SCOTTISH FISCAL COMMISSION BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Scottish Fiscal Commission Bill ("the Bill") introduced in the Scottish Parliament on 28 September 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 78–EN.

POLICY OBJECTIVES OF THE BILL

2. The purpose of the Bill is to give the Scottish Fiscal Commission ("the Commission") a basis in statute which safeguards its structural and operational independence and which formalises its role in scrutinising the operation of Scotland's devolved fiscal framework. The Commission is Scotland's independent fiscal institution ("IFI") with a key role in enhancing the credibility and transparency of fiscal projections 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.

3. The Commission is one of a small number of sub-sovereign IFIs which exist across the world. The creation of a statutory Commission demonstrates the Scottish Government's wider commitment to fiscal competence and discipline in the management of Scotland's devolved public finances. It also delivers against the First Minister's commitment to lead the most open and accessible government that Scotland has ever had by ensuring that devolved fiscal forecasts and projections prepared by the Scottish Ministers are subject to robust external scrutiny, the findings of which are reported to the Parliament and the public.

4. The Parliament's tax-raising powers will remain modest, even following full implementation of the additional powers recommended for devolution by the Smith Commission. The majority of the spending power of the Scottish Parliament will continue to be funded by a block grant from the UK Parliament and so it is not necessary or possible for the Scottish Government, or indeed an IFI, to produce a full set of macro level fiscal projections for Scotland. The remit of the Commission has, therefore, been designed to be proportionate to the current fiscal powers of the Scottish Parliament, but to provide a basis for expanding the Commission's functions as these powers expand.

BACKGROUND

5. The Commission already plays an important scrutiny role in Scotland's fiscal framework and in establishing fiscal transparency. The Scottish Government established the Commission on a non-statutory basis in June 2014 to support the exercise of the tax powers devolved under the Scotland Act 2012. The Commission's initial remit is to provide 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 non-domestic rate income ("NDRI"). The Commission's first reports on these matters were published as part of the process of parliamentary review of the Scottish Draft Budget for 2015-16[1].

6. This initial remit was designed to reflect and be proportionate to the fiscal powers devolved to the Scottish Parliament under the Scotland Act 2012, and to provide a basis for expanding the functions of the Commission in line with any future expansion in the fiscal powers of the Scottish Parliament. In designing this remit, the Scottish Government had regard to the findings of an inquiry into proposals to establish the Commission which was conducted by the Scottish Parliament's Finance Committee and which reported in February 2014.[2] The Scottish Government also had regard to international best practice, drawing in particular on the work of the Organisation for Economic Co-operation and Development ("OECD") and the International Monetary Fund ("IMF"), while recognising that the Scottish Fiscal Commission will support a sub-sovereign fiscal framework and therefore it would not be appropriate or proportionate for the Commission to undertake all the functions expected of a sovereign IFI.

7. There is now widespread international recognition that IFIs play a vital role in supporting the operation of a country's fiscal framework and there has been rapid growth in the number of such institutions over the last decade and particularly since the 2008 financial crisis. The specific features and functions of these institutions vary according to a country's needs, legal traditions and institutional environment, but in all cases they provide a source of independent scrutiny and assurance over a country's public finances. Most IFIs will have a role in scrutinising or assuring the government's tax estimates and macroeconomic forecasts for budget preparation. The presence of an IFI has been found to strengthen the credibility of official forecasts and to ensure that these forecasts are less susceptible to optimistic biases[3]. Their role is thought to improve fiscal discipline and sustainability. IFI's also contribute to a country's perceived fiscal transparency which in turn can affect a jurisdiction's cost of borrowing through financial markets.

8. The Scottish Ministers believe that the time has come to place the Commission on a statutory footing in the interests of permanency and certainty, and in line with international best practice. This will also safeguard the structural and operational independence of the Commission, which is critical to its on-going credibility and effectiveness. The Scottish Government believes that enactment of these legislative proposals will play a vital role in

[1] http://www.scottishfiscalcommission.org/
[2] http://www.scottish.parliament.uk/S4_FinanceCommittee/Reports/fir-14-01w.pdf
[3] http://www.gov.scot/Publications/2013/11/4732

delivering the Smith Commission's recommendation that *"the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland's public finances"*.[4]

9. The policy content of the Bill at introduction reflects the existing legislative competence of the Scottish Parliament, as amended by the Scotland Act 2012. In time, the Scottish Government expects to see the remit of the Commission develop substantially to take account of the new fiscal powers to be devolved under the Scotland Bill[5] currently proceeding through the UK Parliament and any further future devolution. The Bill is designed to provide flexibility to expand the functions of the Commission in due course.

Devolved fiscal powers

10. The Scottish Parliament had limited competence over taxation on its re-establishment in 1999, including powers over local taxation and the power to set the Scottish Variable Rate. The Scotland Act 1998 provided that "*local taxes to fund local authority expenditure (for example, council tax and non-domestic rates)*" were (in terms of Schedule 5 legislative competence) the only exception to the reservation of all fiscal, economic and monetary policy to the UK Parliament.

11. The Scotland Act 2012 devolved competence to the Scottish Parliament to legislate for a tax on transactions involving interests in land and a tax on disposals to landfill (effectively replacing Stamp Duty Land Tax and Landfill Tax in Scotland). The Scottish Parliament subsequently created the first new national taxes in Scotland in over 300 years, passing the Land and Buildings Transaction Tax (Scotland) Act 2013 and the Landfill Tax (Scotland) Act 2014. The Revenue Scotland and Tax Powers Act 2014 provides for the collection and management of the devolved taxes by Revenue Scotland. LBTT and SLfT replaced the predecessor UK taxes in Scotland on 1 April 2015.

12. The 2012 Act also provided for the Scottish Rate of Income Tax (SRIT), which gives the Scottish Parliament the power to set an annual rate of Income Tax for Scottish taxpayers. All Scottish taxpayers will see their rate of UK income tax on non-savings, non-dividend income reduced by 10 pence in the pound across each income tax band from April 2016. The Scottish Parliament will be able to pass a resolution setting a Scottish rate to replace the 10 pence reduction. SRIT will take effect as a constituent part of UK Income Tax and as such remains a reserved tax. SRIT will replace the Scottish Variable Rate when these powers commence in April 2016.

13. The Scotland Act 2012 also provides for limited additional borrowing powers for the Scottish Ministers which came into effect on 1 April 2015. Under these new powers the Scottish Ministers can borrow up to a statutory aggregate cap of £2.2 billion to support capital investment, although the UK Government has placed an administrative limit on annual borrowing of 10% of the Scottish capital budget. The Scottish Government is able to borrow from the National Loans Fund, from banks on commercial terms or through issuing bonds. The Scottish Government also has access to revenue borrowing powers to support any shortfall in

[4] https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf
[5] http://services.parliament.uk/bills/2015-16/scotland/documents.html

actual tax receipts against forecast. Revenue borrowing is subject to a statutory aggregate limit of £500 million and the UK Government has placed an administrative annual limit on borrowing of £200 million. Revenue borrowing is repayable within four years.

Table 1 Devolved Tax and Borrowing Powers which underpin the Scottish Budget

Legislation	Power
Scotland Act 1998	• Non Domestic Rates • Cash reserve /Revenue Borrowing capped at £500m • Powers to vary basic rate of income tax by 3p in the pound ("Scottish Variable Rate" to be replaced by the Scottish Rate of Income Tax)
Scotland Act 2012	• Powers to vary the rate of Income Tax by 10p in the pound from April 2016 (non-savings, non-dividend) ("Scottish Rate of Income Tax" to replace Scottish Variable Rate) • Land & Buildings Transaction Tax • Scottish Landfill Tax • Capital borrowing capped at £2.2bn

14. The Bill provides for specific statutory functions in relation to each of the existing devolved fiscal matters which underpin the Scottish Budget, as summarised at *Table 1* above. The Commission will be under a statutory duty to prepare and publish reports setting out its assessment of:

a) the Scottish Ministers' forecasts of receipts from the devolved taxes (incorporating LBTT and SLfT and any future taxes devolved to the Scottish Parliament);

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 (pertaining to anticipated revenues from SRIT); and

d) Scottish Ministers' projections as to their borrowing requirements.

STATUTORY FUNCTIONS OF THE SCOTTISH FISCAL COMMISSION

15. The non-statutory Commission has a remit to independently scrutinise and report on the Scottish Government's devolved tax revenue forecasts and on the economic determinants underpinning Scottish Ministers' forecasts of NDRI. This reflects the view of the Scottish Government that the preparation of forecasts of tax revenues which underpin the Scottish Budget should be the responsibility of Scottish Ministers, who should in turn be directly accountable to the Scottish Parliament for those forecasts. The existing Commission scrutinises and challenges these forecasts – including the methodologies and assumptions underpinning them – and reports the outcome of that scrutiny to the Parliament and to the public. The Bill provides for the core statutory functions to remain on this basis – that the Commission should provide independent scrutiny and challenge to devolved tax forecasts and other fiscal projections prepared by the Scottish Government.

16. This remit enables the Commission to exert significant influence over the forecasts which underpin the Scottish Draft Budget, as demonstrated by the 2015-16 Draft Budget. The non-statutory Commission reached the conclusion that it was *"able to endorse as reasonable the forecasts made by the Scottish Government"* on the basis of a thorough assessment of the methodologies and assumptions which were applied to produce forecasts prepared by the Scottish Ministers, as evidenced in the Commission's report[6] which also made recommendations as to how forecasting approaches could be developed and strengthened. The Parliament and the public had access to a detailed account of the Scottish Ministers' forecasting approach, as set out in the Devolved Taxes Forecasting Methodology paper published alongside the 2015-16 Scottish Draft Budget[7], as well as to the Commission's independent evaluation of that methodology.

17. In scrutinising the economic determinants of the forecasts of NDRI ahead of the 2015-16 Draft Budget, the Commission expressed a view that the buoyancy assumptions *"seem optimistic"*. Based on that assessment, the Scottish Government revised down the NDRI forecast prior to publication of the Draft Budget, clearly demonstrating that the Scottish Government will take action to respond to the Commission's findings.

18. By contrast, the UK forecasts for individual taxes published by the UK Office for Budget Responsibility ("the OBR") are prepared by HM Revenue and Customs and subject to in-house review by the OBR. Neither the nature of this scrutiny, nor its impact, is made public.

19. The approach proposed in the Bill is consistent with the role of a number of other fiscal councils across the world. As noted above, the work of the OECD and the IMF recognises that the precise form and functions of an IFI should be determined by local needs and the local fiscal and institutional environment. In particular, the OECD provided written evidence to a Finance Committee inquiry in 2013[8] which showed that, of the 17 IFIs in operation in OECD countries at that time, only two had a role in producing macroeconomic forecasts (the UK OBR and the Netherlands Bureau for Economic Policy Analysis). Eight IFIs assessed government forecasts, five prepared alternative forecasts and the remaining two IFIs had no role in relation to forecasting. Of the eight fiscal bodies created since 2008, only the UK OBR has a role in publishing official forecasts.

20. More recently the IMF presented written evidence to the Committee's fiscal framework inquiry which suggested that the "Scottish Fiscal Commission could contribute to the credibility of the government's fiscal policy by assessing the realism of the Scottish government's forecasts for devolved revenues and expenditures"[9].

21. The Scottish Government believes that its approach maximises the openness and transparency of the forecasting process – it means that a detailed account of the Scottish

[6] http://www.scottishfiscalcommission.org/media/media_364407_en.pdf
[7] http://www.gov.scot/Resource/0046/00460449.pdf
[8] http://www.scottish.parliament.uk/S4_FinanceCommittee/Organisation_for_Economic_Co-operation_and_Development.pdf
[9] http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/International_Monetary_Fund_(IMF).pdf

Government's forecasting approach, the findings of an independent evaluation of that approach and the changes which the government has made to forecasts or assumptions in response to those findings are publicly available.

OECD PRINCIPLES FOR INDEPENDENT FISCAL INSTITUTIONS

22. The development of these legislative proposals has been heavily influenced by the *OECD Principles for Independent Fiscal Institutions*[10] which represent international best practice in establishing such a body. These principles cover the following subjects:

- Local ownership
- Independence and non-partisanship
- Mandate
- Resources
- Relationship with the legislature
- Access to information
- Transparency
- Communications
- External evaluation.

23. This section of the Policy Memorandum describes how the Scottish Government has applied the OECD principles in developing legislative proposals for the Scottish Fiscal Commission, recognising the sub-sovereign nature of both the Scottish Parliament and the Commission.

Local ownership

OECD Principle 1.1. - To be effective and enduring, an IFI requires broad national ownership, commitment, and consensus across the political spectrum. While a country seeking to establish an IFI will benefit from the study of existing models and experiences in other countries, models from abroad should not be artificially copied or imposed. Regional or international authorities may provide valuable support and protection.

OECD Principle 1.2. - Local needs and the local institutional environment should determine options for the role and structure of the IFI. Design choices may also have to take into account capacity constraints, particularly in smaller countries. The basic characteristics of an IFI, including specific protections, should be informed by the country's legal framework, political system, and culture. Its functions should be determined by the country's fiscal framework and specific issues that need to be addressed.

[10] http://www.oecd.org/gov/budgeting/recommendation-on-principles-for-independent-fiscal-institutions.htm

24. The Bill establishes the Commission within the context of the current powers of the Scottish Parliament. Whilst the Scottish Government has carefully considered international comparators and in particular the work of the OECD and the IMF, the administrative and statutory arrangements have been designed with the needs of Scotland and its Parliament in mind. The provisions contained within the Bill will create an independent and expert Commission which can support the Parliament in its scrutiny of the Scottish Budget, with the legislation designed to meet the needs of the Scottish Parliament at the current stage of fiscal devolution.

25. The arrangements for the Commission are intended to be proportionate to the fiscal powers of the Scottish Parliament, recognising that the Commission operates at a sub-sovereign level and so it would not be appropriate for it to have the same range of macroeconomic functions as a fully sovereign IFI. The Commission is one of a small number of sub-sovereign independent fiscal institutions. In formulating these proposals to legislate for the Scottish Fiscal Commission, the Scottish Government has taken the opportunity to review the core functions of the Commission to ensure that they remain appropriate in anticipation of the devolution of further fiscal powers to the Parliament and the negotiation of a new fiscal framework for Scotland.

Independence and non-partisanship

OECD Principle 2.1. - Non-partisanship and independence are pre-requisites for a successful IFI. A truly non-partisan body does not present its analysis from a political perspective; it always strives to demonstrate objectivity and professional excellence, and serves all parties. This favours that IFIs should be precluded from any normative policy-making responsibilities to avoid even the perception of partisanship.

OECD Principle 2.2. - The leadership of an IFI should be selected on the basis of merit and technical competence, without reference to political affiliation. The qualifications should be made explicit – including professional standing and relevant government or academic experience. Qualifications should include proven competence in economics and public finances and familiarity with the budget process.

OECD Principle 2.3. - Term lengths and the number of terms that the leadership of the IFI may serve should be clearly specified in legislation as should be the criteria and process for dismissal for cause. The leadership's term should optimally be independent of the electoral cycle. Independence may be enhanced by defining the term span beyond the electoral cycle.

OECD Principle 2.4. - The position of head of the IFI should be a remunerated and preferably full-time position. Strict conflict-of-interest standards, particularly for institutions with council members employed on a part-time basis, should be applied equally vis-à-vis other employment in the public or private sector.

OECD Principle 2.5. - The leadership of the IFI should have full freedom to hire and dismiss staff in accordance with applicable labour laws.

OECD Principle 2.6. - Staff should be selected through open competition based on merit and technical competence and without reference to political affiliation. Conditions of employment should be along the lines of that of the civil (or parliamentary) service.

26. The Scottish Government recognises that it is critical to the effectiveness and credibility of the Commission that it is independent of government and seen to be so. The Bill therefore contains provisions to safeguard the structural and operational independence of the Commission.

27. The Scottish Government believes that the most appropriate way to ensure the structural independence of the Commission is to establish it as a body corporate and as a separate part of the Scottish Administration (sections 10 and 25). This means that the Commission will be directly accountable to the Scottish Parliament for the delivery of its functions, not through Ministers; and will be treated as an office-holder in the Scottish Administration. Establishing a body as part of the Scottish Administration is reserved to the UK Parliament by the Scotland Act 1998. In this case, an order under section 104 of the 1998 Act would be needed to establish the Commission on this basis. The Scottish Government intends to ask the UK Government to bring forward the necessary order in due course.

28. To further underline and safeguard the Commission's independence, section 6 of the Bill expressly provides that the Commission is not subject to the direction or control of any member of the Scottish Government in the performance of its functions.

29. The Bill provides that the Commission has the power to determine its own work plan, including the preparation of reports on other fiscal matters, in addition to the specific statutory duties imposed on the Commission by section 2(1). The Scottish Government recognises that this freedom is central to securing the operational independence of the Commission and so section 5(2) ensures that this function is entrenched in primary legislation and cannot be removed by way of regulations. The Bill seeks to prevent the Commission from involvement in political issues by defining the scope of its remit in terms of existing devolved powers and by preventing the Commission from considering the effect of alternative policies in discharging its functions.

30. The Bill also seeks to safeguard the independence of Commission members. Members of the non-statutory Commission were appointed by Scottish Ministers with the approval of the Scottish Parliament. Section 24 provides for members of the non-statutory Commission to form the first statutory Commission, serving to the conclusion of their current appointment terms. All subsequent appointments to the statutory 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. In addition, the Scottish Parliament is required to approve all appointments to the Commission and the Scottish Ministers may only remove a member from office under specified conditions and with the express approval of the Scottish Parliament.

31. Terms of service, including remuneration, will be set by Ministers and agreed at the outset in a member's appointment letter (remuneration of the initial members will be in a separate letter). Members (including the Chair) can only be appointed for one fixed term. This

further strengthens the non-partisan nature of the Commission by ensuring that members can discharge their duties without consideration of their prospects for reappointment.

32. The Commission will determine its own staffing arrangements, with the terms and conditions of employment to be agreed firstly with the Scottish Ministers. Section 18 requires the Commission to employ a Chief of Staff and also enables the Commission to employ other staff to assist it in carrying out its functions, with its employees' terms requiring the approval of the Scottish Ministers. It is envisaged that the Chief of Staff, who will be appointed by the Commission, will act as statutory Accountable Officer and would also bring significant economic forecasting or equivalent experience and expertise to the work of the Commission. The Commission will have the flexibility to obtain what administrative and other professional or technical support it requires.

Mandate

OECD Principle 3.1. - The mandate of IFIs should be clearly defined in higher-level legislation, including the general types of reports and analysis they are to produce, who may request reports and analysis, and, if appropriate, associated timelines for their release.

OECD Principle 3.2. - IFIs should have the scope to produce reports and analysis at their own initiative, provided that these are consistent with their mandate. Similarly, they should have the autonomy to determine their own work programme within the bounds of their mandate.

OECD Principle 3.3. - Clear links to the budget process should be established within the mandate. Typical tasks carried out by IFIs might include (but are not limited to): economic and fiscal projections (with a short- to medium-term horizon, or long-term scenarios); baseline projections (assuming unchanged policies); analysis of the executive's budget proposals; monitoring compliance with fiscal rules or official targets; costing of major legislative proposals; and analytical studies on selected issues.

33. The statutory remit of the Commission reflects the key fiscal judgements taken by Ministers in preparing the Scottish Budget, and the Commission is required to publish a report on the same day as the Scottish Ministers lay the Scottish Draft Budget before the Parliament. The core function of the Scottish Fiscal Commission will be to provide independent scrutiny of tax forecasts and other fiscal projections prepared by the Scottish Ministers to underpin the Scottish Budget process. This approach maximises the openness and transparency of the forecasting process as all data will be made available and accessible to the Commission, the Commission's reports on its scrutiny work are publicly available; and will provide the Parliament with an informed, authoritative and independent assessment which will enable it to hold Ministers appropriately to account.

34. The Bill provides for specific statutory functions for the Commission, as outlined at paragraph 14 above. In addition, section 2(3) enables the Commission to prepare reports setting out its assessment of the reasonableness of other such fiscal factors as it considers appropriate. This power is defined in terms of the current fiscal powers of the Scottish Parliament and so provides the Commission with scope to produce its own reports and analysis as it sees fit, in line with the OECD Principles. The Commission will also be able to produce technical working papers in addition to its statutory reports.

35. The Government also proposes that the Commission's powers should expand further to reflect any additional powers devolved to the Scottish Parliament. With that in mind, section 5 of the Bill provides a regulation-making power for the Scottish Ministers, following consultation with the Commission and subject to parliamentary process, to confer new functions on the Commission or modify or remove existing ones. Regulations under section 5 would require the approval of the Parliament by affirmative procedure. This power will enable the Commission's remit to be extended in future without the need for further primary legislation, but subject to proper parliamentary oversight and agreement. Once the Scottish Parliament has the additional legislative competence, the Scottish Government plans to add to the functions of the Commission using the regulation-making powers referred to above, subject to the Parliament's approval.

Resources

OECD Principle 4.1. - The resources allocated to IFIs must be commensurate with their mandate in order for them to fulfil it in a credible manner. This includes the resources for remuneration of all staff and, where applicable, council members. The appropriations for IFIs should be published and treated in the same manner as the budgets of other independent bodies, such as audit offices, in order to ensure their independence. Multiannual funding commitments may further enhance IFIs independence and provide additional protection from political pressure.

36. The accompanying Financial Memorandum sets out the Scottish Government's estimate of the resources which will be required by the Commission to enable it to discharge its statutory functions. These estimates were prepared in conjunction with the Commission and are intended to provide the Commission with sufficient flexibility to determine its own operational arrangements in due course. Resources will be allocated to the Commission via the Scottish Budget process, and therefore subject to the scrutiny of the Scottish Parliament. While the nature of the devolved funding settlement can restrict the ability of the Scottish Parliament and Scottish Government to set a multi-year budget, the Scottish Government will seek to agree administrative arrangements with the Commission to provide a degree of certainty over multi-year budgets, which would in due course be subject to parliamentary approval.

Relationship with the legislature

OECD Principle 5.1. - Legislatures perform critical accountability functions in country budget processes and the budgetary calendar should allow sufficient time for the IFI to carry out analysis necessary for parliamentary work. Regardless whether an independent fiscal institution is under the statutory authority of the legislative or the executive branch, mechanisms should be put in place to encourage appropriate accountability to the legislature. These may include (but are not limited to): (1) submission of IFI reports to parliament in time to contribute to relevant legislative debate; (2) appearance of IFI leadership or senior staff before the budget committee (or equivalent) to provide responses to parliamentary questions; (3) parliamentary scrutiny of the IFI budget; and (4) a role for parliament's budget committee (or equivalent) in IFI leadership appointments and dismissals.

OECD Principle 5.2. - The role of the IFI vis-à-vis parliament's budget committee (or equivalent), other committees, and individual members in terms of requests for analysis should be clearly established in legislation. Preferably, the IFI should consider requests from committees and sub-committees rather than individual members or political parties. This is particularly relevant for those IFIs established under the jurisdiction of the legislature.

37. The Commission will be directly accountable to the Parliament. The Bill seeks to ensure that the Commission's outputs will be aligned to the Scottish Budget process and therefore support parliamentary scrutiny of fiscal forecasts and projections prepared by the Scottish Ministers. The Commission is required to lay a report before the Parliament providing its assessment of the forecasts contained within the Scottish Draft Budget on the same day as the Scottish Draft Budget is laid by Ministers. It will be for the Parliament to determine how it wishes to use the work of the Commission to support its scrutiny of the Scottish Budget. For example, Commission members were called to give evidence to the Finance Committee to support its scrutiny of devolved tax forecasts contained within the 2015-16 Draft Budget[11].

38. The Parliament may request that the Commission prepares reports on fiscal matters within the scope of the Commission's statutory functions. The Commission however, has the statutory freedom to determine its own work programme. As outlined above, the Parliament will also scrutinise and approve the Commission's budget as part of the overall Scottish Budget process and have the power to approve or reject appointments to the Commission.

Access to information

OECD Principle 6.1. - There is often asymmetry of information between the government and the IFI – no matter how well an IFI is resourced. This creates a special duty to guarantee in legislation – and if necessary to reaffirm through protocols or memoranda of understanding – that the IFI has full access to all relevant information in a timely manner, including methodology and assumptions underlying the budget and other fiscal proposals. Information should be provided at no cost or, if appropriate, sufficient resources should be provided in the IFI budget to cover analysis obtained through government actuarial services.

[11] http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/85021.aspx

39. The Scottish Government recognises the importance of open access to information by the Commission in order for it to perform its functions. 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 to request information relevant to the performance of its functions from the Scottish Government, Revenue Scotland, Registers of Scotland and SEPA. The provision of such information is subject to other legislation that prohibits, restricts access or relates to its disclosure, for example the Data Protection Act 1998 or the Revenue Scotland and Tax Powers Act 2014.

40. Section 7(2)(e) also contains a regulation making power to allow the Scottish Ministers, subject to parliamentary approval, to grant the Commission access to other information that may be necessary in the future should the Commission's functions be expanded or changed.

Transparency

OECD Principle 7.1. - Given that promoting transparency in public finances is a key goal of IFIs, they have a special duty to act as transparently as possible. Full transparency in their work and operations provides the greatest protection of IFI independence and allows them to build credibility with the public.

OECD Principle 7.2. - IFI reports and analysis (including a full account of the underlying data and methodology) should be published and made freely available to all. As noted in 5.1, all IFI reports and analysis should be sent to parliament in time for legislative debate and the leadership of the IFI should be given the opportunity to testify before parliamentary committees.

OECD Principle 7.3. - The release dates of major reports and analysis should be formally established, especially in order to co-ordinate them with the release of relevant government reports and analysis.

OECD Principle 7.4. - IFIs should release their reports and analysis, on matters relating to their core on-going mandate on economic and fiscal issues, in their own name.

41. In order to provide fiscal transparency, and to provide the Parliament with the information it needs at the right time to enable it to scrutinise the budget, section 4 of the Bill requires the Commission to lay its statutory reports before the Scottish Parliament. The Commission must also publish such reports in whatever manner it considers appropriate to ensure that these reports are accessible to the public at large. The non-statutory Commission already publishes its reports on its website.[12]

42. In order to provide transparency over the Commission's activities, it is required to produce an annual report following the end of each financial year which must be laid before the Scottish Parliament. The Commission is also free to publish other reports and information on their performance as it considers appropriate.

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[12] www.scottishfiscalcommission.org

Communications

OECD Principle 8.1. - IFIs should develop effective communication channels from the outset, especially with the media, civil society, and other stakeholders. Given that the influence of IFIs in fiscal policy making is persuasive (rather than coercive by means of legal sanctions or other punitive measures), media coverage of their work assists in fostering informed constituencies that may then exercise timely pressure on the government to behave transparently and responsibly in fiscal matters.

43. The Bill provides the Commission with complete autonomy over how it disseminates its work and findings. The Scottish Government expects there to be a great amount of interest in the Commission's work, particularly at key stages of the Scottish Budget process, and will ensure that the Commission has access to sufficient and appropriate resources to effectively communicate its work.

External evaluation

OECD Principle 9.1. - IFIs should develop a mechanism for external evaluation of their work – to be conducted by local or international experts. This may take several forms: review of selected pieces of work; annual evaluation of the quality of analysis; a permanent advisory panel or board; or peer review by an IFI in another country.

44. Section 9 of the Bill requires the Commission to submit itself to external review of its performance at least once every five years. The Commission will be required to lay the report of this review before the Parliament. This requirement will ensure that the work of the Commission is periodically assessed by an independent expert, providing the Parliament and the public with an external source of assurance as to the effectiveness of the Commission and ensuring that the Commission is committed to a process of continuous improvement in carrying out its statutory functions.

ALTERNATIVE APPROACHES

45. The Scottish Fiscal Commission already plays a key role in supporting the responsible exercise of the tax powers devolved to the Scottish Parliament and as such is an established and important institution within Scotland's devolved fiscal framework.

46. The Commission was established on a non-statutory basis in 2014, and it could be argued that it could continue to carry out its functions under that status indefinitely. The Scottish Government has always intended that the non-statutory status should be temporary and committed to bringing forward legislative proposals for the Commission in the 2014-15 Programme for Government. International best practice, including the OECD Principles (see principle 3.1 and paragraphs 33 to 35 above), points to the Commission having a statutory underpinning. The Scottish Government considers that this statutory underpinning is essential to securing the Commission's permanency and independence which will in turn strengthen the credibility and effectiveness of the Commission.

47. The Scottish Government has considered alternative functions for the Commission, including the production of devolved tax forecasts. For the reasons outlined at paragraphs 15 to

21 above, the Scottish Government believes that the model of independent scrutiny of forecasts and projections prepared by the Scottish Ministers maximises the operation and transparency of the forecasting process and best supports the operation of Scotland's devolved fiscal framework.

CONSULTATION

48. The Scottish Government published a consultation on its proposals to legislate for the Scottish Fiscal Commission, including a draft Bill, on 26 March 2015. The consultation ran for 12 weeks and the Scottish Government received 10 responses. The Scottish Government has published the responses[13], and an analysis of those responses.[14]

49. Respondents to the consultation were unanimous in their support for the creation of the Commission and for giving it a basis in statute. They were broadly supportive of the policy goals, as set out in the consultation, namely that the Commission should be independent and impartial, have access to the data it requires to perform its functions and have clear and robust governance structures.

50. In keeping with the diverse functions of existing IFIs across the world, respondents held a variety of views on the specific remit of the Commission. There was no consensus amongst respondents on the issue of whether the Commission should independently assess forecasts prepared by the Scottish Ministers or whether it should produce the official forecasts which underpin the Scottish Budget. Six of the ten responses to the consultation were silent on this issue or endorsed the view that it was appropriate for the Commission to independently assess Scottish Government forecasts.

51. The Scottish Parliament Finance Committee considered the future role and remit of the Commission in the course of its inquiry into Scotland's Fiscal Framework, which reported on 29 June 2015[15]. An extract from that report was submitted to the Scottish Government consultation. The Committee recommended that the draft Bill should be amended such that the Commission should produce its own forecasts. The Scottish Government has taken the opportunity to review the core functions of the Commission in light of the Committee's inquiry and the responses to the consultation to ensure that they remain appropriate in anticipation of devolution of further fiscal powers and the negotiation of a new fiscal framework for Scotland. Having reviewed the available evidence including international best practice, the Scottish Government is not persuaded that the Commission should prepare the official forecasts for the devolved taxes. It remains open to the Commission to prepare alternative forecasts or assumptions to support its scrutiny of the Scottish Government's forecasts.

52. Respondents such as ICAS, Taxpayer Scotland and CIPFA recommended that the Commission should have a wider role and look at other areas affecting the Scottish Budget including scrutinising consequential funding allocations from the UK budget under the Barnett Formula, assumptions used in the block grant settlement and monitoring the Scottish Government's performance against fiscal rules. On reflection the Scottish Government does not

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[13] http://www.gov.scot/Publications/2015/09/2406
[14] http://www.gov.scot/Publications/2015/09/4291
[15] http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/90923.aspx

believe that the Commission's functions need to be extended at this point and these issues will be revisited at the point at which the Commission's remit is expanded to reflect the new fiscal powers devolved to the Scottish Parliament under the Scotland Bill introduced into the UK Parliament in May 2015.

53. The Scottish Government has made a number of policy changes to the consultation draft of the Bill in order to address issues raised in the consultation responses as follows.

- Functions – the consultation draft of the Bill included a requirement for the Commission to *"prepare other reports on fiscal matters as the Scottish Ministers may from time to time require"*. Some respondents suggested that this power of direction could be at odds with the stated policy intention to create a Commission which is structurally and operationally independent of government. On reflection, the Scottish Government agrees that this function should be replaced with a broader function which allows the Commission to prepare such other reports as it considers appropriate. It will now be for the Commission to determine whether or not to prepare an additional report requested by, for example, the Scottish Ministers or a Committee of the Scottish Parliament. The Commission will also be able to decide to prepare additional reports without these being requested by Ministers or by the Parliament, within the terms of section 2 of the Bill. This amendment is intended to strengthen the actual and perceived independence of the Commission by allowing it the full freedom to determine its own programme of work.
- Annual report - as suggested by two respondents, the Bill now makes provision for the Commission to prepare and publish an annual report setting out its activities during the year to improve the transparency of the Commission's own operations and provide another mechanism by which the Scottish Parliament can hold the Commission to account for its performance.
- External evaluation - the Royal Society of Edinburgh highlighted the absence of a provision requiring the Commission to submit to external evaluation, in line with the OECD Principles. The Scottish Government agrees that it would be desirable to place such a statutory requirement on the Commission and has made provision for this (see also paragraph 44 above).

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

54. The Scottish Government has assessed the potential impacts of the Bill on equal opportunities[16]. The Bill does 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.

[16] http://www.gov.scot/Resource/0048/00485060.pdf

55. Appointments to the Commission will be public appointments and therefore subject to the Public Appointments and Public Bodies etc. (Scotland) Act 2003. This will result in all appointments being made after fair and open competition and in addition the appointments process will be regulated by the Commissioner for Ethical Standards in Public Life in Scotland.

Human rights

56. The Bill does not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). The Bill has no identified differential impact on human rights nor any impact on any individual's civil liberties.

Business impacts

57. This Bill will have no impact on Scottish businesses, relating solely to the scrutiny of the public finances, and in particular the Scottish Budget.

Privacy impacts

58. 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, restricts access to 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 Bill have been identified.

Island communities

59. The Bill has no identified differential impact on island and rural communities.

Local government

60. There are no additional responsibilities or costs for local authorities as a result of this Bill. Accordingly, this Bill will have no direct impact on local government.

Sustainable development

61. This Bill will have no impact on sustainable development.

This document relates to the Scottish Fiscal Commission Bill (SP Bill 78) as introduced in the Scottish Parliament on 28 September 2015

SCOTTISH FISCAL COMMISSION BILL

POLICY MEMORANDUM

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