The Committee will meet at 10.00 am in Committee Room 2 to consider the following agenda items:

1. **Schools (Health Promotion and Nutrition) (Scotland) Bill and Education (School Meals etc.) (Scotland) Bill:** The Committee will take evidence on the Financial Memoranda from—
   
   Councillor Charles Gray, COSLA Education Spokesperson; and Fergus Chambers, Director of Direct and Care Services, Glasgow City Council.

2. **Post-legislative scrutiny and Policy and Financial Management Reviews:** The Committee will consider correspondence from the Scottish Executive.

3. **Correspondence from the Procedures Committee:** The Committee will consider correspondence from the Procedures Committee in relation to a proposed change to Standing Orders regarding Statutory Instruments.

   *Not before 11.15 am*

4. **Commissioner for Older People (Scotland) Bill:** The Committee will take evidence on the Financial Memorandum from—

   Alex Neil MSP; David Cullum, Clerk Team Leader, Non-Executive Bills Unit; and Claire Menzies-Smith, Senior Assistant Clerk, Non-Executive Bills Unit.

5. **Scottish Executive Budget Review Group:** The Committee will consider a proposal from the Deputy Convener relating to the work of the Scottish Executive’s Budget Review Group.

   Susan Duffy  
   Clerk to the Committee  
   Room T3.60  
   Extn 85215
The papers for this meeting are:

**Agenda Item 1**

Submissions from:
- COSLA;
- HMIE;
- Scottish Food and Drink Federation; and
- Scottish Health Promoting Schools Unit.

_Schools (Health Promotion and Nutrition) (Scotland)_ Bill and accompanying documents (previously circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

_Education (School Meals) (Scotland)_ Bill and accompanying documents (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

_Schools (Health Promotion and Nutrition) (Scotland)_ Bill SPICe Briefing (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

_Education (School Meals) (Scotland)_ Bill SPICe Briefing (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

PRIVATE PAPER

**Agenda Item 2**

Paper from the Clerk

**Agenda Item 3**

Paper from the Clerk

**Agenda Item 4**

Submission from the Scottish Parliamentary Corporate Body

_Commissioner for Older People (Scotland) Bill_ and accompanying documents (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

_Commissioner for Older People (Scotland) Bill_ SPICe Briefing (circulated to Members in hardcopy only, copies available from the Scottish Parliament website)

PRIVATE PAPER
Finance Committee

25th Meeting 2006 – Tuesday 31 October 2006

Scrutiny of Financial Memoranda – Evidence on the Schools (Health Promotion and Nutrition) (Scotland) Bill and the Education (School Meals etc.) (Scotland) Bill

1. The Schools (Health Promotion and Nutrition) (Scotland) Bill was introduced to Parliament on 8 September 2006. The Education (School Meals etc.) (Scotland) Bill was introduced to Parliament on 27 September 2006.

2. The Communities Committee has been designated the lead committee for both bills at Stage 1.

3. The Finance Committee agreed at its meeting on 19 September to adopt a level 3 approach to its scrutiny of the Financial Memorandum of the Schools (Health Promotion and Nutrition) (Scotland) Bill. Specifically, the Committee agreed to issue its standard questionnaire to potentially affected organisations and take oral evidence from COSLA followed by evidence from Executive officials.

4. At its meeting on 3 October 2006, The Finance Committee agreed that, given the similarity in subject matter, the financial memoranda of the Education (School Meals etc.) (Scotland) Bill should be considered in conjunction with the Schools (Health Promotion and Nutrition) (Scotland) Bill.

5. The evidence session on 31 October will consist of one panel of representatives from the COSLA. The Committee will then take evidence from Frances Curran MSP on the Education (School Meals etc.) (Scotland) Bill and then from Executive officials on the Schools (Health Promotion and Nutrition) (Scotland) Bill on 7 November.

6. The following responses to the questionnaire have been received so far and these are attached:
   - COSLA;
   - HMIE;
   - Scottish Food and Drink Federation; and
   - Scottish Health Promoting Schools Unit.

Susan Duffy
Clerk to the Finance Committee
SUBMISSION FROM COSLA

INTRODUCTION
COSLA welcomes the opportunity to provide evidence on the Financial Memorandums of the Schools (Health Promotion and Nutrition) (Scotland) and the Education (School Meals etc) Scotland Bills.

The evidence on the Schools (Health Promotion and Nutrition) (Scotland) reflects the issues raised by local authorities in their individual consultation responses, and by elected members during debate at COSLA’s Education Executive Group.

COSLA recognises that the Scottish Executive has been working to a tight schedule, and while we would have welcomed additional time to consider the financial implications of the new nutritional standards, we have appreciated the Scottish Executive’s openness and willingness to discuss the development of the Bill.

COSLA’s position on the Education (School Meals etc) Scotland Bill will be debated by local authority Leaders on 27 October 2006. As a result this submission concentrates on the Scottish Executive’s Bill. COSLA will be happy to discuss the Education (School Meals etc) Scotland on 31 October, and to expand on points made on the Scottish Executive’s Bill

SUMMARY
We would like to make the following key points about the Schools (Health Promotion and Nutrition) (Scotland) Bill:

- COSLA supports the principle of high quality, nutritious meals and snack for children and young people, and the Scottish Executive’s goal of encouraging healthy eating. We also fully support the new power to provide health food, snacks and drinks free to pupils;

- Local authorities are already working towards these principles under Hungry for Success; as a result we remain uncertain that the Bill will add value to the existing efforts by councils to improve diets. The need for new duties is also questionable, as the Bill seems largely to be based on existing policy and the continuing efforts of local authorities. That said COSLA understands the desire of the Scottish Executive to formalise standards and underline progress on nutrition to date;

- The cost of the Bill’s proposals largely depends on the new nutritional standards, and the steps which councils will be expected to take to promote the uptake of meals. COSLA has argued since the Bill’s initial consultation that it is not possible to accurately cost the Bill without first analysing the new standards;

- The success of implementing the new standards will vary between Primary and Secondary schools. Secondary pupils have access to a wider range of retail outlets, and pupils will readily leave the school to purchase lunch, snacks and drinks, potentially negating the Bill’s positive health intentions.
• If the new standards do drive secondary pupils out of school to purchase lunch, snacks and drinks, then this will not only reduce local authority income, which can be considerable for snack and drink sales, but would increase the number of young people leaving the controlled environment of school during the day. This may be detrimental to pupil safety, health and well being;

• While these are not arguments against providing healthy snacks and drinks, they do highlight the need for a realistic approach to nutrition, which takes into account young people’s attitudes and aspirations. We also urge the Scottish Executive to allow a phased introduction of new standards for snacks and drinks, giving pupils time to adjust to the new range of snacks and drinks, and thereby limiting any loss of income.

• Increasing the uptake of school meals will only be achieved if pupils actually want to eat the meals provided, and if the dining experience is positive and comparable with high street competitors. With the help of Hungry for Success local authorities have been attempting to make the school dining experience more attractive to pupils. However, it should be noted that meeting secondary pupils’ increasingly sophisticated attitude to dining can require considerable investment by the local authority; and

• In complying with the duty to promote school meals, COSLA would seek the Committee’s support in requesting clarification from the Minister for Education and Young People, that local authorities will not be required by the duty to increase capacity beyond a school’s current limitations, as to do so would require additional capital investment;

QUESTIONS

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

COSLA took part in the Scottish Executive’s consultation on the Schools (Health Promotion and Nutrition) Bill. A copy of COSLA’s submission is available at: www.cosla.gov.uk/attachments/publications/Schoolnutrition.doc

As part of this consultation exercise COSLA did comment on the assumptions made in the draft financial memorandum. These comments were of a general nature, and were intended to raise points of principle as well as issues which required clarification. Since the consultation closed COSLA has worked closely with the Scottish Executive to try resolve the issues raised in our response.

COSLA did not respond to the consultation on the Education (School Meals etc) Scotland Bill

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
The central point which we made in our consultation submission on the Scottish Executive’s Bill is that the full cost implications of the Bill cannot be quantified until the new nutritional standards have been published. We understand from the Scottish Executive that the standards will be available shortly, but at the time of writing we have not seen the independent nutrition panel’s proposals.

The assumption in the financial memorandum that local authorities’ costs will not increase significantly as councils are already complying with Hungry for Success, only holds if the new standards are not significantly different to those set in Hungry for Success. Moreover, the duty to maintain standards applies not just to school lunches, but to all food and snacks prepared for schools and nurseries etc. The new standards are therefore crucial in determining the true cost of the Bill.

The Scottish Executive acknowledges our concerns on this issue, and has agreed to share the new standards with us as soon as possible. They have also indicated that the new standards will form part of secondary legislation which will be published next year. We will certainly scrutinise carefully the draft regulations. Nevertheless, given the principles of the Bill are being debated at stage 1 it would have been preferable that the standards had been prepared well in advance, to give everyone a chance to debate whether the legislation is practical, achievable and represents Best Value.

3 Did you have sufficient time to contribute to the consultation exercise?

The consultation exercise was shorter than perhaps would normally be expected for a Bill. This has not proved to be a significant problem for COSLA, although as stated above we would have welcomed time to consider the potential impact of the new nutritional standards before presenting evidence to the Committee.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

In general the financial memorandum does correctly highlight the possible cost implication for local authorities. We have listed below the main issues and their associated financial implications.

Nutritional Standards

COSLA fully supports the principle of high quality, nutritious meals and snacks. While we share the health improvement objectives of the Scottish Executive, COSLA is aware of the limitation that a legal duty can have in encouraging health eating. This is why we have urged the Scottish Executive to take a pragmatic approach to setting new standards, which recognises that young people at secondary school can freely choose not to eat lunch or purchase snacks in school.

If the new nutritional standards do not change significantly from those set under Hungry for Success, then we expect the cost of preparing lunches for pupils at primary and secondary schools not to increase substantially. If standards do change radically then this will have implications for the way food is prepared and on
the ingredients used. This could in turn affect staff training, and could even mean catering contracts having to be re-negotiated. The costs of revisiting contracts in PPP schools could be considerable. We are highlighting these as potential issues which the Committee should be aware of, but they are not possible to quantify at this stage.

The new standards will also apply to all snacks and drinks sold in schools. If as expected the new standards mean popular snacks and drinks will no longer be sold in vending machines and tuck shops, it is to be expected that there will some impact on income. One local authority indicated that vending machines contribute 13% (£500,000) of the income generated by the school catering service. An officer from Glasgow City Council will provide evidence on COSLA’s behalf on 31 October, and will be able to expand on this issue. Glasgow City Council has considerable experience of introducing healthy food and snacks, and was an early adopter of Hungry for Success.

It must be emphasised that health promotion measures which work well in Primary Schools will not necessarily be as successful in Secondary Schools. Primary pupils do not have the option of leaving school to buy food, snacks and drinks, while secondary pupils are free to buy snacks and drinks from local outlets.

There is some evidence that a phased approach to introducing health snacks can limit income loss, and reduce the risk of pupils shifting their buying power to outside the school. While supporting the principle of introducing health drinks and snack, COSLA urges the Scottish Executive to take a considered approach to the sale of snack and drinks, giving pupils time to adjust to the new range of snacks and drinks. If this does not happen, pupils are likely to leave the school and buy unhealthy snacks anyway, completely negating the positive aims of the Bill.

Promotion of school lunches
The financial memorandum of the Bill states that no additional costs are anticipated for local authorities in promoting the uptake of free school meals, beyond the cost of implementing Hungry for Success.

The accuracy of this statement depends on the steps that local authorities will be expected to take to increase uptake. We would therefore seek the Committee’s help in requesting clarification from the Minister for Education and Children that, in complying with the duty, local authorities will not be required to increase school dining capacity beyond the current, locally determined limit. Local authorities will continue to implement innovative ways of incentivising, promoting, encouraging school meals, but compliance with the duty must stop short of additional capital investment in the school estate.

We remain to be convinced that placing a legal duty on local authorities will directly lead to pupils actually choosing to eat in school. To draw a parallel with waste recycling, local authorities can provide the facilities required for householders to recycle, but cannot actually make people recycle. Pupils will only choose school meals over the many other alternatives available if they like the food served, the dining facilities are attractive and the level of service is comparable or better than high street providers.
Meeting pupil aspirations requires considerable investment by the local authority. The branding of school dining, and the continuing need to refresh promotional material all add to local authority costs. This is another area which Glasgow City Council will be able to provide the Committee with additional evidence on 31 October.

Protection of identity
An initial survey of selected local authorities suggested that the Scottish Executive’s estimated costs for introducing anonymous or cashless systems are accurate. We believe that the start-up and running costs for swipe card systems are line with local authority experience in implementing Hungry for Success.

It is important that local authorities are able to implement anonymous systems that are appropriate to each school. Swipe card systems will not be appropriate in all schools, especially smaller primary schools, so we therefore welcome the Bill’s intention to give local authorities the flexibility to implement systems which meet their needs.

However, on a general point COSLA believes that anonymous systems do not tackle the underlying causes of the stigma associated with free school meals. This stigma is partially caused by the perception that school meals are a ‘last resort’ and only for those that cannot afford alternatives. This can be tackled by making school meals a more attractive option for secondary school pupils. While we accept the need to protect the identity of pupils who receive free school meals, we do question the need for a legal duty when 71% of all secondary schools already have anonymous systems in places.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As stated previously the full costs cannot be quantified until the new nutritional standards are known, and we have had a change to analyse their full implications. We have highlighted in this submission potential issues which could arise if the standards are significantly different from those set in Hungry for Success.

The funding provided by the Scottish Executive for Hungry for Success has been very welcome, however, the formalisation of Hungry for Success in new statutory duties, equally requires a commitment by the Scottish Executive to fully fund implementation in the future. As Hungry for Success is only funded up until the end of this spending review period, and the aim of the Bill is to mainstream health promotion in schools, we would expect that future funding for the Bill’s duties to be maintained at least at current levels, plus inflation, and merged into GAE.

In addition, investment in branding, promotion and new dining hall equipment (e.g. flat screen TVs for display purposes), coupled at least initially to a possible reduction in income, has the potential to add up to spending pressure on local authorities, even taking into account Scottish Executive funding. COSLA will provide an indication of the practical costs of implementing Hungry for Success on 31 October 2006.
6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

This submission highlights some of the potential issues which could contribute to uncertainty in the total cost of the implementing the Bill.

**Wider Issues**

7. *If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?*

COSLA has nothing more to add in answering this question.

8. *Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?*

As stated throughout this submission the actual cost of the Bill will depend largely on the regulations, which will contain the new nutritional standards.

**CONCLUSION**

Although all local authorities work within the framework of *Hungry for Success*, the consequences of implementing the Bill and therefore its costs will depend largely on local factors, such as the school estate and the community served. It is therefore difficult to build a national picture of the Bill’s true costs.

What we have attempted to do is highlight to the Committee some of the general issues and areas of financial concern. To help illustrate these general issues and concerns, COSLA will provide practical examples of the costs arising from implementing *Hungry for Success* in oral evidence.

Although we believe that the Bill will be largely funded from *Hungry for Success*, there is significant uncertainty on the impact of the new nutritional standards, and the extent to which councils will be expected to promote school meal uptake. COSLA is happy to provide supplementary evidence on the financial implications of the Bill once we have analysed the impact of the new nutritional standards.
SUBMISSION FROM HMIE

SCHOOLS (HEALTH PROMOTION AND NUTRITION) (SCOTLAND) BILL – FINANCIAL MEMORANDUM

Consultation
1. HMIE do not take part in formal consultations of this kind. We provided professional advice to policy colleagues in discussions about the Bill and were consulted about possible financial implications for HMIE.

2. Yes. HMIE attended a meeting with policy colleagues and stakeholders to consider the financial implications of the Bill. This meeting informed the estimates used in the financial memorandum.

3. Not applicable.

Costs
4. The memorandum indicates that no additional costs will be incurred as a result of the Bill. HMIE will adapt its arrangements for inspection and reporting associated with the Hungry for Success initiative to take account of the new legislation.

5. Yes. As part of Hungry for Success, HMIE undertook to absorb half of the costs of employing three Nutrition Associate Assessors (NAAs). The remaining costs are met by SEED. In the light of increased emphasis on nutrition and health education and promotion, SEED agreed to meet the full costs of a fourth NAA who has now been appointed to strengthen the team.

6. Given that we anticipate no additional costs this question is not really applicable.

Wider issues
7. The Bill is part of a wider policy initiative on health education and promotion. The many strands of activity in this area make it difficult for HMIE to comment on costs. HMIE’s own activities in this area include inspection and reporting, the dissemination of good practice, the provision of policy advice and partnership work with other agencies involved in health promotion. This is a well-established part of the work of HMIE and will continue to be funded as part of our core business unless there is a significant increase in the scale of work required.

8. As indicated in the Financial Memorandum, some modest costs may be incurred in providing additional advice. If uptake of meals increases, there could be capital costs for some education authorities.
EDUCATION (SCHOOL MEALS etc) (SCOTLAND) BILL – FINANCIAL MEMORANDUM

Consultation
1. HMIE do not take part in formal consultations of this kind. We provide professional advice to policy colleagues on matters relating to school meals

2. HMIE has not been involved in discussions relating to this Financial Memorandum.

3. Not applicable.

Costs
4. The Financial Memorandum does not indicate any additional work for HMIE or costs for HMIE. The Policy Memorandum indicates a possible role for HMIE in responding to complaints from pupils or parents about nutritional standards but no cost implications are included.

5. The only additional cost would be if HMIE were involved in responding to complaints about nutrition (as in 4 above). There would be no other additional costs to those already incurred by HMIE in supporting its work on health education and promotion and in supporting the Hungry for Success initiative through its team of Nutrition Associate Assessors.

6. We do not have expertise in estimating margins of uncertainty in financial costs.

Wider issues
7. The Bill is part of a wider policy initiative on health education and promotion. The many strands of activity in this area make it difficult for HMIE to comment on costs. HMIE’s own activities in this area include inspection and reporting, the dissemination of good practice, the provision of policy advice and partnership work with other agencies involved in health promotion. This is a well-established part of the work of HMIE and will continue to be funded as part of our core business unless there is a significant increase in the scale of work required.

8. If uptake of meals increases, there could be capital costs for some education authorities.
SUBMISSION FROM SCOTTISH FOOD AND DRINK ASSOCIATION

Schools (Health Promotion And Nutrition) (Scotland) Bill

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes. The SFDF response considered a wide range of issues addressed by the consultation including the potential financial impact of this Bill. In addition, two SFDF member companies provided written and oral evidence to a stakeholder session convened by the Executive on 29 June 2006 to discuss the financial implications of the Bill.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Paragraphs 61 and 62 of the Financial Memorandum relate to Costs on Other Bodies, Individuals and Businesses and cite some of the feedback provided by industry during the consultation exercise. However, the comments made regarding the product development cycle have only been partially reproduced and as such, do not give an accurate reflection of what was said and so does not fully reflect what we regard to be the potential impact of the Bill.

“The costs associated with product development (such as factory trials and redesigning packaging) have been absorbed by some manufacturers and have not resulted in higher prices for school catering services. It is not anticipated that the Bill will have any significant financial implications for food manufacturers as changes to nutritional requirements can be built into the product development cycle” (Paragraph 62)

Whilst it is true that food manufacturers can absorb some of the costs associated with reformulation into a product development cycle, the manufacturer has to be given sufficient time - a minimum of 2 years. This point was clearly made in SFDF’s response to the consultation and was also specifically referred to by an industry representative at the stakeholder session with time being described as a ‘key cost driver’. The company stressed - “If we do not keep them [the costs] within the normal development cycle they can have a serious impact on the business.

SFDF believes that these comments and the importance of allowing sufficient time to undertake product reformulation were not fully reflected in the Financial Memorandum.

“Some food manufacturers have reacted positively to Hungry for Success and see it as a good business opportunity. They have already developed and are in the process of developing new products that meet the nutritional requirements for vending machines as well as catering services” (Paragraph 62)
Whilst manufacturers continue to reformulate products and develop new products, the “nutritional requirements for vending machines” as proposed in the consultation are, as yet, unknown and therefore SFDF would question the basis upon which this assertion has been made.

“One food manufacturer has commented that healthy products are potentially viable and therefore there is not expected to be a substantial loss of revenue associated with the Bill”. (Paragraph 61)

The commercial viability of products which have been reformulated ultimately depends on consumer acceptance and this includes school children. Nutritional standards and reformulated products will only make a difference if people actually eat these products.

The viability of supplying food and drink products into schools will depend on how achievable the defined nutrition requirements are and also whether or not manufacturers are given sufficient time to undertake reformulation and absorb the costs that this work generates.

“It is expected that overall there will be no material loss of earnings from vending machines and tuck shops as a result of the Bill. However, evidence suggests that the impact of changing products to healthier options may vary across local authorities. One catering provider has reported losses as a result of removing certain products, whereas a local authority has not experienced any loss of earnings as healthier options were phased in to vending machines and tuck shops” (Paragraph 51)

SFDF recollects from the stakeholder session that one local authority noted that following the removal of certain products from its vending machines had resulted in a decrease in revenue of £100,000 p.a – a significant loss of revenue.

3 Did you have sufficient time to contribute to the consultation exercise?
Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill does not have financial implications for SFDF as an organisation, rather it will potentially have an impact on our members – food and drink manufacturers who supply products into schools.

Until further details of the nutrient requirements are known and the impact these will have in terms of what products can and cannot be sold in schools, which products need to be reformulated further in order to be offered in schools and in what timescale these changes need to happen it is difficult to accurately gauge the potential costs of the Bill on industry.
SUBMISSION FROM SCOTTISH HEALTH PROMOTING SCHOOLS UNIT

SCHOOLS (HEALTH PROMOTION AND NUTRITION) (SCOTLAND) BILL

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

   Yes The Scottish Health Promoting School Unit (SHPSU) participated in the consultation process in a number of ways:
   Providing a response on behalf of the SHPSU
   Encouraging and supporting widespread engagement of national and local partners in the consultation process (not directly considering the financial implications of the Bill)
   Participating in a facilitated discussion, organised by SEED and involving a wide range of key national and local partners, specifically to consider and comment on the financial implications of the Bill

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

   Yes

3. Did you have sufficient time to contribute to the consultation exercise?

   Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

   Yes

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

   Yes The Unit's priorities are established on an annual basis to concord with the needs of national and local partners in respect of implementing HPS related policy. As the Bill directly extends current policy and practice it is anticipated the existing allocation of finance would be re-aligned to support its implementation.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

   Yes
Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

In addition to the explicit reference made connecting the Bill to education and health improvement policy, the cross cutting nature of health promoting schools presents an opportunity to link with and extend other key policy areas e.g. Additional Support for Learning, Parental Involvement, School Estates, etc. I would anticipate no additional funding being required in respect of these connections being established: instead I suggest the Bill would be enhanced by developing coherence across these policy areas.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

It has been recognised additional guidance will be required in support of the Bill. Progress has already been made in this respect. Costs associated with the development of guidance are indicated within the memorandum.

At present, in addition to the contribution made currently by SEED and SEHD in support of the HPS agenda, several national agencies have agreed to forward key areas of work incorporating aspects of the health promoting school approach to April 2008. It would be beneficial to maintain the co-ordinated strategic partnership in order to collectively identify priorities, pool resources and jointly enhance capacity and further support implementation at local level.

EDUCATION (SCHOOL MEALS ETC) (SCOTLAND) BILL

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes The Scottish Health Promoting School Unit (SHPSU) participated in the consultation through providing a written response on behalf of SHPSU. This was informed by discussion with key partners such as the National HPS Network and NHS Health Scotland.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

No in two ways.

The wider health promotion aspects offered within the approach to Hungry for Success are not fully referenced in the financial memorandum.
The costs associated with ongoing support to Early years and Secondary sectors are not fully represented in the memorandum

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

No an element of SHPSU is to support healthy eating through an integrated approach to health promotion, as highlighted about the financial implications of this, in order that it might continue are not represented in the memorandum

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

No, this Bill proposes the reallocation of the resource currently in support of hungry for success which would have implications for the allocation to SHPSU however as the SHPSU has been established to support the implementation of policy in respect of health promotion in schools. The work of the SHPSU in respect of supporting the Bill would require to be renegotiated through the Strategic Policy partners and resources realigned to accommodate the outcome of this discussion

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

In addition to the explicit reference made connecting the Bill to social inclusion, social justice, education and health improvement policy. More could be done to connect this Bill to the wider educational context and policy. One of the strengths of Hungry for Success has been the approach to have school meal provision supported by a wider approach permeating all aspects of the school. It would be beneficial to continue this work and there would be additional requirement of resource to take this forward

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
I would anticipate additional guidance would be required to support local partners with this policy change. The costs associated with this are difficult to determine.
Finance Committee
25th Meeting 2006, Tuesday 31 October 2006

Scrutiny of Legislative Costs and Policy and Finance Management Reviews

Approach paper

Introduction

1. On 4 July the Convener wrote to the Scottish Executive Permanent Secretary requesting information on the progress of the review of the Policy and Financial Management Reviews (PFMR) mechanism and on the process by which the Executive monitors the actual cost of legislation against estimates as it is implemented. The Committee received a response on 4 October and this is reproduced at Annex A. The purpose of this paper is to outline possible further courses of action for the Committee in its consideration of these issues.

Scrutiny of legislative costs

Background

2. The Committee considered a paper at its meeting on 6 June which highlighted the recurring concerns raised by the Finance Committee in relation to the standard of information provided within financial memoranda (FMs). The Committee agreed that, as a first step towards ensuring that the Executive is adequately monitoring the actual costs of bills passed by Parliament, to write to the Executive asking for details on how the costs of legislation are tracked once legislation is enacted.

3. The Committee also agreed that, having considered the response, it may wish to hold an evidence session with the relevant Executive officials on one particular bill to compare the estimated costs in the FM and the actual costs.

4. Finally, the Committee agreed that, if after correspondence and an evidence session the Committee considered broader work needed to be done tracking costs, it could then suggest commissioning joint research with the Executive that would have the purpose of improving the production, and in turn the scrutiny of FMs.

Executive response

5. The response from the Permanent Secretary does not specifically outline any process followed by the Executive for monitoring the cost of the implementation of individual acts, it states that:

“Turning to the general question of the process for tracking post-legislative costs, the Executive monitors budgets which are set by Scottish Ministers to cover an activity or range of activities…Any significant variations in expenditure compared to budgets set previously are taken into account at that [Spending Review] stage.”
6. In relation to the Committee’s proposal to take evidence on a specific act the Permanent Secretary states that:

“We support the proposal for the Committee to conduct a case study of an individual piece of legislation, provided that the example captures current practice. The precise selection of witnesses is best left until the example is identified but we recognise that they would need to be able to speak both to the basis of the estimate of costs in the Financial Memorandum and to the factors which have determined actual costs.”

Evidence session
7. On the assumption that the Committee would still wish to hold an evidence session having considered this correspondence, clerks have considered possible acts upon which to base the evidence session following the criteria listed below:

- the act must have been enacted at least two years ago so that the actual cost of the fully implemented provisions have become apparent;
- the act must have been considered at level 3 scrutiny by the Committee in order to allow the Committee to consult key stakeholders which it originally heard oral evidence from on the FM;
- the subordinate legislation enabled by the act must have been passed and implemented;
- as suggested in the correspondence from the Permanent Secretary, the Executive’s most recent guidance on FM must have been available to the Bill team in its production of the FM; and
- ideally the act could be one for which the relevant subject committee is intending to undertake post-legislative scrutiny so that the Finance Committee’s work can inform this scrutiny.

Education (Additional Support for Learning) (Scotland) Act 2004
8. From the limited number of acts which fit all of the criteria above, the Education (Additional Support for Learning) (Scotland) Act 2004 would appear to be a candidate for an evidence session.

9. In its report on the Financial Memorandum for this Act the Finance Committee raised concerns, on the basis of oral evidence from CoSLA and NHS Confederation, that the definitions and policy intention of the Bill were not sufficiently clear. As a consequence, it appeared unclear as to which children the Bill’s provisions would apply and the Committee was concerned that this could lead to a significant underestimate in costs if local authority and health board interpretations of eligibility were broader than those intended by the Scottish Executive.

Witnesses and timetabling
10. It is proposed that the Committee could invite health board and local government representatives to attend the evidence session on this act to be followed by Scottish Executive officials.
11. As the Committee’s work programme is very full until the end of the year due to its consideration of a large number of pieces of legislation and its annual consideration of the budget process, it is envisaged that this evidence session would take place in January 2007.

12. Following this evidence session the Committee could then consider the possibility of commissioning joint research, the findings of which could be considered by the new Finance Committee in the next Parliamentary session.

Policy and Financial Management Reviews (PFMR)

Background
13. At its meeting on the 14 March the Committee agreed to undertake scrutiny of public bodies such as NDPBs or agencies, specifically in relation to whether they represent value for money and whether each of their specific classifications is appropriate to their task. Given the scale of this work, the Committee agreed the best approach would be to take evidence from the relevant Minister from bodies following the Executive’s production of a PFMR on a public body. Under the PFMR system, these reviews should occur once every five years and consider issues such as the requirement for the work undertaken by the body, whether the current government model is appropriate for service delivery and how performance could be improved.

14. The Committee wrote to the Executive setting out its intention and requesting a timetable for future reviews. The response intimated that a review of the PFMR system is currently being undertaken. The Committee wrote again on 4 July noting that those bodies due for review agree a timescale with sponsoring departments, and requesting that heads of departments inform the Committee when any PFMR or similar review is to commence, the likely timescale and whether a report will be published.

Executive response
15. The Permanent Secretary’s response notes that the Executive’s review of the PFMR mechanism is ongoing, that alongside that process the Executive would be ‘pleased to explore the Committee’s interest in these issues’ and that the Head of Public Bodies and Relocation Division will contact the Clerk to discuss these issues in more detail.
Conclusion

16. The Committee is invited to agree to:

- hold an evidence session with health board and local government representatives and Executive officials on the cost of the implementation of the Education (Additional Support for Learning) (Scotland) Act 2004;
- write to the Convener of the Education Committee to alert the Committee to this upcoming evidence session; and
- authorise the Clerk to enter into exploratory discussions with Executive officials in relation to the Committee’s scrutiny of public body reviews undertaken by the Executive. Once such discussions have taken place, the matter will be referred back to the Committee.

Roz Wheeler                      Ross Burnside
Senior Assistant Clerk          Senior Research Specialist
Finance Committee               SPICe
Dear Susan

Thank you for your letter of 4 July on behalf of the Finance Committee raising two issues – the scrutiny of legislative costs after legislation is enacted and the Policy and Financial Management Reviews (PFMRs) undertaken of NDPBs. I note that these issues were raised with the Minister for Finance and Public Sector Reform during his evidence to the Committee’s Inquiry on Governance and Accountability of Parliamentary Ombudsmen and Commissioners.

I attach belated responses covering each of these issues. If you require any further clarification on the detail of these responses the relevant contact for the scrutiny of legislative costs is Aileen Wright, Head of Finance: Accountancy, Reporting & Governance (tel: 0131 244 7355, aileen.wright@scotland.gsi.gov.uk); and the contact for PFMRs is Neil Rennick, Head of Public Bodies & Relocation Division (tel: 0131 244 0924, neil.rennick@scotland.gsi.gov.uk)

I hope the Committee finds this response helpful.

JOHN ELVIDGE
ANNEX A

SCRUTINY OF LEGISLATIVE COSTS

Bill teams are normally disbanded following the passage of legislation and, while individuals may remain within the relevant policy area in some capacity, it is likely that after a period of years they will have moved on. The Committee may wish to bear this in mind in considering the possibility of taking evidence about estimated and actual costs from the Bill teams responsible for piloting legislation through the Parliament. The people in the best position to provide explanations of any variations between the estimates in the Financial Memoranda (FMs) and the actual costs are likely to be the teams with more up to date responsibility for policy in those areas.

It may be helpful to comment on the paper submitted to the Finance Committee on 16 June. While the Committee is understandably concerned about those instances where FMs include uncosted elements, we believe it is generally acknowledged that the standard of information provided has improved markedly since the putting in place of our internal guidance on their preparation. It would seem, therefore, that much of the criticism of FMs in the paper relates to an earlier period.

The Executive is concerned to improve the quality of the financial information put before the Parliament during the legislative process; and always aims for full compliance with Standing Orders and our own internal guidance. As you know, the Executive has worked closely with the Committee to develop the existing guidance. There is a continuing issue with regard to uncosted elements as a result of uncompleted or planned consultations and politically or commercially sensitive negotiations with stakeholders, but such occurrences are relatively rare. Almost all of the FMs suggested to the Committee for the comparing of estimated and actual costs predate our first Finance Guidance Note on their preparation. The choice of such an FM would not seem very likely to provide the Committee with an opportunity to make findings relevant to current practice and procedures.

The paper also highlighted concerns raised by the Parliament's Audit Committee about the financial planning and tracking of the costs of free personal care. While it is perfectly reasonable to list the Audit Committee's criticisms, the Finance Committee might have received a more balanced picture if it had also been provided with the Executive's formal responses. The Finance Committee may also have been interested in the Audit Committee's acknowledgement of the constraints under which the Executive was working with regard to the timetable for introduction of the legislation.

Turning to the general question of the process for tracking post-legislative costs, the Executive monitors budgets which are set by the Scottish Ministers to cover an activity or range of activities. As the Committee are aware, the budgets, either separately or at an aggregated level, are authorised by the Parliament in the annual Budget Act. The continuing need for activities giving rise to expenditure and the level of individual budgets, including budgets for public bodies and local authorities, are considered by Ministers in the course of Spending Reviews and, where appropriate, on an ad-hoc basis. Any significant variations in expenditure compared to budgets
set previously (as a result, for example, of lower or higher than expected take-up of provision) are taken into account at that stage.

While we recognise the attractions to Committees of being able to review figures for the “actual” costs of legislation which they have scrutinised, individual budgets set within the Executive or local authorities will not necessarily fit precisely with the costs arising from a particular enactment or an individual statutory provision. (It is important, in this context, to note that, other than specific grants, individual local authorities have discretion over how their overall budgets are actually spent.) Where budgets at the disaggregated level are not concerned wholly with a cost arising from the legislation, the outturn figures would inevitably involve a degree of estimating. The assessment of actual costs falling on individuals or businesses may well involve additional uncertainties.

We support the proposal for the Committee to conduct a case study of an individual piece of legislation, provided that the example captures current practice. The precise selection of witnesses is best left until the example is identified but we recognise that they would need to be able to speak both to the basis of the estimate of costs in the Financial Memorandum and to the factors which have determined actual costs.
ANNEX B

POLICY AND FINANCE MANAGEMENT REVIEWS

Following an initial exchange of letters with David Robb, then Head of Public Bodies & Relocation Division, earlier this year, relevant Scottish Executive officials have already been alerted to the Committee’s interest in this issue. That message has been re-emphasised following Mr McCabe’s appearance before the Committee on 27 June and the Committee’s most recent letter.

During his evidence to the Committee in June, Mr McCabe confirmed that the Executive would be keen to explore further with the Committee its interest in the PFMRs and the monitoring of NDPB financial management. As the Committee is aware, the Scottish Executive is currently progressing a review of the PFMR mechanism. Alongside that process, we would be pleased to explore in more detail the Committee’s interest in these issues and how best this might be taken forward with the responsible Departments to ensure a consistent and co-ordinated approach and to manage the expectations on the Committee’s and Ministers’ time.

Neil Rennick, who has taken over from David Robb as Head of Public Bodies & Relocation Division (tel: 0131 244 0924, neil.rennick@scotland.gsi.gov.uk), will contact the Committee Clerk to discuss these issues in more detail.
Finance Committee

25th Meeting 2006, Tuesday 31 October 2006

Correspondence from the Procedures Committee

1. The attached correspondence from the Procedures Committee outlines a minor change to Standing Orders proposed by the Subordinate Legislation Committee (SLC) and seeks views on any potential impact on committees.

2. The SLC currently reports on Scottish Statutory Instruments (SSIs) within 20 days of them being laid and this proposed change would allow the SLC occasionally to report on instruments after the 20 day deadline.

3. The Finance Committee is usually only designated as lead committee in regard to Budget Revisions and it is very rare for any other SSIs to be referred to the Committee (although two procurement SSIs were referred at the beginning of this year).

4. The Committee submitted proposals to the SLC for a new system whereby it would scrutinise SSIs where concern had been raised during the Committee’s scrutiny of the Financial Memorandum of the parent Act. This change proposed by the SLC would not affect this work as the Finance Committee would not be acting as lead committee and therefore, would not be required to wait until the SSI had been scrutinised by the SLC.

5. It is likely therefore that this change would have little or no impact on the Committee. Members are invited to consider the attached correspondence and whether to submit any views to the Procedures Committee.

Susan Duffy
Clerk to the Committee
Dear

Minor change to Rule 10.3.2 (“the 20 day rule”)

The Subordinate Legislation Committee (SLC) has asked the Procedures Committee to consider a minor change to Standing Orders in relation to Rule 10.3.2 (“the 20 day rule”). The attached letter from the Deputy Convener of the SLC sets out the background and reasoning for the proposed Rule-change.

The Rule requires that Committee to report to the Parliament and the lead committee on a Statutory Instrument no later than 20 days after it is laid. Due to the increasing volume of statutory instruments, the 20 day timescale is becoming difficult to meet in all cases and the SLC believes that a degree of flexibility would facilitate the process. As a result, the Subordinate Legislation Committee suggests that the wording of the Rule be changed to read:

“The Committee shall report its decision with its reasons in any particular case to the Parliament and the lead committee. It shall normally do so no later than 20 days after the instrument or draft instrument is laid.”

The Subordinate Legislation Committee believes that the proposed change would better enable it to manage its workload, but it recognises that there may be some impact on lead committees and their timetable for consideration of instruments. The SLC envisages that the majority of Instruments would continue to be dealt with within the 20 day timescale.

Before reaching a decision on the matter, the Procedures Committee is keen to ascertain what the impact on lead committees would actually be – if the SLC occasionally reported after the 20 day deadline, would this have a detrimental effect on the lead committee’s timetable for consideration? Also, if
the 20 day limit was qualified by “normally” as the SLC suggests, would you favour having a fixed upper-limit of, say, 25 days for the SLC to report?

I would be grateful if you would advise of any views you or your committee may have by 6 November 2006. It would be helpful if you could indicate whether the response you provide is yours alone, or the collective views of your committee.

Yours sincerely,

Donald Gorrie MSP
Convener
LETTER FROM DEPUTY CONVENER TO THE SUBORDINATE LEGISLATION COMMITTEE

The Subordinate Legislation Committee invites the Procedures Committee to consider a minor change to Standing Orders in relation to Rule 10.3.2 ("the 20 day rule").

This Rule deals with the timescale in which the Subordinate Legislation Committee must report its decision to the Parliament and the lead committee on any Statutory Instrument that it considers. The Rule reads:

The Committee shall report its decision with its reasons in any particular case to the Parliament and the lead committee. It shall do so no later than 20 days after the instrument or draft instrument is laid.

**Suggested change**

The Committee suggests the following amendment to this Rule:

The Committee shall report its decision with its reasons in any particular case to the Parliament and the lead committee. It shall normally do so no later than 20 days after the instrument or draft instrument is laid.

**Background**

The volume of statutory instruments coming before the Committee and the Parliament is increasing. The 20 day timescale within which this Committee is required to report on an instrument to the lead Committee and Parliament is becoming increasingly difficult.

It is especially difficult for the Committee’s legal advisers who often have to provide us with legal advice on instruments within 24 hours of them being laid. This timetable is necessary in order to allow the Committee to have up to two formal considerations of an instrument and be able to report within the 20 day period.

The difficulties are accentuated before parliamentary recesses when there are larger than normal volumes of instruments laid by the Executive, or where instruments are technically complex and raise difficult legal issues which require very detailed consideration.

**Inquiry into the Regulatory Framework in Scotland**

The Committee has recently published a Draft Report on its Inquiry into the Regulatory Framework in Scotland. This recommends changes to the way in which subordinate legislation is dealt with by the Parliament; and recommends a Bill to replace The Scotland Act 1998 (Transitional and Transitory Provisions) (Statutory Instruments) Order 1999 (SSI 1999/1096). If its recommendations are accepted, the 20 day rule will no longer exist.
However, the Committee is conscious that such changes will not be possible this Session, and a Bill will require to be passed by the Parliament in the next Session before any proposed changes can be made. In the meantime, the Committee does not wish to approach changes to the subordinate legislation process in a piecemeal fashion. However, it strongly supports a change to the 20 day rule now which would allow some flexibility in the timescale for its consideration of Scottish Statutory Instruments.

**Impact of the proposed change**

The suggested change to the 20 day rule would have a positive impact on the way in which this Committee is able to plan and manage its very heavy workload. It will provide the Committee and its legal advisers with some flexibility which is not available at present under the current rule.

The suggested change should not impact on the Executive. It will not affect the 40 day deadline set for lead committees to report to Parliament recommending the annulment or approval of an instrument.

The suggested change may have an impact on lead committees and their timetable for considering instruments, however, we would submit that this can be managed through communication between committees.

Where it is clear that the Subordinate Legislation Committee is likely to report to the lead committee after the 20 day period has elapsed, we would undertake to inform the lead committee as soon as possible to allow it an opportunity to adjust its work programme if necessary.

The Committee wishes to stress that it still aims to report on most instruments within the 20 day period.

I hope the Procedures Committee will look favourably upon this minor change, however if you require any further information, please do not hesitate to let me know.

Gordon Jackson MSP
Deputy Convener
14 September 2006
Dear Ms Wheeler

COMMISSIONER FOR OLDER PEOPLE (SCOTLAND) BILL – FINANCIAL MEMORANDUM

Thank you for your letter of 9 October inviting the SPCB to comment on the Financial Memorandum accompanying the Commissioner for Older People (Scotland) Bill.

Drawing on our experience we offer the following comments which I hope the Committee will find helpful.

Yours sincerely

GEORGE REID
QUESTIONNAIRE

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the financial memorandum for the Commissioner for Older People (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The SPCB was not specifically invited to respond to the consultation exercise. Alex Neil MSP did write to the SPCB on 23 August to inform the SPCB of the provisions in the proposed Bill and the likely implications for the SPCB, but we did not see a copy of the Bill until introduction.

Officials received, from NEBU, a draft of the financial memorandum at an early stage (July/August 2006). At that stage we stressed the need for the necessity of a shared services approach. The SPCB did not see the final version of the memorandum until the Bill had been introduced.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The memorandum provides information both with and without a shared services approach utilising relevant and current information. It also reflects the operational approach of existing bodies as well as providing current costs from other bodies that we fund.

3. Did you have sufficient time to contribute to the consultation exercise?

As stated in the answers to questions 1 and 2 officials only had sight of an initial draft of the Memorandum.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The costs for the Commissioner will fall upon the Scottish Parliament with the SPCB providing the funding as per the other parliamentary nominated officeholders. The provisions in the Bill which requires SPCB approval of the Commissioner’s determination on staffing and location is welcomed. The SPCB believes that in order to effect savings it will be imperative for the Commissioner to co-locate with another public sector body.
In relation to location, we would suggest that there should be a clear statement on the face of the Bill that, in the event of the SPCB failing to agree on location with the Commissioner, the final decision on location would rest with the SPCB.

The SPCB also notes that the Member has indicated that he will mirror any amendments made to the SCHR Bill regarding budgetary approval which we also welcome.

The difficulty with figures in a Financial Memorandum is the assumptions underlying the figures. Actual operational costs cannot reasonably be accurately estimated until the Commissioner has taken a view on costs based on his expected functions. Within that context, and based on our experience with other officeholders, the broad figures seem reasonable. However, we would expect that the Commissioner would prepare a zero based budget and to justify that budget based on the requirements to undertake his or her functions, and not to assume the figures in the Financial Memorandum are to be budgeted up to, but must be estimated and fully justified.

We consider that provision has been estimated for all aspects of the office, although we do note there is no provision for the Commissioner to undertake any investigation. We would expect that if the officeholder were to undertake an investigation then there would be a reduction in promotion and awareness raising and/or research to fund the investigation.

In connection with this point, we would suggest that the officeholder is directed under the Bill to provide the SPCB with a rolling three-year strategic plan which would identify at an appropriate stage what the budget in any given financial year will be used for. We do note that provision is made for a one year forward look to appear in the annual report of the officeholder, but consider from a governance perspective, that the rolling plan approach is more appropriate.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The SPCB is content that it could meet the costs associated with the Bill, subject to parliamentary approval of the SPCB’s budget, but would wish to stress the need for consideration to be given to an explicit provision in the Bill to give the SPCB the power to approve the Commissioner’s budget.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The SPCB appreciates the difficulty in anticipating rising costs. However, if it had the power to set the Commissioner’s budget then this would ensure proper accountability for the use of public funds. We would look not only to
Wider Issues

7. **If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?**

Given the extent of policy initiatives emerging from the Executive in relation to older people, then the workload of the Commissioner may be more than that of the Children's Commissioner who is used as a comparator for the Financial Memorandum, and the estimated costs may not accurately reflect the costs which will fall on the SPCB. This is why the SPCB considers it imperative that it has the power to approve the Commissioner's location - in a shared building - thereby reducing accommodation costs and perhaps some staffing costs to ensure that the Commissioner has sufficient funding to undertake his/her functions.

8. **Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?**

The SPCB notes that the Bill provides that the Commissioner may charge for such services as may be specified by the Scottish Ministers, by order made by statutory instrument, as chargeable services for the purposes of the Act. Any income received by the Commissioner would be offset against the Commissioner's agreed budget funding, thereby reducing the funding required from the SPCB.

General Comments

The SPCB believes that it is essential that the establishment of any new office needs to be carefully considered at the outset in terms of value for money; whether an existing body could undertake the functions; and the constitutional nature of any such body.

The Bill proposes that the Commissioner will be a parliamentary nominee appointed by Her Majesty The Queen. The SPCB notes in the Policy memorandum accompanying the Bill that 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.

The SPCB will of course ensure that all the necessary arrangements are put in place should it be the will of the Parliament to establish a Commissioner for Older People. Given that the SPCB, the Parliament and the Scottish
Executive will not be under the jurisdiction of the Commissioner, and the Commissioner's functions are of an advocacy nature, the SPCB would invite the Finance Committee and the subject Committee which will scrutinise the Bill to ensure that, if the will of Parliament is to support the establishment of a Commissioner, they are satisfied as to whether, constitutionally, the Commissioner should be a Royal appointee with the costs falling on the Scottish Parliament or whether by the nature of the functions discharged then this should be a Ministerial appointment and therefore a charge to the Scottish Executive.