

COMMISSIONER FOR OLDER PEOPLE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3A of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Commissioner for Older People (Scotland) Bill introduced in the Scottish Parliament on 2 April 2025.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 64–EN);
 - a Financial Memorandum (SP Bill 64–FM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 64–LC).
3. This Policy Memorandum has been prepared by the Non-Government Bills Unit on behalf of Colin Smyth MSP, the Member who introduced the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVES OF THE BILL

4. The Bill will establish a Commissioner for Older People, whose primary purpose will be to promote and safeguard the rights and interests of people aged 60 and over in Scotland. The Commissioner will be independent from Government.
5. The Commissioner will - using the powers set out in this Bill - act as a champion for older people at a national level. As part of this work, the Commissioner will review law, policy and practice relating to the rights and interests of older people with a view to assessing their adequacy and effectiveness and promote best practice by service providers. Additionally, the Commissioner will promote, commission, undertake and publish research on matters relating to the rights and interests of older people and promote the skills and experience of older people.
6. The Commissioner will have the power to undertake investigations into devolved matters if they consider that the issue relates to older people. These investigations will seek to encourage the consideration of the rights, views, and interests of older people in the decision-making and actions of service providers.

7. The Member believes that establishing a Commissioner for Older People would go a long way towards addressing the many issues faced by older people. His view is that society should celebrate the achievements and experiences of Scotland’s older generations, while also protecting them and ensuring that they have the support they need to enjoy a fulfilling life.

8. The Member believes that the Commissioner would give older people, who are often marginalised, a voice and would seek to ensure that their long-term needs and challenges are fully considered in policy and practice across all government departments and public bodies.

9. In determining the functions that the Commissioner should have, and the role that they should play, the member has drawn inspiration from a previous Member’s Bill seeking to establish an independent commissioner for older people which was introduced in the second session of the Scottish Parliament, by then MSP Alex Neil.¹ The Bill fell at stage 1 when the Scottish Parliament went into dissolution on 2 April 2007 and the Member-in-charge did not bring forward a further proposal. However, Colin Smyth MSP considers that there is as much, if not more, need for a Commissioner for Older People now as there was in 2007.

10. The Member also notes the high profile of the Commissioner for Children and Young People in Scotland (“CYP Commissioner”), and the influence and impact that they have on many matters relating to children’s rights. The Member envisions that the Commissioner for Older People should have a similar profile and impact.

BACKGROUND

Ageing population

11. Scotland’s population is ageing, with the 2022 census recording more people in older age groups than in any previous Scottish census. Figures from 2023 estimated that there were 1,497,192 people aged 60 or over in Scotland. A more detailed breakdown by age group demonstrates that in 2023 there were an estimated:

- 706,151 people aged 60-69;
- 512,152 aged 70-79;
- 233,342 aged 80-89; and
- 45,547 aged over 90.²

12. Projections by the National Records of Scotland estimate that the number of people aged 65 and over³ will continue to grow, rising by 30% by 2045 from 1.06 million (in 2022) to 1.37

¹ Commissioner for Older People (Scotland) Bill [Session 2], retrieved March 2025 from: <https://www.parliament.scot/bills-and-laws/bills/s2/commissioner-for-older-people-scotland-bill>.

² Mid-2023 population estimates - National Records of Scotland, retrieved March 2025, from: <https://www.nrscotland.gov.uk/publications/mid-2023-population-estimates/>.

³ Throughout this document, some of the statistics and research referenced is not specific to 60 and over – for example, some refer to people aged 50 and over, or 65 and over. All such references include people 60 and over and the issues are still relevant etc.

million.⁴ Although the number of older people continues to rise, life expectancy is slowing, and Scotland now has the lowest life expectancy of all UK countries.⁵ Life expectancy rates fell during the COVID-19 pandemic, with older people more likely to die with COVID-19 as an underlying cause.⁶ While the life expectancy rate has since risen, it remains below pre-pandemic levels.⁷

13. Age Scotland, a charity for older people, has stressed the need for more to be done to address the needs of an ageing population, stating that Scotland “isn’t planning effectively or quickly enough for a rapidly ageing population, despite repeated indicators and [a] well-established population trend.”⁸ The charity highlighted the need to address issues older people face relating to housing, health, financial and employment needs. Similar views were expressed in response to the Member-in-charge of the Bill, Colin Smyth MSP’s, consultation on his proposed Bill.⁹

Issues faced by older people

14. The Member acknowledges that older people are not a homogenous group, and that each older person has different experiences, challenges, and priorities. He therefore considers it vital that the Commissioner continually and consistently consults with older people, and organisations that work with and for older people, to ensure that their views are central to the Commissioner’s work.

15. The areas set out below are therefore not an exhaustive list, but instead a sample of some of the issues that older people may commonly face and thus that the Commissioner may wish to carry out work in relation to.

Impact of COVID-19 pandemic

16. The Member considers that the COVID-19 pandemic had a disproportionately negative effect on older people. He notes the issues that many older people faced during the pandemic including those living in care homes often being unable to see their loved ones¹⁰, the loneliness

⁴ Projected Population of Scotland (Interim) 2020-based, National Records of Scotland, retrieved March 2025 from: <https://www.nrscotland.gov.uk/media/aunkohtb/population-projections-2020-scotland-nat-pub.pdf>.

⁵ Life Expectancy in Scotland 2021-2023 - National Records of Scotland, retrieved March 2025 from: <https://www.nrscotland.gov.uk/publications/life-expectancy-in-scotland-2021-2023/#:~:text=In%20Scotland%2C%20life%20expectancy%20at,expectancy%20was%20increasing%20in%20Scotland.>

⁶ COVID-19 deaths in Scotland 2022, by age and gender | Statista, retrieved March 2025 from: <https://www.statista.com/statistics/1291728/covid-19-deaths-in-scotland-by-age-and-gender>.

⁷ Life Expectancy in Scotland 2021-2023 - National Records of Scotland, retrieved March 2025 from: <https://www.nrscotland.gov.uk/publications/life-expectancy-in-scotland-2021-2023/#:~:text=In%20Scotland%2C%20life%20expectancy%20at,expectancy%20was%20increasing%20in%20Scotland.>

⁸ Age Scotland news release July 2022, retrieved March 2025 from: <https://www.agescotland.org.uk/news/292-age-scotland-calls-for-more-action-to-prepare-for-ageing-population>

⁹ [final_consultation_commissionerolderpeople.pdf](#).

¹⁰ *Behind the headlines: why in person care home visiting must get going again*, Age Scotland, December 20202, retrieved March 2025 from: [behind-the-headlines_in-person-care-home-visiting-decemeber-2020.pdf](#).

and isolation often caused by lockdowns and social distancing measures¹¹, the removal of social care packages¹², difficulties in accessing medicines and high rates of death and serious illness¹³, which particularly affected people who were older and therefore more likely to be vulnerable.

17. The Member believes that the pandemic has also had a long-term impact on the mental and physical health of many older people, with research by Age UK finding that 36% of older people in the UK (around 5.8 million) feel more anxious since the start of the pandemic and 43% (around 6.9 million) feel less motivated to do the things that they enjoy.¹⁴

Poverty and cost of living crisis

18. Scottish Government statistics demonstrate that between 2020 and 2023, 15% of those aged over 65, and 23% of those aged 55-64, experienced relative poverty after housing costs.¹⁵ In addition, research published by Age Scotland in September 2023 set out that 41% of over 50s in Scotland felt “financially squeezed,” a rise from 26% who answered in the same way in 2021.¹⁶ Further to this, it is estimated that 4 in 10 pensioners in Scotland live in fuel poverty (with an estimated 1 in 4 living in extreme fuel poverty)¹⁷ and at least 10% of older people are at risk of experiencing malnourishment.¹⁸ Age Scotland has stated:

“The cost of living crisis is forcing many older people to make incredibly difficult financial choices between powering and heating their homes and the food they can afford to buy. Our helpline is hearing from an increasing number of older people who are finding it near impossible to pay their energy bills, having cut down on all but the essentials, and who will now be at risk of falling into unmanageable debt as a result.”¹⁹

¹¹ Age UK *Impact of Covid-19 on older people’s mental and physical health: one year on*, retrieved March 2025 from: [ID204712_HI_Covid_report_v3.indd](#).

¹² Scottish Human Rights Commission news release, October 2020, retrieved from: [Commission calls for immediate return of social care support to address human rights concerns](#).

¹³ Office for National Statistics *Self-reported coronavirus (COVID-19) infections and associated symptoms, England and Scotland* published April 2024, retrieved March 2025 from: [Self-reported coronavirus \(COVID-19\) infections and associated symptoms, England and Scotland - Office for National Statistics](#).

¹⁴ Age UK news release, July 2021, retrieved March 2025 from: <https://www.ageuk.org.uk/latest-press/research-pandemic-impact/#:~:text=Many%20other%20over%2065%20were,the%20start%20of%20the%20pandemic>.

¹⁵ Poverty and Income Inequality in Scotland 2020-23, Scottish Government, retrieved March 2025 from: <https://data.gov.scot/poverty/>.

¹⁶ Age Scotland news release, September 2023, retrieved March 2025 from: <https://www.agescotland.org.uk/news/163-41-of-over-50s-in-scotland-feel-financially-squeezed>.

¹⁷ Age Scotland news release, November 2024, retrieved March 2025 from: <https://www.agescotland.org.uk/news/1327-huge-relief-for-pensioners-as-universal-heating-payment-reinstated#:~:text=%22We%20not%20forget%20that,else%20for%20them%20this%20winter>.

¹⁸ Malnutrition Risk Prevalence in the Community Data Briefing, Food Train, September 2024, retrieved from: <https://thefoodtrain.co.uk/wp-content/uploads/2024/10/Screening-Report-September-2024.pdf>.

¹⁹ Help with the cost of living, Age Scotland, retrieved March 2025 from: https://www.agescotland.org.uk/assets/000/000/971/Cost_of_Living_Guide_v_online_original.pdf?1711475444.

19. The cost-of-living crisis has also had a negative impact on older people’s ability to socialise, with research suggesting that older people are less likely to do so in order to save money.²⁰

Loneliness and isolation

20. Evidence suggests that as people get older it can become more difficult to maintain social connections due to a number of factors such as retirement, bereavement or being more likely to be living alone.²¹ This in turn can lead to feelings of loneliness and isolation, which can have a negative impact on older people’s physical and mental health. This is demonstrated by research undertaken by Age Scotland which found that 58% of those aged over 50 feel lonely most or all of the time.²²

21. Evidence suggests that the COVID-19 pandemic led to an increase in loneliness and isolation for many older people, with Scottish Government research finding that the biggest increase in loneliness during the pandemic was experienced by people over the age of 60.²³ As noted above, lockdowns and social isolation measures were contributing factors to older people not being able to see family and friends or socialise as they had prior to the pandemic.

22. Digital exclusion is another factor that may contribute to older people feeling lonely or socially isolated, with the Scottish Household Survey identifying that 23% of adults over the age of 60 are not internet users.²⁴ A lack of ability or inclination to access the internet can create disadvantages, such as being unable to apply for jobs, access local services, order online or connect with others online. Scottish Government research suggests that older people who remain offline “may do so as they do not understand the benefits of being online or have the confidence to do so safely.”²⁵

23. Age UK suggests that improving the digital inclusion of older people may be one way of reducing or preventing loneliness by helping older people to “maintain or build new social

²⁰ News Release, Age Scotland June 2023, retrieved March 2025 from: <https://www.agescotland.org.uk/news/186-new-research-reveals-more-than-half-of-over-50s-in-scotland-experience-loneliness#:~:text=Findings%20from%20Age%20Scotland%27s%20Big,cost%2Dof%2Dliving%20crisis.>

²¹ Age UK, *You are not alone in feeling lonely: loneliness in later life*, published December 2024, retrieved March 2025 from: [you-are-not-alone-in-feeling-lonely.pdf](https://www.ageuk.org.uk/you-are-not-alone-in-feeling-lonely.pdf).

²² News Release, Age Scotland June 2023, retrieved March 2025 from: <https://www.agescotland.org.uk/news/186-new-research-reveals-more-than-half-of-over-50s-in-scotland-experience-loneliness#:~:text=Findings%20from%20Age%20Scotland%27s%20Big,cost%2Dof%2Dliving%20crisis.>

²³ *Recovering our Connections 2023 to 2026*, Scottish Government, March 2023, retrieved March 2025 from: <https://www.gov.scot/publications/recovering-connections-2023-2026/pages/3/>.

²⁴ Scottish Household Survey 2023 results, Scottish Government, December 2024, retrieved March 2025 from: <https://www.gov.scot/publications/scottish-household-survey-2023-results-internet/>.

²⁵ Full Business Case Connecting Scotland, Scottish Government, September 2023, retrieved from: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2023/09/full-business-case-connecting-scotland/documents/full-business-case-connecting-scotland/full-business-case-connecting-scotland/govscot%3Adocument/full-business-case-connecting-scotland.pdf>.

connections, which in turn can help someone to maintain their independence and improve their wellbeing.”²⁶

Health and social care

24. Research by the Scottish Public Health Observatory states that the “prevalence and incidence” of the majority of health conditions rises as people get older, noting that the most common causes of death change as people age. For example, older people are more likely than younger people to die from cancer, cardiovascular disease, and respiratory disease. The research cites other factors, which may have a particular impact on older people’s health. It states, for example, that older people are more likely to be admitted to hospital and therefore more likely to have a healthcare associated infection. It is further suggested that older people may develop conditions – such as mobility or sight issues - which mean they are classified as disabled. This in turn may mean that they have specific housing or social care needs.²⁷

25. Issues faced by the social care sector may also have a direct impact on the lives of many older people, with Scottish Care, a membership organisation and representative body for independent social care services in Scotland, stating:

“The social care sector is currently grappling with a range of complex issues, including workforce shortages, limited resources, and the demand for high-quality care services. Adequate funding and support for care providers are lacking yet essential to ensure that older individuals receive the level of care and attention they require. Furthermore, the COVID-19 pandemic has exacerbated existing challenges and highlighted the critical importance of robust, resilient, and responsive social care systems.”

26. Scottish Care has called for reform of, and investment in, the social sector care sector and considers that the proposed commissioner can play a significant role in relation to this “by safeguarding the rights and well-being of older people in Scotland, and by bringing voice to the voiceless.”²⁸

Employment, skills and experience

27. Research by the Chartered Institute of Personnel and Development, which was published in 2022, found that there are 852,000 workers aged over the age of 50 in Scotland, accounting for around a third of the workforce. Of those workers, 90,000 are aged over 65.²⁹

²⁶ *You are not alone in feeling lonely*, Age UK, December 2024, retrieved March 2025 from: [you-are-not-alone-in-feeling-lonely.pdf](#).

²⁷ Older People: policy content, the Scottish Public Health Observatory, retrieved March 2025 from: <https://www.scotpho.org.uk/population-groups/older-people/policy-context/>.

²⁸ Summary of consultation responses, proposed Commissioner for Older People (Scotland) Bill, retrieved from: <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/consultation-summary-opc.pdf>.

²⁹ Understanding older workers in Scotland, CIPD Blogs, March 2022, retrieved March 2025 from: https://community.cipd.co.uk/cipd-blogs/b/scotland_the_blog/posts/understanding-older-workers-in-scotland#:~:text=Official%20statistics%20show%20that%20over,over%20the%20age%20of%2065.

28. Twice as many people aged over 65 were in the workplace in 2020 compared to 2010. This may be due to a number of factors which mean that people remain in employment longer including improved health, financial needs, changes to retirement laws and individual choice.³⁰ However, the COVID-19 pandemic has had an impact on older people in employment, with research carried out by the Office of National Statistics noting:

“Those in our sample generally moved or stayed out of the job market after the pandemic because of complex and interrelated factors, including being unable to find a job, their age, ill health, caring for others, concerns about catching COVID-19, and financial security (for example, from a pension or a spouse's salary).”³¹

29. Research conducted by the University of Edinburgh in 2017, highlighted potential benefits of working as an older person, including physical and mental health benefits and work being a means of maintain social contact with others. However, the research also highlighted that older people may face a number of issues in the workplace, or in trying to access work. For example, they may have concerns about ageism in the workplace, that their skills and experience are undervalued, and about job security.³²

30. Further to this, research commissioned by the Fair Work Convention highlighted that women over 50 are more likely to have caring responsibilities, which may act as a barrier to better pay and progression.³³ In addition, both male and female respondents to the University of Edinburgh's research considered that health problems may eventually prevent them from extending their working life.³⁴

RELEVANT LEGISLATION, BODIES, AND PARLIAMENTARY CONSIDERATION

The Equality Act 2006 - Equality and Human Rights Commission

31. The Equality and Human Rights Commission (“the EHRC”) was established in 2007 under the Equality Act 2006. The EHRC has a general duty to encourage and support the development of a society in which: people's ability to achieve their potential is not limited by prejudice or discrimination; there is respect for and protection of each individual's human rights; there is respect for the dignity and worth of each individual; each individual has an equal opportunity to participate

³⁰ Age-friendly workplaces are more important than ever, Health and Social Care Alliance Scotland, September 2020, retrieved March 2025 from: <https://www.alliance-scotland.org.uk/blog/opinion/why-age-friendly-workplaces-are-more-important-than-ever/>.

³¹ Impact of coronavirus on people aged 50 to 70 years and their employment after the pandemic, Office for National Statistics, March 2022, retrieved from: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/articles/impactofcoronavirusonpeopleaged50to70yearsandtheiremploymentafterthepandemic/2022-03-14>.

³² Older people and employment in Scotland: research, Scottish Government, August 2017, retrieved March 2025 from: <https://www.gov.scot/publications/older-people-employment-scotland/>.

³³ Women over 50 in Scotland facing significant barriers to their pay and progression in the workplace, The Fair Work Convention, July 2022, retrieved March 2025 from: <https://www.fairworkconvention.scot/women-over-50-in-scotland-facing-significant-barriers-to-their-pay-and-progression-in-the-workplace/>.

³⁴ Older people and employment in Scotland: research, Scottish Government, August 2017, retrieved March 2025 from: <https://www.gov.scot/publications/older-people-employment-scotland/>.

in society; and there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

32. In exercising its powers, the EHRC shall: (a) promote understanding of the importance of equality and diversity; (b) encourage good practice in relation to equality and diversity; (c) promote equality of opportunity; (d) promote awareness and understanding of rights under the Equality Act 2010; (e) enforce the Equality Act 2010; (f) work towards the elimination of unlawful discrimination, and; (g) work towards the elimination of unlawful harassment.

33. In pursuance of its duties, the EHRC can publish information, undertake research, provide training and advice and act jointly with, cooperate with or assist others undertaking these activities.

The Equality Act 2010

34. The Equality Act 2010 lists and defines the protected characteristics, which include age, and prohibits discrimination (both direct and indirect), harassment and victimisation of people with a protected characteristic.

35. With regard to age, the Act states that someone cannot be discriminated against due to:

- being (or not being) a specific age or in a specific age group;
- someone thinking a person is (or is not) a specific age or in a specific age group; or
- being connected to someone who is a specific age or in a specific age group.

36. The Act also includes the public sector equality duty which requires public bodies to have due regard to the need to achieve the objectives set out under section 149 of the Equality Act 2010 to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Other bodies/officeholders in Scotland related to the rights of older people (including proposed new bodies/officeholders)

37. In addition to the EHRC, there are various other bodies with remits which may, depending on the circumstances, relate to the rights and interests of older people.

38. The Scottish Human Rights Commission (“SHRC”) was created by the Scottish Commission for Human Rights Act 2006 and has operated since 2008. The SHRC has a general duty to promote human rights and encourage best practice in relation to human rights. For the

purpose of fulfilling its general duty, the SHRC can publish information and guidance, conduct research and provide education/training as well as monitor the law, policies and practices of Scottish public authorities. Whilst the SHRC has no power to assist in individual cases or raise legal proceedings (apart from UNCRC cases), it may conduct inquiries into the policies and practices of a Scottish public authority. The SHRC has the power to act jointly, co-operate with or assist others.

39. In terms of human rights action, the cross-over between the EHRC and the SHRC's functions in Scotland is governed by section 7 of the Equality Act 2006. A Memorandum of Understanding was agreed between the EHRC and the SHRC in May 2009, outlining a "framework agreement for co-operation and communication between the SHRC and the EHRC". It is intended to clarify the respective roles and responsibilities of the Commissions, particularly in relation to the operation of the EHRC in Scotland.

40. The EHRC has responsibility for equality in Scotland and human rights in Scotland in relation to reserved policy areas (such as immigration). Human rights in relation to devolved areas (such as the police) is the responsibility of the SHRC. In practice, the two areas may overlap.

41. In February 2024, Jeremy Balfour MSP introduced the Disability Commissioner (Scotland) Bill, which seeks to establish a disability commissioner, whose primary function will be to promote and safeguard the rights of disabled people in Scotland. The Bill was considered by the Equalities, Human Rights and Civil Justice Committee at stage 1.

42. The functions of the disability commissioner, should the bill be passed, are similar to those proposed in this Bill while focused on the rights of disabled people. There is potential overlap between the work of the proposed disability and older people's commissioner, should they be established. For example, many older people may also be disabled and therefore be covered by the remits of both commissioners. In such circumstances, the Member-in-charge of this Bill foresees memorandums of understanding being in place between the commissioners.

Commissioners for older people in the rest of the UK

43. The Older People's Commissioner for Wales was established by the Commissioner for Older People (Wales) Act 2006, with the first Commissioner taking up their post in 2008. The Commissioner is funded by, but operates independently of, Welsh Ministers and is accountable to the National Assembly for Wales. The Commissioner for Older People (Wales) Act sets out the Commissioner's general functions to:

- Promote awareness of the rights and interests of older people in Wales;
- Challenge discrimination against older people in Wales;
- Encourage best practice in the treatment of older people in Wales; and
- Review the law affecting the interests of older people in Wales.

44. The Commissioner has powers to review the way in which the interests of older people are safeguarded and promoted when public bodies discharge their functions, propose to discharge their functions or fail to discharge their function. Additionally, the Commissioner may carry out reviews focused on whether, and to what extent, the arrangements of certain bodies' advocacy, whistle-blowing and complaints arrangements are effective in safeguarding and promoting the interests of relevant older people in Wales.

45. The Commissioner may also provide advice to older people who are making a complaint about or a representation to a public body. This may include financial assistance and, in some circumstances, legal assistance. The Commissioner has an advice and assistance team, which older people can contact via phone, letter or email.

46. The Commissioner for Older People for Northern Ireland was established in 2011, by the Commissioner for Older People Act (Northern Ireland) 2011. The Commissioner is appointed by the First Minister and Deputy First Minister of Northern Ireland.

47. The Commissioner's principal aim is to promote and safeguard the rights of older people. The Act sets out various duties and functions of the Commissioner, including making arrangements for research or educational activities concerning the interests of older people, issuing guidance on best practice in relation to any matter concerning the interests of older people, conducting investigations for the purpose of any of the Commissioner's functions, compiling and publishing information concerning the interests of older people and providing advice or information on any matter concerning the interests of older people. Like the Welsh Commissioner, the Northern Irish Commissioner can offer advice and support to older people who wish to make a complaint about a relevant authority, including financial and legal assistance in certain circumstances.

48. While some of the functions and structures of the other UK-based older people's commissioners differ from those proposed in this bill, they all have the common aim of promoting the rights of older people. The Member-in-charge considers it vitally important that Scotland's older people have the same support and status as those in Wales and Northern Ireland.

Scottish Parliament scrutiny of commissioner landscape

49. In 2006, the Scottish Parliament's Finance Committee published a report setting out the six design principles ("the 2006 principles") that it considered should be factored-in to the consideration of any future proposal for an officeholder position (including commissioners).³⁵ The 2006 principles set out by the Committee were:

- Clarity of Remit: a clear understanding of then office-holder's specific remit;

³⁵ *Inquiry into Accountability and Governance*, Scottish Parliament Finance Committee [session 2], retrieved March 2025 from:

<https://webarchive.nrscotland.gov.uk/20240512032241/https://archive.parliament.scot/business/committees/finance/reports-06/fir06-07-Vol01-00.htm>.

- Distinction between functions: A clear distinction between different functions, roles and responsibilities including audit, inspection, regulation, complaint handling and advocacy;
- Complementarity;
- Simplicity and Accessibility: Simplicity and access for the public to maximise the ‘single gateway’/‘one-stop-shop’ approach;
- Shared services: Shared services and organisational efficiencies should be built in from the outset;
- Accountability: There should be an establishment of clear, simple, robust, and transparent lines of accountability appropriate to the nature of the office.

50. In the time since the 2006 principles were published, the commissioner landscape has continued to evolve and develop and the issue was revisited in session 6 of the Scottish Parliament. Between March and September 2024, the Scottish Parliament’s Finance and Public Administration Committee carried out an inquiry on “whether a more coherent and strategic approach is needed for the creation of [Scottish Parliament Corporate Body-supported] commissioners in Scotland.”

51. The Committee took evidence from various stakeholders including existing commissioners, third-sector organisations, Scottish Government representatives and members of the SPCB. Its report, which was published in September 2024, made several recommendations, including that there should be a moratorium on creating any new SPCB-supported bodies, or expanding the remit of existing bodies, until a ‘root and branch’ review of the commissioner structure has been carried out.

52. The Committee report was debated by the Parliament in October 2024, and the following non-binding motion was agreed to:

“That the Parliament welcomes the Finance and Public Administration Committee’s 7th Report, 2024 (Session 6), Scotland’s Commissioner Landscape: A Strategic Approach (SP Paper 642); agrees with the recommendation that a dedicated committee should be established to carry out a “root and branch” review, with the purpose of creating a clear strategic framework to underpin and provide more coherence and structure to the Scottish Parliamentary Corporate Body (SPCB) supported body landscape, which should complete its work by June 2025, and further agrees that, while this review is undertaken, 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.”

53. The SPCB Supported Bodies Landscape Review Committee, which is tasked with considering, reviewing and reporting on the Scottish Parliamentary Corporate Body (SPCB) supported bodies landscape held its first meeting on 12 December 2024 and is due to publish a report by June 2025. The motion is non-binding and the establishment of the committee therefore does not prevent any new commissioners being created in the interim.

Scottish Government initiatives

54. The Scottish Government set up an older people’s strategic action forum in 2017. The forum was chaired by the then Minister for Older People and Equality, Christina McKelvie, and its membership included a number of organisations which represent older people, including Age Scotland, the Scottish Older People’s Assembly and the Scottish Pensioners’ Forum.

55. Information published by the Scottish Government states that the forum was set up “to ensure that the views of older people, those that support them, and their representative groups are heard.”

56. The forum helped to develop the Government’s framework for action for older people, *A Fairer Scotland for Older People*, which was published in 2019.³⁶ The framework set out priorities for the Government including, ensuring older people can engage with, and contribute to, communities, access public and other services and have financial security. An update on the framework’s actions was published in 2021.³⁷ No further updates on the framework – or on the work of the forum - appear to have been published since.

57. The Scottish Government undertook a written consultation on its health and social care strategy for older people between March and July 2022 and published an analysis of responses in October 2022. The analysis concluded that the timeline for developing the framework should be extended, noting:

“Ministers remain committed to developing a Health and Social Care Strategy for Older People informed by this consultation analysis, once we have fully considered the implications of the National Care Service Bill.”

58. Stage 2 of the Bill, now known as the Care Reform (Scotland) Bill, concluded on 4 March 2025. Following amendments at stage 2, the Bill no longer seeks to establish a national care service. It continues to make provision about the processing of health and social care information and the delivery and regulation of social care.

DETAIL OF THE BILL

59. The Bill provides for the establishment of an independent commissioner to promote and safeguard the rights and interests of older people – aged 60 or over – in Scotland. The Member’s intention is that the Commissioner is funded by the Scottish Parliamentary Corporate Body (“the SPCB”), accountable to the Scottish Parliament and appointed by His Majesty the King on nomination of the Scottish Parliament.

³⁶ A Fairer Scotland for Older People: framework for action, Scottish Government, April 2019, retrieved March 2025 from: <https://www.gov.scot/publications/fairer-scotland-older-people-framework-action/>.

³⁷ A Fairer Scotland for Older People: framework actions and updates, Scottish Government, June 2021, retrieved from: <https://www.gov.scot/publications/a-fairer-scotland-for-older-people-framework-actions-and-updates/>.

60. The Commissioner may only hold the post for a period of up to eight years, with the length of the appointment to be determined by the SPCB. The Parliament may vote to remove the Commissioner from office prior to this, should the SPCB determine that the Commissioner has breached the terms and conditions of appointment or if the Parliament has lost confidence in the Commissioner's willingness, suitability, or ability to perform the role.

Functions of the Commissioner

61. The Commissioner's general function will be to promote and safeguard the rights and interests of older people. In doing so, the Commissioner should also carry out several other functions that are intended to help them to achieve the general function. These are to:

- Promote awareness and understanding of the rights and interests of older people;
- Keep under review the law, policy and practice relating to the rights and interests of older people with a view to assessing the adequacy and effectiveness of such law, policy and practice;
- Promote best practice by service providers;
- Promote the use of the skills and experience of older people; and
- Promote, commission, undertake and publish research on matters relating to the rights and interests of older people.

62. The Member is of the view that the detail of how the Commissioner will promote awareness and understanding of the rights and interests of older people should be for the Commissioner to determine. However, he considers that this could be achieved in a number of ways. For example, the Commissioner could produce guidance and reports highlighting issues that are faced by older people. The Commissioner could also run campaigns, highlighting issues of relevance and calling for changes to be made that would have a positive impact on the rights and interests of older people.

63. The Member notes the high-profile status of the CYP Commissioner, and the influence they have had in a number of issues related to children. He would expect the older people's commissioner to replicate this success, as well as that of the older people's commissioners in Wales and Northern Ireland. For example, the Member notes that the Older People's Commissioner for Wales campaigned to improved pension credit take up by calling on the Welsh and UK Governments to do more to encourage take up and providing practical information to older people. Department of Work and Pensions figures show that the number of pension credit claimants rose following this campaign.³⁸

64. The Commissioner will also keep under review the law, policy and practice relating to the rights and interests of older people with a view to assessing the adequacy and effectiveness of such

³⁸ News release Older People's Commissioner for Wales, March 2021, retrieved March 2025 from: <https://olderpeople.wales/news/new-data-reveals-an-increase-in-the-number-of-new-pension-credit-claimants-during-commissioners-campaign/>.

law, policy and practice. While it is for the Commissioner to determine how this would work in practice, the Member's view is that the Commissioner may review any legislation passing through the Scottish Parliament, to ensure that older people's interests, views and rights are considered in proposed legislative changes. This may include the Commissioner having involvement in policy development through responding to consultations or publishing reports on proposed legislation, involvement in scrutiny through responding to Committee inquiries with written or oral evidence or reviewing existing legislation and reporting on the need for updates or change. Other examples could be writing to, or meeting with, Scottish Ministers, or with other organisations or bodies on issues of relevance to older people.

65. The Commissioner will also promote best practice for service providers. The Member wishes the Commissioner to have flexibility regarding how this will be achieved. One way in which this may be achieved is through publishing guidance or providing training. The Member's view is that the Commissioner should engage with older people, organisations working with and for older people and other key stakeholders to ensure that their views are being heard and any issues they are facing are addressed. The Member notes that the Older People's Commissioner for Wales issued guidance to local authorities and health boards setting out action they could take to ensure that digitally excluded older people can access information and services, and that older people who want to get online are supported to do so.³⁹ The Member considers that the Scottish Commissioner for Older People could undertake similar work.

66. The Commissioner also has a function to promote, commission, undertake and publish research on matters relating to older people. As with the other functions of the Commissioner, the Member considers that it will be for the Commissioner to identify relevant areas of research before promoting, commissioning, or undertaking such research. The research could be carried out by, or in conjunction with, older people and organisations working with and for older people. The findings of the research could then be used to identify issues and areas of concern, and the Commissioner could use their profile to highlight such matters and call for action to be taken.

67. The Member considers that older people have a wealth of knowledge and experience that is often undervalued. By promoting the skills and expertise of older people the Commissioner can help to ensure that older people feel that they are valued and actively contributing to society. Further to this, in sharing their skills and expertise, older people can help to upskill younger generations, which may bring wider, long-term benefits. This could be achieved, for example, by the facilitation of intergenerational mentoring schemes.

68. As covered in more detail later in this document, in addition to carrying out the functions set out above, the Commissioner may undertake investigations into devolved matters, if they consider that the issue relates to older people or an older person. The Member's view is that the carrying out of investigations will help the Commissioner to achieve their general function of

³⁹ *Who wants to listen to me? Why England needs a commissioner for older people and ageing*, Independent Age, September 2023, retrieved March 2025 from: <https://www.independentage.org/sites/default/files/2023-09/Commissioner-for-older-people-report.pdf>.

promoting and safeguarding the rights and interests of older people by seeking to encourage the consideration of the rights, views, and interests of older people in decision-making and actions by service providers. The understanding and awareness of the rights of older people could also be promoted by any reports and recommendations made by the Commissioner following an investigation.

United Nations Principles

69. In exercising functions under this Act, the Commissioner must have regard to the United Nations Principles for Older Persons adopted by General Assembly Resolution 46/91 of 16 December 1991.⁴⁰

70. These 18 Principles fall into five categories relating to the status of older persons:

- Independence;
- Participation;
- Care;
- Self-fulfilment; and
- Dignity.

71. The UN’s General Assembly “encourages Governments to incorporate the following principles into their national programmes whenever possible”. Examples of the principles under these headings are:

Independence	Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.
Participation	Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.
Care	Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.

⁴⁰ United Nations Principles for Older Persons, United Nations Human Rights, Office of the High Commissioner, retrieved March 2025 from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons>.

Self-fulfilment	Older persons should be able to pursue opportunities for the full development of their potential.
Dignity	Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.

Involving older people

72. The needs and rights of older people should always be at the forefront of the work of the Commissioner. The Member believes that older people are best placed to set out what matters affect them and what changes to policy and legislation they would wish to see. The Commissioner should therefore engage with, listen to and consult with older people and organisations that work with older people as much as possible.

73. The Bill requires the Commissioner to encourage the involvement of older people in the work of the Commissioner. In particular, the Commissioner should ensure that older people are aware of the functions of the Commissioner, how to get in touch with the Commissioner and how the Commissioner may respond to any issues raised. Further to this, the Commissioner must consult older people and organisations which work with and for older people on the work that the Commissioner is undertaking.

74. The Bill also sets out that the Commissioner must prepare and keep under review a strategy for involving older people in the work of the Commissioner and consult organisations working with and for older people in doing so.

75. The Member expects that the Commissioner's website will play an important role in providing clear information on how older people can engage with the Commissioner. Information on how to get in touch with the Commissioner, and the ways in which people may engage with the Commissioner could also be shared with organisations working with and for older people.

76. While it will be for the Commissioner to determine how best to engage with older people, an example of how this could be achieved can be found in the work of the CYP Commissioner, who works with a network of young advisors whose views are incorporated into the work of the CYP Commissioner. For example, the young advisors played a lead role in the CYP Commissioner's investigation into school counselling. The Member considers that older people could take on a similar advisory role in working with the Commissioner for Older People. However, the Member would not wish consultation to be limited to those who took on such a role and would expect the Commissioner to ensure that there were various ways in which older people could engage with their work.

Investigations

77. In addition to the Commissioner's functions, as set out earlier in the document, the Commissioner will have statutory powers to carry out investigations into by what means, and to

what extent, a service provider has regard to the rights, interests and views of older people or an older person in making decisions and taking actions that affect the older people (general investigation) or person (individual investigation).

78. The Bill makes it an offence, where certain conditions are met, to fail to appear before the Commissioner or fail to provide information or documentation to the Commissioner when asked to do so in the course of an investigation carried out by the Commissioner.

Who can the Commissioner investigate?

79. As noted above, the Commissioner may investigate the decisions and actions of service providers. This should extend to service providers in the public, private and third sector including individuals. However, the Member's view is that a person who, for example, carries out caring duties for an older family member or friend should not be subject to investigation.

Limitations on who the Commissioner can investigate

80. The Commissioner cannot carry out an investigation if it relates to a reserved matter, or a matter which is subject to legal proceedings. As noted earlier in this document, there may be occasions in which the Commissioner wishes to investigate a matter which another organisation also has the power to investigate.

81. Under the Bill's provisions, should such an occasion arise, providing the matter is not reserved or subject to legal proceedings, the Commissioner would be able to undertake the investigation if they have consulted with any other body who has the function to carry out an investigation and, in having done so, determined that it would be more effective and expedient if the Commissioner for Older People undertook the investigation.

82. The Member is of the view that there may be instances where the Commissioner for Older People will be best placed to carry out an investigation, despite another body also being able to do so. This may be, for example, due to the Commissioner having the time or resources to carry out an investigation when another body does not, or due to the Commissioner having a specific interest in carrying out the investigation.

83. As noted earlier in this document, some organisations have memorandums of understanding in place to set out a procedure, should both parties have an interest in undertaking the same work. For example, SHRC and EHRC's memorandum of understanding states:

“Where common areas of interest within their respective remits are identified, the Commissions will liaise to establish whether it is possible to arrive at common policy positions. In the event that the Commissions do take the same position, they pledge to cooperate insofar as possible to avoid unnecessary duplication of work. Where the Commissions do not arrive at a common policy position, they will keep each other informed of their respective positions and, if appropriate, their reasoning. In particular they

will make best efforts to notify each other prior to making public any such position or reasoning.”

Where either Commission identifies an issue falling within the remit of both Commissions, each Commission will discuss any proposed action with the other, and the Commissions will endeavour to agree how best the work can be carried out in order to maximise resources and avoid unnecessary duplication of work.”

84. The memorandum of understanding also sets out that the two commissions will meet regularly to share information and share information. The Member believes that such an arrangement may be beneficial between the Commissioner for Older People and other bodies with which they may have related functions and interests.

General investigations

85. Under the Bill, a general investigation is one which examines whether, by what means, and to what extent a service provider has regard to the rights, interests and views of older people in making decisions or taking actions that affect older people. It is proposed that for a general investigation, the Commissioner would need to be satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to older people generally, or a particular group of older people.

86. This distinction has been included in order to make clear that investigations might focus on groups of people distinguished by matters other than their age (for instance, their location). For example, the Commissioner could investigate whether sufficient services were in place for older people who live in a particular part of Scotland.

Individual investigations

87. The Bill sets out that an individual investigation is an investigation into whether, by what means, and to what extent a service provider had regard to the rights, interests and views of an older person in making a decision or taking an action that affected that older person.

88. An example of an individual investigation could be where concerns are raised about the care received by an older person who resides in a small, charity-run care home. The Commissioner could investigate whether that charity running the care home, as the service provider, had the regard to the rights, interests and views of the older person in question in making a decision or taking an action that affected that person.

89. The Bill sets out that, in such circumstances, and whenever the Commissioner is considering carrying out an individual investigation, the Commissioner should give consideration as to whether the matter at hand could be resolved without an investigation having to take place. The Member’s view is that, where possible, attempts should be made to reach a satisfactory outcome without having to go through the process of carrying out an investigation.

How will the investigation process work?

90. The Bill requires that the Commissioner must draw up terms of reference for each investigation before it is initiated. Having done so, the Commissioner must then take whatever steps they consider appropriate to ensure those most likely to be subject to the investigation are aware of the terms of reference.

91. The Member considers that there should be a presumption of transparency in the carrying out of general investigations, with the default position being that such investigations are carried out in 'public', so that older people are aware of what and who is being investigated and what the findings of the investigation are. The Member considers it important that there is an option for the investigation proceedings to be kept private and that the decision to do this should be at the discretion of the Commissioner where necessary or appropriate. An individual investigation would be conducted in private as the Member considers this more appropriate in order to ensure the individual's privacy is respected.

92. During the course of their investigation, the Commissioner may, with some exceptions, require any person to give evidence on any matter within the terms of reference of an investigation or to produce documents which have a bearing on the investigation. The Member's view is that this will ensure the Commissioner has sufficient authority to ensure the information required is provided in order to allow a full investigation to take place.

93. Aside from the parameters set out above, and any relevant legislative requirements such as data protection, it will be for the Commissioner to determine how the investigation will be carried out. It is noted, for example, that investigations carried out by the CYP Commissioner have focussed on writing to authorities, asking them for information. The Commissioner may choose to work in a similar way or may decide it is more appropriate to speak to such organisations in person.

What happens after an investigation?

94. At the conclusion of any investigation, the Commissioner must prepare a report containing the Commissioner's findings in relation to the issue investigated and any recommendations made as a result of the findings. The report may include a requirement on a service provider to respond to a recommendation, within such a time period as the Commissioner reasonably requires, setting out what they have done or propose to do in response and if they do not intend to do anything, the reasons for that. The Bill contains provisions as to the publication of these reports and any responses to them.

95. The report must include recommendations but may not in of itself require action to be taken or changes to be made. The Member's view is that the report would be used to highlight, advocate for the rights of older people, and influence those in positions of power to make changes. One example would be the Parliament (most likely the relevant committee) taking action (for example by undertaking an inquiry or writing to the Scottish Government) as a result of the report. Another example would be the Commissioner meeting with the relevant Minister to discuss the recommendations made in the report and call for them to be implemented. The Commissioner may

also undertake media work to highlight the findings and recommendations made as a result of any investigations.

Strategic plan, annual reports and other reports

96. While it will largely be at the Commissioner's discretion what they wish to report on and when they publish any such reports, the Bill places requirements on the Commissioner to publish a strategic plan every four years as well as an annual report. Both should relate to the exercise of the Commissioner's functions, as set out in this Bill.

97. Prior to publishing the strategic plan or any revision to the plan, the Commissioner must consult with the SPCB and any others such persons as the Commissioner considers appropriate. This may, for example, be organisations that work with older people.

Protection from actions of defamation

98. In line with other legislation relating to the creation of independent SPCB-supported commissioners, the Bill provides for protection from defamation. As such, any statement made to, or by, the Commissioner or a member of the Commissioner's staff in investigating or communicating with a person as part of the investigation is subject to absolute privilege. Any other statement made to, or by, the Commissioner (or the Commissioner's staff) is subject to qualified privilege.

ALTERNATIVE APPROACHES

99. The Member notes that there are several existing commissioners funded by the SPCB and considers that new public bodies should only be established when necessary. The Member therefore considered whether his policy aims of promoting and safeguarding the rights and interests of older people could be achieved as effectively in another way. In doing so, the Member took account of the principles for establishing public bodies as set out by the Scottish Parliament Finance Committee in 2006 (as noted in paragraph 50 of this document). This included asking a question specifically about the potential for overlap and duplication between the work of commissioners in his consultation. The Member is satisfied that the establishment of a commissioner would be in line with the principles. It is noted, for example that, in line with the principles, the Member expects that the Commissioner will share offices and services with other public bodies where possible.

100. The Member further notes the suggestion made by the Scottish Human Rights Commission (SHRC) that its structure could be altered to create a rapporteurship model, which entails a series of small teams focused on particular groups of people and/or particular human rights treaties.⁴¹ It is understood that the suggested model would be an alternative to the establishment of new commissioners.

⁴¹ At a crossroads, which way now for the human rights system in Scotland, Scottish Human Rights Commission, June 2023, retrieved March 2025 from: https://www.scottishhumanrights.com/media/2456/crossroads_what-next-for-human-rights-protection-in-scotland-shrc-june-2023.pdf.

101. If the model proposed by the SHRC was implemented, there could be a small team set up within SHRC which is tasked specifically with the rights of older people. It has also been suggested that more members of the SHRC could be appointed by the Parliament, each with a specific remit for a different protected characteristic. If this were to be put in place, a specific member of the commission could be given oversight of the rights of older people.

102. The public consultation that the Member ran on the role of the Commissioner strongly indicated support for an independent commissioner to represent older people. It was also considered important that the Commissioner's remit be focused on older people, rather than spread over, for example, multiple protected characteristics. Therefore, after careful consideration, the Member determined that the alternative options outlined above would not fulfil his policy aim of creating a permanent independent advocate and champion for older people.

103. In terms of the detail of the Bill, the Member considered how an older person should be defined in the Bill, and thus what age group the Commissioner's remit would cover.

104. The Member notes that there is no legal or universally accepted definition 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, while the Northern Irish Commissioner for Older People also defines an 'older person' as a person aged 60 or over. However, the Northern Irish Commissioner may deal with a matter raised by someone aged 50 or over 'if it was an issue that raised a question of principle affecting people aged 50 or over generally or there were exceptional circumstances.'

105. In determining that the remit of the Scottish Commissioner for Older People should cover people over the age of 60, the Member took account of the age range used by other UK commissioners and of the United Nations definition of an older people as:

"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."⁴²

CONSULTATION

106. On 12 June 2023, Colin Smyth MSP lodged a draft proposal for a Member's Bill in the following terms—

"A draft proposal for a bill to establish an independent commissioner to promote and safeguard the rights and interests of older people."

⁴² Older persons, UNHCR, the UN refugee agency, retrieved March 2025 from: <https://emergency.unhcr.org/protection/persons-risk/older-persons>.

107. The proposal was accompanied by a consultation exercise, which ran from 13 June 2023 to 23 October 2023.⁴³ 334 individuals and organisations responded to the consultation.

108. The vast majority of respondents (96.7%) were supportive of the proposal to establish a commissioner for older people. There were similar levels of support for other elements of the proposed bill, including that a commissioner should focus solely on older people's rights and interests (95.2% of respondents) and that a commissioner should be given investigatory powers (92.1%). There was less agreement on the age range that a commissioner's remit should cover. Some respondents considered the suggested 60+ age category to be appropriate. However, other suggestions were made – such as a commissioner's remit extending to those aged 50 and over or being limited to those in receipt of a state pension.

109. Additionally, some respondents noted that, rather than assigning an age-range, individual circumstances should be taken into account when determining who a commissioner should represent. For example, it was suggested that people aged 50 and over with health issues could fall under a commissioner for older people's remit. There was also less certainty as to whether – in line with the “2006 principles” – duplication with the work of existing public bodies could be avoided by an older people's commissioner, with 44.2% of respondents strongly agreeing that avoiding duplication would be possible (29% tended to agree, 17.7% were neutral, 2.7% tended to disagree and 1.5% strongly disagreed.) Reasons given by respondents who opposed the proposal included that it would be too expensive, it would not make a difference to older people and that help should not be focused specifically on older people.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

110. An initial Equality Impact Assessment (EQIA) has been carried out and a summary of its findings is provided below. Following the Bill's introduction, the Member in charge of the Bill will send a copy of the EQIA to the lead committee in order to assist its scrutiny of the Bill at Stage 1.

111. As noted above, the Equality Act 2010 lists and defines the protected characteristics, which include age, and prohibits discrimination (both direct and indirect), harassment and victimisation of people with a protected characteristic.

112. The Bill is focused on the rights and interests of older people and the Member believes that having a commissioner who will advocate on behalf of, and champion the rights and interests of older people will have a beneficial effect on the lives of older people in Scotland.

⁴³ The consultation period ran from 13 June 2023 to 23 October 2023 (previously 12 September 2023). The extension was to allow the member-in-charge time to engage with stakeholders and provide more information to them about the consultation.

113. The Bill provides that the Commissioner would seek to involve older people in their work and to communicate in an inclusive way. This would ensure that everyone would be able to make their views known in order for the needs of older people to be prioritised in the Commissioner’s work.

114. In terms of other protected characteristics, women are more likely to have caring responsibilities, with the 2022-23 carers census finding that 69% of unpaid carers aged over 65 were female.⁴⁴ This can impact the lives of older women in many ways, for example it may mean they have to give up work, that they are struggling financially or suffer from stress or anxiety.⁴⁵

115. Older people are more likely to be disabled and thus may be more likely to have mobility issues, preventing them from carrying out day-to-day tasks or find they face barriers such as a lack of accessible transport or suitable affordable housing.

116. Outside the Box, a Scottish charity which “provides development support to groups and people across Scotland who want to make a difference in their communities” published a paper highlighting some of the challenges which may be faced by LGBT+ older people. For example, they may be more likely to live alone and lack support of children, other family members or faith groups who may have “rejected them when they first came out.” Outside the Box further reports that:

“Many [older LGBT people] say that it can be difficult to make new friends – they feel that attitudes amongst other people of their age are often not very welcoming.” and that;

“In both rural areas and towns [older LGBT people] may have a long way to travel to find support and activities that suit them. Transport may be an issue, both in terms of availability and cost.”

117. Older people who are minority ethnic are more likely to face issues such as poverty, with research by the Joseph Rowntree foundation demonstrating that “more than two in five (44%) minority ethnic people living in poverty in 2017-20 compared to just less than one in five white people.”⁴⁶

118. As part of their role, the Commissioner may seek to engage with groups such as Age Scotland’s Scottish Ethnic Minority Older People Forum, which seeks to “influence policy change and challenges inequality and discrimination faced by ethnic minority older people, including poverty and barriers to accessing information and services.”⁴⁷

⁴⁴ Supporting documents - Carers Census, Scotland, 2022-23, Scottish Government, December 2023, retrieved March 2025 from: <https://www.gov.scot/publications/carers-census-scotland-2022-23/documents/>.

⁴⁵ Women and unpaid care in Scotland briefing, Carers Scotland, retrieved March 2025 from: <https://www.carersuk.org/media/wqbpnce4/women-and-unpaid-caring-in-scotland-briefing-final.pdf>.

⁴⁶ Ethnicity, poverty and the data, Joseph Rowntree Foundation, October 2021, retrieved March 2025 from: <https://www.jrf.org.uk/race-and-ethnicity/ethnicity-poverty-and-the-data-in-scotland>.

⁴⁷ Scottish Ethnic Minority Older People Forum, Age Scotland, retrieved March 2025 from: <https://www.agescotland.org.uk/our-impact/scottish-ethnic-minority-older-people-forum>.

119. The Member's view is that the Commissioner should advocate for, and promote and safeguard the rights of, all older people and in doing so take account of any intersecting protected characteristics.

Human rights

120. The Scotland Act 1998 places a duty on the Scottish Ministers to act in accordance with the European Convention on Human Rights (ECHR). It is the Member's view that all of the Bill's provisions are fully compatible with Convention rights and that the Bill, through the creation of the Commissioner, will contribute positively to the realisation of older people's rights under the European Convention on Human Rights.

121. The Bill includes specific provision that, in exercising functions under this Act, the Commissioner must have regard to the provision of the United Nations Principles for Older Persons adopted by General Assembly Resolution 46/91 of 16 December 1991. The role of the Commissioner will therefore support a human rights-based approach to decision-making in relation to older people.

122. The investigatory powers of the Commissioner, including the powers regarding evidence gathering (documentation in person) may concern sensitive information about an individual's health. The privacy of such information is an important element of article 8 right to private and family life. For this reason, individual investigations are conducted in private and there is the option for general investigations to also be conducted in private when necessary and appropriate. Furthermore, in relation to the publication of investigation reports and any responses to them and will be subject to data protection legislation. The publication of an individual response is at the Commissioner's discretion and in relation to responses to reports, the Commissioner must consider the appropriateness of publication.

Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

123. Under section 23 of the [United Nations Convention on the Rights of the Child \(Incorporation\) Scotland Act 2024](#), any Member introducing a Bill in the Scottish Parliament is required to make a written statement about the extent to which "the provisions of the Bill would be compatible with the UNCRC requirements".

124. Colin Smyth MSP has made a statement that, in his view, the provisions of the Bill have a neutral impact on compatibility with the UNCRC requirements.

125. Article 1 of the UNCRC defines a child as being under 18. The Bill is specifically concerned with the rights and interests of older people (defined in section 16 of the Bill as people who are 60 years of age or over), and none of the provisions are directly relevant to the rights of children.

Island communities

126. The Bill’s provisions will apply equally to all parts of Scotland. The Commissioner will have to take account of the needs of people living in remote, rural and island communities, communicate with them and advocate on their behalf.

127. The Commissioner may need to take steps to ensure that they can have face-to-face engagement with people in island communities. In addition, it may be that older people in such communities have particular issues that they would wish the Commissioner to highlight, for example, if an older person is reliant of public transport and the transport is less frequent or reliable than in more populous areas, if or there are less services available that are of relevance to older people on islands.

Local government

128. One of the Commissioner’s functions will be to promote best practice by service providers. Further to this, the Commissioner will have powers to undertake investigations into by what means and to what extent a service provider has regard to the rights, interests and views of older people or an older person in making decisions or taking actions that affect an individual older person or older people.

129. The Bill defines service providers as “any person providing services for an older person other than a person providing services for them because of their existing family relationship, community or neighbourhood links, or friendship with them and who does not principally provide those services for remuneration or as part of their employment.” It therefore follows that a local authority may be considered to be a service provider and therefore subject to – and asked to engage with – an investigation carried out by the Commissioner.

130. The Commissioner may make recommendations for change following an investigation. For example, they may recommend that a local authority makes changes to the way they involve older people in their decision-making processes, which may require changes to policies or procedures and/or additional resources/ funding. However, the local authority would have no obligation to act on any such recommendations and while the Commissioner should influence and encourage change, they will not have the power to require such changes.

131. In the course of an investigation, a service provider may be required to provide documentation to the Commissioner, or to provide evidence to the Commissioner, either in person or by other means.

Sustainable development

132. The principles of sustainable development include human rights and wellbeing, equalities and equity, and participation and accountability. In considering these the Member is satisfied that the Bill can be delivered sustainably.

133. The aim of the Bill is to improve the wellbeing of older people by creating a commissioner for older people, whose role is to ensure that older people's rights are safeguarded and promoted. As part of their role, the Commissioner would review laws and policies, both at a national and local authority level, to ensure that they provide best practice for all older people.

134. The Commissioner would represent and promote the rights of older people, helping their views to be heard and for them to engage in decision-making on matters that affect them. As part of their role, the Commissioner would actively engage with older people to ensure that their voices are heard and represented in the actions that the Commissioner takes.

135. In promoting the rights of older people, it is hoped that the Commissioner could affect changes which would have a long-term positive impact on older people by, for example, working to lessen the challenges that they experience. This in turn, would have a positive impact on society as a whole.

This document relates to the Commissioner for Older People (Scotland) Bill (SP Bill 64) as introduced in the Scottish Parliament on 2 April 2025

COMMISSIONER FOR OLDER PEOPLE (SCOTLAND) BILL

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