



Law Society
of Scotland

Consultation Response

Proposed Disability Commissioner (Scotland) Bill

August 2022



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 Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the Jeremy Balfour MSP's consultation: *Proposed Disability Commissioner (Scotland) Bill*.¹ The sub-committee has the following comments to put forward for consideration.

General Comments

1. The consultation appears to be focused largely on the Equality Act and the definition of disability in terms of that Act. The Equality Act is a reserved matter. We would suggest that any Scottish proposals should be focused more on the UN Convention on the Rights of Persons with Disabilities ("CRPD"), and the broader concept of disability in CRPD, particularly in view of the policy intention to incorporate CRPD into Scots law.² We suggest that consideration be given to focusing the role of any new Commissioner towards implementing the requirements of CRPD in Scotland.
2. We suggest that in accordance with CRPD, organisations of and for disabled people should take the lead in shaping the role of any such Commissioner as is proposed, and the effect of the statutory provisions in relation to such an appointment, subject however to the following particular comment 3 below.
3. Scotland already has a rather crowded landscape of Commissioners and of organisations with roles which do, could or should discharge functions relevant to the purposes of the Bill. Such organisations include in particular the Mental Welfare Commission for Scotland, Equality and Human Rights Commission, and Scottish Human Rights Commission. The Scottish Government has also committed to creating a Learning Disabilities, Autism and Neurodiversity Commissioner.³ The Bill as presently proposed could become a recipe for confusion, overlapping responsibilities, and inefficient use of resources. 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, and

¹ [Proposed Disability for Scotland Commissioner Bill | Scottish Parliament Website](#)

² See- [New Human Rights Bill - gov.scot \(www.gov.scot\)](#)

³ [Written question and answer: S6W-04992 | Scottish Parliament Website](#)

how it should fulfil the requirements of CRPD in relation to all people with disabilities in accordance with the definition in CRPD, effectively, efficiently and in particular without confusion and duplication as to roles.

4. On the foregoing basis, and subject to the foregoing points, we have at this stage adopted a largely neutral stance in answering the particular consultation questions below.

Consultation Questions

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.

See the General Comments at the beginning of this 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.

See the General Comments at the beginning of this 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.

If the UN Disability Convention is to be incorporated, legislation will be required, but it should follow upon a comparative evaluation of the proposed role of a Disability Commissioner, and the coordinated and more efficient use of existing roles. It should in any event meet the points explained in our General Comments above.

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 coordinate with the work of existing bodies/organisations who support people with these conditions.

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

We agree that all conditions should be included, but do not agree with the proposal in the consultation that this should be based on the definition in the Equality Act 2010. That definition has been developed for a particular purpose and may exclude some conditions or societal barriers. It is also largely based on a medical model of disability, which the CRPD challenges. The CRPD stresses that 'disability is an evolving concept' and includes its own non-exhaustive definition in Article 1 – 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.' In ordinary language, 'disability' is a broad and flexible concept. Drawing from that a statutory definition for a particular purpose must be adapted to that particular purpose. The definition for the role of a Disability

Commissioner needs to be broadly drawn, leaving a margin for more precise application by the Commissioner in any particular circumstances that the Commissioner requires to address. Put simply, the definition must not prevent the Commissioner from addressing circumstances that might arise, and which cannot be predicted at time of drafting, which ought reasonably to be addressed by the Commissioner, and in particular which the Commissioner considers ought to be addressed. The acknowledgement at the beginning of the CRPD definition that disability is an evolving concept is essential, to ensure that any legislation is reasonably future-proofed. The inclusive rather than exclusive approach of the CRPD definition is essential. Short-term impairments should not necessarily be excluded, particularly in the event that a pattern of discrimination in relation to a particular such disability is alleged or identified. We agree with the suggestion in the consultation document that hidden and fluctuating disabilities should be expressly included.

We do strongly recommend that any such role should explicitly include both matters concerning people who themselves have disabilities, and also those whose lives are impacted by the disabilities of others.

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

X Neutral (neither agree or disagree)

- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

This would depend both upon the points in our General Comments above being adequately addressed, and also upon adoption of a suitable definition having regard to our comments on question 4 above.

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

X 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?

In general terms we are fully supportive of the promotion of best practice and learning from service providers, key stakeholders, and the third sector, but our General Comments are particularly relevant here, particularly as to clarity and non-duplication in relation to other existing roles.

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?

X 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

We do not offer suggestions here at this stage, pending clarification as suggested above. However, we do envisage that all of the suggestions above would be helpful, subject to them being appropriately structured and coordinated.

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.

We do not offer a view here, pending clarification sought above.

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.

We do not offer a view here, pending clarification sought above.

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.

We do not offer a view here, pending clarification sought above.

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?

We do not offer a view here, pending clarification sought above.

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)?

We have no comments additional to those already made above.

