



Royal College
of Nursing
Scotland

**RCN Scotland's response to the Scottish Parliament
Equalities, Human Rights and Civil Justice Committee
Call for Views on the**

Commissioner for Older People (Scotland) Bill

11 September 2025

Introduction

The Royal College of Nursing (RCN) is the world's largest nursing union and professional body. It is the leading national and international authority in representing the nursing profession. We represent over half a million nurses, student nurses, midwives, nursing associates and nursing support workers in the UK and internationally.

The RCN has approximately 52,000 members in Scotland. We campaign on issues of concern to nursing staff and patients, influence health policy development and implementation, and promote excellence in nursing practice.

Background

Colin Smyth MSP has introduced this Member's Bill to establish a Commissioner for Older People for Scotland. Colin Smyth MSP believes that an independent commissioner would champion the rights and interests of older people, enabling the challenges faced by older people to be considered in law, policy and practice.

The Bill was introduced on 2 April 2025 and is at Stage 1. At Stage 1, the Bill is given to a lead committee. This is usually the committee whose remit most closely relates to the subject of the Bill. The lead committee will consider and report on the Bill. Other committees may also examine the Bill and report to the lead committee. Finally, there is a debate and vote by all MSPs on the general principles of the Bill. If the general principles are not agreed to, then the Bill 'falls' and can't become law.

Consultation questions and RCN Scotland responses

Q1 - What impact do you think the creation of a Commissioner for Older People would have on different individuals and groups within Scottish society? Please provide a brief explanation of the reasons for your views.

RCN Scotland response:

The Commissioner should provide a spotlight on the interests and rights of older people; in the same way the Commissioner for Children and Young People has successfully done for those individuals. This could be achieved through raising awareness of the challenges of an ageing population and the need for a properly resourced system of health and social care to care for the population as it ages, with increasingly complex health and social care needs. It is anticipated that the Commissioner for Older People will function in a similar way to the Commissioner for Children and Young People.

The Commissioner should drive forward a focus on increasing the broad societal perception of the value of older people in and of themselves, and to the community in terms of strong and positive social connections, and the highly skilled and specialist nursing roles required to care for and support older people appropriately.

Q1 - Do you have any comments on the proposed roles and responsibilities of a Commissioner for Older People in Scotland as set out in the Bill?

RCN Scotland response:

RCN Scotland is broadly supportive of a Commissioner for Older People in Scotland and its proposed function to promote and safeguard the rights and interests of older people.

At RCN Congress in May 2023, RCN members passed a resolution supporting the appointment of Commissioners for Older People in England and Scotland, as there are already in Wales and Northern Ireland. The resolution debate discussed the changing needs of our ageing population and RCN members at Congress argued that parity across the UK would mean better working across the four nations and therefore improved service provision for all older people in the UK¹. Members highlighted the inequity of the current situation and felt that appointing a Commissioner for Older People in Scotland is long overdue and is needed to champion the rights of older people to ensure policy makers

consider the needs of Scotland's ageing population.

The resolution passed at RCN Congress makes clear that RCN members are of the view that a dedicated, independent voice is needed for older people to champion their rights and ensure that policy makers consider the needs of the ageing population. It was felt that an ageing population requires collaboration and joined up thinking to deliver innovative policy solutions that will meet needs now and in the future. A dedicated Commissioner can facilitate the long-term planning that is required to ensure our economy and public services are adapting to demographic shifts we are seeing in our population, while also enabling people to age well. Members believe a Commissioner is needed to champion equality and human rights and oppose structural discrimination against older people.

Day in day out, registered nurses and nursing support workers are working together with their medical and other health and social care colleagues across Scotland, providing high quality care to our older people. With an ageing population, and increasingly complex clinical needs being met in social care and community settings, it has never been more important for Scotland to have the right numbers of nursing staff, with the right skills in the right place. Unfortunately, Scotland's nursing workforce crisis is resulting in severe staffing shortages, with a high number of vacancies and an ageing workforce.

Safe Staffing & Workforce Planning

For the Commissioner to be fully effective, it is essential that health and social care services are appropriately staffed and resourced. The Ministerial Nursing and Midwifery Taskforce², spearheaded by RCN Scotland, outlined a series of recommendations including the necessity for appropriate and safe staffing levels, improved education and retention policies, and sufficient resources for nursing staff, to ensure registered nurses and nursing support workers can deliver safe and the best quality care possible. These recommendations now need to be implemented without delay. This requires robust planning, protecting the registered nursing role and services, and providing them with the ability and means to support prevention and deliver the safest and highest quality care possible.

Investigations 1: those subject to them

One of the main functions of the Commissioner will be to conduct investigations into by what means, and to what extent, a service provider has regard to the rights, interests and views of older people or an older person when making decisions. These investigations fall into two categories – general and individual. General investigations are about making decisions or taking actions that raise an issue of particular significance to older people generally or specific groups of older people. Individual investigations consider the effect of decision making or actions on an individual older person. In these investigations, the

Commissioner can investigate the actions and decisions of service providers. These service providers are defined in the draft Bill as *“any person providing services for an older person, other than a person providing services for them because of their existing family relationship, community or neighbourhood links, or friendship with them and who does not principally provide those services for remuneration or as part of paid employment”*, and this includes service providers in the public, independent and third/voluntary sectors. Based on this definition, which, as far as we can see, does not distinguish between “legal persons” (e.g. a company) and “persons” (i.e. individual employees), this would include registered nurses and other nursing staff. This all-encompassing definition raises a number of concerns on the matter of what the proposed law really means for “service providers” and other “persons,” which we cover below. It is obvious that in any investigation of a “legal person,” actual persons, including employees, will inevitably become part of that investigation.

Before proceeding, we note that the investigatory provisions detailed in the draft Commissioner for Older People (Scotland) Bill (particularly Clause 5 and Clause 6) largely appear to be based on those outlined in the Commissioner for Children and Young People (Scotland) Act 2003, which outlines what investigatory powers the Commissioner has. Schedule 2 of this Act provides the detail on requirements for individuals to give evidence and produce documents to the Commissioner for Children and Young People when requested to do so and the proposed Bill for the Commissioner for Older People follows this closely. We appreciate that any potential problems with the implementation of the proposed law that we highlight may have been addressed successfully by the Commissioner for Children and Young People. But whether or not this is the case is not explained in the draft Bill or the accompanying documents. It should not be to the responsibility of those potentially affected by legislation to work out whether that legislation will operate appropriately by reference to the operation of similar existing legislation, or even to have to obtain legal advice to be able to work that out. It is incumbent upon the proposers of the legislation – especially in the case of a Member’s Bill - to make clear the exact potential effect of that legislation. We do not yet have that clarity and we would urge the Committee to secure it.

Investigations 2: evidence & documents

At clause 8, the draft Bill outlines that the Commissioner may require any person to give evidence on any matter within the terms of an investigation or to produce documents in the control or custody of that person which have a bearing on the matter being investigated. As part of these investigations, the draft Bill outlines (in Schedule 2) that it would be an offence, where certain conditions are met, for an individual to fail to appear before the Commissioner or fail to provide information or documentation when asked to do so, when they have been given notice and are not privileged^a i.e. not obliged to respond. Based on this description, we understand that registered nurses and nursing support workers could be

required to give evidence or produce documents when requested.

If registered nurses and nursing support workers are called to give evidence or to provide documents/information, this would add to their workload and administrative burden, but more significantly heighten stress and potentially impact on their mental health and wellbeing, which in turn will exacerbate already significant staffing shortages, heighten workloads, and impact on patient care as a result. An independent review conducted in 2024 into regulatory reviews undertaken by the Nursing and Midwifery Council (NMC) found that such review and investigation processes can have a profound impact on the mental health of nursing professionals involved. The report highlighted that six individuals tragically died by suicide whilst undergoing an NMC fitness to practise investigation and many more were left waiting four or five years for the outcome of an investigation³. This clearly highlights the real and significant mental health and wellbeing pressures such investigations can put registered nurses and other nursing professionals under and it is imperative that any investigation function by the Commissioner does not further heighten such pressures. Nursing is not just a job or livelihood for those practising, it is a vocation and many nursing professionals report it is a core part of their identity. Investigations by the Commissioner must not ignore this or threaten its continuance. The nursing profession is already heavily regulated, with registered nurses and other nursing staff required to comply with rigorous standards and answer to the NMC and other inspectorates when called upon to do so.

Clause 8 (2) of the draft Bill states that the Commissioner cannot impose a requirement of any person to respond (either give evidence or provide documentation) whom the Scottish Parliament could not require, under section 23 of the Scotland Act, to attend its proceedings for the purpose of giving evidence or producing documents. However, despite this, it is still not clear within the draft Bill to what extent, if at all, an individual can refuse to respond on the basis of exercising other rights they hold in law, such as the right to silence under a criminal investigation. We would like clarity on this, to ensure our members are fully informed of requirements that may be placed on them as a result of the Bill.

Investigations 3: responses

At clause 10, the Bill also sets out a requirement to respond, whereby individuals may be asked by the Commissioner to respond to recommendations made in an investigation report. This response is to be in the form of a written statement from the relevant person or persons, and such statements can be made publicly available at the discretion of the Commissioner, when they consider it appropriate to do so. This raises concerns about the impact of the publication of these written statements on registered nurses and nursing support workers, including undermining their professionalism and apportioning blame, which could subsequently impact on the care they can deliver to older people. Additionally,

clause 10 4(b) of the draft Bill outlines that the Commissioner “must” publicise a person’s failure to comply with a requirement to respond to a recommendation(s) made in a report following an investigation. This could be particularly harmful to registered nurses and nursing support workers. Providing care to older adults can be complex, and therefore an individual registered nurse or nursing support worker is unlikely to be solely responsible for the care of an individual older person and so may not be able to individually respond to and/or deliver on the recommendation(s) made. Responding to and addressing a recommendation(s) is likely to involve multiple individuals and decisions beyond the control of just one individual. Further, there could also be a range of legitimate factors which lead to a delayed response or failure to respond such as workload pressures and uncertainty over what is required. If to be taken forward, the decision to publicise a person’s failure to respond, rather than being a blanket mandatory requirement, should instead be made on a case-by-case basis, with a range of factors considered as to why this might be the case, to protect the person(s) involved from potential unintended consequences.

Investigations 4: scope and further consequences

In the above context, regardless of how the Commissioner for Children and Young People has fared, the investigatory provisions outlined in the draft Bill are arguably too broad.

There appears to be scope for the Commissioner to decide (under Clause 5(3)) to investigate matters irrespective of the fact that they are being actively investigated by other public bodies. In particular, we would like clarity as to the extent to which a live police investigation which has not yet reported to the Crown Office and Procurator Fiscal Service (COPFS) does or does not come under the phrase “legal proceedings before a court or tribunal” and if it does not, what that means for the potential for the Commissioner to end up conducting an investigation in parallel with a police investigation.

The presence of offences in the process will, in particular, inevitably see the greater involvement of trade union and/or legal support to those involved in an investigation. This is bound to make the process more stressful and costly for individuals, as well as more bureaucratic for everyone. That, plus the provisions (i) for mandatory “naming and shaming” under clause 10(4)(b), (ii) for representations to be made under clause 9(3) but not accepted or published, (iii) for an action for defamation to be prohibited under clause 14, and there being no obvious right of appeal or any remedy in what may very well amount to a de facto quasi-judicial process, add up to a process that could be absolutely ruinous for an individual in a wholly disproportionate way given the apparent lack of safeguards of a person’s individual rights.

We understand that these considerations are not in themselves reason for the Bill not to proceed at all, but we note them to illustrate why it is incumbent upon the drafters of the

Bill to make its provisions as clear as possible from the outset and amend it accordingly.

In summary, we can see why, overall, the proposed roles and responsibilities of the Commissioner detailed in the draft Bill are intended to help support its primary function to promote and safeguard the rights and interests of older people and the broad thrust of the Bill is still supported by the RCN. However, we have some concerns with regards to the detail of the investigation role of the Commissioner and the impact this could have on the nursing profession and the care provided to older people as a result.

Q3 - What are your views on the proposed age range (over 60s) covered by the Commissioner's remit?

RCN Scotland response:

Scotland is currently facing an ageing population with growing and complex health and social care needs as a result. As outlined in the draft Bill's Policy Memorandum, there is no legal or universally accepted definition of an older person. The proposed age range of over 60s in the draft Bill aligns with the age range/group covered by the remit of Older People's Commissioners in other parts of the UK, such as the Commissioners in Wales⁴ and Northern Ireland⁵. Having over 60s as the age range covered by the Scottish Commissioner's remit would ensure alignment and parity for older people across the parts of the UK where a Commissioner function already exists. However, the Health and Social Care Strategy for Older People in Scotland⁶, consulted on in 2022, considers older people as those aged 65 and over. Therefore, there is misalignment between the proposals in the Strategy and the Commissioner roles in terms of age of older people covered, which could be problematic with regards to decision making and delivery of health and social care services for older people. Better synergy will be required between both the Commissioner and the Strategy to deliver the most optimal health and social care outcomes for older people.

RCN members have pointed to the need to take a more nuanced approach when it comes to the healthcare needs of older adults – they are not a homogenous group – and these needs can vary significantly within this age group. Despite health-related commonalities between older people, there are often significant differences, which are not age related, as well as commonalities with other groups who are not part of the older people category, such as disabled or chronically sick young people.

Alongside an ageing population, Scotland has an ageing health and social care workforce, with a high proportion of nursing (and midwifery staff) approaching or soon to be at retirement age. NHS Scotland workforce data reports that 23% of nursing and midwifery staff are age 55 and over⁷, and there has been an increase in the number of staff aged over

60 since 2015, rising from around 5% in 2015 to just under 10% of the workforce in 2025⁸. It is therefore critical to set funding levels for health and social care based on modelling of future services and population-based need to address workforce shortages and respond to an ageing nursing workforce. Given this context, and the workforce challenges it brings, some of the nursing professionals who are caring for older people covered by the remit of the Commissioner will also fall under that remit themselves, by virtue of their age. Therefore, there should be some consideration of how this will work in practice, particularly with regards to investigations, when some individuals regarded as service providers (as per the definition in the draft Bill) are also older people themselves covered by the remit and protections afforded by the Commissioner.

Q4 - What are your views on the proposal that the Commissioner should be independent of Government?

RCN Scotland response:

RCN members expressed the view that a Commissioner is required to be a champion for older people to safeguard and promote their rights and interests. We believe that the role should therefore be independent of the Scottish Government to ensure that policy and practice across government considers the long-term needs of people in later life and the implications of our ageing population on society.

Q5 - Given that a number of other bodies have similar functions to some of those proposed for the Commissioner, how best do you think the proposed Commissioner's remit can avoid duplication with existing officeholders?

RCN Scotland response:

With regards to the investigation function of the Commissioner, and adding to our comments above, registered nurses and other nursing professionals are already heavily regulated and overseen by a range of bodies, including the Nursing and Midwifery Council (NMC), various Inspectorates and others, and are required to answer to them when called upon to do so. Therefore, it is vital that any investigations carried out by the Commissioner do not duplicate anything that is already done by and/or is within scope of these other organisations and regulatory bodies. Failing to do so could add further to the already significant workforce challenges faced by the nursing profession; cause unnecessary stress and negative mental health and wellbeing impacts for nursing professionals; could risk damaging the attractiveness of the profession; and lead to unnecessary and wasteful

duplication of money and resources, which could be better spent and invested in supporting nursing professionals to deliver high quality to older people in Scotland.

N.B. RCN Scotland previously responded to the Parliament's consultation on a proposed Commissioner for Older People (Scotland) Bill in 2023⁹.

Footnotes

- a The Bill states an individual has privilege whereby (a) that individual is not obliged under this Act to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Scotland, and/or (b) A Scottish Law Officer or a procurator fiscal is not obliged under this Act to answer any question or to produce any document which that officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act.

References

- 1 [Royal College of Nursing Congress 2023](#)
- 2 Scottish Government (2025) Delivering Together for a Stronger Nursing and Midwifery Workforce. The report and recommended actions of the Scottish Ministerial Nursing and Midwifery Taskforce [Delivering Together for a Stronger Nursing & Midwifery Workforce](#)
- 3 Nursing and Midwifery Council (2024) Independent Culture Review [The Nursing and Midwifery Council - Independent Culture Review](#)
- 4 Welsh Government (2024) Older People's Commissioner for Wales [Older People's Commissioner for Wales | GOV.WALES](#)
- 5 Northern Ireland Assembly (2010) Research and Library Service Bill paper: The Commissioner for Older People Bill [The Commissioner for Older People Bill](#)
- 6 Scottish Government (2022) Health and Social Care Strategy for Older People: consultation [Health and social care strategy for older people: consultation analysis - gov.scot](#)
- 7 NHS Scotland Workforce year to 31st March 2025 [NHS Scotland workforce | Turas Data Intelligence](#)
- 8 NHS Education for Scotland (2025) NHS Scotland Workforce. Latest statistics at 31st March 2025 [NHS Scotland Workforce](#)
- 9 Royal College of Nursing Scotland (2023) RCN Scotland's response to the Scottish Parliament's consultation on the Proposed Commissioner for Older People (Scotland) Bill [Proposed Commissioner for Older People \(Scotland\) Bill | Scotland | Royal College of Nursing](#)

