

POLICY NOTE

THE SCOTTISH FISCAL COMMISSION (MODIFICATION OF FUNCTIONS) REGULATIONS 2017

SSI 2017/86

The Scottish Ministers are making the following regulations in exercise of the powers conferred by section 8(1) and (5) of the Scottish Fiscal Commission Act 2016¹ (the Act) and all other powers enabling them to do so.

Policy Objectives

The Fiscal Framework Agreement² between the Scottish and UK Governments sets out an expanded role for the Scottish Fiscal Commission (SFC) following devolution of the 2016 Scotland Act powers. As well as producing forecasts for the fully devolved taxes and non-domestic rates, the SFC is also to assume responsibility for forecasting income tax, social security expenditure and onshore GDP.

As the Act was passed before the Scotland Act 2016, the Scottish Parliament did not have competence to legislate for these functions during the bill process.

As such these regulations expand the functions of the Scottish Fiscal Commission to reflect the powers devolved through the Scotland Act 2016 and the content of the Fiscal Framework agreed between the Scottish and UK Governments. In summary, the functions of the Commission are expanded as follows (to take effect from 1st April 2017):

- addition of a function to prepare forecasts of demand led social security expenditure;
- addition of a function to require the Commission to prepare Scottish GDP forecasts (not covering the value of oil, gas and other hydrocarbons produced in the Scottish sector of the UK continental shelf).

Subject to the Scottish Parliament approving these regulations, from the 1 April 2017 the Commission's forecasting functions will include preparing 5-year forecasts of receipts from:

- devolved taxes, including Land and Buildings Transaction Tax, Scottish Landfill Tax and future taxes such as Air Departure Tax and the Aggregates Levy;
- Non-Domestic Rates;
- Scottish Income Tax;
- demand led social security expenditure; and
- quarterly GDP forecasts covering the period from the last published outturn GDP figures to the end of the budget year under consideration and annual forecasts for the subsequent four years.

¹ 2016 asp 17.

² <http://www.gov.scot/fiscalframework>

In addition, the Commission will assess the reasonableness of Scottish Ministers' borrowing projections and may prepare reports on other fiscal factors (including forecasts, assumptions or projections prepared by Scottish Ministers). Forecasts will be provided twice a year – once in sufficient time for the Scottish Ministers to formulate the draft Budget and the other in time for the Scottish Parliament to use forecasts to support scrutiny of the Budget Bill for that year. The timing of other reports will be at the Commission's discretion.

Consultation

Section 8 of the Act requires that Ministers, “must consult – the Commission and any other person's as they consider appropriate” regarding regulations changing the Commission's functions. Ministers laid, ‘The Scottish Fiscal Commission Act 2016 (Commencement and Transitory Provision) Regulations 2016’³ which commenced section 8 of the Act early to bring the SFC into statutory existence for the limited purpose of Ministers consulting them on proposals to change their functions. The Cabinet Secretary for Finance and Constitution accordingly wrote to Lady Susan Rice, Chair of the Commission on 9 November 2016 seeking comments on the draft proposals. The Commission's response was supportive of the proposed scope and drafting of the regulations.

The Scottish Government also ran a public consultation from 27 October 2016 to 30 November 2016⁴. Five responses were received and all were broadly supportive of the proposals contained in the consultation including the drafting of the regulations. Responses to the consultation, including the Commission's response can be found on the Scottish Government's Citizen Space website⁵. The full Scottish Government response to the consultation is also available.

In terms of specific issues, the Chartered Institute of Taxation highlighted concerns over tax payer confidentiality. HMRC and Revenue Scotland are however bound by their respective founding legislation to protect tax payer confidentiality and all data handled by the Commission will therefore be aggregated and anonymous.

In their response, Audit Scotland suggested that additional quarterly GDP forecasts might be required in order to monitor for economic shocks covering part of the budget year under consideration and the subsequent one, with relevance to the corresponding trigger for additional borrowing powers. It is the Scottish Government's view that the sensible cut off point, within the spirit of the Fiscal Framework Agreement, remains to extend quarterly forecasts only to the end of the budget year under consideration. If subsequent developments throw previous forecasts into doubt then it would be within the Commission's remit to produce updated forecasts (and indeed Parliament and/or Ministers could also request, but not direct, this of them).

Following broad support from the Commission and other respondents, the regulations as laid have only received non-substantive stylistic changes from the draft which was consulted on.

³ http://www.legislation.gov.uk/ssi/2016/326/pdfs/ssi_20160326_en.pdf

⁴ <http://www.gov.scot/Publications/2016/10/8918>

⁵ <https://consult.scotland.gov.uk/fiscal-responsibility/modification-of-functions-regulations-2016/>

Impact Assessments

Equal opportunities - The Scottish Government assessed the potential impacts of the Act on equal opportunities. These regulations, that stem from the powers in the Act, do not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human rights - These regulations do not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). These regulations have no identified differential impact on human rights nor any impact on any individual's civil liberties.

Privacy impacts - Information shared between the Commission and other organisations and information used by the Commission will be anonymous aggregate data and the provision of information will be subject to other legislation that prohibits, restrict access or relates to the disclosure of that information, for example the Data Protection Act 1998 or the Revenue Scotland and Tax Powers Act 2014. As a result no privacy impacts resulting from this legislation have been identified.

Island communities - The regulations have no identified differential impact on island and rural communities.

Local government - There are no additional responsibilities or costs for local authorities as a result of this legislation.

Sustainable development - These regulations will have no impact on sustainable development.

Financial Implications

The Cabinet Secretary for Finance and the Constitution confirms that no BRIA is necessary. These regulations will have no impact on Scottish businesses, relating solely to the scrutiny of the public finances, and in particular the changes to the functions of the Scottish Fiscal Commission.

The Scottish Fiscal Commission's allocation of £1.7m in the 2017-18 Scottish Draft Budget includes resource for the preparation of forecasts for demand-led social security expenditure and Scottish GDP, in addition to its other functions.

Scottish Government
Fiscal Responsibility Division
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