

SCOTTISH FISCAL COMMISSION ACT 2016

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Scottish Fiscal Commission was established on a non-statutory basis in June 2014, with a proportionate remit that reflects the fiscal powers devolved to the Scottish Parliament under the Scotland Act 2012. The Commission's function of scrutiny and reporting is already an important part of Scotland's fiscal framework. The non-statutory Commission plays a key role in providing the Parliament and the public with independent scrutiny of the Government's forecasts of receipts from the devolved taxes - Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - and also of the economic factors which underpin forecasts of receipts from non-domestic rates.
4. In accordance with the Organisation for Economic Co-operation and Development's (OECD) principles for independent fiscal institutions¹ and in line with international best practice, the Act establishes the Scottish Fiscal Commission on a statutory basis. The Scottish Fiscal Commission Act gives the Commission a legislative underpinning – safeguarding its independence and providing a basis for expanding the functions of the Commission in line with any expansion in the fiscal powers of the Scottish Parliament. In accordance with the agreement between the Scottish Government and the United Kingdom on the Scottish Government's fiscal framework, the statutory Commission will have responsibility for preparing forecasts which underpin the Scottish Budget. The initial statutory functions of the Commission reflect the tax and borrowing powers of the Parliament when the Act was passed, as provided for in the Scotland Act 2012. It is the Scottish Government's intention to use regulation-making powers in section 8 to expand the Commission's functions to reflect the additional fiscal powers devolved by the Scotland Act 2016 as set out in the agreement on the Scottish Government's fiscal framework.

OVERVIEW OF THE ACT

5. The Act comprises 32 sections and is divided into the following sub headings:
 - Scottish Fiscal Commission

¹ <http://www.oecd.org/gov/budgeting/recommendation-on-principles-for-independent-fiscal-institutions.htm>

- Functions
- Corporate status
- Membership
- Remuneration and expenses
- Staff
- General
- Transitional and consequential
- Ancillary provision
- Final provisions.

Scottish Fiscal Commission

Section 1 - Establishment

6. **Section 1** establishes the Commission as an entity to be known as the ‘Scottish Fiscal Commission’. The Commission’s Gaelic name (Coimisean Fiosgail na h-Alba) has equal legal status.

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.

Corporate status

Section 14 - Corporate status

28. **Section 14** stipulates that the Commission will be established as a corporate body. The Commission will have the status of a non-ministerial department and is expected to have the status of an office-holder in the Scottish Administration, within the meaning of section 126(8) of the Scotland Act 1998, by virtue of an order under that Act. This means that the Commission will be directly accountable to the Scottish Parliament for the delivery of its functions, not through Ministers.

Membership

Section 15 - Members of the Commission

29. **Section 15** sets rules around the composition of the Commission.
30. The Commission must have a member who acts as chair and at least two, and no more than four, additional members. The number of members allowed to form the Commission can be changed through regulations made by the Scottish Ministers under the negative procedure.
31. Members are to be appointed by the Scottish Ministers, but only with the approval of the Scottish Parliament. This helps to protect the independence of the Commission and mirrors the process used to appoint the first chair and members in 2014. In addition, appointments to the Commission will be public appointments and therefore subject to the Public Appointments and Public Bodies etc. (Scotland) Act 2003. That means that appointments will be made after fair and open competition and that the appointments process will be regulated by the Commissioner for Ethical Standards in Public Life in Scotland.

Section 16 - Disqualification for appointment

32. **Section 16** disqualifies certain individuals from becoming members of the Commission. These persons are defined as Ministers, elected members of the Scottish, UK and European Parliaments or the National Assembly for Wales or Northern Ireland Assembly, local authority councillors, the holder of any other relevant elective office (which includes elected Mayors and members of the Greater London Assembly), members of the Scottish Government, officers of the Crown and civil servants. A person would also be disqualified if they are or have been insolvent, disqualified as a company director under the Company Directors Disqualification Act 1986, or disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005.

Section 17 - Period and terms of appointment

33. **Section 17** provides for the period of appointments to the Commission. The period of appointment is set at the outset and may be any period chosen by Ministers, not exceeding five years. This makes it possible to 'stagger' the dates on which appointments expire, avoiding a situation where several members leave office at one time, which could dilute expertise and experience.
34. Members can be reappointed on one occasion and so may serve a total of two consecutive terms. To allow flexibility around the timing of the reappointment process

(for example in obtaining parliamentary approval), a person may be reappointed if the person is currently a Member or was a Member in the three months prior to reappointment. All the provisions relating to appointments in this section and sections 15, 16 and 18, including parliamentary approval of appointments, apply to any reappointment.

Section 18 - Disqualification after appointment

35. **Section 18** mirrors section 16 and provides that a member's appointment will cease if the member becomes disqualified after appointment. This ensures that members are subject to the same requirements throughout the full term of their appointment.

Section 19 - Resignation

36. **Section 19** sets out that members may resign by giving written notice to the Presiding Officer of the Scottish Parliament and the Scottish Ministers.

Section 20 - Removal

37. **Section 20** provides the Scottish Ministers with the power to remove members from their position with the Commission, by giving the member written notice. It prescribes the circumstances in which this can occur, namely if a member has not attended meetings for more than three months (without permission for the absence), if a member is unable to perform the members functions or if Ministers deem them as being unfit for the role. Members can only be removed with the approval of the Scottish Parliament.

Remuneration and expenses

Section 21 - Remuneration and expenses

38. **Section 21** makes provision for the Commission, with the approval of the Scottish Ministers, to determine the remuneration of its members, and for the reimbursement of expenses incurred by those members in carrying out their functions.

Staff

Section 22 - Chief of Staff and other staff

39. **Section 22** requires the Commission to employ a Chief of Staff and allows the Commission to employ other staff to assist it in carrying out its functions, with its employees' terms requiring the approval of Scottish Ministers.
40. It is envisaged that the Chief of Staff will act as statutory Accountable Officer for the Commission and would also bring relevant expertise and capabilities to assist the members of the Commission in discharging the statutory functions.

General

Section 23 - Regulation of procedure

41. **Section 23** provides that the Commission may regulate its own procedures including the minimum number of members that need to agree decisions.

Section 24 - Validity of things done

42. **Section 24** stipulates that a vacancy in the membership of the Commission, or a flaw in an appointment or disqualification of a member after appointment, does not make any work carried out by the Commission invalid.

Section 25 - Committees

43. [Section 25](#) enables the Commission to create committees and co-opt members on to them. A committee members may be an individual who is not a member of the Commission. However, there must be at least one Commission member on any committee. The Commission, with the approval of Ministers, can remunerate and provide allowances for members of such a committee.

Section 26 - Authority to perform functions

44. [Section 26](#) provides that the Commission may authorise any of its members, any member of its staff or any other person to perform its functions to whatever extent the Commission decides. This enables the Commission to delegate functions to individual members, committees, members of staff, or to third parties (for example in order to provide specialist statistical or other professional expertise). However, the Commission itself remains ultimately responsible for the performance of its statutory functions.

Section 27 - General powers

45. [Section 27](#) provides a wide general power for the Commission to do anything necessary to enable it to perform its duties and fulfil its remit. In addition to the usual activities necessary to function as a public body, this could include, for example, the Commission preparing and publishing technical working papers related to its statutory functions.

Transitional and consequential

Section 28 - Initial members

46. As the Commission was already in existence on a non-statutory basis at the time of the passage of this Act, section 28 provides for the chair and members of the non-statutory Commission to immediately form the first Commission as soon as the relevant sections of the Act come into force. The terms for the appointment are to carry over from when the member or chair was appointed to the non-statutory Commission.

Section 29 - Amendment of public bodies' legislation

47. [Section 29](#) amends relevant public bodies legislation so as to encompass the new Scottish Fiscal Commission. One of the effects is that the Commission is made subject to the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#) and the other Acts generally applicable to devolved public bodies.

Ancillary provision

Section 30 - Ancillary provision

48. [Section 30](#) empowers the Scottish Ministers to make ancillary provision by way of regulations. Regulations under this section will be subject to the affirmative procedure if they modify an Act.

Final provisions

Section 31 - Commencement

49. Ministers will specify when the provisions in this Act come into force by regulations. Sections 30, 31 and 32 will commence the day after Royal Assent.

Section 32 - Short title

50. The title of the Act is the Scottish Fiscal Commission Act 2016.

PARLIAMENTARY HISTORY

51. The table below sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for the Act, the dates on which the proceedings at that stage took place and the reference to the Official Report of those proceedings.

INTRODUCTION

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Bill as introduced	29 September 2015	http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78S042015.pdf
Parliamentary Briefing	23 October 2015	http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_15-67_Scottish_Fiscal_Commission_Bill.pdf
Explanatory Notes & Accompanying Documentation	29 September 2015	http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78ENS042015.pdf
Policy Memorandum	29 September 2015	http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78PMS042015.pdf

STAGE 1

FINANCE COMMITTEE

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Evidence Session 1	28 October 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10166&mode=pdf
Evidence Session 2	4 November 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10186&mode=pdf
Evidence Session 3	18 November 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10220&mode=pdf
Evidence Session 4	2 December 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10249&mode=pdf

*These notes relate to the Scottish Fiscal Commission Act
2016 (asp 17) which received Royal Assent on 14 April 2016*

DELEGATED POWERS AND LAW REFORM COMMITTEE

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Meeting of the Committee	27 October 2015	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10158&mode=pdf

CONSIDERATION BY PARLIAMENT

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Stage 1 Debate	14 January 2016	http://www.scottish.parliament.uk/S4_BusinessTeam/PM20160114.pdf

STAGE 2

FINANCE COMMITTEE

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Marshall's List of Amendments	8 February 2016	http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78MLS042016.pdf
Stage 2 Consideration	10 February 2016	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10367&mode=pdf
Bill as amended at Stage 2	10 February 2016	http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78AS042016.pdf

STAGE 3

CONSIDERATION BY PARLIAMENT

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Marshall's List of Amendments	7 March 2016	http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78AMLS042016.pdf
Stage 3 Consideration and Debate	10 March 2016	http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10425&mode=pdf
Bill as passed	10 March 2016	http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78BS042016.pdf

*These notes relate to the Scottish Fiscal Commission Act
2016 (asp 17) which received Royal Assent on 14 April 2016*

ROYAL ASSENT

14 April 2016	http://www.legislation.gov.uk/asp/2016/17/enacted
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