

# SCOTTISH FISCAL COMMISSION ACT 2016

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## EXPLANATORY NOTES

### OVERVIEW OF THE ACT

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

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- 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 outcome.
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

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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

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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](#)**

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**- 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.