

**EXPLANATORY MEMORANDUM TO**  
**THE SCOTTISH FISCAL COMMISSION ACT 2016 (CONSEQUENTIAL**  
**PROVISIONS AND MODIFICATIONS) ORDER 2017**

**2017 No. 241**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This Order is made in consequence of the Scottish Fiscal Commission Act 2016 (“the 2016 Act”). The 2016 Act establishes the Scottish Fiscal Commission (the Commission) as a corporate body and sets out its duties. The Order makes the Commission part of the Scottish Administration and places a duty on the Office for Budgetary Responsibility to co-operate with it.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

**4. Legislative Context**

- 4.1 The 2016 Act received Royal Assent on 14 April 2016. The Act establishes the Commission as a body corporate, sets out the Commission’s functions, and specifies that, in performing its functions, the Commission is not subject to the directions and control of the Scottish Government. Its functions include a statutory duty to prepare forecasts of tax receipts and assessments of the Scottish Government’s borrowing projections to inform the Scottish budget process.
- 4.2 Following Royal Assent of the Scotland Act 2016 and the associated Fiscal Framework Agreement<sup>1</sup>, the Scottish Government intends to lay, ‘*Scottish Fiscal Commission (Modification of Functions) Regulations 2017*’ which will update the 2016 Act to encompass GDP forecasting and demand led social security expenditure. This will be laid in the Scottish Parliament in January 2017.
- 4.3 This Order will come into force on 1 April 2017, which is the same day that the relevant provisions of the 2016 Act will be commenced by a Scottish Statutory Instrument<sup>2</sup>. The Order makes the Commission part of the Scottish Administration and provides that references to an office-holder in the Scottish Administration are to

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<sup>1</sup> <http://www.gov.scot/Resource/0049/00494765.pdf>

<sup>2</sup> **The Scottish Fiscal Commission Act 2016 (Commencement and Transitory Provision) Regulations 2016 (2016/326)**

be taken to include a reference to the Scottish Fiscal Commission. Section 51 of the Scotland Act 1998 provides that members of staff of the Scottish Administration are civil servants. Accordingly, the Commission will be a non-ministerial department directly accountable to the Scottish Parliament and its members of staff will be civil servants.

- 4.4 The Order also provides that the Crown Suits (Scotland) Act 1857 does not apply to the Commission with the effect that the Lord Advocate cannot be sued in place of the Commission and it makes changes to reserved legislation in consequence of the 2016 Act.

## **5. Extent and Territorial Application**

- 5.1 This instrument extends to the United Kingdom.  
5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 The Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Scottish Fiscal Commission Act 2016 (Consequential Provisions and Modifications) Order 2017 are compatible with the Convention rights.”

## **7. Policy background**

### *What is being done and why*

- 7.1 The Scottish Fiscal Commission was established in June 2014 as a non-statutory body to provide independent scrutiny of Scottish Government forecasts of receipts and economic determinants from taxes devolved to Scotland.
- 7.2 Through the Scottish Fiscal Commission Act 2016, it is intended that, from April 2017, the Commission will be constituted as a non-ministerial department. Its duties are set out in the 2016 Act and reflect the further devolution of taxation through the Scotland Act 2016.
- 7.3 Articles 2 and 3 of the Order will enable the Commission to become part of the Scottish Administration, and allow its designation as a non-ministerial department that is independent from Scottish Ministers but accountable to the Scottish Parliament. An important effect of this is that civil servants who presently work in the non-statutory body will transfer to the Commission and continue to be civil servants.
- 7.4 Article 3 dis-applies the Crown Suits (Scotland) Act 1857. The default position is that every action to be instituted in Scotland on behalf of, or against, an organisation in the Scottish Administration may be lawfully raised in the name of, or directed against, the Lord Advocate. In order to safe guard the perceived independence of the Commission from the Scottish Government, and to provide consistency with the 2016 Act, it was deemed necessary to dis-apply the Crown Suits (Scotland) Act 1857 so that the Lord Advocate, a member of the Scottish Government, should not represent the Commission.
- 7.5 Article 4 of the Order places a statutory duty on the Office of Budget Responsibility to cooperate with the Scottish Fiscal Commission for the purpose of it carrying out its

functions. This is a reciprocal duty to the one provided for in section 11 of the 2016 Act whereby the Commission must co-operate with the Office of Budget Responsibility so far as necessary for it to fulfil its functions. This reciprocal duty was agreed in paragraph 83 of the Fiscal Framework Agreement between the Scottish and UK Governments.

- 7.6 Article 5 disqualifies members of the Scottish Fiscal Commission from being members of the House of Commons. This will require an entry to be inserted in Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975. This will help ensure the bi-partisan and independent basis of the Commission's work in line with section 16 of the 2016 Act.

### ***Consolidation***

- 7.7 This Order stands alone.

## **8. Consultation outcome**

- 8.1 No formal consultation has taken place on the Order; Orders taken forward under section 104 of the 1998 Act are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises. The terms of the Order have been agreed between the Scottish Government, HM Treasury, Cabinet Office and the Scotland Office.

- 8.2 The Scottish Government has consulted on establishing the Commission, seeking views on its structure and powers, functions and constitutional status. This consultation closed on 26 June 2015. Responses to the consultation can be found online at: <http://www.gov.scot/Publications/2015/09/2406>.

## **9. Guidance**

- 9.1 This Order stands alone, and guidance is not necessary.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The only projected impacts on the public sector will be administrative given that the Order will make the Scottish Fiscal Commission part of the Scottish administration and oblige the Office for Budgetary Responsibility to co-operate with it.
- 10.3 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and, therefore, no monitoring or review of the effects of this Order are required.

### **13. Contact**

- 13.1 Stuart Matheson at the Scotland Office (telephone: 0131 244 9029 or email: [stuart.matheson@scotlandoffice.gsi.gov.uk](mailto:stuart.matheson@scotlandoffice.gsi.gov.uk) ) can answer any queries regarding the instrument.