



Consultation Response

Proposed Commissioner for Older People (Scotland) Bill

23 October 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Equalities Law Policy Sub-committee and the Mental Health and Disability Sub-committee welcome the opportunity to consider and respond to the Proposed Commissioner for Older People (Scotland) Bill consultation¹

We have the following comments to put forward for consideration.

General comments

As a society, Scotland is ageing and by the year 2040, there will be 1 in 4 of our population over the age of 65 yrs. Therefore, these demographic changes are such that the needs for the older generation must be carefully considered by the Scottish Parliament and Government.

According to Age Scotland, there are 150,000 pensioners that live in poverty in Scotland, yet this issue is little discussed. Such poverty in later life leads to poorer health outcomes and a feeling of greater social isolation and additional stress and anxiety. The current cost of living is devastating for older people, with more than half living on a low income worried about their ability to afford life's essentials, such as food and energy bills. The delivery of health and social care services to older people also often falls short. Many older people also face digital exclusion, meaning they miss out on the best deals, access to services and have increased isolation. Not one government department could possibly respond to the needs of an ageing population alone, it will require a joined-up approach.

This scale of demographic change means that the Scottish Government must consider how almost all policy changes impact older people. The introduction of an Older People's Commissioner could facilitate cooperation and the Long-term planning needed to provide innovative and effective solutions.

We have previously highlighted the potentially crowded landscape of Commissioners and of organisations which do, could or should discharge functions relevant to the functions of the Bill.² Such organisations include in particular the Mental Welfare Commission for Scotland, Equality and Human Rights Commission, and Scottish Human Rights Commission. We are concerned that the creation of another

¹ [Proposed Older People's Commissioner Scotland Bill | Scottish Parliament Website](#)

² [22-08-03-mhd-proposed-disability-commissioner-scotland-bill.pdf \(lawscot.org.uk\)](#)



Commissioner could become a recipe for confusion, overlapping responsibilities, and inefficient use of resources. This may be a particular issue for older people, as intersectionality may increase with age—meaning that older people with, for example, mental health or human rights issues, may have several places to take their concerns. As well as being confusing for individuals, there is a risk that each commissioner or other relevant body will not gain a full overview of issues within their remit. The present proposal does not appear adequately to address those concerns. We recommend that there be a clear policy decision as to what the future landscape should look like.

Consultation Questions

Aim and approach

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

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

Please explain the reasons for your response:

We consider that given the scale and breadth of challenges faced by older people that a commissioner who can focus on the issues affecting older people may play a useful role, but we remain concerned about the potentially crowded landscape (see our general comments, above) and would welcome further detail on how the proposed Commissioner will interact with other Commissioners and organisations.

Older people can be disproportionately impacted as follows:

- the cost-of-living crisis on older people who often be relying on a fixed pension income,
- the impact of social isolation particularly because of the Covid 19 pandemic.
- the impact of ill-health and disabilities which become more likely as a person ages.
- Digital exclusion. As services which people require to access move into a digital format these services can become more difficult for older people to access.

There is considerable over-lap between these areas, for example social isolation can have a negative impact on a person's health. The inability to afford necessities can have a significant impact upon a person's health, and limits opportunities for interaction with other people either in person or on-line and thus exacerbates social isolation.

We consider that having a commissioner dedicated to the interests of older people may be well-placed to consider and advocate for a joined-up approach to the various issues impacting older people, how they interact, and to consider solutions to these issues.

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

The Older Peoples Commissioner could be that person who is the voice for the older generation who feel lost and a burden to Scottish society. However, legislation should follow upon a comparative evaluation of the proposed role of an Older People's Commissioner, and the coordinated and more efficient use of existing roles. See our general comments, above.

In a survey by Age concern campaigners "Independent Age" so many older people within Scotland believe that they are forgotten about & seen as a burden to wider society and such, they do not get the help needed to inform them on many issues that could improve their day-to-day life. The Older Peoples Commissioner could be that person to speak on behalf of this forgotten section of society.

This could be on issues such as health & benefits. The Commissioner could also be there to offer advice on help with isolation & loneliness within this age group within communities in Scotland. The Commissioner could also have scope to focus on the issue of age discrimination and age-related hate crime. They could also work on tackling poverty within this age group and ensuring that all are informed of benefits & money advice points and help with tackling digital exclusion within this age group. The reasons above are why, it is so important Scotland does appoint an Older Persons Commissioner.

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

Fully supportive

Partially supportive

X Neutral (neither support nor oppose)

Partially opposed

Fully opposed

Do not wish to express a view

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

See our general comments, above. While there may be an over-lap with other commissioners, there are issues which are specific to older people, or affect older people in a way that it does not affect other groups.

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

and over?

X Fully supportive

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

Please explain the reasons for your response

This response is predicated on it being established that it is appropriate to create a Commissioner role.

We agree that the remit should cover all in Scotland aged 60 and over. While some of the issues that older people encounter become prevalent on retiring from the workforce such as poverty, and as such having the remit of the Commissioner start in line with the state pension age could be justified, we consider that a clear point for when the Commissioner has a remit is necessary. As the national retiral age is different according to a person's birth date and is regularly reviewed it does not provide a consistent point at which the Commissioner's remit would commence. Having a remit for all those aged 60 and over provides a clear starting point.

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

X Fully supportive

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

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

It would be an added tool for the Commissioner to have the power to conduct Investigations on those issues that have most impact on Older People and to be able to make recommendations to ensure that the older population of Scotland have a voice speaking on behalf of them and working as their Peoples champion. However, care should be taken to avoid overlapping powers and we would welcome further clarification on how any powers to investigate would interact with the powers of other organisations and Commissioners.

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

duplication with existing officeholders?

Strongly agree

Tend to agree

X Neutral (neither agree nor disagree)

Tend to disagree.

Strongly disagree.

Do not wish to express a view

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

See our comments above. Careful co-ordination and communication between the various commissioners should be assured, and if necessary, a body such as the Equality and Human Rights Commission could be assigned the role of co-ordination between the various commissioners.

The scale of the demographic change within the country is such that it would be hard for one organisation to oversee all the changes needed to facilitate our older population and all changes needed.

If we had an Older Peoples Commissioner, then this could help cooperation and the long-term planning that would be needed to provide innovative & effective solutions thus ensuring that our older population felt they have a voice and are being heard within Scottish society.

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

Fully supportive

Partially supportive

Neutral (neither support nor oppose)

Partially opposed

Fully opposed

X Do not wish to express a view

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

Financial implications

8. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you

think this proposal could have if it became law?

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs

X Skip to next question

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

We have no comments to make.

Equalities

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

What impact could this proposal have on particular people if it became law?

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

This proposal may have a positive impact on individuals due to their age. Further where there is an intersection between any of the other protected characteristics and age, there is likely to be a positive impact.

Sustainability

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

Do you think the proposal could impact in any of these areas?

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

We have no comments to make.

General

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

We have no further comments.

For further information, please contact:

Elaine MacGlone

Policy Team

Law Society of Scotland

Policy@lawscot.org.uk