

SCOTTISH FISCAL COMMISSION ACT 2016

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Functions

Section 2 - Forecasts and Assessments and section 3 - Meaning of terms used in section 2

7. *Section 2* sets out the Commission's main functions. Under these provisions, the Commission is under a statutory duty to prepare forecasts of tax receipts and assessments of the Scottish Government's borrowing projections to inform the Scottish budget process. In particular, the Commission is to prepare 5-year forecasts of receipts from:
 - devolved taxes;
 - non-domestic rates; and
 - the Scottish rate of income tax.
8. All forecasts should cover a rolling five-year period, with a set of five-year forecasts to be prepared on at least two occasions each financial year. The Commission must publish an explanation of its methodology and the factors which it took into account when preparing forecasts, alongside publication of tax forecasts. This is intended to promote transparency and ensure that the basis for the forecasts are available for scrutiny by Parliament, academic commentators and others.
9. The Commission may prepare reports on other fiscal factors (including forecasts, assumptions or projections prepared by Scottish Ministers), in addition to those outlined above. A 'fiscal factor' is anything that the Scottish Ministers use to ascertain the resources available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000 (those sections make provision for the authorisation of the use of resources by the Scottish Administration and other bodies by Budget Act for each financial year). To help prevent the Commission being drawn into political discussion, it must have regard to Government policy but may not consider what the effect of alternative policies would be. The Commission may, however, consider the effect of alternative forecasting assumptions or methodologies on revenue forecasts.
10. *Section 3* provides definitions of the terms used in describing the Commission's functions in section 2 in order to provide clarity to the intentions and effect of section 2.

Section 4 – Review of forecasting accuracy

11. *Section 4* requires the Commission to produce a self-evaluation report on the accuracy of its previous forecasts for each financial year. It will be important for the Commission to self-evaluate their work on a regular basis, building on, and learning from, their previous experiences in order that the forecasts that underpin the Scottish budget get more robust with time.

12. It is expected that the reports therefore will look at methodologies, assumptions, risks and projections used by the Commission in light of actual outturn.
13. These reports are to be published outside the budgetary cycle at a time determined by the Commission, and are subject to a requirement that they be laid before Parliament as soon as reasonably practicable after it is prepared.

Section 5 – Reports

14. **Section 5** provides that the Commission must lay a report prepared under section 2(2) before the Parliament on the same day as the Scottish Ministers present the Scottish Draft Budget and a further report on the same day as a member of the Scottish Government introduces a Bill for a Budget Act. This will allow Members of the Scottish Parliament to have the reports when considering the Budget and the Bill for a Budget Act. The Commission must have sent copies of the reports to the Scottish Ministers in sufficient time to enable Ministers to use the report in the preparation of the draft budget and subsequent Bill.
15. Any other report which the Commission prepares under subsection (2) or (4) of section 2 must be laid before the Parliament as soon as reasonably practicable after the report is prepared, with a copy to be sent to Scottish Ministers. The Commission is also required to publish its reports in such a manner as it considers appropriate.

Section 6 - Protocol between the Commission and the Scottish Ministers

16. **Section 6** requires that there is to be a protocol between Scottish Ministers and the Scottish Government and for the Commission to publish the protocol. The protocol, and any subsequent revision, will include arrangements for communications and meetings, expectations on information sharing including arrangements for handling draft reports and the publication of any other papers the produced to support the exercise of the Commission's functions. This will increase the transparency of the interactions between the Commission and Scottish Government during the forecasting and assessment process outlined in sections 2 and 5.

Section 7 – Scottish Ministers' statement

17. **Section 7** creates a presumption that the Scottish Ministers will use the forecasts prepared by the Commission in the Scottish Budget. If they do not do so then Scottish Ministers must provide a statement to Parliament explaining why they disagree with the Commission's forecast. This statement is to be laid before the Parliament at the same time as the budget documentation. It is anticipated that Ministers would only make use of alternative forecasts in exceptional circumstances.

Section 8 - Power to modify the Commission's functions

18. **Section 8** provides a regulation-making power for Scottish Ministers, following consultation with the Commission and subject to parliamentary process, to confer new functions on the Commission or to modify or remove existing ones. Regulations under section 8 are subject to the affirmative procedure. This power will enable the Commission's remit to be adjusted in future without the need for further primary legislation, but subject to parliamentary oversight and agreement. This is intended to provide flexibility to expand the functions of the Commission in line with future expansion of the fiscal powers of the Scottish Parliament, including those reflected in the Scotland Act 2016 as set out in the agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework.
19. Ministers may not remove the Commission's core functions under sections 2(1) or (4) through this regulation making power. However, they may remove or modify paragraphs in subsection (2) which relate to the specific forecasts which are to be prepared by the Commission.

Section 9 - Independence

20. **Section 9** sets out that the Commission cannot be directed or controlled by any member of the Scottish Government in relation to the performance of its functions. This safeguards the operational independence of the Commission, which is to be free to determine how it fulfils its functions.

Section 10 - Access to information

21. In order to perform its functions, the Commission requires access to data and information held by the Scottish Government and others which supports the production of forecasts and any other data or information which the Commission considers relevant to the performance of its functions. Section 10 allows the Commission access to information relevant to the performance of its functions where the information is held by the Scottish Government, Revenue Scotland, Registers of Scotland, the Scottish Environment Protection Agency, a local authority, or a valuation authority or assessor (including depute assessor) appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994.
22. **Section 10** also contains a regulation-making power to allow Scottish Ministers, subject to parliamentary approval, to grant the Commission access to information held by other bodies where that may be necessary in the future should the Commission's functions be expanded or changed.
23. This provision is subject to other legislation that prohibits, restricts access or relates to the disclosure of the information required by the Commission, for example the Data Protection Act 1998 or the Revenue Scotland and Tax Powers Act 2014.

Section 11 – Duty to co-operate with the Office for Budget Responsibility

24. **Section 11** places a duty on the Commission to co-operate with the Office for Budget Responsibility in the performance of that Office's functions. The agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework provides that the United Kingdom Government will place a reciprocal duty on the Office for Budget Responsibility to co-operate with the Scottish Fiscal Commission.

Section 12 - Annual report

25. **Section 12** places a duty on the Commission to publish an annual report on its activities and to lay this in the Parliament after the end of every financial year. A copy of the report must also be sent to the Scottish Ministers.

Section 13 - Review of Commission's performance

26. **Section 13** requires that, at least once in every period of 5 years, the Commission must appoint a suitable person to conduct an external review of its performance in carrying out its functions and requires the Commission to publish the report of the review. It must lay a copy before the Parliament and send a copy to the Scottish Ministers. Any payment for the review must be approved by the Scottish Ministers.
27. Notwithstanding the general 5 year cycle of review, the first report under this section is required within 2 years of the Commission starting its statutory functions under section 2.