



Consultation on the Proposed Disability Commissioner (Scotland) Bill

A draft proposal for a Bill to establish a
Disability Commissioner for Scotland

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Foreword



For too long, the voices of disabled people in Scotland have not been heard. With one in five of Scotland’s population – approximately one million people – defined as disabled, this voice should be loud and clear¹.

Disabled people still face many difficulties and discrimination in their day-to-day life, in areas such as education, housing, welfare and employment. Disabled people are 50% less likely to hold any formal qualification compared with non-disabled people, only 50% of registered working-age disabled people are in employment compared to 80% of their non-disabled counterparts, and 25% of individuals in families with at least one disabled member live in income poverty compared to 16% of individuals in households with no disabled member. In addition, around three in four people believe there is some level of prejudice in Britain towards disabled people². This prejudice can spill over into violence, with Police Scotland reports showing that while only 4% of reported hate crime is disability hate crime, Police Scotland has acknowledged that it “know(s) that it’s under-reported.”³

The experiences of people with a disability throughout the COVID-19 pandemic has highlighted the clear need for a dedicated Commissioner with a specific and sole focus on disabled people, to champion their rights and needs and be a new catalyst for change. The Lancet recently reported that: “People with disabilities have been differentially affected by COVID-19 because of three factors: the increased risk of poor outcomes from the disease itself, reduced access to routine health care and rehabilitation, and the adverse social impacts of efforts to mitigate the pandemic.”⁴

¹ <https://onescotland.org/equality-themes/disability/>

² <https://www.st-andrews.ac.uk/hr/edi/disability/facts/>

³ <https://www.scotland.police.uk/what-s-happening/campaigns/2020/disability-hate-crime/>

⁴ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00625-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00625-5/fulltext)

It goes on to state that:

“(L)ockdown measures societies have taken during the COVID-19 pandemic have meant people with disabilities are worse off and more excluded. When assistive technology is not prescribed, maintained, or repaired, people with disabilities are rendered dependent. When social care is put on hold, cancelled, or reduced, people with disabilities are thrown back on the support of families if they have them. When it is not possible to attend day centres or voluntary projects, people with disabilities may be left with no one to meet. When individuals are expected to use face masks and physically distance, people with hearing loss who cannot lip read or people with visual impairment who use guide dogs can find it difficult to follow these rules and as a result they might be stigmatised.”⁵

These lockdown closures have been highlighted recently by the BBC, which confirmed that “no local authority in Scotland has confirmed that their day-care services have returned to normal levels” and that “many disabled people and their families are feeling abandoned and forgotten by local authorities because day-care centres have not re-opened to pre-pandemic levels.”⁶ There is therefore a need - an urgent need - for a champion of disabled people to help combat the many inequalities they face daily and which have been highlighted by the COVID-19 pandemic.

My intention is to bring forward a Member’s Bill to establish a Disability Commissioner in Scotland. The proposed Bill will follow a similar model to that of the Children and Young People Commissioner that was established in Scotland in 2004⁷. The proposed Commissioner is deliberately based on a commissioner model with wide-ranging functions, with the specific intention that the Disability Commissioner would be viewed as the first and main port of call for people with a disability who are facing issues that might cut across a number of policy areas and may also require a number of associated actions (from high level policy challenge to specific investigations of their case).

The Disability Commissioner will encompass all disabilities; physical, mental, hidden and fluctuating conditions as per the definition set out in the Equality Act 2010 Section 6⁸ to ensure no-one is left behind or excluded from seeking assistance and support.

The specific role and responsibilities of the Disability Commissioner will develop as the policy for the proposed Bill is taken forward, but I would propose that the Commissioner will be independent of the Scottish Government, funded through the Scottish Parliament Corporate Body and have a legal framework behind them to allow them to promote and safeguard the rights of all disabled people, advocate on behalf of disabled people at a national level and if necessary carry out investigations on specific devolved cases, both

⁵ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00625-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00625-5/fulltext)

⁶ <https://www.bbc.co.uk/news/uk-scotland-60233724>

⁷ <https://cypcs.org.uk/about/commissioner/>

⁸ [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/eqa/2010/1)

general and individual, to ensure the rights of disabled people are respected and upheld.

The Disability Commissioner will work closely and in conjunction with disabled people and, involve them in policy and decision making, ensuring inclusive communication, and reaching out to those that do not have other adequate means by which they can make their views known.

The Commissioner will also work collaboratively with existing public bodies and organisations where there might be some cross-over in powers, but with the Disability Commissioner being the first port of call and a champion of Disabled rights, where they can decide if they are best placed to act or to liaise and signpost to other organisations that may be better placed to help.

Any cross-over in remit and responsibilities can be worked through by means of Memorandums of Understanding being established and by collaborative discussions between the various organisations.

I would like to thank Camphill Scotland⁹ for its help in developing this consultation. This organisation, along with others in the third sector, have been strong advocates for people with disabilities, and their voices will be strengthened by the establishment of a Disability Commissioner.

Before my proposal is put forward for parliamentary scrutiny, I am keen to ensure that as many voices as possible are heard during this key consultation period. Hearing from people with lived experience of disabilities, both physical and mental/hidden, those who champion rights and others key stakeholders who have an interest in promoting the rights of disabled people need to be included in this legislative process to ensure this proposed Bill is as effective as possible in its aims and objectives.

I welcome your thoughts and views on this draft proposal for a Member's Bill and hope we can work together to develop legislation that will allow the establishment of a Disability Commissioner for Scotland.

Jeremy Balfour MSP
May 2022

⁹ [Camphill Scotland](#)

How the consultation process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

[Chapter 9 Public Bill Procedures | Scottish Parliament Website](#)

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:
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The Scottish Parliament,
EH99 1SP

or email: Jeremy.balfour.msp@parliament.scot

Enquiries about the possibility of obtaining the consultation document in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Bills and Laws / Proposals for Bills.

Aims of the proposed Bill

There are a number of key aims to consider in establishing the role of Disability Commissioner. The Commissioner will:

- be independent
- promote and safeguard the rights of disabled people
- keep under review the law and assess the adequacy of policy and practice relating to the rights of disabled people
- promote best practice and learning from service providers, including the third sector
- have regard for the United Nations Convention on the Rights of Persons with Disabilities
- encourage the involvement of disabled people in the work of the Commissioner
- communicate in an inclusive way, paying particular attention to groups of disabled people who do not have other adequate means by which they can make their views known
- be involved in devolved legislative reform and policy development affecting disabled groups in the community and work with other organisations and agencies to promote the rights of these groups
- have the powers to carry out general investigations into devolved matters if they see that the issue relates to disabled people generally or specific groups of disabled people, and individual investigations as required
- report to the Scottish Parliament on an annual basis.

Definition of disability

As I have stated, the proposed Disability Commissioner will encompass all disabilities, so that no one is left behind or excluded. The Equality Act states:

“You’re disabled under the Equality Act 2010 if you have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on your ability to do normal daily activities”¹⁰

Further guidance published to support the Act states:

“A disability can arise from a wide range of impairments, which can be:

- sensory impairments, such as those affecting sight or hearing
- impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy
- progressive, such as motor neurone disease, muscular dystrophy, and forms of dementia
- auto-immune conditions such as systemic lupus erythematosus (SLE)
- organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease
- developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia
- learning disabilities
- mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders; obsessive compulsive disorders; personality disorders; post-traumatic stress disorder, and some self-harming behaviour
- mental illnesses, such as depression and schizophrenia
- produced by injury to the body, including to the brain.”¹¹

By encompassing this definition, this ensures that the proposed Disability Commissioner is able to be involved in a wide range of issues, including mental health conditions, fluctuating or progressing conditions such as MND, ME and epilepsy and physical conditions.

¹⁰ [Definition of disability under the Equality Act 2010 - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

¹¹ [Equality Act 2010 Guidance \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

Accountability and governance

On establishing a commissioner role, the Scottish Government states that:

“Parliamentary commissioners and ombudsmen are typically responsible for safeguarding the rights of individuals, monitoring and reporting on the handling of complaints about public bodies, providing an adjudicatory role in disputes and reporting on the activities and conduct of public boards and their members. The jurisdictions of these officeholders usually covers Scottish Government activity, so it is important to ensure independence from the Scottish Ministers.”¹²

I am aware that a number of forms of commissioner are overseen to a degree by the Scottish Government. There are a range of forms that commissioners can take. However, I envisage that the Disability Commissioner will be accountable to the Scottish Parliament as opposed to the Scottish Government to ensure full independence of its functions.

Parliamentary Commissioners and Ombudsmen are appointed by the Scottish Parliamentary Corporate Body (SPCB) with the approval of the Scottish Parliament. Commissioners and Ombudsmen are financially accountable to Parliament and are not accountable to the Scottish Government for their actions in order to function independently of Government and hold the Government to account effectively. Each office holder is responsible for employing their own staff, who are not civil servants, and managing their own budgets from funding provided by the Scottish Parliament. Whilst these officeholders are independent in function (i.e., in undertaking their respective regulatory responsibilities), they are accountable to, and report directly to, the Scottish Parliament on the day-to-day operation of their offices (i.e., funding, accounts, staffing arrangements etc)¹³

In relation to operational independence, this is also noted in the Scottish Parliament Finance Committee Report on Accountability and Governance¹⁴ which states that: “The independent nature of parliamentary commissioners and ombudsman is defined within the legislation which explicitly states that:

- **in the exercise of that officer's functions** {the officer} is not subject to the direction or control of
 - any member of the Scottish Parliament
 - any member of the Scottish Executive
 - the Scottish Parliamentary Corporate Body (with some exceptions such as needing approval of SPCB to appoint staff)”

¹² [Public bodies in Scotland: guide - gov.scot \(www.gov.scot\)](http://www.gov.scot/publications/public-bodies-in-scotland-guide/) – Sect 11

¹³ <https://www.gov.scot/publications/public-bodies-in-scotland-guide/>

¹⁴ <https://archive.parliament.scot/business/committees/finance/reports-06/fir06-07-Vol01-01.htm#indy>

- The [Scottish Parliamentary Commission and Commissioners Act 2010](#) reflected some of the recommendations made in the Finance Committee's report.

Background

Equality Act 2010

The Equality Act 2010 brought together a large number of separate pieces of legislation (including the Disability Discrimination Act 1995) in an effort to harmonise equality/anti-discrimination law. It was seen by some as a step forward in protecting people's rights and prohibits discrimination and harassment on the basis of protected characteristics, which include disability. This includes "providing protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic"¹⁵ The Equality Act 2010 also imposes a duty to make reasonable adjustments for people with a disability.

The Act was designed to protect disabled people from discrimination by:

- employers
- businesses and organisations which provide goods or services like banks, shops and utility companies
- health and care providers like hospitals and care homes
- someone you rent or buy a property from like housing associations and estate agents
- schools, colleges and other education providers
- transport services like buses, trains and taxis
- public bodies like government departments and local authorities.¹⁶

The Act applies to Scotland, England and Wales, with specific provisions made for devolved Scottish matters.

However, a recent report from September 2021 looking at the effectiveness of the Equality Act for disabled people by the House of Lords Liaison Committee notes that:

"Many witnesses had felt that the absorption of the Disability Discrimination Act into the Equality Act led to a loss of focus on disability which is different in nature to the other protected characteristics listed in the Act."¹⁷

This echoes the 2016 findings of the former Select Committee on the Equality Act 2010 and Disability Committee, set up to conduct post-legislative scrutiny on the impact of the Equality Act on people with disabilities. At the time the Chair Baroness Deech, said:

"(W)hen it comes to the law requiring reasonable adjustments to prevent discrimination, we found that there are problems in almost every part of society, from disabled toilets in restaurants being used for storage to schools refusing

¹⁵ [Equality Act 2010: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/equality-act-2010)

¹⁶ [Equality Act 2010 - discrimination and your rights - Citizens Advice](https://citizensadvice.org.uk/equality-act-2010-discrimination-and-your-rights/)

¹⁷ [The Equality Act 2010: the impact on disabled people Follow-up report \(parliament.uk\)](https://www.parliament.uk/equality-act-2010-the-impact-on-disabled-people-follow-up-report/)

interpreters to deaf parents, to reasonable adjustments simply not being made.” The Committee concluded “merging the Disability Discrimination Act with the other protected characteristics in a single Equality Act had led to a loss of focus on disability discrimination and a sense of loss of rights among disabled people.”¹⁸

A change is therefore needed, to give disabled people a dedicated champion to encourage the elimination and prevention of discrimination and the observance of the provisions and principles of the Equality Act 2010 and have regard to the provisions of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)¹⁹. This is also why I have considered options such as adding a commissioner role to existing human rights organisations, such as the Equalities and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC), mentioned below, but feel that legislating for a dedicated Disability Commissioner is the best way to achieve the aims of establishing a clear voice for disabled people in Scotland.

The proposed Disability Commissioner would be able to work alongside the broader reaching organisations that are currently operating within Scotland, such as:

- the Equalities and Human Rights Commission,
- the Scottish Human Rights Commission,
- The Mental Welfare Commission for Scotland

While these organisations currently cover some of the remit of the proposed Disability Commissioner and may cross-over and interact regarding disability issues in the future, the proposed Disability Commissioner will be a unique, central and independent body that will ensure disability issues are at the forefront and the sole focus of their remit. The intention is that the proposed Disability Commissioner would complement existing bodies, and not amend or detract from their remits and powers.

I will briefly outline below how these organisations are currently set up and how I envisage the new Disability Commissioner will interact with these existing public bodies.

Equalities and Human Rights Commission (EHRC)

The EHRC, established by the Equality Act 2006, has operated across the UK since 2007 and “has a remit not just to protect equality, but to promote equality across what the law describes as the nine protected characteristics.”²⁰ These are:

1. age
2. disability
3. gender reassignment

¹⁸ <https://www.disabilitynewsservice.com/government-is-failing-disabled-people-on-discrimination-say-peers/>

¹⁹ [Convention on the Rights of Persons with Disabilities \(CRPD\) | United Nations Enable](#)

²⁰ <https://www.equalityhumanrights.com/en/about-commission-scotland>

4. marriage and civil partnership
5. pregnancy and maternity
6. race
7. religion or belief
8. sex
9. sexual orientation

The EHRC is an independent, statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain.²¹

The EHRC is a regulatory body, when powers of advice, guidance and research prove insufficient, it also has investigative, legal and enforcement powers using the court and tribunal systems. The EHRC has also benefitted from the creation of the Scottish Human Rights Commission and states that it “work(s) closely with the Scottish Human Rights Commission, with whom we share our human rights remit in Scotland.”²²The 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 Scottish Human Rights Commission. In practice, the two areas are often interwoven.

But as the EHRC is responsible for protecting equality across all nine protected characteristics, many feel that disabled people’s rights are being forgotten and ignored. This sentiment is summed up by Sir Bert Massie, “one of the most influential disabled campaigners of the last 50 years²³” and previous chair of the Disability Rights Commission, which was dissolved, and its functions taken over by the EHRC, when the EHRC was established.

According to the Disability News Service, he suggested “EHRC has failed to protect disabled people and that many disabled people believe responsibility for disability rights should be taken away from the organisation.”²⁴

He went on to say that:

“Perhaps in the future we do need a debate on whether disability issues should be removed from the mandate of the EHRC and [given] to a commission with a single focus. That is what many disabled people want.”²⁵

I am not allowed, nor would I want, to take disability away from the EHRC remit, but believe that the creation of a specific Disability Commissioner will ensure sufficient

²¹ <https://www.equalityhumanrights.com/en/about-us/what-we-do>

²² [About the Commission in Scotland | Equality and Human Rights Commission \(equalityhumanrights.com\)](#)

²³ [Should DRC rise again? Sir Bert asks in posthumous autobiography – Disability News Service](#)

²⁴ [Should DRC rise again? Sir Bert asks in posthumous autobiography – Disability News Service](#)

²⁵ [Should DRC rise again? Sir Bert asks in posthumous autobiography – Disability News Service](#)

focus on disability rights and create a central role that can act as a primary contact for disabled people and organisations.

Scottish Human Rights Commission (SHRC)

The SHRC was established by the Scottish Commission for Human Rights Act 2006 and has operated as the Scottish Human Rights Commission since 2008 to “promote and protect human rights for everyone in Scotland”²⁶ The SHRC deals with issues at a “bigger picture” level, seeking to “improve the laws, policies and day-to-day practices that affect people's rights,” therefore not taking on individual cases for review.²⁷

When the SHRC was set up, a [Memorandum of Understanding](#) was agreed with the EHRC 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.”²⁸ Commissions can work together to avoid duplication of work, maintain their independence but work co-operatively where possible.

I would envisage similar frameworks being established once my proposed Disability Commissioner is established, to ensure transparency and clear communication between the various professional bodies, to avoid duplication of work and ensure close collaboration where possible.

Mental Welfare Commission for Scotland

The Mental Welfare Commission for Scotland has a remit to “protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions”²⁹

It states its role is to be a “leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice” and aim to achieve this by “empowering individuals and their carers, monitoring mental health and incapacity law, and influencing and challenging service providers and policy makers.”³⁰

As with the EHRC and SHRC, the Mental Welfare Commission has a Memorandum of Understanding with other public bodies where there are common themes and potential

²⁶ https://www.scottishhumanrights.com/media/1316/animation-transcript_final-1.pdf

²⁷ [animation-transcript_final_1 \(scottishhumanrights.com\)](#)

²⁸ file:///C:/Users/R804976/Downloads/mou_with_shrc_nov2016.pdf

²⁹ <https://www.mwscot.org.uk/about-us/who-we-are-and-what-we-do>

³⁰ <https://www.mwscot.org.uk/about-us/who-we-are-and-what-we-do>

overlaps. These public bodies include the Scottish Public Services Ombudsman, the Care Inspectorate and the Mental Health Tribunal and are detailed on the Mental Welfare Commission's website.³¹

Alongside these Memoranda of Understanding, I would propose that the Disability Commissioner could also produce materials and communications to ensure awareness in Scottish society of the distinct role and responsibilities of the various interacting organisations in this field, and how the new Disability Commissioner fits into this landscape. This would ensure that all legislative bodies that work in this field, work collaboratively to ensure the best outcome for disabled people in Scotland. Having a Disability Commissioner co-ordinating and leading the way in disability rights will ensure that disabled people have a clear voice and ensure all organisations work towards the same aims and objectives.

Scottish Children & Young People's Commissioner – an example of an existing commissioner structure in Scotland

The idea of a commissioner to represent and advocate for a specific group of people is not new.

The Children & Young People's Commissioner was set up in 2003 with the passing of the Commissioner for Children and Young People (Scotland) Act 2003. Their role is described in simple terms as work(ing) with his team to protect the human rights of children and young people.³² This is something I would like my proposed Disability Commissioner to emulate for the disabled community as a whole. The Children & Young Person Commissioner has seven functions set out in legislation including:

- Protecting and promoting the rights of children and young people
- Promoting awareness and understanding
- Reviewing law, policy and practice
- Promoting best practice
- Research
- Investigation
- Reporting to parliament

In exercising these functions, the Commissioner must have regard to any relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner must also regard, and encourage others to regard, the best interests of children and young people as a primary consideration and have regard to their views on all matters affecting them.

³¹ <https://www.mwcscot.org.uk/about-us/how-we-work-other-organisations>

³² <https://cypcs.org.uk/>

I believe these functions could be similarly applied to the rights and policies relating to disabled people, including having regard to the provisions of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) as well as the interests and views of those with disabilities.

Examples of international disability commissioners

In other countries, there are similar roles to the one I am proposing, such as the Chief Commissioner for Persons with Disabilities in India³³, the Health & Disability Commissioner in New Zealand³⁴ and New York's Mayor's Office for People with Disabilities³⁵. New York's disabled population of 1 million people mirrors that of Scotland. The New York City Commissioner published a report in 2020 which "focuses on the issues raised during the COVID-19 pandemic and highlights the City's equitable response for people with disabilities."³⁶

Whilst the specific remit of these Commissioner offices may vary, their core value and mandate are the same – to advocate on behalf of disabled people within their community.

³³ <http://disabilityaffairs.gov.in/content/page/chief-commissioner-for-persons-with-disabilities.php>

³⁴ <https://www.hdc.org.nz/>

³⁵ <https://www1.nyc.gov/site/mopd/about/commissioners-bio.page>

³⁶ <https://www1.nyc.gov/site/mopd/initiatives/accessiblenyc.page>

Detail of the proposed Bill

As previously stated, the 10 key aims in setting up Disability Commissioner in Scotland are:

1. The Commissioner will be Independent
 - The Commissioner will be funded by the Scottish Parliament, not the Scottish Government.
 - The Commissioner will be appointed by Her Majesty The Queen on the nomination of the Scottish Parliament.
2. The Commissioner will report to the Scottish Parliament on an annual basis
 - This report will allow the Scottish Parliament to scrutinise the work of the Commissioner and raise any issues at a national level.
 - The report will hold the Commissioner to account and ensure their remit as defined by this proposed Bill is fulfilled.
 - The report will contain a review of issues identified by the Commissioner in the reporting year as being relevant to disabled people.
 - The report will include the strategy used by the Commissioner for involving disabled people in the work of the Commissioner.
3. The Commissioner will promote and safeguard the rights of disabled people
 - The Commissioner will undertake and publish research on matters relating to the rights of disabled people.
 - The Commissioner will work on behalf of all disabled people – both physical and hidden/mental disabilities to promote a strong, united voice.
4. The Commissioner will keep under review the law, policy and practice relating to the rights of disabled people
 - The Commissioner will be able to review any legislation passing through the Scottish Parliament, to ensure that disabled people's needs and rights are at the heart of any proposed legislative changes.
5. The Commissioner will assess the adequacy of laws, policy and practice relating to disabled people
 - This power will allow the Commissioner and their office to review laws and policies, both at a national and local authority level, to ensure they provide best practice for all disabled people and ensure equality and inclusion for all.

- The Commissioner will be involved in devolved legislative reform and policy development affecting disabled people in our community and work with other organisations and agencies to promote the rights of these people.
6. The Commissioner will promote best practice and learning from service providers, key stakeholders and from different sectors including the third sector
 - The Commissioner will engage with third sector disabled organisations and other key stakeholders to ensure that their views are being heard and any issues they are facing are addressed.
 7. The Commissioner must have regard for the United Nations Convention on the Rights of Persons with Disabilities
 - They must regard and encourage others to have regard to the rights contained in the Articles of the UNCRPD.
 - They must regard, and encourage others to regard, the best interests of disabled people as a primary consideration.
 - They must regard, and encourage others to have regard to, the views of disabled people on all matters affecting them.
 8. The Commissioner will encourage the involvement of disabled people and DPOs (Disabled People's Organisations) in the work of the Commissioner
 - The Commissioner must ensure disabled people & DPO's are aware of the functions of the Commissioner and how best to communicate with them.
 - The Commissioner must ensure disabled people and DPO's are aware of how the Commissioner will respond to any issues they raise.
 - The Commissioner must pay particular attention to groups of disabled people who do not have other adequate means by which they can make their views known.
 9. The Commissioner must communicate in an inclusive way
 - The Commissioner must have regard to the importance of inclusive communication, paying particular attention to groups of disabled people who do not have other adequate means by which they can make their views known.
 - "Communicating in an inclusive way" means communication in a way that ensures that individuals who have a difficulty communicating (in relation to speech, language or otherwise) can receive information and express themselves in a way that best meets each individual's needs.

10. The Commissioner will have legal powers to carry out investigations into **devolved** matters if they see that the issue relates to disabled people. These investigations will seek to encourage consideration of the rights, views and interests of disabled people in the particular organisation under investigation and more widely:

- The Commissioner will have the powers to carry out *general* investigations into matters if they see that the issue is of particular significance to disabled people generally or specific groups of disabled people. i.e., to assess whether, by what means, and to what extent regard has been given to the rights, views and interests of disabled people in making decisions or taking actions that affect those disabled people.
- A general investigation would be carried out in public except to the extent that the Commissioner considers that the taking of evidence in private is necessary or appropriate.
- The Commissioner will have the powers to carry out *individual* investigations into matters if they see that the issue relates to a specific disabled person(s). This would be conducted in private.
- The Commissioner will not undertake investigations on reserved matters or those that are subject to legal proceedings before a court or tribunal. Nor would the Commissioner duplicate the work properly the function of another person.
- The Commissioner will only be able to undertake investigations into devolved matters, while being able to comment and have a policy position on reserved matters.
- The Commissioner's investigations will be reported to Parliament and to the relevant organisation under investigation.

As far as possible, within devolved competence, the intention is that the investigative powers would be similar to those of the Children and Young People's Commissioner, as set out in the Commissioner for Children and Young People (Scotland) Act 2003. The Children and Young People's Commissioner can investigate "service providers" which means any person providing services for children and young people (but does not include a parent or guardian exercising their parental rights and responsibilities. I welcome views on who the proposed Commissioner should be able to investigate in relation to their consideration of the rights, views and interests of disabled people) (see question 8).

Equalities and sustainable development

Equalities

Equality is at the heart of this proposed bill. While the Equality Act 2010 provides protections for disabled people (and others who are defined as having 'protected characteristics') more must be done to ensure that the rights of disabled people are heard, protected and promoted.

As noted elsewhere in this document, evidence suggests that disabled people are more likely to live in poverty, with Scottish Government research showing that families with at least one disabled member were more likely than families without a disabled member to live in relative poverty after housing costs.¹ The same research shows that disabled people are significantly more likely to experience food insecurity than non-disabled people (18% compared to 5%), rates of material deprivation are higher among disabled people and living costs are generally higher than for non-disabled people.²

The unemployment rate for disabled people is also higher than for people who are not disabled, with statistics from 2018 showing that the unemployment rate for disabled people aged 16-64 in Scotland was 9.4% in 2018, compared with an unemployment rate of 3.6% for non-disabled people.³ We also know that a higher proportion of disabled people than non-disabled people leave school with little or no qualifications.⁴

Should a disability commissioner be appointed, their primary purpose would be to promote and safeguard the rights of disabled people in Scotland to work towards rectifying such inequalities.

Under the proposed bill, the Commissioner would seek to involve disabled 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 disabled people to be prioritised in the Commissioner's work.

Sustainability

The principles of sustainable development include human rights and wellbeing, equalities and equity and participation and accountability.

The aim of the proposed Bill is to improve the wellbeing of disabled people by creating a disability commissioner, whose role is to ensure that disabled people's rights are safeguarded and promoted. As set out in this document, currently far too many people with disabilities face discrimination in relation to many aspects of their lives including in education, housing, welfare and employment. As part of their role, it is proposed that the Commissioner would review laws and policies, both at a national and local authority level, to ensure that they provide best practice for all disabled people.

The Commissioner would represent and promote the rights of disabled 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, it is proposed that the Commissioner would actively engage with disabled people to ensure that their voices are heard and represented in the actions that the Commissioner takes. In doing so, the Commissioner would be required to communicate in an inclusive way, paying particular attention to disabled people who do not have other adequate means by which they can make their views known.

In promoting the rights of disabled people, it is hoped that the Disability Commissioner could effect changes which would have a long-term positive impact on disabled people by, for example, working to reduce the discrimination that they experience. This in turn, would have a positive impact on society as a whole.

Financial implications

There will be costs involved in setting up and running the Disability Commissioner Office. Different models for this proposed office may be possible and so the detailed assessment of likely costs would come at a later stage in the development of the Bill. To use the Commissioner for Children & Young People in Scotland Office as an example, the Scottish Parliamentary Corporate Body Budget Submissions for 2021 show an approved budget of £1.3m.³⁷

The costs associated with the provisions of this proposed Bill will fall largely upon the Scottish Parliament. There will also be additional costs incurred by the Scottish Parliament in relation to the appointment of the Commissioner; setting up a selection panel and providing administrative and other support throughout the process of the appointment.

The role of the SPCB in this appointment has been laid out by the Scottish Parliament Finance Committee as follows³⁸:

“Each individual piece of legislation establishing commissioners and ombudsman specifies a role for the Scottish Parliament Corporate Body. Although each piece of legislation is distinct, the key duties of the SPCB in relation to these officers are to ‘determine his/her length of appointment; to set his/her terms and conditions of appointment; approve determinations; pay his/her salary and allowances and any expenses incurred in the exercise of his/her functions’. The SPCB is also responsible for designating an accountable officer who is answerable to the Parliament for ensuring that his/her finances have been used properly, efficiently and effectively.

In practice the responsibility to ‘ensure expenses are properly incurred’ includes ensuring that annual budget bids are scrutinized by the SPCB. For the annual budget process, all commissioners and ombudsman submit their budget bids for scrutiny to the SPCB. The SPCB makes allowance for the funding required by commissioners and ombudsman within its own annual budget bid, following a process of discussion and negotiation between commissioners and ombudsman and the Corporate Policy Unit in conjunction with the Parliament’s Clerk and Chief Executive on behalf of the SPCB. The SPCB may then call on commissioners or ombudsman to give evidence to them in support of his/her budget proposals if required when the SPCB formally considers their proposals”

There may be opportunities to share resources with other commissioner bodies or public bodies in Scotland in order to reduce costs, for example sharing offices. The Parliament’s Finance Committee in Session 2 have examined what scope there might be in securing greater value for money from commissioners and ombudsman. Its full

³⁷ <https://cypcs.org.uk/about/accounts-and-finances/>

³⁸ [The Scottish Parliament - Finance Committee Report](#) – Section 25 and 26

report, including on sharing resources can be found at Section 14 of [The Scottish Parliament - Finance Committee Report](#).³⁹

³⁹ [The Scottish Parliament - Finance Committee Report](#) – Section 14

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you?

- Politician (MSP/MP/peer/MEP/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Person with lived-in experience of a physical disability
- Person with lived-in experience of other types of disability than physical
- Person without a disability.

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously

- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- Please ONLY tick this box if you are under 12 years of age.

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

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

- Fully supportive
- Partially supportive
- Neutral (neither agree or disagree)
- Partially opposed
- Fully opposed
- Do not wish to express a view

Please explain the reasons for your response.

2. Which of the following best expresses your view on whether there is a need for a specific, dedicated commissioner focussing solely on people with a disability?

- Fully supportive
- Partially supportive
- Neutral (neither agree or disagree)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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

Scope of the Disability Commissioner Role

4. Which of the following best expresses your view of the Disability Commissioner role covering all disabilities; physical, mental, hidden and fluctuating conditions?

- Fully supportive
- Partially supportive
- Neutral (neither agree or disagree)
- Partially opposed
- Fully opposed
- Unsure

Please give reasons for your response, including how the commissioner could co-ordinate with the work of existing bodies/organisations who support people with these conditions.

5. Which of the following best expresses your view of the Disability Commissioner having a role in reviewing laws and policies that might impact on disabled people?

- Fully supportive
- Partially supportive
- Neutral (neither agree or disagree)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

6. Which of the following best expresses your view of the Disability Commissioner promoting best practice and learning from service providers, key stakeholders and third sector?

- Fully supportive
- Partially supportive
- Neutral (neither agree or disagree)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response, including how you envisage this work being undertaken?

7. Which of the following best expresses your view of encouraging involvement of disabled people and DPOs (Disabled People's Organisations) in the work of the Disability Commissioner?

- Fully supportive
- Partially supportive
- Neutral (neither agree or disagree)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response. Please discuss how you think this would work in practise – would this be through focus groups, internships, paid roles etc

8. Who should the Disability Commissioner be allowed to investigate?

- Scottish Public Bodies
- Service providers (any person providing services for disabled people)
- Both Scottish Public Bodies and service providers
- The Commissioner should not have power to carry out investigations

Please explain the reasons for your response.

Financial implications

9. 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
- 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.

Equalities

10. 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? If you do not have a view skip to next question.

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

Sustainability

11. 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?
If you do not have a view then skip to next question.

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?

General

12. 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)?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy as mentioned in the Section on “How the Consultation Process works” or contact Jeremy Balfour to discuss alternative formats being made available.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/DisabilityCommissioner/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here [Privacy Notice](#).

Smart Survey’s privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Jeremy.balfour.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Jeremy Balfour MSP
Room 3.12
Scottish Parliament

Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 5961.

Deadline for responses

All responses should be received no later than **3 August 2022**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website www.jeremybalfour.org.uk

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person’s consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or

your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspubliknowledge.info.