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1. The following documents are published to accompany the Commissioner for Children and Young People (Scotland) Bill introduced in the Scottish Parliament on 4 December 2002:
   • Explanatory Notes;
   • a Financial Memorandum; and
   • the Presiding Officer’s Statement on legislative competence.

The Financial Memorandum and Presiding Officer’s statement are required under Rule 9.3 of the Parliament’s Standing Orders.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Non-Executive Bills Unit on behalf of Karen Gillon, convener of the Education, Culture and Sport Committee. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL


5. The Bill was developed from the Committee’s conclusion that a new and independent office of “Commissioner for Children and Young People” (the Commissioner) should be established by statute.

6. The 2nd Report recommended that the functions of the Commissioner should include advocacy for all children and young people at a national level; conduct of publicity and information campaigns; and presentation of an annual report to the Scottish Parliament. That Report also emphasised the need for a Commissioner to involve children and young people throughout Scotland in his or her work and to ensure that the work of the Commissioner is informed by the views of children and young people. This and other aspects of the Report were underpinned by articles of the United Nations Convention on the Rights of the Child (UNCROC). In particular, Article 12 of UNCROC emphasises the importance of the views of children. Similarly, Article 3 of UNCROC emphasises the importance of “the best interests” of children.

7. The Bill creates the post of Commissioner for Children and Young People with the general function of promoting and safeguarding the rights of children and young people. This includes everyone in Scotland up to the age of 18, and those up to 21 years who have been “looked after” by a local authority. “Looked after” is defined in section 16. In doing so, the Commissioner will have regard to the United Nations Convention on the Rights of the Child.
These documents relate to the Commissioner for Children and Young People (Scotland) Bill (SP Bill 71) as introduced in the Scottish Parliament on 4 December 2002

8. There are a number of principles which underpin the Bill. These are that:
   • the Commissioner is independent;
   • the best interests of children and young people should be a primary consideration in all matters affecting them; and
   • the views of children and young people should be taken into account in accordance with age and maturity.

9. In exercising the general function of promoting and safeguarding the rights of children and young people under the Bill, the Commissioner is to:
   • promote an awareness of those rights amongst children, young people and adults;
   • keep under review current law, policy and practice relating to those rights;
   • promote best practice by service providers in relation to children and young people;
   • promote, commission, and publish research;
   • undertake investigations; and
   • report to the Parliament.

10. The Commissioner can conduct investigations into how service providers take rights, interests and views into account in decisions or actions affecting children and young people. The Commissioner cannot, however, undertake an investigation which only concerns an individual child or young person. In an investigation, the Commissioner has the power to call witnesses to attend and require the production of documents. It is anticipated that investigations will be rare.

11. In all the functions, the Commissioner will be able to take a mainstreaming approach to issues concerning the rights of children and young people. That is, the Commissioner will act to encourage and enable others to have a higher regard for rights. For example, the Commissioner could establish relationships with existing organisations in order to make use of existing networks.

COMMENTARY ON SECTIONS

Section 1: Establishment

12. Subsection (1) establishes the office of Commissioner for Children and Young People.

13. Subsection (2) introduces schedule 1 which makes detailed provision concerning the status, independence, remuneration, terms of appointment and general powers of the Commissioner. The schedule also makes detailed provision in relation to various matters of an administrative nature.
Section 2: Appointment

14. Subsection (1) provides that the Commissioner will be an individual, who will be appointed by Her Majesty on the nomination of the Parliament.

15. Subsection (2) provides that anyone who is an MSP, MP or MEP or has held such an office in the previous year is disqualified from appointment.

16. Subsection (3) provides that the Commissioner holds office for a maximum period of five years but this must be read with section 3 which provides for the early removal from office of the Commissioner. The Scottish Parliamentary Corporate Body (SPCB), will on appointment determine the period of appointment.

17. The SPCB was created by section 21 of the Scotland Act 1998 (c.46) (the Scotland Act) to provide the Parliament with the property, staff and services which it requires and to represent the Parliament in legal proceedings. As well as the specific functions set out in the Scotland Act, the SPCB is bound to perform functions conferred upon it by other legislation.

18. Subsection (4) provides for the re-appointment of the Commissioner. There can only be one re-appointment which, although it need not be consecutive to the original appointment, cannot be for more than another five years. No further re-appointment is allowed. As a consequence, the maximum period of time which one person can serve as Commissioner is ten years.

Section 3: Removal

19. Subsection (1) sets out the grounds on which the Commissioner may be removed from office by Her Majesty. The Commissioner may resign or may be removed following a resolution of the Parliament. Subsection (1)(a) permits the Commissioner to resign from office. Subsection (1)(b) enables the Parliament to pass a resolution for the removal of the Commissioner. Such a resolution could be passed on the grounds that the Commissioner had breached the terms of appointment or that the Parliament had lost confidence in the Commissioner’s willingness, ability or suitability to carry out the functions of Commissioner. A resolution for removal by the Parliament would require the support of two-thirds of the total votes cast by those voting where the number of MSPs voting includes any voting to abstain.

Section 4: Promoting and safeguarding rights

20. The general function of the Commissioner, set out in subsection (1), is to promote and safeguard the rights of children and young people.

21. Section 16 provides that “children and young people” are individuals under the age of 18. However, if someone in Scotland has been “looked after” by an authority in the United Kingdom they will come within the remit of the Commissioner until they reach 21 years of age.

22. The word “rights” is not defined in the Bill. Therefore the Commissioner’s general function is to promote and safeguard any rights which apply to children and young people in
Scotland, either statutory or otherwise. This includes, for example, the right to a school education under section 1 of the Standards in Scotland’s Schools Act 2000 (asp 6).

23. Subsection (2) sets out specific duties of the Commissioner in carrying out the general function of promoting and safeguarding the rights of children and young people.

24. In particular the Commissioner is to promote awareness and understanding of the rights of children and young people (subsection (2)(a)). In relation to children and young people themselves this might include providing information to individuals about what their rights are and where and how to access further assistance. In relation to the promotion of those rights amongst adults as well as children and young people this might include, for example, fostering a high media profile or holding conferences.

25. Under subsection (2)(b) the Commissioner is to consider legislation relating to the rights of children and young people as well as the way in which it is applied. An example of this might include issuing statements or reports on the possible impact of legislation and proposed legislation. It also requires the Commissioner to consider policy and practice. This could include consideration of Scottish Executive policy, Scottish Parliament practice, local authority practice, practice in voluntary organisations or practice in private companies. A review of law, policy or practice could result, for example, in recommendations in a report to the Parliament under section 12 or be referred to in the annual report under section 10.

26. Under subsection (2)(c) the Commissioner is to promote best practice amongst “service providers”. Section 16 of the Bill defines “service providers” in such a way as to include any person providing services for children and young people. The exercise of parental responsibilities is not regarded as a “service” for these purposes unless such responsibilities are being exercised other than by a parent or guardian (for example, by a local authority). (See paragraph 41, below for further discussion of “service provider”).

27. Subsection (2)(c) is closely linked to the function of reviewing practice in subsection (2)(b). For example, the Commissioner could recommend improvements and highlight examples of good practice as a result of considering current practice under subsection (2)(b). The Commissioner might promote best practice by, for example, making recommendations to service providers.

28. Under subsection (2)(d) the Commissioner has obligations in relation to research relating to the rights of children and young people. This might result, for example, in the Commissioner undertaking research into the effect of a particular piece of legislation or policy on the rights of children and young people.

Section 5: United Nations Convention and equal opportunities

29. Section 5 places a duty on the Commissioner to have regard to the relevant provisions of UNCROC and also to act in a manner which encourages equal opportunities.

30. UNCROC gives an international framework to the concept of children’s rights. It covers a very broad range of issues many of which relate to devolved areas. The key principles include
the importance of children’s views, non-discrimination and the need to consider children’s best interests as a primary consideration. UNCROC was ratified by the UK on 16 December 1991 and places obligations on the UK government. These obligations are monitored through reports by the UK government to the UN Committee on the Rights of the Child. Section 16 makes it clear that the Commissioner will not have regard to articles on which the UK government has entered reservations. It also makes clear that the Commissioner must interpret UNCROC in accordance with the declared interpretation of the UK government. At present, in relation to devolved matters, the UK has reservations entered against article 37(c) concerning young offenders. The UK government has also declared that the Convention applies only following a live birth and that “parent” is to be interpreted according to national law. Any change in reservations or interpretation made by the UK government will also apply to the Commissioner’s interpretation of UNCROC.

31. Although the Commissioner must have regard to the relevant provisions of UNCROC, subsection (3)(a) provides that the Commissioner must, in particular, regard and encourage others to regard the best interests of children and young people as a primary consideration. This specific requirement mirrors Article 3(1) of UNCROC which provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of children and young people shall be a primary consideration.”

32. In a similar way, subsection (3)(b) imposes an obligation on the Commissioner to have regard to and encourage others to have regard to the views of children and young people. This reflects Article 12(1) of UNCROC which provides that:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

33. Subsection (4) reflects the key principle of non-discrimination which is set out in Article 2 of UNCROC by imposing an obligation upon the Commissioner to act in a manner which promotes equal opportunities. Section 16 defines “equal opportunities” by reference to Section L2 of Part II of Schedule 5 to the Scotland Act. Equal opportunities generally is reserved and the definition used follows the exception to the reservation set out in the Scotland Act. The effect of the provision is to require the Commissioner to encourage non-discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions.

Section 6: Involving children and young people

34. Subsection (1) places a general duty on the Commissioner to encourage the involvement of children and young people in all of his or her work. This will ensure that his work is informed by the views of children and young people.
35. Subsection (2) details the manner in which the Commissioner is to encourage the involvement of children and young people in his or her work by listing a number of duties which the Commissioner must take reasonable steps to fulfil.

36. Subsection (2)(a) requires the Commissioner to take reasonable steps to ensure children and young people are made aware of the existence of the Commissioner through awareness of the Commissioner’s functions, how to communicate with the Commissioner and what responses may be given by the Commissioner to issues raised.

37. Subsection (2)(b) requires the Commissioner to take reasonable steps to consult children and young people on the work to be undertaken by him or her. It would be for the Commissioner to determine how, who, what, why and when he or she consults. For example, “reasonable steps” in relation to some issues might mean consulting a particular group of children while, in relation to others, a wider general consultation may be appropriate.

38. Subsection (3) requires the Commissioner to give some priority to those children and young people who are not within the remit of other agencies or who do not have adequate means to make their views known for other reasons. This allows the Commissioner to focus on particularly vulnerable groups of children and young people who need extra support in making their views known.

39. Subsection (4) requires the Commissioner to prepare and maintain a strategy on the continued involvement of children and young people in his or her work under this section. The strategy will, as a consequence of section 10(2)(d) (see paragraph 58 below) require to be updated at least annually.

Section 7: Carrying out investigations

40. Subsection (1) gives the Commissioner a power to carry out investigations into how the rights, interests and views of children and young people are taken into account in decisions or actions affecting them.

41. Such investigations can be carried out in relation to the actions of service providers. Section 16 makes it clear that “service provider” means any person or organisation providing a service to children and young people. This includes the private, public and voluntary sector. Thus any individual who, or organisation or company which, provides services to children or young people can be investigated by the Commissioner. For example, organisations which give advice, provide guidance or provide goods could be investigated. The service in question does not need to be provided exclusively to children or young people. Section 16 also makes it clear that parents carrying out their parental responsibilities are not service providers. However, the Bill ensures that local authorities to whom parental responsibilities have been transferred are treated as service providers by referring to sections 1 and 2 of the Children (Scotland) Act 1995 (c.36) which apply only to natural persons.

42. Investigations can concern a single service provider or a group of service providers. For example, an investigation could consider the way rights, interests and views are considered by a single local authority, or by local authorities in general.
43. Before the Commissioner can carry out an investigation he or she must be satisfied on reasonable grounds that the conditions set out in subsections (2)(a) and (2)(b) have been met.

44. In coming to a view in that regard the Commissioner must consider information available about the issue. This might include research findings, consultation exercises and the experiences of individuals. The Commissioner must also consider any other information which is received by him or her.

45. Subsection (2)(a) requires that an issue for investigation must be of significance to children and young people. This is an area in which the views of children and young people will inform the work of the Commissioner. For example, the Commissioner may consult children and young people before launching an investigation. It could be an issue that affects a particular group of children – such as children with disabilities or “looked after” children, or children in a particular institution.

46. Ultimately, it is for the Commissioner to decide whether something is significant enough to be investigated provided that he or she has reasonable grounds upon which to do so.

47. Subsection (2)(b) prevents the Commissioner from duplicating the investigatory functions of other bodies. The Commissioner has a very broad remit which covers general areas, some of which are also covered by the remit of other bodies. This provision means that the Commissioner will not be able to investigate a service provider’s standards towards children if these are already regulated and inspected by other bodies. However, the Commissioner could investigate the way in which children’s rights, interests and views are taken into account by the service provider generally – but only if this was not an issue already addressed in existing regulatory arrangements. The Commissioner could investigate the way in which the regulatory body itself takes children’s rights, interests and views into account.

48. Subsection (3) places two further restrictions on the matters which may be subject to investigations. Firstly, the Commissioner can only investigate issues which relate to devolved matters. Secondly, an investigation must be concerned with children generally or a group of children. This prevents the Commissioner from investigating the case of an individual child or young person. This does not prevent, however, the Commissioner using examples of individual cases to inform an investigation.

Section 8: Initiation and conduct of investigation

49. Subsection (1) sets out procedural requirements which need to be fulfilled before the Commissioner can undertake an investigation.

50. Subsection (1)(a) requires the Commissioner to draw up terms of reference for the proposed investigation. The terms of reference will define the scope of the investigation which cannot be changed once an investigation has started.

51. In addition subsection (1)(b) requires that the Commissioner publishes notice of the investigation and its terms of reference in order to create awareness of it amongst those who may
be affected by it. The precise means of publication employed by the Commissioner in order to satisfy this requirement will be a matter for the Commissioner’s discretion.

52. Subsection (2) makes it clear that investigations by the Commissioner will be conducted in public unless the Commissioner considers that it is necessary or appropriate to take evidence in private. This could include, but is not limited to, circumstances in which a young child or a vulnerable person is giving evidence. In addition, given that the Commissioner will be required to consider the best interests and views of children and young people under sections 5(2)(a) and (b), this means that the Commissioner should ascertain their views as to privacy before they give evidence.

Section 9: Investigations: witnesses and documents

53. This section sets out the powers available to the Commissioner in gathering information and undertaking an investigation under section 7.

54. Subsection (1) authorises the Commissioner to require any person to give evidence or produce documents they hold. These powers apply to companies and other bodies as they do to individuals. The Commissioner cannot request information or evidence which is outwith the scope of the investigation as set out in the terms of reference.

55. Subsection (2) is based on section 23 of the Scotland Act and limits the Commissioner’s powers to require the giving of evidence or the production of documents from certain persons. Section 23 imposes various restrictions on the Parliament’s powers, for example, in relation to Ministers of the Crown, judges and members of tribunals.

56. Subsection (3) introduces schedule 2 (see paragraphs 76-83 below), which contains further provision with respect to witnesses and documents. Schedule 2 also details the sanctions for non-compliance with a requirement under this section.

Section 10: Annual report

57. Subsection (1) requires the Commissioner to prepare an annual report which must be laid before the Parliament. The report must cover the functions exercised by the Commissioner during the preceding year.

58. Subsection (2) sets out the matters that must be included in the annual report. These will be included in every annual report. There is, however, no restriction on the inclusion of any other areas considered relevant to the Commissioner. The annual report will, for example enable the Commissioner to comment on the “big themes” of the previous year in relation to the rights of children and young people. It will also contain an indication of the themes to be tackled over the following year, including how the strategy to involve children and young people is expected to develop. The Commissioner can also make recommendations in the annual report. These could, for example be recommendations repeated from earlier reports (such as a report following an investigation) or they could be new recommendations. The annual report could, for example, be an opportunity for the Commissioner to comment on his or her powers under this Bill and whether amendment to this legislation is desirable.
Section 11: Reports on investigations

59. Subsection (1) requires the Commissioner to report in writing to the Parliament following the conclusion of any investigation he or she has undertaken.

60. Subsection (2) requires the Commissioner to include in such reports any recommendations he or she may have arising out of the investigation. Other than this the Bill does not prescribe the content of such a report. This is left to the Commissioner's discretion.

61. Subsection (3) requires that anyone named in, or identifiable from, the report be given a draft of the proposed report and an opportunity to make representations on it to the Commissioner.

Section 12: Other reports to the Parliament

62. This section enables the Commissioner to lay before the Parliament any other reports relating to his or her functions as he or she considers necessary or appropriate. This could include, for example, research findings, conference reports or reviews of policy, or practice. A review could include, for example, a "child impact statement" providing an overview of the extent to which the work of the Executive and the Parliament has reflected the rights of children and young people. Reports under this section could also include those relating to investigations that are, for any reason, terminated before conclusion.

Section 13: Anonymity for children and young people

63. This section requires the Commissioner to ensure, so far as reasonable and practicable, that children or young people referred to in a report have their anonymity preserved. The Commissioner might decide not to preserve anonymity where, for example, naming a group of children or young people in a report would be beneficial in highlighting their views. The Bill does not make specific provision in relation to the disclosure of the identity of individuals who are not children or young people. This gives the Commissioner a discretion about whether to identify them. In practice, the Commissioner might preserve the anonymity of an adult where, for example, information has been given in confidence.

Section 14: Publication

64. Subsection (1) requires the Commissioner to publish all reports laid before the Parliament. Publication in either electronic format or hard copy would meet this requirement.

65. Subsection (2) enables the Commissioner to publish any other report relating to his or her functions. This provision is to cover reports that it may not be necessary or appropriate for the Commissioner to lay before the Parliament but which the Commissioner may still wish to publish. For example, the Commissioner may wish to lay before the Parliament results of major research projects, or a key annual conference. However, smaller scale projects would still merit publication but may not merit being laid before the Parliament.
These documents relate to the Commissioner for Children and Young People (Scotland) Bill (SP Bill 71) as introduced in the Scottish Parliament on 4 December 2002

66. Subsection (3) requires the Commissioner to publish a “child friendly version” of all reports published by him or her unless a report is already written in such a style. “Child friendly version” is defined in section 16. This gives the Commissioner a discretion about how he or she approaches putting reports into a wording, style and format most accessible to children and young people.

**Section 15: Protection from actions of defamation**

67. Subsection (1)(a) provides the Commissioner and staff with absolute privilege for all reports, statements and communications related to the purposes of the Bill. The provision of absolute privilege effectively places a bar on a person’s right to pursue an action of defamation in respect of statements made by the Commissioner. This allows the Commissioner to carry out investigations without being fettered in relation to the repetition of any defamatory material received.

68. Subsection (1)(b) provides individuals who make statements to the Commissioner or the Commissioner’s staff with qualified privilege. Under qualified privilege individuals can make statements and can assist in investigations without fear of an action for defamation provided statements are not motivated by malice or intent to injure. “Statement” has the same meaning as in the Defamation Act 1996 (c.31) and therefore includes words, pictures, visual images, gestures or any other method of signifying meaning.

**Section 17: Commencement and short title**

69. This section provides for certain provisions of the Bill to come into force automatically six months after the granting of Royal Assent. The period of six months is required so as to enable the Scottish Executive and the Parliament to put in place the required structures, procedures, staffing and resources. The provisions of the Bill which do not come into force six months after Royal Assent come into force on Royal Assent. Those provisions enable the Commissioner to be appointed prior to the Bill coming fully into force.

**Schedule 1: The Commissioner for Children and Young People in Scotland**

70. Schedule 1 makes detailed provision concerning the status, independence, remuneration, terms of appointment and general powers of the Commissioner. It also makes detailed provision in relation to various matters of an administrative nature.

71. Paragraph 1 of the schedule makes it clear that the Commissioner is not to be regarded as a servant or agent of the Crown and that the Commissioner’s property is not to be regarded as property of the Crown. This is necessary because the Commissioner is appointed by the Queen. This has legal implications in relation to immunities which are applied to servants or agents of the Crown and also in relation to particular statutory provisions which relate to Crown property.

72. Under paragraph 4, the SPCB sets the salary and allowances of the Commissioner, and any other terms of the appointment. It will be for the SPCB alone to decide whether the Commissioner should hold any other office or appointment. For example, the SPCB may consider a situation where an appointment would prevent the Commissioner from fulfilling what
is expected to be a full time post as being inappropriate for the Commissioner. There may also be instances when an appointment might be seen to compromise the independence of the Commissioner. For example, this could arise if the Commissioner were to become an office-holder of a service provider which he or she would be able to investigate.

73. Paragraph 6 vests a general power in the Commissioner that is ancillary to the Commissioner’s main functions, which are detailed from section 4 onwards. This is to ensure that the Commissioner is able to carry out his or her functions effectively.

74. Under paragraph 7, the Commissioner can appoint any number of staff and determine the terms of their appointment with the approval of the SPCB.

75. Paragraph 12 allows for the appointment of an acting Commissioner where the office of Commissioner is vacant or where the Commissioner is unable to act for whatever reason. The same eligibility requirements must be met as for the Commissioner.

Schedule 2: Investigations: supplementary provisions on witnesses and documents

76. Paragraph 1 makes provision for the Commissioner to give notice to a person who is required to give information or produce documents in line with the equivalent notice provision for the Parliament that is contained in section 24 of the Scotland Act. The notice must set out the subjects to which the required evidence will relate. In addition, in the case of the attendance of a person to give evidence, the time and place at which attendance is required must be given. In the case of documents, the date by which they are to be produced must also be given. A notice must be sent by registered or recorded delivery post. In the case of an individual it has to be sent to their last known address and in any other case to the person’s registered or principal office.

77. Paragraph 2 sets out restrictions to the Commissioner’s powers to require evidence and documents. The power extends to the limits applicable to court proceedings in Scotland. This is in line with the provision that applies to the Parliament’s own powers in section 23(9) of the Scotland Act. These cover various privileges such as the privilege against self-incrimination and privileges in connection with litigation.

78. Sub-paragraph (2) provides a similar restriction to that of the Scotland Act in relation to a Scottish Law Officer or a procurator fiscal declining to answer a question or produce a document in relation to the operation of the system of criminal prosecution in any particular case. Under the Scotland Act this applies to the fiscal if the Lord Advocate considers that answering or producing it might prejudice criminal proceedings in the case in question or would otherwise be contrary to the public interest and the Lord Advocate has authorised the fiscal to decline to answer the question or produce the document on that ground. Similarly, this applies to the Lord Advocate and the Solicitor General if he or she considers that answering the question or producing the document might prejudice criminal proceedings in the case in question or would otherwise be contrary to the public interest.

79. Paragraph 3 provides that a person giving evidence can be required to do so under oath and sub-paragraph (1)(a) authorises the Commissioner to administer such an oath. A person will be able to affirm, as an alternative to taking an oath, as this is expressly provided for in the Oaths
Act 1978 (c.19). Paragraph 3 makes it an offence for a person who has been required to take an oath by the Commissioner to fail to do so. The penalties for that offence are the same as for the offence created by paragraph 5 of this schedule and are detailed in paragraph 81 below.

80. Where a person makes a statement in answer to any question by the Commissioner which the person was obliged to answer, paragraph 4 provides that any such statement would be inadmissible in any proceedings in a criminal court. The effect of this is that a person cannot incriminate him or herself during the investigation process. The one exception to this provision is in the event that perjury proceedings are initiated in respect of the statement made to the Commissioner.

81. Paragraph 5 creates offences which are equivalent to those set out in section 25 of the Scotland Act in relation to failures to comply with requirements imposed by the Parliament as to the giving of evidence or the production of documents. For instance, this section makes it an offence for a person who is required by the Commissioner to give information or produce documents to fail to do so unless they have a reasonable excuse. A person found guilty by a summary criminal court of an offence under this section is liable to a fine not exceeding level 5 on the standard scale (currently £5,000) (section 225 of the Criminal Procedure (Scotland) Act 1995 (c.46)) or to imprisonment for a maximum period of three months.

82. Paragraph 6 allows for individuals who exercise control within an organisation, as well as the organisation itself, to be proceeded against and punished where the organisation commits an offence under the Bill.

83. Paragraph 8 makes provision for the payment of allowances and expenses to persons giving evidence or producing documents. The level of those allowances and expenses will be a matter to be determined by the Commissioner who must first seek agreement from the SPCB. The SPCB will be asked to agree a scheme for paying allowances and expenses (rather than agreeing each individual payment to those giving evidence or producing documents).

FINANCIAL MEMORANDUM

INTRODUCTION

84. The costs associated with the provisions of this Bill will fall largely upon the Scottish Parliament.

85. 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 appointment.
86. There is a large margin for discretion associated with these costs as key issues relating to the location, number and composition of staff required, together with set up costs, are properly a matter for the Commissioner.

COSTS ON THE SCOTTISH PARLIAMENT

87. The office of the Commissioner for Children and Young People will be publicly funded by the Scottish Parliamentary Corporate Body (SPCB).

88. There are many seemingly comparable offices in existence throughout Europe and the world. It is not helpful however to make a direct comparison with these existing offices for a variety of reasons. There are different types of Children’s Commissioners, some of whom exist to perform a government function. Some act only as Ombudsman, dealing with complaints, others advise on legislative reform, or have a specific remit in a particular government sector. There is great variation in the legal powers attached to the various offices. In addition there are other important social, political and economic factors which may influence the funding of such an office which this type of comparison cannot take account of.

89. There are already several Commissioners’ and Ombudsmen’s offices in existence in Scotland, including most recently, the Scottish Public Services Ombudsman and the Scottish Information Commissioner. These bodies encompass the promotion of certain rights but only across the public sector where there are already existing frameworks. It is expected that the Commissioner for Children and Young People will embark on the considerably larger task of changing existing attitudes and will be relevant to all sectors of society.

Salary

90. Following appointment by the Queen upon the recommendation of Parliament, the Commissioner will require an annual salary. Two posts, similar in status to that of the Commissioner for Children and Young People, have been advertised in the past year. These are the Scottish Information Commissioner and the Scottish Parliamentary Standards Commissioner. The former is a full time role promoting good practice and providing information, which attracts a salary between £70,000 and £80,000, and the latter is a part time role with a salary of £36,500. As the Commissioner will work full time it is expected that the appointee will be paid a similar salary of up to £80,000. This would reflect a uniformity of approach towards such appointments.

Recruitment

91. One of the initial tasks facing the Commissioner in setting up the office would be to advertise and recruit staff. Before recruitment costs can be considered the Commissioner would need to create benchmarks for the level of skill required for each post. This is likely to require specialist advice, most likely from a recruitment consultancy.

92. While the number and composition of staff cannot be prescribed by this document, certain assumptions have been made in this regard for budgeting purposes. A number of comparative models across the world have been considered. The different approaches of the Welsh and Swedish models are discussed below.
93. Wales set up a Commissioner for Children and Young People in 2001 and has a total of 21 staff in two offices. Compared to other international models, Wales has similar cultural, economic and social conditions to Scotland, so it would appear at first glance to be a possible comparator. The main difference is that the Welsh Commissioner deals mainly with the provision of services as they relate to public services in devolved areas and is able to take on individual cases. The Commissioner in Scotland will, by comparison, have a much wider remit covering all children and all service providers. Here the Commissioner’s work will be proactive with the emphasis on promotion of rights and research rather than a reactive role of intervention in individual cases.

94. By contrast, the Children’s Ombudsman in Sweden has been established for almost ten years. The office has a total of 25 staff, and does not have a remit for handling individual cases. The importance of according children’s rights a high degree of priority is a well-established principle in Sweden. This means that the emphasis of the Swedish Ombudsman is on safeguarding the rights and interests of children and in following up Sweden’s obligations under the United Nations Convention on the Rights of the Child (UNCROC).

95. Given the diversity of approaches and other practical considerations, it has been assumed that a staff of 15 people would be a reasonable number. This reflects an outline of key staff: e.g. one or more legal staff, media officer, webmaster/IT specialist, financial officer, reception/administrative staff, information officer, several research and/or project staff based on the core functions of the office.

96. The experience of the Commissioner’s office in Wales shows that approximately 10% of the annual budget was spent on recruitment. If this figure were mirrored in Scotland, the total cost of recruitment would be £150,000. This level of recruitment will not be incurred every year. It is not anticipated that there will be a high rate of staff turnover and therefore only a small proportion of this cost needs to be retained as an ongoing cost for this purpose.

Staff costs

97. Statistics from the Commissioner’s office in Wales suggest that on average 55% of the annual budget requires to be set aside for salaries alone. While it is recognised that experience from other countries may reflect different working arrangements, this percentage is reflected throughout similar offices worldwide. Based on the posts outlined in paragraph 11, and using the Scottish Parliament’s pay and grading structure, salary costs for staff will amount to £490,000. Pensions and National Insurance contributions will account for around a further 30% of the salary paid. The total cost of staff is £650,000.

98. In addition, staff training costs are estimated at £10,000 per year.

Rental costs

99. A fundamental part of the Commissioner’s role is accessibility to and by children. The methods and means chosen to achieve this are entirely a matter for the Commissioner. It is anticipated for the purposes of this memorandum that the Commissioner will have one office base. Based on recommended space areas, the rental cost is taken to be £40,000.
Cost of office equipment

100. The office will require a variety of equipment including electronic and communications equipment, in addition to desks, filing cabinets etc.

101. These costs have been estimated at £25,000 in the first year. This will largely be a start-up cost. However an annual cost equivalent to 25% of this value would be required to cover the ongoing costs of upgrading and replacing such equipment.

Travel costs

102. The Commissioner will provide a voice for all children at national level and therefore must be accessible to all children. It is anticipated that the Commissioner or members of his or her staff will attend meetings with, for example, schools, children’s organisations, local authorities, service providers and the Scottish Executive.

103. As well as representing children, the Commissioner’s work may involve attending and speaking at conferences both at home and abroad. He or she will also undertake fact finding trips to develop guidelines for good practice and to learn firsthand through the experience of other countries.

104. Total annual travel costs are taken as £20,000.

Publications, events, marketing, public relations

105. The Commissioner will be a new body promoting the rights of children and young people ensuring that Scotland’s one million children are aware of his or her existence and functions. He or she will likely need to undertake substantial promotional work in order to fulfil the functions of the office. This would require a variety of approaches to reach the full diversity of children and young people. He or she will also need to target the wide diversity of adults and service providers. While this will include traditional methods such as holding events, production and distribution of information, the Commissioner is likely to consider a wide range of methods to reach such diverse groups. One aspect of this will include the production of information, including leaflets and posters, and the holding of seminars or conferences. The Commissioner may also wish to use the internet, television, radio, school curriculum materials, newsletters or advertising. These would aim to inform people about the office and the work of the Commissioner, and about the rights of children and young people. The Commissioner will also produce a variety of reports to be circulated among interested parties and a child-friendly version report. Similar organisations spend around £220,000 annually on their advertising, publications and events budget.

106. The total publication costs will be around £325,000 in the first year. This will be necessary in order to inform and raise general awareness allowing the Commissioner to carry out his or her functions effectively and efficiently in the longer term. It is estimated that an annual budget of approximately £200,000 would be required thereafter.
Research

107. The Commissioner may also wish to commission research in certain areas, which may include projects spread over a number of years. It is anticipated that he or she would be able to undertake at least a couple of small to medium size projects per year. Based upon the Scottish Parliament’s experience, the total cost for research per year will be approximately £100,000.

Total cost on the Scottish Parliament

108. The table below illustrates the total cost on the Scottish Parliament:

<table>
<thead>
<tr>
<th>Breakdown of Costs</th>
<th>Total cost incl. start-up costs (£)</th>
<th>Total cost excl. start-up costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recruitment process</td>
<td>150,000</td>
<td>0</td>
</tr>
<tr>
<td>Commissioner’s salary</td>
<td>80,000</td>
<td>80,000</td>
</tr>
<tr>
<td>Staff salaries etc</td>
<td>650,000</td>
<td>650,000</td>
</tr>
<tr>
<td>Training</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td>890,000</td>
<td>740,000</td>
</tr>
<tr>
<td><strong>Office costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rent</td>
<td>40,000</td>
<td>40,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>25,000</td>
<td>6,250</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td>65,000</td>
<td>46,250</td>
</tr>
<tr>
<td><strong>Functional costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Travel costs</td>
<td>20,000</td>
<td>20,000</td>
</tr>
<tr>
<td>Publications/events/marketing/public relations</td>
<td>325,000</td>
<td>200,000</td>
</tr>
<tr>
<td>Research</td>
<td>100,000</td>
<td>100,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td>445,000</td>
<td>320,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong> (+ 10% Margin of discretion)</td>
<td>1,400,000</td>
<td>1,106,250</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,540,000</td>
<td>1,216,875</td>
</tr>
</tbody>
</table>

109. Allowing a 10% margin of discretion the total annual budget for the office of Commissioner for Children and Young People in Scotland is estimated as £1,216,875. An additional £323,125 is expected to satisfy the initial start-up costs.

COSTS ON LOCAL AUTHORITIES

110. It is not anticipated that the provisions should impose any direct costs on local authorities.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

111. It is not anticipated that the provisions should impose any direct costs on other bodies, individuals and businesses.

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

112. On 4 December 2002, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Commissioner for Children and Young People (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”