

Equalities, Human Rights and Civil Justice Committee
Tuesday 17 September 2024
18th Meeting, 2024 (Session 6)

Disability Commissioner (Scotland) Bill

Introduction

1. The [Disability Commissioner \(Scotland\) Bill](#) is a Member's Bill introduced by Jeremy Balfour MSP on 8 February 2024. The Bill and its accompanying documents are available on the [Bill webpage](#).
2. The Parliament designated the Equalities, Human Rights and Civil Justice Committee as lead committee on 21 February 2024. Under the Parliament's Standing Orders Rule 9.6.3.(a), it is for the lead committee to report on the general principles of the Bill, as well as accompanying documents such as the Financial Memorandum and Policy Memorandum. In reporting, the lead committee should take account of views submitted to it by any other committee.
3. The Member wrote to the Committee on 14 March 2024 to provide an [Equalities Impact Assessment](#).
4. A full written [SPICe bill briefing](#) is available on the Bill webpage.

Background

5. On 11 May 2022, Jeremy Balfour MSP lodged a draft "proposal for a Bill to establish a Disability Commissioner for Scotland". The draft proposal was supported by a [consultation document](#). The consultation closed on 3 August 2022.
6. The Member lodged a final proposal on 6 December 2022 – "A proposal for a Member's bill to establish an independent commissioner to promote and safeguard the rights and interests of disabled people". The final proposal was complemented by a [consultation summary](#), which stated that the vast majority (90%) of responses were supportive of the proposal.
7. The final proposal received cross-party support from 40 MSPs (27 Scottish Conservative and Unionist Party; 11 Scottish Labour; 2 Scottish Liberal Democrats), thus securing the right to introduce a Bill.
8. All background to the proposal process is available on the [proposed Bill page](#).

Purpose/policy objective of the Bill

9. The policy objective of the Bill, as set out in the Policy Memorandum, is to "establish a Disability Commissioner for Scotland, whose primary purpose will be to promote and safeguard the rights of disabled people".

10. The Member's intention is that the Commissioner will:

- Advocate for disabled people at a national level, promoting awareness and understanding of the rights of disabled people
- Review law, policy and practice relating to the rights of disabled people
- Promote best practice by service providers and may also promote, commission, undertake and publish research on matters relating to the rights of disabled people
- Have the power to undertake investigations into devolved matters if the issue relates to disabled people.

11. The Policy Memorandum indicates that the Member has used the Children and Young People's Commissioner Scotland as a template, noting their high-profile and the influence and impact they have on matters relating to children's rights.

Work by other committees

12. The Finance and Public Administration Committee (FPAC) has been conducting an inquiry into the evolution of the overall landscape of commissioners since devolution, with the aim of proposing a more strategic approach to the establishment and financing of commissioners: [Scotland's Commissioner Landscape: A Strategic Approach](#).

13. As part of its inquiry, that Committee has held seven evidence sessions:

- [Tuesday 16 April 2024](#)
- [Tuesday 30 April 2024](#)
- [Tuesday 7 May 2024](#)
- [Tuesday 14 May 2024](#)
- [Tuesday 21 May 2024](#)
- [Tuesday 28 May 2024](#)
- [Tuesday 4 June 2024](#).

14. The FPAC has indicated it will continue to scrutinise financial memoranda associated with any future officeholder legislation and to draw concerns to the attention of the relevant lead committee where appropriate. The inquiry will not, however, make recommendations on the merits or otherwise of individual commissioners.

15. The Finance and Public Administration Committee took evidence on the Financial Memorandum to the Bill from the member-in-charge at its meeting on [25 June 2024](#).

16. The FPAC subsequently [wrote to this Committee](#) on 23 July 2024. The letter refers to its inquiry into the current commissioner landscape in Scotland, which "explores the evolution of the Commissioner landscape in Scotland since devolution and the extent to which a more coherent and strategic approach [...] is needed". It notes concerns expressed during its evidence-taking regarding the "already cluttered landscape, including the impact of additional costs at a time of significant pressure on public finances, the potential for overlap and duplication, and confusion around who individuals should approach".

17. FPAC notes the Member's view that "memorandums of understanding could be put in place between relevant organisations in order to set out which types of work can be carried out by each organisation and setting out procedures for how potential overlaps of work should be dealt with".
18. FPAC further notes the Member's view that "the costs incurred in establishing a disability commissioner [would] be an investment in disabled people that is long overdue", which is a point that came across quite strongly in our oral evidence sessions.
19. It indicates that it is due to report on its inquiry into Scotland's Commissioner Landscape in autumn 2024 and invites the Equalities, Human Rights and Civil Justice Committee to consider the evidence it [FPAC] heard on the Financial Memorandum alongside the conclusions and recommendations in its upcoming report.

Stage 1 scrutiny, Call for Views and evidence

20. At its meeting on 5 March 2024, the Committee agreed to issue a Call for Views, to run for up to eight weeks.
21. The Committee further agreed to issue the Call for Views in accessible formats including Easy Read and BSL, via WhatsApp, and that all formats be issued simultaneously. The [Call for Views](#) was issued on 28 March and closed on Friday 17 May 2024. All [published responses](#) are available on Citizen Space.
22. Respondents included disabled people's organisations and disability groups; some cover disability generally, while others support people with specific disabilities.
23. The Cabinet Secretary for Social Justice wrote to the Committee on 16 May 2024 to provide a [memorandum](#) in response to the Committee's Call for Views.
24. The memorandum raises concern around the cost of establishing a new Commissioner, and ongoing costs, given the "extremely challenging financial climate". It states that the Scottish Government will be holding a neutral position on the Bill in order to "provide an opportunity for the following concerns about the feasibility and desirability of a commissioner role as the vehicle to advance disability equality to be explored:
 - the potential for the Commissioner to duplicate functions already undertaken by existing bodies;
 - the complex landscape which this additional Commissioner would be added into;
 - the limitations of the approach proposed in the Bill in terms of value for money and efficiency".
25. At its meeting on [4 June 2024](#), the Committee heard oral evidence from:
 - Dr Arun Chopra, Executive Director (Medical), Mental Welfare Commission for Scotland

- Stephanie Griffin, Scotland Policy Manager, Equality and Human Rights Commission
- Nick Hobbs, Head of Advice and Investigations, Children and Young People's Commissioner Scotland
- Jan Savage, Executive Director, Scottish Human Rights Commission.

26. At its meeting on [11 June 2024](#), the Committee heard oral evidence from two witness panels:

- Lyn Pornaro, Chief Executive Officer, Disability Equality Scotland
- Tressa Burke, Chief Executive Officer, and Karen Wylie, Policy and Participation Manager, Glasgow Disability Alliance
- Heather Fiskien, Chief Executive, and Dr Pauline Nolan, Head of Policy and Engagement, Inclusion Scotland
- Jenny Miller, Chief Executive, PAMIS – promoting a more inclusive society, followed by
- Jamie Cooke, Head of Policy and Communications, Enable
- Suzi Martin, External Affairs Manager, National Autistic Society Scotland
- Alice Struthers, Programme Director, Neurological Alliance of Scotland
- Eddie McConnell, Chair, Scottish Commission for People with Learning Disabilities (SCLD).

27. At its meeting on [18 June 2024](#), the Committee heard oral evidence from:

- James Adams, Director, RNIB Scotland
- Amy Dalrymple, Associate Director of Policy and Public Affairs, Marie Curie Scotland
- Tomas Gerrard, Bid Writer, Deaf Action
- Richard Meade, Director of Carers Scotland and Carers Northern Ireland.

28. At its meeting on [3 September 2024](#), the Committee heard oral evidence from Kaukab Stewart, the Minister for Equalities.

29. In her evidence, the Minister recognised the intentions behind introducing the Bill, but reiterated the concerns expressed in the Cabinet Secretary's memorandum of 16 May 2024. She questioned whether the establishment of a Disability Commissioner is "the right vehicle through which to achieve the change" being sought, to improve the lives of disabled people.

30. The Minister also referenced the Finance and Public Administration Committee's inquiry into the current commissioner landscape. She said:

"Part of the inquiry's remit is to consider whether a more strategic approach is needed to the creation of commissioners in Scotland. Whatever that committee's recommendations will be, its report will surely require significant consideration by the Parliament and further dialogue with Government and other stakeholders. Given that context, it seems to be inadvisable to bring a new commissioner into an already complex environment at this time."

31. The Minister provided further context to the Scottish Government’s position by indicating that it is preparing to publish the first phase of a disability equality plan, designed to tackle the systemic barriers faced by disabled people. She added that the plan had been developed in partnership with disabled people’s organisations and considered that it will “bring about significant progress in advancing disability equality”.
32. On 10 September 2024, members of the Committee held informal, private engagement sessions with members of disabled people’s organisations, including Disability Equality Scotland, Inclusion Scotland and Glasgow Disability Alliance.
33. The sessions were held in the Scottish Parliament, in Glasgow and online. Anonymised notes of the engagement sessions will be published in due course but some of the key themes coming out were how disabled people are hidden in society and always have to fight for their rights; a commissioner with a specific focus and knowledge of disability, and who has the power to meaningfully effect change, can make a difference. There was an element of scepticism around whether a commissioner would have sufficient powers and a concern that disabled people are being given false hope.
34. At this meeting, the Committee will hear oral evidence from Jeremy Balfour MSP, Member in Charge of the Bill. He will be supported by Scottish Parliament officials:
 - Nick Hawthorne, Senior Clerk, Non-Government Bills Unit
 - Liz Anderson, Assistant Clerk, Non-Government Bills Unit
 - Alison Fraser, Solicitor, Legal Services.
35. This session provides an opportunity for the Committee to explore and discuss with the Member in Charge the issues that have been raised during its evidence gathering. These might include:
 - The general principle of establishing a Disability Commissioner
 - The Member’s view on the Scottish Government’s position
 - The Member’s view on the letter received from the Finance and Public Administration Committee, and the concerns it heard during its inquiry, including
 - The already cluttered landscape
 - The potential risk of overlap and duplication of remits
 - Financial and resource implications
 - Intersectionality
 - The definition of disability
 - Powers of the Disability Commissioner and potential to go beyond devolved powers
 - Inclusive communication and involvement of disabled people
 - The Scottish human rights framework and further powers for existing commissions/commissioners.

Next steps

36. The Committee will consider the evidence it has received during the course of its scrutiny of the Bill. Included within that will be views that it heard during its engagement sessions with disabled people, as well as the work undertaken by the Finance and Public Administration Committee in relation to the Financial Memorandum and its inquiry into the commissioner landscape in Scotland.
37. The Committee expects to publish a Stage 1 report on the Bill in the autumn.

Clerks to the Committee
September 2024