These documents relate to the Scottish Commissioner for Human Rights Bill (SP Bill 48) as introduced in the Scottish Parliament on 7 October 2005

SCOTTISH COMMISSIONER FOR HUMAN RIGHTS BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Scottish Commissioner for Human Rights Bill introduced in the Scottish Parliament on 7 October 2005:
   
   • Explanatory Notes;
   • a Financial Memorandum;
   • an Executive Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 48–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Human Rights and Law Reform Branch on behalf of Robert Brown, Deputy Minister for Education and Young People. Their purpose is to assist the reader of the Bill and to help inform debate on it. As such 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 intended to be, a comprehensive description of the Bill itself. Wherever a section or schedule, or part of a schedule does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL

4. The Bill establishes a Scottish Commissioner for Human Rights (SCHR) (and provides for there to be up to two deputy Commissioners). The Commissioner will be independent, with the ability to choose which issues are investigated and reported upon. The Commissioner will be accountable to the Scottish Parliament and will submit annual reports summarising the actions and inquiries undertaken in the previous year.

5. The Commissioner’s general duty, as set out in section 2, is to promote awareness and understanding of, and respect for, human rights. The Bill gives the Commissioner certain other specific functions (see sections 3 to 5 and 11) in support of the general duty. These include: monitoring law, policy and practice; providing information, advice, guidance, and education; carrying out inquiries; and intervening in civil court proceedings.

6. The Commissioner will be able conduct inquiries into general human rights issues, but will not be able to investigate, support or rule on individual cases. The Commissioner will have the ability to require information in support of inquiries and a right of entry to places of detention in certain cases.

7. The Commissioner will deal only with human rights issues relating to devolved matters. However, this remit will include the full range of human rights instruments to which the UK is signatory.

8. The SCHR will be able to liaise with the proposed Commission for Equality and Human Rights (CEHR) for Great Britain, to be created by the Equality Bill at Westminster. The Equality Bill states that the CEHR will not be able to act on human rights in relation to matters that are devolved to the Scottish Parliament, unless it has the consent of the Commissioner.
COMMENTARY ON SECTIONS

Section 1: Establishment

9. Section 1 establishes the office of the Scottish Commissioner for Human Rights. He or she is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.

10. Subsections (3) and (4) allow for up to two deputy Commissioners to be appointed at any time.

11. Subsection (5) allows a deputy Commissioner to perform the Commissioner’s functions in the Commissioner’s absence. In doing so, a deputy Commissioner is to be treated like the Commissioner in all respects (except in relation to terms of office and pensions).

12. Further detail about the Commissioner and the deputy Commissioners is contained in schedule 1 to the Bill.

Section 2: General duty to promote human rights

13. Subsection (1) stipulates that the general duty of the Commissioner is to promote awareness and understanding of, and respect for, human rights. Two particular aspects of this duty are given in paragraphs (a) and (b) of subsection (1).

14. Subsection (1)(a) states that the Commissioner should seek to encourage best practice in relation to human rights. In terms of subsection (1)(b) the Commissioner should encourage Scottish public authorities to abide by section 6 of the Human Rights Act 1998, which states that it is unlawful for a public authority to act in a manner that is incompatible with Convention rights. The term ‘Scottish public authority’ is defined in Section 17.

15. Subsection (2) defines the phrase “human rights” in two parts. “Convention rights” means all Articles and Protocols of the European Convention on Human Rights listed in section 1 of the Human Rights Act 1998. This includes the right to life and the prohibition of torture, slavery and forced labour, amongst other rights. “Other human rights” are (non-Convention) human rights contained in any international instrument (e.g. an instrument enacted by the United Nations, the Council of Europe or the European Union) which have been ratified by the UK.

16. Subsection (3) stipulates that the Commissioner’s priority will be Convention rights. Convention rights are important because, as a result of the Human Rights Act 1998 and the Scotland Act 1998, they are directly enforceable through the domestic courts.

Section 3: Duty to monitor law, policy and practice

17. The Commissioner is required by section 3 to monitor the law of Scotland and the policies and practices of public authorities. This function will allow a process of reviewing and reporting, and the Commissioner will be free to choose which issues he or she examines, provided that those issues are within his or her remit.
18. This section also empowers the Commissioner to recommend changes to the law and to the policies and practices of public authorities. These recommendations will not be legally binding and there will be no obligation upon public authorities to seek guidance from the Commissioner, nor will there be any compulsion upon public authorities to implement the Commissioner’s recommendations.

Section 4: Information, guidance, education, etc.

19. Subsection (1)(a) and (b) provides that the Commissioner may, in pursuing the general duty set out in section 2(1), publish or otherwise disseminate information or ideas and provide advice or guidance.

20. Under these subsections, the Commissioner could, for example, publish information leaflets, internet resources, or educational materials; send group emails; make presentations at conferences; set up awareness-raising campaigns; issue guidance material; or offer advice through correspondence or by telephone.

21. As detailed in subsection (1)(c), the Commissioner will be able to conduct research. The Commissioner could, for instance, conduct statistical research on court cases with human rights aspects.

22. Subsection (1)(d) provides that the Commissioner can provide education and training.

23. Subsection (2) states that the Commissioner can charge reasonable fees for providing any of the services described in the previous subsection. Any fees paid to the Commissioner are to be put towards the costs of doing the things in paragraphs (a) to (d) of subsection (1).

Section 5: Power to conduct inquiries

24. Subsection (1) states that the Commissioner can conduct inquiries into the policies or practices of a particular Scottish public authority, Scottish public authorities generally or Scottish public authorities of a particular description. Section 6 establishes certain restrictions upon these powers.

25. Subsection (4) sets out the procedure before starting an inquiry, requiring the Commissioner to draw up terms of reference and a summary of the procedure to be followed. The Commissioner must give notice of the proposed inquiry and its terms of reference and procedure to the relevant Scottish public authorities, and publicise such details in a manner that the Commissioner feels is appropriate to bring them to the attention of others affected by the inquiry.

26. ‘Relevant Scottish public authority’ is defined in subsection (7) to mean any public body which the Commissioner believes is likely to be required to give evidence or provide other information, or which has members, officers or staff who are likely to be so required.
27. Subsection (5) states that inquiries should be conducted in public but reserves to the Commissioner the ability to hear evidence in private.

Section 6: Restrictions as to scope of inquiry

28. Section 6 sets out various restrictions on the power of the Commissioner to conduct inquiries.

29. Subsection (1) states that the Commissioner cannot question the findings of any court or tribunal while conducting an inquiry, including in his or her final report.

30. The remit of the Commissioner restricts inquiries to the general policies and procedures of public authorities, as opposed to individual cases. However, an inquiry into the policies and practices of a particular Scottish public authority may be conducted if it is the only body exercising the functions being investigated, as set down in subsection (2)(a).

31. Additionally, inquiries may be initiated into the policies and practices of a particular Scottish public authority if the specific subject matter of the inquiry is to assess compliance with particular human rights (as defined in subsection (6)). The Commissioner, as previously stated, cannot conduct an inquiry into an individual case, although this does not bar the Commissioner from taking the relevant policies and practices into account during an inquiry.

32. Subsection (5) establishes similar rules for investigating the management and operation of institutions such as prisons, hospitals, schools, colleges and care homes. The Commissioner may only launch an inquiry into an individual institution if the institution in question is the only one of its kind in Scotland, or if the subject matter of the inquiry is to assess compliance with particular human rights (as defined in subsection (6)) at that institution.

33. Subsection (6) details the particular human rights referred to in subsections (2)(b) and (5)(b). These are contained in two of the international human rights instruments to which the UK is signatory. These instruments relate to the prevention of torture and degrading treatment. Subsections (2)(b) and (5)(b) give the Commissioner power to conduct inquiries into particular public authorities and institutions to ensure compliance and good practice in relation to these instruments. Provision is also made for further human rights instruments to be added to the list in subsection (6) by an Order in Council. Such an Order would be subject to affirmative procedure in Parliament.

Section 7: Evidence

34. Subsections (1) and (2) permit the Commissioner to require any Scottish public authority or member, officer or staff member of such an authority to give oral evidence, produce documents or to provide any other form of information deemed relevant to an inquiry.

35. Subsection (3) allows the Commissioner to consider information freely volunteered by public authorities or members of the public, provided that information is relevant to the inquiry.
36. Subsection (4) states that those required to give evidence by the Commissioner are not required to answer any question, produce any document or provide any information which those persons would be entitled to refuse to (as the case may be) answer, produce or provide in proceedings in a court in Scotland.

37. Further provision in relation to the requirement to provide evidence is made in Schedule 2.

Section 8: Places of detention – powers of entry, inspection and interview

38. This section empowers the Commissioner to enter places of detention during the conduct of an inquiry. In terms of this Bill, ‘places of detention’ means any premises, vehicle or other place where a person can be detained on the authority or consent of a Scottish public authority. Subsection (4) clarifies this point by defining a person as being detained in a place “if he or she is imprisoned there or otherwise deprived (to any extent) of his or her liberty to leave the place”.

39. Specifically, subsection (1) empowers the Commissioner to inspect such places of detention and to conduct private interviews with any person detained there, subject to that person’s consent. Subsection (5) states that an interview is “in private” if it is conducted outwith the hearing of anyone involved in the management or control of, or working at, the place of detention. Schedule 3 makes further provision in relation to these powers.

Section 9: Report of inquiry

40. Upon completion of an inquiry, subsection (1) requires the Commissioner to lay a report of his or her findings before the Parliament. Section 13(1) further stipulates that such reports must be published by the Commissioner.

41. Subsection (2) states that the report must include the Commissioner’s findings and any resultant recommendations. Subsection (3) prohibits reporting upon the activities of a specified or identifiable person, unless the Commission considers that it is necessary to do so in order for the report to adequately reflect the results of the inquiry.

42. If the Commissioner chooses to exercise the capacity to identify individuals then it must furnish those persons with a draft of the proposed report and provide them with an opportunity to make representation concerning the proposed report. The Commissioner must consider any such representations before proceeding with publication.

43. The contents of the Commissioner’s reports are otherwise left to the judgement of the Commissioner.

Section 10: Confidentiality of information

44. This section states that neither the Commissioner, nor any agent of the Commissioner, past or present, shall disclose any information obtained in the course of the Commissioner’s activities unless that information is authorised by subsection (3).
45. Subsection (3)(a) authorises disclosure of information provided that it is made with the consent of the person who provided it. Subsections (3)(b) and (c) further allow disclosure of information if the Commissioner deems it necessary for the furtherance of his or her functions or if it is made for the purposes of civil or criminal legal proceedings.

46. Subsection (2) identifies information that is subject to these rules. Information which has been obtained by or on behalf of the Commissioner for the purposes of an inquiry should not be disclosed unless at least one of the conditions described above are met. But subsection (2)(b) states that information which has previously been in the public domain is not covered by these restrictions.

47. As stated in subsection (4), a person who knowingly discloses information that should not be made public in terms of this section commits an offence. Subsection (5) details the penalties that can be imposed for an unauthorised disclosure of information.

**Section 11: Power to intervene**

48. This section describes the process by which the Commissioner may intervene in civil proceedings before a court, with the exception of children’s hearing proceedings. The Commissioner may only make a submission to the court on an issue arising in proceedings which the Commissioner considers are relevant to his or her general duty and raise a matter of public interest.

49. Such interventions can only be made with leave of or at the invitation of the court – the Commissioner has no power to intervene in proceedings without the court’s permission.

50. When applying for leave to intervene, the Commissioner must inform the court of the issue arising in the proceedings which the Commissioner believes to be relevant to his or her general duty. The Commissioner is further required to provide the court with a summary of the submission that he or she intends to make.

51. If the Commissioner is invited to intervene, then the court must set out the issue arising in the proceedings upon which the court seeks a submission. The court may only grant leave for or invite the Commissioner to intervene if it is satisfied that such an intervention is likely to assist the court.

52. Further rules relating to the procedure to be followed in an intervention can be made by the Court of Session in an Act of Sederunt.

53. As stated in subsection (8), this section is without prejudice to any capacity of the Commissioner to intervene in any proceedings before any court or tribunal in terms of any existing enactment or the practice of the court or tribunal.
Section 12: Annual report

54. In addition to issuing reports upon the completion of its inquiries, the Commissioner must also provide the Parliament with an annual report.

55. The report will include a summary of any inquiries that the Commissioner has conducted in the past year, a summation of its other activities and a synopsis of the action which the Commissioner proposes to take in the next year in pursuance of his or her general duty.

56. Subsection (3) obliges the Commissioner to comply with any directions given by the Parliamentary corporation regarding the form and content of the report. As with reports on inquiries, the Commissioner must publish the annual reports.

Section 13: Publication of report

57. Subsection (1) requires the Commissioner to arrange for the publication of all reports submitted to the Parliament. It is likely that any reports would be published in either electronic format or hard copy.

58. Subsection (2) enables the Commissioner to publish any other report relating to his or her functions.

Section 14: Power to co-operate etc. with others

59. This section empowers the Commissioner to consult, act jointly with, co-operate with or assist any other person. Subsection (2) further states that the Commissioner must attempt to ensure so far as practicable that activity undertaken does not unnecessarily duplicate the work of other statutory agencies with shared interests or remits that overlap with that of the Commissioner.

Section 15: Protection from actions for defamation

60. Subsection (1)(a) provides the Commissioner with absolute privilege for all reports of inquiries, and any other statements and communications in relation to those inquiries. The provision of absolute privilege places a bar on a person’s right to pursue an action of defamation in respect of such statements made by the Commissioner.

61. Subsection (1)(b) provides the Commissioner with qualified privilege for any other statement made in pursuance of the purposes of the Bill, and subsection (1)(c) confers the same protection upon any statement made to the Commissioner for the same purposes. Under qualified privilege the Commissioner can make statements without fear of action provided that such statements are not motivated by malice or intent to injure. ‘Statement’ has the same meaning as in the Defamation Act 1996 (c.31) and therefore includes words, pictures, visual images, gestures or any other method of signifying meaning.
Section 16: Giving of notice

62. This section sets out the processes that the Commissioner must follow when giving notices.

63. Any notice to be given to any person under any provision of the Bill must be given in writing, and must be either delivered in person or sent by registered post, recorded delivery, email or some other means which the person giving the notice considers likely to cause it to be delivered on the same or the following day. In the case of an individual, notice should be served at the person’s usual or last known address, or the person’s place of business or work. In any other case, notice should be served at the person’s registered or principal office.

64. If notice is given by electronic means such as email, it will be treated as being in writing if it is received in a form which is legible and can be subsequently used for reference. Unless evidence to the contrary is provided, notice given by a means described in subsection (2)(c) is presumed to be delivered on the next working day following the day on which it is sent. In the Bill “working day” means any day apart from a Saturday, a Sunday or an official bank holiday in Scotland.

Section 17: Meaning of “Scottish public authority”

65. This section defines “Scottish public authority”. Any body, office or office holder who is a part of the Scottish Administration is considered a Scottish public authority. Also included is any Scottish public authority (within the meaning of the Scotland Act 1998) with mixed, i.e. devolved and reserved functions, or no reserved functions.

66. Additionally, any other person defined as a public authority within the meaning of the Human Rights Act 1998 is considered a “Scottish public authority” but only insofar as the functions of that person relate to Scotland and do not relate to reserved matters.

Section 19: Short title, Crown application and commencement

67. The Act that results from this Bill will be cited as the Scottish Commissioner for Human Rights Act 2005. It will bind the Crown and, excepting this section, come into force on such a day as Her Majesty may by Order in Council appoint.

68. Such an Order in Council may appoint days for different purposes and contain transitional and transitory provision.

Schedule 1: The Scottish Commissioner for Human Rights

69. Schedule 1 makes detailed provision concerning the status, independence, remuneration, terms of appointment and general powers of the Commissioner. The Schedule also details various administrative and procedural matters.
70. Paragraph 1 of the Schedule makes clear that neither the Commissioner, nor any deputy Commissioner or staff member, should be regarded as a servant or agent of the Crown or have the status, immunity or privilege of the Crown.

71. The second paragraph states that the Commissioner, in the exercise of his or her functions, is not subject to the direction or control of any member of the Parliament, the Scottish Executive or the Parliamentary corporation. This is qualified because certain other provisions (section 12(3) and paragraphs 8(2)(b), 10, 11(2), (3) and (5), and 14(1) of schedule 1) allow the Parliamentary corporation some control over the Commissioner including the form of the Commissioner’s annual report, the accounting practices of the Commissioner and the location of the Commissioner’s principal office.

72. Paragraph 3 deals with circumstances which would disqualify a person from appointment and holding office as Commissioner or deputy Commissioner. No person may become Commissioner or deputy Commissioner if that person is a member of the House of Commons, the Scottish Parliament or the European Parliament. Persons who have held any of these offices in the year preceding nomination are also disqualified, as would be any Commissioner or deputy Commissioner who was elected to such a post during his or her tenure.

73. Paragraph 4 lists details of terms of office and remuneration for Commissioners and Deputy Commissioners, stating that each may hold office for a period of up to five years and is eligible for reappointment when that period expires. A Commissioner or deputy Commissioner may be appointed for two terms of up to five years each but may not be reappointed for a third period.

74. Paragraph 4 also provides that the Commissioner or deputy Commissioner can be removed from office by Her Majesty at his or her request, or if the Parliament so resolves. In the latter case such a resolution must be voted for by at least two thirds of the total number of MSPs.

75. Paragraph 4 also contains details regarding the Commissioner’s and deputy Commissioner’s salaries, to the effect that each is entitled to a salary and allowances as determined by the Parliamentary corporation.

76. Additionally, no Commissioner or Deputy Commissioner may hold any other office or employment, paid or voluntary, while holding that office, without the consent of the Parliamentary corporation. Other terms and conditions of holding office are to be determined by the Parliamentary corporation.

77. Paragraph 5 establishes the procedure to be followed if the office of the Commissioner is vacant. The Parliamentary corporation may appoint any person to be the acting Commissioner until a new Commissioner is be appointed. The role of acting Commissioner is subject to the same basic strictures relating to appointment as a Commissioner or deputy Commissioner, in that he or she cannot hold any of the offices described in Paragraph 3, nor have held any such office in the preceding year.
78. Sub-paragraph (3) sets out the terms on which a person can be appointed as acting Commissioner. An acting Commissioner can be relieved from office at that person’s request and may also be removed from office on notice from the Parliamentary corporation. Otherwise, the Parliamentary corporation may determine the terms and conditions by which the acting Commissioner holds office.

79. With the exception of certain provisions relating to terms of office and the validity of actings contained in paragraphs 4, 6 and 7(a), the acting Commissioner is to be treated as the Commissioner.

80. Paragraph 6 makes provision for financial matters including payment of pensions, allowances and gratuities to persons who have ceased to be Commissioners or deputy Commissioners. The Parliamentary corporation has responsibility for arranging such payments. The pensions, allowances or gratuities arranged under this section may be in compensation for loss of office.

81. Paragraph 7 states that no act of the Commissioner or a deputy Commissioner is to be considered invalid on grounds of any defect in his or her nomination, nor by disqualification from appointment as Commissioner or deputy Commissioner.

82. Paragraph 8 empowers the Commissioner to do anything which appears necessary or expedient for the purpose of, or in connection with or conducive to, the exercise of his or her functions. Paragraph 8 also confers upon the Commissioner the specific power to enter into contracts and, with the consent of the Parliamentary corporation, to acquire and dispose of land.

83. The Commissioner can delegate any function to any person he or she authorises to act upon his or her behalf. The Commissioner still retains ultimate responsibility for carrying out his or her functions, whether delegated or not.

84. Paragraph 10 states that the Commissioner’s choice of location for his or her office is subject to the approval of the Parliamentary corporation.

85. Paragraph 11 requires the Commissioner to appoint a chief executive and also allows the Commissioner to appoint other staff on such terms and conditions as the Commissioner determines. The number of staff and their terms and conditions are subject to the approval of the Parliamentary corporation. The chief executive will be responsible to the Commissioner for the general exercise of the Commissioner’s functions.

86. Sub-paragraph 11(5) makes provision for payment of pensions, allowances or gratuities to former staff. This paragraph gives authority to the Commissioner to make arrangements, which may include pensions, allowances and gratuities made in compensation for loss of employment. Approval of such arrangements must be obtained from the Parliamentary corporation.

87. Paragraph 12 sets out the functions of the chief executive as accountable officer and states that he or she is accountable to the Parliament for exercise of those functions. It is the
duty of the chief executive to ensure that the finances of the Commissioner are kept in good order and that the resources of the Commissioner are used economically, efficiently and effectively. If the chief executive is required to act in a manner that he or she considers inconsistent with these responsibilities, the chief executive must obtain written authority from the Commissioner and send a copy of this to the Auditor General for Scotland.

88. The Parliamentary corporation is responsible for payment of the salary, allowances and expenses of the Commissioner and any deputy Commissioners. The Parliamentary corporation is also responsible for any sums payable to a person who is appointed as acting Commissioner or who has ceased to hold that office.

89. Paragraph 14 requires the Commissioner to keep proper accounts and accounting records, prepare annual accounts for each financial year and send copies of the annual accounts to the Auditor General for Scotland. The Commissioner must comply with any directions given by the Scottish Ministers in relation to these requirements.

90. The Commissioner must make a copy of the audited accounts available, free of charge, to anyone who requests them.

Schedule 2: Inquiries: Supplementary provision as to evidence

91. Paragraph 1 expands upon the ability of the Commissioner to require a person to give evidence. Where oral evidence is required, the Commissioner must give notice specifying the time and place the person should attend. In cases where persons are requested to provide documents or other information, the Commissioner must specify the documents (or type of documents or other information) requested and the date by which they should be produced. In all cases, the Commissioner is required to inform the person in question of the matters to which the request relates.

92. Any person required to give any form of evidence to the Commissioner may apply to the sheriff for cancellation of any requirement imposed by the notice. The sheriff may allow this only if he or she is satisfied that the requirement is unnecessary – i.e. it is unconnected to the matter being investigated, undesirable for reasons of national security or considered by the sheriff to be otherwise unreasonable.

93. Paragraph 3 empowers the Commissioner to administer an oath to any person giving evidence and to require any such person to take an oath.

94. The fourth paragraph allows the Commissioner, following the service of a notice under paragraph 1, to refer uncooperative or obstructive persons to the Court of Session. The Commissioner could take this action where a person refuses or fails to comply with any requirement specified in the notice without reasonable excuse including failing to attend at a hearing, where a person refuses to take an oath when so required or to answer questions relevant to the matter at hand, or where a person deliberately destroys, conceals, alters or withholds documents.
95. On hearing any evidence or representations on a report of obstruction, the Court of Session may make such an order for enforcement as it deems necessary or deal with the matter as if it were a contempt of the court.

96. In accordance with paragraph 5, the Commissioner can pay allowances and expenses to any individual giving information of any kind in response to a notice under paragraph 1, subject to the approval of the Parliamentary corporation.

**Schedule 3: Places of detention: powers of entry, inspection or interview**

97. Schedule 3 expands upon the powers of entry, inspection and review granted to the Commissioner in Section 8 and sets out procedures for the exercise of these powers. Paragraph 1 requires the Commissioner to give at least fourteen days’ notice to the manager of any place he or she intends to inspect or in which he or she wishes to conduct an interview with an incarcerated person. The notice must specify the place of detention which the Commissioner wishes to enter and the date and time at which the Commissioner wishes to attend. The Commissioner must provide with this notice a copy of the terms of reference for the inquiry to which his or her visit relates.

98. The Commissioner may delegate the power to enter places of detention to another person, but paragraph 2 provides that the person must be able to produce evidence that such power has been delegated to him or her.

99. A person who has received notice of the Commissioner’s intent to exercise the power to enter places of detention can apply to the sheriff under paragraph 3 for cancellation of the Commissioner’s power to act upon that notice. The sheriff may cancel the power if satisfied that the proposed inspection or interview is irrelevant to achieving the aims of the Commissioner’s inquiry or is undesirable for reasons of national security. The sheriff can also do so if content that the proposed inspection or interview is otherwise unreasonable.

100. Paragraph 4 allows the Commissioner to report any person intentionally obstructing the Commissioner or authorised person from exercising this power to the Court of Session.

101. After hearing any evidence or representations on the matter, the Court of Session may make such an order for enforcement as it sees fit or may deal with the matter as a contempt of court.

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**FINANCIAL MEMORANDUM**

**INTRODUCTION**

102. The costs associated with this Bill will fall upon the Scottish Parliament.
103. These costs will relate primarily to the operations of the Scottish Commissioner for Human Rights, including the running of the Commissioner’s office. It is estimated that these costs will be in the region of £1 million per year. There will however also be costs associated with the establishment of the Commissioner. These will include costs in relation to the process of appointing the Commissioner and Deputy Commissioners, recruiting staff and setting up the Commissioner’s office. These set-up costs, which should be non-recurring, are estimated at around £208,000.

104. These figures are only estimates since the details of the structure and working arrangements of the Commissioner’s office will for the most part be for the Commissioner himself to decide. Decisions on certain matters, such as the number of staff and the location of the Commissioner’s office, will be subject to the approval of the Scottish Parliament Corporate Body (SPCB). The estimated cost figures are based on a number of assumptions about how the Commissioner’s office might be structured and examples of other bodies that fulfil similar roles.

COSTS ON THE SCOTTISH PARLIAMENT

105. The Commissioner will be publicly funded by the SPCB. The Scottish Executive will transfer funding to the Parliament of £1m per year from 2006-07 to meet the costs of the Commissioner.

Commissioner Salaries

106. There is to be a single Scottish Commissioner for Human Rights and up to two deputy Commissioners. The policy presumption is that the post of Commissioner will be a full-time appointment. There is however a degree of flexibility within the Bill as to the full- or part-time nature of Commissioner posts: the Commissioner or a deputy Commissioner will be able to hold another office or other employment if the SPCB agrees.

107. The Commissioner is expected to have a broadly similar status to the Commissioner for Children and Young People and the Freedom of Information Commissioner. These posts are full-time roles promoting good practice and providing information, which attract salaries between £70,000 and £75,000 per year. The Scottish Public Services Ombudsman is the only existing similar statutory body in Scotland which has more than one commissioner or ombudsman. It has a full-time Ombudsman, whose salary is between £70,000 and £75,000 per year, and three part-time deputy ombudsmen, each receiving an annual salary of £25,000. The Children’s Commissioner in Wales has three Deputy Commissioners, each of whom is paid an annual salary of £35,000 to £45,000.

108. If salaries for the Scottish Commissioner for Human Rights and deputy Commissioners follow the models of existing Scottish statutory bodies, it is estimated that the Commissioner would be paid a salary of between £70,000 and £75,000 per year and the deputy Commissioners salaries of between £45,000 and £55,000. The salary differential between the Commissioner and the deputy Commissioners is thought to be justified by the Commissioner’s overall responsibility for the operations of his or her office and likely enhanced public role.
109. Including 30% for National Insurance and pension contributions, the total cost for the Scottish Commissioner and two deputy Commissioners based on these salary assumptions would be around £208,000 and £240,500.

Recruitment

110. Costs will be incurred in recruiting the Commissioner and any deputy Commissioners, such as the cost of placing adverts for such vacancies in the national press. It is estimated that this could cost between £7,500 and £15,000. However this may vary, depending for instance on whether the vacancies are advertised separately or all at once.

111. One of the initial tasks in setting up the Commissioner’s office will be to recruit staff. Recruitment costs will depend largely on decisions about what staff posts will be needed and the nature and level of skills and experience required for each post. Posts will then need to be advertised and filled. This is likely to require specialist advice and services, most likely from a recruitment consultancy.

112. The experience of the Children’s Commissioner in Wales shows that approximately 10% of the annual budget was spent in the first year on recruitment. If this figure were mirrored in Scotland, the total cost of recruitment would be £100,000.

113. This level of recruitment activity should not be required every year, since it is not anticipated that there will be a high staff turnover. Therefore only a small proportion of this cost needs to be retained as ongoing for this purpose.

Staff

114. It will be for the Commissioner to decide on the number and composition of staff and their terms and conditions of service, subject to the approval of the SPCB. This memorandum therefore cannot prescribe what the staff of the Commission should be, but certain assumptions have been made for budgeting purposes.

115. A number of comparative models from the UK and further afield were considered. These included the Irish Human Rights Commission, which has 11 staff; the Northern Ireland Human Rights Commission, which has 16 full-time equivalent posts; the Children’s Commissioner for Wales, who has 17 staff; and the Scottish Information Commissioner, who has 13 staff. While these bodies are helpful examples in terms of general size and structure, all of them have a role in handling or supporting individual complaints or cases, which can be particularly labour intensive. The SHRC will not have such a role and it would therefore be reasonable to expect that its staff may be slightly smaller than some of the above examples.

116. The Bill includes a provision that the Scottish Commissioner for Human Rights will be required to appoint a Chief Executive. For the purposes of this memorandum, and based on the models described above, we have assumed that the Commissioner’s office will have around 10 staff (including the Chief Executive).
117. On this basis, and making salary assumptions based on the Scottish Executive’s pay and grading structure, it is estimated that salary costs for staff (including the Chief Executive) would amount to around £350,000 (including pensions and National Insurance contributions). This costing has been conducted on the assumption that all staff will be full-time.

118. It is anticipated that the Commissioner will not be established at the start of the financial year 2006-07. It will be for Parliament to decide when to appoint the Commissioner and deputy Commissioners, but it seems unlikely that they will be appointed before the summer of 2006. Experience suggests that it takes some time for statutory bodies such as the Commissioner to become fully staffed and operational. For the purposes of this memorandum it is therefore assumed that total salary costs in 2006-07 will be approximately half the anticipated full-year total.

119. An additional annual cost of £10,000 has been assumed for staff training.

Rental costs

120. For the purposes of this memorandum it is assumed that the Commission will have one office and that this will be rented. The cost of that office will of course depend on the location, size and nature of the actual premises chosen. The location of the Commission will be a matter for the Commission to decide, subject to the approval of the SPCB. Having considered the experience of other comparable bodies we have allowed around £75,000 per year to cover rental costs. It will probably be necessary for expert property and legal services to be bought in to assist in identifying and securing suitable premises, and it may also be necessary for some works to be done to the chosen property to make it suitable for occupation by the Commissioner and his or her staff. For the purposes of this memorandum we have estimated these costs as being between £75,000 and £100,000.

Cost of office equipment etc

121. The Commissioner’s office will require office furniture, IT equipment, telephones, etc. A substantial cost is likely to be incurred in the first year, although an annual budget will be required to cover costs of maintenance and upgrading. Based on the experience of the Northern Ireland Human Rights Commission a first year cost of between £100,000 and £120,000 has been assumed, with an annual cost of between £5,000 and £10,000 thereafter.

122. There will also be other running costs associated with the Commissioner’s premises, such as utility bills and cleaning costs. There will also be administrative costs for items such as postage, hospitality, purchase of publications and so on. Having considered the experience of other comparable bodies we estimate that these costs are likely to amount to around £80,000 a year.

Travel costs

123. The Commissioner will be responsible for promoting human rights throughout Scotland. The Commissioner, deputy Commissioners and staff are likely to have to attend meetings and events and undertake investigations throughout the country. Additionally, they are likely to travel abroad on occasion to attend meetings and hearings at institutions such as the UN and the Council of Europe, as well as participating in events and observing good practice in other
countries. We think it reasonable to allow between £15,000 and £20,000 a year to cover such costs.

**Promotion and awareness-raising**

124. The overarching role of the Commissioner will be to promote and raise awareness of human rights. It is therefore expected that the Commissioner will undertake a wide range of promotional and awareness-raising activities. These might include commissioning or producing guidance publications for public authorities and members of the public; arranging events such as conferences, seminars or workshops; and raising awareness of particular issues through marketing campaigns. We have assumed an annual budget of between £150,000 and £200,000 for such events.

125. Although we have assumed for costing purposes that the Commissioner’s office will not come fully into operation until well into the 2006-07 financial year, we expect that it may wish to devote extra effort to its promotional and awareness-raising activities in its first year of operation in order to highlight the fact of its creation. We have therefore assumed for planning purposes that expenditure in 2006-07 on such activities and also on travel will be at the same level as for subsequent years.

**Research**

126. The Commissioner may wish to undertake research on key human rights issues. The cost of commissioning research can vary widely. In the Executive’s experience small projects can cost in the region of £10,000 to £15,000 each. Large projects, involving labour intensive surveys or complex analysis, can cost £30,000 to £35,000. A budget of £50,000 has been assumed, on the basis that the Commissioner may be unlikely to want to conduct more than one large research project in the course of a single year. A smaller amount has been assumed for the Commissioner’s first year of operation.

**Income**

127. The Commissioner is to be able to charge reasonable fees in connection with his or her information-related activities. For instance, the Commissioner may wish to charge for attendance at training seminars. Any income from such fees would be offset against the Commissioner’s expenditure. We have no basis on which to estimate how much income might be generated by this means, and so our estimates of costs do not take account of potential income.

**Total costs expected to fall on the Scottish Parliament**

128. The table below summarises the estimated costs associated with the Commissioner, based on the figures given in paragraphs 102 - 126 above. Where a range of costs has been given the mid-point of that range is shown in the table.
These documents relate to the Scottish Commissioner for Human Rights Bill (SP Bill 48) as introduced in the Scottish Parliament on 7 October 2005

<table>
<thead>
<tr>
<th>Staff costs</th>
<th>2006-07</th>
<th>Subsequent years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recruitment of Commissioners (para. 9)</td>
<td>11,000</td>
<td>01</td>
</tr>
<tr>
<td>Commissioners’ salaries (para. 8)</td>
<td>112,000</td>
<td>224,000</td>
</tr>
<tr>
<td>Recruitment of staff (para. 11)</td>
<td>100,000</td>
<td>6,000</td>
</tr>
<tr>
<td>Staff salaries (para. 16)</td>
<td>175,000</td>
<td>350,000</td>
</tr>
<tr>
<td>Training (para. 18)</td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td>408,000</td>
<td>590,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Office costs</th>
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</thead>
<tbody>
<tr>
<td>Rent (para. 19)</td>
<td>38,000</td>
<td>75,000</td>
</tr>
<tr>
<td>Acquisition and conversion (para. 19)</td>
<td>88,000</td>
<td>0</td>
</tr>
<tr>
<td>Equipment (para. 20)</td>
<td>110,000</td>
<td>8,000</td>
</tr>
<tr>
<td>Running costs (para. 21)</td>
<td>40,000</td>
<td>80,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td>276,000</td>
<td>163,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Functional costs</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel (para. 22)</td>
<td>9,000</td>
<td>18,000</td>
</tr>
<tr>
<td>Promotion and awareness-raising (para. 23)</td>
<td>175,000</td>
<td>175,000</td>
</tr>
<tr>
<td>Research (para. 25)</td>
<td>25,000</td>
<td>50,000</td>
</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td>209,000</td>
<td>243,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>893,000</td>
<td>996,000</td>
</tr>
</tbody>
</table>

129. As stated above, these figures are an example of how the Commissioner’s budget might look. The exact structure of the budget will depend on decisions made by the Scottish Parliament and the Commissioner. These examples are intended to demonstrate why the Executive considers an annual budget in the order of £1 million to be appropriate, rather than to prescribe exactly how such a budget should be spent.

**COSTS ON LOCAL AUTHORITIES**

130. It is not anticipated that the provisions will impose any direct costs on local authorities. An authority might incur costs in connection with an inquiry by the Commissioner, but it is not possible to estimate these in advance. Such costs would not in any event be recurrent, and would mainly reflect the cost of staff time in providing information to the Commissioner.

131. It is possible that local authorities may incur costs in responding to recommendations or suggestions by the Commissioner to change their policies and practices in respect of human rights. However, the Commissioner will not have any power to direct local authorities to take, or refrain from taking, any action to change their policies and practices; and so local authorities will not be required as a matter of law to incur any expenditure in response to any recommendations or suggestions from the Commissioner. Any such expenditure that local authorities do incur will therefore arise because the authorities choose to incur it rather than through their being under any legal obligation to do so. Similarly, the Commissioner will not be able to directly change the

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1 No provision is shown for Commissioner recruitment costs for subsequent years because the Commissioner and deputies will serve terms of up to 5 years and so recruitment will only be an occasional activity.
These documents relate to the Scottish Commissioner for Human Rights Bill (SP Bill 48) as introduced in the Scottish Parliament on 7 October 2005

substantive law and so any costs incurred by authorities will arise in connection with obligations under existing human rights law.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

132. It is not anticipated that the provisions will impose any direct costs on other bodies, individuals or businesses. Although there might be costs associated with responding to requests from the Commissioner for information in connection with inquiries, these are expected to be marginal and occasional. In any case, the Commissioner will only be able to conduct inquiries into the policies and practices of private bodies to the extent that they fall within the definition of “public authority” in terms of the Human Rights Act 1998. For the same reason, recommendations or suggestions by the Commissioner will usually not apply to private bodies or persons, and so the cost of implementing such recommendations or suggestions should not be an issue.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

133. On 7 October 2005, the Minister for Justice (Cathy Jamieson) made the following statement:

“In my view, the provisions of the Scottish Commissioner for Human Rights Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

134. On 7 October 2005, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Scottish Commissioner for Human Rights Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Scottish Commissioner for Human Rights Bill (SP Bill 48) as introduced in the Scottish Parliament on 7 October 2005

SCOTTISH COMMISSIONER FOR HUMAN RIGHTS BILL

EXPLANATORY NOTES

(A ND OTHER ACCOMPANYING DOCUMENTS)


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