Delegated Powers and Law Reform Committee

Scottish Fiscal Commission Bill at Stage 1
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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

a. any—
   i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   ii. [deleted]
   iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

c. general questions relating to powers to make subordinate legislation;

d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

g. any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
Committee Membership

Convener
Nigel Don
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Richard Baker
Scottish Labour

John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
Introduction

1. At its meeting on 27 October 2015 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Scottish Fiscal Commission Bill at Stage 1 ("the Bill"). The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM").

3. The Bill was introduced by the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy on 28 September 2015. The Bill seeks to establish the Scottish Fiscal Commission and to provide for its functions.
Overview of the Bill

4. Section 1 of the Bill establishes the Scottish Fiscal Commission. Sections 2 – 9 make provision for the functions of the Commission. Section 2 requires the Commission to prepare reports which assess the reasonableness of the matters listed at section 2(1)(a) – (d):

(a) the Scottish Ministers’ forecasts of receipts from the devolved taxes,

(b) the assumptions made by the Scottish Ministers in relation to the determinants described in subsection (2) (being the economic determinants on which the Scottish Ministers’ forecasts of receipts from non-domestic rates are based),

(c) the Scottish Ministers’ forecasts of receipts from income tax attributable to a Scottish rate resolution,

(d) the Scottish Ministers’ projections as to their borrowing requirements.

5. Section 2(3) allows the Commission to prepare reports relating to other fiscal factors. Section 2(6) requires the Commission to have regard to a policy of the Scottish Ministers if it is relevant to the performance of the functions of the Commission under section 2, but the Commission is not permitted to consider the effect of any alternative policy.

6. Section 3 lists terms used in section 2. Section 4 provides the procedure for the laying of reports by the Commission. Section 4(1) requires any report prepared by the Commission under section 2(1) to be laid on the same day as the Scottish Ministers lay their draft Scottish budget. Section 4(2) requires reports relating to other fiscal factors (under section 2(3)) to be laid “as soon as practicable after the report is prepared”. Before laying a report under section 2, the Commission is required to send a copy of the report to the Scottish Ministers.

7. Section 5 enables the Scottish Ministers to bring forward regulations to change the functions of the Commission. However, the Scottish Ministers are not permitted to remove the two key reporting functions under section 2(1) and (3).

8. Section 6 is a statutory declaration that the Commission is to be independent of any member of the Scottish Government, although that status is subject to any contrary provision elsewhere.

9. Section 7 provides for the Commission to have access to “relevant information” (defined in section 7(2)).
10. Section 8 requires the Commission to publish an annual report on its activities in each financial year. Section 9 requires the Commission to appoint a person to review and report on the performance of the Commission in every 5-year period. Section 10 provides for the Commission to be a body corporate.

11. Sections 11 to 16 make provision for the membership of the Commission. The membership is to consist of no more than 5 members (a chair and up to 4 other members), with all appointments being made by the Scottish Ministers. An appointment can only be made with the approval of the Parliament (section 11(3)). Section 12 lists persons who are not able to be appointed as a member of the Commission. Section 12(3) further restricts appointments so that a former member cannot be reappointed. Scottish Ministers are to fix the periods and terms of appointment (section 13). Section 14 confirms that if a person is appointed as a member of the Commission but subsequent to that becomes disqualified under any of the grounds in section 12, then the appointment of that person ceases to have effect. A member may resign by giving notice to both the Scottish Ministers and to the Presiding Officer (section 15). Scottish Ministers may remove a member for any of the specific grounds listed in section 16(1) but only with the approval of the Parliament (section 16(2)).

12. Section 17 allows for remuneration and expenses to be paid to members. Section 18 requires that the Commission appoints a Chief of Staff. It also permits the Commission to employ other staff.

13. Sections 19 to 23 are grouped together under the heading of “general”. Section 19 allows the Commission to regulate its own procedure. Section 20 prevents action taken by the Commission from being invalidated because of any vacancy in membership, a defect in appointment of a member, or a disqualification of a member after appointment. Section 21 permits the Commission to set-up committees, the membership of which will not necessarily be drawn entirely from members of the Commission. Section 22 permits the Commission to authorise other persons (listed at section 22(1)) to perform its functions, although the Commission will remain responsible for those functions. Section 23 is a general provision which, in effect allows the Commission to function properly.

14. Section 24 makes transitional arrangements for the existing chairing member and all other members of the current non-statutory Fiscal Commission to continue in post as if appointed under the provisions of the Bill. The appointment of those members will continue for the duration of the terms and conditions upon which they are currently appointed. This will ensure that there is no gap in the membership and operation of the body as it changes status.

15. Section 25 contains six amendments to ensure that the Commission is included in the various pieces of legislation that govern public bodies. If enacted in current form, the effect of section 25 will be to make the Commission subject to the following enactments:
(a) Ethical Standards in Public Life etc. (Scotland) Act 2000;
(b) Freedom of Information (Scotland) Act 2002;
(c) Public Appointments and Public Bodies etc. (Scotland) Act 2003;
(d) Public Services Reform (Scotland) Act 2010;
(e) Public Records (Scotland) Act 2011; and
(f) Procurement Reform (Scotland) Act 2014.

16. Section 26 is an ancillary power, section 27 is the commencement power, and section 28 provides for the short title.
17. The Committee considered each of the delegated powers in the Bill. At its first consideration of the Bill on 27 October, the Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:

- Section 5 – Power to modify the Commission’s functions
- Section 7 - Access to information
- Section 11 – Members of the Commission
- Section 26 – Ancillary Powers
- Section 27 – Commencement

18. The Committee therefore reports that it is content with the delegated powers provisions contained in the Bill.
Delegated Powers and Law Reform Committee
Scottish Fiscal Commission Bill at Stage 1, 63rd Report, 2015 (Session 4)

1 Scottish Fiscal Commission Bill (as introduced) is available at the following website:

2 Scottish Fiscal Commission Bill Delegated Powers Memorandum is available at the following website: