COMMISSIONER FOR OLDER PEOPLE (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Commissioner for Older People (Scotland) Bill introduced in the Scottish Parliament on 20 September 2006. It has been prepared by Alex Neil MSP, the Member in Charge of the Bill with assistance from the Parliament's Non-Executive Bills Unit to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 71–EN.

POLICY OBJECTIVES OF THE BILL

2. The objective of the Bill is to create a new and independent office of a Commissioner for Older People to ensure that the rights and interests of older people aged 60 years or over are protected and promoted. Within this objective the Commissioner will have a number of key functions:

- to promote awareness and understanding of the rights and interests of older people;
- to review current policy, law and practice relating to the rights and interests of older people;
- to promote best practice by those who provide services to older people;
- to promote the use of the skills and experience of older people; and
- to promote, commission, undertake and publish research on matters relating to the rights and interests of older people.

3. Additionally the Commissioner will have the power to carry out investigations into how service providers have regard to the rights, interests and views of older people in their dealings with them.

4. The work of the Commissioner will be informed by the views of older people, with an input from those organisations working with and for older people. The principles of consultation, participation and accessibility will be central to the way in which the Commissioner operates.
5. In carrying out his or her duties the Commissioner must have regard to the United Nations Principles for Older Persons\(^1\).

**BACKGROUND**

**Ageing population**

6. An increasing older population is a reality and will continue to be a feature of the population of Scotland for a substantial part of this century. The United Nations (UN), which studies world population ageing, has stated that within a few generations the proportion of older persons across the planet aged 60 years and above will rise from approximately 1 in 14 to 1 in 4.\(^2\) This increase in the older population is the result of the demographic transition from high to low levels of fertility and mortality. In Scotland this trend is already in motion.

7. Some areas of Scotland will be more affected by the convergence of falling birth rates and longevity. For example, Dumfries and Galloway has a projected fall of over 30% in the 30-49 age group over the next 20 years (2004 to 2024), while there will be a 75% increase in the 75+ age group in the same period.\(^3\)

8. The following chart shows the projected change in Scotland’s population structure from 2004 to 2031. As can be seen the largest proportion of the population will be in the 60 years and over categories. All the other age groups are falling, with the largest drop in the 30 - 44 year old category at 18%.\(^4\)

![Population Change Chart](attachment:image.png)

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\(^3\) Consultation on the strategy for a Scotland with an Aging Population, 2. Setting the Scene – Background Information, page 5. Available online at: [http://www.scotland.gov.uk/Publications/2006/03/07120532/6](http://www.scotland.gov.uk/Publications/2006/03/07120532/6)

9. By 2031, the Registrar General for Scotland indicates that the number of people of pensionable age is projected to rise by 35 per cent from 0.97 million in 2004 to 1.31 million.\textsuperscript{5}

10. A combination of the decline in the birth rate and a greater life expectancy will increase the dependency burden on workers. The potential support ratio (PSR - the number of persons aged 15-64 years per one older person aged 65 years or older) is a measurement of the dependency burden on potential workers. Worldwide the PSR fell from 12 to 9 people between 1950 and 2000. In Scotland the dependency burden on potential workers was 8 people in 2001 and will continue to fall. Currently there are about 2 working adults to every child and pensioner. By 2041 this could fall to 1.3.\textsuperscript{6}

11. An increase in the number of older people will also present opportunities and benefits to Scottish society in terms of their skills and experience. A study into “The Benefits of an Ageing Population” has been carried out by Judith Healy of the Australian National University. Basing her work on the situation in Australia, she argues that there are many benefits and new opportunities emerging from an ageing population. In particular, wealthier retirees may be attracted to the voluntary sector, and are more likely to be involved in community activities. Grand-parenting has been shown to benefit the grand-children and it is likely that older communities will be more law abiding, since older people are statistically less inclined to commit crimes against property and people.\textsuperscript{7} So important are older people to communities, that in response to the Executive’s Age and Experience consultation, a number of WRVS (formerly known as Women’s Royal Voluntary Service) focus group participants described older people as the “glue of society”.\textsuperscript{8} The Royal College of Physicians of Edinburgh in their response to the Executive’s consultation described older people as the “institutional memory of our society”.\textsuperscript{9}

12. An independent Commissioner established to champion older people’s rights and interests will help to guide law makers and service providers during this long-term trend of population change and be valuable in helping to channel and utilise the skills of older people in order to produce the maximum advantage to society.

**United Nations Principles for Older People**

13. There is a well developed international policy framework in connection with older people and an ageing population. The Vienna International Plan of Action on Ageing was the first international instrument on ageing, guiding thinking and the formulation of policies and programmes on ageing. It was endorsed by the United Nations General Assembly in 1982


\textsuperscript{8} WRVS’ Response to the Scottish Executive’s Age and Experience Consultation, page 1, Contribution and Opportunity, para 3. Available as seen on 18 September 2006: www.wrvs.org.uk/newsandfeatures/strategy.pdf

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(resolution 37/51),\(^{10}\) having been adopted earlier the same year at the World Assembly on Ageing at Vienna, Austria.

14. Older people were again the focus of the United Nations nine years later when the UN agreed a set of principles for older people which aim to ensure that priority attention is given to their situation. In 1991, after its endorsement of the Plan, the United Nations General Assembly adopted the United Nations Principles for Older Persons (resolution 46/91).\(^{11}\) These 18 Principles fall into five categories relating to the status of older persons:

- Independence;
- Participation;
- Care;
- Self-fulfilment; and
- Dignity.

15. The UN’s General Council said that it “encourages Governments to incorporate the following principles into their national programmes whenever possible”. Examples of the principles under these headings are:

<table>
<thead>
<tr>
<th>Independence</th>
<th>Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation</td>
<td>Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations.</td>
</tr>
<tr>
<td>Care</td>
<td>Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.</td>
</tr>
<tr>
<td>Self-fulfilment</td>
<td>Older persons should be able to pursue opportunities for the full development of their potential.</td>
</tr>
<tr>
<td>Dignity</td>
<td>Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse.</td>
</tr>
</tbody>
</table>

16. Almost fifteen years have now elapsed since resolution 46/91 by the UN General Assembly was agreed on 16\(^{th}\) December 1991. Ageing remains a major focus of the United Nations. The International Year of the Older Person held in 1999 carried the theme of – Towards a Society for All Ages. The 1999 debate was held to inform thinking, planning and practical arrangements for decades to come.


17. This theme highlights an important area where the Children’s Commissioner and the Commissioner for Older People could work jointly. An intergenerational project could focus on strengthening connections and understanding between the generations from childhood and youth through to late life. Children in Scotland’s response to the Scottish Executive’s Consultation on Age and Experience reflects a need to address intergenerational relations, referring to the “For Scotland’s Children Report” which acknowledges the breakdown in relationships with adults and notes that children and young people think that adults, especially the older generation see them as trouble makers.12

18. The Second World Assembly on Ageing took place in Madrid, Spain in 2002 to revise the Vienna Plan on Ageing and establish a long-term strategy for ageing populations. The UN’s Madrid International Plan of Action on Ageing 2002 called for “changes in attitudes, policies and practices at all levels in all sectors so that the enormous potential of ageing in the twenty-first century may be fulfilled”. The aim of the international plan was “to ensure that persons everywhere are able to age with security and dignity and to continue to participate in their societies as citizens with full rights”.13

19. It is noted that “Governments have the primary responsibility for implementing the broad recommendations of the International Plan of Action, 2002”. The “crucial elements of implementation” included that “Independent, impartial monitoring of progress in implementation is also valuable and can be conducted by autonomous institutions”.14

20. There is worldwide recognition that countries will have to develop policies that address both the difficulties presented by an ageing population and that also provide opportunities to older people and harness the benefits provided to society by older people. The UN Principles set out what facilities and opportunities should be available to older people and as such are central to the Commissioner’s duties. By virtue of section 5 of the Bill, the Commissioner must have regard to the United Nations Principles when carrying out his or her functions. This enables the Commissioner to promote the UN principles and ensure that bodies are aware of them and can take the Principles into account in their work. By establishing the Commissioner’s office, Scotland will also be fulfilling the independent role of monitoring the implementation of the recommendations set down in the Madrid Plan.

Remit of the Commissioner

21. The Commissioner’s remit is to safeguard and promote older people’s rights and interests. In order to fulfil the Commissioner’s role the appointee will:

- promote an awareness and understanding, among adults, young people and children of older people’s rights and interests;
- engage actively with older people and also with those organisations working with, or on behalf of, older people;

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• keep under review the current law, policy and practice relating to older people in order to assess adequacy and effectiveness;
• promote the benefit of the skills and experience older people have to offer;
• make recommendations and issue guidance on best practice by service providers in relation to older people’s rights and interests;
• carry out investigations into issues involving service providers that affect older people; and
• undertake, promote, commission and publish research on older people’s rights and interests.

Definition of an older person

22. There is no legal or generally accepted definition of an “older person”. Persons in Scotland who are aged 60 years or over come within the remit of the Commissioner. The member’s consultation asked for views on at what age older people should come within the competence of the Commissioner. The most popular age was 50 years, closely followed by 60 and 65 years. Setting the age limit at 50 years would bring a third of Scotland’s population within the ambit of the Commissioner.

23. The British Geriatrics Society (Scotland) suggested that health problems usually come later than “retirement age” therefore perhaps a boundary such as 75 years with discretion below this would be appropriate.  

24. The member believes that on balance setting the age limit too low would encourage too heavy a workload for the Commissioner. This in turn would dilute the services available for those for whom the post is really intended. Raising the age limit would exclude too large a number of older people who could benefit from a Commissioner to represent their views and shift the equilibrium away from the active retiree towards the cared for elderly.

25. A number of responses supported the use of 60 years and older. West Lothian Council (Older People’s Forum) favour the age level being set at over 60 because it coincides with the World Health Organisation’s description of an older person and would help broaden the older persons agenda i.e. detracting from the traditional view that older person’s interests are focussed solely on health and social care needs. Carers Scotland also felt setting the age at 60 or 65 is sensible as 50 would be unjustifiable as it does not correspond with demographic changes taking place at present.

26. The Commissioner for Older People (Wales) Act 2006 defines an older person as a person who is aged 60 or over. Lord Evans, the Minister responsible for the Welsh Bill in the House of Lords, stated that “A number of the issues that the commissioner uncovers that are problematic for people aged 60 or more, and then addresses, will have a positive effect on the experiences of

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15 Detailed Summary of Responses Conclusions, page 11. Available online as seen on 15 July 2006:
16 Ibid
people who are slightly younger and share similar difficulties. Standards will be raised for a wider age group than just those of 60 or more”.

27. The member is keen that the Commissioner has a promotional role which highlights the benefits of a healthy older population while helping to improve services that older people use. Both too high an age limit, and too low an age limit, would shift the balance of the Commissioner’s remit to the detriment of older people more generally.

**Discrimination against older people**

28. It is important to remember that ageing is not a negative trend, even though there is a section of society which sees older people as vulnerable, needing protection, and as a burden or problem to be solved, “a demography of despair, which portrays population ageing not as a triumph of civilisation, but something closer to an apocalypse”.

**Age Discrimination**

29. In this culture, older people can be subject to direct and indirect ageism. As the number of older people grows in Scotland to 1.3 million in 2031, the potential for age inequality will be accentuated. Age inequality can arise from either explicit age limits or by assumptions about people’s capabilities based on their age.

30. The Scottish Parliament is currently considering the Scottish Executive’s Bill to create a Scottish Commissioner for Human Rights (SCHR). While the SCHR is to have a broad remit to promote awareness and understanding of, and respect for, human rights, the Commissioner for older people will have a specific focus on the fastest growing sector of our society, older people. In common with international experience, the population aged 60 and over is growing faster than any other age group. There is a very real need for a Commissioner given the dynamic nature of this population trend and the consequences of increasing numbers of older people.

“For over 20 years anxieties have been growing in all industrialised economies that ageing populations threaten our collective futures. Some worry about the damaging impact on economic growth. Others that the growing numbers of older people will bankrupt pension, health and other welfare support systems for the elderly. Some fear even worse consequences, with democratic society falling apart as inter-generational conflict becomes the new “class war”. In April 2002 a United Nations conference in Madrid summed up this darkening mood when it debated the possibility that the greatest threat to the quality of life in developed countries – more than war, disease and natural disaster – is the ageing of their populations.”


31. The Commissioner will be in a unique position to influence positively the culture of Scotland to raise the profile of older people and to promote greater understanding and respect between the generations. Additionally, the Commissioner can influence improvement and tailoring of services so that older people suffer no disadvantage in terms of access, delivery or outcomes compared to the rest of the population.

32. NHS Lanarkshire, when responding to the member’s consultation, argued that older people are generally considered part of the 4th age\(^2\) (dependency) rather than the 3rd (retirement) even though they are still fit and able to contribute to society and as such it is the anti-age-discrimination role that provides the strongest argument for establishing a Commissioner for older people.

**Discrimination against groups of older people**

33. It will not be adequate to leave the safeguarding and promotion of the rights and interests of older people to the Scottish Commissioner for all human rights. There is a need to eradicate inequality and negative cultural norms at present.

34. Discrimination towards groups of older people may give rise to issues that are worthy of further investigation by the Commissioner for Older People. For example, the Equal Opportunities Commission Scotland states that, “Transport services are designed around car dependency and are consumer orientated. Older people, particularly women rely heavily on public transport and so this focus disadvantages them considerably. The Scottish Executive reports that 36% of those aged between 60-69 do not have a full driving licence. Indeed, women are twice as likely as men in this age group (60-69) not to have a full driving licence; only 19% of men are without a driving licence compared with 50% of women.”\(^2\)

35. Older people are a diverse group of people with a wealth of experience and skills to offer. Stereotyping of older people impacts negatively on their potential to contribute to society. The Commissioner will be in a strong position to influence Scottish culture in particular to maximise the opportunity for older people to contribute to society.

**Overlap**

36. The Scottish Parliament has passed a number of Acts which establish Commissioners and Ombudsman, such as:

- the Scottish Information Commissioner;
- the Commissioner for Children and Young People in Scotland;
- the Scottish Parliamentary Standards Commissioner; and
- the Scottish Public Services Ombudsman.

\(^2\) The First Age is education, the Second career and family, the Third Age is retirement and the Fourth Age is dependency. As described as seen on 15 July 2006: [http://website.lineone.net/~wendy_thelwell/thirdage.html](http://website.lineone.net/~wendy_thelwell/thirdage.html)

37. Inevitably, there is potential for overlap with other remits. However, the Commissioner for Older People will be empowered under Schedule 1, paragraph 6 of the Bill to co-operate with other persons in matters relevant to the exercise of the office. That power should help the Commissioner to minimise overlap and duplication with others by co-ordinating the work of the office, and establishing good working relationships with other relevant parties. These might include other commissioners and ombudsman, statutory organisations including the Parliament and the Executive, and organisations representing older people, such as Age Concern Scotland and Help the Aged. Any potential overlap could for example be addressed by a memorandum of understanding setting out the respective roles of the Commissioner and bodies which may have responsibilities in similar areas.

38. That power will enable the Commissioner to work collaboratively to examine interlinked factors which can create barriers to older people making a full contribution to society, and highlighting the issues which need to be addressed. He or she will be able to represent the views of older people in these investigations eliciting the opinions of marginalised older people. The Commissioner will have the advantage of being able to tap into the existing network and those he or she will develop to gather views from organisations and individuals to broaden participation in any investigation which may affect them.

Commissioners for Older People

“...It is the meaning that men attribute to their life, it is their entire system of values that define the meaning and value of old age. The reverse applies: by the way in which a society behaves toward its old people it uncovers the naked, and often carefully hidden, truth about its real principles and aims.”

Simone de Beauvoir, The Coming of Age

39. Scotland, along with Wales, will be at the forefront in Europe in representing older people. So far it has not been possible to identify a comparable independent office to that of the Commissioner anywhere else in the world.

40. In the United States of America, however, there are a number of Commissioner appointees in place. For example, New York City has a Commissioner of the Department for the Aging; whilst in Boston there is a Commissioner of Elderly Affairs; and in Southeast Idaho there is an Ombudsman for the Elderly. These Commissioners however are more closely related to the "ombudsman" role, primarily concerned with maladministration.

41. What sets the proposed Commissioners in Scotland and Wales apart from these Commissioners is their promotional and consultative role. The Commissioner for Older People in Scotland will actively seek the opinions and priorities of older people and make sure that their views are heard and understood about the issues that affect them. Beyond this the Commissioner will promote the benefits of an ageing population. Section 6 of the Bill ensures that the Commissioner involves older people in the work of the Commissioner, with section 6(3) placing a duty on the Commissioner to prepare and keep under review a strategy for involving older people. The Bill also requires that the Commissioner should take reasonable steps to consult older people and those organisations working on behalf of older people.
Commissioner for Older People for Wales

42. The Welsh Assembly government established an advisory group to consider the possibility of creating a Commissioner for Older People for Wales. The Group published their findings in March 2004 in a report entitled A Commissioner for Older People in Wales. This report received all-party support which led to a Government Bill “Commissioner for Older People (Wales) Bill (HL Bill 6)” being introduced in the House of Lords on 25 May 2005.

43. The Bill received Royal Assent on 25 July 2006. The Welsh Act is quite wide. In addition to promoting and safeguarding the rights of older people in Wales, the Commissioner has a complaints and enforcement role with powers to:

- review and monitor the operation of arrangements made by prescribed bodies in Wales (including power of entry);
- review the exercise or failure to exercise functions of the Assembly;
- review the exercise or failure to exercise functions of prescribed bodies in Wales;
- assist older people in making complaints and representations to or in respect of the Assembly and prescribed bodies (power to be conferred by regulations); and
- examine individual cases (power to be conferred by regulations).

44. Proportionately at present Wales has more older people than the rest of the United Kingdom. By 2031 however, both Scotland and Wales will have 26 per cent of their population aged 65 and over.

Commissioner for Older People in Scotland

45. The Commissioner’s Office in Scotland will be unique in respect of its specific coverage of older people in Scotland. The Commissioner will provide a focus for the co-ordination and promotion of older people’s rights and interests and be an easily identifiable, single-entry point of contact for older people. As such the Commissioner’s office will be able to develop an overview of the issues pertaining to older people’s rights and interests. The work undertaken, and prioritisation of such, would be informed by older people. The powers of the Commissioner when conducting an investigation will extend to a requirement for production of documents and the attendance of witnesses. No existing body with an exclusive focus on older people’s rights has these powers. The statutory basis of the office, its independence, the duty to report to the Parliament, and active engagement with older people will enable older people’s views to be heard formally.

46. A major strand of the Commissioner’s work will be to influence the culture of Scotland to reflect a positive view of older people and ageing, and promoting a greater understanding and respect between the generations.

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The benefits of an ageing population

“Older people should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities”

United Nations Principles for Older Persons – Resolution 46/91

Volunteering

47. There are many ways in which older people could make use of their time to benefit their communities. For example, they might assist in schools to help improve reading skills or transporting patients to doctor or hospital appointments.

48. Volunteering by older people benefits both the individual and the organisation to which they offer their services. For the older person voluntary work can help maintain a sense of purpose and self-respect, particularly for those who have retired from paid work. It can also lessen the isolation felt by those cut off from social networks in the workplace and from their families. Through volunteering and social contact older people stay more active and healthy, both physically and mentally, which is of benefit to society.

49. Organisations which involve older volunteers gain experience attained from both inside and outside the workplace. Older volunteers bring with them skills that have been developed through years of life and work. They will also have more time to spare and be more flexible in terms of when they work. With the rise in the numbers of older people there will be an increase in the numbers of potential volunteers.

50. However there are barriers to older people volunteering. A 2002 Scottish Opinion Survey found that young people (aged 18-24) were 1.5 times more likely to be involved as volunteers than people aged 65 and over.26 There is still a perception of older people as receivers of assistance rather than contributors to their communities. Some organisations have retirement policies for older volunteers. Discrimination against older people is present in the voluntary sector as insurance companies offer age-related exclusions in their policies hindering opportunities for older volunteers. As people live longer and healthier lives these restrictions become out of step. Older volunteers may be restricted to carrying out certain types of volunteer work which does not include for example, driving or working with youth groups.

51. Raising the profile of the advantages of older volunteers is an area where the Commissioner could add value as well as by identifying potential barriers that restrict older people’s involvement. The Commissioner would be in a position to share best practice across the sector and advocate the positive benefits to older people and organisations that would not normally consider older volunteers appropriate.

Making the most of older people’s skills and experience

52. Older people have acquired valuable skills and experience through the course of their life. Mentoring and coaching is an area where older people could utilise their skills to help someone to make the most of their talents, at a professional or personal level. In its response to the Scottish Executive’s Age and Experience consultation, WRVS consider “Many older people have the skills and talents to become successful and valued Trustees in the charitable sector – and yet more and more charities are struggling to fill vacant board posts.” 27

Community leadership and political involvement

53. As well as volunteering there are more structured routes to community participation. Community councils form the most local tier of statutory representation in Scotland. They are intended to bridge the gap between local authorities and local communities and to help to make local authorities and other public bodies aware of the opinions, needs and preferences of the communities. Many community councils involve themselves in a wide range of other activities including fundraising and organising civic and charitable events.

54. Information suggests that older people are quite active in exercising their right to vote. The Scottish Household Survey gives the peak age group for men voting in local elections as 60+ (79% voting). For women it is 60-64 (84% voting). However, the SHS annual report (2003) states that overall more people say they voted (64%) than actually voted (49%). 28 There is scope for older people to be more involved in politics. Notably, the Scottish Parliament has an older member who set up a political party to specifically represent older people. A number of members of the Scottish Parliament are themselves “older people” as defined in the Bill.

Education and technology

55. The Scottish Adult Learning Partnership felt that the costs inherent in education can be a barrier for older people continuing education. This view is supported by the Equal Opportunities Commission Scotland, who state that “further education is almost unobtainable for older people and student loans are unavailable for those over 55.” 29 Fife Council makes the point that there needs to be recognition of everyone’s right to learn and develop and suggests that colleges, libraries and other agencies provide a balance of opportunities which are accessible and attractive to people later in life. Sport, leisure and cultural opportunities should also be tailored to meet the needs of older people in terms of content, location and timing of programmes. 30

56. Presently a large proportion of older people are disadvantaged by the rapid growth in the use of technology. There is scope for older people, particularly those who have limited mobility to use the internet to maintain social contact. Training, perhaps in the home at a pace that suits the

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30 Fife Council, Response to the Scottish Executive’s Age and Experience Consultation Available as seen on 18 September 2006: http://www.fife.gov.uk/publications/index.cfm?fuseaction=publication.pop&pubid=66C1D5B7-E7FE-C7EA-06FF3B044BEE635A
learner could be more fully explored. This could present an opportunity for younger people to share their knowledge while developing relationships with the older generation.

57. Lifelong learning could be championed by the Commissioner promoting the value of learning by older people and possibly investigating the systemic barriers which make it difficult for older people to fulfil their personal development and potential.

58. The Commissioner has a clear role in promoting the positive contribution that older people can make to society by, for example, volunteering or community leadership. In addition the Commissioner can raise awareness of the benefits to older people of continuing with education and the advantages of developing social networks into old age.

Initiatives aimed at older people and ageing

59. The Scottish Executive is developing a range of initiatives aimed at older people. The most recent of these is the development of a strategy for an ageing population. On 22 September 2005, Jack McConnell, MSP stated that:

“It is important that we stop thinking of older people as a burden and start thinking about how they can, and do, contribute positively to Scotland. With encouragement and support, older Scots can help to strengthen our communities and to give younger Scots a better start in life.”

60. The aim of the strategy is to provide a framework for:

- access to opportunities for older people to make a continuing contribution;
- effective integrated services for older people;
- promoting and maintaining health and well-being; and
- people living in accommodation and environments which continue to meet their needs and wishes as they age.

61. A consultation exercise which will feed into the Strategy, “Age and Experience: Consultation on the Strategy for a Scotland with an Ageing Population” concluded on 5 June 2006. A series of events; including seminars and conferences, and various deliberative consultation events, sought to ensure the involvement of different stakeholder groups, and the coverage of different issues. It is understood that the strategy will be developed during this year with a provisional publication date before the end of 2006.

62. The Minister for Communities (Malcolm Chisholm MSP) chairs quarterly meetings of the Older People’s Consultative Forum. The forum includes representation from the main Scottish organisations for Older People and has observers from the Convention of Scottish Local Authorities (CoSLA). Its remit includes “assisting in developing and monitoring an ongoing strategy for older people in Scotland, and providing a sounding board for policy thinking in

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specific areas affecting older people.”

The Scottish Parliament also has a Cross Party Group on Older People, Age and Ageing.

63. In addition there is the Parliament’s Futures Forum and the Scottish Executive’s Futures Project. The Futures Project is a programme of work that is helping to assess some of the key challenges and opportunities that Scotland might face over the next 20 years or so. The Trend Analysis highlights some of the main trends - or influences - that are likely to affect Scotland. One of these working papers “Shape of Society” looks at ageing. The Parliament’s Futures Forum has also chosen to focus on ageing, undertaking a project looking at four main areas, pensions, training, empowerment and skills contribution of an ageing population.

64. These clearly illustrate that the Scottish Executive and others recognise the scale and effect an ageing Scottish population will have on how we live and work in Scotland and underlines the potential resource provided by older people. However this recognition should be balanced with the knowledge that these initiatives are in their infancy and that the amount of work required to move Scotland forward to a culture that values older people cannot be under-estimated. Any strategy or initiative will need time to be implemented. There will also be a need for the project to be monitored and reviewed.

65. A key role for the Commissioner in respect of initiatives aimed at older people will be to complement these evolving programmes of work. Not only will the Commissioner provide a focal point for these initiatives and be instrumental in providing a driving force for new initiatives, but the Commissioner can act to sustain momentum in these emerging policy areas.

Policies relating to older people

66. An ageing population impacts on every facet of life requiring policy makers, service providers, organisations and individuals to take account of Scotland’s changing population make-up. This is because ageing is a multi-dimensional, multi-sectoral and multi-generational issue. Safeguarding and promoting older people’s rights and interests is a major undertaking, as the following selection of policies will show. It is acknowledged that one of the greatest achievements of the 20th century must be the 25 years increase in life expectancy. However, the World Health Organisation asks a key question:

“years have been added to life, but will life be added to years?”

Health and Social Services

67. An important role for the Commissioner in this area will be to influence policy and service delivery. The Commissioner will be in a position to consider the provision of health and social

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32 Scottish Executive People and Society, Consultative Forum. Available at: http://www.scotland.gov.uk/Topics/People/OlderPeople/Gettinginvolved/Consultativeforum
33 The Futures Project, Trend Analysis Available at: http://www.scotland.gov.uk/Topics/Government/futures/trendanalysis
34 The Futures Project, Trend Analysis, Shape of Society Working paper page 83 to 105 Available at: http://www.scotland.gov.uk/Topics/Government/futures/trendanalysis
services and the impact of these services on older people. Older people are frequent users of health services and also major users of community care and social services. These services should work together for the well-being of older people and the Commissioner has a role in identifying gaps in these services and highlighting best practice in service delivery as it relates to older people. Carers Scotland who responded to the member’s consultation classed the dissemination of best practice as one of the most effective drivers of change.36

Usage of health and social services by older people

68. The health of older people tends to deteriorate with increasing age, inducing greater demand for long-term care as the numbers of those in their eighties grow. “By 2024, as Scotland’s population ages and diminishes, older people will become by far the major users of health and social services.”37

69. Policy on health and social work services, especially care homes and support for carers are of particular relevance to older people. The Scottish Household Survey gives an indication of how older people use health and care social services. This suggests that 22% of those aged 85 years or older are long term residents of care homes. Twenty per cent of men in their early 60s are permanently sick or disabled.38

Preparing health services for an increase in older people

70. The Scottish Executive asked the Chief Medical Officer in 2001 to lead an expert group on care for older people and the Adding Life to Years report was published in 2002. In February 2003 the Working Group on Quality Assurance of Healthcare Services for Older People in Scotland was established to develop a set of standards that will apply to all parts of NHS Scotland where services are used by older people and a consultation was issued in May 2004. NHS National Framework for Service Change in the NHS in Scotland: Care of Older People Action Team Report was published in 2005. The Report indicates that much of the current pressure on health and social care services relates to the care of older people and that acute services are unsustainable over the next 20 years in their present form. The report was clear that access should be based on clinical need and there should be no discrimination in service provision.39

71. The Executive published “Delivering for Health”40 in May 2005 which described the overall aim as “to improve the health of the people of Scotland ... with a shift towards preventative medicine and more continuous care in the community.” For example, one goal of particular relevance to older people is identifying those people at greatest risk of hospital admission and

39 Available at: http://www.show.scot.nhs.uk/sehd/nationalframework/Documents/remoterural/Final%20Draft170505.pdf
providing them with earlier care to prevent deterioration of health and reduce emergency admissions.41

**Free Personal Care**

72. On July 1 2002 the Scottish Executive introduced its ground breaking policy - free personal care for people aged 65 and over. Since its introduction there has been a number of Parliamentary Questions lodged about the implementation of the policy surrounding the use of waiting lists by local authorities42 and charging by councils of those entitled to free personal care for assistance with meal preparation.43 New policies have to be monitored to see that the original intention of the legislation is fulfilled. The Commissioner’s focus on issues that affect older people has a role in identifying at an early stage whether there are difficulties with implementation.

**Delayed Discharges**

73. In response to the Scottish Executive’s consultation on the Strategy for Older People, the Royal College of Physicians of Edinburgh emphasises that the importance of timeous provision of effective ongoing care for frail older patients would unlock a large number of NHS acute hospital beds all over Scotland and that lengthy hospital waits for community care, resulting in delayed discharges, are unacceptable.44 One of the main findings in the research review “Tackling Delayed Discharge” was that older people, with multiple pathology, and those with some specific clinical conditions (such as neurological deficit and stroke) are most at risk of experiencing a delayed discharge. There is evidence that the cause is the ways in which organisations are managing services to care for people with these clinical conditions.45

**Clinical Trials**

74. Health services were also of particular concern to those responding to the member’s consultation. The British Geriatrics Society (Scotland) said that older people, 65 years and over, account for a disproportionate number of NHS prescribed medicines. In their view since adverse drug reactions increase with age then “typical older people” should be involved in clinical trials. The Society suggested that “typical older people” are often excluded from trials because of arbitrary age limits or on the grounds of more than one chronic disease. They requested that age limits on scientific research be closely scrutinised so that medicine trials can be developed more towards the actual users of a drug.46

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42 S2W-24865 - Nanette Milne (North East Scotland) (Con) (Date Lodged 30 March 2006) and S2W-24661 - Shona Robison (Dundee East) (SNP) (Date Lodged 24 March 2006)
43 S2W-24663 - Shona Robison (Dundee East) (SNP) (Date Lodged 24 March 2006)
75. As can be seen from this brief overview of health and social care services there are a number of different policies and practices in operation. This compounds the possibility that policies or practices, or a combination of policies or practices, may have unintended consequences on older people. The Commissioner will be well placed to have an independent overview of these policies and offer recommendations on how policy makers and services can take account of the issues affecting older people and support joint working by sharing information and models of good practice.

Abuse of older people

76. An issue that is of direct concern to older people is becoming a victim of abuse. Abuse can occur in an older person’s own home, in care homes or in hospitals or through any service an older person receives. Abuse can be perpetrated by family members, neighbours and friends, professional care workers, informal carers, those who provide financial and legal services and others.

77. There have been a number of high profile stories in the media concerning the abuse of older people at a number of care homes. Since 2001 Age Concern Scotland has been highlighting the extent of the issue through a project aimed at reducing the level of abuse of older people; and ensuring access to appropriate support and legal remedies for victims of abuse.

78. This project uncovered abuse of older people by family members, care workers and others who are in a position of trust and has dealt with cases of neglect as well as psychological, physical, financial and sexual abuse. Age Concern Scotland has figures which suggests that between 7% and 9% of all older people living in their own homes suffer at least one form of abuse, and that over 40% of victims experience more than one kind of abuse.47

79. Abuse of older people was highlighted by some respondents as a particular area where legislation is inadequate. North Lanarkshire Council Social Work argued that there exists no ‘national strategy’ for dealing with abuse of older people and that caring organisations, local authorities and health boards address these issues independently of each other.48 The Bill provides the mechanism for the Commissioner to undertake investigations at sections 7 to 9. For example, the Commissioner could undertake an independent inquiry into the issue of elder abuse by service providers and make recommendations in response to the evidence gathered, or could promote best practice for assisting and supporting older people who have been abused or develop a strategy as suggested.

Transport

80. In the four major cities, 56 percent of the over 65s have no access to a car. For those living in towns the proportion lies between at 40 and 50 percent, but in rural areas the proportion is much lower at 31 percent in accessible areas and 28 percent in remote areas.49

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47 Age Concern, Scotland, Elder Abuse, Available at: http://www.ageconcernscotland.org.uk/section/default.asp?p=134
Citizens Network highlighted transport issues relating to older people in rural locations as an area of concern in its response to the member’s consultation. 50

81. The Scottish Executive recently introduced a new concessionary travel scheme aimed at older people. From April 1st 2006, older and disabled people have been entitled to unlimited free bus and coach travel. According to Scottish Accessible Transport Alliance (SATA) who responded to the member’s consultation, more could be done for certain groups of older people. SATA commented on the non-availability of ‘quality door-to-door services’ essentially for the frail or disabled and felt a commissioner should be a powerful advocate for the vulnerable and disadvantaged. 51

82. The Bill provides at section 4(2)(e) that the Commissioner can undertake, or commission, research on matters relating to the rights and interests of older people. This would for example allow the Commissioner to research the concerns of older people living in rural areas and identify options to address these concerns.

Housing

83. In common with other policy areas, housing has a number of policies specifically aimed at older people as well as more general policies which impact on older people such as council tax discounts. Specific policies such as the Scottish Executive’s Central Heating Programme provide central heating, insulation and advice. With “The Warm Deal” a grant of up to £500 is available for home insulation. Additionally, The Care and Repair schemes enable elderly and disabled owner-occupiers to carry out repairs, improvements and adaptations enabling them to stay in their own homes. In March 2000, Fiona Hyslop MSP lodged a Parliamentary Question asking the Scottish Executive what it intended to do to tackle fuel poverty following the record level of “excess winter deaths this winter”. 52  The then Minister referred the member to the Warm Deal initiative and the Winter Fuel Deal as a possible way to reduce the numbers of excess winter deaths.

84. There is however continuing concern about the number of winter deaths occurring. In 2005, Age Concern Scotland stated that in the last 5 years, more than 14,000 people in Scotland have died as a result of the winter months. Scotland has one of the highest rates of winter deaths in Europe. And older people in Scotland are at greater risk of cold-related illnesses such as pneumonia than people in colder countries such as Finland or Austria. 53

52 S1W-5062 - Fiona Hyslop (Lothians) (SNP) (Date Lodged 6 March 2000)
Joint working

85. ‘Better Outcomes for Older People’ A Joint Framework for services for older people was published in May 2005. This suggests how key agencies can develop better integrated working. “Established ways of thinking about services and providing them are changing radically in many parts of Scotland. The Framework demonstrates the exciting changes possible in the shape and nature of modern health, housing, social care and well being service, by developing more joint and integrated services.” The Framework sets out three key actions for NHS Boards and Local Authorities. One of these is that partnerships should have in place systems for collecting the views of older people and sound performance management frameworks.

Role of the commissioner in policy work

86. Policies relating to older people are high on policy makers’ agenda. Virtually all Acts of Parliament (both at Westminster and through the Scottish Parliament) will impact in some way on the lives of older people. A vital role for the Commissioner will be ensuring that responsibilities towards older people that have been established though legislation, such as free care for the elderly and concessionary travel schemes are met and that related polices and practice are effective.

87. It is clear that progress in initiating legislation which supports older people and takes account of their needs has been made over the last five years, but this needs to be continued through future administrations as Scotland’s population continues to age over the next 30 to 40 years. Policies will need to be more focused on creating a better future for older people.

88. The Scottish Executive’s Consultation document Age and Experience shows that there is an important role for the Commissioner.

“Older people’s services are diverse, as are service providers. Service provision is a complex interplay between local authority, health service, voluntary sector, and private sector provision; between housing, residential care, transport, community care, and health care; as well as services such as advice and information, libraries, and leisure. Not only that, but informal care and services are an important part of the overall package of services that older people use. While the Scottish Executive can directly influence the statutory services, there is also a role for providing a strategic framework within which other service providers can develop to meet the needs of an ageing population.”

89. An independent Commissioner responsible for the promotion of older people’s rights will be well placed to assess independently the impact of policies, programmes and frameworks which affect older people as well as identifying best practice for service delivery and better integration of services across public, private and voluntary sectors.

90. The Commissioner will supplement the work of the Executive adding value to its programmes and strategies, reinforcing key messages contained therein to the benefit of older

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55 Ibid, Executive Summary page 4
56 Age and Experience: Consultation on the Strategy for a Scotland with an Ageing Population, Setting the Scene – Background Information, Effective Integrated Services for Older People, para 7
people. In seeking to influence and encourage decision-makers to have regard to older people and their particular needs, the Commissioner will represent the views of older people to the Parliament, the Executive and others. Significantly, the Commissioner will be well placed to advocate the benefits that an older generation offer. In promoting older people’s skills and experience to organisations and agencies, the Commissioner will be instrumental in unlocking this untapped resource to the advantage of Scottish society and potentially the Scottish economy.

**Establishing the office of the Commissioner for Older People**

91. The Commissioner will be independent, appointed by the Queen on the recommendation of the Parliament. Terms and conditions of appointment will be determined by the Scottish Parliamentary Corporate Body. The Commissioner will be appointed for a period of up to five years with the possibility of re-appointment for a further period of not more than five years. The Commissioner can be removed from office on a motion affirmed by the Parliament by at least two thirds of those voting. This is in line with other Commissioners such as the Commissioner for Children and Young People in Scotland.

92. The Commissioner’s independence is essential in underpinning the Commissioner’s freedom to consider older peoples rights and interests coherently, given their cross-cutting nature straddling numerous policy areas and sectors.

**Accountability: duty to report**

93. The Commissioner is subject to a duty to publish and lay before the Parliament an annual report, setting out:

- a review of current issues relevant to older people;
- a review of the Commissioner’s activity over the previous year;
- an overview of work to be undertaken over the following year;
- a strategy for actively engaging older people in the work of the Commissioner; and
- any other information that the Commissioner considers to be relevant.

94. The duty and mechanism of reporting is to be a crucial element in the Commissioner’s accountability in terms both of annual reports and reports on specific issues (including those relating to investigations, see paragraph 111). It will enable the Parliament to find out what the Commissioner is doing and assess how well he or she has been undertaking their functions.

**Accountability and budget setting**

95. There is a need to balance independence with accountability. The Commissioner must be able to speak up for older people in a way that is responsive to the priorities and concerns of older people themselves. However, the Commissioner must also be able to demonstrate clearly that he or she discharges their responsibilities and makes use of public funding appropriately and with due propriety. The Commissioner will be expected to operate his office in a cost effective manner and demonstrate that his functions are carried out in a way that provides value for money.
96. The Bill provides for the office to be publicly funded, with payment of salary and any allowances coming through the Scottish Parliamentary Corporate Body (SPCB).

97. There is a requirement for accounts to be prepared and submitted to the Auditor General for Scotland.

98. The Scottish Parliament’s Finance Committee is undertaking an inquiry into the accountability and governance of independent, regulatory and investigatory bodies. The Committee is examining the adequacy of processes for setting and scrutinising the annual budgets of such bodies and the appropriateness of existing lines of accountability and how this process works in practice.

99. The Justice 1 Committee considered this issue with regard to the Scottish Commissioner for Human Rights (SCHR) Bill and has published its report. The Justice 1 Committee fully endorsed the SPCB’s proposal for a directional power for budgetary approval, saying this “would achieve an appropriate balance between the independence and accountability of the Commissioner” and looked forward to receiving amendments accordingly at Stage 2.\(^{57}\)

100. An amendment to the SCHR Bill is being prepared to reflect the SPCB’s proposal for a directionary power. The member is aware of the ongoing work in this area and has indicated that he wishes to amend Schedule 1 of the Bill to mirror any amendment being prepared by the Scottish Executive when it is available.

**Involving older people**

101. The Scottish Executive commissioned research “Involving Older People: Lessons for Community Planning”\(^{58}\) to look at how older people are involved in the planning, delivery, monitoring and evaluation of public services. One of the main findings was that there was limited evidence of a strategic approach to the involvement of older people in shaping public services within and across agencies. Barriers to involvement included negative attitudes toward older people, older people’s low expectations of the effectiveness of involvement and a variety of organisational barriers. WRVS suggest that this is still an issue with “the views and opinions of older people…not respected or given due weight.”\(^{59}\)

102. It was considered necessary to set up The Black and Minority Ethnic Elders Group (BMEEG) Scotland in January 2000 in response to the need to increase participation and

\(^{57}\) Stage 1 Report on the Scottish Human Rights Bill, 1st Report 2006 (Session 2), SP Paper 508, Volume 1, paras 119 to 133.

\(^{58}\) Involving Older People: Lessons for Community Planning, Scottish centre for the Promotion of the Older Person’s agenda, Queen Margaret University College, November 2003. Available online at: http://www.scotland.gov.uk/Topics/People/older-people/home-improvements/15079/13860

\(^{59}\) WRVS Response to the Scottish Executive’s Age and Experience Consultation, Services for Older people, page 5, para 3.3.1
consultation with ethnic elders and to drive forward common agendas and approaches in care development and management of services to ethnic elders and their carers in Scotland.\textsuperscript{60}

103. Involving older people is central to the aims, ethos and working practices of the Commissioner. The Commissioner is placed under a duty to take all reasonable steps to encourage this involvement as an on-going process by section 6 of the Bill.

104. Ultimately it will be for the Commissioner to decide how best to carry out that duty, putting the principles of consultation, participation and accessibility into practice and establishing mechanisms to encourage the most constructive involvement of older people. On a practical level, the Commissioner will be expected to consider, develop and promote good practice and a diversity of approaches to engaging with older people.

105. Such diversity might include interviews, surveys, discussion groups, participatory events, or long-term structures such as employing older people as participation or policy officers. It might entail working through existing structures and networks, the media or modern communications technology.

\textit{Investigations}

106. The Commissioner has the power at section 7 to carry out investigations into how the rights, interests and views of older people are taken into account by service providers.

107. The Commissioner does not have the power to investigate the case of an individual older person. The member considers this approach an appropriate measure as a duty to investigate individual cases would result in the potential for virtually all the Commissioner’s time being spent undertaking investigations to the exclusion of the remainder of his/her responsibilities. Bodies such as the Scottish Commission for the Regulation of Care and the Scottish Public Services Ombudsman already exist and are best placed to help complainants seek redress. However, where an individual case gives rise to a wider issue affecting older people or certain groups of older people the Commissioner can undertake an investigation.

108. In addition, any individual or any organisation (including the Parliament and the Executive) may suggest a matter for investigation by the Commissioner. This could prove to be useful where no time can be found in these organisations’ work programmes to undertake an investigation. Of course the Commissioner could decide to undertake an investigation of his or her own accord. Ultimately, though the decision to undertake an investigation will lie with the Commissioner.

109. To warrant investigation an issue must, in the reasonable opinion of the Commissioner:

- relate to devolved matters;
- be a matter concerning the provision of services to older people;
- so far as is reasonably possible involve no duplication of work carried out by existing organisations; and

This document relates to the Commissioner for Older People (Scotland) Bill (SP Bill 71) as introduced in the Scottish Parliament on 20 September 2006

- be of particular significance to older people, in the reasonable opinion of the Commissioner, supported by evidence (from consultation, research, information gathering etc.) that this is so.

110. Any person or organisation providing a service to older persons may be subject to an investigation in accordance with the criteria set out above. The Commissioner will have the power, if necessary, to require the production of documents and the attendance of witnesses during the course of an investigation. In common with the Scottish Parliament, the Commissioner and his/her staff will be given protection from actions of defamation in relation to reports, statements and communications made in the course of their work. Absolute privilege will attach to work carried out in connection with investigations and reports. Qualified privilege will attach to the Commissioner’s other functions and to statements made to the Commissioner by members of the public.

111. Having carried out an investigation, the Commissioner is to report to the Parliament setting out any recommendations that the Commissioner may have.

112. The Commissioner will need to balance how much resources in any year are devoted to carrying out investigations and how much to the Commissioner’s role in awareness raising and promotional activities. Further information on the resources required to undertake the Commissioner’s duties can be found in the associated Financial Memorandum.

CONSULTATION

113. Alex Neil prepared a consultation paper “Commissioner for Older People (Scotland) Bill” on his proposal for a Commissioner, which was consulted upon between October 2004 and January 2005. The main aspects covered were the areas the Commissioner should deal with, such as, age discrimination and protection of older people from abuse. The consultation paper also asked how the Commissioner would work with other bodies and whether the Commissioner should investigate individual cases. Other areas were the terms of appointment and cost implications.

The responses

114. Copies of the consultation paper were sent directly to 239 organisations which included amongst others, representative older person’s organisations, health bodies, social inclusion organisations, local government and equal opportunities groups. The paper was accessible via a hyperlink from the Scottish Parliament’s website on the members’ bills page. In total 50 responses were received. These included responses from those directly representing older people (including forums and individuals), local authorities and departments, health and care organisations, housing bodies and academics amongst others.

115. Of those who responded 62% were in favour of the establishment of a Commissioner. Twenty per cent of respondents were unclear. Less than 20% were not in favour of the creation

61 Commissioner for Older People (Scotland) Bill, consultation paper. Available at: http://www.scottish.parliament.uk/business/bills/pdfs/mb-consultations/Commissioner-for-Older-People-consultation.pdf
of a Commissioner. If you include the individual responses that came under the cover of two responses from forums, the actual figures show a significant increase in support. Under these circumstances 75% of those who responded agree with the creation of a commissioner for older people. 62

116. Significantly, organisations representing older people made up the bulk of the responses. Of these 41 responses, 34 (83%) wanted a Commissioner to represent their rights and interests. Of the nine responses that came from the health and care sector, notably seven (78%) were in favour of establishing a commissioner.

117. A number of respondents raised issues affecting and giving concern in the daily lives of older people such as benefits, taxation, pensions and employment law. These matters are not devolved to the Scottish Parliament and therefore cannot be included in the scope of the legislation for a Commissioner. However, in relation to the UK Government’s functions there are already provisions for redress in individual cases. Nonetheless the Commissioner could observe, and make representations on the impact on older people in Scotland, particularly whether these might be having unintended effects or where more joining up of public bodies may be required.

ALTERNATIVE APPROACHES

118. The member has considered whether the functions of a Commissioner for Older People could be given to an existing Commissioner or Ombudsman as an alternative to creating a new Commissioner. To delegate the Commissioner for Older People’s functions directly to for instance the Scottish Public Services Ombudsman a Bill would be required which makes provision for the conferral of additional functions on the Public Services Ombudsman. That would involve considerable amendment of the existing legislation coupled with new administrative arrangements at the Ombudsman’s office so that new functions can be absorbed.

119. Additionally, the underlying ethos of the Commissioner for Older People is to promote older people’s rights and interests, whereas the Scottish Public Services Ombudsman is concerned with complaints against public bodies and maladministration. Merging functions raises questions about the dilution of the Commissioner’s role and confusion of the role of the Scottish Public Services Ombudsman. The member is therefore of the opinion that, given the timescale, complexity and possibility that the Commissioner’s role could be weakened, merging of roles is not viable at this time.

120. The member also considered whether the provisions of the Bill should be extended to encompass specific groups of younger people aged 50 and over where they might be classed as vulnerable. However, the member believes there is difficulty with this approach in that the legislation would need to specifically designate vulnerable groups. This raises issues about the identification of groups, which could in turn lead to specific groups unintentionally being included, or excluded, by the legislation.

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121. The member believes that older vulnerable people will already have their rights and interests safeguarded by other legislation such as the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003 for example. The Commissioner could of course highlight issues where the legislation is not operating as intended, and by doing so may improve the outcome for older vulnerable people. There was a general consensus from those responding to the member’s consultation that the Commissioner should have a broad remit covering all older people rather than attempting to define a particular group as vulnerable and focussing on it, particularly as there is no universal definition of a vulnerable person and that going down this route may in fact dilute the Commissioner’s role for other older people.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

122. Assumptions as to the relationship between a person’s age and a person’s capacity can permeate all areas of society. Systems, institutional behaviours and cultural perceptions end up causing barriers to the participation of older people, leading to exclusion and potential isolation from their community. Older persons have, or should have a right to expect equal treatment and to participate.

123. The Bill will create a Commissioner with responsibility for actively promoting a Scottish culture where due regard is given to the difference and similarities of older people as a group in society, but equally encourages service providers and others to reflect the diversity of an older person’s particular situation and experience. The Commissioner will be key to breaking down barriers that prevent older people from participating in economic and social activity.

124. Older people should be able to expect the same access to services, information and education as the rest of society. The work of the Commissioner will help to improve the delivery of public, private and voluntary services to older people.

125. This will be of particular benefit to older persons who are most disadvantaged by their age in the form of direct and indirect discrimination, for instance, the frail or disabled. The creation of a Commissioner for Older People will have succeeded when it has had the effect of moving Scotland to a position where older people’s rights and interests are mainstreamed.


127. The majority of these groups supported the proposal to establish a Commissioner for Older People in Scotland, and most agreed with the proposals that were set out in the consultation paper. Many useful comments were made in the responses which the member took...
account in drafting the Bill. For example, the City of Edinburgh Council Older Peoples Equalities Forum suggested that the remit should not focus solely on “looking after” older people – the Commissioner needs to be pro-active in promoting older people as a “valuable resource”.

**Human rights etc**

128. The Bill creates two offences, one of which is a strict liability offence (schedule 2, paragraph 5). Strict liability offences raise issues under Article 6(2) of the European Convention on Human Rights (ECHR) - Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. However, the member is satisfied that the strict liability offence in this Bill does not create any difficulties in terms of Article 6(2) as the provision of a defence is an indication that the presumption of strict liability is being confined within reasonable limits.

129. Article 6(2) is also relevant in relation to burden of proof imposed by the statutory defence, and whether this breaches the presumption of innocence. Burdens, which place the onus of proof on the accused, are referred to as reverse burdens of proof. In this Bill issues concerning reverse burdens of proof arise in relation to the defence to the offences at schedule 2, paragraph 5 of failing to attend as a witness before the Commissioner, failing to answer questions or failing to produce documents. The member is satisfied that the imposition of the legal burden of proving the defence on the accused strikes a fair balance given that the matters referred to in the offence are matters peculiarly within the knowledge of the accused.

130. The second ECHR issue that is raised by the Bill concerns section 14 which provides that for the purposes of the law of defamation, any statement made by the Commissioner or the Commissioner’s staff in the context of the conduct of an investigation or in a report has absolute privilege. Any statement made by the Commissioner or the Commissioner’s staff for any other purpose under the Bill has qualified privilege as does any statement made to the Commissioner or the Commissioner’s staff.

131. An individual who has suffered an unjustified attack on his or her reputation is entitled under article 6 to bring civil proceedings in order to seek a judicial determination of the issue. In the Fayed case 63, the ECHR stated (at paragraph 70): "statements which harm an individual’s reputation and which would otherwise give rise to liability should benefit from total or partial immunity because their author or publisher is acting in furtherance of some overriding interest of social importance". The Commissioner will be doing just this if for example the Commissioner undertakes an investigation into the subject matter of elder abuse. Therefore the member believes the measure is proportionate given the aim being pursued.

132. Without such protection the Commissioner is less likely to receive frank evidence from witnesses and will be unable to be frank in the report made to Parliament without fear of possible litigation. This would have the undesirable result of undermining the effectiveness of the Commissioner.

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Finally, section 14 provides protection to the Commissioner and his or her staff from actions of defamation. Having regard to the nature of the post, the member is clear that the aim of the provision, essentially to give the Commissioner freedom to carry out his or her functions without fear of being sued for defamation - is a legitimate one and is proportionate. Similarly, those giving information to the Commissioner should feel able to do so freely (so long as they are not acting maliciously).

**Island and rural communities**

134. There is no distinction made by the Bill between island and rural communities and any other communities.

135. However, older people in island and rural communities may experience different or perhaps more limited access to services than those in urban areas. Older people in the countryside for example may find it more difficult to get assistance with small domestic repairs, heavier gardening tasks, lifts to the doctors and hospital appointments and shopping. By creating a Commissioner specifically for older people, the Bill provides a framework where views from older people living in rural and island communities can be gathered, existing provision of services audited, best practice models identified and recommendations made aimed at public, private and voluntary service providers. Therefore the Bill will assist with joining up the working of agencies with responsibilities in island and rural areas.

**Local government**

136. No effect.

**Sustainable development**

137. Within the general function of the Commissioner to safeguard and promote the rights and interests of older people there is an underpinning function “to promote the use of the skills and experience of older people”, the realisation of which will contribute to sustainable development.

138. Future generations will benefit from developing a culture where older members of society are both expected to and are given an opportunity to contribute to their community, thus achieving economic and social goals in ways that can be supported for the long term. In addressing difficulties in the provision of services for older people and breaking down barriers to education and training for older people the Commissioner is an important factor in minimising the impact on health and social care services for future generations as social and mental activity is linked to older people staying healthier for longer.