INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Scottish Fiscal Commission Bill (introduced in the Scottish Parliament on 14 May 2014) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by side-lining in the right margin.

2. 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.

3. 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

4. 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.

5. 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

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

6. 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 website.

THE BILL

OVERVIEW

7. 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

8. 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

9. 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:

This document relates to the Scottish Fiscal Commission Bill as amended at Stage 2 (SP Bill 78A)

(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.

10. 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.

11. 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

12. 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 the Scottish Ministers in sufficient time prior to the laying of the report in the Parliament that the contents of the report can inform the budget deliberations. This timing will be covered by the protocol described in the following paragraph.

Section 4A - Protocol between the Commission and the Scottish Ministers

13. Section 4A requires that there is to be a protocol between Scottish Ministers and the Scottish Fiscal Commission and for the Commission to publish the protocol. The protocol, and any subsequent revision, will include arrangements for communications and meetings, expectations on information sharing including timings and the production of any papers the Commission produces whilst exercising its functions. This will increase the transparency of the interactions between the Commission and the Scottish Ministers during the scrutiny process as outlined in section 2 of the Bill.

Section 5 - Power to modify the Commission’s functions

14. 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.

15. 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

16. 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

17. 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.

18. 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.

19. 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

20. 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

21. 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

22. 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

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

24. 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.

25. 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

26. 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).

Section 13 - Period and terms of appointment

27. 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, not exceeding five years. This makes it possible to ‘stagger’ the dates on which appointments expire, avoiding a situation where several members leave office at one time, which could dilute expertise and experience.
28. Members can be reappointed on one occasion and so may serve a total of two consecutive terms. To allow flexibility around the timing of the reappointment process (for example in obtaining parliamentary approval), a person may be reappointed if the person is currently a member or was a member in the three months prior to reappointment. All the provisions relating to appointments in this section and sections 11, 12 and 14, including parliamentary approval of appointments, apply to any reappointment.

Section 14 - Disqualification after appointment

29. 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

30. 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

31. 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

32. 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

33. 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.

34. 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

35. 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

36. 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

37. 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

38. 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

39. 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

40. 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

41. 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
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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

42. 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

43. 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

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