.⁸ 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.

⁸ 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>

In Northern Ireland, the Older Person's Commissioner has published a series of reports and investigations. These include the *Appreciating Age* report,⁹ *Crime and Justice: The experience of older victims of crime in Northern Ireland*,¹⁰ and *Home Truths, the Commissioner's Investigation into Dunmurry Manor Care Home*.¹¹ 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.¹²

The Commissioner for Older People in Scotland could only carry out a general investigation if the Commissioner has considered the available evidence on the matter and is satisfied that the case has significance to older people generally or particular groups of older 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.

5. How would the Commissioner work alongside other bodies and organisations?

It is important that the Bill avoids duplication of work. In other areas of the UK, Older People's Commissioners have a close and productive working relationship with all relevant bodies and have been able to guard against any duplication of effort.

The key examples of bodies that a Commissioner in Scotland would be required to work alongside are the Equalities and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC).

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 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

There are different options available to establish a good working relationship, for example a Memorandum of Understanding between the Commissioner for Older People and the SHRC and EHRC could be a possibility. This may not be a necessity, as 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.

6. How would the Commissioner be appointed and held accountable?

The Commissioner would be independent of Government and appointed by the Scottish Parliamentary Corporate Body (SPCB), which is the means by which the existing independent officeholders are appointed, including the Commissioner for Children and Young People. The appointment would require the approval of the Scottish Parliament.

⁹Commissioner for Older People Northern Ireland, https://www.copni.org/media/1123/appreciating_age_valuing_the_positive_contributions_made_by_older_people.pdf

¹⁰ Commissioner for Older People Northern Ireland, <https://www.copni.org/media/1540/206567-online-a4-crime-report-56p.pdf>

¹¹ Commissioner for Older People Northern Ireland, <https://www.copni.org/media/1478/copni-home-truths-report-web-version.pdf>

¹² Commissioner for Older People for Northern Ireland, Annual Report and Financial Statements for the year ended 31st March 2020, [copni-annual-report-2019-2020.pdf](https://www.copni.org/media/1478/copni-annual-report-2019-2020.pdf)

In order to maximise transparency and accountability, the Commissioner would have a duty to publish and lay before the Parliament an annual report which 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

7. What impact would the Commissioner have on equalities?

Age is a protected characteristic as defined by the Equality Act 2010 and discrimination on the basis of age is prohibited under the Act. However 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.

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.

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. A new Commissioner for Older People should be mindful of identities which intersect with age to ensure that ethnic minorities, 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.

8. What impact would the Commissioner have on sustainability?

Establishing a Commissioner for Older People would impact positively on sustainable development by making society more just through promoting and upholding the rights and interests of older people and holding Government and public bodies to account in relation to issues affecting older people.

All older people regardless of circumstance would be represented and championed by the Commissioner, with no discrimination or bias. A commissioner would also strengthen communities by highlighting and tackling issues which affect individual towns, areas or regions. By raising awareness of key challenges faced by older people, including the ways they can be socially and economically disadvantaged, establishing a commissioner would be an effective way to ensure that the rights of a significant demographic within our society are being observed and supported.

9. What is the potential financial impact of establishing a Commissioner for Older People in Scotland?

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.

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. would be my intention that the

provisions of my proposed bill would give powers to the Scottish Parliament Corporate Body 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.

There is currently a significant amount of money being spent on tackling health and social care pressures that could be alleviated if problems facing older people were addressed much more quickly and if older people had access to the assistance they need when they need it. A commissioner would play a vital role in identifying these areas and ensuring that the needs of older people included in the policymaking process, which would help to save money in the long-term.