COMMISSIONER FOR OLDER PEOPLE (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Non-Executive Bills Unit on behalf of Alex Neil MSP, the member in charge of this Bill. It has been prepared to assist the Subordinate Legislation Committee with their consideration, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of the provision in the Commissioner for Older People (Scotland) Bill conferring power to make subordinate legislation. It describes the purpose of the provision and explains why the matter is to be left to subordinate legislation.

POLICY CONTEXT

2. The objective of the Bill is to establish the Commissioner for Older People in Scotland with the general function of promoting and safeguarding the rights of older people. In carrying out his or her work the Commissioner is to involve older people to ensure this work is informed by their views. In addition, the Commissioner must have regard to the United Nations Principles for Older Persons. A major strand of the Commissioner’s work will be to influence positively the culture of Scotland to raise the profile of older people and the skills and experience they offer and to promote greater understanding between the generations.

3. The Commissioner will also have power to carry out investigations. These investigations will consider how service providers take rights, interests and views into account in decisions or actions affecting older people. The Commissioner cannot undertake an investigation that only concerns the case of an individual older person i.e. he or she will not act as some sort of appeal mechanism. In an investigation, the Commissioner will have the power to call witnesses to attend and require the production of documents. It is anticipated, however, that investigations will form only a small part of the overall work of the Commissioner.

CONTENT OF THE BILL

4. The specific provisions of the Bill include:
   - the procedural requirements allowing for the establishment, appointment and removal of the Commissioner for Older People (sections 1 - 3 and schedule 1). Any
nomination for appointment will be made by the Parliament and the Commissioner will be appointed and removed by the Queen;

- the functions of the Commissioner (sections 4-9 and schedule 2). In carrying out his or her functions the Commissioner is to:
  - have regard to the United Nations Principles for Older Persons;
  - encourage the involvement of older people in his or her work; and
  - carry out investigations into how service providers to older people take their clients' interests into account;

- the reporting requirements on the Commissioner (sections 10-13). The Commissioner must provide reports to Parliament on the exercise of his or her functions and has the power to lay any other reports which he or she considers necessary or appropriate;

- protection from actions of defamation (section 14). The Commissioner and his or her staff will have absolute privilege in the context of an investigation or a report. Otherwise, the Commissioner and his or her staff, and any person who makes a statement to them, have qualified privilege.

DELEGATED POWERS

5. The Bill contains only one delegated power.

Schedule 1, paragraph 6(3) – Power to specify chargeable services

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
<td>Order made by Statutory Instrument</td>
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6. The Bill gives power to the Scottish Ministers to specify, by order, services for which the Commissioner may charge. This might include such services as carrying out research, assessing standards of best practice in individual organisations, or giving seminars.

7. The main purpose of the provision is to allow for flexibility, since it will not be until the Commissioner is well in post that a decision can be made on the services that should be chargeable services. This will be dependent on the expertise and capacity of the Commissioner and his or her staff. The power will allow Ministers to add or remove services from the chargeable list, which may also be useful in the light of future circumstances.

8. It will then be for the Commissioner to set the level of charges (for those chargeable services). This is appropriate since the office of Commissioner will be publicly funded. It is thought that the Scottish Ministers should not be able to somehow supplement the Commissioner's budget by setting the level of charges. Moreover, the Commissioner will be in a unique position, based on his or her experience, to decide an appropriate level of charge.
9. It is felt that negative resolution procedure is appropriate, as the subject matter of the regulations is administrative in nature and not of such significance as to require the more stringent control afforded by the affirmative procedure.
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