COMMISSIONER FOR OLDER PEOPLE (SCOTLAND) BILL

EXPLANATORY NOTES

(CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Commissioner for Older People (Scotland) Bill introduced in the Scottish Parliament on 20 September 2006:
   • Explanatory Notes;
   • a Financial Memorandum; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 71– PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Non-Executive Bills Unit on behalf of Alex Neil, the member in charge of the Bill. 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

4. The Bill creates the post of Commissioner for Older People in Scotland with the general function of promoting and safeguarding the rights and interests of older people. This includes everyone in Scotland aged 60 years and over.

5. The overall aim of the Commissioner’s post is to influence positively the culture of Scotland to raise the profile of older people and to promote greater understanding between the generations.

6. In carrying out his or her duties, the Commissioner must have regard to the United Nations Principles for Older Persons.

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

8. In exercising the general function of promoting and safeguarding the rights and interests of older people under the Bill, the Commissioner is to:
   
   • promote an awareness and understanding of those rights and interests amongst the population at large,
   • keep under review current law, policy and practice relating to those rights and interests,

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promote best practice by service providers in relation to older people,
promote the use of older people’s skills and experience,
promote, commission, undertake and publish research,
undertake investigations, and
report to Parliament.

9. The Commissioner can conduct investigations into how service providers take older people’s rights, interests and views into account, in decisions or actions affecting older people. The Commissioner cannot, however, undertake an investigation which only concerns an individual older person. In an investigation, the Commissioner has the power to call witnesses to attend and require the production of documents.

COMMENTARY ON SECTIONS

Section 1: Establishment

10. Subsection (1) establishes the office of Commissioner for Older People in Scotland (the Commissioner).

11. 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

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

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

14. 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.

15. 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.

16. 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

17. Subsection (1) sets out the grounds on which the Commissioner may be removed from office by Her Majesty. The effect of this provision is to permit the Commissioner to resign from office and to enable 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 members of Parliament voting.

Section 4: Promoting and safeguarding rights and interests

18. The general function of the Commissioner, set out in subsection (1), is to promote and safeguard the rights and interests of older people.

19. Section 16 provides that “older people” are individuals age 60 and over.

20. The words “rights” and “interests” are not defined in the Bill. Therefore the Commissioner’s general function is to promote and safeguard any rights and interests which apply to older people in Scotland, either statutory or otherwise. This includes for example, the right to access health services in the same way as younger people do.

21. Subsection (2) sets out specific duties of the Commissioner in carrying out the general function of promoting and safeguarding the rights and interests of older people.

22. In particular the Commissioner is to promote awareness and understanding of older people’s rights and interests (subsection (2)(a)). In relation to older 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 and children and young people this might include, for example, developing a high media profile or holding conferences.

23. Under subsection (2)(b) the Commissioner is to consider legislation relating to the rights and interests of older 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 Parliament under section 12 or be referred to in the Annual Report under section 10.
24. 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 older people.

25. Subsection (2)(c) is closely linked to the function of reviewing law, policy and 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.

26. Under subsection (2)(d) the Commissioner is to promote the use of the skills and experience of older people to ensure these talents are not lost to society. This could take the form of holding seminars for employers, voluntary organisations and older people themselves.

27. Under subsection (2)(e) the Commissioner has obligations in relation to research relating to the rights and interests of older 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 or interests of older people.

Section 5: United Nations principles

28. Section 5 places a duty on the Commissioner to have regard to the United Nations Principles for Older People.

29. In 1991, the United Nations General Assembly adopted the United Nations Principles for Older Persons (resolution 46/91). These 18 Principles fall into five categories relating to the status of older persons: Independence; Participation; Care; Self-fulfilment; and Dignity which underpin the specific duties and the general function of the Commissioner (see associated Policy Memorandum, SP Bill 71–PM, paragraphs 13 to 16).

Section 6: Involving older people

30. Subsection (1) places a general duty on the Commissioner to encourage the involvement of older people in all of his or her work. This will ensure that older people can influence the work and priorities of the Commissioner.

31. Subsection (2) details the manner in which the Commissioner is to encourage the involvement of older people in his or her work by listing a number of duties which the Commissioner must take reasonable steps to fulfil.

32. Subsection (2)(a) requires the Commissioner to take reasonable steps to ensure older people are made aware of the functions of the Commissioner and how the Commissioner may be contacted.

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

34. Subsection (2)(c) requires the Commissioner to take reasonable steps to consult organisations working with and for older people on the work to be undertaken by him or her, for example may mean consulting Age Concern Scotland or the Scottish Council for Voluntary Organisations.

35. Subsection (3) requires the Commissioner to prepare and maintain a strategy on the continued involvement of older people in his or her work under this section. The strategy will, as a consequence of section 10(2)(d) (see paragraph 55 below) require to be updated at least annually.

Section 7: Carrying out investigations

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

37. 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 providing a service to older people. This includes private, public and voluntary organisations. Thus any body, organisation or company which provides services to older 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 older people. However, the Bill ensures that investigations would not cover, for example, domestic assistance provided by a child to an elderly parent free of charge (see paragraph 43 below).

38. 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.

39. 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.

40. Subsection (2)(a) requires that an issue for investigation must be of particular significance to older people. This is an area in which the views of older people will inform the work of the Commissioner. For example, the Commissioner may consult older people before launching an investigation. It could be an issue that affects a particular group of older persons – such as those who live in rural areas or older people with a disability.
41. 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.

42. 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 older people if these are already regulated and inspected by other bodies. However, the Commissioner could investigate the way in which older people’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 older people’s rights, interests and views into account.

43. Subsection (3) places three 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 older people generally or a group of older persons. This prevents the Commissioner from investigating the case of an individual older person. This does not prevent, however, the Commissioner using examples of individual cases to inform an investigation.

44. Thirdly, the Commissioner is prevented from undertaking an investigation into matters currently before courts or tribunals or into the decisions made by these bodies.

45. This third restriction prevents the Commissioner from impinging on current legal proceedings and investigating judicial decisions that have been made. It also prevents consideration of actions made under judicial directions by e.g. court staff. It does not prevent the Commissioner from investigating generic issues such as matters of structure or procedure, for example how older people are treated generally by courts and tribunals.

Section 8: Initiation and conduct of investigation

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

47. 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.

48. 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.

49. 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 vulnerable person is giving evidence.

**Section 9: Investigations: witnesses and documents**

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

51. 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.

52. 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. Similar restrictions thus apply to the Commissioner’s powers.

53. Subsection (3) introduces Schedule 2 (see paragraphs 74 - 82 below), which contains further provision with respect to witnesses and documents. It also details the sanctions for non-compliance with a requirement under this section.

**Section 10: Annual report**

54. 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.

55. 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 area the Commissioner considers relevant to his or her functions. The annual report will, for example enable the Commissioner to comment on the ‘big themes’ of the previous year in relation to the rights and interests of older people. It will also contain an indication of the themes to be tackled over the following year, including how the strategy to involve older 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.

**Section 11: Reports on investigations**

56. Subsection (1) requires the Commissioner to report in writing to the Parliament following the conclusion of any investigation he or she has undertaken.
57. 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.

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

Section 12: Other reports to Parliament

59. 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. It could also include reports relating to investigations that are for any reason, terminated before conclusion.

Section 13: Publication

60. Subsection (1) requires the Commissioner to publish all reports laid before the Parliament. The Commissioner will require to have a Publication Scheme approved by the Scottish Commissioner for Freedom of Information under section 23 of the Freedom of Information (Scotland) Act 2002 which will detail how the Commissioner will make his/her reports available to the public. All reports laid before Parliament will, in line with normal practice, automatically be made available through the Stationery Office and the Parliament’s partner libraries.

61. 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 Parliament results of major research projects, or a key annual conference. Smaller scale projects may still merit publication but may not merit being laid before Parliament.

62. Subsection (3) gives the Commissioner power to determine the style and format in which reports are published taking into account that the information should be reasonably accessible.

Section 14: Protection from actions of defamation

63. Subsection (1)(a) provides the Commissioner and staff with absolute privilege for all statements and communications related to investigations or reports under 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 for those purposes. This allows the Commissioner to carry out investigations without being fettered in relation to the repetition of any defamatory material received.

64. Subsection (1)(b) provides individuals who make statements to the Commissioner or the Commissioner’s staff with qualified privilege. Individuals can therefore make statements and assist in investigations without fear of an action for defamation provided statements are not
These documents relate to the Commissioner for Older People (Scotland) Bill (SP Bill 71) as introduced in the Scottish Parliament on 20 September 2006

motivated by malice "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 15: Amendment of Freedom of Information (Scotland) Act 2002

65. The Freedom of Information (Scotland) Act 2002 (asp 13) provides a right of access to information held by Scottish public authorities; creates exemptions from the duty to disclose information; and establishes the arrangements for enforcement and appeal. This section includes the Commissioner for Older People in Scotland in the list of public authorities bound by the 2002 Act meaning that the public has access to information held by the Commissioner. Other bodies such as the Scottish Public Services Ombudsman and the Standards Commission for Scotland are subject to the provisions of the 2002 Act.

Section 17: Commencement and short title

66. This section gives the Bill its short title and also provides for certain provisions of the Act 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 Parliament to put in place the required structures, procedures, staffing and resources. The provisions of the Act 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 Act coming fully into force.

Schedule 1: The Commissioner for Older People in Scotland

67. 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.

68. Paragraph 1 of the schedule makes it clear that the Commissioner is not to be regarded as being a servant or agent of the Crown and that the Commissioner’s property is not to be regarded as being 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.

69. 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 him or her 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 liable to investigate.

70. Paragraph 6 vests a general power in the Commissioner to do anything that is ancillary to the Commissioner’s functions, which are detailed from section 4 onwards. Particular ways in
which the power may be exercised are also specified. This is to ensure that the Commissioner is able to carry out his or her functions effectively and efficiently.

71. Paragraph 7 states that the Commissioner’s choice of location for his or her office is subject to the approval of the Parliamentary Corporation.

72. Under paragraph 8, and subject to the consent of the Parliamentary Corporation, the Commissioner can appoint any number of staff and determine the terms of their appointment.

73. Paragraph 13 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 provisions of the Bill apply to the acting Commissioner, where appropriate, as they do to the Commissioner.

Schedule 2: Investigations: supplementary provisions on witnesses and documents

74. Schedule 2 makes detailed provisions concerning requiring witnesses to give evidence and the production of documents when the Commissioner undertakes an investigation. Provisions include the notification requirements to witnesses who are to give evidence or produce documents, privileges pertaining to witnesses, evidence on oath, admissibility of statements in subsequent criminal proceedings, offences, production of copies or extracts of documents and the payment of allowances and expenses.

75. 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.

76. Paragraph 2 sets out restrictions to the Commissioner’s powers to require evidence and documents. The power extends to the same limits as are applicable to court proceedings in Scotland. This is also 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.

77. 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 a procurator fiscal if the Lord Advocate considers that answering or producing might prejudice the criminal proceedings in the case in question or would otherwise be contrary to the public interest. The Lord Advocate must authorise 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 on the same grounds and criteria.
78. Paragraph 3 provides that a person giving evidence can be required to do so under oath and subparagraph (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 those in paragraph 5 of this schedule and are detailed in paragraph 80 below.

79. 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.

80. 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.

81. 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.

82. 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

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

84. In producing the figures account has been taken of the experience and related costings for the Scottish Commissioner for Children and Young People (SCCYP) and latterly the estimated costs for the Scottish Commissioner for Human Rights (SCHR). Information from administrators who have experience of the financial framework underpinning Commissioners has also been received.
85. The figures set out in this Memorandum are indicative rather than prescriptive since the details of the working arrangements of the Commissioner’s office will for the most part be for the Commissioner to decide.

86. However, the Commissioner’s determinations on the number of staff required and the office location will be subject to the approval of the Scottish Parliamentary Corporate Body (SPCB).

87. There could be an opportunity for the Commissioner to share an office with another Commissioner; this co-location could bring about a reduction in costs for both. For the purposes of this Memorandum, two sets of figures have been produced to show costs for the Commissioner inhabiting an office on their own and under co-location.

COSTS ON THE SCOTTISH ADMINISTRATION

88. The Bill will place no direct costs on the Scottish Administration. However, the cost of the Commissioner will be funded by the SPCB which is funded directly from the Scottish Consolidated Fund.

COSTS ON THE SCOTTISH PARLIAMENT

89. The office of the Commissioner for Older People will be publicly funded by the SPCB.

Staff costs

Recruitment of Commissioner

90. There will be costs incurred in relation to the recruitment and appointment of the Commissioner. Costs that could be incurred in recruiting the Commissioner are, for example, placing adverts for the vacancy in the national press and appointing an Independent Assessor to oversee the process. There will also be costs for setting up a selection panel and providing administrative and other support throughout the process of appointment. These set up costs are estimated at around £17,000.

91. With regard to recurring recruitment costs, re-appointment of the Commissioner would largely be an administrative process thereby limiting costs to administrative costs and the cost related to independent assessors estimated to be around £5,000. This figure has not been included in the table at paragraph 115 as it is unlikely that this cost will be incurred in Year 2.

3 Procedures Relating to Crown Appointments, Procedures Committee Report, 2nd Report, 2006 Recommendations relating to reappointment: prior to the panel interview, an independent assessor be appointed to review and assess the post-holder’s performance against a set of relevant criteria and provide a report to the SPCB; a second, separate assessor be appointed to oversee the re-appointment decision and to ensure the probity of the re-appointment proceedings.
Commissioner’s salary

92. Following appointment by the Queen upon the recommendation of the Parliament, the Commissioner will require an annual salary.

93. The Commissioner is expected to have a broadly similar status to that of other Crown appointees such as the Scottish Information Commissioner (SIC) and the SCCYP. The post is a full time role, promoting good practice and providing information.

94. It will be for the SPCB to determine the Commissioner’s salary but in line with other full time Crown appointees, the post is likely to attract a starting salary of around £72,000 per annum. This would reflect a uniformity of approach towards such appointments.

Recruitment of staff

95. The recruitment costs for staff will vary depending on the decisions made on which posts will be needed and the level of skills and experience required for each post. They will also be influenced by whether or not a specialist recruitment agency or consultancy is used. It can be assumed that there will also be costs involved in placing adverts in the national press, but these costs could be minimised by recruiting for more than one post at a time.

96. Information obtained in relation to the cost of recruitment of staff for the SCCYP indicates that costs will be in the region of £90,000. For future years, £10,000 has been set aside for recruitment of staff.

97. When recruiting staff it would be useful if the successful candidates have as wide a range of skills and experience as possible. This flexibility of staff could reduce the need to outsource expertise e.g. employing specialist consultants, thus reducing potential costs.

Staff structure and salaries

98. It is not possible at this stage to state exactly the number and composition of staff as this will be for the Commissioner and the SPCB to decide upon. However certain assumptions have been made for the purpose of this memorandum.

99. A possible staff structure is shown below.
100. Using the current SPCB scale an outline of staffing costs that may be incurred is provided in the table below.

<table>
<thead>
<tr>
<th>Post</th>
<th>Salary (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head of Policy and Participation</td>
<td>39,924</td>
</tr>
<tr>
<td>Office Manager</td>
<td>25,268</td>
</tr>
<tr>
<td>Policy Officer</td>
<td>25,268</td>
</tr>
<tr>
<td>Participation Officer</td>
<td>25,268</td>
</tr>
<tr>
<td>Research and Information Officer</td>
<td>25,268</td>
</tr>
<tr>
<td>Legal and Parliamentary Officer</td>
<td>25,268</td>
</tr>
<tr>
<td>Participation Workers x 2 @ £18,775</td>
<td>37,550</td>
</tr>
<tr>
<td>Administration Manager</td>
<td>18,775</td>
</tr>
<tr>
<td>Receptionist</td>
<td>15,768</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>238,357</strong></td>
</tr>
</tbody>
</table>

101. This gives a figure of £238,357.

102. If the Commissioner was to co-locate it would be anticipated that there could be savings around sharing certain staff. For example, it may be possible for posts such as the Legal and Parliamentary Officer, Administration Manager and Receptionist to be shared between organisations, providing a reduction in the estimated costs of £29,906 in the total above. There will be potential savings on a similar scale to the organisation co-locating with the Commissioner.
Staff training

103. In a similar manner to the SCHR\(^4\), a sum of £10,000 has been identified towards staff training. This would provide a sum of £1000 per head for training. This is to reflect that all the staff will be new to the organisation and additional training may be required. Open generic courses such as IT, management and soft skills can cost between £200 and £500 per day depending on the course and a team building day can cost around £2000. Once the staff are established the need for training may reduce and it would be feasible to expect to spend around £550 per head on training, giving a total of £5,500 in subsequent years.

Office costs

Rental costs

104. For the purposes of the memorandum it has been assumed that the Commissioner will have one office and that this will be rented. The total property costs for the first year of operation for the SCCYP was recorded at £49,000\(^5\). However the provisions of the Bill give powers to the SPCB to determine the location of the Commissioner’s office. If the Corporate Body so wished it can take an active role in ensuring the Commissioner co-locates its premises with another Commissioner or Agency which could in turn reduce costs for both parties. For the purposes of this memorandum, it has been assumed that co-location would result in the rental costs being as much as half of the above giving a figure of £24,500. The other organisation co-located with would also enjoy a similar saving.

Cost of office equipment etc.

105. The Commissioner’s office will require office furniture, IT equipment, telephones etc. A substantial cost is likely to be incurred in the first year. The cost of fitting out the office for the SCCYP was £203,000 along with £69,000 for furniture and IT systems costs. It has been assumed for the purposes of this memorandum that the cost of office equipment etc should be around £250,000, with £150,000 for the cost of fitting out the office and £100,000 for furniture and IT systems.

106. These costs are generally start up costs, however it is generally recommended that an annual cost equivalent to 25% of the initial cost be accounted for to cover the ongoing costs of upgrading and maintaining the equipment. This cost would therefore be approximately £62,500 in subsequent years.

Administration costs

107. There will be other costs associated with running the Commissioner’s office, such as, utility bills, cleaning, stationery and postage. The SCCYP in its first year spent £21,000\(^6\), and has budgeted for approximately £60,000 in subsequent years. We have assumed the Commissioner’s requirements would be similar, unless the Commissioner co-locates.

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\(^4\) Financial Memorandum accompanying the Scottish Commissioner for Human Rights Bill (SP Bill 48) (October 2005)


\(^6\) As above
108. If the Commissioner were to co-locate it would be reasonable to assume that savings could be made in the area of rates and utility bills such as gas and electricity, reducing the figure to around **£45,000**. The office co-located with would also see savings in this area.

**Travel costs**

109. The Commissioner will be responsible for promoting the rights of older people throughout Scotland. The Commissioner staff will be expected to travel to meetings with interested parties such as the Scottish Executive, local authorities and service providers. It is also likely the Commissioner will be invited to take part in or attend conferences both at home and abroad.

110. Based on the spend projections of other Commissioners it is estimated that travel costs will be in the region of **£20,000** per year.

**Consultants**

111. It is anticipated that the Commissioner may require to access consultants to provide them with expert advice on premises searches (this activity would not be required if co-located with another office resulting in a reduction to the estimated consultancy costs), lease handling, the purchase of IT and office equipment. In the very early stages, the SCCYP employed consultants to develop its participation strategy, to produce the initial website and to handle press enquiries. The SCCYP spent **£136,000** on consultants in relation to this establishment work. Utilising this experience it is estimated that around **£100,000** would be sufficient for the Commissioner in the first year, with **£50,000** for subsequent years as most of the work could then be carried out in-house.

**Promotion and awareness raising costs**

112. The Commissioner will be a new body promoting the rights of older people. It is likely there will be a need to undertake substantial promotional work in order to fulfil the functions of the office. This promotional work might include producing leaflets and posters or holding seminars and conferences. The Commissioner may also make use of internet, television, radio, newsletters or advertising. The SCCYP was estimated to require an initial sum of **£325,000** in the first year with **£200,000** per year thereafter. The higher figure is to reflect the initial need to raise awareness of the Commissioner and its functions and aims.

113. For the purposes of this memorandum it has been assumed that a lower figure will be required in the first year as during that time the Commissioner will require to be recruited and thereafter make arrangements to set up their office, a figure of **£100,000** has therefore been estimated for the first year. It has been assumed that while the Commissioner will want to raise awareness it will also not want to generate a demand that the office is unable to meet until staff are in place and the office is functional. A figure of **£200,000** per year has been assumed for future years.

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7 Financial Memorandum accompanying the Commissioner for Children and Young People (Scotland) Bill (SP Bill 71) (December 2002)
Research costs

114. The Commissioner may also wish to commission research. Information provided by the Scottish Executive indicates, that in its experience, small research projects are estimated to cost between £10,000 and £15,000 each, while larger projects can cost between £30,000 and £35,000. These projects could involve focus groups and working groups where travel and expenses are required for participants. It is assumed that the Commissioner will wish to undertake no more than one large research project and three to four smaller ones in the course of a single year. On this basis the budget for research could therefore range between £95,000 and £60,000. This has been reduced to £50,000 for the first year during which the Commissioner is likely to focus more on recruitment of staff and setting up the office.

Total cost on the Scottish Parliament

115. The table below illustrates the total cost on the Scottish Parliament for the first year and subsequent years. Figures are shown for co-location as well as for separate offices.

<table>
<thead>
<tr>
<th>Breakdown of costs</th>
<th>Total cost including start up costs</th>
<th>Total cost including start up costs assuming co-location</th>
<th>Year 2 and subsequent years</th>
<th>Year 2 and subsequent years assuming co-location</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Staff costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recruitment of Commissioner</td>
<td>17,000</td>
<td>17,000</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Commissioner salary</td>
<td>72,000</td>
<td>72,000</td>
<td>72,000</td>
<td>72,000</td>
</tr>
<tr>
<td>Recruitment</td>
<td>90,000</td>
<td>90,000</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Staff</td>
<td>238,357</td>
<td>208,451</td>
<td>238,357</td>
<td>208,451</td>
</tr>
<tr>
<td>Staff training</td>
<td>10,000</td>
<td>10,000</td>
<td>5,500</td>
<td>5,500</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td>427,357</td>
<td>397,451</td>
<td>325,857</td>
<td>295,951</td>
</tr>
<tr>
<td><strong>Office costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rental</td>
<td>49,000</td>
<td>24,500</td>
<td>49,000</td>
<td>24,500</td>
</tr>
<tr>
<td>Cost of office equipment</td>
<td>250,000</td>
<td>250,000</td>
<td>62,500</td>
<td>62,500</td>
</tr>
<tr>
<td>Administration (utilities, stationery etc)</td>
<td>60,000</td>
<td>45,000</td>
<td>60,000</td>
<td>45,000</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td>359,000</td>
<td>319,500</td>
<td>171,500</td>
<td>132,000</td>
</tr>
<tr>
<td><strong>Functional costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Travel</td>
<td>20,000</td>
<td>20,000</td>
<td>20,000</td>
<td>20,000</td>
</tr>
<tr>
<td>Consultants</td>
<td>100,000</td>
<td>100,000</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Promotion and awareness raising</td>
<td>100,000</td>
<td>100,000</td>
<td>200,000</td>
<td>200,000</td>
</tr>
<tr>
<td>Research</td>
<td>50,000</td>
<td>50,000</td>
<td>95,000 to 60,000</td>
<td>95,000 to 60,000</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td>270,000</td>
<td>270,000</td>
<td>425,000</td>
<td>425,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,056,375</td>
<td>986,951</td>
<td>862,357</td>
<td>792,951</td>
</tr>
</tbody>
</table>

116. Rule 9.3.2 of Standing Orders requires the margin of uncertainty in costings to be indicated. The table above details the highest estimated figure in each category.

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8 Financial Memorandum accompanying the Scottish Commissioner for Human Rights Bill (SP Bill 48) (October 2005)
117. The estimated total cost of establishing the Commissioner and office is £1,056,375 for the first year and £986,951 for subsequent years. Should the SPCB require that the Commissioner co-locate and share an office, or other reductions in estimated costs materialise, there is the potential that the costs could fall to £827,357 and £757,951 respectively.

118. As stated earlier, these figures are an example of the costs involved in setting up and facilitating the office of the Commissioner for Older People. These figures provide an estimate of what these costs could be and do not attempt to prescribe how the Commissioner’s budget should look. The exact budget of the Commissioner will depend on decisions made by both the Commissioner and the Scottish Parliamentary Corporate Body.

COSTS ON LOCAL AUTHORITIES

119. It is not anticipated that the provisions in the Bill should impose any direct cost on local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

120. It is not anticipated that the provisions in the Bill should impose any direct cost on any other bodies, individuals or businesses.

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

121. On 14 September 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Commissioner for Older People (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Commissioner for Older People (Scotland) Bill (SP Bill 71) as introduced in the Scottish Parliament on 20 September 2006

COMMISSIONER FOR OLDER PEOPLE (SCOTLAND) BILL

EXPLANATORY NOTES

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