

SCOTTISH FISCAL COMMISSION BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Scottish Fiscal Commission Bill introduced in the Scottish Parliament on 28 September 2015:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 78–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. 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 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, it is the Scottish Government's intention that the Scottish Fiscal Commission should have a statutory basis. The Scottish Fiscal Commission Bill will give the Commission a legislative underpinning – safeguarding its independence and providing a basis for expanding the functions of the Commission in future in line with any expansion in the fiscal powers of the Scottish Parliament. The Scottish Parliament does not yet have competence to legislate for additional functions for the Commission to reflect the further fiscal powers recommended for devolution by the Smith Commission, which are provided for in the Scotland Bill currently before the UK Parliament. The initial statutory functions of the Commission will therefore reflect the current tax and borrowing powers of the Parliament, as provided for in the Scotland Act 2012.

5. A consultation on the Scottish Government's legislative proposals, including a draft Bill, was held between 26 March and 26 June 2015. A total of 10 responses were received from individuals and organisations. Copies of the non-confidential responses can be accessed through the Scottish Government's Library (0131 244 4565) or website. An analysis of the consultation is published on the Scottish Government's website².

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

² <http://www.gov.scot/Resource/0048/00485059.pdf>

THE BILL

OVERVIEW

6. The Bill comprises of 28 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

7. 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 - Functions and section 3 - Meaning of terms used in section 2

8. Section 2 sets out the Commission’s functions. Under these provisions, the Commission is under a statutory duty to prepare reports setting out its assessment of the reasonableness of:

- (a) Scottish Ministers’ forecasts of receipts from the devolved taxes;
- (b) the assumptions made by the Scottish Ministers in relation to the economic determinants underpinning forecasts of receipts from non-domestic rates;
- (c) Scottish Ministers’ forecasts of receipts from income tax attributable to a Scottish rate resolution; and
- (d) Scottish Ministers’ projections as to their borrowing requirements.

9. The Commission may prepare reports on other fiscal factors (forecasts, assumptions or projections), in addition to those outlined above, 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 - Reports

11. Section 4 provides that the Commission must lay a report prepared under section 2(1) before the Parliament on the same day as the Scottish Ministers present the Scottish Draft Budget. Any other report which it prepares under section 2(1) or a report prepared under section 2(3) must be laid before the Parliament as soon as reasonably practicable after the report is prepared. The Commission is also required to publish its reports in such a manner as it considers appropriate. A copy must also be provided to Scottish Ministers prior to laying in the Parliament.

Section 5 - Power to modify the Commission's functions

12. Section 5 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 5 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 any future expansion of the fiscal powers of the Scottish Parliament, including the recommendations made by the Smith Commission and reflected in the Scotland Bill currently proceeding through the UK Parliament.

13. Ministers may not remove the Commission's core functions under sections 2(1) or (3) through this regulation making power, but may remove or modify paragraphs in subsection (1) (that is, paragraphs (a) to (d) which provide for the specific functions of the Commission).

Section 6 - Independence

14. The Scottish Government recognises that it is critical to the effectiveness of the Commission that it is independent of the Scottish Ministers and that it is seen to be so. To that end, section 6 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 will safeguard the operational independence of the Commission, which will be free to determine how it fulfils its functions.

Section 7 - Access to information

15. In order to perform its functions, the Commission will require 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 7 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 or the Scottish Environment Protection Agency.

16. Section 7 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.

17. 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 8 - Annual report

18. Section 8 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 must be sent to Scottish Ministers.

Section 9 - Review of Commission's performance

19. Section 9 sets out that every five 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.

Corporate status

Section 10 - Corporate status

20. Section 10 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 11 - Members of the Commission

21. Section 11 sets rules around the composition of the Commission.

22. 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.

23. 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 current 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 12 - Disqualification for appointment

24. Section 12 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 (c. 46), or disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp. 5).

25. This section also prevents the Scottish Ministers from reappointing a person who is or has been a member of the Commission. This means that the members, including the chair, can only serve for one non-renewable term.

Section 13 - Period and terms of appointment

26. Section 13 provides for the period of appointments to the Commission. The period of appointment is set at the outset at any period chosen by Ministers. 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.

Section 14 - Disqualification after appointment

27. Section 14 mirrors section 12 and provides that a member's appointment will cease if they become disqualified after appointment. This ensures that members are subject to the same requirements throughout the full term of their appointment.

Section 15 - Resignation

28. Section 15 sets out that members should resign by giving written notice to the Presiding Officer of the Scottish Parliament and the Scottish Ministers.

Section 16 - Removal

29. Section 16 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 17 - Remuneration and expenses

30. Section 17 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 18 - Chief of Staff and other staff

31. Section 18 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.

32. 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 19 - Regulation of procedure

33. Section 19 provides that the Commission may regulate its own procedures including the minimum number of members that need to agree decisions.

Section 20 - Validity of things done

34. Section 20 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 21 - Committees

35. Section 21 provides for the Commission to create a committee and co-opt members on to it. Members of the committee may be individuals that are not members 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 22 - Authority to perform functions

36. Section 22 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 23 - General powers

37. Section 23 provides a wide general power for the Commission to do anything necessary to enable it to perform its duties and fulfil its remit. This ensures that the Commission is not held up in performing its statutory functions because of a small gap in its powers. It would also, for example, enable the Commission to prepare and publish technical working papers related to its statutory functions.

Transitional and consequential

Section 24 - Initial members

38. As the Commission is already in existence on a non-statutory basis, section 24 allows the current chair and members to immediately form the first Commission as soon as the Bill commences in statute. The terms for the appointment are to carry over from when the member or chair was appointed to the non-statutory Commission.

Section 25 - Amendment of public bodies' legislation

39. Section 25 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 26 - Ancillary provision

40. Section 26 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 27 - Commencement

41. Ministers will specify when the provisions in this Bill come into force by regulations. Sections 26, 27 and 28 will commence the day after Royal Assent.

Section 28 - Short title

42. The Bill will be known as the Scottish Fiscal Commission Act 2016.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This Financial Memorandum has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Policy Memorandum, which is published separately, explains in detail the background to the Bill and the policy intention behind the Bill. The purpose of this Financial Memorandum is to set out the costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

3. The Bill will establish the Scottish Fiscal Commission ("the Commission") in statute to safeguard its structural and operational independence and formalise its role in challenging and scrutinising fiscal projections and forecasts for the devolved public finances prepared by the Scottish Ministers. The Commission has been operating on a non-statutory basis since June 2014, when the Scottish Parliament endorsed the creation of the Commission and approved the Scottish Ministers' nominations for appointment to the Commission.

4. This Financial Memorandum sets out the costs associated with the establishment and operation of the statutory Commission in order to deliver those functions provided for in the Bill.

COSTS ON THE SCOTTISH ADMINISTRATION

5. The estimated costs arising from the Bill are summarised at Table 1 below. The estimated recurring costs of c. £850,000 per annum from 2017-18 onwards reflect the statutory functions of the Commission as provided for in the Bill as introduced and the need to ensure that it is fully resourced to deliver these functions and to fulfil the other governance and statutory responsibilities of an office-holder in the Scottish Administration. This Memorandum also estimates the non-recurring costs which will be incurred in transitioning the Commission from its current non-statutory operating model to a statutory body. These are predominantly staffing costs and are estimated at c. £600,000 over 2015-16 and 2016-17. These estimates assume that the statutory Commission comes into operation on 1 April 2017.

Table 1: Total estimated costs 2015-16 to 2017-18

	Transitional years		Year 1
	2015-16 £000s	2016-17 £000s	2017-18 £000s
Operating costs			
Staff costs	-	170	345
Member costs	-	-	112
Non-staff costs	-	180	393
Sub total	-	350	850
Transition costs			
Staff costs	180	360	-
Non-staff costs	15	30	-
Sub total	195	390	-
TOTAL	195	740	850

6. It will be for the Commission to determine how it utilises its resources to perform its statutory functions. The estimates included in this Memorandum have been prepared in consultation with the non-statutory Commission and are intended to provide a collective understanding of the likely resourcing requirements of the Commission as it transitions to, and then operates as, a statutory body. It will be for the statutory Commission to develop its own resourcing plans and to take its own decisions on how to deploy resources within the overall financial envelope, which the Scottish Government and Commission agree will be sufficient to deliver the statutory functions provided for in the Bill.

7. This Memorandum does not estimate the running costs for the non-statutory Commission. The Scottish Government allocates resources to the non-statutory Commission to meet the costs of secretariat and research support, remuneration of members, travel and subsistence including conference attendance, and running the office provided by the University of Glasgow. Similarly, this Memorandum does not attempt to estimate the additional costs associated with any future expansion of the Commission's functions, including that anticipated following enactment of the Scotland Bill introduced to the UK Parliament in May 2015. The Scottish Government will work with the Commission to determine what additional resources will be required to support such an expansion and update the Parliament on the associated costs when it brings forward proposals for the requisite legislation.

8. The paragraphs below provide more detail on the costs associated with this Memorandum.

Operating costs

Staff costs

Table 2: Estimated staff costs

	2016-17 £000s	2017-18 £000s
Chief of staff	50	100
Analytical and strategic support	80	165
Corporate and member support	40	80
TOTAL	170	345

9. Staff costs for the Commission have been estimated on the basis of a team of 6 full time equivalent staff providing governance, strategic, operational and technical support to members in discharging the Commission's functions. This represents the total staffing resource which the statutory Commission is likely to require, but as noted above it will be for the Commission to take decisions on its staffing structure in due course. The year 1 (2017/18) costs of £345,000 are based on the Scottish Government average staff costs for 2014-15, uprated for inflation. These include Accruing Superannuation Liability Charge (employer pension contributions) and employers' National Insurance Contributions. Staff costs may change in the future in accordance with Scottish Government Public Sector Pay Policy and other changes to superannuation or National Insurance Contributions. This Financial Memorandum estimates that staff costs will increase by 2% per annum in order to provide an indication of how costs may increase over time. These estimates have been prepared on the basis that the staff to support the statutory Commission will be appointed in the second half of 2016-17.

10. These estimates have been built around the Commission being supported by staff under the following three categories:

- **Chief of Staff** – The Bill requires that a Chief of Staff be appointed and it is anticipated that this post will incorporate the role of statutory Accountable Officer. As Accountable Officer, the Chief of Staff will be responsible for maintaining systems of corporate governance and internal control to ensure the Commission delivers its functions whilst safeguarding public funds. Given the technical nature of the Commission's core functions, the Chief of Staff is expected to have significant relevant technical expertise and thereby be able to provide professional leadership to analytical staff. The Chief of Staff will be appointed by, and report to, the Commission.

- **Analytical and strategic support** – This team will provide professional analytical advice as requested by Commission members, in order for the Commission to discharge its statutory functions. This team will also prepare any other reports and analyses as the Commission members consider appropriate within the terms of the legislation.
- **Corporate and member support** – This team will provide administrative support to the chief of staff and members and will have responsibility for the day-to-day operations of the Commission.

Remuneration and expenses of Commission members

Table 3: Estimated members costs

	2017-18 £000s
Remuneration of members	104
Member expenses	8
TOTAL	112

11. Appointments to the statutory Commission will be remunerated in line with Public Sector Pay Policy for Senior Appointments. It is assumed that the chair and members will continue to be remunerated based on a daily rate of £465 and £331 respectively, with an assumed time commitment of 1.5 days per week. The appointments are not pensionable but the costs include employers’ National Insurance Contributions.

12. Costs have been estimated on the basis of three members, one of whom acts as Chair, in line with membership of the non-statutory Commission. The Bill makes transitional provision for the chair and members of the non-statutory Commission to immediately form the first statutory Commission. The Bill provides that the Commission should have between three and five members (with one of these members to serve as chair) and there is potential for the size of the Commission to expand in line with its functions. The Scottish Government considers that the present size of the Commission is appropriate for and proportionate to its initial statutory remit. The anticipated time commitment of members will also be subject to review as the Commission transitions to a statutory body with full-time staff.

13. The Commission will also be responsible for non-pay costs for members including conference costs and travel and subsistence incurred through attendance at Commission meetings. The Scottish Government estimates this at around £8,000 in year 1 of statutory operation.

Non-staff costs

Table 4: Estimated non-staff costs

	2016-17 £000s	2017-18 £000s
Accommodation and related costs	60	125
Other running costs	120	160
Research	-	108
TOTAL	180	393

14. The non-statutory Commission is currently hosted by the University of Glasgow and operates from office premises on the University campus. The Commission will need to consider whether this arrangement remains fit for purpose as it transitions to a statutory body. In the event that the Commission takes the decision to relocate, accommodation costs have been estimated at commercial rates. Total annual accommodation costs are estimated to be £125,000, which includes rent, rates and utilities. These estimates are prepared on the basis that the statutory Commission is required to meet accommodation costs from the point at which staff are appointed in 2016-17. These costs do not include any payments that may be required to locate and secure the accommodation, for example advance rental and any associated legal advice, and such payments are included in the estimated transition costs below.

15. Estimates of IT costs, including IT support and network access, are based on the costs of the Scottish Government's *Information Services and Information Support* system and the SCOTS network. This fully managed ICT service provides and maintains computer hardware, printers, telephones, internet access, video conference equipment and mobile communications. IT costs including the purchase of hardware, cost to establish the network, on-going annual maintenance of the network and data centre costs are included in the estimate of other running costs. The Commission may wish to source secure ICT provision from an alternative provider. One-off costs associated with start-up are shown in 2016-17, to coincide with the recruitment of staff.

16. These estimates assume that the Commission would enter into shared service agreements with the Scottish Government or another public body for the provision of payroll, HR, accounting, finance and procurement services. This is in line with current practice for some other Scottish public bodies, including Revenue Scotland, the Office of the Scottish Charity Regulator (OSCR) and the Scottish Housing Regulator, where it would not represent good value for money for the body to provide these functions in-house.

17. The Commission will also incur other non-pay administration costs covering production of reports, office operating expenses, staff training, website development and audit.

18. The Commission will determine its own resourcing model, including the balance between employed staff and use of external expertise. Given the specialist nature of the research or

technical expertise which may be required, the illustrative costs in this Memorandum are based on a daily rate of £600. The length of time required to complete analyses will vary and the estimated costs allow for a maximum of 180 days work. This provides for a total of £108,000 to be available for research and consultancy, which may include the cost of commissioning an independent evaluation in relevant years.

Transition costs

Table 5: Estimated transition costs

	2015-16 £000s	2016-17 £000s
Pay and expenses	180	360
Non-staff costs	15	30
TOTAL	195	390

19. A change programme will be initiated to manage and deliver the transition of the non-statutory Commission to an office-holder in the Scottish Administration. Costs have been estimated based on a programme team comprising six full-time equivalents, who would ensure delivery of corporate services, including IT and accommodation, and the establishment of operating procedures, HR and governance. The cost of the transition team is estimated at £180,000 for 2015-16 and £360,000 for 2016-17 including travel and subsistence, assuming that the team would be formed in the second half of 2015-16. These estimates make a modest provision for non-staff costs to allow for other costs, including a property search and legal advice on subsequent property leases.

COSTS ON LOCAL AUTHORITIES

20. No additional costs on local authorities are anticipated as a result of the establishment of the Scottish Fiscal Commission.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

21. No additional costs are expected to fall on other bodies, individuals or businesses as a result of the establishment of the Scottish Fiscal Commission.

These documents relate to the Scottish Fiscal Commission Bill (SP Bill 78) as introduced in the Scottish Parliament on 28 September 2015

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 28 September 2015, the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney MSP) made the following statement:

“In my view, the provisions of the Scottish Fiscal Commission Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 28 September 2015, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Scottish Fiscal Commission Bill would be within the legislative competence of the Scottish Parliament.”

