Passage of the

Scottish Fiscal Commission Bill

SPPB 238
Passage of the
Scottish Fiscal Commission Bill

SP Bill 78 (Session 4), subsequently 2016 asp 17

SPPB 238

EDINBURGH: APS GROUP SCOTLAND
Contents

Foreword

Introduction of the Bill
Bill (As Introduced) (SP Bill 78) 1
Explanatory Notes (and other accompanying documents) (SP Bill 78-EN) 13
Policy Memorandum (SP Bill 78-PM) 30
Delegated Powers Memorandum (SP Bill 78-DPM) 46

Stage 1
Stage 1 Report, Finance Committee 53
Written evidence received 84

Official Report, Finance Committee—
28 October 2015 272
4 November 2015 285
18 November 2015 309
25 November 2015 335
2 December 2015 348

Stage 1 Report, Delegated Powers and Law Reform Committee 367
Scottish Government response to the Finance Committee’s Stage 1 report 379

Extract from the Minutes of the Parliament, 14 January 2016 384
Official Report, Meeting of the Parliament, 14 January 2016 385

Stage 2
Marshalled List of Amendments for Stage 2 402
Groupings of Amendments for Stage 2 405
Extract from the Minutes, Finance Committee, 10 February 2016 406
Official Report, Finance Committee, 10 February 2016 407

Bill (As Amended At Stage 2) (SP Bill 78A) 421
Revised Explanatory Notes (SP Bill 78A-EN) 435

Stage 3
Marshalled List of Amendments selected for Stage 3 443
Groupings of Amendments for Stage 3 448
Extract from the Minutes of the Parliament, 10 March 2016 449
Official Report, Meeting of the Parliament, 10 March 2016 450

Bill (As Passed) (SP Bill 78B) 467
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.
Scottish Fiscal Commission Bill
[AS INTRODUCED]

CONTENTS

Section

Scottish Fiscal Commission

1 Establishment

Functions

2 Functions
3 Meaning of terms used in section 2
4 Reports
5 Power to modify the Commission’s functions
6 Independence
7 Access to information
8 Annual report
9 Review of Commission’s performance

Corporate status

10 Corporate status

Membership

11 Members of the Commission
12 Disqualification for appointment
13 Period and terms of appointment
14 Disqualification after appointment
15 Resignation
16 Removal

Remuneration and expenses

17 Remuneration and expenses

Staff

18 Chief of Staff and other staff

General

19 Regulation of procedure
20 Validity of things done
21 Committees
22 Authority to perform functions
23 General powers

Transitional and consequential

24 Initial members

SP Bill 78

Session 4 (2015)
<table>
<thead>
<tr>
<th></th>
<th>Amendment of public bodies’ legislation</th>
<th>Ancillary provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Ancillary provision</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Commencement</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Short title</td>
<td></td>
</tr>
</tbody>
</table>
Scottish Fiscal Commission Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish the Scottish Fiscal Commission and to provide for its functions.

Scottish Fiscal Commission

1 Establishment

5 (1) The Scottish Fiscal Commission (in Gaelic, Coimisean Fiosgail na h-Alba) is established.

(2) In this Act, it is referred to as “the Commission”.

Functions

2 Functions

10 (1) The Commission is to prepare reports setting out its assessment of the reasonableness of—

(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.

(2) For the purposes of subsection (1)(b), the determinants are—

20 (a) the change predicted to the rateable value of the lands and heritages on the valuation rolls, and

(b) the rate of inflation used for the purposes of the forecast of the non-domestic rate to be prescribed under section 7B of the Local Government (Scotland) Act 1975.

(3) The Commission may from time to time prepare reports setting out its assessment of the reasonableness of such fiscal factors (other than those mentioned in paragraphs (a) to (d) of subsection (1)) as it considers appropriate.
(4) For the purposes of subsection (3), a “fiscal factor” is any forecast, assumption or projection which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000.

(5) Reports prepared under this section may include such other information relating to the assessments being made as the Commission considers appropriate.

(6) Where a policy of the Scottish Ministers is relevant to the Commission’s performance of its functions under this section, the Commission—

(a) must have regard to the policy, but

(b) may not consider what the effect of any alternative policy would be.

3 Meaning of terms used in section 2

(1) This section defines terms used in section 2.

(2) “Devolved taxes” is to be construed in accordance with section 80A(4) of the Scotland Act 1998.

(3) “Non-domestic rates” means non-domestic rates levied under section 7B(2) of the Local Government (Scotland) Act 1975.

(4) “Scottish rate resolution” is to be construed in accordance with section 80C(1) of the Scotland Act 1998.

(5) “Valuation roll” is to be construed in accordance with section 1 of the Local Government (Scotland) Act 1975.

4 Reports

(1) The Commission must lay a report prepared under section 2(1) before the Scottish Parliament on the same day as that on which the Scottish Ministers lay before the Parliament the draft Scottish budget for the subsequent financial year.

(2) The Commission must lay any other report prepared under section 2(1) or a report prepared under section 2(3) before the Scottish Parliament as soon as reasonably practicable after the report is prepared.

(3) Before laying a report prepared under section 2 before the Scottish Parliament, the Commission must send a copy of it to the Scottish Ministers.

(4) Once a report prepared under section 2 has been laid before the Scottish Parliament, the Commission must publish it.

(5) The Commission may publish reports prepared under section 2 in such manner as it considers appropriate.

5 Power to modify the Commission’s functions

(1) Subject to subsection (2), the Scottish Ministers may by regulations—

(a) confer functions on the Commission,

(b) modify the functions of the Commission,

(c) remove functions from the Commission.
(2) Regulations under subsection (1) may not remove the Commission’s functions under section 2(1) or (3) (but may remove or modify any paragraph in subsection (1) of that section).

(3) Regulations under subsection (1) are subject to the affirmative procedure.

(4) In preparing a draft of a Scottish statutory instrument containing regulations under subsection (1) for laying before the Scottish Parliament, the Scottish Ministers must consult—

(a) the Commission, and

(b) such other persons as they consider appropriate.

(5) Regulations under subsection (1) may—

(a) modify this Act or any other enactment,

(b) include incidental, supplementary, consequential, transitional, transitory or saving provision.

6 Independence

(1) In performing its functions, the Commission is not subject to the direction or control of any member of the Scottish Government.

(2) This section is subject to any contrary provision in this or any other enactment.

7 Access to information

(1) The Commission—

(a) has a right of access at reasonable times to any relevant information that the Commission may reasonably require for the purpose of performing its functions,

(b) may require any person who holds or is accountable for relevant information to provide at reasonable times any assistance or explanation that the Commission may reasonably require for the purpose of—

   (i) performing its functions, or

   (ii) exercising the right conferred by paragraph (a).

(2) In subsection (1), “relevant information” means information in the possession or under the control of—

(a) any member of the Scottish Government,

(b) Revenue Scotland,

(c) the Keeper of the Registers of Scotland,

(d) the Scottish Environment Protection Agency,

(e) such other person, or person of such description, as the Scottish Ministers may by regulations specify.

(3) Subsection (1) is subject to any other enactment or rule of law that prohibits or restricts the disclosure of any information or the giving of any assistance or explanation.

(4) Regulations under subsection (2)(e) are subject to the affirmative procedure.
8 Annual report
(1) The Commission must, as soon as reasonably practicable after the end of each financial year—
   (a) prepare and publish a report on its activities during the year,
   (b) lay a copy of the report before the Scottish Parliament, and
   (c) send a copy of the report to the Scottish Ministers.

(2) The Commission may publish its reports under this section in such manner as it considers appropriate.

9 Review of Commission’s performance
(1) The Commission must, at least once in every 5-year period, appoint a suitable person or body to review and prepare a report on the Commission’s performance of its functions during the period.

(2) For the purposes of subsection (1), a person or body is suitable only if—
   (a) the person or body has expertise likely to be relevant to the assessment of the performance of the Commission’s functions under section 2, and
   (b) the person or body is not—
      (i) a member of the Commission, or
      (ii) disqualified from appointment as such a member by virtue of section 12(1)(a).

(3) The Commission may make such payment to a person or body appointed under subsection (1) in respect of a review as it may, with the approval of the Scottish Ministers, determine.

(4) The Commission must—
   (a) publish each report prepared under subsection (1),
   (b) lay a copy of it before the Scottish Parliament, and
   (c) send a copy of it to the Scottish Ministers.

(5) The Commission may publish reports prepared under subsection (1) in such manner as it considers appropriate.

(6) In this section, “5-year period” means—
   (a) the period of 5 years beginning with the date on which section 2 comes into force,
   (b) each successive period of 5 years.

Corporate status

10 Corporate status
The Commission is a body corporate.

Membership

11 Members of the Commission
(1) The Commission is to consist of—
(a) a member to chair the Commission, and
(b) at least 2 but no more than 4 other members.

(2) The Scottish Ministers are to appoint the members.

(3) The Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment.

(4) The Scottish Ministers may by regulations amend subsection (1)(b) by substituting a different number for any number for the time being specified there.

(5) Regulations under subsection (4) are subject to the negative procedure.

12 Disqualification for appointment

10 (1) The Scottish Ministers may not appoint a person as a member if the person—
(a) is—
(i) a member of the Scottish Parliament,
(ii) a member of the House of Commons,
(iii) a member of the National Assembly for Wales,
(iv) a member of the Northern Ireland Assembly,
(v) a member of the European Parliament,
(vi) a councillor of any local authority,
(vii) the holder of any other relevant elective office within the meaning of paragraph 1(8) of schedule 7 to the Political Parties, Elections and Referendums Act 2000,
(viii) a member of the Scottish Government,
(ix) a Minister of the Crown,
(x) an office-holder of the Crown in right of Her Majesty’s Government in the United Kingdom,
(xi) an office-holder in the Scottish Administration,
(xii) a civil servant,
(b) is or has been insolvent,
(c) is or has been disqualified as a company director under the Company Directors Disqualification Act 1986,
(d) is or has been disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005, or
(e) is or has been disqualified under any disqualification provision analogous to either of those mentioned in paragraphs (c) and (d), anywhere in the world.

(2) For the purposes of subsection (1)(b), a person is or has been insolvent if—
(a) the person’s estate is or has been sequestrated,
(b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,
(c) the person is or has been the subject of any other kind of arrangement analogous to either of those described in paragraphs (a) and (b), anywhere in the world.
(3) The Scottish Ministers may not reappoint a person who is or has been a member.

13 **Period and terms of appointment**

(1) A member is appointed for such period as the Scottish Ministers may determine.

(2) The Scottish Ministers may determine other terms of an appointment, so far as not provided for by this Act.

14 **Disqualification after appointment**

(1) A person’s appointment as a member ceases if the person becomes disqualified as a member after appointment.

(2) A person becomes disqualified as a member after appointment if, during the person’s period of appointment as a member, any of paragraphs (a) to (e) of section 12(1) applies to the person.

15 **Resignation**

A member may resign by giving notice in writing to—

(a) the Scottish Ministers, and

(b) the Presiding Officer of the Scottish Parliament.

16 **Removal**

(1) The Scottish Ministers may remove a member, by giving the member notice in writing, if—

(a) the member has been absent from meetings of the Commission for a period longer than 3 months without permission from the Commission, or

(b) the Scottish Ministers consider that the member is—

(i) otherwise unfit to continue to be a member, or

(ii) unable to perform the member’s functions.

(2) The Scottish Ministers may remove a member under subsection (1) only with the approval of the Scottish Parliament.

**Remuneration and expenses**

17 **Remuneration and expenses**

(1) The Commission may pay to its members such remuneration as it may, with the approval of the Scottish Ministers, determine.

(2) The Commission may pay to its members such sums as it may, with the approval of the Scottish Ministers, determine in respect of expenses incurred by them in performing their functions.

**Staff**

18 **Chief of Staff and other staff**

(1) The Commission must employ a person to act as the Commission’s Chief of Staff.
(2) The Commission may employ other staff.

(3) The Chief of Staff and other staff are to be employed on such terms as the Commission may, with the approval of the Scottish Ministers, determine.

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General

19 Regulation of procedure
The Commission may regulate its own procedure (including quorum).

20 Validity of things done
The validity of anything done by the Commission is not affected by—
(a) a vacancy in membership,
(b) a defect in the appointment of a member,
(c) disqualification of a person as a member after appointment.

21 Committees
(1) The Commission may establish committees.
(2) The membership of a committee may include (but may not consist entirely of) persons who are not members of the Commission but those persons are not entitled to vote at meetings.
(3) The Commission may pay each person mentioned in subsection (2) such remuneration and allowances as it may, with the approval of the Scottish Ministers, determine.

22 Authority to perform functions
(1) The Commission may authorise—
(a) any of its members,
(b) any committee established by it,
(c) any member of its staff,
(d) any other person,
to perform such of its functions (to such extent) as it may determine.
(2) The giving of authority under subsection (1) to perform a function does not—
(a) affect the Commission’s responsibility for the performance of the function,
(b) prevent the Commission from performing the function itself.

23 General powers
The Commission may do anything that appears to it—
(a) to be necessary or expedient for the purpose of, or in connection with, the performance of its functions,
(b) to be otherwise conducive to the performance of its functions.
Transitional and consequential

24 Initial members

(1) The person who was, immediately before the commencement date, the chairing member of the non-statutory Commission is, on that date, taken to have been appointed under section 11(1)(a) as the member to chair the Commission.

(2) Any person who was, immediately before the commencement date, a member (other than chairing member) of the non-statutory Commission is, on that date, taken to have been appointed under section 11(1)(b) as a member of the Commission.

(3) A person to whom subsection (1) or (2) applies is referred to in this section as an “initial member”.

(4) An initial member’s period of appointment as a member—
(a) is to continue to be the same as that for which the member had been appointed as a member of the non-statutory Commission, and
(b) accordingly expires at the time at which the period of appointment as a member of the non-statutory Commission would have expired.

(5) Except as may be agreed between the Scottish Ministers and an initial member, the other terms of the member’s appointment are to continue to be the same as the terms on which the member had been appointed as a member of the non-statutory Commission, so far as consistent with this Act.

(6) In this section—
“commencement date” means the day on which section 1 comes into force,
“the non-statutory Commission” means the body known as the Scottish Fiscal Commission established by the Scottish Government following the Scottish Parliament’s resolution of 24 June 2014 endorsing its establishment and supporting the appointment of the persons nominated to be members.

25 Amendment of public bodies’ legislation

(1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Scottish Fire and Rescue Service insert—
“Scottish Fiscal Commission”.

(2) In the Freedom of Information (Scotland) Act 2002, in Part 2 of schedule 1 (non-ministerial office holders in the Scottish Administration), after paragraph 18A insert—
“Scottish Fiscal Commission”.

(3) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), under the heading “Executive bodies”, after the entry relating to the Scottish Fire and Rescue Service insert—
“Scottish Fiscal Commission”.

(4) In the Public Services Reform (Scotland) Act 2010, in schedule 8 (listed public bodies), after the entry relating to the Scottish Fire and Rescue Service insert—
“Scottish Fiscal Commission”.

(5) In the Public Records (Scotland) Act 2011, in the schedule, under the heading “Scottish Administration” after the entry relating to the Scottish Courts and Tribunals Service insert—
In the Procurement Reform (Scotland) Act 2014, in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13B insert—

“13C Scottish Fiscal Commission”.

Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may—
   (a) make different provision for different purposes,
   (b) modify this Act or any other enactment.

(3) Regulations under this section containing provision which adds to, replaces or omits any part of the text of an Act are subject to the affirmative procedure.

(4) Otherwise, regulations under this section are subject to the negative procedure.

Final provisions

(1) This section and sections 26 and 28 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—
   (a) include transitional, transitory or saving provision,
   (b) make different provision for different purposes.

Short title

The short title of this Act is the Scottish Fiscal Commission Act 2016.
Scottish Fiscal Commission Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to establish the Scottish Fiscal Commission and to provide for its functions.

Introduced by: John Swinney
On: 28 September 2015
Bill type: Government Bill
These documents relate to the Scottish Fiscal Commission Bill (SP Bill 78) as introduced in the Scottish Parliament on 28 September 2015

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

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

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

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

<table>
<thead>
<tr>
<th></th>
<th>Transitional years</th>
<th>Year 1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015-16 £000s</td>
<td>2016-17 £000s</td>
</tr>
<tr>
<td><strong>Operating costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff costs</td>
<td>-</td>
<td>170</td>
</tr>
<tr>
<td>Member costs</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Non-staff costs</td>
<td>-</td>
<td>180</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td>-</td>
<td>350</td>
</tr>
<tr>
<td><strong>Transition costs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff costs</td>
<td>180</td>
<td>360</td>
</tr>
<tr>
<td>Non-staff costs</td>
<td>15</td>
<td>30</td>
</tr>
<tr>
<td><strong>Sub total</strong></td>
<td>195</td>
<td>390</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>195</td>
<td>740</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>2016-17 £000s</th>
<th>2017-18 £000s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief of staff</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>Analytical and strategic support</td>
<td>80</td>
<td>165</td>
</tr>
<tr>
<td>Corporate and member support</td>
<td>40</td>
<td>80</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>170</strong></td>
<td><strong>345</strong></td>
</tr>
</tbody>
</table>

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

- **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**

<table>
<thead>
<tr>
<th></th>
<th>2017-18 £000s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remuneration of members</td>
<td>104</td>
</tr>
<tr>
<td>Member expenses</td>
<td>8</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>112</strong></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>2016-17 £000s</th>
<th>2017-18 £000s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation and related costs</td>
<td>60</td>
<td>125</td>
</tr>
<tr>
<td>Other running costs</td>
<td>120</td>
<td>160</td>
</tr>
<tr>
<td>Research</td>
<td>-</td>
<td>108</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>180</strong></td>
<td><strong>393</strong></td>
</tr>
</tbody>
</table>

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

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

<table>
<thead>
<tr>
<th></th>
<th>2015-16 £000s</th>
<th>2016-17 £000s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay and expenses</td>
<td>180</td>
<td>360</td>
</tr>
<tr>
<td>Non-staff costs</td>
<td>15</td>
<td>30</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>195</strong></td>
<td><strong>390</strong></td>
</tr>
</tbody>
</table>

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.
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.”
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.

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

delivering the Smith Commission’s recommendation that “the Scottish Parliament should seek to expand and strengthen the independent scrutiny of Scotland’s public finances”.

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 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.


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

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**

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

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

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\(^6\) [http://www.scottishfiscalcommission.org/media/media_364407_en.pdf](http://www.scottishfiscalcommission.org/media/media_364407_en.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*\(^\text{10}\) 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](http://www.oecd.org/gov/budgeting/recommendation-on-principles-for-independent-fiscal-institutions.htm)
This document relates to the Scottish Fiscal Commission Bill (SP Bill 78) as introduced in the Scottish Parliament on 28 September 2015

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
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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.

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.

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](http://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\(^\text{13}\), and an analysis of those responses\(^\text{14}\).

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\(^\text{15}\). 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

\(^{13}\) 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\(^\text{16}\). 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.

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

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Scottish Fiscal Commission Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Scottish Fiscal Commission was originally set up by the Scottish Government to independently scrutinise Government forecasts of receipts from the taxes created by the Scottish Parliament under powers devolved by the Scotland Act 2012 (Land and Buildings Transaction Tax and Scottish Landfill Tax) and the economic determinants underpinning forecasts of receipts from non-domestic rate income. The Bill is intended to place the Scottish Fiscal Commission on a statutory footing in line with best international best practice and the OECD’s recommended principles for Independent Fiscal Institutions.

4. The Bill makes provision for a robust and fully independent Scottish Fiscal Commission which is directly accountable to Parliament. The Commission will continue to play a key role in scrutinising and reporting on tax forecasts and other fiscal projections that are prepared by the Scottish Government, in order to maximise the openness and transparency of the forecasting process. The Bill will also provide a platform to expand the Commission’s remit to reflect any future expansion in the Parliament’s fiscal powers, including the implementation of the additional fiscal powers recommended for devolution by the Smith Commission and the subject of the Scotland Bill currently proceeding through the Westminster Parliament.

OUTLINE OF BILL PROVISIONS

5. The Bill comprises of 28 sections and is divided into the following sub headings:

   • Scottish Fiscal Commission – sets up the Commission.
   • Functions - details the Commission’s functions.

1 http://www.oecd.org/gov/budgeting/recommendation-on-principles-for-independent-fiscal-institutions.htm
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- Corporate Status – sets the Commission up as a body corporate.
- Membership – makes provision and sets criteria for appointments.
- Remuneration and Expenses – allows the Commission to pay its members.
- Staff – provides for staffing arrangements.
- General – provides for the Commission to regulate its own procedure and for it to delegate functions.
- Transitional and Consequential – amends public bodies legislation and allows for current Commission members to continue in role.

RATIONALE FOR SUBORDINATE LEGISLATION

6. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:
   - the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example greater devolved fiscal powers);
   - the need to make proper use of valuable Parliamentary time; and
   - the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

DELEGATED POWERS

Section 5 – Power to modify the Commission’s functions

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish Statutory Instrument
Parliamentary procedure: affirmative

Provision

7. This provision will allow the Scottish Ministers to confer functions on the Commission, and to modify or remove the Commission’s functions, following consultation with the Commission. Ministers may not remove the Commission’s functions under sections 2(1) or (3) using this regulation-making power, but may remove or modify any paragraph in subsection (1). This means that Ministers cannot by regulations remove the two core functions of the Commission – namely to prepare reports setting out its independent assessments of the reasonableness of fiscal estimates prepared by the Scottish Ministers and to prepare such other reports assessing the reasonableness of fiscal factors as it considers appropriate. However, Ministers may by regulation remove the requirement to prepare reports setting out the reasonableness of any of the individual forecasts or projections specified at paragraphs (a) to (d).
Reason for taking power

8. Where possible, we have sought to “future proof” the remit of the Commission in the drafting of the legislation. For example, the requirement to assess the reasonableness of “forecasts of receipts from the devolved taxes” will automatically encompass Scottish air passenger duty and aggregates levy once these are devolved to the Scottish Parliament.

9. This power will build flexibility into the remit of the Commission to enable the functions to expand to reflect the devolution of further fiscal powers to the Scottish Parliament. This 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.

10. For example, once the Scottish Parliament has the additional legislative competence set out in the Scotland Bill introduced to the Westminster Parliament in May 2015, the Scottish Ministers will be able to add to the functions of the Commission using this regulation-making power.

11. The nature of further fiscal devolution may necessitate changes to the Commission’s existing statutory functions and so the Scottish Ministers will also have the power to modify or remove functions. For example, it will be necessary to modify the requirement on the Commission to assess the reasonableness of “the Scottish Ministers’ forecasts of receipts from income tax attributable to a Scottish rate resolution” when the power to set the Scottish rate of income tax, as provided for by the Scotland Act 2012, is replaced by the power for the Scottish Parliament to set all income tax rates and thresholds for non-savings, non-dividend income as proposed in the current Scotland Bill.

12. The Scottish Ministers shall not be able to remove the Commission’s function under section 2(3) which empowers the Commission to prepare reports on such fiscal factors as it considers appropriate. As this general function gives the Commission full flexibility to report on the reasonableness of such other devolved fiscal factors as the Commission may determine and thus is critical to its structural and operational independence, it is appropriate that the removal of this function should require primary legislation.

Choice of procedure

13. Affirmative procedure is considered to be appropriate because the provision allows for the amendment of primary legislation. Any change to the Commission’s functions will have a direct impact on the expert independent scrutiny of fiscal forecasts and projections prepared by the Scottish Ministers.

Section 7 - Access to information

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<td>Power exercisable by:</td>
<td>regulations made by Scottish Statutory instrument</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>affirmative</td>
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This document relates to the Scottish Fiscal Commission Bill (SP Bill 78) as introduced in the Scottish Parliament on 28 September 2015

**Provision**

14. Section 7 provides for the Commission to have a right of access to relevant information held by specified public bodies that may be required by the Commission in order for it to perform its functions. This power allows the Scottish Ministers to add to the list of specified bodies by regulations.

**Reason for taking power**

15. The Bill as introduced requires the Scottish Government, Revenue Scotland, the Keeper of the Registers of Scotland and the Scottish Environmental Protection Agency to provide relevant information to the Commission. These are the bodies directly involved in the collection and management of the two currently devolved taxes (Land and Buildings Transaction Tax and Scottish Landfill Tax).

16. This power will allow Ministers to give the Commission access to information held by other bodies or officeholders that may be relevant to the preparation or scrutiny of forecasts of future devolved taxes. This provision is subject to other legislation that prohibits, restrict 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.

**Choice of procedure**

17. Affirmative procedure is considered to be appropriate because the regulations would impose new specific duties on public bodies or officeholders in the Scottish Administration.

**Section 11 – Members of the Commission**

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**Provision**

18. This provision allows Scottish Ministers the power to alter the number of Commission members.

**Reason for taking power**

19. The Bill provides that the Commission should consist of a member to chair the Commission and between two and four other members. We consider that this number of members will provide the Commission with the necessary capacity and expertise to carry out present and future statutory functions. However, it is prudent to allow for some flexibility to increase the size of the Commission in future, should there be a significant expansion in the fiscal powers of the Scottish Parliament beyond those currently legislated for and provided for in the Scotland Bill introduced to the Westminster Parliament in May 2015.
Choice of procedure

20. Negative procedure is considered appropriate for what is essentially a limited power to make very specific amendments. It is also notable that there are similar powers in the Crofting Reform (Scotland) Act 2010, Police and Fire Reform (Scotland) Act 2012 and Historic Environment Scotland Act 2014, and that they are all subject to negative procedure. The appointment of individual members being subject to Parliamentary approval (section 11(3)) was also taken into consideration when determining the procedure.

Section 26 – Ancillary Powers

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: affirmative if changing an Act, otherwise negative.

Provision

21. This provision enables the Scottish Ministers to make any incidental, supplementary, consequential, transitory, transitional or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill.

Reason for taking power

22. The reason for taking the power is to enable the Scottish Ministers to institute the Commission and address any unforeseen situations as soon as it is practical for them to bring forward regulations. Whilst the power is wide-ranging it is vital that the Scottish Fiscal Commission interacts well with Scots law and the changing fiscal landscape in Scotland.

Choice of procedure

23. Regulations made under this section which contain a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other regulations made under this section are subject to the negative procedure. These procedures are typical for ancillary powers.

Section 27 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish Statutory Instrument
Parliamentary procedure: laid, no procedure

Provision

24. This provision allows the Scottish Ministers to commence provisions in this Bill (other than sections 26, 27 and 28, which come into force on the day after Royal Assent) on such day as the Scottish Ministers may by regulations appoint. Such regulations can include transitional, transitory or saving provision and appoint different dates for different purposes.
Reason for taking power

25. It is standard for the Scottish Ministers to have control over the commencement of a Bill and for the substantive provisions to be commenced at such a time as they appoint to be suitable. This is to provide flexibility to enable the provisions of the Bill to be brought into force in a coordinated and managed way, so as to give proper effect to the Bill without having to resort to primary legislation.

Choice of procedure

26. It is normal practice for commencement regulations to be laid before Parliament but not subject to additional procedure. Commencement regulations bring into force provisions whose policy have already been considered by the Parliament during the passage of the Bill. It is thought to be sufficient that any regulations under this section are laid before Parliament as soon as practicable after they are made (and before they come into force). This is provided for by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

27. When commencing a provision it is common to have to make provision which deals with the transition to the new regime (or save aspects of the old regime for a period) and it is generally considered appropriate and most accessible for the users of legislation for this to be done as part of the commencement regulations. If substantial or complex transitional, transitory or saving provision were required before commencement could occur, consideration may be given to using the powers under section 26 (ancillary provision).
Finance Committee

Stage 1 Report on the Scottish Fiscal Commission Bill
1. The remit of the Finance Committee is to consider and report on-
   a. any report or other document laid before the Parliament by members of the
      Scottish Government containing proposals for, or budgets of, public expenditure or
      proposals for the making of a tax-varying resolution, taking into account any report
      or recommendations concerning such documents made to them by any other
      committee with power to consider such documents or any part of them;
   b. any report made by a committee setting out proposals concerning public
      expenditure;
   c. Budget Bills; and
   d. any other matter relating to or affecting the expenditure of the Scottish
      Administration or other expenditure payable out of the Scottish Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament on
   the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, “public expenditure” means expenditure of the Scottish
   Administration, other expenditure payable out of the Scottish Consolidated Fund and
   any other expenditure met out of taxes, charges and other public revenue.

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Convener
Kenneth Gibson
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Jackie Baillie
Scottish Labour

Richard Baker
Scottish Labour

Gavin Brown
Scottish Conservative and Unionist Party

Mark McDonald
Scottish National Party

Jean Urquhart
Independent
INTRODUCTION

1. The Scottish Fiscal Commission Bill ("the Bill") was introduced by the Deputy First Minister (DFM) on 28 September 2015. The Finance Committee ("the Committee") was designated lead committee by the Parliamentary Bureau. The role of the Committee at Stage 1 is to consider and report on the general principles 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 has been operating on a non-statutory basis since June 2014.

3. The Committee has taken a strong interest in the development of the Commission and published a report, Proposals for a Scottish Fiscal Commission, on 7 February 2014. The Committee also considered the need for an enhanced role for the Commission as part of its consideration of the Smith Commission proposals for an updated fiscal framework for Scotland. The Committee submitted its recommendations to the Scottish Government consultation on the draft Commission Bill.

4. The Committee’s scrutiny at Stage 1 builds upon this previous work and, in particular, focuses on some of the key issues which emerged. The Committee received 14 submissions to its call for evidence and held a number of oral evidence sessions.

5. The Committee has also carried out two fact-finding visits as part of its work on the Commission. In June three Members visited Stockholm where they met with the Swedish Fiscal Policy Council (SFPC) and in November two Members visited Dublin where they met with the Irish Fiscal Advisory Council (IFAC). On both visits there were also meetings with the respective governments, parliaments and other forecasting bodies.

6. Finally, the Committee also commissioned external research from Ian Lienert, an independent consultant in public financial management. His report, Independent Fiscal Institutions: International Experience and the Scottish Fiscal Commission, has been of great value to the Committee in informing our deliberations on the Bill.

7. The Committee would like to thank Ian for his report and to everyone who took the time to meet with them as part of the fact-finding visits and everyone who provided written and oral evidence.
INDEPENDENCE

8. The Committee has previously recommended that the Commission adheres to the Organisation for Economic Co-operation and Development (OECD) principles for independent fiscal institutions (IFIs) and especially the principles of independence, non-partisanship and transparency. 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.”

Functions

9. A key element of the independence of any IFI is the functions which it is required to perform. The policy memorandum states that the Bill provides a statutory basis for the core functions currently being carried out by the non-statutory Commission which are “to independently scrutinise and report on the Scottish Government’s devolved tax revenue forecasts and on the economic determinants underpinning Scottish Ministers’ forecasts” of Non-Domestic Rates Income (NDRI). The role of the Commission is to scrutinise and challenge these forecasts including the methodologies and assumptions underpinning them which "enables the Commission to exert significant influence over the forecasts which underpin the Scottish Draft Budget.”

10. The policy memorandum explains that the Commission was “able to endorse as reasonable” the forecasts in relation to Draft Budget 2015-16 on the basis of a “thorough assessment of the methodologies and assumptions” used by the Scottish Government. The policy memorandum also explains that the Scottish Government revised down its NDRI forecast on the basis of the Commission’s assessment that the buoyancy assumptions seem optimistic.

11. The non-statutory Commission describes its role on its website as, throughout the year we “scrutinise the Scottish Government’s work in developing models and methodologies to produce its forecasts” and this informs our “understanding of the reasonableness or otherwise of their forecasts” and its scrutiny improves the methods used by the Scottish Government and thereby the eventual forecasts.” In its first report on the Scottish Government’s forecasts for Draft Budget 2015-16 it describes its approach as “one of enquiry and challenge followed by response, followed by further enquiry and suggested improvements.”

12. Ian Lienert questions whether it is desirable for the Commission to exert significant influence over the Scottish Government’s forecasts. He argues that this is “undesirable, as it could change the Commission from being an “independent assessor” of the forecasts to being an “advisor” to the Scottish Government. He suggests that the Commission “should step back from being closely involved” in the preparation of the official forecasts.
13. Rather, it should “develop its own fiscal forecasts independently” of the Scottish Government. It may also be preferable for the Commission to assess the official forecasts “only once they are submitted to the Scottish Parliament.” His view is the same day reporting requirement in the Bill could undermine the Commission’s independence. The Bill should be amended to allow the assessment report to be laid before the Parliament as soon as practicable after the publication of the draft budget.

14. He also questions the requirement within the Bill for the Commission to send a copy of its report to Scottish Ministers prior to being laid before the Parliament which could also undermine its independence. The OECD’s view is that this “requirement may be perceived as favouring the government.” Ian Lienert recommends that section 4(3) should be removed from the Bill. However, the Bill Team pointed out that the Scottish Government would only be looking to check the factual accuracy of the report and that the “only changes we would envisage would be to clarify understanding of the forecasting processes and methodologies that the Scottish Government had put in place.”

15. Robert Chote, Chairman of the Office for Budget Responsibility (OBR) was also asked whether it was appropriate for the Commission to have significant influence over the forecasts at the same time as providing an assessment of reasonableness. His view is that the whole point of independent scrutiny is to exert influence. The question arises as to how that influence is exerted and whether it is done in “private conversation with the commission in the run-up to publishing the draft budget?” The experience of the OBR is that “if there is this sort of debate beforehand, it might be harder to satisfy everybody and demonstrate that the commission is being independent.” At the same time though there would clearly be “more opportunity for the Commission to influence the numbers if it has that prior discussion rather than waiting for the draft budget to come out.”

16. Robert Chote was also asked whether in his view the independence of an IFI was as much dependent on individuals as it is on formal processes. He responded that this was certainly the conclusion of the independent review of the OBR. The review states that stakeholder confidence in the OBR “is tied more strongly to its people (i.e. leadership and staff), methodological approaches and transparency than to its legal underpinnings and operational structure.”

17. Carlo Cottarelli of the International Monetary Fund (IMF) noted that there is clearly a trade-off between exerting influence and providing independent assessment. In his written submission he stated that “early intervention would give the SFC more influence which on the forecasts in the short run, but would involve some degree of ownership, which would reduce its independence over the medium term.” While there is nothing wrong in having discussions throughout the year this “should not become a formal scrutiny.” On this basis he argues that the assessment should be carried out after the Scottish Government forecasts are published. Otherwise, the forecasts could be changed which “would essentially mean that the SFC could influence the forecasts.”
18. In contrast, Dr Armstrong and Dr Lisenkova argue that the Commission should have sufficient time to evaluate the forecasts prior to publication. They suggest that to do so after publication “would place intolerable political pressure on the SFC and more likely to lead to suspicion rather than trust which is essential.” Scrutiny of the forecasting methods should be a collaborative and iterative process in which the Commission “should continuously communicate with the Scottish Government and civil servants to make its opinion as to methodology and assumptions known.”

19. During the Committee’s fact-finding visit to Dublin, Members heard that the secretariat of the IFAC has significant levels of on-going interaction with Irish Government officials. The Council was clear that in its meetings with officials it does not give an opinion on levels of figures or attempt to influence the direction of travel of the government. Once the date of the Budget has been announced only discussions around the clarification of technical issues can take place.

20. The DFM provided some further details of how the Commission works in practice. He explained to the Committee that the Commission is “there to challenge us, to push us and to make sure that we are coming to the correct answer, and its members will verify whether they think that we have come to the correct answer.” He does not view this as being an advisory role and does not think there is any conflict between the Commission’s independence and being able to exert significant influence.

21. The DFM explained that in his view the Commission essentially has a veto as he would not publish a forecast unless it was assessed as reasonable by the Commission. When questioned by the Committee as to where the veto is provided for in the Bill he responded that essentially, “the power in section 2(1) of testing the reasonableness of the forecast is where the commission has its veto.”

22. However, he went on to say that this is unlikely to happen as he would reach agreement with the Commission on the methodology prior to the production of the forecasts. He explained, we “get to that point of agreement on the methodology weeks before the budget, and then we introduce the numbers.” The Commission interrogates and challenges the model “to make sure well in advance that it is a robust model for generating the numbers that need to go into the budget.”

23. It is clear that the Scottish Government seeks the agreement of the Commission regarding its forecasting model. It is less clear what happens next. The DFM explained that once the methodology has been agreed he then tells the Commission, “this is what I want to do” and they test “that to see whether the numbers and propositions that I am suggesting, when applied through the methodology that has been prepared are robust.”

24. However, Lady Rice, Chair of the Commission, told the Committee, the Commission’s role is to provide a challenge function early in the process but it “would then let the forecasters get on with running the numbers – we would not be part of that, because we do not look at numbers and outputs; we look at their
thought processes going into that." She also suggested that the Commission’s report could be submitted to the Scottish Government for a fact check either once the forecast is “essentially complete” or “before the forecast is finalised.” It is not clear how the Commission provides an assessment of the reasonableness of the forecast if it submits its report before the forecast is finalised.

25. The Committee believes that the Commission needs to be able to demonstrate how its role in exerting significant influence on the Scottish Government’s forecasts can be combined with its role as an independent assessor.

26. The Committee, therefore, recommends that in order to demonstrate its independence there needs to be much greater clarity regarding the role of the Commission and how it works in practice. In particular, there is a need to set out in a Memorandum of Understanding, between the Scottish Government and the Commission, the formal process and timings for:

- agreeing the methodology;
- assessment of the forecasting methods;
- testing the suggested numbers and propositions;
- commenting on any provisional or initial assumptions and forecasts;
- assessing the reasonableness of the forecasts;
- assessing the reasonableness of any revised forecasts.

Transparency

27. In addition to the need for much greater clarity regarding the functions of the Commission there is also the need for much greater transparency in relation to how it carries out those functions. Robert Chote’s view is that while there are formal ways of demonstrating independence “the absolutely crucial issue is transparency, in not only the process and nature of our interactions with officials, but the outputs.”

28. The OECD recommends that:

“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.”

29. The IFAC advised committee members during their fact-finding visit to Dublin that transparency is vital. The IFAC’s reputation for independence has been built through continually challenging and criticising the Irish Government in public when necessary to do so. The experience of the Irish model suggests that the ability of
an IFI to build its credibility as an independent body necessitates the need for full transparency in relation to the challenge function.

30. Dr Armstrong suggests that “if we believe in avoiding moral hazard, we need transparency, and that requires that whoever makes the assessments can do it completely independently and can be seen to be independent.”

31. Professor MacDonald states that he “would give priority to independence, transparency and openness in the working relationship between” the Commission and the Scottish Government and other public bodies. Both Professor McGregor and Professor Peat agreed that the work of the Commission in carrying out its role of enquiry and challenge should be as transparent as possible. Professor McGregor would also like the core models used by the Scottish Government for its forecasts to be made public subject to the caveat that there may be some confidential data which could not be published. Carlo Cottarelli from the IMF states that it is important that there is transparency in the way the Commission and the Scottish Government interacts.

32. The Scottish Government believes that the approach which it has set out in the Bill:

“maximises the openness and transparency of the forecasting process - it means that a detailed account of the Scottish 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.”

33. However, the Bill team explained to the Committee that it was “very open to considering any ways in which we can maximise the transparency of the relationship and interactions between the Scottish Fiscal Commission and the Scottish Government.”

34. Given that the Commission has been working on a non-statutory basis since June 2014 the Committee has been able to consider the level of transparency which currently exists in its operations. The Commission’s first report provides a detailed assessment of the Scottish Government’s forecasting methods. There is little comment on the actual forecasts other than to say that they are reasonable.

35. The Scottish Government also published a paper alongside Draft Budget 2015-16 on its forecasting methodology for the devolved taxes. This paper provides details of the Scottish Government’s modelling approach and the assumptions which underpin the forecasts. Read together these provide clarity in relation to the methods and assumptions which underpin the forecasts. The Commission also provide recommendations as to how the methodology may be improved.
36. However, in neither document is there any detail of the process of enquiry and challenge and it is not made apparent that the methodology was agreed between the Commission and the Scottish Government. Neither is there any distinction made between the Commission’s role in providing a challenge function and its role in providing an evaluation of the methods and assumptions used.

37. It is also not clear at what stage of the process the challenge function stopped and the evaluation process started. For example, the Commission’s report refers to the non-domestic rates buoyancy forecast being too optimistic. The DFM subsequently announced that the Commission had considered his NDRI forecast and he had revised it down on the basis of its concerns about the buoyancy forecast. However, Professor Hughes Hallett, explained to the Committee that “we changed what we thought was an unreasonable assumption up front. We do those sorts of things at the first stage.” There is no mention of this in the Commission’s report. The report, therefore, appears to refer to an assumption as being too optimistic although that assumption had already been changed and the forecast already revised down.

38. Lady Rice explained in relation to the challenge meetings which the Commission has with the Scottish Government that everyone should be able to see what was “discussed, what had come to the table and the challenges that we raised.” The Commission have begun taking minutes of these meetings and a short summary has been published prior to the full minutes being published alongside its report on the draft budget. Professor Hughes Hallett explained that when “the minutes come out, the committee will see some thoughts and comments about what the Scottish Government might do next about a particular problem.”

39. The DFM was asked about the need for transparency in the relations between the Scottish Government and the Commission. For example, he was asked if his forecasts were changed as a consequence of the views of the Commission whether both the initial and the final forecasts would be published. He responded that only the final forecast would be published and that he does not see the value in there being a multiplicity of forecasts.

40. He was then asked, if disagreements between the Commission and the Scottish Government are never published, how could that be considered to be transparent. He responded that what “matters is whether the Scottish budget is underpinned by a reasonable forecast” and that this “is the piece of information that the public and the parliament require.” He would also argue strongly against the Commission publishing the initial forecasts.

41. The Committee recommends that in order for the Commission to build its credibility as an independent body it needs to be able to challenge and criticise the Scottish Government publicly when necessary to do so. This means that it must publish any disagreements which it has with the Scottish Government and the outcome of those disagreements.
42. The Committee notes that the first external evaluation of the OBR found that it “is seen to have overcome any perception of bias in its work because of its openness” and had “demonstrated its willingness to speak out on issues that are unfavourable to the government, bolstering its independence.” The Committee recommends that the Commission adopts a similar approach.

43. The Committee recommends that the Commission’s report on the draft budget needs to provide a breakdown of the outcome of the forecasting process as set out at paragraph 25 above. This should include a clear distinction between the role of the Commission in agreeing the forecasting methodology and its role in providing an independent assessment of the methodology.

44. The Committee recommends that where there are changes made to the Scottish Government forecasts on the basis of the views of the Commission then both the original and the revised forecast need to be published.

45. The Committee recognises that the working practices of the Commission are still being developed and recommends that as it becomes more adequately resourced it improves the transparency of its work.

46. The Committee welcomes the commitment of the Commission to publish the full minutes of the challenge meetings with the Scottish Government as an annexe to its report on the draft budget. The Committee will consider these minutes as part of its scrutiny of the draft budget.

47. The Committee recommends that the Scottish Government should provide a written response to the recommendations made by the Commission within four weeks of the publication of the draft budget.

FORECASTING

48. The Committee recommended in its report on Proposals for a Scottish Fiscal Commission that the Commission’s remit should include the option to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections. The Scottish Government stated in its response that it “does not expect that the Commission would need to develop its own forecasting methods or to have its own analytical capacity in order to provide a benchmark set of projections.”

49. The Committee subsequently recommended in its report on Scotland’s Fiscal Framework that the Commission should be able to carry out its own forecasts and that the draft Commission Bill should be amended accordingly. The Scottish Government responded that it was not persuaded that the Commission “should prepare the official forecasts for the devolved taxes” but it “remains open to the
The Bill team explained that “we have not shut down in any way the Commission’s ability to produce its own alternative forecasts” and that it “will be empowered both through legislative powers and the resources that will be allocated to them as set out in the financial memorandum.” However, when asked whether resources had been allocated to allow the Commission to carry out its own forecasts, the Bill team responded that “we have not specifically addressed the alternative forecast issue in our interactions with the commission on the financial memorandum.”

The Bill team was subsequently asked whether there may need to be a significant increase in the Commission’s budget if it were to do substantial forecasting. The Bill team responded that “without being able to specify exactly what the commission might want to do, it is difficult to give a precise figure.” The Financial Memorandum (FM) states that these estimates have been prepared in consultation with the non-statutory Commission and are “intended to provide a collective understanding” of its likely resourcing requirements. It is not clear why the issue of alternative forecasts was not specifically addressed in developing a “collective understanding” of resource requirements.

A majority of witnesses were of the view that the Commission should do its own forecasts with some strongly of the view that it should produce the official forecasts. The RSE’s view is that “until a body undertakes its own forecasting, it does not get a feel for how the data are working and for the key parameters that matter most in the forecast being derived.” Dr Armstrong told the Committee that “I do not see how it is possible to make a judgement on reasonableness without starting from the base of going through the numbers.” His view is that the OBR model is “perfect for what is required.” The Scottish Property Federation suggests that if the Commission “is only able to verify Scottish Ministers’ assessments then it may be difficult to convince the wider world that it is truly an independent body.”

Professor McGregor and Professor Swales point out that international practice suggests that if fiscal bodies “do not provide their own forecasts they typically have access to sufficiently detailed independent forecasts." The Commission should, therefore, produce its own forecasts for comparative purposes but it “would seem sensible perhaps to aim gradually to build internal forecasting/analytical capability.” Professor MacDonald prefers a similar evolutionary approach. The Commission should initially use the Scottish Government’s forecasting model rather than seeking to develop its own model but as its role evolves it should take on the responsibility for producing the official forecasts.

The Canadian parliamentary budget officer states that if the Commission produces its own forecasts, this will allow the parliament to challenge the assumptions underlying the Scottish Government forecasts. His view is that even if the
Commission "is not mandated to provide independent forecasts, it needs to have the capacity and resources to produce its own alternative forecasts."

55. Ian Lienert suggests that “it would be helpful for the SFC to build up in-house macroeconomic and fiscal forecasting expertise” and that the “SFC’s forecasts would be for the purpose of benchmarking” the Scottish Government’s forecasts. He points out that unlike other IFIs the Commission will not have the option of comparing the official forecasts with those of another forecaster. It should be for the Commission to decide whether or not to publish the benchmark forecasts.

56. Carlo Cottarelli from the IMF suggests that while the Commission may carry out its own forecasts “these do not need to be necessarily presented. One may even argue that it may be damaging to have a different set of point forecasts (rather than a range) as this may be seen as an alternative set to the official forecasts.”

57. Dr Cuthbert highlights the need for an independent risk assessment of the Scottish Government’s forecasts but this does not necessarily require the Commission to carry out its own forecasts. Neither the Chartered Institute for Taxation (CIfT) nor ICAS believe that there is a need for the Commission to produce its own forecasts. ICAS suggest that this would be a duplication of work while the CIfT suggest the Commission could explore whether there are other alternative forecasts which it could use in its work.

Irish Fiscal Advisory Council

58. Robert Chote highlights the experience of the IFAC which “suggests that, with time, the Commission will pretty much end up having to do a forecast of its own in order to be able to critique the forecast that it looks at from the Government.” His view is that the Commission should have the resources to do that if they wish.

59. During the Committee’s fact-finding visit to Dublin, Members heard that the IFAC soon realised that in order to endorse the official macro-economic forecasts, it would need to produce its own forecasts as a benchmark. The IFAC’s approach to endorsement focuses on whether the macroeconomic forecasts are within a range of appropriate forecasts. This “endorseable range” is informed by benchmark projections prepared by the Council’s secretariat. It involves a full-scale forecasting exercise and the development of a range of forecasting tools.

60. The benchmark projections are based around a “suite of models” approach. The models used include some based on the equations used by the Department of Finance and some developed by the IFAC’s Secretariat. The preparation of the benchmark projections also involves discussion and input from other forecasters including the Irish central bank, the Economic and Social Research Institute, the European Commission and the IMF.

61. The IFAC’s examination of the official forecasts includes comparing them to the benchmark projections and the endorseable range as well as assessing the consistency of the overall set of projections. They state that while their
benchmark projections may differ from the official forecasts they could still be endorseable:

“either because (i) the differences are sufficiently small to be within the endorseable range, or (ii) if the Department of Finance provides convincing reasons for forecasts further from the benchmark projections.”

62. In order “to provide an independent analysis of, and to effectively challenge the Department of Finance forecasts, the benchmark projections are completed before the Council engages in in-depth endorsement meetings with the Department of Finance.” These projections are not shared with the Department of Finance who advised that sharing forecasts in advance could lead to errors in forecasts not being picked up. It also ensures that the Department of Finance doesn’t inadvertently tailor its own forecasts to ensure they receive endorsement from the IFAC. However, the benchmark forecasts are published in the Council’s fiscal assessment report.

63. The Commission states in its submission that “it should develop its own forecasting methods and analytical tools and its capacity over time” but it does not propose to produce the official forecasts. Lady Rice explained that we “see ourselves as assessors and as the body that scrutinises what Government produces.” This role would include “engaging in forecasting as an exercise” and, therefore, one “of the tools in our toolbox should be the ability to produce forecasts, possibly for some taxes at certain points in time and for some other elements.” Professor Hughes Hallett’s view is that “being asked to do the official forecasts would seriously compromise our independence.”

64. The DFM confirmed to the Committee that Section 2(3) of the Bill would allow the Commission to prepare and publish alternative forecasts if it chooses to do so. He does not believe that the Bill needs to be amended to make this explicit. However, as noted at paragraphs 39 and 40 above he believes that only one forecast should be published and he would argue strongly against the Commission publishing another forecast. He explained to the Committee:

“What is the point of having a variety of forecasts when the budget has to depend on a particular number? Which number do I settle on? My view is that I should settle on the number that the Fiscal Commission, established by statute, says is the number.”

65. The DFM was also questioned on the views of Dr Armstrong and Dr Lisenkova who suggested in their written evidence that “given the uncertainty around any forecast the threshold reasonableness is too low or ‘unreasonable’ is too high.” Dr Armstrong elaborated that “it is too difficult to say that something is unreasonable, because that is quite a strong requirement.” The DFM responded that he would be willing to consider a higher threshold “but if we were to go up from ‘reasonable’ to ‘precise’ or ‘definite’...it would be very difficult for anyone to sign up to that.”
66. The Committee believes that the critical issue in relation to forecasting is the credibility of the Commission as an independent body and that it is seen to be independent. The model being proposed in the Bill depends on a high level of behind-the-scenes interaction between the Commission and the Scottish Government. This includes reaching an agreement on the robustness of the Scottish Governments methods prior to the production of the forecasts.

67. While the Committee agrees that this provides some assurance in relation to the quality of the Scottish Government forecasts, this way of working raises a number of questions regarding the independence of the Commission or at least the perception of its independence.

68. The Committee recognises that there needs to be some interaction between the Commission and the Scottish Government. However, in the other models which we have looked at this is primarily to share technical information. It is not to seek agreement on methods or to test numbers and propositions. It is not clear to the Committee how this role can be combined with the Commission’s role as an independent assessor.

69. The Committee, therefore, recommends that, in order to ensure that the Commission is seen to be independent, it should produce the official forecasts. The Committee believes that giving the Commission ownership of the forecasts in this way addresses many of the concerns we have raised in the previous section of this report on independence. If the Commission does not produce the official forecasts then these concerns could remain.¹

70. The Committee reiterates its previous recommendation that the official forecasts should cover a five year period.

GOVERNANCE

71. A number of governance issues were raised by witnesses and these are discussed below. The Committee recommended in its report on proposals for a Scottish Fiscal Commission that:

> “all members of the SFC are appointed by Ministers under the provisions of the Public Bodies and Public Appointments etc. (Scotland) Act 2003 but that the appointments should be subject to the consent of the Parliament on the recommendation of the Finance Committee. The Finance Committee should also have the option to hold a pre-appointment hearing and will be required to report to the parliament”⁶⁷; and

¹ John Mason MSP dissented from this paragraph.
“under existing constitutional arrangements there should be 3 part-time members of the SFC appointed for normally no more than 5 years for a single term whose appointment cannot be terminated without the consent of the Parliament on the recommendation of the Finance Committee. The initial terms should be staggered to ensure some continuity within the SFC and the appointment process should always be separate from the political cycle.”

72. The Scottish Government responded that it “agrees with these recommendations, which it believes will contribute to the independence of the SFC and therefore its credibility and authority” and that the Bill when introduced “should reflect the Committee’s recommendations on appointments processes and periods.”

Appointments

73. The Bill provides for members of the Commission to be appointed under the provisions of the Public Bodies and Public Appointments etc. (Scotland) Act 2003. Scottish Ministers are to appoint the members subject to parliamentary approval and may remove a member from office only under specified conditions and with the approval of the Parliament. The Commission states in its written submission that “the proposed appointment and removal procedures are adequate for ensuring the independence of Commission members.”

74. Ian Lienert suggests that there are various options for involving non-government and non-parliament institutions in the appointment process for Commission members. He recommends that consideration should be given to providing a requirement in the Bill for a selection panel who would provide a short-list of candidates for consideration by Scottish Ministers.

75. ICAS raised concerns in their written submission that the appointment process “still provides the opportunity for ministers to put forward their nominations and hence the perceptions of independence may be compromised.” Its view is that the parliament or the commission should make the appointments.

76. Carlo Cottarelli from the IMF states in written evidence that the “involvement of the Government in the appointment of Commission members should in my view be avoided (although it is not unusual in some fiscal councils). The significant ministerial involvement currently envisaged by the legislation seems excessive.” Audit Scotland suggests that it “may increase the public perception of independence further if the members of the Commission were appointed by Parliament with the agreement of Ministers.”

77. The Bill team was questioned by the Committee about the level of ministerial involvement in the appointment process. They responded that:

“The key elements are that ministerial appointments are all regulated by the Commissioner for Ethical Standards in Public Life in Scotland and that the appointments process will be subject to the code of practice for ministerial
appointments to public bodies in Scotland, which will provide safeguards about the process and about there being a fair and open competition and will ensure that appointments are made on merit.\textsuperscript{70}

78. The Bill team also pointed out that there is in effect a veto for the Parliament as Section 11(3) of the Bill provides for the need for parliamentary approval before an appointment can be made.

79. The DFM was asked by the Committee why the Parliament could not appoint the Commission members without the involvement of Ministers. He responded that we have to have confidence that the individuals being proposed “have the necessary capability to perform a function that is absolutely material to the budget process.”\textsuperscript{71}

80. The Committee agrees with the appointment process provided for in the Bill.

Number of members

81. The Bill provides for a membership of between 3 and 5 including the Chair. Ian Lienert’s view is that 3 Members is adequate to fulfil the Commission’s current mandate but that as the functions increase five members may be required although two of these could be non-executive. He recommends that the Bill could be amended to include provision for two non-executive members.

82. The Commission’s framework document states that the Scottish Government:

\begin{itemize}
  \item “will carefully consider all representations from the Commission on the appropriate number of members to serve on the Commission at any one time, having due regard to the workload of the Commission. The Scottish Government shall notify the Scottish Parliament of the outcome of its consideration of any such representations.”\textsuperscript{72}
\end{itemize}

83. The Committee recommends that if the Scottish Government wishes to alter the size of the membership of the Commission as allowed for in the Bill, this needs to be agreed by the Parliament having first been considered by the Finance Committee. The Bill should be amended accordingly.

Term lengths and the number of terms

84. The Bill provides for each member of the Commission to be appointed for one fixed term but it does not specify term lengths. The Scottish Government’s consultation on the Bill proposed a term length of no longer than five years and the Commission website indicates that members are appointed for fixed terms of between three and five years but this is not reflected in the Bill.
85. OECD principle 2.3 states that the terms lengths and number of terms “should be clearly specified in legislation” and each term “should optimally be independent of the electoral cycle.”\textsuperscript{73} Ian Lienert states that section 13 of the Bill is “inconsistent with this principle, as term lengths are not specified” which could result in membership terms “being linked with the parliamentary electoral cycle.”\textsuperscript{74} He recommends that the Bill should be amended to include an unequivocal position on term length.

86. There was a general view among witnesses that the length of term of office should be included in the Bill and that the cycle of appointments should be independent of the electoral cycle. The OECD points out that in almost all IFIs there are clearly defined term lengths for members. In order to be aligned with the OECD principles they recommend that the Bill should be amended to include the term length of Commission members. The Bill team was questioned as to why the Bill does not include the lengths of appointment for Commission members. They responded that this is “consistent with the practice elsewhere in Scottish legislation” but that Ministers would be willing to look at the findings of the Committee’s stage 1 report.\textsuperscript{75}

87. The OECD also points out that a number of IFIs allow the reappointment of members and that this can be particularly important in smaller countries and may provide increased long-term stability for the Commission. The majority of witnesses agreed that the Bill should include provision for the possibility of a second term of office. However, Carlo Cottarelli from the IMF suggests that it “would be preferable to have only one term, to ensure full independence, but the term should be sufficiently long to ensure continuity.”\textsuperscript{76}

88. Section 24 of the Bill allows for the current non-statutory members to form the first non-statutory Commission, serving to the conclusion of their current appointment terms. The terms of the current members are as follows:

- Lady Susan Rice CBE (Chair) 1 July 2014 to 30 June 2018;
- Professor Andrew Hughes Hallett 1 July 2014 to 30 June 2017;
- Professor Campbell Leith 1 July 2014 to 30 June 2019.

89. The Commission supports the provision within the Bill for a single non-renewable term but believe that the term of office should be stated in the Bill and that individual terms should be staggered. Lady Rice further explained to the Committee that the Commission “discussed the possibility of having two terms as long as there was a process for renewal, or possibly a break of two years and then a return that was not necessarily guaranteed.”\textsuperscript{77} Overall, the Commission could be persuaded in different directions on whether it should be one or two terms of office.

90. The DFM’s view is that “it would be better for the Commission members never to be dependent on a minister for reappointment” but he also understands “the view that giving people a couple of terms would allow for a build-up of expertise.” He also pointed out that the code of practice for ministerial appointments to public
bodies states that “no individual should hold public office for longer than eight
years.”

91. The Committee recommends that the Bill is amended to include term
lengths which are staggered and should be independent of the electoral
cycle.

92. The Committee also recommends that the Bill should be amended to
provide for the option of two consecutive terms, each of which should be no
more than five years.

Access to information

93. The Bill provides the Commission with a “right of access at reasonable times to
any relevant information” that it “may reasonably require.” Ian Lienert argues that
the use of the words ‘at reasonable times’ and ‘reasonably’, “risks giving the
Scottish Government too much discretion on deciding what information to provide
and when to provide it” and it may be preferable to remove these words from
section 7 of the Bill. At the same time he acknowledges that the Scottish
Government cannot instantaneously provide information. He suggests including a
provision within the Bill which requires the Commission to indicate the information
which it requires on a regular and automatic basis and that the details can be set
out in the memorandum of understanding with the Scottish Government.

94. The Bill team stated that “we have presented what we consider to be a very
robust right of access to information for the commission.” They explained that
the inclusion of the words ‘reasonably’ and ‘at reasonable times’ is consistent with
the powers of other public bodies such as Revenue Scotland. However, the
Commission state in its written submission that the right of access to the
information it requires is essential and “it would have no objection if this wording
were made more robust.”

95. The DFM’s view is that when you look at sections 7(1)(a) and (b) of the Bill
together “I think that we can see a strong foundation for the Commission to be
able to get the information that it requires.”

96. The Committee is content with the use of the words ‘reasonable’ and
‘reasonably’ in Section 7 of the Bill.

UK institutions

97. A number of witnesses pointed out that in order to fulfil its mandate the
Commission will need direct access to information from UK institutions including
HM Revenue and Customs (HMRC) and the OBR. However, the Bill is silent on
this issue and there is no mention of it in the accompanying documents.
98. The Scottish Government stated in its consultation on the draft Commission Bill that:

“it may be necessary for the Scottish and UK Governments to agree powers for the Commission and the OBR to share information with each other to support their respective functions. This would consist of aggregate data, and not information relating to individuals. The two bodies already work together on a non-statutory basis. The Scottish Government believes that there may be benefit in providing a statutory power enabling them to do so.”

99. Although one of the functions of the Commission is to assess the Scottish Government forecasts for the Scottish rate of income tax (SRIT) there is no provision within the Bill for the Commission to have direct access to HMRC data. The Committee has previously recommended that in relation to the forecasting of income from SRIT that the Commission will require a “right of access to all HMRC information and analytical capacity which it may reasonably require for the performance of its duty.” This should be set out in a Memorandum of Understanding between HMRC and the Commission. The Scottish Government responded that where required it “will seek the agreement of the UK Government to the Commission having access to all information and analysis it needs to undertake the work required by Scottish Ministers.”

100. The Committee subsequently asked Scottish Government officials during its inquiry on the fiscal framework whether they and the Commission would have access to HMRC data on SRIT. The Scottish Government responded that they “are still discussing with HMRC precisely which data on income tax we can get access to.” The Committee requested regular updates on the progress of these discussions.

101. The Commission states in its written submission in relation to the right of access to information that over time their “goal would be to have a deeper relationship with the OBR and HMRC.” Robert Chote pointed out that the OBR has to respect taxpayer confidentiality and it does not have access to all of the HMRC data. This will equally apply to the Commission if it is allowed access to HMRC data.

102. Ian Lienert argues that Scottish Ministers should be encouraged to urge the UK to provide a legal basis for the Commission to access essential information held by UK agencies and that indirect access whereby the request has to go through the Scottish Government would be unsatisfactory.

103. The Committee recommends that a right of access for the Commission to relevant information held by UK agencies should be provided for on a statutory basis.
104. The Committee recommends that a memorandum of understanding between the Commission and HMRC and between the Commission and the OBR are agreed and published.

**ADDITIONAL FUNCTIONS**

105. While the Bill is intended to reflect the existing legislative competence of the Scottish Parliament, the Scottish Government expects the functions of the Commission to “develop substantially to take account of the new fiscal powers to be devolved under the Scotland Bill currently proceeding through parliament and any further future devolution.”

106. The Committee previously recommended that the draft Bill should be amended to widen the functions of the Commission to include assessing the performance of the government against its fiscal rules and an assessment of the long-term sustainability of the public finances. The Scottish Government responded that it recognised that this may be desirable but that the Parliament “does not yet have competence to legislate for additional functions for the Commission to reflect the further fiscal powers recommended for devolution by Smith.”

107. The Scottish Government sought views on the following future functions for the Commission in its consultation on the draft Bill:

- Assessment of the Scottish Government’s fiscal rules agreed with the UK Government;
- Assessment of forecasts of receipts from income tax (to reflect all non-savings, non-dividend income paid by Scottish taxpayers);
- Assessment of the methodology for assigning VAT receipts to the Scottish budget and forecasts made under that methodology;
- Assessment of forecasts of welfare expenditure - this would involve assessing the forecasting models developed by the Scottish Government and the economic and demographic assumptions underpinning those models; and
- Assessment of the mechanisms for adjusting the block grant.

108. The Scottish Government’s summary of responses stated that respondents “generally agreed with the proposed functions and that there could be benefits in expanding these but there was no clear consensus on what the additional functions should be.”

109. There was a broad agreement among the Committee’s witnesses that the Bill should be amended to widen the functions of the Commission to include responsibility for assessing the sustainability of the public finances including adherence to fiscal rules. The RSE have consistently raised concerns about the short-term nature of the budget process and “we very much agree with the
Committee that looking at performance against fiscal targets and critically assessing the long-term sustainability of the public finances should be a substantial element of the SFC’s role.”

They suggest that the Scottish Government should publish a medium-term budget framework alongside the annual draft budget.

110. Carlo Cottarelli of the IMF’s view is that “it is common practice for fiscal councils to have responsibilities that go beyond the assessment of forecasts and, definitely, assessing the adherence of fiscal rules is often part of those responsibilities.” It would be preferable that the Bill is amended “to ensure that the SFC has a clear remit to do so.”

111. The Canadian parliamentary budget officer states that he is:

“of the opinion that a charter for budget responsibility framed around the Organisation for Economic Co-operation and Development’s (OECD) best practices for budget transparency would be useful and that the SFC could ensure the Government’s adherence to the charter.”

112. Ian Lienert recommends that the Committee should urge the Scottish Government to publish a medium-term fiscal strategy including a medium-term budget framework alongside the annual draft budget. The Scottish Government should also be encouraged to publish a “comprehensive analysis of medium-term fiscal risks, including those from PFI’s.” The Commission could then “assess their realism and comment on key components, including the basis of the adjustments which, along with borrowing, determine the total resources available for spending in Scotland.”

113. He also notes that in other countries such as Ireland, the legislation establishing the IFI also established the wider fiscal framework including fiscal rules. He points out that it would be possible to amend the Bill to include a few generally worded phrases relating to the wider fiscal framework. However, he highlights the need to resolve institutional weaknesses in inter-governmental relations across the UK prior to extending the mandate of the Commission.

114. The Commission states in its written submission that it:

“believes it should have responsibility for assessing the Scottish Government’s forecasts on the sustainability of Scotland’s public finances, such as adherence to fiscal rules as an example, and it would welcome the Bill being amended now to anticipate this additional responsibility when it arises.”

115. Professor Hughes Hallett suggests that the Bill should be amended to make explicit that the Commission has a role in carrying out sensitivity analysis and in assessing fiscal sustainability. Professor Campbell Leith’s view is “one of the main objectives of creating a fiscal commission is to ensure fiscal sustainability. The raison d’être of a fiscal commission is exactly that.”
116. However, the DFM takes a different view. He does not support widening the Commission’s remit to include assessing adherence to fiscal rules and the sustainability of the public finances which he believes is a role for the Finance Committee and the Parliament. His view is that the role of the Commission “is properly defined as that of focusing on the estimation of the Government’s taxation forecasts and reporting accordingly.”

117. The Committee notes the recommendation of the Smith Commission that the Parliament “should seek to expand and strengthen the independent scrutiny of Scotland’s public finances in recognition of the additional variability and uncertainty that further tax and spending devolution will introduce into the budgeting process.”

118. The Committee believes that there is currently a lack of institutional capacity within Scotland providing independent scrutiny of the public finances and that the Commission provides a substantial opportunity to help fill that gap. At the same time the Committee would also expect that as further financial powers are devolved there would be an increase in the level of institutional capacity providing independent scrutiny of the public finances.

119. The Committee, therefore, reiterates our own view and the view of many of our witnesses that the Bill should be amended to widen the functions of the Commission to include assessing the performance of the Government against its fiscal rules and an assessment of the long-term sustainability of the public finances.

FINANCIAL MEMORANDUM

120. The FM estimates recurring costs of £850,000 per annum from 2017-18. This reflects the statutory functions of the Commission provided for in the Bill and does not include “the additional costs associated with any future expansion of the Commission’s functions.” Rather, the Commission’s remit as set out in the Bill “is designed to reflect and be proportionate to the fiscal powers that are devolved to the Scottish Parliament under the Scotland Act 2012.”

121. The Policy Memorandum states that the Parliament’s tax-raising powers will remain modest even following the implementation of the Smith Commission proposals. The remit 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.”

122. Ian Lienert suggests that the estimates within the FM “are generous relative to comparable small IFIs elsewhere.” Table 1 below provides a comparison with the Swedish and Irish models although it should be noted that they have much wider mandates than the relatively limited remit initially proposed for the Commission.
Table 1

<table>
<thead>
<tr>
<th></th>
<th>Number of members</th>
<th>Number of staff</th>
<th>Staffing costs</th>
<th>Member costs</th>
<th>Annual Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>IFAC (2014)</td>
<td>5</td>
<td>5</td>
<td>360,000 euros</td>
<td>97,000 euros incl. expenses</td>
<td>800,000 euros maximum</td>
</tr>
<tr>
<td>SFPC</td>
<td>6</td>
<td>5</td>
<td>500,000 euros</td>
<td>100,000 euros</td>
<td>1 million euros</td>
</tr>
<tr>
<td>SFC (2017-18)</td>
<td>3</td>
<td>6</td>
<td>£345,000</td>
<td>£112,000</td>
<td>£850,000 maximum</td>
</tr>
</tbody>
</table>

Irish Fiscal Advisory Council

123. The figures provided above for the IFAC are taken from its annual report for 2014. The budget for the Council is capped at 800,000 euros linked to inflation. The actual spend in 2013 was 480,941 euros and 604,756 euros in 2014. The Council initially had 3 staff. Since the endorsement function was added to its remit the Council has hired an additional economist and two research assistants bringing the secretariat to six. One staff member works specifically on short and medium term macroeconomic forecasting. Given the small size of the secretariat, all staff (except the administrator) contributes to the production of IFAC’s macroeconomic forecasts as part of the process of carrying out the Council’s endorsement function.

124. Council members are either paid a fee or compensation is paid to Council members’ full time-employers for the time spent on IFAC work. Fees are comparable with other non-commercial state-sponsored bodies. The 2014 annual accounts show expenditure of 65,317 euros for Council fees and expenses and 31,720 euros was paid to other public bodies. The main time commitment for Members is to participate in a full meeting of the Council once per month. An ex Council Member has advised the Committee that in addition to these monthly meetings there is around two days a month needed to read and provide comments on draft papers prepared by the secretariat. There are also two parliamentary appearances per year and two meetings with Irish Government officials in relation to the endorsement function.

Swedish Fiscal Policy Council

125. The annual budget for the SFPC is slightly less than 10 million kronor which is around 1 million euros. The Council has five staff which includes a head of agency, two senior economists, one junior economist and an administrator. The Council does not do any forecasting. The main forecasting institution is the National Institute of Economic Research (NIER) which has approximately 60 employees. The Council relies on their forecasts and at times it commissions specified analyses from the NIER.
126. Staff costs are around 60% of the total budget but this includes remuneration for Members who are paid a fixed monthly amount. The Chairman receives 180,000 kronor per year which is around 19,000 euros. The vice chairman receives 127,000 kronor per year which is around 14,000 euros and regular members receive 110,000 kronor which is around 12,000 euros. The cost for the Council is higher since this includes employer fees. As with the IFAC the main time commitment for Members is to participate in a full day meeting once per month.

127. From the above we can see that the estimated costs for Members of the Commission are much higher than for the Irish and Swedish Councils despite having fewer Members and a much smaller remit. The estimate of 1.5 days per week for Commission Members would appear to be greater than the time commitment for Swedish and Irish Council Members. It is not clear why this is the case given the relative size of its remit compared to the Swedish and Irish models.

128. Ian Lienert suggests that it is questionable whether more than three members of the Commission would be needed even with an increased remit. However, he suggests that as the Commission becomes more established then consideration could be given to “recruiting two non-executive members who would provide oversight” of the three executive members.

**Staffing**

129. The FM states that estimated staff costs are based on “a team of six full time equivalent staff providing governance, strategic, operational and technical support to members in discharging the Commission’s functions.” The Scottish Government’s view is that this is the total staffing resource which the Commission is likely to require in carrying out its functions as set out in the Bill and that it does not include the likely staffing resource to support an expansion of the Commission’s role following the enactment of the Scotland Bill 2015.

130. Given the Commission’s relatively limited mandate, Ian Lienert questions why six full time staff are required. He points out that while the proposed staffing levels are broadly similar to Ireland and Sweden these councils have considerably wider mandates. At the same time he also recognises that given the lack of other forecasting bodies in Scotland there will be a need for the Commission to develop a strong in-house forecasting expertise. He suggest that a “pragmatic way forward may be to recruit, say 3 staff in addition to the existing secretary, and see whether there is a need for further staff.” Robert Chote on the other hand states that:

> “The resources that are needed to do the job properly may be rather larger than some people who have not engaged in the process think, so I suspect that the Scottish Government has made quite a good judgement on that rather than an excessively generous one.”

131. It is not clear though whether the proposed staffing resource is based on the Commission carrying out its own forecasts or whether more staff would be required if this were the case. The IFAC secretariat has doubled in size from three
to six since it began its own forecasting operation following the introduction of the endorsement function. Ian Lienert suggests that it will take time to “build up a strong forecasting capacity within the Commission” but nonetheless such capacity is urgently needed.\footnote{107} The Commission should begin to recruit as soon as possible staff with strong analytical skills and prior forecasting experience.

132. The Commission states in its submission that the resources provided within the FM are suitable for the work which it is currently required to do but as the remit of the Commission expands, the “resources available to it will need to grow prudently to support the additional work.”

133. In response to the suggestion that the proposed budget in the FM may appear generous compared to Sweden and Ireland, Lady Rice responded:

> “The budget is not there to be spent; it is there to allow us to grow and develop as we see fit.....We would not go out and hire four full-time economists just because that was allowed by the budget; rather, we would hire one. We might in the future, if we felt that we needed another or as new taxes come in, decide to add to that.”\footnote{108}

134. In response to the same question the DFM stated that the proposed budget was formulated in discussion with the Commission and that this can be reviewed if necessary “to see whether the resources that we have put in place are actually required to fulfil the Commission’s functions.”\footnote{109}

135. The Committee recommends that the resources of the Commission should be proportionate to its relatively limited remit and does not anticipate that the full budget will be required on the basis of the functions proposed in the Bill. However, this will need to be reviewed if the Commission is required to produce the official forecasts.

CONCLUSION

136. The Committee welcomes the establishment of the Commission on a statutory basis and believes that it has an important role in providing independent scrutiny of the public finances in Scotland. The Committee believes that it is critical that the Commission is not only independent but seen to be independent and, therefore, that is why we recommend that it should have responsibility for producing the official forecasts.\footnote{110}

\footnote{110} John Mason MSP dissented from this recommendation.
137. The Committee agrees with the recommendation of the Smith Commission that there is a need to strengthen the independent scrutiny of Scotland’s public finances and that the SFC provides a substantial opportunity to do so. That is why we recommend that the Bill should be amended to allow the Commission to assess the long-term sustainability of the public finances including the performance of the Scottish Government against its fiscal rules.

138. The Committee supports the general principles of the Bill.
ANNEXES

ANNEXE A: REPORTS FROM OTHER COMMITTEES

Delegated Powers and Law Reform Committee
The Delegated Powers and Law Reform Committee’s report to the Finance Committee on the Scottish Fiscal Commission Bill is available at:
63rd Report, 2015 (Session 4): Scottish Fiscal Commission Bill at Stage 1

ANNEXE B: INDEX OF ORAL EVIDENCE SESSIONS

Please note that all oral evidence and associated written evidence is published electronically only, and can be accessed via the Finance Committee’s webpages at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29822.aspx

26th Meeting, Wednesday 28 October 2015
Sean Neil, Acting Deputy Director of Finance, Alison Cumming, Head of Tax Policy, and John St Clair, Senior Principal Legal Officer, Scottish Government.

27th Meeting, Wednesday 04 November 2015
Robert Chote, Chairman, Office for Budget Responsibility (by videoconference); Professor Ronald MacDonald, Professor of Macroeconomics and International Finance, University of Glasgow; Dr Jim Cuthbert; Mark Taylor, Assistant Director, Audit Services Group, Audit Scotland.

29th Meeting, Wednesday 18 November 2015
Charlotte Barbour, Head of Taxation, The Institute of Chartered Accountants of Scotland; John Cullinane, Tax Policy Director, The Chartered Institute of Taxation; Alan Bermingham, Policy and Technical Manager, Chartered Institute of Public Finance and Accountancy; Professor Jeremy Peat, Fellow, Royal Society of Edinburgh; Dr Angus Armstrong, Director of Macroeconomic Research, National Institute of Economic and Social Research; Chris Stewart, Chairman, Scottish Property Federation; Professor Peter McGregor, University of Strathclyde.

30th Meeting, Wednesday 25 November 2015
Lady Susan Rice C.B.E, Chair, Professor Andrew Hughes Hallett, and Professor Campbell Leith, Scottish Fiscal Commission.

31st Meeting, Wednesday 02 December 2015
John Swinney, Cabinet Secretary for Finance, Constitution and Economy, John St Clair, Senior Principal Legal Officer, and Alison Cumming, Head of Tax Policy, Scottish Government.
ANNEXE C: INDEX OF WRITTEN EVIDENCE

Written submissions—

- Audit Scotland (168KB pdf)
- Andrew Wilson (78KB pdf)
- CIOT (230KB pdf)
- Dr Lisenkova and Dr Armstrong (808KB pdf)
- ICAS (236KB pdf)
- IMF (147KB pdf)
- Jim Cuthbert (358KB pdf)
- OECD (1.05MB pdf)
- Parliamentary Budget Officer (Canada) (70KB pdf)
- Professor Ronald MacDonald (319KB pdf)
- Professor Peter McGregor and Professor Kim Swales (316KB pdf)
- RSE (283KB pdf)
- Scottish Property Federation (163KB pdf)
FINANCE COMMITTEE CALL FOR EVIDENCE

SCOTTISH FISCAL COMMISSION BILL

SUBMISSION FROM AUDIT SCOTLAND

1. Audit Scotland is the independent public sector audit agency undertaking the external audit of the majority of public sector bodies in Scotland. We do this on behalf of the Auditor General for Scotland (for the NHS and central government) and the Accounts Commission (for local government).

2. The Finance Committee has requested views on the Scottish Fiscal Commission Bill. Audit Scotland welcomes the opportunity to comment. We also provided evidence to the Committee’s inquiry into proposals for an independent fiscal body in early 2014, and responded to the Scottish Government’s consultation on the draft bill in September 2015.

3. Audit Scotland, the Auditor General for Scotland and the Accounts Commission have all been set up in ways that establish their independence from the Parliament and the Government in the selection of audit work to be undertaken, the conduct of the work and reporting the results in public. We believe that this independence is essential to the creation and maintenance of long term public confidence in our work and the same considerations should apply to the Scottish Fiscal Commission.

Overall comments

4. Our report on *Preparations for the implementation of the Scotland Act 2012* in December 2014 commented that “The Scottish Fiscal Commission is an important part of the scrutiny process and it is essential that it remains independent of the Scottish Government and has the capacity and budget to fulfil its role.”

5. Overall the proposals in the Bill appear to provide a significant degree of independence for the Scottish Fiscal Commission. This could be further increased by moving the balance of influence on appointments and financing further towards the Parliament.

6. The proposals in the Bill provide for a number of individual functions for the Scottish Fiscal Commission. We consider that it is also important that the Commission is able to provide an overall commentary bringing together the

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results of each of its individual assessments and commenting on their overall effect.

7. The Bill provides for the initial statutory functions of the Commission and provides a mechanism for future expansion to reflect the proposals in the 2015 Scotland Bill. It is important that the Commission’s remit is sufficiently wide to cover all of the key areas of fiscal estimation within future Scottish budgets. We suggest that assessing the mechanisms for applying the Barnett formula, adjusting the block grant and achieving the “no detriment” principle may be important additional areas for the Scottish Fiscal Commission to be involved in.

**Forecasting tax revenues**

8. Fiscal institutions such as the Scottish Fiscal Commission provide independent assurance on forecasts and estimates which Parliament and Government use. The remit of such bodies is for Parliament to determine, but its operation should conform to best practice guidance. We consider that the OECD principles\(^2\) provide a very useful reference point for the principles to be adopted by the Scottish Fiscal Commission.

9. A primary role for the Scottish Fiscal Commission is to provide independent, comprehensive, timely, high quality professional information and advice to both the Parliament and the Government to enable them to fulfil their functions in setting tax levels and budgets. This will involve producing forward looking reports on the sustainability of public finances. Information on past performance will also help decision making and accountability and build confidence in Scotland’s ability to manage its finances in the new environment. The Commission requires the capacity and resources to undertake this work in the manner that it considers most appropriate.

10. Effective scrutiny of budget proposals will require information on the sensitivity of variations in proposals on income or expenditure. The Scottish Fiscal Commission will be well placed to conduct such analysis or report views on the Government’s own analysis.

**Role of the SFC prior to the publication of the Scottish Government forecasts**

11. The Scottish Fiscal Commission should have the ability to produce reports at its own initiative and also to respond to requests from parliamentary committees and the Scottish Government. It should have access to all information held by

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\(^2\) - [http://www.oecd.org/gov/budgeting/recommendation-on-principles-for-independent-fiscal-institutions.htm](http://www.oecd.org/gov/budgeting/recommendation-on-principles-for-independent-fiscal-institutions.htm)
government that it needs for its work and have the power to publish its reports and underlying analysis at no cost to users.

12. This is likely to require the Commission to engage with the Scottish Government throughout the year about its methodologies and to report on these in public as it considers appropriate. This would enable the Commission to help the Government to improve its approach over time, while at the same time protecting its independence.

Additional functions

13. If the Commission is to provide independent assessments of Scottish Government forecasts that will help Parliament in its scrutiny of budgets, then it is important that the Commission’s remit is sufficiently wide that it covers all of the key areas of fiscal estimation within the budget.

14. The proposed statutory functions in the Bill appear to cover the principal areas of fiscal estimation based on existing powers, but it is not clear that the Commission will have the ability to comment on the overall effect of the combined forecasts. It is also important that the Commission should have the ability to bring together its views of the individual components to provide an overall assessment of the combined estimations within the budget. In the event that all the individual components were within acceptable ranges but were all towards one end of the ranges the Commission would then be able to bring such information to the attention of Parliament.

15. One of the proposed future functions of the Commission set out in the Scottish Government’s consultation on the draft bill was the assessment of the mechanisms for adjusting the block grant. Given that mechanisms are required to be in place under the existing Scotland Act 2012 fiscal devolution arrangements, it may be appropriate to incorporate this function in the current Bill. It was not clear from the consultation paper whether an assessment of mechanisms for adjusting the block grant would include the operation of the Barnett formula. We suggest that this should be explicitly included in the remit of the Commission.

16. The Smith Commission made a number of proposals about “no detriment” when fiscal changes are made by the UK or Scottish Governments. This is likely to be difficult to implement in practice, and the Commission could play a useful role in reporting on the mechanisms for achieving no detriment.

17. A medium term budgetary framework is important in order to show the medium term effect of policy and budgetary decisions and to demonstrate the sustainability of public finances. The Commission could consider any such
framework prepared by the Government, reporting views on the robustness of the framework and the extent to which key aspects are being adhered to.

18. Possible additional objectives could include providing economic reports for Scotland where existing UK information is not disaggregated or where there is good reason, in the view of the SFC, to use different assumptions from those adopted by either the OBR or Scottish Government. The SFC could be required to co-operate with the equivalent UK body and we consider it should be required to publish explanations where it uses different assumptions.

Rights of access to information

19. In accordance with the OECD principles the Scottish Fiscal Commission should have the power to produce reports at its own initiative, have access to all information held by government that it needs for its work and have the power to publish its reports and underlying analysis.

20. In our view the provisions of the Bill provide sufficient rights of access to devolved bodies based on current fiscal arrangements that reflect the provisions of the 2012 Scotland Act. While it may be helpful for the parties involved to set out detailed working arrangements in a memorandum of understanding there is no requirement to provide for this directly in the legislation. Clearly any such arrangement should not have the effect of limiting the Commission’s right of access in practice.

21. A memorandum of understanding is likely to be helpful in providing an agreed framework for the Commission’s engagement with relevant UK Government bodies, particularly the OBR.

Appointment of members and staff

22. The Bill’s proposal that members of the Commission are appointed for a single term with no reappointment appears appropriate. The Bill proposes that appointments would be made by Scottish Ministers with the approval of Parliament. This approach ensures that both Government and Parliament are content with the proposed appointments. It may increase the public perception of independence further if the members of the Commission were appointed by Parliament with the agreement of Ministers.

23. The Scottish Government’s consultation on the draft bill made reference to the appointment period being no longer than five years. This restriction does not appear in the Bill, which provides only that “A member is appointed for such period as the Scottish Ministers may determine”. The OECD principles make the point that if appointment terms are independent of the electoral cycle this will
help reinforce the public perception of independence. In our view it is important to enshrine this principle directly in the legislation.

Resources

24. It is important that the Scottish Fiscal Commission has sufficient staff and budget to carry out its role effectively. The independence and impartiality of the Commission would be enhanced if it were funded through the Scottish Parliament's budget rather than the Scottish Government's budget.

Further information

25. We hope that you find our comments helpful. Should you require any further information please contact Mark Taylor, Assistant Director, 110 George Street, Edinburgh EH2 4LH or e-mail mtaylor@audit-scotland.gov.uk.
Kenny Gibson MSP
Convener, Finance Committee
The Scottish Parliament

4th November 2015

Dear Kenny,

CALL FOR EVIDENCE – SCOTTISH FISCAL COMMISSION BILL

I am writing in a personal capacity as someone who has taken a keen interest in Scotland’s public finances and their devolution over the past twenty years. I hope that you and the Committee wouldn’t mind if I focused my comments on some specific issues with only passing mention of others you highlight in your call for evidence.

At a UK level the level and range of information, modeling and forecasting available to policymakers and those who scrutinise them is very significant. A number of models exist to provide assessments of the prospects for different categories of revenue and expenditure and the impact of changes in policy on outcomes.

The Treasury and OBR model the UK economy and, in concert with HMRC assessments, predict the impact of decisions on revenue flows and, separately, expenditure flows. Often the assumptions these models depend on – for example productivity growth – are relatively important though obscured in the conduct of the general debate. Few realise that the productivity assumption, for example, makes a £45bn plus difference to UK fiscal balances at the end of the planning period. But due to the way the Scottish forecasts by the OBR or HMT are constituted at present, there is no way we can determine what effect factors such as these, or attempts to improve the performance of the economy more generally, might have. Indeed, the future impacts on the economy are completely ignored in the present set up and the underlying assumptions and information remain confidential. That makes it impossible to make serious evaluations, and decisions will end up having to be made on “half a forecast”.

Separately, the Institute for Fiscal Studies provides a helpful independent input which assesses the impact of policy changes on different demographic groups, or different parts of income distribution, and in different sectors of the economy. It would surely make sense, given the growing importance and focus on equality issues, if every policy change or bill of a certain scale be subjected to a sensible distributional analysis and the results published alongside spending decisions in the way fiscal impact is now.

The Bank of England model then offers further assessments of the UK economy and the impact of monetary policy on inflation and the other variables they focus upon.
It may be helpful for the Committee and other colleagues at Holyrood to consider the broader landscape of information that is available to inform the debate in Scotland as financial responsibilities migrate north. In my experience as an MSP, and then subsequently as an economist and follower of the conduct of public debate, there is an important development in the political culture that must follow the growth in responsibility.

Relatively static assessments of money in and money out on the basis of “Zero Sum” judgements on what would happen with policy changes too often fail to take account of behavioural change in response to such policy changes. More sophisticated economic modeling will be able to take account of the impact of policy change on behaviour and therefore outcomes based on assumptions that should be both transparent and debated.

Of course, placing too much store by the assessment of any model can lead to sub-optimal policy choices. What we require – culturally – is a more rounded debate and deeper assessments that understand the economy is more organic in its nature and performance than a standard P&L or balance sheet. The problem we have is that Scotland has no model comparable to the UK-wide ones other than the Scottish Government’s own version of the NIESR assessment.

This would be thrown into sharp relief by the variation of income tax bands or rates. Too little information is available about the detail of Scotland’s tax base and the impact of its potential growth and contraction on revenues.

A further complication will arise depending on the method HM Treasury eventually uses to both assess and then revise its own predictions on revenue flows in Scotland, and how it will reconcile the payments made to Scotland in the light of the inevitable forecast errors. This is a point of detail that will determine the sustainability of any next devolution settlement in both spirit and practical terms. The committee’s focus on VAT assignation assessments would be time well spent.

There is very significant public interest in this particular call for evidence from across society and the broader business community. My own plea would be that the Parliament and Government (both Scotland and UK) should work together to reach for the maximum possible amount of information being placed in the public domain. It may be that the UK Government could add very significantly to the flow of information of its own volition, which could be a very significant signal it takes seriously the call by Lord Smith for a respectful relationship to be nurtured. Likewise it would make eminent sense if the Fiscal Commission were in a position to comment and challenge the assumptions both of the Scottish and UK Governments. More transparency, challenge and consideration are always additive.

Beyond this however it is my strong belief that the ability for interested parties to interrogate an independent model and its assumptions would lead to a more substantial culture of debate. It is critical that we focus less on options for dividing a spending pie or chasing revenues from short-term hikes, and much more on the performance of the Scottish economy in a competitive landscape, and the impact of
that on the tax base and therefore revenues. When the broad political culture has a handle on that it is far more likely to produce responsible and sustainable policy options. And equally important, only at that point will it be genuinely possible to hold Scottish policy makers accountable for their decisions.

Moreover, while modeling of potential policy impacts in advance of changes is always prioritised, it is equally important to properly assess and highlight and evaluate the impact of policies after the fact. The latter is too often the poor relation in thinking about the development of the evidence base for policy.

If funding is needed to properly provide the legislative arm (and the public) with information and a model that can be interrogated independently then that will be funding well spent. Before the cost can be estimated a proper assessment of what the gap currently is should be undertaken, perhaps by your committee.

What may seem arcane points of detail to many get to the very roots of our political culture and the sustainability of a constitutional settlement. Despite the often heated nature of political debate - especially on the constitution and in an election lead-in – your deliberations now will have a material impact on all of our well-being for decades to come. Detail matters, but so too does the harder-to-determine culture that drives both the conduct of officials at all levels and of the politicians that lead and hold to account.

I wish you well in your deliberations at an extremely important time for the development of public policy, government and our Parliament.

Yours Sincerely

ANDREW WILSON
(Founding Partner)
1 Introduction

1.1 This is a response by the Chartered Institute of Taxation (CIOT) to the Finance Committee of the Scottish Parliament’s call for evidence: Scottish Fiscal Commission Bill. We welcome the opportunity to offer our comments; we are pleased to have the chance to amplify our points orally.

1.2 The CIOT is an educational charity concerned with promoting the education and study of the administration and practice of taxation. For more details see the statement about us at section 8 below.

1.3 The CIOT has previously submitted a response to the Scottish Government’s consultation on the Scottish Fiscal Commission,¹ and a joint response with our Low Incomes Tax Reform Group (LITRG) to the Finance Committee’s Inquiry into Scotland’s Fiscal Framework,² which included a brief consideration of the role and remit of an enhanced Scottish Fiscal Commission. Further to a recommendation contained in our submission in respect of the Scottish Government consultation,³ we note that the Bill as introduced includes a provision requiring the Commission to prepare and publish an annual report, which it must lay before the Scottish Parliament.⁴ This would be done with the aim of showing that the Commission has carried out its functions, while retaining its independence and objectivity.

1.4 We answer the Committee’s questions in turn below. We have not included any Executive Summary as such in this response.

⁴ Section 8, Scottish Fiscal Commission Bill, SP Bill 8, Session 4 (2015).
2 Forecasting tax revenues

The Committee would welcome views on whether:

- there is a need for independent forecasts in addition to the Scottish Government official forecasts?
- the Commission should have the capacity and resources to make its own forecasts even if its role is to assess the official forecasts?
- the Scottish Government forecasts should be subject to sensitivity analysis carried out by the Commission?
- the Commission should be able to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections?

2.1 We have not previously made a recommendation in relation to who should be responsible for generating forecasts. The key issue to consider is that reports and forecasts should provide appropriate assurances to the Scottish and UK Governments – which means a need for proper and independent scrutiny. Independent scrutiny is also an essential element of a robust fiscal framework. While we believe it is essential that there are reliable and timely forecasts of tax revenues, the key role of the Scottish Fiscal Commission is to provide the independent and robust scrutiny of those forecasts. In considering whether or not there is a need for the Scottish Fiscal Commission to produce its own independent forecasts in addition to those prepared by the Scottish Government, it is necessary to take into account what will add value and what will assist in its scrutiny of the official forecasts. Ideally, while ensuring robust scrutiny, there should also be value for taxpayers’ money and therefore the avoidance of duplication of work.

2.2 We recognise that a case can be made for the Scottish Fiscal Commission preparing its own forecasts, but we do not think this is a necessity. We appreciate that the ability to produce or access alternative forecasts to the Scottish Government official forecasts might assist in the analysis and assessment of the official forecasts. At this stage, we do not think it would be a realistic demand in terms of capacity and resources for the Scottish Fiscal Commission to prepare its own forecasts. As such, it may be more appropriate to explore whether there are alternative forecasts, produced by other bodies, which the Scottish Fiscal Commission could use in its work.

2.3 Nevertheless, the Commission should either have the expertise on hand, or access to such expertise, to prepare analysis of and comment on the Government’s budget proposals and forecasts. It is particularly important for
the Commission to have expertise to comment on the sensitivity of the forecast to key assumptions: this is much more valuable than having the capability of putting forward different assumptions and therefore forecasts of its own, since any assumption, however reasonable it seems at the time it is made, can prove with hindsight to be significantly inaccurate. We note however that there are likely to be practical difficulties for the Commission in entering the political arena by criticising assumptions put forward by the Government.

2.4 In addition, as the Bill allows, it is important that there is the ability to amend the functions of the Commission in the future to reflect changing circumstances.

3 Role of the SFC Prior to the Publication of the Scottish Government Forecasts

The Committee would welcome views on whether:

- the Commission should exert significant influence over the forecasts at the same time as providing an assessment of their reasonableness?
- the Commission should have a role throughout the year in scrutinising the Scottish Government’s work in developing models and methodologies to produce its forecasts?
- the Commission should carry out its assessment of the Scottish Government forecasts either before or after publication?
- the Commission should be required to send a copy of its report on its assessment of the forecasts to Ministers prior to publication and, if so, how far in advance?

3.1 The work of the Commission must both be independent and seen to be so. If the Commission exerts significant influence over the Scottish Government forecasts, in the sense that it is involved in their preparation and has a vested interest, this will harm both actual and perceived independence. An exertion of external influence, in the sense that the Scottish Government takes heed of the Commission’s assessment of their forecasts would likely be less of an issue in terms of independence and more acceptable.

3.2 The Commission should have the capacity to identify where it wants to challenge forecasts and the capacity to codify its challenge (or the ability to access input to do so), including the methodologies, as part of its remit of scrutinising them. In order to scrutinise the forecasts properly, it is essential that the Commission examines the methodologies and assumptions that form the basis of those forecasts. Otherwise, it is not possible to assess the
reasonableness of the forecasts.

3.3 While we can see the attraction in having the Commission playing a role in the development of models and methodologies, this kind of involvement might hinder the Commission when assessing and scrutinising the forecasts, particularly if the methodologies and assumptions have effectively been set by the Commission. This kind of involvement might reduce the perceived and actual independence of the Commission when it comes to its core function of scrutinising forecasts (and their methodologies).

3.4 It is important that the Commission carries out its assessment of Scottish Government forecasts and prepares its report in time to ensure the report contributes to relevant Parliamentary debates. This would tend to suggest that the Commission should carry out its assessment of forecasts prior to their publication, such that the forecasts and the Commission’s report can be published at the same time.

3.5 It would be reasonable for the Commission to send a copy of the report to Ministers prior to publication, so that they are aware of its contents. The timing should be such that it is clear that there has been no opportunity for Ministers to influence the content of the report, meaning probably only advance notice of hours or days, rather than weeks. It will be well understood that the potential downside of any advance notice is the potential for suspicion of Ministerial influence, even at a late stage; but if the Scottish Government, starting with a clean sheet of paper, succeeds in avoiding giving apparent grounds for such suspicions, there is the prospect of preserving the perceived independence of the Commission, while allowing Ministers reasonable advance notice.

4 Additional Functions
The Committee would welcome views on whether:

- the Commission should have a wider role in assessing the sustainability of Scotland’s public finances such as adherence to fiscal rules and, if so, should the Bill be amended now to reflect this?
- the Bill should be amended to include assessment of mechanisms for adjusting the block grant?
- there should be a legislative requirement for the Scottish Government to prepare a charter for budget responsibility and the Commission should have a role in assessing adherence to the charter?
4.1 Increasing the remit as proposed above would significantly increase the workload of the Commission, and it would require appropriate resources. This would inevitably have a knock-on effect on the cost projections set out in the Financial Memorandum. Arguably, until the proposals in the Smith Commission Report are implemented, there is less need for these functions – for example, the fiscal rules will be developed as part of the updated fiscal framework. So it might be appropriate to leave the Bill as it stands currently, with the proviso that functions should be added, by affirmative resolution, as the devolution settlement develops.\(^5\) The Bill includes provision for amending the functions of the Commission by regulation, and therefore allows for this. For example, once the fiscal rules and new fiscal framework are in place, it might be logical to add the function of assessing adherence to them. The OECD recommendations suggest that the mandate should be clearly stated in primary law, however, which strengthens the argument for amending the Bill before it becomes law.

4.2 Taking the proposals in turn, we think that a role in assessing adherence to fiscal rules, for example, would be a sensible extension of the remit of the Commission. Assessment of mechanisms for adjusting the block grant would also be an appropriate function. We do not think that a charter for budget responsibility is a necessary requirement, in the context where Scotland still has its own fiscal framework that is consistent with and effectively fits within the overall UK framework.

4.3 There may also be a role for the Scottish Fiscal Commission in scrutinising new policy proposals in tax and welfare for consistency in interactions with existing rules and proposed new ones. A further suggestion would be to consider whether the Commission should have the ability, where requested, to examine the results of consultations in relation to fiscal matters or to monitor the consultation process to ensure that due regard is given to the views of respondents where appropriate.

4.4 There is however a balance to be struck here. While any one additional function may seem reasonable in isolation, the more that functions such as these are added, the more the Commission will get drawn into matters that are inherently subjective and quite properly the matter of political, including party political, debate. Independent experts have an important role but so do elected politicians.

5 Right of Access to Information
The Committee would welcome views on:

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\(^5\) The Scottish Government consultation on the Scottish Fiscal Commission indicated that this was the intention at paragraph 4.12 ff.: [http://www.gov.scot/Publications/2015/03/1668](http://www.gov.scot/Publications/2015/03/1668)
• is the right of access in the Bill robust enough?
• is there a need to include a requirement for a MoU on the face of the Bill?
• what principles should underpin the working arrangements between the Commission and the Scottish Government and other relevant public bodies?
• the process and timings for the Commission’s engagement with the Scottish Government and how this should be set out in the MoU?
• the process and timings for the Commission’s engagement with HMRC and the OBR and how this should be set out in the MoU?

5.1 We think that the provisions setting out right of access to information in the Bill are robust enough. One possible addition might be to specify that relevant information should be provided to the Commission in a timely manner.

5.2 It would seem sensible for there to be (MoU) between the Scottish Fiscal Commission and other public bodies, to reinforce the Commission’s right of access to information. The Commission may also need to work with and share aggregate data with UK institutions, including HM Revenue & Customs and the Office for Budget Responsibility. We think that it would be beneficial for joint-working arrangements to be placed on a statutory basis. In particular, this might help to ensure co-ordination and prevent duplication of effort.

5.3 It is important that the Commission is both independent in fact and seen to be independent. The principles underpinning working arrangements with the Scottish Government (and other public bodies) should reflect this. Equally, the process and timings of engagement should not compromise, or appear to compromise, the independence of the Commission.

6 Appointment of Members and Staff
The Committee would welcome views on whether:
• the proposed appointment and removal procedures are adequate for ensuring the independence of Commission Members?
• Ministers should determine the period of office of each Member or should it be specified in the Bill?
• appointments should be for one fixed term or should there be an option for a further term?
• should the Commission determine its own staffing arrangements on the basis of terms and conditions of employment agreed firstly with Ministers?

6.1 For continuity purposes, we can see that it is reasonable for the existing membership to form the initial membership of the statutory Commission. Such
continuity may however lead to a perception that the initial members of the Commission are not fully independent. In general, however, the proposals for appointment, tenure and removal of members of the Commission appear reasonable. For example, there appear to be reasonable safeguards since the Scottish Ministers’ actions are subject to the approval of the Scottish Parliament. In addition, appointments will be subject to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, which means that the OECD principles are likely to be adhered to when making appointments.6

6.2 Section 13 provides for Scottish Ministers to appoint members for such periods as they may determine. The consultation document indicated that the intention is for terms of appointment to endure no longer than five years. We recommended that a maximum term length of five years should be referred to explicitly in the legislation.7 This is in line with the OECD recommendations that suggest term lengths should be specified in legislation.8

6.3 We also think that the terms should provide for a member to be reappointed,9 though we think only one reappointment (and so in normal terms a maximum of 10 years) should be allowed. In order to establish continuity of membership, it might be helpful to have a set, standard term, but to have say half of the initial appointments for a longer period than this. Going forward, this would mean that changes in appointments would not all occur at the same time. We also draw attention to the OECD principles in this regard, in particular where these suggest that the leadership’s terms should be independent of the electoral cycle.10

6.4 We think that the Commission should have the capacity, including sufficient ongoing funding, to employ staff, hire consultants (or sub-contractors), and commission reports by third parties and so on. This ability to both employ staff and sub-contract work will ensure flexibility, enabling the Commission to cope with spikes in demand for its resources and to have access to deep specialists on key areas when required.

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9 Section 12 (3), Scottish Fiscal Commission Bill, SP Bill 8, Session 4 (2015) – this provides that Scottish Ministers may not reappoint individuals who are members or have previously been members.
6.5 We think that the Commission should be able to decide the terms and conditions of employment, in agreement with Ministers. We think that the OECD principles should be kept in mind when drawing these up.\textsuperscript{11}

7 Resources

The committee would welcome views on:

- the overall costs set out in the FM;
- the number of staff;
- the remuneration and assumed time commitment of Commission members;
- the likely costs of expanding the Commission's role to include an assessment of key aspects of Scotland's fiscal framework such as the Scottish Government's adherence to fiscal rules.

7.1 In order for the Commission to be credible and fulfil its functions properly, it is essential that it has appropriate resources, both in terms of finances and staff. It is also necessary to ensure that staff costs are commensurate with the experience and skills required.

7.2 This is not our area of expertise and we make no further comment in this regard.

8 The Chartered Institute of Taxation

8.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

8.2 The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

8.3 The CIOT’s 17,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation
12 November 2015
Preamble

We understand that the questions asked in this Call for Evidence are in relation to the Scotland Fiscal Commission Bill which is the responsibility of the Scottish Government. We recognise that the Scottish Fiscal Commission (SFC) is a fairly rare institution as it is an independent fiscal institution (IFI) operating at a sub-sovereign level. We welcome the intention to enhance the SFC’s status by putting it on a statutory basis. However, we wish to make clear that we do not agree that the best way to establish credibility is to have the SFC operate on an ‘independent scrutiny’ basis. First, we assume that this would be done by academics and in the media anyway. Second, given the uncertainty around any forecast the threshold reasonableness is too low or ‘unreasonable’ is too high. Third, it will be difficult for the SFC to establish credibility as it does not ‘own’ a forecast. Finally, fourth, it is unclear how an opinion adds to transparency. As a general point we do not accept that the appropriate governance of an IFI depends on the amount of tax and spending powers of the government. That is an issue of scope. The appropriate governance of an IFI is a function of how credible, transparent and effective the government intends the IFI to be.

1. Forecasting tax revenues

The Committee would welcome views on whether:
- there is a need for independent forecasts in addition to the Scottish Government official forecasts?
- the Commission should have the capacity and resources to make its own forecasts even if its role is to assess the official forecasts?
- the Scottish Government forecasts should be subject to sensitivity analysis carried out by the Commission?
- the Commission should be able to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections?

Comments:

In our view the SFC’s role in preparing reports with the assessment of reasonableness is too narrow. Our preferred arrangement would be for the SFC to prepare its own independent forecasts both from revenue and expenditure sides, using inputs from the Scottish Government and civil servants and evaluating the fiscal consequences of their policy proposals.
Producing a forecast greatly adds to discipline. In our view, it is only by going through the full forecasting procedure that one really notices the quirks in data and difficulties. At the same time, if the final configuration is for the SFC to purely assess forecasts, we do not think that in this situation the SFC should produce a competing forecast. Its role would be unclear and this would create tensions between the SFC and the Scottish Government, which would have a negative effect on the ability of the SFC to effectively carry out its duties. Moreover, we doubt that this would add to the credibility of the SFC. It is not a question of which forecast turns out closer to the outturn – much can happen after the forecast. The credibility comes from the SFC being at a distance from those who have an incentive to bias the forecast.

2. **Role of the SFC Prior to the Publication of the Scottish Government Forecasts**

The Committee would welcome views on whether:

- the Commission should exert significant influence over the forecasts at the same time as providing an assessment of their reasonableness?
- the Commission should have a role throughout the year in scrutinising the Scottish Government’s work in developing models and methodologies to produce its forecasts?
- the Commission should carry out its assessment of the Scottish Government forecasts either before or after publication?
- the Commission should be required to send a copy of its report on its assessment of the forecasts to Ministers prior to publication and, if so, how far in advance?

**Comments:**

To be able to provide a well-informed assessment of the reasonableness of the forecasts, the SCF should have full access to the Scottish government’s models and methodologies throughout the year. And scrutiny/assessment should be a collaborative and iterative process. The SFC should continuously communicate with the Scottish government and civil servants to make its opinion as to methodology and assumptions known.

Formally, the SFC should have enough time to evaluate the Government’s forecasts before they are delivered to Parliament and made public. After the publication this would place intolerable political pressure on the SFC and more likely to lead to suspicion rather than trust which is essential. To work out modalities, we recommend creation of a Forecast Liaison Group (as per the OBR MoU) headed by the SFC but involving the civil servants working on the forecast. We also believe that the SFC should be required to send a copy of its report to the Scottish Government prior to publication for Ministers to prepare their response. A decision about how far in advance should be agreed upon by the initial members of the SFC and the Scottish Government.
3. **Additional Functions**

The Committee would welcome views on whether:

- the Commission should have a wider role in assessing the sustainability of Scotland’s public finances such as adherence to fiscal rules and, if so, should the Bill be amended now to reflect this?
- the Bill should be amended to include assessment of mechanisms for adjusting the block grant?
- there should be a legislative requirement for the Scottish Government to prepare a charter for budget responsibility and the Commission should have a role in assessing adherence to the charter?

**Comments:**

In our view the SFC should have a wider role in assessing the sustainability of Scotland’s public finances. This will become more important as the process of fiscal devolution continues and the Scottish Government gets more powers. Moreover, we emphasise that the fiscal framework (yet to be decided) would benefit greatly from a single set of independent forecasts. As we mentioned above we would prefer the SFC to produce the fiscal forecasts rather than merely assess the reasonableness of forecasts.

We would also add to the list of additional functions: assessment of adherence to fiscal rules, and medium-to-long term sustainability of public finances. Currently, a focus on the short-term prevents an assessment and mitigation of the impact of important factors that have long-run effects, such a demographic change. It is also more important to have a dynamic view in the light of the new borrowing powers. A dynamic view of public finances will also require the production of forecasts of the future block grant, based on the adjustment principle agreed by the Scottish Government and HM Treasury.

We do not believe that it is for the SFC to assess the block grant – that is a political decision. We understand that any allocation on the basis of the formula will be remains under the Westminster government.

It is important to future-proof the Bill as much as possible. We welcome the requirement for “affirmative procedure” to modify the functions of the SFC as a means to preserve its independence. Due to this, all currently envisaged functions should be included in the Bill from the outset. We also support the view that Parliament should be allowed to propose changes to the SFC functions.

4. **Right of Access to Information**

The Committee would welcome views on:

- is the right of access in the Bill robust enough?
- is there a need to include a requirement for a MoU on the face of the Bill?
- what principles should underpin the working arrangements between the Commission and the Scottish Government and other relevant public bodies?
- the process and timings for the Commission’s engagement with the Scottish Government and how this should be set out in the MoU?
- the process and timings for the Commission’s engagement with HMRC and the OBR and how this should be set out in the MoU?

Comments:

Cooperation and confidence between the SFC and the Scottish Government will be essential. Therefore, it is important to be as clear as possible from the outset about operational procedures. Taking into the account the important role of the MoU for the independence of the OBR, we would recommend a MoU be included in the Bill.

Within the Fiscal Liaison Group (Chaired by the SFC) the key relevant public bodies ought to be included. It would be for the Liaison Group to set the time schedule for the SFC engagements with the relevant public bodies. The Head of the SFC would be required to report of a Parliamentary Committee to scrutinise the operation of the Fiscal Liaison Group. The SFC should have a right to request resources and, importantly, the right to access of relevant information and an explanation for any questions the SFC may have for making its judgement.

We believe it is important to specify how the SFC forecast responsibilities will interact with the OBR responsibilities. The OBR forecasts are part of the UK economic framework. It is unreasonable for the SFC to produce a macroeconomic forecast for Scotland that is conflicting with the OBR forecast. Therefore we believe that SFC should take the OBR forecast as given. The SFC should have the right to an explanation of the OBR forecast and its implications for the Scottish economy. This can form a part of the MoU.

5. Appointment of Members and Staff

The Committee would welcome views on whether:
- the proposed appointment and removal procedures are adequate for ensuring the independence of Commission Members?
- Ministers should determine the period of office of each Member or should it be specified in the Bill?
- appointments should be for one fixed term or should there be an option for a further term?
- should the Commission determine its own staffing arrangements on the basis of terms and conditions of employment agreed firstly with Ministers?

Comments:
We are not expert in the Public Appointment (Scotland) Act so we defer judgement. However, the success of the OBR depends heavily on the personalities chosen and this cannot easily be legislated for. First, we suggest that member of the SFC should not have had any supportive involvement with the Scottish Government. Second, the Chair must also be someone who can command confidence and cooperation with the Scottish Government. The SFC requires external credibility from independence but also cooperation with the authorities will be essential.

The fixed term of office of members of the SFC should be specified in the Bill. It should fall outside of the electoral cycle overlapping consecutive administrations. We believe that there should be an option for a member to serve for two consecutive terms. The main reason for this is a small pool of people with sufficient level of skills. This has been raised as a concern for long-term success and sustainability of the OBR in the first external review of the organisation. And in the case of Scotland the constraint could be more pressing. Two 5-year terms should be enough for a new generation of highly skilled fiscal professionals to emerge.

We agree that the SFC should determine its own staffing arrangements subject to terms and conditions of employment agreed with the Scottish Government.

6. **Resources**

The committee would welcome views on:
- the overall costs set out in the FM;
- the number of staff;
- the remuneration and assumed time commitment of Commission members;
- the likely costs of expanding the Commission’s role to include an assessment of key aspects of Scotland’s fiscal framework such as the Scottish Government’s adherence to fiscal rules.

**Comments:**

The costs and staff and remuneration outlined in the FM appear satisfactory, assuming that the SFC will have the right to request resources, information and explanation for the purposes of carrying out its duties as described in question 4.

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About ICAS

1. The Institute of Chartered Accountants of Scotland ("ICAS") is the oldest professional body of accountants. We represent around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices.

2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities. Our members also have a wealth of experience in assurance and corporate governance.

General comments

3. ICAS is grateful for the opportunity to give evidence to the Finance Committee regarding the Scottish Fiscal Commission Bill, as requested in the call for evidence issued in September 2015.

4. ICAS contributed to the earlier stages of the consultative process when a draft bill was issued and we submitted views on this to the Scottish Government. Our earlier submission is available at https://www.icas.com/__data/assets/pdf_file/0005/152834/Submission-Scottish-Fiscal-Commission.pdf

5. Independent scrutiny and assessment, and reporting thereon, of Scottish Government forecasting, the modelling of tax rates and receipts, and borrowing is vitally important. From reading the Bill, however, it is not clear exactly what the Scottish Fiscal Commission (SFC) is to do. This is compounded by the range of questions posed by the Finance Committee in its call for evidence.

6. So, for instance, is the SFC to check the detail of the Scottish Government’s forecasting of tax receipts and borrowing requirements, or is its role more one of an oversight/governance vehicle that reviews the methodologies and assumptions underpinning forecasts? And if the role is the former, is this to be conducted by simply checking Scottish
Government figure work and assumptions or is the SFC to undertake its own forecasting from a zero-base to then truly have an independent comparison to use as a check of the reasonableness of the Scottish Government figures?

7. If the SFC is being put on a statutory basis, the statute needs to be more precise and clear regarding the scrutiny function. ICAS has concerns about this lack of clarity; there are also questions that sit underneath this. For example, to what extent should the SFC be asked to check the Scottish Government’s work? The starting point should be that the Scottish Government and its civil service knows what they are doing and will do it properly and, therefore, the SFC should provide external oversight and scrutiny but without having to re-do the forecasting.

8. Interrelated with the question around the precise functions of the SFC, is the question of its independence. On the one hand, there are a number of pointers in the Bill towards the SFC being independent, for example, clause 6 is headed ‘independence’, and there is a direct line of reporting to the Scottish Parliament. On the other hand, Scottish Ministers may exercise considerable influence over the SFC, with the the appointment of members to the SFC (clause 11), and approving remuneration (clauses 17 and 18). We agree with the Policy Memorandum at paragraph 26 ‘….it is critical to the effectiveness and credibility of the Commission that it is independent of government and seen to be so’ but we do not think this Bill fully reflects this sentiment. A number of concerns around the proposed independence of the SFC were discussed in our earlier submission, and many of these remain unaddressed in this Bill.

9. Permeating this Bill is a number of checking mechanisms in relation to the SFC: it is to report annually on its work to the Scottish Parliament; clause 9 calls for a review of the SFC’s performance to be conducted by someone from outwith the SFC within a period of every 5 years; and Ministers need to approve remuneration of both members and staff. There are considerable checks on a Commission that is being set up to provide credibility and assurance.

10. The policy intentions behind this Bill do not stand out clearly: for example, there is a sense that there is a desire for the SFC to sit somewhere between being within the Scottish Administration and being a completely independent body but it is not clearly one or the other.

11. Clause 6 relates to the independence of the SFC but clause 6(2) states that the section is subject to any contrary provisions in this or any other enactments. This opens up the potential for the independence to be undermined.
Views on topics raised by the Finance Committee

Forecasting tax revenues - the Committee would welcome views on whether:

- there is a need for independent forecasts in addition to the Scottish Government official forecasts?
- the Commission should have the capacity and resources to make its own forecasts even if its role is to assess the official forecasts?
- the Scottish Government forecasts should be subject to sensitivity analysis carried out by the Commission?
- the Commission should be able to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections?

12. ICAS does not consider that there is a need for the SFC to prepare independent forecasts as this would create duplication of work and not provide value for taxpayers. In relation to sensitivity analysis, we consider that this is part of the role of the Scottish Government in preparing its forecasts so, again, it would only duplicate work if the SFC was to do this too.

13. As discussed above under the section ‘general comments’ we question whether the SFC should be expected to recreate the work of the Scottish Government, or whether its role is to scrutinise the methodology, assumptions, and controls used in forecasting, which would in turn provide assurance of the reliability or otherwise of the forecasts.

Role of the SFC Prior to the Publication of the Scottish Government Forecasts - the Committee would welcome views on whether:

- the Commission should exert significant influence over the forecasts at the same time as providing an assessment of their reasonableness?
- the Commission should have a role throughout the year in scrutinising the Scottish Government’s work in developing models and methodologies to produce its forecasts?
- the Commission should carry out its assessment of the Scottish Government forecasts either before or after publication?
- the Commission should be required to send a copy of its report on its assessment of the forecasts to Ministers prior to publication and, if so, how far in advance?

14. Whilst the SFC as an independent body should not be involved in influencing the preparation of forecasts by the Scottish Government, we would expect that if the SFC presented any challenges or questions to the
Scottish Government that these would be considered. The SFC should be part of the fiscal framework, at one remove from the Scottish Government, but with an active role. Otherwise, it will simply provide a commentary on another body’s work rather than being a part of the overall process that aims for the most robust and accurate forecasts possible.

15. The SFC should have a role throughout the year, and this is particularly so when the fiscal framework and related institutions and tasks are relatively new in Scotland. It is important that the constituent parts interact on a regular basis in order that all are informed, can learn from one another, and can work together.

16. Whether the SFC should scrutinise Scottish Government forecasts before or after their publication will depend on the desired end outcome. If the aim is to have forecasts that are the best they can be, the SFC should have a role throughout the year, and it should conduct its final scrutiny of the Scottish Government forecasts before they are published. If there is any criticism or challenge this needs to be initiated behind the scenes: no one likes to be criticised and it makes for defensive, uncooperative working relations for these types of processes and scrutiny to be conducted in public after a report has been published. However, if the aim is simply to have a public commentary this could be conducted after the forecasts have been published.

17. The forwarding of a report to Ministers prior to publication needs to provide sufficient time for Ministers to consider how to address concerns, otherwise there is no point in providing them with an advance copy. Therefore, a balancing act is required between being early enough in the process, but not so early that the forecasts have still to be finalised. There should also be provision in the Bill that the SFC allow the Scottish Government a reasonable period of time to prepare any response prior to publication. And if there are discussions between the SFC and the Scottish Government it may be that in the interests of transparency these should be summarised as part of the report.

Additional functions - the Committee would welcome views on whether:

- the Commission should have a wider role in assessing the sustainability of Scotland’s public finances such as adherence to fiscal rules and, if so, should the Bill be amended now to reflect this?
- the Bill should be amended to include assessment of mechanisms for adjusting the block grant?
- there should be a legislative requirement for the Scottish Government to prepare a charter for budget responsibility and the Commission should have a role in assessing adherence to the charter?
18. To be fully effective the Commission would need to scrutinise the whole budget. The remit appears to be limited in that there is no reference to scrutiny or assurance of (i) how the Barnett formula would in future be calculated, and (ii) of adjustments to the block grant for devolved powers, assuming that Scottish institutions could do this. This ties into the right to access information, discussed in the section below.

19. However, care needs to be taken that there is a clear delineation between the work of the SFC and any oversight role of the Finance Committee.

20. It would also make sense for the Scottish Fiscal Commission Bill to contain the necessary functions and provisions to enable the SFC to be fully operational under the next Scotland Act.

21. In clause 5 there is a power to confer, modify or remove the SFC’s functions by regulations. ICAS does not support the use of secondary legislation to change primary legislation, particularly when this relates to the core functions of the SFC. The granting of powers, duties and functions to a statutory body are an important exercise of Parliament’s duties and therefore should only be exercised through primary legislation so that there is full consideration before doing so. Secondary legislation should be used for administrative purposes only, such as how the powers in primary legislation are to be exercised and accounted for.

Right of access to information - the Committee would welcome views on:

- is the right of access in the Bill robust enough?
- is there a need to include a requirement for a MoU on the face of the Bill?
- what principles should underpin the working arrangements between the Commission and the Scottish Government and other relevant public bodies?
- the process and timings for the Commission’s engagement with the Scottish Government and how this should be set out in the MoU?
- the process and timings for the Commission’s engagement with HMRC and the OBR and how this should be set out in the MoU?

22. The right of access to information provided for in the Bill is sufficient. The basic right should be set in statute but access to a full range of information relies on good working relationships, which are derived from cooperation and a sense of benefit being derived from the arrangement. If this is too rigid, or every aspect set in statute, it may be less easy to work with and simply provide the parameters for dispute.
23. A Memorandum of Understanding between the SFC and other Scottish institutions will assist in providing a framework around working relations, but we do not think it is necessary for this to be on the face of the Bill. The SFC should continue to develop its processes and timings, building on existing engagement if this is found to have worked to date.

24. In relation to the Scottish Rate of Income Tax (SRIT) and VAT assignment, both the OBR and the SFC would appear to have a scrutiny remit. If the relevant information is sourced from HMRC, there may be duplication of work, which would seem unnecessary. It would also be difficult if the use of the same information gave rise to different, contradictory interpretations. Any MoU with the OBR and HMRC needs to address how work will be coordinated, or done on a joint basis, so that scrutiny is conducted to the satisfaction of the SFC and OBR but without creating duplication and wasting resources.

25. Any MoU between the SFC and relevant UK authorities should contain a commitment to maintain an open and transparent approach to sharing data. As discussed in the section above, to be fully effective the SFC would need to scrutinise the whole budget, and so there would need to be a mechanism whereby the SFC can access information held by relevant UK authorities, such as HMRC and HMT.

Appointment of Members and staff - the Committee would welcome views on whether:

- the proposed appointment and removal procedures are adequate for ensuring the independence of Commission Members?
- Ministers should determine the period of office of each Member or should it be specified in the Bill?
- appointments should be for one fixed term or should there be an option for a further term?
- should the Commission determine its own staffing arrangements on the basis of terms and conditions of employment agreed firstly with Ministers?

26. In the earlier consultation we expressed concern about the measures for appointing members to the SFC. Although Scottish Ministers are to appoint the members only if Parliament approves, concerns have nevertheless been expressed that this still provides the opportunity for ministers to put forward their nominations and hence the perceptions of independence may be compromised.

27. We disagree with the proposal that Ministers should decide the term of appointment. The length of term should be specified in the legislation, and there should be the potential for one term to be served, followed by one
further term. In the earlier consultation it was suggested that a term should be for 5 years and we support this.

28. If the SFC is to be independent there is no need for Ministers to oversee the terms and conditions for staff. If there is to be any oversight however, these should be subject to Parliamentary approval.

Resources - the Committee would welcome views on:
- the overall costs set out in the FM
- the number of staff
- the remuneration and assumed time commitment of Commission members;
- the likely costs of expanding the Commission’s role to include an assessment of key aspects of Scotland’s fiscal framework such as the Scottish Government’s adherence to fiscal rules.

29. It is crucial to get this right from the start so it may be that the Finance Committee should put forward proposals including staffing levels and skills. Although the SFC is different, there may also be useful lessons available from the establishment of the OBR.

Comments on the detail of the Bill

30. The following points of detail should be considered.
- Clause 1(1) – we suggest that clause 10 could be combined with clause 1(1) to read: ‘The Scottish Fiscal Commission (in Gaelic, Coimisean Fiosgail na h-Alba) is established as a body corporate.’

- Clause 7(2) should be amended to read: ‘In subsection (1), “information” means information in the possession or under the control of—‘ (Rather than ‘In subsection (1), “relevant information” means information in the possession or under the control of— ‘)

- Clause 7(2) (b) – (d) – it may be helpful to specifically state that these access to information powers are subject to the restrictions around protected taxpayer information as provided for in the Revenue Scotland and Tax Powers Act 2014 Part 3.

- Clause 9 – should state that the review should be the responsibility of Audit Scotland. We also suggest that the first review should be earlier than 5 years so that corrective action can be taken to deal with any teething troubles and early lessons can be learned which may inform changes which Parliament may wish to consider.
• Clause 22 (1)(c) – care needs to be taken with the use of the word ‘member’ given that it has a specific meaning in clause 11.
Finance Committee

Scottish Fiscal Commission Bill

Submission from IMF

Response

Forecasting tax revenues

☐ there is a need for independent forecasts in addition to the Scottish Government official forecasts?

No. There is no need for the SFC to present its own forecasts. The key requirement is that it is able to provide an independent assessment of the official forecasts. Inevitably, in doing so, it will (probably) form a view about its own forecasts but these do not need to be necessarily presented. One may even argue that it may be damaging to have a different set of point forecasts (rather than a range) as this may be seen as an alternative set to the official forecasts. Be this as it may, there is no need to have the FSC to present its own forecasts.

☐ the Commission should have the capacity and resources to make its own forecasts even if its role is to assess the official forecasts?

Yes. It is not easy to distinguish between the capacity of assessing the official forecasts and the capacity to make forecasts. In order to have the capacity to assess the forecasts, you must also have the capacity to make forecasts. Of course, I am assuming that the SFC would have access to the information that is used by the government to make its own forecasts.

☐ the Scottish Government forecasts should be subject to sensitivity analysis carried out by the Commission?

Yes, it is good practice to subject official forecasts to sensitivity analysis. Most fiscal councils do, as it is essential to evaluate the margin of error around a baseline forecast, which would be important even if the baseline were unbiased.

☐ the Commission should be able to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections?

I am not sure how this question differs from the second one. I argued that the capacity to assess forecasts also implies the capacity to make forecasts. The latter must be based on some forecasting methods. There is no need, however, to have
the capacity to develop new forecasting methods (rather than using methods developed by others, e.g. academic research centers).

**Role of the SFC Prior to the Publication of the Scottish Government Forecasts**

- the Commission should exert significant influence over the forecasts at the same time as providing an assessment of their reasonableness?
  Clearly, there is a trade off here. An early intervention would give the SFC more influence on the forecasts in the short run, but would involve some degree of ownership, which would reduce its independence over the medium term. On balance I believe that the main task of the SFC should be to assess the forecasts rather than trying to influence them before they are presented.

- the Commission should have a role throughout the year in scrutinising the Scottish Government’s work in developing models and methodologies to produce its forecasts?
  It depends on what it is meant by having “a role”. There is nothing wrong in having contacts and discussions throughout the year on models and methodologies, but it should not become a formal scrutiny.

- the Commission should carry out its assessment of the Scottish Government forecasts either before or after publication?
  After their publication. If it were before, then the forecasts could be changes and this would essentially mean that the SFC could influence the forecasts, Incidentally, I do not see why the SFC should publish its assessment the very same day the official forecasts are published. If they were published, say, one-two weeks later, this would give the SFC time to react to last minute changes in official forecasts.

- the Commission should be required to send a copy of its report on its assessment of the forecasts to Ministers prior to publication and, if so, how far in advance?
  No. Again, I think the SFC should step in after the forecasts are published.

**Additional Functions**

- the Commission should have a wider role in assessing the sustainability of Scotland’s public finances such as adherence to fiscal rules and, if so, should the Bill be amended now to reflect this?
Yes, it is common practice for fiscal councils to have responsibilities that go beyond the assessment of forecasts and, definitely, assessing the adherence of fiscal rules is often part of those responsibilities. And, if so, it would be preferable to amend the bill to ensure that the SFC has a clear remit to do so.

- **the Bill should be amended to include assessment of mechanisms for adjusting the block grant?**
  
  No, at least it is not a critical extension of the remit. This issue has to do with the amount of resources that would be made available from the center, an issue related to the extent of fiscal decentralization, not so much to the soundness of fiscal policy in Scotland. Moreover, the SFC is there to assess the implementation of fiscal policy by the Scottish government, while decisions on the block grant do not depend on the Scottish government.

- **there should be a legislative requirement for the Scottish Government to prepare a charter for budget responsibility and the Commission should have a role in assessing adherence to the charter?**
  
  It could be useful to have a charter, as a way of building consensus on responsible fiscal policies. Personally, though, I would not regard it as a sine qua non. If there is a charter, the SFC should assess adherence to it.

**Right of Access to Information**

- **is the right of access in the Bill robust enough?**
  
  I would think so, but I am not too familiar with the institutional features of public finances in Scotland to know whether the list of institutions under 7 (2) is sufficiently broad.

- **is there a need to include a requirement for a MoU on the face of the Bill?**
  
  Yes. Typically MOUs are necessary to provide more detailed information on access to information and other issues relating to the interaction between a fiscal council and the government.

- **what principles should underpin the working arrangements between the Commission and the Scottish Government and other relevant public bodies?**
  
  The most important things are transparency in the way the SFC and the Government interact, including in the rules of engagement, and Independence. The latter does not mean antagonizing each other (the two institutions will inevitably have to cooperate), but it is clear that the SFC will have to be seen as truly independent.
the process and timings for the Commission’s engagement with the Scottish Government and how this should be set out in the MoU?
It is critical to have regular access of information by the SFC and the availability of the government to answer questions and providing clarifications on fiscal developments to the SFC throughout the year and not only in the proximity of the budget.

the process and timings for the Commission’s engagement with HMRC and the OBR and how this should be set out in the MoU?
Ditto. As to the OBR, I would think that the interaction with the OBR would not raise concerns about the independence of the SFC and could be less formal than the interaction with the Scottish government.

Appointment of Members and Staff

the proposed appointment and removal procedures are adequate for ensuring the independence of Commission Members?
The involvement of the Government in the appointment of Commission members should in my view be avoided (although it is not unusual in some fiscal councils). The significant ministerial involvement currently envisaged by the legislation seems excessive.

Ministers should determine the period of office of each Member or should it be specified in the Bill?
It should be definitely specified in the Bill.

appointments should be for one fixed term or should there be an option for a further term?
It would be preferable to have only one term, to ensure full independence, but the term should be sufficiently long to ensure continuity.

should the Commission determine its own staffing arrangements on the basis of terms and conditions of employment agreed firstly with Ministers?
I am not sure what it is meant by “staffing arrangements” If it is meant the employment conditions (salary first of all) of its employees, it should be left to the discretion of the SFC but within a clear employment framework determined by legislation (preferably) or by the government.
Resources

- **the overall costs set out in the FM;**
  The amount of resources depends clearly on the mandate. This said, an overall cost of 850,000 pounds is not much compared to the cost of many fiscal councils.

- **the number of staff;**
  I would think that a staff of some 10-15 people would be appropriate, including to evaluate the application of fiscal rules.

- **the remuneration and assumed time commitment of Commission members;**
  The remuneration per day seems to be appropriate. I would think that a couple of days a week would be preferable (a bit more than the 1.5 days currently envisaged).

- **the likely costs of expanding the Commission’s role to include an assessment of key aspects of Scotland’s fiscal framework such as the Scottish Government’s adherence to fiscal rules.**
  See above.
Introduction

Before responding to some of the specific questions identified in the call for evidence, it is appropriate to make two general comments on the nature of the requirement for forecasts and risk assessments.

The first is to repeat a point made in my written evidence to the Committee before their hearing in November 2013: namely, that there are inherent limitations as regards the forecasting role of any independent financial scrutiny body. The implication is that the role of assessing risk should, in many ways, be more important than the actual production of forecasts. This point will prove extremely relevant when it comes to considering what the role of SFC should be in producing forecasts, what the timing of their input should be, and how independent the SFC should be of the forecasting activities of the Scottish government.

My second general comment relates to a clarification of the nature of the forecasting problem which faces the Scottish government and the SFC: (and here, when I refer to forecasting, I mean it in the broad sense of forecasting plus risk assessment.) It is useful to distinguish three different aspects to the forecasting problem:

a) There is the problem of forecasting the Scottish government’s devolved tax revenues, over the short term, (i.e., forthcoming budget year), and medium term, (public expenditure planning horizon.) This aspect, of forecasting devolved tax revenues, is what the Bill appears to concentrate on.

b) But wider than this, there is also the problem of forecasting the Scottish government’s overall revenues over the same time horizons. After all, only about half of the Scottish government’s revenues will come from devolved taxes. The other half will come from the operation of the modified Barnett formula, modified, that is, by the abatements for devolved taxes, and the operation of the “Holtham” indexation of these abatements. Forecasting the overall revenues will be a difficult task, quite unlike that undertaken by the OBR when it forecasts the UK government’s tax revenues: (the modelling in Ref.1 gives some indication of the complexity of what is involved.) It will be extremely important that this task is done well, not just for public expenditure planning purposes, but also for understanding how the post-Smith financial settlement is operating.
c) And finally, it will also be very important to produce periodic assessments over the longer term of where the Scottish government’s budget is being taken by the post-Smith arrangements. Such projections will be essential to inform the Scottish government’s long term policy on public expenditure, and on the tax rates it will set: but also so that a properly informed dialogue can take place in good time with Westminster about whether problems are emerging with the fiscal settlement, and whether changes will be required.

Answers to specific questions.

Page 1 questions.  
*Is there a need for independent forecasts in addition to the Scottish government official forecasts?*

Both of the general comments made in the above introduction are relevant here.

As regards forecasts of devolved tax revenues, there is certainly a need for an independent risk assessment of whatever forecasts are produced by the Scottish government: but this does not mean that the SFC would necessarily have to produce its own independent tax revenue forecast. There might be occasions when the SFC felt that the Scottish government forecast was so flawed that it needed to produce its own forecasts: but these occasions could be relatively rare.

As regards the problem of forecasting the Scottish government’s overall revenues, there will be a need for both forecasts and risk assessments. It is not clear that the current remit of the SFC is broad enough to ensure it is able, and has the resources, to carry out this work. The remit should certainly be made broad enough to enable it to do so.

*Should the Commission have the ability and resources to make its own forecasts?*

Yes, as well as the capacity and resources to assess the official forecast, and produce risk assessments. But in light of the comments above, the SFC may choose on occasion not to produce forecasts of its own.

*Should the Scottish government forecasts be subject to sensitivity analysis carried out by the SFC?*

Yes. But sensitivity analysis is only part of the broader risk assessment the SFC should be carrying out.

*Should the SFC be able to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections?*

Yes, it should certainly have analytical capacity. But whether it should produce its own projections would depend on whether there were gaps in the coverage of the projections produced by the Scottish government: (i.e, the Scottish government might not be covering the three types of requirement identified in the introduction). And also on whether the SFC regarded the Scottish government projections as being of satisfactory quality.
Page 2 questions.

Should the SFC exert significant influence over the Scottish government’s forecasts, at the same time as providing an assessment of their reasonableness?

If the SFC is really going to get to grips with the Scottish government’s forecasts, and do so on a timescale which will enable its assessment to have influence, it will need to be asking about, and querying, the relevant assumptions as they are made. This will inevitably set in train a process whereby the Commission’s thinking is influenced by Scottish government analysts, and vice versa. So it is not realistic to expect the Commission to be providing forecasts which are fully independent of the Scottish government. This is where the question of risk assessment becomes vitally important. The SFC might well endorse a projection produced by the Scottish government, but still fulfil a vital, and independent, function by producing an informed assessment of the risks surrounding that projection.

Should the SFC have a role through the year in scrutinising the Scottish government’s work?
In line with previous answer: yes.

Should the SFC carry out its assessment before or after publication of the Scottish government’s forecasts?
In line with the above, much work should be completed before, (though the process need not necessarily be completed before the Scottish government publishes.)

Should the Commission be required to send a copy of its report to Ministers before it is published?
No. Ministers will presumably have a good idea of how Commission thinking is developing, because of the ongoing contacts between Scottish government and Commission staff. But to give Ministers advance warning, (other than a courtesy 24 hours or so), would open the door to Ministers trying to influence the Commission’s report.

Page 3 questions.

Should the Commission have a wider role in assessing the sustainability of Scotland’s public finances, such as adherence to fiscal rules?
Yes, in one sense: but the question of fiscal rules is problematic. Setting a rule is liable to distort behaviour: in particular, it is liable to lead to the misapprehension that the rule is the end in itself, and that breaking the rule is the cause of any wider failure. (For example, a balanced budget rule may be being breached because the economy is failing: but insisting on the rule may lead to financial tightening in an already depressed economy – precisely the wrong approach, and diverting attention away from the underlying economic problems.) However, leaving aside the question of fiscal rules, the SFC should have a central role in assessing the sustainability of Scotland’s public finances – and, in particular, how the post-Smith financial settlement is operating. The Bill should certainly reflect this responsibility.
Should the Bill be amended to include assessment of mechanisms for adjusting the block grant?
In line with the above: yes. How these mechanisms are operating will be a key issue post-Smith: and there is need for an independent and authoritative assessment. In relation to the much simpler problem of understanding how the old Barnett formula was operating, and what the implications were, Scottish governments and the Treasury failed in this role. This highlights the importance of the SFC being involved.

Should there be a legislative requirement for a charter for budget responsibility?
In line with the above comments on the problems with rule based systems: no.

Page 4 questions.
What should the process and timing be of the Commission’s engagement with HMRC and OBR?
The Treasury should be added to the list of bodies with whom the SFC will need to have a good, and well understood, working relationship.
In particular, if, (as this evidence strongly recommends), the SFC takes on a role in forecasting the Scottish government’s total future revenues, then it will need to have access to the Treasury’s assumptions about the long term growth in public expenditure on “devolved” services in England, (since this is what drives the Barnett formula): and on the growth in the UK income tax base, and whatever proxy is being used for growth in the UK VAT tax base, (since these assumptions will drive Holtham indexation.)
Note that the use of Holtham indexation greatly complicates the forecasting process. This is another argument, (though not the central one), for adopting a simpler approach towards indexing the abatement to the block grant for devolved taxes. (The central argument against the current proposals relates to the instability of the Holtham system: see Ref.1.) One possible alternative approach, instead of Holtham indexation, was suggested in a follow up note to the House of Lords Economic Affairs Committee, (Ref. 2), a copy of which has been passed to the Clerk of the Committee.

References.


Ref. 2. Cuthbert, J. R.: “Modelling Scotland’s Fiscal Settlement: Note for House of Lords Economic Affairs Committee following evidence session on 9th September.” (A copy has been sent to the Clerk of the Finance Committee.)
Modelling Scotland’s Fiscal Settlement:

Note for House of Lords Economic Affairs Committee following
evidence session on 9th September

Dr. J. R. Cuthbert

Introduction
At the Committee session in Edinburgh on 9th September, I gave some
examples pointing out implications of the system of indexation, (Holtham
indexation), proposed in Cm8990. For example, if Scotland adopted a neutral
tax policy, and if, as will almost certainly be the case, the devolved tax base is
growing in England relative to Scotland, then public expenditure in Scotland
will eventually start to decline in absolute terms and, left to itself, would
ultimately go negative.

I undertook to provide the committee with a note giving proofs of these points.
The examples I gave orally, and therefore the analysis in this note,
concentrate on the long term. The long term is important, because it is
presumably the intention to put in place an abiding and stable fiscal
settlement: but it is nevertheless only part of the story, so this note in itself
should not be regarded as the definitive critique of Holtham indexation.
Information on how the system behaves in the shorter term is given in the
modelling paper, reference 1. That paper indicates how things could actually
start to go wrong fairly rapidly – particularly given the potential, as identified in
that paper, for dynamic effects which would change parameters adversely.

One implication of the material in this note, (and of the papers submitted with
earlier evidence), is that neither Holtham indexation as originally proposed,
nor in an adjusted form correcting for relative population change, can be
regarded as satisfactory. So this note also fleshes out a suggestion I made
orally to the Committee: namely, that a better approach to indexation might be
to use an absolute indexation factor, rather than one which sets an implicit
target based upon the rate of growth in the UK tax base. The final section of
this note looks at this possibility in some more detail.

In writing this note, I have tried to keep the notation in the main part of the
note to a minimum, in the interest of readability. I have done this by
expressing the relevant equations in the main part of the paper in simplified
form. This simplified form is useful for demonstrating why the various
assertions I made actually hold – but is inadequate for giving a detailed proof.
The full detail of the relevant proofs, (and the necessarily heavier notation), is
restricted to the Annexes.

Holtham indexation.
Under Holtham indexation as proposed in Cm8990, there would be an
abatement to the Barnett formula block grant for income tax revenues
foregone by Westminster, and this abatement would be increased each year
in line with the growth in the overall UK tax base.
The behaviour of the system operating under these rules is critically dependent on three parameters: these are:

\( \theta \) = the rate of growth in nominal public expenditure, (on “devolved” services), in England. (So, for example, a nominal rate of growth of 3% in nominal public expenditure corresponds to \( \theta = 1.03 \).)

\( \lambda \) = the relative rate of growth in population in England relative to Scotland: again, expressed as a number, rather than as a percentage: so \( \lambda = 1.002 \) means that

\[
\frac{\text{population in England in year } t}{\text{population in England in year } t-1} = 1.002 \frac{\text{population in Scotland in year } t}{\text{population in Scotland in year } t-1}
\]

\( \phi \) = the relative rate of growth in the tax base, (of “devolved taxes) in England compared to Scotland: (again, like \( \lambda \), expressed as a number.)

Suppose that Scotland adopts a neutral policy on devolved tax rates, in the sense that it mirrors tax rates UK in the rest of the UK. Suppose also that the proportion of expenditure on “devolved” services in England which is funded by devolved taxes, (i.e., taxes which are devolved in Scotland), remains roughly constant: this seems an entirely reasonable assumption.

Then Scottish government receipts in year \( t \), (from all sources, i.e., abated Barnett plus Scottish devolved tax revenues), will be given by a formula of the form

\[
a + b \left( \frac{\theta}{\lambda} \right)^t - c \theta^t (1 - \phi^t)
\]

where \( b \) and \( c \) are greater than zero.

(1)

(See Annex 1 for proof.)

It will almost certainly be the case that \( \phi > 1 \), particularly since the population of England has historically grown relative to that of Scotland, (i.e., \( \lambda > 1 \)), so for that reason alone the English tax base is likely to be more buoyant. For large values of \( t \), then, the formula at (1) will behave like

\[
a + b \left( \frac{\theta}{\lambda} \right)^t - c \theta^t
\]

(2)

Since \( \lambda > 1 \), this formula will be dominated by the \( -c \theta^t \) term for large \( t \), and so will in due course decline in absolute terms, and ultimately, if left to itself, would become negative, (assuming \( \theta > 1 \): i.e., that there is nominal public expenditure growth in England).

Now suppose that, under a form of fiscal autonomy, Scotland no longer receives the abated Barnett formula block grant from Westminster, but instead receives its own tax revenues from non-devolved taxes. Let \( \rho \) denote the annual rate of growth in Scotland’s non-devolved tax revenues.

Then the difference between the revenues the Scottish government would receive under fiscal autonomy, as compared to what it would receive under the Smith fiscal settlement is, for large \( t \), given by a formula of the form
\[ A + B\rho^t + C\theta^t - D\left(\frac{\theta}{\lambda}\right)^t + E\left(\frac{\theta}{\phi}\right)^t \] , where B, C, D, E are greater than zero

(3)

(Again, see Annex 1 for proof)

Assuming \( \theta > 1 \), this will ultimately be a positive, and increasing, function of \( t \). In other words, Scotland would ultimately be better off under fiscal autonomy, no matter what the relative values of \( \theta \) and \( \rho \) actually are.

(Although the above indicates that Scotland would always ultimately be better off under fiscal autonomy than under Holtham indexation, this should not be taken as an endorsement of fiscal autonomy. There would be considerable problems in setting up a workable system of fiscal autonomy within the UK monetary union.)

Adjusted Holtham Indexation.

In the paper on modelling Holtham indexation, (reference 1), I noted that an adjusted form of Holtham indexation would correct some, (but not all), of the problems with the basic form of Holtham indexation. Under adjusted Holtham indexation, the income tax abatement would be indexed in line with the growth in the overall UK tax base, divided by the relative rate of population growth.

In oral evidence to the Committee, I noted that, if the relative rate of growth of the tax base in England to Scotland is greater than the relative rate of population growth, (which is very likely), then relative per capita public expenditure in Scotland to England will tend to a limit under adjusted Holtham: but the limit will still be unacceptable: (Scottish per capita expenditure would be about 50% of that in England).

This is a consequence of the following equation:

Relative per capita public expenditure in Scotland to England under adjusted Holtham in year \( t \)

\[
= \text{Relative per capita public expenditure under Barnett formula } - K(1 - \left(\frac{\lambda}{\phi}\right)^t)
\]

(4)

where the value of \( K \) is approximately 0.5.

(See Annex 2.)

The first term after the equality sign in equation (4), which relates to the original Barnett formula, will converge in the long term to something which is close to \( \frac{(\theta - 1)}{(\theta - \lambda)} \): (this is proved in reference 2). Assuming “normality” returns, and there is reasonable long term growth in public expenditure in England, this limit will be slightly greater than 1. If \( \lambda < \phi \), the last term in equation (4) will tend to \( -K \), which is approximately -0.5: so the limiting value of equation (4) will indeed be approximately \( 1 - 0.5 = 0.5 \).
Policy Implications.

1. What Holtham indexation means is that the funding of the Scottish government will be aggressively penalised, unless Scotland grows its “devolved” tax base at least as fast as England’s. Since England has traditionally had a growing population relative to Scotland, this in fact means that Scotland has to grow its per capita tax base even faster than England to avoid penalisation. Moreover, the penalty involved is stringent: if Scotland were to adopt a neutral tax policy, the implication of formula (2) is that Scottish government funding would eventually go negative. In the face of these effects, it is difficult to see how Holtham indexation, as currently proposed, can be regarded as anything other than a mistake.

2. The adjusted form of Holtham indexation analysed above, which involves correcting the indexation factor for relative population change, is a more attractive proposition than crude Holtham indexation, but still involves serious problems. Under adjusted Holtham indexation, the system is more stable, in that, under reasonable assumptions, relative per capita public expenditure in Scotland compared to England will converge to a limit, (unlike crude Holtham indexation, where the system diverges.) However, Scotland would still be penalised if it failed to grow its per capita “devolved” tax base as fast as England: and in these circumstances, the limiting value of per capita spend in Scotland would be about 50% of that in England.

Effectively, adjusted Holtham indexation involves saying to the Scots: “We would be setting up a system where, if you adopt a neutral tax policy, and if you grow your devolved per capita tax base at the same rate as in England, you will be exactly as well off in public expenditure terms as under the Barnett formula. If you grow your tax base faster, you will be better off; but if you grow your tax base more slowly, in the long run public expenditure per head in Scotland will be reduced to about half that in England.” Viewed in this light, the flaws in adjusted Holtham are very apparent. First of all, the target is a challenging one: given Scotland’s lack of economic powers, and the very different nature of the income tax base in Scotland compared to England, there are bound to be long periods when Scotland fails to meet the target. Secondly, the size of the eventual penalty if it fails to do so is so large, (about 50% of levels of English per capita public expenditure), that there is no realistic option of achieving something like parity by raising Scottish tax rates: and the attempt to do so would make the dynamics of the Scottish economy even worse. Adjusted Holtham, therefore, does not look a tenable option.

3. It seems clear that a more radical re-think on the indexation arrangements is required. One possibility, which would avoid the problems with both forms of Holtham indexation, while still giving the Scottish government a real incentive to grow the tax base, could be as follows. This option would involve setting an absolute target for growth in the Scottish tax base, rather than defining a target relative to the growth in the tax base in the UK as a whole. Under this system, the indexation factor for the abatement would be set at x% in real terms per annum, where x is some appropriately chosen constant.

This would avoid the problem inherent in both forms of Holtham indexation, of penalising the Scots if they fail to match some version of growth in the English
tax base. It would give Scotland a real incentive to exceed the growth rate target. And this approach solves another very significant problem as well: it could be applied equally well to the indexation of the abatement for VAT receipts – a difficult problem which does not appear to have been thought about at all as yet.

This approach does, however, raise the difficult problem of how to choose the constant x. Two comments on this are relevant:

a) It would be appropriate to choose a modest value of x: e.g., 1% in real terms. There are three reasons for this. First, the Scottish government has limited economic powers: so the influence it can have on the growth rate of the Scottish economy is fairly small. (Further, those powers it does have do not obviously impact all that positively on the economy, when exercised alone: for example, improving education, without being able to stimulate the demand for the resulting skills, could lead to increased emigration, rather than economic growth.) Secondly, income tax, which is the main component of Scotland’s devolved tax base, is not obviously a strong suite for Scotland: (given, for example, that Scotland has about 7.4% of overall UK income tax receipts, as against about 8.3% of UK population.) Thirdly, the inevitable downside of an absolute target is that Scotland will be penalised by the indexation arrangements on those regular occasions when the overall economic cycle turns adverse: setting too high an absolute target would make the lengths of such periods insupportably long.

b) There should be a procedure for regular review of the indexation factor, (and of other aspects of the financial settlement). Without such regular review, relative public expenditure will eventually head off to levels, (either too high, or too low), which would be politically unacceptable. But the general rules for such reviews should be laid down and agreed well in advance. In particular, if Scotland was managing to outperform on any specific value of x, it should be well understood that the adjusted indexation factor following the review would not simply be the latest rate of growth in the Scottish tax base: this would destroy the incentive element in the system.

It is not being suggested that this absolute target approach to indexation is ideal: there is a pro-cyclical aspect to it which would be of concern. But in the context where Scotland is being shoe-horned into the very unsatisfactory framework set out in the Smith report and Cm8990, any solution on indexation is going to be unsatisfactory: and absolute indexation may well be a good deal less-worse than either Holtham variant.

References.


Annex 1: Holtham indexation.
Notation and assumptions

These are as in references (1) and (2). In particular, as in reference (2):

Let $E_t$ denote expenditure in England in year $t$, and $E^S_t$ expenditure in Scotland under the original Barnett formula: (strictly, “expenditure” here is that covered in the relevant DEL).

Let $p_t$ denote population in England in year $t$, and $p^S_t$ population in Scotland.

Let $R_t$ denote the ratio of per capita expenditures between Scotland and England at time $t$, under the original Barnett formula.

Let $k$ denote lag, (in years).

It is assumed that

a) $E_{t+1} = \theta E_t$ : (i.e., expenditure in England grows at a constant rate.)

b) \[ \frac{p_{t+1}}{p_t} = \lambda \frac{p^S_{t+1}}{p^S_t} \] for all $t$, where $\lambda \geq 1$: (i.e., there is a constant relative rate of growth of population in England relative to Scotland).

c) In the annual public expenditure planning round, the new final year baseline is determined as being equal to the previous end year figure: and Barnett applies only to that end year, with population shares determined at a lag $k$.

And as in reference (1):

Let $T^E_t, T^S_t$, and $T_t$ represent, respectively, tax revenues in England, Scotland and the whole UK in year $t$.

Let $\phi$ be the relative rate of growth in the tax base in England as compared to Scotland. It is assumed that $\phi$ is constant from year to year. In line with the assumption that tax take is proportional to tax base, it follows that

\[ \frac{T^E_t}{T^E_{t+1}} = \phi \frac{T^S_t}{T^S_{t+1}} \]

for all $t$.

Let $a_t$ represent the abatement to the Barnett formula block grant in year $t$: then $a_0 = T^S_0$, (given the no-detriment assumption in setting the initial abatement), and $a_t = \frac{T_t}{T_0} a_0$, under Holtham indexation, given the assumption that tax take is proportional to the tax base.

Let $E^S_t$ represent abated expenditure in Scotland in year $t$:

therefore $\hat{E}^S_t = E^S_t - a_t + T^S_t$.

Finally, let $\hat{R}_t$ represent relative per capita spending levels in Scotland and England, when Scotland receives the abated block grant, plus its own revenues on devolved taxes.

Proof of Equation (1)

The formula for $E^S_t$, which is derived in the Annex to reference (2) can be rewritten as
\[ E^s_t = E^s_0 + (\left(\frac{\Theta}{\lambda}\right)^t - 1) \lambda^k \left(\frac{\Theta - 1}{\Theta - \lambda}\right) E^s_0 \frac{p^s_0}{p_0} . \]

It is proved in the Annex to reference (1) that

\[ -a_t + T^s_t = -T^E_t \left(\frac{a_0}{T_0}\right)[1 - \phi^i] . \]

It follows that

\[ \hat{E}^s_t = E^s_t - a_t + T^s_t = \left(\frac{\Theta}{\lambda}\right)^t - 1) \lambda^k \left(\frac{\Theta - 1}{\Theta - \lambda}\right) E^s_0 \frac{p^s_0}{p_0} - T^E_t \left(\frac{a_0}{T_0}\right)[1 - \phi^i] . \]

The assumption that the proportion of expenditure on “devolved” services in England which is funded by devolved taxes remains roughly constant implies that \( T^E_t \) is proportional to \( \Theta^i \). It follows that \( \hat{E}^s_t \) is of the general form given in equation (1).

"Fiscal autonomy"

Let \( N^S_t \) = non-devolved taxes in year \( t \), and suppose that \( N^S_t \) grows at rate \( \rho \).

Let \( F^S_t \) = public expenditure in Scotland under fiscal autonomy.

Then \( F^S_t = N^S_t + T^S_t \).

Therefore \( F^S_t - \hat{E}^S_t = N^S_t - E^S_t + a_t \), since the \( T^S_t \) terms cancel out,

\[ = \rho^i N^S_0 - E^S_0 + (1 - \left(\frac{\Theta}{\lambda}\right)^t) \lambda^k \left(\frac{\Theta - 1}{\Theta - \lambda}\right) E^S_0 \frac{p^S_0}{p_0} + a_t . \]

Now, it follows from (2) in Annex 1 of reference (1) that

\[ a_t = \frac{T^E_t}{T_0} (1 + \phi^{-t}) \frac{a_0}{T^E_0} a_0 . \]

Hence

\[ F^S_t - \hat{E}^S_t = \rho^i N^S_0 - E^S_0 + (1 - \left(\frac{\Theta}{\lambda}\right)^t) \lambda^k \left(\frac{\Theta - 1}{\Theta - \lambda}\right) E^S_0 \frac{p^S_0}{p_0} + \]

\[ \frac{T^E_t}{T_0} (1 + \phi^{-t}) \frac{a_0}{T^E_0} a_0 . \]

Since \( T^E_t \) is assumed proportional to \( \Theta^i \), it follows that \( F^S_t - \hat{E}^S_t \) is of the general form given in equation (3).


Notation is as in Annex 1.

Equation (4) in reference (1) gives a good approximation to relative per capita expenditure under adjusted Holtham as

\[ \hat{R}_t = R_t - \left(\frac{a_0}{T^E_0}\right) \left(\frac{p_0}{p^S_0}\right) \left(\frac{T^E_t}{T_0}\right)(1 - \left(\frac{\lambda}{\phi}\right)^t) \]

The first term in brackets in this equation is the ratio of initial tax revenues between Scotland and England, and the second term in brackets is the ratio of English to Scottish population, so the product of these two terms will be approximately 1: and the third term in brackets is the share of “devolved” expenditure in England funded by devolved taxes, which is approximately 0.5
in Scotland, and is likely to be broadly similar in England. So the ratio of per capita expenditure is given by an equation of the form of formula (4) in the main body of the paper, in which the constant K is approximately 0.5.
Recommendation of the Council on
Principles for Independent Fiscal Institutions

February 2014
Recommendation of the Council on Principles for Independent Fiscal Institutions

INTRODUCTION

On 13 February 2014, the OECD Council adopted the Recommendation of the Council on Principles for Independent Fiscal Institutions. Geared towards Member countries that have established or are considering establishing an independent fiscal institution (IFI), the Principles codify lessons learned and good practices that are firmly grounded in the experience of IFIs to date. The Principles seek to reinforce the core values that IFIs both promote and operate under – independence, non-partisanship, transparency, and accountability – while demonstrating technical competence and producing relevant work of the highest quality that stands up to public scrutiny and informs the public debate. As such, they aim to assist countries to design an enabling environment conducive to the good performance of an IFI and to ensuring its long-run viability.

The Principles come at a critical time. With commitments to sustainable public finances under close scrutiny since the crisis, policymakers are searching for new ways to safeguard fiscal discipline and rebuild public trust in their capacity to manage public budgets prudently and transparently. While fiscal decision-making is ultimately the responsibility of democratically elected officials, IFIs, often in complement with credible fiscal rules, are seen as a mechanism to help address bias towards spending and deficits and more generally enhance fiscal discipline; promote greater fiscal transparency and accountability; and raise the quality of public debate on fiscal policy.

Independent fiscal institutions (commonly referred to as independent parliamentary budget offices or fiscal councils) are publicly funded, independent bodies under the statutory authority of the executive or the legislature which provide non-partisan oversight and analysis of, and in some cases advice on, fiscal policy and performance. Although relatively few and novel world-wide, diverse examples of IFIs have existed for decades in countries such as Belgium (1936), the Netherlands (1945), Denmark (1962), Austria (1970), and the United States (1974). Today, IFIs are considered among the most important innovations in the emerging architecture of public financial management. A clear trend towards establishing IFIs is evident in Member countries. Just over half of Member countries have an IFI - and just over half of those were established in the past five years. The number of IFIs (of all shapes and sizes) is likely to continue to rise in the foreseeable future.

The Principles, which originated in the OECD Network of Parliamentary Budget Officials and Independent Fiscal Institutions (PBO), are the culmination of over two years of intensive consultation within the PBO, the Working Party of Senior Budget Officials (SBO), and the Public Governance Committee (PGC). Other inputs to the process include an in-depth study of IFIs in 18 OECD member countries and informal consultation with colleagues within the OECD and with other international organizations such as the European Commission, International Monetary Fund, and the World Bank.

For further information on the Recommendation of the Council on Principles for Independent Fiscal Institutions, please contact Lisa von Trapp at lisa.vontrapp@oecd.org.
Recommendation of the Council on Principles for Independent Fiscal Institutions

13 February 2014 - C(2014)17
13 February 2014 - C(2014)17/CORR1

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

NOTING the growth of independent fiscal institutions within Member countries and the diversity of existing institutions;

HAVING AGREED that, for the purpose of the present Recommendation, independent fiscal institutions are publicly funded, independent bodies under the statutory authority of the executive or the legislature which provide non-partisan oversight and analysis of, and in some cases advice on, fiscal policy and performance, and that these institutions have a forward-looking ex ante diagnostic task;

RECOGNISING that independent fiscal institutions have the potential to enhance fiscal discipline, promote greater budget transparency and accountability and raise the quality of public debate on fiscal policy, while recognising also that alternative institutional arrangements may serve some countries equally well;

RECOGNISING that budget transparency is a key element of good governance and that the OECD has played a leading role in the international community in promoting budget transparency through the OECD Best Practices for Budget Transparency (OECD, 2002);

On the proposal of the Public Governance Committee:

I. RECOMMENDS that Members which have chosen to establish or are considering establishing an independent fiscal institution take into account the Principles for Independent Fiscal Institutions which are set out in the Annex to this Recommendation of which it forms an integral part.

II. INVITES Members and the Secretary-General to disseminate this Recommendation.

III. INVITES non-Members who have chosen to establish or are considering establishing an independent fiscal institution to take account of and to adhere to this Recommendation.

IV. INVITES relevant international organisations to take account of this Recommendation and to collaborate with the OECD to exchange good practices and data on independent fiscal institutions.

V. INSTRUCTS the Public Governance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter.
ANNEX

PRINCIPLES FOR INDEPENDENT FISCAL INSTITUTIONS (IFIs)

The twenty-two Principles for Independent Fiscal Institutions (fiscal councils and independent parliamentary budget offices) proposed below are grouped under nine broad headings: (1) local ownership; (2) independence and non-partisanship; (3) mandate; (4) resources; (5) relationship with the legislature; (6) access to information; (7) transparency; (8) communication; and (9) external evaluation.

1. Local ownership

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.

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.

2. Independence and non-partisanship

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.

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.

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.

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.

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

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1 Several countries (e.g. Ireland, Portugal, and Sweden) allow for non-nationals to serve as council members, thus increasing the pool of qualified candidates and reducing the risk of “groupthink”. As such, this design choice may also serve to bolster independence.

2 Non-partisanship should not be confused with bi-partisanship. Whereas bi-partisanship suggests a balance between political parties, non-partisanship necessitates an absence of political influence.

3 The title may differ – director, president, or chair – depending on its design. The institution may be under individual or collective (council) leadership.

4 There are exceptional cases in which a part-time position may be considered sufficient, for example if the IFI has a strictly defined and limited work programme or if another institution provides complementary functions which impact on the workload of the IFI. In Sweden, the Fiscal Policy Council can use the macro-fiscal forecasts prepared by another well-established independent agency, the National Institute of Economic Research.
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\(^5\).

3. Mandate

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.

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.

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\(^6\).

4. Resources

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.

5. Relationship with the legislature

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.

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.

6. Access to information

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.

\(^5\) Given the small size of the majority of IFIs, staff may be provided with career mobility within the broader civil service. However, care should be taken to avoid conflict of interest.

\(^6\) Other functions are carried out by well-established IFIs, such as costing of election platforms by the Netherlands Bureau for Economic Policy Analysis, or programme evaluation by the Korean National Assembly Budget Office.
6.2. Any restrictions on access to government information should also be clearly defined in legislation. Appropriate safeguards may be put in place as regards protection of privacy (for example, taxpayer confidentiality) and of sensitive information in the areas of national defence and security.

7. Transparency

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.

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.

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.

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.

8. Communications

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.

9. External evaluation

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.

Relevant body: Public Governance Committee

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7 For example, security clearance for IFI staff.
8 There may be cases where an IFI provides confidential estimates as part of the legislative process. For example, the U.S. Congressional Budget Office provides estimates early in the legislative process – kept confidential only until the legislative proposal becomes public – in order to help craft legislative proposals.
9 Care must be taken to avoid the perception that the timing of the release of the IFI reports favours the government or the opposition parties.
FINANCE COMMITTEE

SCOTTISH FISCAL COMMISSION BILL

SUMBSSION FROM ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Overview

Please find below the submission from the OECD in relation to the Scottish Fiscal Commission Bill. The views expressed in our submission are based on best practices drawn from OECD Member country experiences. Our submission is also informed by the OECD’s long and extensive involvement in this area, including the annual meetings of the OECD Network of Parliamentary Budget Officials and Independent Fiscal Institutions. Many discussions at these meetings have specifically focused on the core issues involved with successfully establishing and operating such bodies and have been translated into OECD Principles for Independent Fiscal Institutions (also attached as a separate document) which we will refer to regularly in this submission. Since the publication of the Principles we also undertook case studies of institutions in 18 member countries which will be published later this year and will cover the economic and political context in which the institutions were established, as well as their relationship with the executive and the legislature; legal basis; mandate; functions; work programme; budget; leadership and staffing; access to information; transparency; and governance, advisory support, monitoring and evaluation mechanisms.

The OECD is pleased to see that the Principles for Independent Fiscal Institutions have influenced the development of the Scottish Fiscal Commission Bill, which will give the Scottish Fiscal Commission a basis in statute. In particular, the proposals for access to information and external evaluation to be enshrined within legislation and the clear articulation of the relationship with the legislature will serve to strengthen the Scottish Fiscal Commission as an independent fiscal institution. However, in the areas of independence & non-partisanship and resourcing, there remains some scope for the Bill to be more closely aligned with the Principles.

Forecasting tax revenues

The roles and responsibilities of each independent fiscal institution differ substantially across OECD countries due to varied local needs and local institutional environments (including, in some cases, capacity constraints). It may be useful to note that in our member countries’ experience, independent fiscal institutions role in forecasting takes several forms. The Netherlands Bureau for Economic Policy Advice
(CPB) and the United Kingdom’s Office for Budget Responsibility (OBR) have been tasked with producing the official forecasts. Others produce alternative forecasts to those of the government (e.g. United States and Canada). While others provide an opinion on government forecasts (e.g. France, Ireland and Sweden).

Independent fiscal institutions which provide an opinion on government forecasts may benefit from having their own forecasting tools. This allows the IFI to develop in-house capacity and expertise for a more rigorous assessment of government forecasts. Specifically, it can help the institution develop a better understanding of the forecasting methodology and the sensitivity of the results to different methodological configurations and economic assumptions. A more informed opinion reduces reputational risk for the IFI. Although some institutions have chosen, or been obliged to outsource this function due to resource constraints, this risks limiting the development of in-house capacity and expertise, which may not be desirable in the longer-term.

**Role of the SFC Prior to the Publication of the Scottish Government Forecasts**

Some independent fiscal institutions carry out their assessments of government forecasts before publication, and some after. Regardless of the timing, the most important consideration is that the institution has access to information and the resources it needs in order to allow it to fulfil its remit in a credible and independent manner (see *OECD Principle 6.1*).

There are some examples of independent fiscal institutions that share reports with the government the day before they are released as a courtesy; however this is usually at the discretion of the institution. The provision in the Bill (4.3) which states that the Scottish Fiscal Commission should send a copy of its report on its assessment of the forecasts to Ministers prior to publication may be perceived as favouring the government. It is important for independent fiscal institutions to have strong working relationships with the government that enable it to liaise with relevant officials on the factual accuracy of their work. However, care must be taken to avoid the perception that the publication process favours the government or opposition parties. The *OECD Principles for Independent Fiscal Institutions* state that reports and analysis by independent fiscal institutions should be published and made freely available to all (see *OECD Principle 7.2*).

**Additional Functions**

The functions of independent fiscal institutions across the OECD are extremely diverse. Common functions includes analysis of fiscal policy and budget proposals, a role in forecasting, monitoring compliance with fiscal rules, analysis of long-term fiscal sustainability, costing of policy proposals, and analytical studies on selected issues. In setting up any new institution it is important to consider the roles of existing institutions and the gaps that remain. The OECD notes the views expressed
by some stakeholders (ICAS, Taxpayer Scotland and CIPFA) 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. The roles and responsibilities of any new IFI should be adapted to fit the local needs (see OECD Principle 1.2).

**Right of Access to Information**

The OECD is pleased to see guaranteed access to information within the Scottish Fiscal Commission Bill as this is closely aligned with the *OECD Principles for Independent Fiscal Institutions* (see OECD Principle 6.1). Accessing government information is crucial to the work of independent fiscal institutions. In this context, the OECD considers it very important for access to information to be guaranteed in legislation and, if possible, reaffirmed through memoranda of understanding. Memoranda of understanding can, in particular, help to clarify procedural aspects of sharing information (e.g. time for response to information requests) and the process of negotiating memorandum of understanding can help manage expectations and pinpoint potential difficulties in advance. A good example is provided by the Memorandum of Understanding between the Australian Parliamentary Budget Officer and the Heads of Commonwealth Bodies in relation to the provision of information and documents. Just over sixty percent of independent fiscal institutions in OECD member countries have access to information underpinned by legislation, and at least half of these have access to information underpinned by both legislation and memoranda of understanding. Although institutions can experience challenges accessing information even with these formalities in place, guarantees in legislation and memoranda of understanding provide important backstops.

However, it is noted that the provision in relation to access to information covers the Scottish Government only. It is not clear how the Scottish Fiscal Commission might be guaranteed access to information it may need from the UK Government, e.g., for income tax forecasts.

**Appointment of Members and Staff**

The OECD is pleased to see that there must be parliamentary approval of appointments and dismissals as this is closely aligned with the *OECD Principles for Independent Fiscal Institutions* (see OECD Principle 5.1). The appointment process for members and staff underpins the independence and non-partisanship of an independent fiscal institution. The *OECD Principles for Independent Fiscal Institutions* state that “the term lengths and the number of terms that the leadership of an IFI may serve should be clearly specified in legislation” (see OECD Principle 2.3). To be aligned with the *OECD Principles*, the Scottish Fiscal Commission Bill should state the term length of the appointment of Fiscal Commission members. In
almost all of the independent fiscal institutions across OECD member countries leaders have clearly defined term lengths. Term lengths that are independent of the electoral cycle serve to reduce the potential for political interference in the appointment process and can help build trust in the institutions of government. Prior specification of term lengths also provides a degree of stability for the independent fiscal institution.

It is observed that a number of independent fiscal institutions allow the reappointment of members. This can be particularly important in smaller countries where the pool of experts who can fill such positions may be more limited. This was identified as a key issue in the External Review of the OBR which stated “Finding successors to the current trio of senior leaders and continuing to secure high-quality staff will be crucial in fostering the long-term success and sustainability of the OBR. However, the size of the fiscal community, and the subsequently small pool of talent from which the OBR can draw its leadership and analysts, present challenges for the organisation” (Page 2014). In this context, enabling reappointment of members, at least for one additional term, may provide increased long-term stability for the Scottish Fiscal Commission. These challenges can also be lessened by ensuring that legislation does not preclude the appointment of members who are non-nationals.

In some areas the provisions within the Bill are, in general, aligned with the OECD Principles for Independent Fiscal Institutions, but more details could provide additional guarantees. For example, it could be made clear that the leadership and other staff should have relevant expertise (see OECD Principle 2.2). The circumstances under which a member may be dismissed because they are “unable to perform the member’s functions” could also be made more explicit (see OECD Principle 2.3).

Resources

Given that independent fiscal institutions deal with fiscal matters, their own resourcing is often carefully scrutinised by the media and civil society. OECD Principle 4.1 states that “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”. A number of institutions have it stated in legislation that their funding can only be reduced in duly justified exceptional circumstances (e.g. Portugal). This may help insulate the Scottish Fiscal Commission from political pressure and enhance its independence.

In addition, OECD Principle 2.4 states that “The position of head of the IFI should be a remunerated and preferably full-time position.” The OECD notes that the Scottish Fiscal Commission members, including the chair, currently contribute on a part-time basis and that this may be reasonable due to local circumstances. However, as the
mandate of the Commission grows, full-time positions may bolster its credibility and enable it to fulfil its workload more effectively.

The Scottish Fiscal Commission Bill has a provision relating to a periodic review of the Commission’s performance. This is a welcome provision and in line with OECD Principle 9.1. The Bill (9.1) states that the Commission must be reviewed at least once in every 5-year period. This time-frame also aligns with best practice identified in the forthcoming OECD paper “Evaluating the Performance of Independent Fiscal Institutions” which proposes a framework for evaluating these institutions. However, it is not clear that the financial provisions in the Financial Memorandum accompanying the Bill include the resources that this is likely to require.
Recommendation of the Council on Principles for Independent Fiscal Institutions

February 2014
Finance Committee

Scottish Fiscal Commission Bill

Submission from Parliamentary Budget Officer (Canada)

Response

Thank you for the invitation to provide comments on the Scottish Fiscal Commission Bill.

I will address the issues presented in the Call for Evidence document that was sent by email.

Forecasting Tax Revenues

Based on our experience in Canada, independent forecasts by the Scottish Fiscal Commission (SFC) will enable members of the Scottish Parliament to challenge the assumptions underlying the forecasts of the Scottish Government (Government). However, even if the SFC is not mandated to provide independent forecasts, it needs to have the capacity and resources to produce its own alternative forecasts. This will help the SFC to better understand the Government’s official forecasts and provide a more rigorous assessment of it to the Scottish Parliament.

As noted in the International Monetary Fund’s research on fiscal councils, the forecasting of tax revenues is a labour-intensive exercise since it requires the development of a model for each type of tax revenue and the continuous refinement of such models. These activities may require giving additional resources to the SFC.

Role of the SFC Prior to the Publication of the Scottish Government Forecasts

We believe that the publication of the SFC report on the draft Scottish budget and publication of the draft on the same day could decrease the credibility of the SFC since it may be perceived that the SFC and the Government worked together on the draft or that the Government influenced the results found in the SFC report. A better model could be the publication of the SFC report after the draft budget is published, which could serve to enhance the perceived independence of the SFC.

Regarding the influence of the SFC on the forecasting by the Government, this influence may be seen as the Government downloading the development of a model and forecasting to the SFC similar to the relationship between the Office for Budget...
Responsibility and HM Treasury. If this is the preferred administrative model, more explicit language should be incorporated in the enabling legislation.

Additional Functions

Drawing from the work of the Canadian Parliamentary Budget Officer (PBO), the SFC may consider the review of Government estimates after their publication. Previous Canadian parliamentary studies have also recommended the review of the estimates of one department or agency at a time, with rotating reviews, so that the estimates of all department and agencies would be reviewed within a certain time period. Such a review process would require year-long involvement of the SFC.

We are of the opinion that a charter for budget responsibility framed around the Organisation for Economic Co-operation and Development’s (OECD) best practices for budget transparency would be useful and that the SFC could ensure the Government’s adherence to the charter. It is unclear what the appropriate penalties, if any, would be if the Government is found to be noncompliant by the SFC.

Right of Access to Information

Based on our experience in Canada and the OECD’s guidelines for independent fiscal institutions, we are concerned with the definition of “relevant information” since it may be too broad to be useful were disputes to arise between the information holder and the SFC. A better definition would be economic, tax and financial information and including such information that is found in documents the purpose of which is to present background explanations, analyses of problems or policy options to the Government.

Appointment of Members and Staff

According to the proposed staffing of the SFC, the terms and conditions of the employment contract of staff would be approved by the Scottish Ministers, the lack of an independent hiring and staffing process may result in influence by the Government into the ability of the SFC to undergo its activities.

Resources

We do not have any comments on the funding for the SFC, number of staff or remuneration of staff and Commission members, beyond assuring comparability with the similar positions within the Scottish Public Service.

Yours sincerely,
Jean-Denis Fréchette
Parliamentary Budget Officer (Canada)
Finance Committee

Scottish Fiscal Commission Bill

Submission from Professor Ronald MacDonald

Professor Ronald MacDonald
Adam Smith Business School
University of Glasgow

My written evidence to the committee is a response to the questions raised by the Committee in:

The committee's questions are in bold below.

- there is a need for independent forecasts in addition to the Scottish Government official forecasts?
- the Commission should have the capacity and resources to make its own forecasts even if its role is to assess the official forecasts?
- the Scottish Government forecasts should be subject to sensitivity analysis carried out by the Commission?
- the Commission should be able to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections?

It is an important principle that the Fiscal Commission (FC) is able to produce an independent set of forecasts for the new devolution powers embodied in Smith (2015) and it may be that an evolutionary approach will prove an optimal way forward on this. For example, in the initial phase of the FC's work, it may prove optimal for it to act as an independent scrutineer of SG forecasts. Moving forward the FC could then move to a system where they produce their own forecasting model and forecasts. I say this because if it is assumed that the model used by Scottish Government is based on best current practice, and assuming the model is relatively tractable which it is likely to be given current data limitations, the model that the FC produced would likely be very similar to that used by SG. If this is the case it would therefore seem more efficient, at least initially, to allow the FC to run their own counterfactuals based on the SG model. (This would also have the advantage that it would give those appointed by the FC to undertake their own modeling/forecasting to set up a model and refine it so that it could produce accurate forecasts). As the role of the FC evolves it would be best for it to take on the forecasting role,
perhaps exclusively so, as is the case of the OBR. So in the longer run the SG role in forecasting could be tapered out and left to the FC.

Given my response to the first point, the FC should indeed have the potential capacity and potential resources to make independent forecasts, although I do not think that the resources required would be large given that a full blown macro-econometric model would not be needed or, indeed, could initially be produced given data limitations. The FC would of course need to have access to all relevant data sources.

Following on from this, a sensitivity analysis would be crucially important given that small changes in assumptions can often have a big impact on forecasts and the potential to create a large forecasting error (which of course could have costly implications for public services).

Yes, the Commission should have the capacity to develop its own forecasting methods/analytical to provide benchmarks although as noted above this may be part of an evolutionary approach.

- the Commission should exert significant influence over the forecasts at the same time as providing an assessment of their reasonableness?
- the Commission should have a role throughout the year in scrutinizing the Scottish Government’s work in developing models and methodologies to produce its forecasts?
- the Commission should carry out its assessment of the Scottish Government forecasts either before or after publication?
- the Commission should be required to send a copy of its report on its assessment of the forecasts to Ministers prior to publication and, if so, how far in advance?

I think the influence and assessment of reasonableness should be kept separate. It is one thing for the Commission to give its comments to SG, and more widely to the public, but another to force the SG forecasting team into making changes to their forecasts if the latter group are convinced that they are correct. To address this issue, and if the FC are to use the SG model for its own forecasts at least initially, it should be allowed to ask the SG forecasting team to run other counterfactuals based on alternative assumptions (provided by the FC). These functions should be kept separate.

If a small team were to be funded for the FC’s independent scrutiny of the SG’s forecasts, and if the modeling framework used by the SG was approved of by the FC, then it would make sense for the Commission to have an ongoing role throughout the year in scrutinizing the SG’s work on developing
the underlying model and methodology, this particularly so if the two stage strategy mentioned above were to be adopted.

Given the importance of forecasts for future planning I think the FC should carry out its assessment of SG forecasts at the same time. Clearly if the FC’s assessment / alternative forecasting were to be done ex post there would always be a danger that differences between its assessment / forecasting were a function of timing.

I would support sending a report to Ministers as courtesy prior to publication, perhaps when the SG forecasts are in Press, which perhaps would be a week before publication.

- the Commission should have a wider role in assessing the sustainability of Scotland’s public finances such as adherence to fiscal rules and, if so, should the Bill be amended now to reflect this?  
- the Bill should be amended to include assessment of mechanisms for adjusting the block grant?  
- there should be a legislative requirement for the Scottish Government to prepare a charter for budget responsibility and the Commission should have a role in assessing adherence to the charter?

It would make sense for an independent body to assess the sustainability of Scotland’s public finances and adherence to any fiscal rules devised, especially with the ongoing further devolution of fiscal powers and a revised and beefed up fiscal Commission would seem ideally suited to take on this role. So, yes, I believe the Bill should be amended to take on board such a change.

A bloc grant element is going to be essential for any form of fiscal devolution short of full fiscal autonomy, the latter in my view only being consistent with political independence. I also believe we should move away from the Barnett bloc grant element which is not transparent and to many seems unfair, to a new bloc grant system perhaps based on a new needs assessment. Since there would need to be mechanisms, such as some form of indexation (which the committee has previously noted may well be controversial) in place to adjust the grant in moving forward it would make sense that the Bill was amended to include assessment of such mechanisms and how they work in practice.

Having a Charter for budget responsibility would seem to make sense especially since that is now set out explicitly for the UK as a whole and there have been issues raised about how devolved policies in Scotland may differ from those in the UK as a whole.
is the right of access in the Bill robust enough?

is there a need to include a requirement for a MoU on the face of the Bill?

what principles should underpin the working arrangements between the Commission and the Scottish Government and other relevant public bodies?

the process and timings for the Commission’s engagement with the Scottish Government and how this should be set out in the MoU?

the process and timings for the Commission’s engagement with HMRC and the OBR and how this should be set out in the MoU?

Overall the right of access in the bill does seem robust enough although I suppose a quibble could be raised over the use of the term ‘reasonableness’.

What happens if a request is deemed ‘unreasonable’? There doesn’t appear to be any arbitration mechanism in the current legislation if a dispute about what is reasonable were to arise. As is noted elsewhere, the production of a solid and comprehensive data-base for the Scottish economy is still work in progress (Paras 175-177 of http://www.scottish.parliament.uk/S4_FinanceCommittee/Reports/fir15-12w.pdf). It is not clear to me that the current right of access would allow the FC to access such preliminary data, some of which may not be published. I think the FC should have the right of access to such data and of course any other data produced by civil servants.

Given the potential importance of the FC work for Scotland’s public finances, I think it is important that there is a written understanding of the agreement between the SG and the FC. I would therefore support the inclusion of a MoU on the face of the Bill.

I would give priority to independence, transparency and openness in the working relationship between the FC, SG and other public bodies. A spirit of cooperation would also I think be important by which I mean a real willingness to cooperate for the benefit of the greater public good rather than cooperation based on an overly legalistic and formulaic framework. In that regard the FC should be seen as a group that is designed to enhance the decision making process and be a positive benefit to SG rather than as a body that offers criticism for criticisms sake.

One of the key issues that have been identified as a problem with current interactions between the two governments is that they are ad hoc and relatively informal, leading to a lack of transparency and accountability and clearly this has to be avoided in setting up new arrangements. There should be a set calendar for each year for meetings, both between FC and SG and the FC and other bodies, such as the OBR. Most likely the timing of these
meetings would coincide with the SGs production of forecasts although if the
FC does have a further enhanced role with respect to fiscal rules, meetings
for these would have to be factored in as well.

- the proposed appointment and removal procedures are adequate for
  ensuring the independence of Commission Members?
- Ministers should determine the period of office of each Member or
  should it be specified in the Bill?
- appointments should be for one fixed term or should there be an
  option for a further term?
- should the Commission determine its own staffing arrangements on
  the basis of terms and conditions of employment agreed firstly with
  Ministers?

Overall the proposed appointment and removal procedures are adequate,
although I think there should perhaps be a clause ruling out members
transferring from a body such as the Council of Economic advisors straight to
the FC without any lag in service. Without such a lag, and irrespective of how
independent such members turn out to be, such a move will always raise a
question in the public eye of how independent they actually are.

I would support having the period of office specified in the Bill and I see
nothing that should preclude someone serving for two terms in office
particularly if they are deemed to have made an especially helpful contribution
in their first term in office (as I understand it other similar bodies such as the
Bank of England Monetary Committee and OBR allow for the option of a
further term of office). The cycle of period of office should differ from the
political cycle.

- the overall costs set out in the FM; • the number of staff; • the
  remuneration and assumed time commitment of Commission members;
- the likely costs of expanding the Commission’s role to include an
  assessment of key aspects of Scotland’s fiscal framework such as the
  Scottish Government’s adherence to fiscal rules.

For stability and other reasons it is important that funding is in place for a fixed
period, which I believe the Cabinet Secretary has indicated will be the case,
and this will not coincide with the political cycle. The overall cost set out in the
FM, and the number of staff and remuneration / time commitment, seem to
me reasonable for the initial tasks of the FC, but are clearly going to be
inadequate for the extended potential roles for the Commission in both the
direction of producing their own forecasts and as overseers of any fiscal rules
introduced. I think it would be beneficial to attract someone on secondment
from a UK or European forecasting unit in the initial stages of the modeling to oversee the development of the forecasting model and the cost of such a person, who would likely be relatively senior in position, would have to be factored into the costing.
Finance Committee

Scottish Fiscal Commission Bill

Joint submission from Professor Peter McGregor and Professor Kim Swales

Fraser of Allander Institute, Department of Economics, University of Strathclyde

We are strongly supportive of an independent Scottish Fiscal Commission, but believe that its remit should be expanded relative to that envisaged within the Scottish Government’s Bill. We respond to each of the Committee’s requests in its Call for Evidence below.

Forecasting tax revenues

Is there a need for independent forecasts?

We believe that the provision of independent forecasts by the Commission would prove useful. The ability of the Commission to assess the Scottish Government forecasts/projections would be significantly enhanced if it had the capacity to generate its own forecasts for comparative purposes. This is in line with much international practice, and where such fiscal bodies do not provide their own forecasts they typically have access to sufficiently detailed independent forecasts.

However, at least in the shorter-term data limitations may limit the degree of sophistication that can reasonably be expected of forecasting models, which may be rather mechanistic, with little or even no modelling of behaviour. It would seem sensible perhaps to aim gradually to build internal forecasting/analytical capability, perhaps involving a range of modelling approaches, reflecting different policy concerns and data availability and the parallel development of modelling expertise within the Office of the Chief Economic Adviser (OCEA).

We are aware that Office of the Chief Economic Adviser (OCEA) is developing expertise in macro-econometric, micro-simulation, computable general equilibrium (and, in the wider policy context, various energy system) models of the Scottish economy, and our view is that these models will enhance the Scottish Government’s understanding of the likely impact of its fiscal (and other) policies. To the extent that any subset of these models is ultimately employed to assist with system-wide forecasting of Government revenues and expenditures (most likely with the use of a macro-econometric model for short-term forecasting in the first instance) and become a key input into the Government’s fiscal projections, it would be helpful for the Commission to have the ability to run similar models in parallel. Indeed, ideally,

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1 Earlier evidence to the Committee identified the range of economic modelling of the Scottish economy being undertaken within the ESRC’s Future of Scotland and the UK pre and post referendum initiative, including our own CGE modelling.
models used by the Scottish Government would be available to external groups of researchers to use to assess the potential impact of alternative policies, for example. Alternatively, the Commission should at least have the ability to request the Scottish Government to conduct sensitivity analyses around its core projections (see below).

As others have emphasised to the Committee the independence and neutrality of the Commission is crucial here, as is the transparency of the Government’s and/or its own forecasting process.

Having this ability would also, again in principle, provide the Commission with the capacity to explore the implications of alternative policies, so that the Scottish Government’s chosen position can be better assessed. We suspect that it is unlikely that the Commission’s remit will be modified to the extent of considering alternative fiscal policy stances, in which case there is an even greater need for additional independent external scrutiny, although we believe that such scrutiny will be valuable, regardless of the scope of the Commission’s activities (see our concluding paragraph).

There are of course, real resource costs to providing forecasting capacity, and risks to the Commission’s credibility if forecast performance proves to be poor. If there were sufficiently detailed independent forecasts already produced for Scotland the Commission could perhaps use/adapt these. (Certainly it could and should use whatever external forecasts are available to assist its judgements, and it intends to do so.) However, currently available forecasts are unlikely to provide sufficient fiscal detail for the Commission’s purposes.

It may be reasonably argued that the capacity of the Commission should reflect the extent of the fiscal powers that the Scottish Parliament possesses. Given that, following the Smith Commission, the Scottish Government is shortly to enjoy significantly greater fiscal autonomy in addition to that already in the pipeline as the Scotland Act 2012 is fully implemented in April 2016, the case for a wider remit of the Commission is enhanced. In our view this is so even if the restriction on borrowing powers effectively rules out the “deficit bias” that has motivated the establishment of most fiscal councils. It is likely, in any case, that there will be continuing pressure for yet further fiscal autonomy even after the Bill currently being considered at Westminster is passed and its provisions implemented.

Should the Commission have the capacity and resources to make its own forecasts even if its role is to assess the official forecasts?

The current limitation on the Commission’s functions does reduce the potential benefits to independent forecasting activity (by, for example, precluding consideration of alternative policy stances), but again in the absence of other sources of sufficiently detailed forecasts/projections, it probably remains desirable against the background of increasing fiscal autonomy. Even if the Commission’s role is initially restricted to assessing the official forecasts, its own forecasting ability, or
the ability to require sensitivity analysis (see below) that it specifies around the Government’s core projections, would enhance its ability to subject official estimates to rigorous scrutiny.

**Should the Scottish Government’s forecasts be subject to sensitivity analysis by the Commission?**

We interpret “sensitivity analysis” here as potentially encompassing a wide range of possible activities, although, of course, the Bill will define the scope of such analysis (if the function of the Commission is extended in this direction at all).

Ideally, the Commission should be in a position to provide, or require others to provide, sensitivity analysis. One form of sensitivity, that could be delivered automatically, would provide probability bands to projections. However, a second type of sensitivity would seek to explore the consequences of possible deviations from key assumptions embodied in the Government’s forecasts, relating to, for example, net migration flows. This would allow a more thorough *ex ante* evaluation of the SG’s own projections. This would represent a considerable extension to the proposed remit of the Commission, and one that we think would be desirable.

If there was a shift in this direction there would clearly be a question regarding how wide the Commission’s activities should range (and there is, as previous evidence to the Committee has noted, a wide variety apparent among extant fiscal councils). The key issue here is that the focus of the Commission is currently fairly narrow (in common with many other fiscal councils). While the Scottish Government has a core purpose of increasing sustainable economic growth, this of course, encompasses a range of (potentially conflicting) policy objectives, among which the overall fiscal policy stance (as typically reflected in e.g. fiscal deficits and debt levels) – and the sustainability of fiscal policy - is only one. Clearly, a number of objectives may be impacted by fiscal policy, including economic growth, employment, equity and carbon emissions. It seems unlikely that the remit of the Commission will range that widely, but the issues are very important in any attempt to provide an overall assessment of fiscal (and other) policies. However, the Commission could be required to report on these wider, and longer term, issues in a more informal way, simply to raise possible policy issues/ conflicts if they believe that they might arise.

Even if further devolution were to continue to impose strict borrowing limits, to the point where any Scottish “deficit bias” is effectively precluded, many major fiscal policy issues remain (even given the common currency and UK-determined monetary policy). In particular, balanced budget fiscal changes allow considerable choice about the type of economy and society that we wish to establish. For example, the Scandinavian economies are often held up as an example that Scotland may wish to emulate (at least in terms of government expenditure levels), but even the Scotland Act 2012 (fully implemented from April 2016), would allow the Scottish Government actually to raise average income tax levels to Scandinavian
levels, and to use the increased tax revenues significantly to expand government expenditure. Of course, no political party in Scotland is currently proposing such a radical strategy, but it would be useful to explore the likely impact of such a change; or indeed of a movement in the opposite direction towards the low tax, low public spending Baltic economies. An explicitly interregional modelling approach can also be used to explore the complexity of implementing any “no detriment” condition given the presence of complex demand- and, in general, supply-side spillovers. While there has been considerable discussion around further fiscal autonomy, there has so far been little discussion as to how precisely these new powers might be used, and what the consequences of such choices are likely to be.

While the institutional context, including any fiscal rules and the Commission itself, of course, imposes constraints on Scottish fiscal policy, very significant choices will remain, and might be usefully informed by wider economic analysis. How much of this analysis is (at least initially) undertaken by the Commission will be determined of course by the legislation. It seems certain, however, that the Commission’s function will not extend to attempting to provide wider evaluation of Scottish fiscal policy’s contribution to the Scottish Government goals.

*Should the Commission be able to develop its own forecasting methods and analytical capacity in order to provide a benchmark set of projections?*

Again, we would agree that this would assist the Commission’s assessment of Scottish Government projections, and many other fiscal councils have this capacity.

**Role of the SFC prior to the publication of the Scottish Government Forecasts**

We do not have strong views on the series of issues raised here. Our response would depend to a degree on the precise remit of the Commission, but we would generally be supportive of the Committee’s recommendations.

**Additional Functions**

*Should the Commission have a wider role in assessing the sustainability of Scotland’s public finances such as adherence to fiscal rules and, if so, should the Bill be amended to reflect this?*

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While there is a variety of motivations for establishing fiscal councils, a key objective is to enhance the credibility of fiscal policy through provision of an independent monitoring function that reports, inter alia, on the sustainability of the current (and anticipated future) fiscal policy stance. Where fiscal rules are in place (so that the Commission itself is clearly not regarded as substituting for such rules), it would seem very strange indeed to have a Fiscal Commission that did not have such a role: it is a core function of most fiscal councils.

The difficulties involved in assessing the sustainability of Scotland’s public finances will of course depend on what precisely is agreed about the extent of borrowing powers. However, even if these are limited, the Commission could be required report, perhaps more informally, on the longer-term sustainability of public expenditure programmes as a consequence of, for example, anticipated population changes.

Importantly, the Commission should also provide independent guidance as to whether prevailing economic circumstances merit some deviation from the rules, and perhaps the extent of such deviation that it believes may be reasonable without prejudicing longer term fiscal sustainability.

Accordingly, our view is that the Commission should have the role of assessing the sustainability of public finances and the Bill should be amended to reflect this.

**Should the Bill be amended to include assessment of mechanisms for adjusting the block grant?**

In view of the potential importance of the precise mechanism for adjusting the block grant, it would certainly be very useful to have some independent assessment of the alternatives. If the Commission has its own forecasting/projection capacity, or was in a position to require others to provide appropriate analyses, it would be able to explore the consequences of acceptance of any particular adjustment mechanism as against potential alternatives. Once an agreed adjustment mechanism is in place, it would be helpful to monitor its impact.

**Should there be a legislative requirement for the SG to prepare a charter for budget responsibility and should the Commission have a role in assessing adherence to the Charter?**

This seems helpful given a general desire for transparency.

**Right of access to information**

Right of access is clearly central to the Commission being able to carry out its role effectively. Because of that it probably would be helpful to establish this on a statutory basis in a MoU. It may also be helpful, to facilitate transparency, that the basis of the working relationships be set out in a MoU.
Appointment of members of staff

Our view is that: the proposed appointment and removal procedures are fit for purpose; ideally the Bill would specify periods of office; one fixed term is typical (although the need for staggering to ensure some continuity has already been noted); the Commission should definitely determine its own staffing arrangements on the basis of terms and conditions of employment agreed firstly with Ministers.

Resources

Not surprisingly, given the differences in the breadth and depth of their responsibilities, the resources used by fiscal councils around the world vary dramatically - and not necessarily in line with the size of the country – reflecting the differences in the breadth and the depth of their responsibilities. Adding in-house forecasting capability will add to costs, but the extent of this will depend on precisely what the Commission is expected to deliver (and the Government’s, and its own, choice of model(s)). This extension should also allow assessment of the Scottish Government’s adherence to fiscal rules.

Wider policy assessment

It seems unlikely that the Fiscal Commission’s remit will be extended very substantially to encompass assessment of the contribution of fiscal policies to Government objectives. The more restrictive the role of the Commission, the more important it will be to have additional scrutiny provided by external, independent researchers.

There has never been a period in Scotland’s recent history where the need for independent analysis of Scottish economic policy has been more striking, and the scale of its likely impact on the Scottish people more important. The ESRC has funded considerable relevant research activity under its Future of Scotland and the Rest of the UK pre and post Referendum Initiative, but securing external funding to support continuing, and wide-ranging, policy scrutiny is challenging. The Fraser of Allander Institute (FAI) remains committed to providing a source of independent commentary and analysis - as it has done over the 40 years since its establishment - together with our academic colleagues in the Centre for Constitutional Change, and others such as SPICE. It is essential, against the background of substantially enhanced fiscal autonomy, that Scotland maintains a critical mass of independent economic analysis that can complement the work of the Commission.
Finance Committee

The Scottish Fiscal Commission (Scotland) Bill

Submission from the Royal Society of Edinburgh November 2015

Summary

- In line with the Finance Committee’s recommendation, the RSE is firmly of the view that the Scottish Fiscal Commission (SFC) should be capable of producing its own independent fiscal forecasts in assessing the Scottish Government’s fiscal projections. In doing so, the SFC should have the freedom to develop its own framework of analysis, data sources and methodology. The SFC will need staff with expertise in data analysis, statistical modelling and econometrics.

- The rationale for the establishment of the SFC is to strengthen independent scrutiny of Scotland’s public finances. If the SFC is expected to provide an independent assessment of the reasonableness of the Government’s forecasts, it is essential that it has no role in their production. In order to secure its independence and ensure transparency of process, the SFC should carry out its assessment of the Government’s forecasts after their publication.

- The functions of the SFC should include assessing the performance of the Scottish Government against its fiscal targets and an assessment of the long-term sustainability of the public finances. To enable this, the Government should prepare and submit a medium-term budget framework at the same time as it submits its draft annual budget bill.

- The Government needs to improve the provision of fiscal data to ensure the SFC can fulfil its remit. The SFC Commissioners have stated that they do not have data to allow comparison between forecasts and actual outturn figures. This reinforces the need to develop in Scotland a framework for the collection and use of fiscal data.

- In undertaking its work we would expect the SFC to take due cognisance of the UK-wide forecasts produced by the UK’s Office for Budget Responsibility (OBR). The SFC does not currently have access to data from HM Revenue & Customs (HMRC). The UK and Scottish Governments will need to address this so that the SFC has direct access to HMRC data. The SFC should have Memoranda of
Understanding with both the OBR and the HMRC for the sharing of information to enable it to fulfil its functions.

- To minimise potential conflicts of interest and to enhance the SFC’s independence, the Bill would be strengthened by ensuring that a Commissioner may not at the same time serve as a member of the Scottish Government’s Council of Economic Advisers.

- To provide clarity and transparency, the terms of appointment to the SFC should be clearly set out in the legislation as opposed to being left to the discretion of the Scottish Ministers. This is in line with the principles of the Organisation for Economic Co-operation and Development (OECD). It would be pragmatic to make provision to allow for Commissioners to serve for a second term.

Introduction

1. The Royal Society of Edinburgh (RSE) welcomes the invitation to respond to the Scottish Parliament Finance Committee’s scrutiny of the Scottish Fiscal Commission (Scotland) Bill. The Committee will be aware that the RSE has made a longstanding contribution to the debate around the provision of independent fiscal forecasting and analysis in Scotland. Most recently, the RSE responded1 in June 2015 to the Scottish Government’s proposals for putting the Scottish Fiscal Commission (SFC) on a statutory footing.

2. We are pleased that a number of the suggestions we made for strengthening the Government’s legislative proposals have been adopted in the current Bill:

   - We were concerned that the provision in the draft Bill that the SFC must prepare such reports as the Scottish Ministers may from time to time require would compromise the Scottish Government’s stated intention to safeguard the independence of the SFC. We are pleased that the Government has removed this proposed reporting requirement from the current Bill.

   - We also responded by saying that the SFC should be required to prepare an annual report on its activities for laying before the Scottish Parliament. We note this provision has been introduced in section 8 of the Bill.

   - We recommended that the Government should set out arrangements for external independent evaluation of the SFC. We therefore welcome the introduction of section 9 in the current Bill that the SFC’s performance must, at least once every five years, be externally reviewed.

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1 RSE submission to the Scottish Government’s consultation on the Scottish Fiscal Commission; June 2015 
Forecasting tax revenues

3. Section 2 of the Bill makes clear that the primary function of the SFC is to scrutinise, assess the reasonableness of and report on the Scottish Government’s devolved tax revenue forecasts and on the economic determinants underpinning Scottish Government non-domestic rate income (NDRI) forecasts.

4. It is clear that the Scottish Government envisages a position where the SFC’s role is focussed on assessing and reporting on the forecasts prepared by the Government.

5. In its recent Report on Scotland’s Fiscal Framework\(^2\), recognising the strong level of support among expert witnesses, including an RSE representative, the Finance Committee recommended that the draft Bill should be amended to ensure that the SFC is able to undertake its own forecasts.

6. The RSE agrees with the Finance Committee. We are firmly of the view that the SFC should be able to originate its own independent forecasts of the future fiscal revenues and budgetary position in Scotland. The SFC should have the freedom to develop its own framework of analysis, data sources and methodology, in assessing the Scottish Government’s forecasts.

7. Indeed, to fulfil its functions the SFC will need to be able to produce independent forecasts. For example, we envisage that the Scottish Parliament would look to the SFC to provide clarification on the level of certainty underlying the Scottish Government’s projected revenues from the new devolved taxes. It is likely that these various tax revenue projections will lie within a range (e.g. within a set of upper and lower values). Paragraph 9 of the Bill’s Explanatory notes states, “The Commission may, however, consider the effect of alternative forecasting assumptions or methodologies on revenue forecasts.” This indicates that the SFC will have the power to assess the impact on these projected revenues of changing the value of the underlying assumptions. It is difficult to conceive how the SFC would be able to carry out this impact assessment without it re-forecasting the Government’s projections. Therefore, in order to provide a robust assessment of the Government’s projections, the SFC will need to be capable of producing its own fiscal forecasts independently of the Scottish Government. Without this empirical evidence, the SFC analysis and comment will be seriously undermined.

8. It is paramount that the SFC be independent of government influence, and be seen to be so. This is required to ensure the reputation, impartiality and credibility of the SFC. The Scottish Government has made clear its aim to safeguard the independence of the SFC. However, some of the Government’s statements made in relation to the SFC’s functions would appear to be in tension with this. For example, in 2014 the Scottish Government was clear that it “agrees that the SFC should have no role in producing the original forecasts.” However, paragraph 16 of the Bill’s policy memorandum states that, “the remit enables the Commission to exert significant influence over the forecasts which underpin the Scottish Draft Budget.”

9. The rationale for the establishment of the SFC is to strengthen independent scrutiny of Scotland’s public finances. It would be alarming if the SFC were to have a role in producing the same forecasts that it is tasked with assessing. We strongly agree with the Finance Committee that in order to preserve the SFC’s independence it is essential that it has no role in producing the Government’s forecasts if it is expected to provide an independent assessment of their reasonableness.

10. We therefore support the legislative intention to ensure that the SFC is directly accountable to the Scottish Parliament for the delivery of its functions; not through Scottish Ministers. However, there needs to be clear and robust governance structures between the Commission and the Parliament to ensure that while being properly accountable to Parliament, the Commission’s work is not compromised. This approach also recognises the importance of ensuring the Commission’s freedom from political pressure while balancing this with an appropriate mechanism of accountability to assure its effectiveness and democratic legitimacy.

11. In order to secure its independence and ensure transparency of process, the SFC should assess the Scottish Government forecasts after their publication. For the same reasons, we do not believe that the SFC should be required to send a copy of its report to the Government in advance of it being laid before the Scottish Parliament. Section 4 (3) of the Bill should therefore be removed.

12. As with the relationship between the OBR and HM Treasury, we would expect all correspondence, meeting agendas and minutes between the SFC and the Scottish Government to be published on the SFC website.

Assessing the long-term sustainability of the public finances

13. The RSE has frequently raised concerns that the focus on short term priorities drives the Scottish budgetary process, arguing that this can restrict analysis of the long term outlook for public spending and revenues. The RSE therefore
agrees with the Finance Committee recommendation that the functions of the SFC should include assessing the performance of the Scottish Government against its fiscal targets and an assessment of the long-term sustainability of the public finances. While an assessment of the longer-term outlook will be inherently uncertain, it can help draw the attention of policy makers to long-term challenges.

14. We are of the view that in enhancing its autonomy and expanding its current functions, consideration should be given to tasking the Commission with:

   a) reviewing the fiscal outlook for the government and the public;
   b) forecasting the future revenues likely to be available;
   c) estimating current structural imbalances; and
   d) estimating the likely consequences of current spending and taxation plans.

15. This would be consistent with the Smith Commission recommendation that the Scottish Parliament should seek to expand and strengthen the independent scrutiny of public finances in Scotland in recognition of the additional variability and uncertainty that further tax and spending devolution will introduce into the budgeting process. However, the responsibility for the choice, design and execution of fiscal policy would remain firmly with the Scottish Government.

16. In order to enable the SFC to undertake an assessment of the Scottish Government’s medium-term fiscal strategy, the Scottish Government should prepare and submit a medium-term budget framework at the same time as it submits its draft annual budget bill.3

17. Given the need to ensure the impartiality of the SFC in any statements it makes on the ongoing sustainability of Scotland’s public finances, the Finance Committee might wish to consider whether the SFC should produce something akin to the OBR’s annual fiscal sustainability report.

Fiscal rules

18. As part of its remit the OBR has responsibility for monitoring compliance with the UK Government’s fiscal rules. It would therefore seem reasonable to accept that there is the need for an equivalent independent body (the SFC) to adopt a similar role in respect of monitoring adherence to the Scottish Government fiscal rules. This role is likely to be important to the Scottish Government and Scottish

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Parliament in relation to agreeing adjustments in the Barnett formula, seeking borrowing capacity and/or the further devolution of taxes.

Right of access to information and data-related considerations

19. In giving evidence to the Finance Committee in April⁴, the SFC Commissioners made clear that currently they do not have data to allow comparison between forecasts and actual outturn figures. Similarly, at the Finance Committee’s evidence session on 20 May, economists and public policy experts stated that to ensure that the SFC can fulfil its remit, the Scottish Government needs to improve the provision of fiscal data. We note that Audit Scotland has made similar comments.

20. This reinforces the importance of developing a better understanding of data requirements and the need to sustain data collection over the long-term in order to derive trends from it. A framework for data provision will require to be appropriately resourced. Inevitably, as more powers are devolved to the Scottish Parliament, the more important it becomes to develop in Scotland a framework for the collection and use of fiscal data.

21. Section 7 of the Bill states that the SFC should have a right of access at reasonable times to any relevant information that it may reasonably require for the purpose of performing its functions. We fully agree that the SFC should have full and unfettered access to Scottish Government data and to any related analysis or evaluations made elsewhere.

22. The Scottish Government, Revenue Scotland, the Keeper of the Registers of Scotland and the Scottish Environment Protection Agency are listed on in the Bill as sources of relevant information for the SFC. We agree that the framework governing the working relationship between the SFC and these bodies be set out in Memoranda of Understanding (MoU). The MoU’s should be published.

23. However, we note there are a number of notable bodies that are not listed on the face of the Bill. We would expect the SFC to take due cognisance of the UK-wide forecasts produced by the OBR. In addition, we note that the SFC Commissioners have stated that they do not currently have access to data from HM Revenue & Customs (HMRC). Given that the Scottish Parliament will have devolved responsibility for the Scottish rate of income tax from April 2016, with further responsibility for income tax expected to be delivered through the Scotland Bill, it will be necessary for the Scottish and UK Governments to address this so that the SFC has direct access to HMRC data. We would expect

⁴ Scottish Parliament Finance Committee; Official Report; 1 April 2015
the SFC to have Memoranda of Understanding with both the OBR and the HMRC for the sharing of information to enable the SFC to fulfil its duties.

Appointment of Members

24. In order to provide flexibility and recognising that the Commission’s functions are expected to expand over time, we are content with the proposition that the Commission should comprise of a chairing member and between two and four other members.

25. We are of the view that in minimising potential conflicts of interest and in order to enhance the SFC’s independence, the Bill would be strengthened by ensuring that a Commissioner may not at the same time serve as a member of the Scottish Government’s Council of Economic Advisers.

26. The Scottish Government’s consultation proposed that members of the SFC would be entitled to a fee. The RSE agreed that Commissioners should receive a daily fee reflecting the public service nature of the work. We are content with the proposal that Commissioners are remunerated in line with the Public Sector Pay Policy for Senior Appointments.

27. The Financial Memorandum assumes a time commitment of 1.5 days per week for each Commissioner. However, if the SFC is to have a role in assessing the performance of the Scottish Government against its fiscal targets and providing an assessment of the long-term sustainability of the public finances, as we believe it should, then it is highly likely that it will require Commissioners to dedicate more time to the SFC. Similarly, with the anticipated devolution of further powers to Scotland, it can be assumed that the Commission’s workload will expand.

28. In this context we note that in its Principles for Independent Fiscal Institutions (IFI), the Organisation for Economic Co-operation and Development (OECD) recommends\(^5\) that the position of head of the IFI should be a remunerated and preferably full-time position. In his commissioned analysis for the Finance Committee, Ian Lienert\(^6\) indicates that given their oversight and public relations responsibilities, the SFC chairperson should be at least 50% full-time equivalent.

29. The OECD principles are also instructive in relation to terms of appointment, where principle 2.3 makes clear that term lengths and the number of terms that IFI members may serve should be clearly specified in legislation. However, section 13 of the Bill states that the Scottish Ministers will determine lengths of

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\(^6\) Ibid. 3
membership. To provide clarity and transparency, we believe that the terms of appointment should be clearly set out in the legislation as opposed to being left to the discretion of the Scottish Ministers. We are also of the view that it would be sensible to make provision to allow for Commissioners to serve for a second term.

**Staffing and Resources**

30. In evidence to the Finance Committee, the OECD emphasised that the resources allocated to the SFC must be sufficient and sustainable to allow it to fulfil its remit in a credible manner.

31. In order that it can undertake its own fiscal forecasts, staff with expertise in data analysis, statistical modelling and econometrics will be needed.

32. We understand that in its first year of operation in 2014-15, the SFC was allocated a budget of £20,000. In response to the Scottish Government consultation we commented that this would have to increase significantly if Commissioners are to be remunerated and to enable the SFC to employ even a minimal level of staff support. The Financial Memorandum states that the Scottish Government’s estimated recurring costs for the operation of the SFC are £850,000 per annum from 2017-18.

33. We note from Lienert’s analysis of international IFIs, that the proposed annual budget for the SFC should allow for reasonable flexibility in the way it structures its operations and staffing. The operation of the SFC will of course need to be kept under review by the Parliament and changes to its functions and scope of activities may need to be reflected in subsequent budgetary allocations.

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7 Report on proposals for a Scottish Fiscal Commission; Scottish Parliament Finance Committee; 7 February 2014
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/72938.aspx
Additional Information

This Advice Paper has been signed off by the RSE General Secretary.

In preparing this Advice Paper we would like to draw attention to the following RSE responses which are relevant to this subject:

- The Royal Society of Edinburgh’s response to the Scottish Government’s Consultation on the Scottish Fiscal Commission (June 2015)


- The Royal Society of Edinburgh’s response to the House of Commons Constitution and Political Reform Committee on Scotland in the United Kingdom: An Enduring Settlement – Draft Scotland Clauses 2015 (February 2015)

- The Royal Society of Edinburgh’s response to the House of Commons Constitution and Political Reform Committee on Scotland in the United Kingdom: An Enduring Settlement – Draft Scotland Clauses 2015 (February 2015)

- The Royal Society of Edinburgh’s response to the Scottish Parliament’s Finance Committee on proposals for an independent fiscal institution in Scotland (September 2013)

Any enquiries about this Advice Paper should addressed to Mr William Hardie (email: evidenceadvice@royalsoced.org.uk).

Responses are published on the RSE website (www.royalsoced.org.uk).

The Royal Society of Edinburgh, Scotland's National Academy, is Scottish Charity No. SC000470
Introduction

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors including major institutional investors, lenders, developers, landlords of commercial and residential property, and professional property consultants and advisers.

2. The Scottish Parliament’s fiscal powers are growing and the requirement for scrutiny of Scottish Ministers’ decisions on taxation and other fiscal matters is increasingly important. The property industry is at the forefront of industries directly affected by the new powers and we are keen to see effective scrutiny of the consequences of the government’s tax forecasting and its consequent decision-making. In fact two of the current taxes considered by the non-statutory SFC relate to the property sector, being LBTT and non-domestic rates which is a tax based on commercial property rental values as assessed on the valuation roll and these are of course core determinants listed under the Bill as functions for the SFC.

3. Our desire to see an effective and robust taxation scrutiny process is not confined to direct industry considerations. With powers being devolved on income tax it is important for the economic competitiveness of Scotland that effective tax and finance scrutiny of Scottish Ministers’ decisions is assured for the parliament and the wider public. We do not agree that this is assured merely by commenting on the ‘reasonableness’ of Scottish Government forecasting which appears to be suggested by the current draft of the Scottish Fiscal Commission Bill (s2). In our view, the Bill has too narrow a view of the role of the SFC. We argue below therefore that the SFC should be able to produce its own forecasts.

4. We encourage the Finance Committee to consider the potential role of the SFC in a wider sense of the Scottish Government’s new fiscal powers. The government is now able to raise capital via issuing bonds (within certain limits). While this is currently restrained within certain limits set by the UK Parliament it is nonetheless a development that will bring the Scottish Government into contacts with the financial markets if used. This process will bring greater scrutiny of the Scottish Government’s fiscal policy and credentials in a similar manner to that of the UK and other bond-issuing governments as the market prices the bonds that may be raised by the Scottish Government. In this light the potential for the SFC’s role is
significant and important if it is to properly inform parliament and public about the efficacy of future Scottish Government tax forecasts. It could be that this wider view of fiscal factors relevant to the increasing powers of the Scottish Parliament of the SFC might be delivered via s2(3).

**Forecasting tax revenues**

5. We believe that the SFC should have the freedom to produce independent forecasts. This would be in line with the Office for Budget Responsibility. It would be strange in a sense if the OBR could not produce its own forecasts – after all, the SFC will need to be developing its own assessments in order to compare Scottish Government forecasts and associated assumptions on market developments.

6. The Committee has previously noted that it is important that the SFC is perceived to be independent of the Scottish Government. This could be difficult to achieve without a means of producing and publishing its own independent forecasts. If it is only able to verify Scottish Ministers’ assessments then it may be difficult to convince the wider world that it is truly an independent body. It follows that SFC will need to develop some internal analytical capability in order to facilitate its own forecasts.

7. We believe that the SFC needs to develop credibility and must become respected as an arm’s length body that can take a genuinely independent view of major areas of taxation including business rates, LBTT and in time, income tax. We expand on our concerns about the current process for forecasting taxes in our comments in paragraph 9.

**Role of the SFC prior to the publication of the Scottish Government forecasts**

8. In the event that the SFC is so empowered, it is important that Ministers are able to consider any SFC forecasts ahead of the publication of their own forecasts. Parliament will wish to hear from Ministers directly what their view is of the SFC’s forecasts and therefore it is only right that Ministers should have the chance to consider SFC forecasts in advance.

9. We would hope that the SFC will influence and advise the development of Scottish Government forecasting from the basis of its independence and expertise. We wish to see the forecasting process develop and improve. We believe this will be aided by the government and the SFC learning from each other’s assumptions and modelling. In particular and in line with our comments to the earlier Scottish Government consultation of this year, we are keen to see more sophisticated tax forecasting that will take into account potential behavioural changes in the property markets as a consequence of changes to LBTT rates and thresholds in particular. For example, although the decision over
rates and thresholds is of course a political decision to make, we feel that an independent forecast of the consequences of higher rates on pricing, transactions and consequent revenue would have helped with current LBTT forecasts, particularly for the higher value residential market.

10. Although we have data only for the first six months of year of LBTT it is apparent that there is a significant difference in the returns for commercial and residential property under LBTT. While commercial revenue appears to be broadly in line with expectations, residential revenue is significantly below the required trend to achieve the tax forecast of £235mn set by the Scottish Government.

11. On NDRI (business rates) we suggest that there is a significant role for the SFC to play in verifying Scottish Government forecasts that will be aligned to the forthcoming revaluation (to take effect 1 April 2017). We welcome strongly therefore the inclusion of this as a specific part of the Bill (s2(2a)). There has not been a revaluation for seven years, dating back to the height of the previous property market. Our members suggest there has been significant polarisation of the commercial property markets since this time and this will have a potentially significant influence on the distribution and forecast of future NDR poundage rate and subsequent NDR revenues. NDRI will remain the second highest source of revenue for the Scottish Government after the transfer of income tax powers, beginning next April with SRIT) and therefore it is important that it forms a core part of the SFCs considerations.

David Melhuish
Director
Scottish Property Federation
19th November 2015

Convener
Finance Committee
Room T3.60
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Convener,

Thank you for asking the Scottish Fiscal Commission (SFC) to respond to questions the Finance Committee has raised in relation to the Scottish Fiscal Commission Bill which is currently under scrutiny.

Forecasting tax revenues

In a rational world, there should be one official forecast of tax revenues and there should be an independent assessment of that forecast. The assessment may be informed by activities such as independent forecasting, drawing on research, modeling and analyses; such exercises should be done as required, and do not need to be done for every instrument and in every round. These activities should lead to a check on the official forecast. They should not become the basis in themselves for informing the Draft Budget.

The SFC, as the ‘assessor’, believes it should develop the latter type of forecasts alongside research, modeling and analysis. The object of the SFC doing so would be to provide a comparator to the forecasts released by the Scottish Government, which would help in the overall assessment of the reasonableness of the official forecasts.

The SFC will need appropriate capacity and resources to do this work, and indeed has already begun the process of building such capacity this year with the engagement of two research assistants. But it would note that building up technical and targeted modeling capacity takes time; it’s not a matter of hiring people off the street.

In order to operate independently, the SFC would itself determine when and about what to carry out such forecasting, research, modeling and analysis.

Regarding sensitivity analyses, there are limited variables in current Scottish Government forecasts which could be subjected to such analysis; there may be more over time. But, even now, there may be instances, for example, when the SFC would want to consider or propose a wider range of economic determinants for a given tax, or it might comment that the official forecast is reasonable but particularly sensitive to specified factors.
In sum, the SFC agrees that it should develop its own forecasting methods and analytical tools and its capacity over time, to assist in its judgment of the reasonableness of the official forecasts. But it does not propose to produce the official forecasts which inform the Draft Budget.

Role of the SFC prior to the publication of the SG forecasts

The SFC identifies two types of interaction with the Scottish Government forecasters. There are pros and cons as to when these interactions should take place.

There is a time when contact with the forecasters is helpful in equipping the SFC with a full understanding of the approaches they are taking. And there is interaction once the official forecasts are complete, at which time the SFC will have questions for the Scottish Government in order to understand better what underpins the forecasts, so that it can carry out its assessment of their reasonableness.

However, if there is direct engagement while the forecasters are developing and refining their forecasts, there could be the imputation of undue influence over the very forecasts on which the SFC has to pass judgment.

On the other hand, if there is no contact, there is the possibility of a Budget debate taking place using unreasonable numbers, and that is surely to no one’s benefit. If there is no contact between the SFC and the forecasters until the Draft Budget is published, and the forecasts turn out to be lacking, surely there will be loud voices asking where was the SFC? And why did they not do something to ensure a sounder set of forecasts?

The SFC views its role as one of serving the public good. With that aim in mind, it would propose a possible solution to this conundrum. The SFC could have direct engagement with the forecasters in the early part of the year when the forecasters are developing or refining their models. The SFC would draw on any challenges it had issued in relation to the forecasts developed for the previous Draft Budget, and on its own conceptual approach to given taxes. The SFC’s role would be to challenge and influence the efficacy of Scottish Government processes and approaches, for example in light of out-turn numbers or if an approach has had to be developed for a new tax.

The SFC would then have no contact while the Scottish Government developed its forecasts and until the point when the Draft Budget itself is submitted for publication. At that point, the SFC would engage directly with the Scottish Government again to investigate the processes and approaches they chose in the end to take. And, at that stage, without having had any interaction while the forecasts were developed, the SFC would make its assessment of the reasonableness of those forecasts.

In order to ensure transparency at every stage, the SFC would publish Minutes of its meetings with the Scottish Government, both those early in the cycle to look at Scottish Government methods and approaches, and those emanating from the scrutiny meetings after the forecasts are made public.
It would facilitate our work if the SFC could see the forecasts as soon as the Draft Budget goes to print, which is some days before it becomes public. Also, the SFC has found value in submitting its Report to Scottish Government purely to check for factual errors, and would propose doing so very shortly before its Report is published, and after the forecasts have been finalised.

**Additional functions**

The SFC believes it should have responsibility for assessing the Scottish Government’s forecasts on the sustainability of Scotland’s public finances, such as adherence to fiscal rules as an example, and it would welcome the Bill being amended now to anticipate this additional responsibility when it arises.

In order to play a role in relation to the block grant adjustment, the SFC would clearly need to understand how the adjustment is calculated and applied. However, the SFC understands that the mechanisms for adjusting the block grant are currently under discussion. For that reason, we won’t at this time offer a view about potential engagement in this area. Whatever the ultimate decision, however, the SFC should play no role in negotiations between the Scottish Government and the UK Government.

Whether Parliament proposes that the Scottish Government develop a charter for budget responsibility, or the adoption of fiscal rules, our response is the same. The SFC should play a role in adherence to these requirements.

**Right of access to information**

The SFC believes that the right of access to the information it requires is essential; it would have no objection if this wording were made more robust.

MOUs are the normal way of working across public sector areas; if the SFC’s right to establish relevant MOUs would be better safeguarded with more explicit wording on the face of the Bill, then the SFC would support doing so.

Principles of transparency and cooperation should underpin all the working arrangements between the SFC and the Scottish Government and other relevant public bodies. To date, the SFC has found these counterparties to be fully cooperative.

Over time and in order to do its job properly, the SFC’s goal would be to have a deeper relationship with the OBR and HMRC. The Scottish Government would need to negotiate with the UK Government in the first instance to establish formally those relationships.

**Appointment of members and staff**

The SFC believes the proposed appointment and removal procedures are adequate for ensuring the independence of Commission Members. The Public Appointments process is rigorous and rigorously executed.
The term of office should be stated in the Bill and the SFC believes, on the whole, that a single non-renewable term as currently pertains is effective, and that individual terms should be staggered.

The SFC must be able to determine its own staffing arrangements, within the constraints of public sector T’s and C’s.

**Resources**

The overall costs set out in the Financial Memorandum appear to be suitable for the work currently required of the SFC. As the remit of the SFC expands, it will need to commit more time for instance to research, assessment of adherence to fiscal rules and to carry out other activities. The resources available to it will need to grow prudently to support the additional work.

We hope these comments are useful and look forward to meeting with the Committee in due course.

Sincerely yours,

Lady Susan Rice  Professor Campbell Leith  Prof Andrew Hughes Hallett
Independent Fiscal Institutions: International Experience and the Scottish Fiscal Commission

Report prepared for the Finance Committee, Parliament of Scotland

October 25, 2015

Ian LIENERT
Independent Consultant in Public Financial Management

Table of Contents

Preface and acknowledgements ........................................................................................................... 3
Executive Summary ................................................................................................................................. 4
A. Introduction ....................................................................................................................................... 10
B. Governance, mandates, size and forecasting activities of IFIs ......................................................... 11
  Institutional models of IFIs .................................................................................................................. 11
  Mandates of IFIs ................................................................................................................................. 12
  Size of IFIs .......................................................................................................................................... 14
  IFIs at subnational level ....................................................................................................................... 19
C. Possible lessons for Scotland from four IFI case studies ............................................................... 20
  Belgium: High Council of Finance (HCF) and Federal Planning Bureau (FPB) ............................. 20
  The Irish Fiscal Advisory Council (IFAC) ......................................................................................... 21
  United Kingdom: Office for Budget Responsibility (OBR) ............................................................. 22
  Legislative Budget Offices (LBOs) in the 50 States of the United States ..................................... 23
D. Key Characteristics of Successful Independent Fiscal Institutions (IFIs) ..................................... 24
  Success factor #1: Broad political consensus and credibility ............................................................. 24
  Success factor #2: Clear mandate ..................................................................................................... 24
  Success factor #3: IFI independence ................................................................................................. 25
  Success factor #4: Access to information ....................................................................................... 25
  Success factor #5: Transparent governance arrangements ............................................................... 25
  Success factor #6: Adequate resources, guaranteed from the budget ........................................... 26
  Success factor #7: Transparency and relationship with the media .................................................. 26
  Success factor #8: Accountability and oversight .............................................................................. 26
  Success factor #9: Legal framework ............................................................................................... 27
E. Scottish Fiscal Commission: Options and recommendations ...................................................... 27
  1. Obtaining political consensus ........................................................................................................ 28
  2. Clarifying the SFC’s mandate as specified in the SFC bill ............................................................ 28
  3. Deciding on the SFC’s forecasting role ....................................................................................... 32
  4. Considering a widening of the SFC’s mandate .......................................................................... 35
  5. Ensuring SFC independence prior to publication of its main assessment report .................... 39
  6. Enhancing specific aspects of the SFC’s operational independence .......................................... 42
  7. Obtaining access to information ................................................................................................. 44
  8. Reducing Scottish Government influence on SFC governance arrangements ....................... 45
  9. Providing the SFC with adequate resources ............................................................................. 51
  10. Ensuring transparency, accountability and oversight of the SFC ........................................... 54
  11. Placing the SFC on a statutory footing ...................................................................................... 56
Bibliography ......................................................................................................................................... 58
Preface and acknowledgements

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Executive Summary

Scotland is one of the few devolved regions of Europe that has created an independent fiscal institution (IFI). The Scottish Fiscal Commission (SFC) that has been operating for over one year and in September 2015, the Scottish Government (SG) submitted a SFC bill to the Scottish Parliament with a view to placing the SFC on a statutory basis. This follows the SG’s consultation during March-June 2015, which resulted in the SG taking action to strengthen the statutory SFC’s provisions for its operational independence from the SG.

This report first examines international experience with IFIs, which are quite diverse. The statutory SFC is designed to be a stand-alone body, comparable to the Fiscal Councils set up in several European countries in recent years, except that the SFC has a narrow mandate.

The report notes that some non-Euro zone countries (e.g., Poland, New Zealand) have decided not to establish an IFI because existing fiscal institutions are adequate and/or macro-fiscal forecasts are not systematically biased. Also, since 2013, all Euro-zone countries must establish an IFI, even though the need is not pressing in countries with low fiscal deficits and debt (e.g., Estonia, Luxembourg).

Four case studies draw lessons for Scotland, to the extent that this is possible given Scotland’s constitutional arrangements within the UK. The report also identifies nine key factors for a successful IFI. These are based mainly on OECD’s 22 sound principles for IFIs.

This executive summary is confined to the report’s key suggestions concerning the SFC’s:

- **Mandate**, including the SFC’s role in assessing forecasts and the fiscal framework.
- **Operational independence**, including access to information
- **Governance** arrangements
- **Accountability to Parliament and legal basis**.

Clarifying the SFC’s core mandate as envisaged by the Scottish Government

*Core mandate and obligatory tasks*: The SG’s proposals for the SFC’s obligatory and specific tasks are clear in the SFC bill. It would be clearer, in the SFC bill, to first identify the SFC’s core mandate. This report suggests that the SFC’s core mandate is to assess the realism (or “reasonableness”) of the SG’s macroeconomic and fiscal forecasts. This is a somewhat wider mandate for the SFC than that proposed by the SG, as it includes assessing the SG’s macroeconomic forecasts and expenditure estimates in annual budgets. The report calls for a clarification of the SFC’s core mandate in the SFC bill. In addition, it would be useful to state explicitly in the SFC bill that the SFC must perform its duties objectively, transparently and impartially.

*Voluntary* tasks: The SFC bill appropriately provides the SFC with the option of performing non-obligatory functions that the SFC chooses to include in its annual work programme. For example, the SFC could comment twice a year on the OBR’s Scottish tax forecasts, in line with the Finance Committee’s recommendation in its 2014 report on the SFC.

*Prohibition*: While this report considers that it would not be prudent to allow the SFC to recommend fiscal policy changes, it is difficult to justify the SFC’ prohibition from examining the impact of alternative fiscal policies. A change in sub-section 2 6 (b) is recommended.
Deciding on the SFC’s role in forecasting

It is appropriate for the statutory SFC to assess the realism of the SG’s macroeconomic and fiscal forecasts. This is a key task for many IFIs. The IFIs in Euro-zone countries are required to endorse the government’s macroeconomic forecasts, but not the fiscal forecasts. This report does not recommend that the SFC should endorse the SG’s forecasts. However, in the SFC bill, it may be useful to add that the SFC:

- Will state publicly the reasons why the SG’s forecasts are realistic or unrealistic.
- May examine the impact of alternative fiscal policies, provided it does not make a recommendation on any preferred fiscal policy. If judged necessary, also add that the SFC may also consider the effect of alternative forecasting assumptions or methodologies on the budgetary forecasts of Scottish Ministers.

For its forecast assessment activities, it would be helpful for the SFC to build up in-house macroeconomic and fiscal forecasting expertise. The SFC’s forecasts would be for the purpose of benchmarking the SG’s forecasts. Unlike some national IFIs that, for benchmarking purposes, compare the official forecast with those of another forecaster (e.g., those of the EU, IMF, OECD, the Central Bank or a research institute), this option is not open in Scotland. The SFC’s forecasts could be published at SFC discretion. The SFC bill is silent as to whether the SFC can or must prepare alternative macroeconomic and fiscal forecasts. Thus, the SFC bill is not inconsistent with the Finance Committee’s 2015 recommendation that the SFC should carry out its own forecasts. Whether or not this should be stated in the SFC Act is optional. It is rare for an IFI to be obligated by legislation to prepare alternative fiscal forecasts (Table 1).

The SG’s devolved tax forecasts have been prepared for only a few years. As a result, it is too early to assess if there is statistical evidence that the SG’s forecasts are biased. This contrasts with the systematically biased macro-fiscal projections prepared in the UK Government prior to 2010, which led to the establishment of the OBR with a mandate to prepare the official UK forecasts (see Annex 2). There are very few other IFIs that prepare official fiscal forecasts. Largely for these reasons, this report does not recommend that the SFC should prepare the official macroeconomic and fiscal forecasts for Scotland.

Considering a widening of the SFC’s mandate

The SFC bill proposes that the mandate of the SFC in the future could be widened incrementally using Scottish Statutory Instruments proposed by the SG, over which the Scottish Parliament would have veto rights. An alternative approach would be to widen drastically the statutory SFC’s mandate now, to include assessments relating to the wider fiscal framework. In particular, the present SFC bill could require SFC assessments of: (1) Scotland’s fiscal stance and adherence to SG fiscal rules or medium-term fiscal targets; and (2) Scotland’s fiscal sustainability.

The report discusses this possibility in the context of the Finance Committee’s 2015 recommendation that there should be a legislative requirement for the SG to prepare a Charter for Fiscal Responsibility in Scotland. Pre-requisites for a wider SFC mandate include:

- Addressing the weaknesses in intergovernmental relations (IGR) between the UK and Scottish governments (and those in Wales and N. Ireland) that were identified in the Smith Commission (2014) report. Formal institutional arrangements are
needed to negotiate appropriate fiscal targets with the subnational governments in the UK. Scotland’s fiscal targets would need to be broadly consistent with the UK’s medium-term budget framework (MTBF) and fiscal targets until 2019/20.

- The need for the Scottish Government to prepare and publish a medium-term fiscal strategy that includes a quantified MTBF (Figure 5 shows the conceptual framework), preferably with a comprehensive analysis of fiscal risks in Scotland. Presently, the SG does not systematically provide such documents to the Scottish Parliament when it submits its annual draft budget.

- The need for the SG to resolve data quality issues (highlighted by Audit Scotland and in the SFC’s first report), which affect the base year for the SG’s fiscal forecasts.

- Formal adoption of fiscal rules by the SG. Presently, the SG has a golden rule – a balanced budget for current transactions, with a self-imposed constraint on borrowing for infrastructure projects. There is no (net) debt rule, although the Finance Committee in 2015 recommended the SG should agree on a debt rule with the UK Government consistent with the UK fiscal framework.

Until these constraints are overcome, the SFC’s assessment role is likely to remain limited. In present circumstances, the SFC cannot assess medium-term projections against fiscal targets or fiscal rules. In view of the groundwork needed to develop a coherent fiscal framework for Scotland, this report suggests that the Finance Committee could:

- Urge the SG to use its influence to help address institutional UK-wide weaknesses.

- Consider whether it is appropriate to add provisions to the present SFC bill relating to the wider fiscal framework, such as requiring the SG to provide a MTBF with its annual budget submission to the Scottish Parliament and/or to establish fiscal targets that are broadly consistent with the UK fiscal framework.

- Reiterate the FC’s previous recommendation that the SG adopts two fiscal rules: a “balanced budget” rule consistent with the agreed level of borrowing, and a limit on net debt, and require, in the SFC bill, the SFC to assess compliance with the SG’s fiscal rules.

- Note that the SG is not yet in a position to prepare its own fiscal sustainability analyses which, in the longer-term, the SFC could also assess.

- Consider the risks of delaying the adoption of the SFC Act, should a broader Scottish “Fiscal Responsibility Act” (SFC bill plus new fiscal framework provisions) be proposed during the current legislative session.

**Ensuring SFC independence prior to publication of its main assessment report**

The SFC bill requires the SFC’s main annual report – its assessment of the SG’s forecasts – to be submitted to the Scottish Parliament on the same day as the presentation of the SG’s budget to Parliament. There would be some advantages to eliminating the “same-day” SFC reporting requirement from the SFC bill, while requiring the SFC to report “as soon as practicable” after budget day.

The report takes a strong view on the need to eliminate from the SFC bill the requirement that the SFC submits a copy of its report to the Scottish Government prior to the report’s submission to the Scottish Parliament. Such an obligation could thwart SFC independence.
To reduce further the risk of SG interference in the SFC assessment work, the report identifies eight safeguards. These include: (1) drawing up a publicly available Memorandum of Understanding (MoU) that specifies the forecast-related information to be shared between the SFC and the SG on particular days before and after budget day; (2) avoiding too frequent SFC/SG contacts; (3) preparation by the SFC of its own independent fiscal forecasts, prior to sharing them with the SG; (4) nurturing strong relationships between the SFC and other institutions in Scotland or the UK that provide a view helpful for the SFC’s assessment activities, as well with the media.

The focus of attention should be on whether the SG’s forecasts are reasonable, not on any differences in the SG’s official forecasts and the SFC’s benchmark alternative forecasts. If the SFC’s independent forecasts are substantially different from those of the SG, the SFC would provide reasons why the SG’s forecasts are not reasonable. The SFC bill could require this.

Enhancing other specific aspects of the SFC’s operational independence

The SFC bill contains several useful provisions relating to the SFC’s independence. The bill could nonetheless be further strengthened to enhance the SFC’s operational independence. Three specific suggestions are:

- Consider amending the SFC bill’s sub-section 6 (1) to indicate that, in performing its functions, the SFC acts independently, not only of the Scottish Government, but also of the Scottish Parliament and any other public or private entity.
- Consider expanding section 4 to indicate that the SFC may, on its own initiative, publish any research and other papers related to its statutory functions.
- Eliminate section 26 (on “Ancillary Provisions”) that confers wide-ranging powers on Scottish Ministers to regulate the SFC.

Ensuring SFC access to needed information

The SFC bill provides considerable discretion to Scottish Ministers to decide what can “reasonably” be provided within “reasonable” time limits. The SFC Act should be unequivocal in this area. Although they do not need to be required by the SFC Act, MoUs should be drawn up with relevant Scottish and UK authorities. The MoUs would elaborate on the types of fiscal information needed, the delays in providing data, etc.

The SFC bill’s provisions for the SFC’s access to data could be enhanced by:

- Specifying sanctions on public bodies that do not provide the SFC with essential fiscal data and information in a timely manner (c.f., the extract from Portugal’s “fiscal council” law – see Annex 6).
- Ensuring, by legislation, that the SFC has direct access to Scotland-specific fiscal data and information that is held by UK bodies such as HM Treasury, the OBR, HMRC and DWP. This may require the SG to take initiatives at UK level.

Reducing Scottish Government influence in SFC governance

Another important aspect of SFC independence concerns how the SFC members are selected, appointed, reappointed, and removed. Relevant sections of the SFC bill assign a preponderant role to Scottish Ministers. This report makes specific suggestions for amending the SFC bill with a view to including provisions for:
• Forming a special panel (that could include the SFC chair) for selecting a short-list of candidates for new SFC members. One option is for the Finance Committee of the Scottish Parliament to select one candidate from the short list, prior to formal appointment by Scottish Ministers. Another is to reverse the order of the selection and appointment (SG selects, Parliament appoints).

• Limiting the maximum number of SFC members to five, two of which could be non-executive members.

• Specifying the term lengths and the number of term renewals for SFC members, in line with OECD Principle 2.3. Two renewable four-year terms may be appropriate, given Scotland’s 5-year parliamentary election cycle.

• Providing more details (see main text) for removing SFC members who are “otherwise unfit”. The SFC Act should remove the possibility of abuse by future SGs who may wish to remove, without adequate justification, outspoken SFC members.

• Involving explicitly the Finance Committee (not just the Scottish Parliament) should there ever be a proposal by Scottish Ministers to remove a SFC member.

Providing the SFC with adequate resources and annual budget

In the SG’s Financial Memorandum, the cost estimates for the SFC’s annual budget as from 2017/18-- £850,000 per year – are munificent. The provision of six SFC staff, in addition to five SFC members may be over-generous, given the SFC’s limited mandate. Some comparable fiscal councils (e.g., those in Ireland, Slovakia and Sweden), which have wider mandates, are functioning on more limited budgets (on a per person basis). A downward revision of the cost estimate may be appropriate.

The report makes several suggestions relative to enhancing the SFC bill’s provisions for the SFC’s budget, of which the most important are:

• Consider involving a special SFC remuneration panel (identical to the proposed appointment panel), instead of solely relying on Scottish Ministers, to determinate SFC members’ remuneration or fees for expenses for time spent on SFC business.

• Remove the need for the SFC to seek prior approval of Scottish Ministers for setting the level of SFC staff remuneration and employment. In this context, re-formulate sub-section 18 (3) so as to ensure that SFC staff remuneration would be guided by the conditions applicable to Scottish civil servants.

• Insert a section that indicates that the revenues of the SFC’s budget would be received from Scotland’s Consolidated Fund and that the SFC’s annual budget would be prepared by the SFC (within the constraints of law).

• Consider introducing a section in the SFC bill so as to ensure that the SFC’s annual budget increases from the agreed initial base level (lower than £850,000), using transparent rules for adjusting the SFC’s annual budget, e.g., by price indexation.

Although it does not need to be stated in the SFC Act, it is preferable that the position of the SFC chair be at least half time (see OECD Principle 2.4). Also, the SFC needs a Chief of Staff to begin expanding the SFC’s capabilities to assess the SG’s macroeconomic and fiscal forecasts.
Also outside the SFC bill, it would be useful for the Scottish Government and the SFC to reach a multi-year funding agreement and publish it as a formal document. Before finalization, the Finance Committee could review the funding agreement.

Finally, it would be useful for the SFC, as an independent body corporate, to receive a treatment in the annual Scottish budget and periodic Spending Reviews that is similar to that of other independent bodies, notably the Scottish Parliament and Audit Scotland.

**Ensuring accountability and oversight of the SFC**

The SFC has made a good start in respecting OECD principles relating to IFI transparency. The SFC should continue to publish all of its reports and major correspondence, and to seize available opportunities to make its messages known in the Scottish Parliament, the media and elsewhere. This will strengthen the SFC's credibility.

The SFC bill could be further strengthened in areas concerning the SFC's accountability to the Scottish Parliament. The following omissions could be included in the SFC Act:

- Require SFC appearances before the Finance Committee of the Scottish Parliament, especially for explaining the content of the SFC's key annual assessment report.
- Specify that the Auditor-General audits the SFC's annual accounts, with the audited accounts included in the SFC's annual report.
- Identify the SFC Chair as the SFC's Accountable Officer, who would be required to appear before the Public Audit Committee of the Scottish Parliament, as needed or requested, to defend the SFC's annual financial statements.

**Placing the SFC and the fiscal framework on a statutory footing**

This report prefers that the present SFC bill focuses on putting in place the best possible arrangements for the statutory SFC's operational independence, access to data, governance arrangements, and its accountability before the Scottish Parliament. Any widening of the SFC's mandate, to include broad fiscal framework issues, could take place in a future legislative session of the Scottish Parliament. The possible adoption of a Scottish Fiscal Responsibility Law could take place after institutional weaknesses in UK-Scotland intergovernmental relations have been addressed and there is greater clarity and certainty concerning the wider fiscal framework issues.
A. Introduction

Independent Fiscal Institutions (IFIs), which include fiscal councils and parliamentary budget offices (PBOs), are proliferating. There has been an upsurge in the number of IFIs in recent years, especially in European countries (Debrun et al., 2013; OECD, 2015a; Debrun and Kinda, 2014).

In Scotland, the idea of establishing a Fiscal Policy Commission was first floated by the Government’s Council of Economic Advisors (CEA) in December 2009 (see Recommendation 17 in CEA, 2009). To elaborate further on fiscal rules and the possibility of creating a SFC, the CEA formed a Working Group in 2012. The Working Group indicated that an independent Scottish Fiscal Commission should form a key part of the fiscal framework of an independent Scotland (CEA, 2013).

In May 2013, the Scottish Government (SG) announced proposals to establish an interim Scottish Fiscal Commission. In its Report on proposals for a Scottish Fiscal Commission (SFC), published in February 2014, the Scottish Parliament’s Finance Committee welcomed the creation of the SFC on an interim basis. In June 2014, the Scottish Parliament endorsed the Scottish Government’s nominations for the appointment of the non-statutory SFC’s first chair and two other members (Finance Committee, 2014b). The SFC’s first report was published in October 2014.

The interim’s SFC’s remit is limited to scrutinizing and assessing the SG’s forecasts of revenues from fully devolved taxes as well as the economic determinants underpinning the SG’s forecasts of non-domestic rate income. For its assessment activities, the interim SFC is free to decide its analytic methods, modelling and approaches.

Following the “no” vote in Scotland’s independence referendum in September 2014, there was a strong political consensus at the United Kingdom (UK) level that further devolution of fiscal powers and a strengthening of Scotland’s Parliament should take place. Relevant recommendations were published in the report of the Smith Commission (2014).

The proposed additional devolution includes new responsibilities over certain taxes, welfare spending and borrowing in Scotland. Regarding the SFC, the January 2015 UK Command Paper 8990 noted that it will be crucial that the remit and capacity of the SFC fully reflects expanded responsibilities. Given the increased importance of effective scrutiny as more responsibilities are transferred to the Scottish Parliament, independence, transparency and resources will be particular areas for further progress. It is the UK Government’s view that the Scottish Government should bring forward proposals fully consistent with the OECD principles [for IFIs] and to enhance the SFC as part of agreement to a new fiscal framework for Scotland.

In view of the need to strengthen Scottish Parliament oversight of fiscal developments in Scotland, which are currently determined by both the UK and Scottish Governments, in February 2015, the Finance Committee (FC) of Scotland’s Parliament launched an inquiry on the Smith Commission’s report and the UK Government proposals for an updated fiscal framework for Scotland. In June 2015, the FC published its recommendations pertaining to fiscal forecasting and fiscal institutions, notably fiscal rules for Scotland and the SFC.

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1 A Framework document between the SFC and the SG laid out the interim SFC’s remit. See Annex 5 and also paragraph 2.3 of Scottish Government (2015).
As part of its legislative agenda for 2015/16, the SG has been planning to put the SFC on a statutory basis. To this end, during March-June 2015, the SG conducted a consultation on the statutory SFC (summarized in SG Consultation Analysis, 2015). At end-September 2015, the SG submitted to the Scottish Parliament a revised draft SFC bill, along with three helpful explanatory documents.

The aim of this report is to provide further inputs – considerations of the revised SFC Bill. The report benefits from research on good international practices for IFIs and relevant country case studies. However, being a subnational IFI in a specific context – that of partial devolvement of fiscal powers (which are evolving) – Scotland’s statutory SFC will necessarily have some distinct features.

The report is laid out as follows. After the Introduction (section A), it reviews institutional models, mandates, size and forecasting activities of IFIs in various countries, including at subnational level (section B). Possible lessons for Scotland from four national-level IFIs are examined in Section C, with the detailed overviews of the IFIs in Belgium, Ireland, the United Kingdom, and the 50 States of the United States laid out in Annexes 1-4. The report also examines nine key characteristics of successful IFIs (section D). Partly drawing on the lessons from international experience – to the extent that it is relevant to Scotland’s specific constitutional and institutional arrangements – section E presents, for consideration, some options and recommendations pertaining to the statutory SFC.

Given that other commentators have already responded to the Finance Committee’s Consultation on Scotland’s fiscal framework, as well as on the SG’s Consultation on the SFC, a particular focus of the suggestions in this report is on:

- What could be amended, excluded from, or added to the draft SFC bill submitted to the Scottish Parliament in late September 2015.
- Practical considerations, options and recommendations concerning the statutory SFC’s mandate, role in forecasting, independence, access to information, governance arrangements, resources, transparency and accountability.

B. Governance, mandates, size and forecasting activities of IFIs

Institutional models of IFIs

The extent to which the government, the parliament or other bodies exert influence an IFI’s governance arrangements, including appointments of the head of the IFI, differs widely. Parliamentary Budget Offices (PBOs) assist parliament in its oversight and scrutiny functions, and work primarily for the parliamentary Budget Committee (or the equivalent). A few IFIs are government agencies with considerable independence: the Minister responsible for the IFI seldom, if ever, intervenes. Other IFIs are stand-alone independent bodies. Five IFIs are independent bodies under the external audit office or the central bank.

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2See www.scottish.parliament.uk/parliamentarybusiness/Bills/92309.aspx
Nine of the 34 member countries of OECD have not created an IFI; all are non-Euro zone countries (Figure 1). The reasons why several non-Euro zone countries have not created an IFI include: (1) no perceived need, because the country has adequate fiscal institutions (e.g., Poland, New Zealand). For Poland, the Government rejected the idea of establishing an independent fiscal council on the grounds that it would not bring any value added, given that Poland already has a strong independent control authority (NIK), which may, inter alia, monitor fiscal rules. In New Zealand, the Treasury has a reputation for being nonpartisan and independent; (2) there is already an “economic council” with a broad mandate for economic analysis, whose outputs also include fiscal analysis (e.g., Norway). Also, it is quite possible that some EU countries with low fiscal deficits and public debt, e.g., Estonia and Luxembourg, would not have established fiscal councils in 2014 had it not been for EU Regulation No 473/2013 that requires all euro-zone members to establish an IFI.

All IFIs, including those under the government, publish reports that are useful to parliament for its budget scrutiny activities, especially reports assessing the draft ex ante budget. For ex post budget scrutiny activities, the parliament is assisted by the IFI when it reviews how well the government has performed relative to its fiscal strategy and targets (including fiscal rules). By contrast, external audit offices assist parliament in its ex post detailed scrutiny of government budget programmes and financial management.

**Mandates of IFIs**

All IFIs have at least one of the following three main mandates:

- **Assessing and/or preparing macroeconomic and fiscal forecasts.** This can involve: (1) *assessing* (and, possibly, formally *endorsing*) macroeconomic and fiscal forecasts of the government. To do this, the IFI may *prepare alternative fiscal forecasts* to the official forecasts. Alternatively the IFI may *compare* the official forecast with those of another forecaster; or (2) *preparing the official projections* of the economy and fiscal outlook. Such forecasts can be one-year ahead or, more frequently, over a medium-term period (3-5 years). In many cases, the IFI is also charged with (3) *assessing long-term fiscal sustainability*. Most IFIs assess the official economic and fiscal forecasts prepared by the Government’s “ministry of finance” (MoF) (see Table 2, Debrun and Kinda). IFIs that prepare alternative forecasts include the US Congressional Budget Office (CBO), and Korea’s National Assembly Budget Office (NABO). The UK’s Office of Budget Responsibility (OBR), along with the Netherlands’ Central Planning Bureau are the only EU-recognized IFIs that have a mandate to *produce* the official economic and fiscal forecasts.8

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3 For a discussion of Poland, Germany and UK, see Kovás and Csuka (2012).
4 See footnote 28 of Szpringer (2015).
5 For a discussion on the merits of a fiscal council in New Zealand, see Ter-Minassian (2015).
6 Prior to EU Regulation 473/2013, Germany used to argue that it had adequate fiscal institutions, including the independent Council of Economic Advisors.
7 “Ministry of Finance” is used generically in this paper. In includes the “central budget office” (also used generically) that centralizes budget submissions and/or prepares the MTBF and the detailed annual budget estimates.
8 For Belgium, the EU-recognized IFI is the High Council of Finance. Another IFI – the Federal Planning Bureau – prepares the official forecasts. For details, see Annex 1 on Belgium.
Figure 1: Institutional Models for IFIs in 34 OECD countries

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Sources: Debrun and Kinda (2014), updated by the author using Box 8 of ECB (2014) and OECD data.9

9 In 2015, the situation was fluid, with some countries creating new councils, e.g., Iceland was adopting legislation that included the establishment of an IFI. Also, in a few countries, there are two IFIs. In Figure 1, judgment is exercised in categorizing the countries under only one heading.
• **Assessing the fiscal stance and fiscal outcomes**: monitoring and evaluating the ex ante fiscal stance (medium-term budget projections against fiscal targets or rule) and the ex post fiscal outcome. The IFI may also be charged with making recommendations for correcting fiscal policies -- changing revenue and expenditure policies to achieve the officially approved fiscal targets. The monitoring remit applies especially in EU countries where there are EU and national fiscal rules -- long-lasting constraints on the fiscal deficit and debt. Examples of IFIs with a strong "assessment" mandate include: the Irish Fiscal Advisory Council (IFAC) and Sweden’s Fiscal Policy Council; the latter, but not the former, is authorized to make fiscal policy proposals.

• **Costing of proposed fiscal policy measures** including those of alternative policies. This involves costing new expenditure policies and/or new tax and nontax measures. In some countries, costing is limited mainly to government proposals. In other countries (e.g., Australia) this function extends to the costing of political parties' election manifestos. Since detailed costing work requires considerable resources, less than half of the IFIs in the world undertake this work. The two largest IFIs (CBO, United States and NABO, Korea) employ about 250 and 125 staff respectively, many of whom work on policy analysis and costings.

The weight given to the above three main mandates -- and variants within them -- varies considerably between countries (see Table 2 of Debrun and Kinda, 2014). The tasks associated with the first two bullet points above are arguably the key roles of any IFI (Calmfors, 2011), with "costing" an optional (and costly) extra. In EU countries, the recent upsurge of new IFIs is partly in response to the EU’s emphasis on the second bullet point.

Some IFIs are also charged with **specialized regular tasks** such as quantifying the potential budgetary cost of all new draft laws. Others may conduct **one-off studies on specific issues**, e.g., improvement in the operation of fiscal rules. Finally, although it may not necessarily be specified in the law creating the IFI, most IFIs have **strong relationships with the media**. This is an implicit mandate.

**Size of IFIs**

Given the differing mandates and the intensity of staff needed for the "forecasting", "assessment" and "costing" functions, the size of large and medium-small IFIs varies considerably. Given its very limited mandate, it is not surprising that Scotland’s non-statutory Fiscal Commission is the smallest IFI in the world (Figure 2).

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10 In countries with "fiscal deficit" rules, the deficit may cover “general government” -- all levels of government including extrabudgetary funds of central/subnational governments (e.g., EU countries) or only central/federal government (e.g., Canada, United States). The deficit may apply to the cyclically adjusted deficit (e.g., EU countries) or to the unadjusted (or “headline”) fiscal balance. "Debt" can be defined as gross debt (Euro-zone countries) or net debt (UK). Again, coverage of debt varies from "central government" to the "public sector". Some countries also have "total expenditure" fiscal rules, which may include or exclude certain "obligatory" expenditures.

11 Nine "large" IFIs -- arbitrarily set at more than 25 staff -- have been excluded from Figure 2. The countries are: Australia (38 staff); Belgium (133 staff in two IFIs); Denmark (55); Korea (126); Mexico (38); Netherlands (120); Slovenia (75 staff in two IFIs); Spain (35 staff); and USA (251). See Table 4 of Debrun and Kinda (2014) and OECD (2015a).
Figure 2. Small-medium sized IFIs, 2015

Selected Countries, number of IFI members and staff

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<thead>
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Sources: Table 4 of Debrun and Kinda (2014), which is based on a survey of IFIs in 2013. Since then, the number of leadership and staff of several countries’ IFIs has increased. The author, thanks to OECD and country IFI websites, has updated data for most countries. The IFIs of Estonia, Germany and Luxembourg (created in 2013 or 2014) have been added.

For fiscal transparency, two good principles for forecasting are (see IMF, 2014, paragraphs 2.1.2 and 2.1.3):

12 The chart shows the headcount of IFI “managers” and staff. Ideally, the data should be adjusted to show the numbers on a full-time equivalent basis (or hours actually worked for the IFI).
Medium-term budget framework (MTBF): Budget documentation should include outturns and projections of revenues, expenditures, and financing over the medium term, on the same basis as the annual budget.

Macroeconomic forecasts: The budget projections are based on comprehensive macroeconomic forecasts, which are disclosed and explained.

Based on the first principle, it is now a standard practice for 120 governments around the world to present a MTBF to Parliament at the same time as the draft annual budget of revenues and expenditures (World Bank, 2013). The MTBF typically shows major categories of revenue and expenditures. Total revenues include various categories of direct and indirect taxes (e.g., personal and company income tax, VAT, excise taxes) as well as the main nontax revenues. Expenditures may be presented as “budget programmes” (or outputs or outcomes), or by specific sector or spending areas. Often countries’ budgets and MTBFs distinguish various categories of current and capital spending.

Whatever the categorization of the forecasts of revenues and expenditures, the IFI typically focuses on assessing the macroeconomic and fiscal projections of total revenues, total expenditures and the overall fiscal balance, especially relative to fiscal targets that the Government may have established. Figures 3 and 4 illustrate the key variables of a MTBF - those on which IFIs focus on. Fiscal balance projections feed into projected increases or decreases in net debt, another key variable of “macro” focus for IFIs.

To underpin the fiscal projections (especially for revenues), there is a need to prepare macroeconomic projections. Considerable resources and tools are needed for macroeconomic modelling work. All sectors of the economy are included: notably the production sector (private and public), price developments, the financial sector, the fiscal sector, and the external sector (imports, exports, capital flows, etc.). Economists develop macroeconomic models to ensure the consistency of projections across the sectors of the economy. They use models to simulate policy or other “shocks” to the economy. Variables or assumptions about real GDP growth (and its components), inflation, interest rates, exchange rates, oil prices, etc. are major “drivers” in multi-sector macroeconomic models. There is often a “fiscal block” within the overall macroeconomic model, which enables forecasters to develop baseline macro-fiscal projections. “Sub-models” for specific taxes, other revenues, or specific expenditures (e.g., welfare spending) may be developed.
The “Ministry of Finance” (MoF) usually prepares the official macro-fiscal projections. Table 1 (2nd column) shows that only the IFIs of Belgium, the Netherlands and the UK prepare the official macroeconomic and fiscal forecasts that serve as the main input for the MoF’s budget forecasts. In some countries, other publicly funded agencies, including IFIs, prepare alternative fiscal forecasts. Parliamentary budget offices, notably those of Korea and USA, are the only IFIs that are mandated by law to prepare alternative forecasts (Table 1, 4th column). Some “stand-alone” fiscal councils have arrangements with non-MoF agencies for preparing alternative macroeconomic and fiscal forecasts to help in its forecast assessment functions. Three examples are: (1) Ireland – the Irish Fiscal Advisory Council (prior to 2013); (2) Slovenia – the Institute of Macroeconomic Analysis and Development; and (3) Sweden – the National Institute of Economic Research.

To perform their forecast assessment functions, some IFIs have found that they need tools for preparing their own benchmark forecasts. Others, with limited resources may compare the official forecast with those of another forecaster. Macroeconomic and fiscal models can be sophisticated and detailed, or simple and aggregated. In either case, the forecasting of macroeconomic and fiscal variables is not a simple mechanical exercise. In some countries, macroeconomic forecasts are prepared by various agencies (government or non-government). Detailed fiscal forecasts are prepared mainly by the MoF, especially the projections on the expenditure side (revenue forecasts are often driven by economic parameters, whereas spending forecasts are more likely to be determined by: (1) policy choices, e.g., setting nominal expenditure ceilings; choosing to index certain spending items to inflation; or (2) demographic variables, notably social transfers. In all cases, careful analysis of forecasts derived from the preferred model (or multiple models) is needed. Fiscal and other forecasts are typically adjusted judgmentally for various reasons.

The official macro-fiscal forecaster may prepare biased or unbiased forecasts. Some studies for European countries indicate that, for fiscal forecasts, official projections – especially for economic growth and government revenues -- were biased optimistically, i.e., with more than a 50% chance of being too high. To counter systematic and politically motivated forecasting biases, Jonung and Larch (2006) postulated that forecasts prepared by an IFI would be superior to in-house MoF forecasts. More recently, the EU has taken a strong view on the need to create an IFI. EU Regulation No 473/2013 requires euro-zone members to have its national medium-term fiscal plans and draft budgets based on independent macroeconomic forecasts, which means that macroeconomic forecasts must be produced or endorsed by an IFI. For a progress report on implementation, see ECB (2014).

In the UK, the reason for creating the OBR with its unique mandate was because the official UK forecasts for GDP and revenues in the decade prior to 2010 were biased upwards (see Annex 3 for details). Other countries have dealt with the “forecast bias” problem by creating a fiscal council with a strong “forecast assessment” function, rather than transferring the official forecasting unit out of the MoF and into an independent body. In a few cases,

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13 The MoF may prepare projections in-house or it may rely on other official agencies such as a planning ministry or, in some countries, the Central Bank, if the latter has modeling expertise.
14 This is the case in a number of newly established IFIs in Europe. For example, the Latvian Fiscal Discipline Council compares the MoF’s forecasts with those of EC, IMF and Bank of Latvia.
15 For an overview of fiscal forecasting experience in Europe see, for example, Leal et al (2007).
16 Hughes Hallet (2003) had earlier proposed creating a Sustainability Council (an independent panel of experts) for enforcing fiscal rule compliance in the euro area.
including Slovenia and Sweden, the Fiscal Council does not have enough resources to produce the forecasts in-house, so it “contracts” a non-MoF government forecasting body to prepare the alternative forecasts.

**Table 1. Forecasting Mandates and Practices of IFIs**

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<th>Assess the official fiscal forecasts?</th>
<th>Prepare the official fiscal forecasts?</th>
<th>Prepare alternative fiscal forecasts?</th>
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Sources: OECD (2015a) with updates by the author.

Notes: the situation is fluid, especially for recently established IFIs. For column 1, a Yes response is given for countries that assess official forecasts in the context of assessing the fiscal stance relative to fiscal rules. For column 3, a No response does not necessarily mean that an IFI has never prepared alternative forecasts, unpublished or published.
In Belgium and the Netherlands, well-staffed long-established bodies produce the official macroeconomic and fiscal forecasts. These bodies were created with a wide mandate to prepare multi-sector economic plans and analyses, of which fiscal forecasting is one component. It would be inconceivable to envisage such a role for the SFC, given the large staffing requirements involved. Moreover, both Belgium and the Netherlands have established a second independent body for assessing conformity with EU fiscal rules. Belgium’s High Council of Finance makes recommendations for fiscal policy targets at national and regional levels (see Annex 1 for details). In the Netherlands, since 2014, the Council of State has been designated as the independent budgetary authority that considers whether annual draft budgets meet EU fiscal rules (European Parliament, 2015). In summary, for two of the countries where an IFI prepares the official macroeconomic and fiscal forecasts, a second IFI has been established with assessment functions.

Canada had a period when it systematically produced pessimistic macro-fiscal forecasts. Following its debt crisis of the early 1990s, Canada’s official forecasts for economic growth and budget revenues were biased downwards. The rationale was that it is preferable to have pleasant surprises (actual revenues being higher than forecast) than unpleasant surprises (revenues lower than forecast, with pressure to cut expenditure in the following year’s budget). Canada wished to avoid another debt crisis and to begin running fiscal surpluses. Since actual federal revenues were higher than those projected, Canada was able to exit its high indebtedness more quickly than it would have if its projections had been unbiased or, worse, too optimistic, as in several European countries. Interestingly, during the decade to 2005, Canada did not need an IFI to complement its other fiscal institutions.

Irrespective of whether fiscal forecasts are biased, it is a good practice to prepare sensitivity analyses of how the macro-fiscal projections would change if some underlying assumptions (e.g., GDP growth, inflation, interest rates, exogenous variables such as export demand or world oil prices, the interpretation of “unchanged” government spending policies, etc.) were to change. Such analysis is important for fiscal risk analysis, which is also a good practice for all governments (IMF, 2014) and to which an IFI may also contribute. For example, IFAC (2015) identified nine separate risks in the fiscal outlook for Ireland. This allowed Ireland’s IFI to make a statement concerning the balance of risks – positive and negative – in the official fiscal projections.

**IFIs at subnational level**

Few countries have established IFIs at subnational level. The USA is a major exception, where each of the 50 States has some form of a Legislative Budget Office (LBO). In Europe, IFIs have been established primarily at the national level only. This is especially in response to EU directives to have an IFI that monitors compliance with EU and national fiscal rules.

There are only a few non-USA countries where subnational IFIs have been, or are being, created, e.g., in Ontario, Canada; in Catalonia, Spain. Scotland’s SFC is one of the first IFIs in Europe to be established at subnational level.

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17 Canada’s “MoF” took the consensus forecasts for GDP and interest rates and, using a macro-fiscal model, adjusted these downwards and upwards respectively, to prepare a pessimistic scenario, including for the revenue projections of the federal budget. For details, see Bayoumi et al (2007).

18 Ontario’s first Financial Accountability Officer was appointed in February 2015 (see www.fao-on.org/en/). The provincial IFI is modeled on Canada’s PBO at federal level.
C. Possible lessons for Scotland from four IFI case studies

This section draws out possible lessons for Scotland from the IFIs that operate in Belgium, Ireland, the United Kingdom and the 50 States of the United States (Annexes 1 to 4 provide details). The four case studies were chosen because:

- **Belgium** is a country with three regions, each with distinct identities and considerable fiscal autonomy. Each region must contribute to the achievement of nation-wide fiscal objectives, particularly with regard to EU “general government” fiscal rules. Belgium’s two IFIs are unique: one IFI makes official forecasts and the other IFI makes recommendations on fiscal stance, including for each region.

- **Ireland** is an independent country influenced by the Westminster system. The Irish Fiscal Advisory Council (IFAC) is a recent institution. While IFAC does not prepare the official forecasts, it has developed its own forecasting tools to assist in fulfilling its mandate, which includes endorsing the official macroeconomic forecasts.

- **United Kingdom’s OBR** is also a recent creation with a distinct role of preparing the official fiscal forecasts for the United Kingdom. The OBR also has a role in forecasting Scotland’s devolved taxes over a five-year period.

- **50 States of the United States.** Independent LBOs at State level are amongst the oldest in the world. Their longevity may be instructive. The USA is the only country with widespread use of IFIs at subnational level.

**Belgium: High Council of Finance (HCF) and Federal Planning Bureau (FPB)**

**Differences between the IFIs in Belgium and Scotland**

The “policy target setting” and “independent forecasting” functions are performed by two quite different IFIs in Belgium. The closest parallels with the UK are:

- Belgium’s HCF = UK Treasury Ministers + representatives of Scottish ministers, Welsh ministers, N. Ireland ministers (c.f., Germany’s Stability Council). The HCF is a body of central and regional persons charged with setting the key parameters for national and regional fiscal policy targets. A comparable body does not exist in the UK. The Finance Ministers’ Quadrilateral is the closest parallel, but this body is less formal. Weak institutional arrangements for coordination between the UK and devolved administrations were repeatedly raised as a problem during the Smith Commission (2014). Whereas both the HCF in Belgium and the Treasury in the UK have a principal or federal “minister of finance” as the political head of their respective bodies, the HCF is serviced by a small secretariat, while UK Treasury ministers are serviced by the powerful HM Treasury.

- Belgium’s FPB is the equivalent of the OBR plus other government-funded bodies that prepare economic analysis and forecasts. The FPB has a much wider mandate than the OBR, as it conducts social, labour market, age-related, energy and environmental analyses, as well as economic and fiscal analyses.
Possible lessons for Scotland

Despite these large differences, possible lessons for Scotland and the SFC include:

- When there is political and linguistic fragmentation, a Joint Ministerial Committee, made up of Ministers from both central and regional governments, can be established for the setting national and regional fiscal targets, based on the recommendations of an advisory committee that is mandated to reach a consensus on medium-term fiscal objectives at central and devolved levels, consistent with fiscal rules for the nation as whole.

- In such a setting -- where the Council makes recommendations for fiscal targets at nation-wide and regional levels -- it is helpful to have an independent forecasting institution like the FPB. Unlike HM Treasury, the FPB publishes baseline projections not only at national level, but also for each of Belgium’s three regions. However, Belgium's federal forecasting institution (the FPB) needs inputs from regional forecasting institutes. In Scotland (and other devolved UK regions) strong forecasting capacity is lacking.

- The FPB publishes economic and fiscal projections for 5 years ahead, with some details provided for national and regional fiscal projections, so as to highlight the evolution of revenues, expenditure, the primary balance and the overall fiscal balance of the Flemish, Walloon and Brussels regions. This illustrates what could be possible in the UK: separate economic and fiscal projections for England, Northern Ireland, Scotland, Wales, consistent with the OBR’s economic and fiscal projections for the UK. Robust national and regional databases and skilled nonpartisan personnel are needed for such projections.

- It is possible to have an agency under a government ministry that produces credible economic and fiscal forecasts. It is helpful that Belgium’s FPB is administratively under a ministry other than the Finance and Budget ministries.

The Irish Fiscal Advisory Council (IFAC)

Differences between the IFIs of Ireland and Scotland

There are a number of contextual differences between the IFIs of Ireland and Scotland. These are mainly linked to Ireland being an independent country and an EU member State. In particular, the IFAC was assigned tasks stemming from the EU’s new fiscal governance system, including those laid out in the “fiscal compact” (for details, see chapter 5 of Jonung et al., 2015). The IFAC is both an integral part of the EU system of fiscal surveillance and a domestic fiscal watchdog, whereas the SFC will only be the latter. The mandates of the IFAC and the SFC therefore differ substantially.

Possible lessons for Scotland

The IFAC nonetheless provides a useful model for Scotland to study with respect to:

- Beginning as an interim body and being placed on a permanent basis as an
Having a clear mandate laid out in law, as well as clear administrative arrangements concerning the size of the Council, recruitment, dismissal, etc. of members and staff. Although details are likely to differ between Ireland and Scotland, several provisions in the Schedule to Ireland’s Fiscal Responsibility Act provide a good model for Scotland to adapt in the legislation that places the SFC on a permanent basis.19

Recognizing that forecasting is a labour intensive activity and, even with five staff, several with previous experience in short-term forecasting, it is challenging to develop and maintain in-house forecasting models, especially those used for the five-year macroeconomic and fiscal projections.

Having statutory budget funding for the IFAC that cannot be changed by the government of the day. This shelters the IFAC from government-inspired budget cuts motivated by political reasons to “clip the wings” and independence of the IFAC.

United Kingdom: Office for Budget Responsibility (OBR)

Differences between the IFIs of the UK and Scotland

The OBR’s mandate was deliberately focussed on the medium and long-term sustainability of the public finances of the UK (Conservative Party, 2010). The OBR is unique amongst IFIs in that it produces the official medium-term fiscal forecasts, while it is not authorized to suggest or to cost alternative fiscal policy proposals that could help the UK Government get its fiscal strategy back on track should there be slippages in attaining medium-term fiscal targets.

In many respects, the OBR and the SFC are not comparable. The OBR (for multi-year projections) and the Scottish Government (for annual budget projections) are currently co-responsible for the preparation of official projections for devolved taxes in Scotland. Currently the Scottish Government does not present a MTBF with its annual budget submission to the Scottish Parliament. This is mainly because the UK determines total Scottish revenues and the overall budget balance. In view of the non-comparability of the main mandates of the OBR and the SFC, it is not possible to use the OBR to draw lessons for the SFC’s mandate.

Possible lessons for Scotland

The Budget Responsibility and National Audit Act 2011 is a useful model in the following additional areas:

- The BR&NA Act 2011 specifies the duty of the OBR to perform its tasks objectively, transparently and impartially.

19 One exception is the relatively weak legal provisions for “access to government data”.
The OBR is held accountable to parliament for its outputs and the management of its annual budget and annual accounts. Several elements of the OBR’s governance arrangements were used to help prepare the SFC bill (e.g., providing a parliamentary committee with veto rights over the SG’s appointment of the SFC members; remunerating SFC members and staff with comparability with the Scottish civil service; preparing an annual SFC report; and conducting an external review of the SFC after 5 years). Two other aspects to consider are:

- Establishing executive and non-executive members to govern the SFC;
- Having SFC annual accounts audited by the Auditor General, with the audited accounts being transmitted to the Scottish Parliament.

The OBR’s Memoranda of Understandings (MoUs) could help guide the SFC’s drawing up of MoUs with the SFC’s key counterparts, notably Scottish Ministers (as represented by the SFC’s main counterparts at working level: the Directorate General Finance, and Revenue Scotland), other Scottish fiscal bodies, the OBR, HM Treasury, HMRC and DWP. The MoUs would include the content and timing of provision to (and from) the SFC of budget-related information.

Legislative Budget Offices (LBOs) in the 50 States of the United States

Differences between the IFIs of the 50 States and Scotland

U.S. States’ “governments” and “parliaments” are quite different from those in Scotland. First, each State is completely autonomous from the federal authorities for its fiscal management. A fiscal rule or strategy adopted at federal level (comparable to “London”) generally has no bearing on the 50 States’ fiscal frameworks. Second, nearly every State has its own fiscal rules, independent of those at federal level. Third, U.S. States’ budgetary time horizon is focussed particularly on the short term: that of the annual or biennial budgets. Only a few State legislatures get involved with medium-term fiscal projections. State-level fiscal sustainability issues are generally not examined by State legislatures or the LBOs under them (even though some States have considerable debt, despite balanced budget rules). Fourth, LBOs serve the legislature exclusively, not the government. Their mandates and annual work programs primarily serve the needs of the budget committee(s) of the two houses.

Possible lessons for Scotland

Some features of LBOs in US States could be useful for the SFC:

- **The mandate of the LBO.** Some of the laws that establish the LBO clearly specify -- and in sufficient detail -- the office’s mandate, notably in the States where the LBO is a stand-alone entity. See, for example, the mandatory and discretionary tasks of Pennsylvania’s Independent Fiscal Office in Act 120 of 2010.

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20 Exceptions occur if the federal government were to cut earmarked transfers to States, or if the federal authorities were to transfer spending responsibilities to States without providing the finance (these are called “unfunded mandates”).
• **Laws spell out provisions for the LBO’s access to information.** In practice, there is good collaboration between the LBO and the Executive’s agencies, particularly the Governor’s Budget and Planning Offices and Treasury Departments.

• **Appointment of the LBO Director.** The procedure for the appointment of the LBO’s director is quite often specified in law. The legislature’s Committee that approves the Director of the LBO is composed of a balanced representation of political leaders from both sides. The principal of multi-party representation for the body deciding the appointment could be applied in Scotland.

• **Nonpartisan staff.** The laws establishing the LBO typically specify that the LBO staff are nonpartisan, without providing details. The LBO Director has considerable autonomy to manage his/her staff. For example, internal procedures are developed by the LBO Director to ensure that candidates for filling staff positions are not only apolitical (not active members of political parties) but also are not involved in advocacy (lobbying).

• **Revenue forecasting.** In nearly all of the 50 States, the government takes the lead in preparing budget revenue forecasts (although in three States, revenue projections are “outsourced”). Some States have adopted “consensus forecasting” of revenues, in which the Executive, the Legislature, and possibly outside bodies, agree on budget revenue forecasts.

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### D. Key Characteristics of Successful Independent Fiscal Institutions (IFIs)

Some IFIs were established 30 or more years ago. From these IFIs – and some of the more recently established ones – lessons can be drawn from their positive and negative experiences. After examining the experiences of 19 IFI case studies, in February 2014, the OECD Council endorsed 22 principles for IFIs (see OECD, 2015a). Based particularly on these principles, the following section identifies nine key success factors for establishing, operating and durably maintaining an IFI.

**Success factor #1: Broad political consensus and credibility**

An IFI needs wide support across political parties at the time of its establishment. For its part, the IFI needs to consistently deliver the outputs requested by the political consensus and maintain its independence from politics. In so doing, its credibility is enhanced.

In the absence of ongoing political consensus or of political competition (e.g., one-party states), the IFI may be destined to have only a short life (see case of Hungary, Kopits, 2011).

**Success factor #2: Clear mandate**

The IFI’s obligatory or core mandate(s), as well as the IFI’s optional tasks, should be clearly stated in a primary law.
There are no international standards for country-specific mandates. However, an IFI typically undertakes at least some of the assessment functions discussed in section B above.

While it is useful to study the mandates of other countries’ IFIs (as is done in this paper), the mandate of the “local” IFI needs to respond to domestic needs, and fit into its specific constitutional, institutional and political environment.

Once the mandate and tasks are decided, the IFI’s obligatory reporting requirements should be specified, preferably in the primary law establishing the IFI.

Success factor #3: IFI independence

Independence and non-partisanship are crucial. There are several aspects:

- **Political independence.** The IFI serves the interests of all major political parties represented in parliament and government, without discrimination.

- **Independent leadership.** The leadership of the IFI should be selected on the basis of objectivity, technical competence, and non-engagement in politics. To ensure apolitical leadership, the government alone should not propose candidates; cross-party consensus for appointments can be achieved by seeking the approval of the parliamentary “budget committee” (or equivalent) or by involving an independent panel (with Audit Office and/or Central Bank involvement, for example). Essential qualifications for IFI leadership are proven experience, competence in economics and public finance, and familiarity with budget processes.

- **Managerial independence.** The leadership of the IFI recruits and dismisses staff, and sets staff remuneration, which is similar to parliamentary and/or government service remuneration and also consistent with local labour laws.

- **Operational independence.** The leadership of the IFI is free to formulate the IFI’s annual work program, consistent with its mandate. The IFI has both the right and the obligation to report on its analysis, without political interference.

- **Financial independence.** The IFI proposes its own budget, consistent with its mandate. Disputes over the proposed budget are resolved by discussions with both parliament and the government. For budget size, see success factor #6 below.

- “**Policy independence**”. If the IFI has a mandate to make fiscal policy recommendations (usually not the case), this mandate should be fulfilled without political interference.

Success factor #4: Access to information

- **Access to information.** The IFI needs to have ready access to all government and other official documents needed to carry out its functions. Any restrictions (e.g., for national security and confidentiality of individual taxpayers) should be defined in legislation.

Success factor #5: Transparent governance arrangements

The IFI’s governance structure should be clearly laid out in a primary law.
The leadership can be collegial (a "council") or a single chairperson. For the latter, a non-executive oversight board and/or panel of independent experts to advise on the IFI annual work programme, can be helpful. Strict conflict-of-interest standards should apply, especially when IFI members hold positions elsewhere.

The chairperson of the IFI should preferably be a full-time position, with remuneration consistent with comparable positions elsewhere. Term contracts for the IFI leadership team should be delinked from electoral cycles.

The grounds for dismissing the leadership of the IFI should be laid out in law. Parliament should be involved should there ever be a dismissal.

**Success factor #6: Adequate resources, guaranteed from the budget**

The IFI’s resources should be commensurate with its mandate and tasks. The manner in which the IFI's budget (spending on IFI members, staff and operations) is determined should be similar to that of other independent bodies such as the national audit office.

The following dispositions reduce the risk of cuts in IFI funding for political reasons:

- An IFI-specific budget line is provided in the Annual Appropriations Act.
- The IFI’s annual budget is determined by a statutory (or “permanent”) appropriations procedure, e.g., the annual budget, including updates for inflation and expansion of mandate, is “rolled over” from an appropriate base-year budget.
- Multi-annual budgetary commitments are approved by the political authorities and made available publicly.

**Success factor #7: Transparency and relationship with the media**

All IFI reports and analysis, including clear statements of methodology and assumptions, should be published in the IFI’s own name. Publications should be available free; the IFI’s website is an ideal tool for disseminating IFI publications.

The IFI should seize opportunities to communicate with the media and other stakeholders. Frequent media coverage enhances the visibility of the IFI’s outputs and is a channel for the IFI to communicate its essential messages.

**Success factor #8: Accountability and oversight**

The IFI’s key analytical outputs should be linked with the annual budget cycle and presented to parliament in a timely manner, to facilitate parliamentary scrutiny and debate on the Government's draft annual budgets and budget updates.

Parliament (especially the budget committee) should be empowered to:
• Require the IFI leadership and senior staff to make appearances and answer questions relating to IFI analysis and reports.

• Scrutinize the IFI’s draft annual budget and the IFI’s annual report, including the IFI annual budget outcomes and audited financial statements.

An external evaluation of the IFI’s work and effectiveness, by a panel of independent experts, should be conducted periodically.

**Success factor #9: Legal framework**

The IFI’s primary law may be one component of a more comprehensive fiscal responsibility law. This is because, in many countries, the IFI’s mandate is intimately linked to the fiscal framework, including medium-term budget frameworks (MTBFs) and/or fiscal rules.

The key features of the IFI – especially its mandate and governance arrangements – should be laid out in a primary law. The Government, by itself, should not make fundamental changes in the IFI’s mandate and governance arrangement, e.g., by adopting a secondary law or regulation. Parliament should endorse such changes by amending the IFI law.

The drawing up of Memoranda of Understandings between the IFI and MoF and other central government offices are useful complements to primary law, especially for elaborating on the access and timing of economic and fiscal information to be supplied to (or received from) the IFI.

**E. Scottish Fiscal Commission: Options and recommendations**

A critical stage in the SFC’s development has been reached. After initiating the creation of the SFC in 2014, the SG held a Consultation with the public on the SFC, with a view to putting the SFC on a statutory basis. In late September 2015, the results of the SG’s Consultation were published and a SFC bill was submitted to Parliament, along with Explanatory Notes, a Financial Memorandum, a Policy Memorandum, and a Delegated Powers Memorandum. The SFC bill incorporated a number of useful recommendations made during the Consultation, including some to strengthen the SFC’s independence and accountability (e.g., removal of the SG’s power to require the SFC to report to it; inserting requirements for an annual SFC report and a periodic external review of the SFC).

The SG considered the Finance Committee’s (FC’s) recommendations on Scotland’s Fiscal Framework, published in late June 2015. Some of the recommendations were taken on board in the SFC bill. Others were not taken on board. In particular, the FC had recommended that there should be a legislative requirement for the SG to prepare a Scottish Charter for Budget Responsibility. It also recommended establishing two fiscal rules – on the budget balance and on net debt respectively.

There is presently a tension between the FC’s recommendations pertaining to Scotland’s fiscal framework and the SFC bill. In particular, in the SFC bill, the Scottish Government proposes a limited-scope SFC, without reference to the wider fiscal framework.
This section examines eleven specific issues relating to the statutory SFC. These are partly based on OECD’s 22 principles for IFIs. Some suggestions for amending the SFC bill are made, including for further strengthening the independence of the statutory SFC.

1. Obtaining political consensus

In 2013, the Scottish Government took the initiative to create the SFC on an interim basis. The appointments of the chair and members of the interim SFC were transparent, in part because the FC of the Scottish Parliament was involved. During the FC hearings of the SG’s proposed candidates for the interim SFC’s members, three members of the FC voiced their concerns that there may be a conflict of interest for two members of the SFC who, at the time, were also members of the SG’s Council of Economic Advisors (CEA).\(^{21}\) This incident should not obscure the fact that there was widespread political party acceptance that the SFC’s creation is considered an important development for Scotland.

During 2015, the Scottish Government has actively sought public participation and views on the SFC that is planned to be placed on a statutory basis during the current parliamentary session. The SG’s Consultation during March–June 2015 was a concerted effort to ensure that the views of any political party, institution, association, NGO or private individual could be heard. Although the Consultation revealed differences of opinion, especially concerning the mandate of the statutory SFC, there nonetheless was a consensus that the SFC will be a new institutional arrangement for its evolving fiscal framework.

**Recommendation 1 – Obtaining political consensus**

A. The Finance Committee should continue to play its key role in examining major issues pertaining to the SFC. Opposition and Government Members of Parliament should continue to voice their views on SFC-related issues, with a view to obtaining a consensus whenever possible.

2. Clarifying the SFC’s mandate as specified in the SFC bill

In 2009, the SG’s Council of Economic Advisors proposed a wide mandate, notably a SFC that could review the fiscal outlook for Scotland, examining the revenues likely to be available to the Scottish Government from the UK Government, any other revenue sources, and the future expenditure implications of current policies, including such items as PFI commitments, changing demography, and pension costs (CEA, 2009, paragraph 7.32).

The interim SFC established in 2014 has a very limited mandate compared with that proposed by the CEA in 2009, when the primary focus was a SFC with a focus on assessing the macro-fiscal outlook. In the SFC bill, the SG has adopted the principle that the statutory SFC’s functions should evolve in line with the fiscal powers devolved to the Scottish Parliament via UK legislation, notably various Scotland Acts (SG Explanatory Notes (2015), paragraphs 4, 12).

Although the mandate of the proposed statutory SFC is slightly wider than that of the interim SFC, it falls short of that proposed above by the CEA in 2009. The mandate proposed

\(^{21}\) As from March 2015, the two SFC members were no longer members of the CEA.
in the SFC bill is quite limited compared with the CEA Fiscal Commission Working Group’s 2013 recommendation that “the SFC’s priority should be on assessing the sustainability of net borrowing and the stock of public debt” (CEA, 2013, page 9).

Importantly, the SFC bill satisfies OECD Principles 3.1 – 3.3, summarized in Success Factor #2 in section D above. In particular:

- Policy Memorandum (2015) identifies the SFC’s core mandate.
- The SFC bill identifies the obligatory mandates of the SFC.
- These tasks are clearly linked to the annual budget cycle.
- The SFC bill identifies the SFC’s optional tasks.
- The SFC bill clearly identifies prohibitions on the SFC activities.

These five issues are discussed in turn.

**The SFC’s core mandate**

The SFC bill does not explicitly identify the SFC’s core mandate. In contrast, the SG’s Policy Memorandum (2015), paragraph 33, identifies “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 is a relatively clear statement of the SG’s vision of the SFC’s core functions. This remit is much narrower than that of many national IFIs (especially in EU countries). Typically, an IFI’s “assessment” remit often relates both to the forecasts and to the fiscal forecasts trajectories against national fiscal rules or fiscal targets.

Under its proposed core mandate, the SFC could conduct independent scrutiny of all fiscal projections prepared by Scottish Ministers. In this context, it is useful to distinguish forecasts that are prepared by the SG and those determined by the SG. The latter are mainly forecasts of devolved taxes and budget spending portfolios. The former include all forecasts, including those made by the UK authorities, notably the block grant from the UK budget. It would be useful for the SFC to assess both types of forecasts, which include: (1) all revenues of the Scottish budget, inclusive of the transfers from the UK budget under the block grant and the assumptions underlying them; (2) all borrowing by the SG; and (3) all expenditure projections, at the aggregate level and at the level of spending for each portfolio.

Sub-sections 2 (3) and 2 (4) of the SFC bill allow the SFC to prepare reports, should it decide to, on “other fiscal factors”, which are defined as “any forecast, assumption or projection which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000”.

Also, since sections 1 to 2 of the SFC bill refer to spending approval by the Scottish Parliament, it would be logical to begin section 2 of the SFC bill with a clear statement of the core purpose of the SFC along the following lines:

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22 The three OECD principles are shown in full on page 9 of SG Policy Memorandum (2015).
The core function of the Scottish Fiscal Commission is to provide an independent assessment of the realism of the macroeconomic and fiscal (revenue, expenditure and borrowing) forecasts prepared by the Scottish Ministers in the context of submission of the annual budget to the Scottish Parliament.

The above formulation of the SFC’s core mandate would allow the SFC to assess the SG’s estimates of the amount for the annual block grant for spending in Scotland and the assumptions underlying it. This would require the SG to document, in each draft annual budget, how the UK authorities have applied the Barnett formula and the basis for the estimates of increments or decrements (“consequential”) in adjusting the formula and hence the grants from the UK available for Scotland’s budget.

In FC (2015) paragraph 61, the Finance Committee noted that some commentators pointed to how Scotland could be penalized by using the Holtham indexation method for adjusting the block grant when there is additional tax devolution.\(^{23}\) It is important for the SG to document the estimates of the “consequential” and for the SFC to comment on these estimates should it judge that it is necessary as part of its assessment of total resources.

The above formulation would also allow the SFC to assess the expenditure estimates in the draft annual budget bill. This is a wider remit for the SFC than that envisaged in the SFC bill, which is confined to the SFC assessing the forecasts of the taxes and borrowing that have been devolved in successive UK Scotland Acts.

The SFC’s obligatory mandate for devolved taxes and borrowing

Concerning devolved taxes, Sections 2 (1) (a) to (c) of the SFC bill charge the SFC with specific responsibilities, notably to assess the SG’s forecasts of taxes that have been fully devolved in Scotland Acts. These assessments are obligatory.

The SFC bill allows the SG to initiate additional obligatory specific assessments. This widening of the SFC’s specific tasks would occur when the UK Parliament authorizes new Scottish Parliament tax responsibilities, including for Scottish income taxes and Scottish VAT shares.\(^{24}\) Scottish Statutory Instruments (SSIs), under section 5 of the SFC bill, would be the means of extending the SFC’s mandate for specific tax forecast assessments.

Section 2 (1) (d) of the SFC bill charges the SFC with another obligatory responsibility, namely to assess the SG’s projections of its borrowing requirements. This is an important new responsibility for the SFC, relative to the remit of the non-statutory SFC.

Borrowing by Scotland is constrained by UK legislation. Under the Scotland Act 2012, there are quantitative limits on the amounts and conditions for revenue borrowing and capital borrowing by the SG. In Queen’s Speech (2015) and in line with the Smith Commission’s report, additional borrowing powers will be agreed between the UK and Scottish Governments as part of a new fiscal framework for Scotland. These agreements are likely

\(^{23}\) For example, see J. Cuthbert’s 2015 submission to the Finance Committee, [www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Dr_IR_Cuthbert.pdf](http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Dr_IR_Cuthbert.pdf).

\(^{24}\) Seely and Kemp (2015) discuss and summarize Smith Commission tax proposals. Also, Queen’s Speech (2015) refers to “The Scotland Bill 2015 would provide the Scottish Parliament with the first ten percentage points of standard rate VAT revenue raised in Scotland (and 2.5% reduced rate)”.
to take place outside UK legislation, as the Scotland Bill 2015, which had completed its second reading in the UK House of Commons in July 2015, did not propose to change the borrowing limits of the Scotland Act 2012 (although it is possible, at the time of writing, that the UK Government could still initiate changes in these limits in the legislation).

It is to be hoped that, in each annual budget, the SG will provide details on the agreed borrowing for current and capital expenditures. Future borrowing projections of the SG is a key component of Scotland’s medium-term budget framework (MTBF). Along with fully and partially devolved taxes, and UK block grant transfers, these provide estimates of the total resources for financing the expenditure that is contained in each year’s annual Budget bill. For fiscal transparency, it is appropriate for the SG to provide full details for its proposed borrowing in the draft annual Budget Act that it submits to the Scottish Parliament. Provided the SG prepares borrowing projections for a multi-year period, the SFC can conduct its assessments for borrowing over a multi-year period ahead (see below).

**The SFC’s optional tasks**

The SFC bill provides the SFC with the freedom to prepare reports on non-obligatory functions, notably its assessment of “other fiscal factors”. If section 2 of the SFC bill were to be amended to first state clearly the SFC’s core mandate – as proposed above – the SFC would be able to prepare, according to its own work programme, any report on “other fiscal forecasts”. For example, if the SG were to prepare a report on Scotland’s fiscal sustainability, the SFC would be free to assess the SG’s analysis. Similarly, the SFC bill would allow the SFC to provide a commentary twice a year on the OBR’s Scottish tax forecasts (as recommended by Finance Committee, 2014a), which is a legal requirement for the OBR.

**The SFC’s prohibitions**

Sub-section 2 (6) (b) prohibits the SFC from *considering the effect of any alternative fiscal policies to those of Scottish Ministers.* This is a strong prohibition. SG Policy Memorandum (2015) explains that this provision was inserted in the SFC bill so as to prevent the Commission being drawn into political discussions. The Commission may, however, consider the effect of alternative forecasting assumptions or methodologies on revenue forecasts. The latter phrase is not included in the SFC bill.

Many IFIs, especially those that are primarily serving parliament, consider the effect of alternative fiscal policies. The costing of alternative revenue and expenditure measures is a key mandate of many parliamentary budget offices (PBOs). Provided the PBO produces unbiased estimates, the costings of alternative policies can be useful for all political parties. For example, the USA’s Congressional Budget Office periodically publishes its costings of about 80 different revenue and expenditure policy alternatives. The CBO (and other PBOs that do such costings) are not drawn into political discussion because of this work. Similarly, at US State level, LBOs often prepare alternative costings of fiscal policies (see Annex 4).

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25 More specifically, policies relevant to the SFC functions, as stated elsewhere in section 2.
26 For example, the 2015 CBO publication showed the year-by-year impact of 79 different revenue and expenditure policy alternatives over the 10-year period 2015 to 2024. See [www.cbo.gov/sites/default/files/cbofiles/attachments/49638-BudgetOptions.pdf](http://www.cbo.gov/sites/default/files/cbofiles/attachments/49638-BudgetOptions.pdf).
This restriction on the SFC’s mandate could be justified on a pragmatic ground, namely that the SFC is a new body and should prioritize its work and focus on its forecast assessment activities. Since the costing of alternative revenue and expenditure policies is labour- and time-intensive, it could be argued that the SFC should, at this stage, be disallowed from examining alternative policies. Once the SFC is well established and is fulfilling its core functions to the full satisfaction of all Scottish stakeholders, the prohibition could be lifted.

While this argument has some merits, this report takes the view that the statutory SFC should not be restricted from considering policy alternatives, while it should be restricted from recommending alternative fiscal policies. The reasons are: (1) it is preferable, even now, to allow the statutory SFC to consider the impact of policy alternatives, rather than include this prohibition in the SFC Act, which may be difficult to amend at a later time period; and (2) the Financial Scrutiny unit of the Scottish Parliament already publishes useful information on alternative policies, e.g., for the Scottish income tax rate. The SFC should not be deprived of publishing comparable studies, provided it does not recommend a preferred option, i.e., enter the realm of normative analysis.

**Recommendation 2 – Clarifying the SFC’s mandate as specified in the SFC bill**

A. Identify the SFC core mandate in the SFC bill. For example, begin section 2 of the bill with a new subsection that specifies clearly the core mandate of the SFC, using the wording along the lines suggested above.

B. Note that the proposed formulation of the SFC’s core mandate is wider than that proposed by the SG, as it would allow the SFC to assess the SG’s forecasts of expenditures made in the context of annual Budget Acts. The proposed new subsection 2 (1) could replace the present sub-sections 2 (3) and (4) in their entirety.

C. Note that the SFC’s mandate, as proposed in the SFC bill, requires the SFC to prepare **obligatory** reports on assessments of SG forecasts of fully devolved taxes and borrowing, while, at the same time, permitting the SFC to prepare, **voluntarily**, other reports pertaining to the SG’s forecasts of other revenues and expenditures included in annual Scottish Budget bills.

D. Replace sub-section 2 (6) (b) with a phrase along the following lines: The SFC may examine the impact of alternative fiscal policies, provided it does not make a recommendation on any preferred fiscal policy. If judged necessary, add: The SFC may also consider the effect of alternative forecasting assumptions or methodologies on the budgetary forecasts of Scottish Ministers.

The next two sections of this report examine other issues pertaining to the SFC’s mandate, notably: (1) the SFC’s forecasting role; and (2) the possibility of widening the SFC’s mandate to include broader fiscal framework questions.

### 3. Deciding on the SFC’s forecasting role

In its June 2015 report, the Finance Committee recommended that **the SFC should carry out its own forecasts.** As shown in Table 1, most IFIs do not produce the **official** macro-

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28 In its 2014 report on the SFC, Finance Committee (2014a) recommended that *if the remit is to provide a commentary on Scottish Government forecasts, it is essential that to ensure its independence, the SFC should carry out its own forecasts.*
fiscal forecasts. Some IFIs prepare alternative fiscal forecasts that serve as benchmarks for assessing the plausibility of the official projections. The IFIs that prepare the official forecasts (Belgium, Netherlands and the UK) have about 100 staff29 working on preparing macroeconomic and fiscal projections, reflecting the labour intensive nature of forecasting. Moreover, in Belgium and the Netherlands, a second IFI – a council – has been designated as the IFI to assess implementation of EU Regulation 473/2013 relating to EU fiscal rules.

The EU strengthened its fiscal framework regulations because some countries had not been complying with EU fiscal rules, which was partly a result of upward biased GDP and revenue forecasts. In Scotland, there is not a long enough track record of SG forecasting of devolved taxes to know whether there is any systematic bias in its forecasts. In the absence of evidence of bias in the SG’s revenue forecasts, there is little reason to contemplate the possible removal of the official forecasting function from the Scottish Government.

The SFC bill assumes that the SG alone prepares the official macroeconomic and fiscal forecasts, with the SFC “assessing the reasonableness” of the SG’s forecast of devolved taxes and borrowing. The bill does not disallow the SFC from preparing alternative forecasts, which would be used to benchmark the SFC’s forecasts, in the absence of other external forecasters, e.g., those of a central bank, an international organization that Scotland belongs to, or a Scottish forecasting institution with a strong track record. On the other hand, the SFC bill does not require the SFC to produce its own forecasts.

Internationally, it is rare for an IFI law that establishes an IFI with assessment functions to require the IFI (in the same law) to prepare its own forecasts (Table 1, final column). Whether or not the IFI prepares alternative forecasts is a choice of the IFI. For example, Ireland’s Fiscal Responsibility Law requires IFAC to provide an assessment of the official forecasts. To fulfill this task, the IFAC, on its own initiative, recruited staff and developed in-house models to prepare its own forecasts, to provide a benchmark for assessing the macroeconomic and fiscal forecasts of Ireland’s Department of Finance (DoF).30

On the other hand, some of the recently created fiscal councils in Europe, e.g., those in Estonia, France, Germany, Latvia, Luxembourg and Slovenia, have very few staff, if any, with strong forecasting skills. They are “strong in council members” and “weak in staff” (at least at the time of writing). These IFIs, whose assessment mandates may be quite restricted (in view of other government-financed institutions), tend to use external forecasts to benchmark the official government forecasts. Many of these new fiscal councils in Europe are required to assess how well projected aggregate fiscal developments are performing relative to fiscal rules, as opposed to assessing the realism of the forecasts per se. To conclude, the statutes underlying IFIs do not usually “dictate” how the IFI should go about its assessment functions, e.g., by requiring it to prepare alternative forecasts.

the SFC should have no role in producing the forecasts. This recommendation is interpreted by the author to mean that the SFC should have no role in producing the official SG forecasts.

29 The (federal/central) Planning Bureaus of Belgium and the Netherlands have about 100 staff, many of which work on short- and long-term forecasting. Although the OBR only has about 20 staff, the first OBR external review drew attention to the fact that the OBR is dependent on approximately 125 full-time equivalent employees from other government agencies (Page, 2015, pp. 10).

30 As a result of the enhanced EU rules on fiscal surveillance, the IFAC must endorse the DoF’s macroeconomic forecasts.
Some fiscal councils prepare alternative macroeconomic and fiscal forecasts by obtaining access to the models and databases of other forecasters: either the model(s) of the official forecaster or those maintained by an alternative forecasting body. In this context, the interim SFС has had access to, and understands, the SG’s methods and data for preparing the official forecasts of devolved taxes. It would not be difficult for the SFС to change the SG’s “model” parameters and to prepare alternative fiscal forecasts. It would be more complicated, though not impossible, for the SFС to build an alternative “model” (or models) for forecasting the Scottish economy, devolved fiscal variables and, in the longer term, medium- or long-term fiscal scenarios or fiscal sustainability analyses.

To assess the official fiscal forecasts (for revenues, expenditure and borrowing) as well as for the macroeconomic projections underlying them, staff with strong analytical skills and prior forecasting experience would be needed for the SFС. It will take time to build up a strong forecasting capacity within the SFС. Such capacity is nonetheless urgently needed. It would be desirable to begin strengthening of the SFС’s analytical and forecasting skills, by SFС staff recruitment, as soon as possible.

In the near future, as the SFС continues to focus especially on assessing the reasonableness of forecasts of devolved taxes, the SFС will need analytical in-house support to help it examine the sensitivity of baseline (“central case”) forecasts to the underlying assumptions and parameters. Property-based taxes have a greater degree of uncertainty relative to more stable taxes such as those based on consumption or incomes that fluctuate less than property values during economic cycles. As part of its duties, the SFС would also comment on the risks inherent in the SG’s forecasts.

The SFС also needs to be able to delegate to the SFС staff the task of examining errors in past SG fiscal forecasts. This involves decomposing forecast errors, to ascertain whether the errors are due to exogenous events (e.g., Scottish economy shocks or policy changes), inappropriate forecasting models and methods, or errors in judgment. Conducting post mortems of the sources of errors in previous forecasts is a task of any forecasting agency. The SFС also needs secretariat support to document the underlying assumptions and parameters of forecasting models, methods and data, so that the write-ups of the SFС’s forecast assessments are fully transparent and, over time, engender widespread trust.

**Recommendation 3 – Deciding on the SFС’s role in forecasting**

A. Note that, in the SFС bill, it is appropriate for the statutory SFС to assess the SG’s macroeconomic and fiscal forecasts and, if needed, publish alternative forecasts, rather than produce the official macroeconomic and fiscal forecasts.

B. Consider whether it is necessary to require, in the SFС bill, a remit for the SFС to prepare alternative macroeconomic and fiscal forecasts to those of the SG.

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31 Unlike say, Ireland for example, Scotland has a very limited number of forecasting bodies that could provide staff to the SFС. In Ireland, the IFAC secretariat staff have been seconded from the ESRI, the central bank, and government ministries; most staff had prior economic forecasting experience in their “parent” institution (see Annex 2).

32 When macro-fiscal forecasts are prepared with the intent of changing policies in order to obtain a different outcome (e.g., getting the fiscal programme back on track), the original forecasts will necessarily be “wrong”. In this sense, baseline fiscal forecasts are often destined to be inaccurate.
C. Note that in performing its assessment role, the SFC needs capacity to produce its own macroeconomic and fiscal forecasts, which is a labour intensive task. Begin recruiting SFC staff with macro-fiscal forecasting skills, to assist the SFC in their assessment-of-forecasts activities.

D. Note that there are several tasks associated with assessment of forecasts, including examining the SG’s perceptions of fiscal risks, as well as the errors in past forecasts. These will be integral tasks of the SFC Secretariat. Such tasks do not necessarily have to be spelt out in the SFC Act.

4. Considering a widening of the SFC’s mandate

The Finance Committee of the Scottish Parliament has recommended that there should be a legislative requirement for the SG to prepare a charter for budget responsibility (see FC, 2015, paragraph 25). The FC also recommended that Scotland’s fiscal framework, while being consistent with the UK overall fiscal framework, should allow flexibility for the SG to pursue distinct fiscal policies.

A Charter for Budget Responsibility is a document that could spell out Scottish Minister’s responsibilities and commitments in the following areas: medium-term fiscal strategy; MTBF projections; fiscal risk assessments; fiscal rules, e.g., on borrowing and total (net) debt, fiscal sustainability and debt analyses; and fiscal data quality.

Medium-term budget framework projections and fiscal risks

In the SFC bill, the SFC does not have a mandate to assess the SG’s medium-term fiscal strategy and fiscal framework. Although the SFC bill does not prevent the SFC from conducting its assessment functions for multi-year forecast periods, this could only be done if the SG were to change its current practice of not presenting a MTBF to the Scottish Parliament at the same time that it submits its annual draft budget.

If the SFC’s core mandate were to be clarified as proposed above, the SFC could, in the first instance, assess Scotland’s MTBF. This would require the SG to regularly publish updated MTBF projections and their underlying assumptions (the key aggregates of the MTBF are largely determined in HM Treasury, at least those covering the years of each UK Spending Review period). For fiscal transparency, it would be useful for the SG to prepare and submit MTBF projections to the Scottish Parliament at the same time as it submits its draft annual budget bill. Such MTBFs are shown schematically in Figure 5.

If the SG were to prepare MTBF projections, the SFC could assess their realism and comment on key components, including the basis of the adjustments in the Barnett formula, which, along with borrowing, determine the total resources available for spending in Scotland.

In its assessment activities, the SFC could reiterate its messages concerning shortcomings in Scottish data. In its October 2014 report, the SFC urged the SG to take early steps to enhance the accessibility and quality of historical data. Similar messages were communicated by Audit Scotland (2015). When stressing the need for Scottish public sector data to be comprehensive, transparent, reliable and timely, Audit Scotland pointed to the absence of
reconciled data for the balance between funding and spending and the overall level of borrowing for the devolved Scottish public sector as a whole. In other words, there are discrepancies in the base-year data of the budget framework, shown conceptually in Figure 5. Over a medium-term forecast period, it is unknown whether these discrepancies are constant, increasing or decreasing. The SFC could play an important role in highlighting data discrepancies and the risks incurred in projecting data with underlying weaknesses.

Figure 5. Budget Resources and Spending in Scotland

![Figure 5. Budget Resources and Spending in Scotland](image)

It is also important for the SFC to assess major risks in annual and medium-term macroeconomic and fiscal projections relevant to the Scottish public sector. This would include the fiscal risks of local authorities, corporate bodies owned by the SG, and Public Financing Initiatives (PFIs) that could impact adversely (or favorably) Scottish public finances. With an expanded mandate, the SFC could begin making assessments of the quality of SG fiscal risk analysis.

**Fiscal rules, fiscal targets, medium-term fiscal strategy, and fiscal sustainability analyses**

In its 2015 report on the fiscal framework, the Finance Committee (FC, 2015, paragraph 36) recommended that Scotland’s updated fiscal framework should include two fiscal rules: a balanced budget rule to govern the level of borrowing, and a limit on net debt. To date, the SG has not formally adopted such fiscal rules. The Finance Committee also recommended that the remit of the SFC should include judging the performance of the SG against its fiscal targets and assessing the long-term sustainability of public finances [in Scotland] (see paragraphs 133 and 139, FC, 2015).
Presently, the SG has a golden rule – a balanced budget for current transactions, with a self-imposed constraint on borrowing for infrastructure projects.\(^{33}\) Currently, there is no (net) debt rule, although the Finance Committee in 2015 also recommended that the SG should agree on a debt rule with the UK Government, consistent with the UK fiscal framework.

These recommendations would require the SG to adopt fiscal rules and to propose fiscal targets specific to Scotland for a medium-term period, broadly consistent with those of the UK’s MTBF and its medium-term fiscal objectives (currently until 2019/20). The targets would be accompanied by an annual and medium term budget policy strategy – a document that outlines the SG’s tax and budget spending priorities consistent with it medium-term strategy, which would describe the MTBF and quantify the ongoing budgetary impact of the SG’s economic and social programme outlined in SG (2015). This would enable the Scottish Parliament and the public to have a better idea of where Scotland’s public finances, based on existing constitutional arrangements, are heading for the next few years ahead.\(^{34}\)

It would be difficult to implement the FC’s fiscal sustainability recommendations in the absence of a regularly updated SG medium-term fiscal strategy document, which would be the basis for prolonging the projections even further, e.g., for periods of 20 to 50 years. Fiscal sustainability analyses focus especially on the dynamics of fiscal deficits and increases in public debt. At this stage, the SG does not prepare a long-term fiscal sustainability analysis. Such a debt analysis would use base-year data derived from the SG’s annual public sector assets and liabilities, which are published and audited each year.

**Should a Charter for Budget Responsibility be introduced now?**

With the imminent adoption of the SFC Act, it is legitimate to ask: “Should the present SFC bill be not only the vehicle for placing the SFC on a statutory basis, but also the legal instrument for implementing the Finance Committee’s recommendations relating to the wider fiscal framework?”

In some countries (e.g., Hungary, Ireland, Slovakia), the legislation relating to the wider fiscal framework, especially fiscal rules, was the same law that formally established the IFI. In fact, the IFI in those countries were established to complement the fiscal framework and fiscal rules. In contrast, in Scotland, the strategy has been reversed: first create the IFI, and later, prepare the wider fiscal framework – the MTBF and fiscal rules.

The pros and cons of extending the SFC bill to include key “fiscal framework” issues are:

- **Pros.** The window of opportunity is now. Without too much work, a few generally worded phrases relating to the wider fiscal framework could be inserted into the SFC bill. Details could be elaborated later, when the Charter for Budget Responsibility is drafted by the SG and presented to the Scottish Parliament. A Fiscal Responsibility Act (FRA) could be adopted in 2016/17 or beyond.

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33 The SG limits revenue commitments related to capital investment to a maximum of 5% of expected annual [Departmental Expenditure Limit] DEL budget. For details, see Hudson (2013).

34 The medium-term budgetary projections would be based on total Scottish revenues and expenditures (and fiscal balance) on which the Scottish annual Budget Act is based and not on hypothetical revenues and expenditures (“GERS estimates”) such as those published in SG (2014a).
• **Cons.** Considerable time is needed for further discussions on these issues, which are complex and controversial. Discussions are first needed within the SG, the Scottish Parliament and with other partners, especially those in the UK.

**Improving intergovernmental relations**

The Smith Commission (2014) emphasized the need to address weaknesses in intergovernmental relations (IGR) between the UK and Scotland, Wales and N. Ireland. Also, FC (2015) paragraph 145 identified two important difficulties in IGR on fiscal issues: (1) most bilateral relations between the national and devolved governments take place on an ad hoc basis, which leads to a lack of transparency and accountability; and (2) there are questions about the purpose of the formal institutions that do exist. The UK is not like Belgium and Germany, which have formal institutions for IGR on fiscal matters that regularly meet and lay the basis for fiscal targets at national (federal) and subnational (regional) levels. In the UK, there are no formal mechanisms for allocating the UK Government’s year-by-year fiscal targets until 2019/2020 for the fiscal balance and net debt between the UK, Scotland, Wales, N. Ireland (and, possibly, England). These institutional weaknesses in IGR need to be addressed; otherwise the SG will continue to be thwarted in preparing a MTBF that is fully coherent with medium-term fiscal objectives for the UK (as a whole) and its devolved entities.

Given the institutional weaknesses in IGR within the UK, it may be preferable to resolve them as a prerequisite to expanding the SFC’s mandate to include the wider fiscal framework assessments. Once the pre-requisites are met, the SFC’s core mandate could be re-oriented towards that of assessing the SG’s ex ante fiscal stance and the attaining of SG fiscal targets and/or fiscal rules, which are as yet not well defined. If, during the current legislature, the “fiscal framework” issues were to be combined with “SFC issues” in one bill, there could be a strong risk that the SFC Act would not be adopted prior to the May 2016 elections.35

For these reasons, it may not be suitable to advance, at this stage, with the preparation of a wider “fiscal framework +SFC” bill (a Scottish Fiscal Responsibility Act). However, the choice of adopting a FRA is a political one. While risky, it would not be impossible to adopt a FRA during the current legislative session. It depends partly on whether a consensus could be reached on the need to prepare a FRA that would include the obligation for the SG to prepare a Charter for Budget Responsibility. If the SFC bill were to be substantially amended to include fiscal framework issues, the draft law would also need to re-write the section on the core mandate for the SFC.

**Recommendation 4: Considering a widening of the SFC’s mandate**

A. Urge the Scottish Government to prepare: (1) a medium-term fiscal strategy document that would include a quantified MTBF, which would be submitted to the Scottish Parliament as part of annual budget documentation; and (2) a comprehensive analysis of medium-term fiscal risks, including those from PFIs.

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35 In Ireland, discussions on the draft Fiscal Responsibility Act in 2012 (which included with Ireland’s creditors, the IMF/EU/ECB troika) were prolonged mainly because it took time to resolve differences of view on the "fiscal rules" section of the Act. In contrast, it was easier to reach agreement on the “fiscal council” sections of the Act.
B. Reiterate the previous Finance Committee recommendations for the adoption by the Scottish Government of two fiscal rules: a balanced budget rule to govern the level of borrowing, and a limit on net debt.

C. Note that the Scottish Government may not yet be in a position to prepare its own fiscal sustainability analyses, which, in the longer-term, the SFC could assess.

D. Urge the SG to do all that it can, within its powers, to improve the functioning of intergovernmental relations, especially with a view to putting in place mechanisms for deciding on Scotland’s fiscal framework broadly consistent with that of the UK.

E. Consider whether it is appropriate to revamp substantially the SFC bill, by adding provisions on the wider fiscal framework (MTBF, fiscal targets, etc.), for which the SFC would have an assessment role.

F. Assess the risks of delaying the adoption of the SFC Act, should a broader Scottish Fiscal Responsibility Bill be proposed during the current legislative session.

5. Ensuring SFC independence prior to publication of its main assessment report

In line with OECD Principle 3.3, the SFC bill establishes a clear link with the Scottish annual budget cycle. In particular, the bill requires the SFC to lay its report prepared under section 2(1) before the Scottish Parliament on the same day as that on which the Scottish Ministers lay before the Parliament the draft Scottish budget (section 4 (1)). For its other reports, the SFC is free to decide the timing of submission, provided the report is before the Scottish Parliament as soon as reasonably practicable after the report is prepared (subsection 4 (2)). These provisions would not prevent the SFC from combining, in a single report, its obligatory and non-obligatory assessments of fiscal forecasts.

The “same day reporting” requirement could undermine the SFC’s independence. The requirement would require the SFC and the SG to hold bilateral discussions prior to “budget day”. Most likely, the SG would share confidential budget information with the SFC, including its revenue and borrowing forecasts, possibly prior to their finalization. The SG Policy Memorandum (2015), paragraph 16 appears to indicate that it is desirable for the SFC to exert significant influence over the forecasts that underpin the Scottish Draft Budget. This report takes the opposite view: it is undesirable, as it could change the SFC from being an “independent assessor” of the SG’s forecasts to being a part-time advisor to the SG for its own budget forecasts prior to “budget day”.

In a certain sense the SFC will always have a “forecast advisor” role, since its assessment reports provide an independent view on how the SG’s forecasting techniques could be improved. This was certainly the case for the SFC’s first assessment report, published in October 2014, and the discussions prior to it, during which time the SFC sought to understand the SG’s “models” for forecasting devolved taxes. The STC’s report highlighted the data deficiencies, which limits the rigour and solidity of the SG’s forecasts. However, this initial “advisory” role is likely to diminish from now on, since the SFC now understands how the SG makes its forecasts. In the future, to assess the SG’s forecasts, the SFC may

36 In particular, there is a lack of Scotland-specific time-series data for a number of variables needed for the tax revenue forecasts. This thwarts the SG in making its fiscal forecasts.
develop its own “models”, to provide benchmark forecasts for ascertaining whether the SG’s forecasts are plausible (or “reasonable”) or not.

Thus the SFC should step back from being closely involved with the SG when the SG is preparing the official fiscal forecasts. During a given budget round, the SFC would develop its own fiscal forecasts independently of the SG. For the SFC, to maintain its distance from the SG during its preparation budget forecasts, it may be preferable to assess the SG’s forecasts only once they are submitted to the Scottish Parliament.

The SFC bill could therefore require the SFC’s assessment report to be submitted to the Scottish Parliament “as soon as practicable” after budget day. To be relevant, the SFC’s assessment report(s) should be submitted to the Scottish Parliament and published rapidly after “budget day” (publication is, appropriately, an obligatory requirement, under subsection 4 (5)).

Sub-section 4 (3) of the SFC bill requires the SFC to send a copy of its draft report to Scottish Ministers prior to presenting the same report to the Scottish Parliament. This would open the door for the SG making substantive changes in the content of the SFC’s report, thereby undermining the SFC’s independence. To enhance the SFC’s independence, it is desirable to eliminate sub-section 4 (3) from the SFC bill.

If the SFC judged that SG comments for factual checking of its assessment reports are needed, the MoU could specify the timing of providing its draft report to the SG and receiving non-substantive comments from the SG. However, the SFC’s assessments of the SG’s forecasts must be those of the SFC alone.

To reduce further the risk of SG interference in the SFC assessment work, eight safeguards are desirable:

(1) A Memorandum of Understanding (MoU) that specifies the forecast-related information and data to be shared between the SFC and the SG on predetermined dates (working backwards and forwards from “budget day”). MoUs are typically drawn up voluntarily between the IFI and other bodies.

(2) For transparency, the MoU should be published.

(3) Formal contact would take place at discrete times, including possibly before budget day (the SG’s forecasts are finalized before the Cabinet Secretary for Finance presents the draft annual budget bill to the Scottish Parliament).

(4) The SFC should avoid frequent contact with the SG in carrying out its mandate.

(5) The SFC should prepare its own fiscal forecasts independently, prior to sharing them with the SG. The SFC’s benchmark forecasts could influence those of the SG in the subsequent budget round.

(6) The MoU could be supplemented, when needed, by formal letters indicating precisely when additional SFC/SG meetings are to take place, the agenda for the meeting, etc. For transparency, important letters and Minutes should be published on the SFC’s website.

(7) The SFC should nurture relationships with any other institutions in Scotland or in the UK that provide views helpful for the SFC’s forecast assessment activities.
(8) The SFC should develop good relationships with the media, which helps to establish the SFC’s independence from the SG and improve its visibility.

These detailed safeguards do not need to be included in the SFC Act. The focus of attention should be on whether the SG’s forecasts are reasonable, not on any differences in forecasts unless substantial. In this context, the SFC bill could require the SFC to highlight the reasons why it finds the SG’s to be reasonable or otherwise.

The UK and Irish cases illustrate that the independence of the SFC would not be under threat if the above conditions were met. In the UK, the OBR’s independence has not been undermined by the HM Treasury’s sharing of confidential pre-budget information with the OBR. Such information is needed, inter alia, by the OBR for its role in certifying UK government policy costings. Similarly, in Ireland, the IFAC’s independence has not been undermined by the sharing of IFAC’s benchmark macroeconomic forecasts (which are prepared independently, using in-house models) with those of the Department of Finance during the course of IFAC’s endorsement of the Irish Government’s macroeconomic forecasts. In both cases, a MoU governs how the information sharing is to take place. In both cases, the IFIs are free to disagree with the Government’s own forecasts.37

Since forecast uncertainty and the margin for error in both macroeconomic and fiscal forecasts can be substantial – especially for medium-term forecasts – IFIs prefer to focus on their core “assessment” mandates rather than emphasize small technical differences in forecasts, e.g., differences in view on some components of GDP or of specific tax elasticities. In Scotland, it is possible that the SG and the SFC may have such minor differences in view.

To maintain its independence, the SFC needs to be free to disagree with any aspects of the SG’s fiscal forecasts. Should there be substantive differences of view between the SG and the SFC regarding either the macroeconomic or the fiscal forecasts, it is important that the Scottish Parliament and the public are informed in the SFC’s reports.

**Recommendation 5 - Ensuring SFC independence prior to publication of its main assessment report**

A. Change sub-section 4 (1) of the SFC so that, instead of the SFC laying its report before the Scottish Parliament “on the same day as that” on which the SG lays its draft budget before Parliament, to read “as soon as practicable after the day...”.

B. Require, in the SFC bill, the SFC to highlight the reasons why it finds the SG’s forecasts to be reasonable or otherwise.

C. Eliminate sub-sections 4 (3) and 6 (2) from the SFC bill. The SFC’s independence could be undermined if it were to be required to submit a copy of its report to the Scottish Government prior to the report’s submission to the Scottish Parliament.

D. Encourage the SFC and the SG to draw up, as a matter of urgency, a MoU relating to the SFC’s forecast assessment functions, and to publish the MoU on the SG and SFC websites.

E. Note that a MoU requirement does not need to be included in the SFC Act.

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37 In the UK, HM Treasury continues to make its own forecasts in-house, using its own models, especially for alternative policy scenarios (which the OBR is not permitted to make).
6. Enhancing specific aspects of the SFC’s operational independence

The SG wishes to establish a SFC that “is independent of the Scottish Ministers and that it is seen to be so” (SG, Explanatory Note, 2015, paragraph 14). Following the SG Consultation, in which many participants highlighted the need for the SFC to be independent, the SG modified its March 2015 early draft of the SFC bill so as to strengthen the statutory SFC’s independence. A notable example was the removal of an earlier provision that would have required the SFC to prepare a report on fiscal matters as the Scottish Ministers may specify. This would have been inconsistent with section 6 of the SFC bill concerning its independence.

The Scottish Parliament and its committees, via its law amending powers, should play the key role whenever the mandate of the SFC is to be modified substantively. In this context, the SFC bill (section 5) allows the SFC’s mandate to be modified by Scottish Ministers by using secondary legislation, notably a Scottish Statutory Instrument (SSI). It could be argued that the SFC’s independence would be undermined should the SG “dictate” an expansion of the SFC’s obligatory functions. However, the use of the SSI (affirmative procedure) provides the Scottish Parliament with the right to veto any specific expansion of the SFC’s mandate. Also, Section 5 of the SFC bill places strong restrictions on the use of SSIs. In particular, a SSI could not be used to amend the SFC’s main functions. SSIs would only be used for modifying SFC obligatory assessments of specific taxes, particularly those to be devolved in the Scotland Act 2015, as well as in other future decisions.

Another area of SFC independence concerns the discretion that the SFC has to undertake work on its own initiative. The SFC will be free to prepare reports pertaining to its core function and it is not subject to the direction or control of any member of the Scottish Government. Section 6 is consistent with OECD principle 3.2. The SFC’s independence (as specified in sub-section 6 (1)) could be strengthened further, by indicating that the SFC is not only independent of Scottish Ministers but it is also not under the direction or control of the Scottish Parliament and any other Scottish body.

The SFC’s independence would also be enhanced if sub-section 6 (2) (“This section is subject to any contrary provision in this or any other enactment”) were to be removed from the SFC bill. It would be preferable for section 6 of the SFC bill – on SFC independence – to be unqualified.

In this context, section 23 concerns “General Powers” of the SFC, which are primarily related to the SFC’s independence. In particular, the SFC can “do anything it considers expedient for the performance of its functions”. Section 23 would, for example, allow the SFC to draw up MoUs, not only with the SG, but also all relevant actors in Scotland and the UK. It may be preferable to combine section 23 with sub-section 6 (1), i.e., section 23 could be inserted in place of sub-section 6 (2).

To strengthen further the SFC bill’s provisions relating to the SFC’s independence, it may be helpful to add a clause (perhaps in section 6) that indicates that the SFC must perform its duties objectively, transparently and impartially. SG Policy Memorandum (2015) explains that section 23 of the SFC bill would, inter alia, allow the SFC to prepare and publish technical working papers related to its statutory functions. If this is what is in mind – and it is a good practice – it could be inserted as a new “liberty” of the SFC at the end of section 4 (on SFC reporting requirements).
finally, section 26 on ancillary powers confers wide-ranging powers on scottish ministers to make "incidental" regulations. sg delegated powers memorandum (2015) indicates "the reason for taking the power is to enable the scottish ministers to institute the commission and address any unforeseen situations as soon as it is practical for them to bring forward regulations. whilst the power is wide-ranging it is vital that the scottish fiscal commission interacts well with scots law and the changing fiscal landscape in scotland."

the provision of such wide-ranging regulation-making powers to the sg appears to contravene the widespread political acceptance that the sfc must be independent and seen to be independent. first, section 27 (2) of the sfc bill provides an adequate basis for scottish ministers to issue regulations allow the statutory sfc to formally begin is operations. second, the sfc can be expected to interact well with scots law, especially fulfilling its obligations under the sfc act. third, regarding the changing fiscal landscape in scotland, section 5 already confers on scottish ministers the power to initiate incremental changes in the sfc's mandate by ssi. should the changes in the fiscal landscape in scotland be substantial, the scottish parliament should be the key actor for making final decisions on major changes. in conclusion, it would be desirable to remove section 26 from the sfc bill.

recommendation 6 - enhancing specific aspects of the sfc's operational independence

a. note that section 5 of the sfc bill provides restricted powers to scottish ministers to modify the sfc's mandate regarding assessments of specific devolved tax forecasts. since the scottish parliament has veto rights over ssis, these provisions of the sfc bill do not undermine the sfc's independence.

b. strengthen sub-section 6 (1) to indicate that the sfc is not only independent of scottish government but also is not under the direction or control of the scottish parliament and any other scottish body

c. consider adding the following clause to the sfc bill (in section 6): the sfc must perform its forecast assessment duties objectively, transparently and impartially.

d. consider integrating section 23 of the sfc bill into section 6, while strengthening the latter as follows: the sfc acts independently while performing the functions assigned to it through these statutes, and it is not subject to the direction or control of the scottish government, the scottish parliament and any other public or private entity. consider eliminating sub-section 6 (2).

e. consider expanding section 4 to indicate that the sfc may, on its own initiative, publish any research and other papers related to its statutory functions.

f. eliminate section 26 on "ancillary provisions" which confers wide-ranging powers on scottish ministers to regulate the sfc activities and thereby undermine the sfc's independence.

other aspects of the sfc's independence -- concerning its access to information and its management independence (governance) -- are discussed in the next two sections.
7. Obtaining access to information

OECD Principle 6.2 states that any restrictions on access to government information should also be clearly defined in legislation. Appropriate safeguards may be put in place as regards protection of privacy (for example, taxpayer confidentiality) and of sensitive information in the areas of national defence and security. While sub-section 7 (3) provides an adequate basis for respecting this principle, it is succinct.

SG Explanatory Note (2015) cites two examples of Scottish Acts that could restrict SFC access to data: notably the Data Protection Act 1998 or the Revenue Scotland and Tax Powers Act 2014. It may be useful to expand sub-section 7 (3) to elaborate on the main justifiable grounds for restricting SFC access to data (e.g., non-access to tax information of individual taxpayers).

The SFC’s independence would also be undermined if the Scottish Government or the UK Government refused to provide essential fiscal information in a timely manner. In this regard, the use of the words “at reasonable times” (twice) and “reasonably” (twice) in section 7 (1) of the draft SFC bill risks giving the Scottish Government too much discretion on deciding what information to provide and when to provide it. It may be preferable to be unequivocal and remove the words “reasonable” or “reasonably”, so as to provide the SFC ready access.

Of course, the SG cannot instantaneously provide any information that the SFC may require. In this context, it would be helpful to introduce a sub-section in the SFC bill that requires the SFC to indicate the set of information to which it requires regular and automatic access, in accordance with a pre-defined calendar. Details for such a provision in the SFC bill would be spelt out in the MoU to be signed with the SG. The SFC could include provisions on access to the SG’s macroeconomic and fiscal forecasting models and their underlying assumptions. Such a provision is included in Portugal’s “fiscal council” law – see Annex 6. The Portuguese law also includes two subsections that sanction any public body that does not provide access to required fiscal data and information in a timely manner. Relevant parts of the “access to information” section of Portugal’s law could, after appropriate modification, be used for amending the SFC bill.

To fulfil its mandate, the SFC needs information not only from the Scottish Government and the Scottish bodies listed in section 7 (2), but also direct access to Scotland-specific information held by UK bodies, notably HM Treasury and the OBR (for economic and fiscal data, including projections), HMRC (Scottish tax data), DWP (welfare spending in Scotland) and, possibly, NHS. Ideally, these bodies should also be listed in the SFC bill.

For its independence, the SFC should be authorized by law to contact directly such bodies, and to draw up Memoranda of Understandings (MoU) with them, which, inter alia, would specify which information and data is regularly needed and the maximum time delay for its provision. In the SFC bill, the SFC should be provided with open-ended access to public bodies that hold data and information needed to fulfil its mandate, without being obliged to request Scottish Ministers to draw up a SSI to place another public body on the SG-controlled list, as is required by subsections 7 (2) (e) and 7 (4) of the SFC bill.
If, for constitutional and/or legal reasons, it is not possible for the SFC to have direct access to UK public bodies, then Scottish Ministers should be encouraged to urge the UK to provide a legal basis for the SFC to access essential information held by UK agencies. In view of further and imminent tax devolution to Scotland, direct access appears to be particularly urgent, given that some Scottish taxpayer (aggregate) data is held by HMRC. Indirect access, in which the SFC would request the Scottish Government to obtain the data from UK agencies, would be an unsatisfactory second-best alternative and could thwart the effectiveness of the SFC’s assessment work.

**Recommendation 7 -- Obtaining access to information.**

A. Consider expanding sub-section 7 (3) with a view to elaborating on the main justifiable grounds for restricting SFC access to data (e.g., confidentiality of taxpayer information).

B. Consider eliminating the words “at reasonable times” and “reasonably” in section 7 (1) (on “Access to Information”) of the SFC bill, and replace them with a sub-section such as: “the SFC shall indicate the set of information to which it requires regular and automatic access, in accordance with a pre-defined calendar”.

C. Consider strengthening the SFC bill’s “access to information” provisions further by adding sub-sections that sanctions public bodies that do not provide to the SFC essential information in a timely manner (consider Portugal’s “fiscal council” law as a model – see Annex 6).

D. Ensure, by legislation, that the SFC has direct access to Scotland-specific fiscal data and information that is held by UK bodies such as HM Treasury, the OBR, HMRC and DWP. Draw up MoUs between the SFC with each Scottish and UK body that holds Scotland-specific data and information needed by the SFC to fulfil its mandate.

E. Eliminate the final phrase of subsection 7 (2) (e) as well as sub-section 7 (4) of the SFC bill, which requires the SFC “to plead its case” before the SG in order to obtain access to data necessary for its mandate. Replace subsection 7 2 (e) by a clause that provides the SFC with direct access to data and information held by public bodies in the UK.

F. (In the case where Recommendations D and E cannot be implemented, for constitutional reasons). Urge the SG to initiate draft legislation in the UK parliament that would provide the SFC with direct access to Scottish data held by UK agencies.

**8. Reducing Scottish Government influence on SFC governance arrangements**

The Scottish Ministers play a predominate role in the SFC bill’s governance arrangements for the SFC, notably for: (1) the appointment of SFC members (sub-sections 11 (2, 3)); (2) the number of Commissioners (sub-sections 11 (4, 5)); (3) disqualification of members (section 12); (4) the terms of appointment (section 13); and (5) the removal of SFC members (section 16). The Scottish Parliament is involved only in some of these aspects, notably the appointment of SFC members and their possible removal (section 16).

There are other options for SFC governance arrangements that would enhance the independence of the SFC’s members and staff. At present, other Scottish bodies that are objective and nonpartisan do not play any role in these matters.
Internationally, apart from countries like Belgium, Ireland, Netherlands, and the UK, where the Government also plays the predominant role in proposing/appointing IFI leadership and members, there are a variety of arrangements elsewhere. Examples are:

- The external audit office plays a role in proposing and appointing the leadership or members of the IFIs of France, Finland and Portugal. In France, the President of the Court of Accounts (CoA) is automatically the President of the High Council of Public Finance (HCPF), with 10 other members. The CoA President appoints 4 members from the CoA, Parliament appoints 4 members. The Economic, Social and Environmental Council nominates 1 member, and the Director of the National Statistics office is automatically a HCPF member.

- The Central Bank plays an important role in proposing/appointing the chair of the councils of Estonia and Portugal. In Estonia, the central bank Governor proposes candidates, which are appointed by the central bank Supervisory Board (Board of Governors). In Portugal, the Governor of the Central Bank and the Auditor-General are, in effect, a 2-person panel for nominating candidates to the 5-person Fiscal Policy Council, with formal appointment by the Government.

- Employer and Employee Organizations in Austria play an equally weighted role to that of the Government in proposing new council members.

- A selection review committee is set up in Canada, to propose a short list of three candidates for the PBO chair,

- Parliament plays the predominant role in appointing the directors of most PBOs, e.g., Australia, Italy, Korea, United States (both the federal CBO and State LBOs). In Slovakia, the chair of the 3-person Council for Budget Responsibility is elected by a vote of 3/5ths in the National Council (Parliament); Parliament also elects (by simple majority) the other two members, one of whom is proposed by the Central Bank and the other by the Government.

By lessening the voice of the Government in decision making for IFI governance, these arrangements help ensure that the chosen candidates for IFI membership are nonpartisan, the most competent, and the best suited for leading an independent IFI.

Several countries’ IFI legislation also list the key qualifications needed for IFI leadership and/or membership.

In view of the above international practices, the following paragraphs discuss alternative arrangements for SFC governance and makes suggestions in five areas.

1. The appointment of SFC members

The SFC bill proposes that Scottish Ministers may appoint a person as a member [of the SFC] only if the Scottish Parliament has approved the appointment. This wording provides Parliament (via its committees) with a veto right over SFC member appointments. The SFC bill, like most other IFI laws, is silent on the various procedural steps involved:

- Pre-selection of potential candidates;
- Short-list of candidates;
• Review of short-list;
• Proposal of a candidate; and
• Formal appointment.

In Scotland, without a central bank, but with an external audit office and other reputable organizations, there are various possibilities for involving non-Government and non-Parliament institutions in appointing the Chair and members of the SFC.

Amongst the various options, one possibility would be to form a small SFC member selection panel that would propose a short list of three candidates to a relevant committee of the Scottish Parliament (on which government and opposition members are representatives). The parliamentary committee would narrow the choice down to one person, after which the Scottish Government and/or the Scottish Parliament would formally appoint the SFC Chair and Commissioners.

A two- or three-person selection panel could be composed, for example, of the SFC chair, 1 representative from Audit Scotland, along with a representative from a reputable and independent organization that responded to the Scottish Government’s 2015 Consultation. After review, the Finance Committee of Parliament could choose one candidate, after which there would be a review by the Commissioner for Ethical Standards in Public Life in Scotland, prior to formal appointment by the Scottish Government or the Scottish Parliament. This ordering could be reversed. If this procedure (or something similar) were to be agreed, then section 13 (2) ("Scottish Ministers may determine other terms of appointment, so far as not provided in this Act") could be eliminated.

Some small European countries appoint foreigners to the IFI, e.g., Ireland, Portugal, Slovenia and Sweden. Portugal’s IFI legislation requires two non-Portuguese EU citizens to be on the five-person Council. This enhances the independence of the IFI in a small country, where the pool of eligible candidates for the IFI is not large. This possibility could be explicitly included in the SFC bill.

The SFC bill does not include provisions on the qualifications of SFC members (but has a long article on disqualification). Ireland’s Fiscal Responsibility Law, for example, includes the following qualification requirements:

- Having competence and experience in domestic or international macroeconomic or fiscal matters
- To the extent possible, an appropriate balance between men and women.

The first bullet point above allowed Ireland to appoint three of its initial Council members who were living outside Ireland including one non-Irish national. Similar provisions could be included in the SFC bill, especially if it were to recruit SFC members from abroad.

Concerning qualifications for membership, Sweden’s Ordinance that established its IFI requires the Swedish Fiscal Council to present proposals for council membership that

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38 In her submission to the 2015 SFC Consultation, the Auditor General of Scotland observed: “it may increase the appearance of independence further if the members of the Commission were appointed by Parliament with the agreement of Ministers”.
balance scholarly expertise in economics with practical experience in economic policy making, and it should strive for a gender balance.

2. The number of SFC Members

The present SFC is composed of a chair and two members. The SFC bill establishes the number of SFC members to be 2 to 4. With its present responsibilities, a three-person SFC appears adequate.

Should the SFC’s mandate expand, five Commissioners may be required, two of which could be non-executive (see below). However, at this stage, the need for SFC staff is more pressing. Based on international experience on the number of members of stand-alone fiscal councils in small countries, there does not appear to be a need to increase the size of SFC members to beyond five.

It is recognized that some of recently created fiscal councils in Europe are “council heavy” and "staff thin". However, these fiscal councils were created principally to fulfil the obligations of EU Regulation 473/2013, relating to assessing compliance with EU fiscal rules. In establishing these councils it was judged necessary to have more than 5 council members (even up to 15+) primarily because many members are needed for these councils to reach a consensus opinion on fiscal stance and even fiscal policies, rather than merely assessing the fiscal forecasts of the Government.

Some small countries, e.g., New Zealand, have not established a fiscal council at all, even though they have considered it. In a recent External Review of the NZ Treasury Policy Advice, an international consultant considered the usefulness of a fiscal council in New Zealand. Should a Council be established, Ter-Minassian (2014) recommended “a small number of well-respected national, and possibly international, figures, with substantial fiscal expertise, previous policy experience, and strong communication skills”.

In view of these considerations on the number of fiscal council members, there does not appear to be a need for Scottish Ministers to be authorized in the SFC Act to increase, by SSI, the number of SFC members to more than five.

In the case of the OBR and Portugal’s Fiscal Policy Council, the five members are divided between three Executive members and two non-executive members, who act in an advisory capacity (see OBR note – Annex 3). The present non-executive members of the OBR are not remunerated. Consideration could be given in the SFC bill to establishing two non-executive SFC members who would provide oversight the SFC’s three executive members.

3. Disqualification of members

 Appropriately, the SFC bill excludes the appointment to the SFC of sitting politicians – those in the Scottish, UK and European parliaments. Office-holders are also excluded, which is appropriate if they are political appointees.

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39 Examples of the number of fiscal council members for IFI created since 2012 are: Austria (15), Estonia (6), France (10, plus the Chair), Germany (9), Latvia (6), and Luxembourg (7).
In the SFC bill, civil servants would also be excluded from SFC membership (sub-sections 12 (1) (a) (xii)) as well as. This exclusion is questionable. In Westminster-tradition countries civil servants often provide apolitical advice to the Government of the day. Also, in Sweden, for example, one member of Sweden’s Fiscal Policy Council, who is the chair of another government agency, previously been the Budget Director in the Ministry of Finance. The exclusion of civil servants appears to be total. Would retired civil servants also be ineligible for SFC membership? Would non-Scottish civil servants, even active (but near-retirement), also be excluded? This exclusion could perhaps be eliminated from the SFC bill. The decision of SFC membership of any potential candidates who are civil servants, or have been civil servants, could be made during the selection and appointment process, as discussed above.

Should former MPs or political appointees be excluded from SFC membership? The statutes for Portugal’s fiscal policy council, for example, exclude those who have been active in politics in the preceding two years, after which they become eligible for membership. The principle of a “cooling off” period from an active life in politics, prior to potential IFI membership, is sound. It could be incorporated into the SFC bill.

4. **Term length(s) for SFC members**

OECD principle 2.3 recommends that term lengths and the number of terms for the leadership of the IFI be specified in legislation, with the term length being delinked from electoral cycles. Section 13 of the SFC bill is inconsistent with this principle, as term lengths are not specified. Rather, the term length is left to the discretion of Scottish Ministers. This could result in SFC membership terms being linked with the parliamentary electoral cycle. Separately, under section 12 (3), Scottish Ministers are authorized to not reappoint a person who is or has been a member.

There are no international norms on term lengths and the renewal of terms of IFI members. However, given that the normal parliamentary electoral cycle in Scotland is now 5 years, two 4-year terms may be appropriate. This option is perhaps preferable to a once-only longer term, e.g., 6-7 years. Concerning reappointments, several countries allow IFI leaders to be appointed for a second term.40 Whatever the fixed term limit, it would be useful to continue to stagger the starting/ending dates of SFC members, as is done presently, so as to avoid a bunching of the departures of Commissioners and a disruption to SFC work. Section 24 of the SFC bill appears to be consistent with such staggering (assuming that there are no voluntary resignations by SFC members which is permitted in section 15 of the SFC bill).

5. **Removal of SFC members**

Section 16 of the SFC bill authorizes Scottish Ministers to remove SFC members for three reasons, subject to the approval of the Scottish Parliament. It would be useful in the SFC Act to spell out the conditions under which Scottish Ministers could consider a member to be

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40 As discussed in Annex 4 on USA states, there are no term limits for the heads of the LBOs. However, LBOs serve the Legislature and are not directly comparable to the SFC, which is being created as a stand-alone independent Commission, neither under the Government nor the Parliament.
“otherwise unfit to continue to be a member”, otherwise section 16 (1) (b) (i) could be open to abuse (e.g., when a Scottish Government has a majority in the Scottish Parliament). Reasons for being “otherwise unfit” include:

- Incapable because of ill health, physical or mental.
- Significant conflict of interest.
- Misbehaviour, criminal or non-criminal, as ascertained by judicial authorities.

Should there ever be a removal on these grounds, under section 16 (2), the Finance Committee of Parliament, which has cross-party representation, would be consulted. Although this may be implicit in the phrase “subject to approval of the Scottish Parliament”, it may be useful to make this explicit in the SFC Act.

**Recommendation 8 - Establishing transparent governance arrangements.**

A. Consider inserting in the SFC bill a requirement for establishing a SFC member selection panel composed of independent actors such as Audit Scotland, the SFC Chair, and a representative from a non-partisan organization. The selection panel would establish a short-list of candidates prior to following appointment procedures involving both the Scottish Parliament and the Scottish Government.

B. Consider adding to the SFC bill (e.g., using either the Irish or Portuguese IFI examples) that would allow the appointment of SFC members who do not reside in Scotland and who are not necessarily UK citizens.

C. Consider adding to the SFC bill a clause on the qualifications needed for SFC membership, as well as for gender balance.

D. Note that a maximum of five Commissioners is likely to be adequate for the SFC, even of the SFC’s mandate is expanded.

E. In view of point D, consider removing sub-sections 11 (4) and (5) from the SFC bill.

F. Consider adding to the SFC bill provisions for two non-executive SFC members.

G. Reconsider whether active civil servants who have not been involved in politics could, under certain conditions (especially those approaching retirement age or are non-Scottish civil servants), be eligible to be SFC members. Decide whether subsection 12 (1) (a) (xii) should be eliminated.

H. Consider specifying a limited time period (e.g., 2-4 years) for which former politicians are ineligible for appointment to the SFC.

I. Replace section 13 (1) and 12 (3) of the SFC bill with an unequivocal position on term length for SFC members, for example 4 years, with a once-only renewal of the 4-year term (alternatively, a once-only longer term of 6-7 years).

J. Elaborate on the SFC bill’s provisions for removing an “unfit member of the SFC”, notably by adding (at least): (a) incapable because of ill health; (b) significant conflict of interest; and (c) committed state misbehavior.

K. Consider adding to section 16 (2) of the SFC bill an explicit requirement to involve the Finance Committee of the Scottish Parliament should there ever be a proposal by Scottish Ministers to remove a SFC member.
9. Providing the SFC with adequate resources

The SFC’s future budgets will be composed of expenses for: (1) SFC members (mainly fees); (2) SFC staff salaries; and (3) expenses for materials and services, including for building rental, administrative services, travel, etc.

1. SFC members

As discussed above, the present three-person Commission has allowed the SFC to fulfil its remit. Two more members (non-executive) could complete the number of SFC members.

For budget purposes, the question arises as to whether the members of the statutory SFC should be full-time or part-time. In this regard, OECD principle 2.4 recommends that the head (chairperson) of an IFI should preferably be a remunerated and full-time position. Once the SFC begins recruiting staff for its Secretariat (see below), the SFC chair will need to be present relatively frequently, to provide oversight and direction for the work of the SFC staff. The chair of the SFC also has an important public relations role, to promote the SFC’s interests and work. In this context, the Chair needs to interact with the Government, the Parliament, the media and civil society organizations, since the SFC chair is the key person for giving the SFC visibility and credibility in Scotland, the UK, and international forums.

The time needed to accomplish such tasks could be substantial. If the SFC chairperson position is not full-time, it should probably be at least 50% full-time equivalent (FTE).

There are no OECD guidelines for the remuneration of non-Chair IFI members. Four “fiscal council” IFIs that are comparable to the SFC (Ireland, Portugal, Slovenia and Sweden) have various practices, including: (1) reimbursement of employers of IFI members for time spent on IFI work, notably universities – Ireland (for some IFAC members); (2) flat rate fees per month – Sweden; (3) fees for travel / attendance (Slovenia, where council members are not otherwise remunerated) or time spent on IFI work (some IFAC members); and (4) Portugal – where all members of the Executive Committee are full-time, with remuneration determined by a special remuneration committee.

Section 17 of the SFC bill establishes the principle that the Commission may pay its members either remuneration or expenses for work performing SFC functions, subject to the approval of Scottish Ministers. In the Financial Memorandum accompanying the SFC bill, it is assumed that the statutory SFC will be remunerated in line with Public Sector Pay Policy for Senior Appointments. This is one option.

Another option for setting the daily fee of the SFC members (and, possibly, a salary for the Chair, if it were to become full-time) would be to involve an independent panel for determining the remuneration and/or fees for expenses incurred by SFC members. For example, the “SFC remuneration” panel could be the same panel as that proposed above in relation to appointments of SFC members. A third option would be to have the Finance Committee of Parliament vet remuneration / fee packages for SFC members, following propositions from Scottish Ministers for the remuneration/fees of SFC members.

2. SFC staff

By September 2015, the SFC had recruited a secretary, but had not yet recruited a Chief of Staff, an obligatory position in the SFC bill (section 18 (1)). Key aspects of the work of the
The Chief of Staff will be to provide the SFC members with guidance and technical information needed to assess macroeconomic and fiscal forecasts. Report drafting would be another task. The Chief of Staff would direct other SFC staff and provide on-the-job training for incoming staff. It is a key position for the SFC’s functioning.

The number of SFC staff to be recruited depends on the SFC’s mandate. To assess both macroeconomic and fiscal forecasts (revenues, expenditures, budget balance) several SFC staff would be needed, especially if the Scottish Government begins publishing a medium-term budget framework of revenues, spending and borrowing. The fiscal councils of Ireland and Sweden (with about 5 staff) may provide some guidance for the SFC. However, these two councils have a full-fledged mandate. On the other hand, unlike in Ireland and Sweden, the SFC staff would not have access to a non-MoF government agency to assist it in its macroeconomic and fiscal forecasting activities. Slovenia’s fiscal council had no staff, which created a risk for its on-going existence (OECD, 2015a).

A pragmatic way forward may be to recruit, say 3 staff in addition to the existing secretary, and see whether there is a need for further staff. In the meantime, the SFC members would benefit from the immediate assistance of a qualified Chief of Staff, who would also build further capacity inside the SFC to make forecasts of devolved taxes.

The SFC itself should be the main body that determines the remuneration for SFC staff. If SFC governance were to include non-executive members, the latter could provide guidance to the SFC chair as to the level of staff remuneration. In line with OECD principle 2.6, the level of Scottish civil servant’s remuneration and employment conditions for comparable positions could be used to establish benchmarks for SFC staff remuneration. In this context, it would be useful to remove the need for the SFC to seek prior approval of Scottish Ministers when setting SFC staff remuneration packages. For example, sub-section 18 (3) could be re-worded as follows: The Chief of Staff and other staff are to be employed on such terms as the Commission may determine, following remuneration and employment guidelines applicable to Scottish civil servants.

3. SFC budget

The Financial Memorandum of the SFC bill contains estimates of the running costs of the SFC during a transitional period and annual budget estimates as from 2017/18. The annual recurring costs for operating the SFC are estimated by the SG to amount is £850,000. Key assumptions (for costing purposes) are: (1) SFC members remain at three, each working 1.5 days per week for the SFC; (2) SFC staff is built up to six full-time equivalents (FTEs); (3) all major non-salary costs (rent of office space at commercial rates, IT services, administrative and professional services, travel, etc.) for operating the SFC are included in the estimates.

The SG’s estimates are generous relative to comparable small IFIs elsewhere, for which the annual budget is roughly £60,00041 times the number of members and staff. In view of the

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41In Ireland, for example, in 2014, the operating budgeting of the IFAC was 800,000 Euros; this budget supported 5 Council members and 5 staff, i.e., the per person total cost was 80,000 Euros or about £60,000. Similar calculations show that Slovakia’s IFI is also about £60,000 per person. Sweden’s fiscal council per person budget is approaching £70,000 and Portugal’s IFI around £80,000 (but note that the 3 executive Council members are all full-time). Estimates for the “low-budget” councils recently established in Europe (see footnote 39) range from £12,000 per person in Estonia.
SFC’s relatively limited mandate, it may not be necessary to build up to 6 staff by 2017/18. On the other hand, the SFC will need strong in-house forecasting expertise, given that the SFC will not have access to non-MoF forecasting agencies in Scotland or international organizations (EU, IMF, OECD), as is the case in many countries.

The proposed budget for the SFC allows swapping between SFC budget “line items”. For example, if it is decided to step up the time involvement of the SFC chair, to at least ½ time (or even full-time), the SG’s budget estimates would allow the SFC chair to be remunerated in function of time spent on SFC business.

OECD principle 4.1 for IFIs indicates that the IFI’s budget should be published and treated in the same manner as the budget of other independent bodies such as audit offices. Multi-annual funding commitments may further enhance IFIs independence.

Concerning publication of the SFC’s budget, in its draft annual budget for 2015/16, the SG presented the expenditure estimates for the Scottish Parliament and Audit Scotland under one heading. It would be appropriate for the SFC, as an independent body corporate (c.f., section 10), to have a budgetary treatment similar to that of the Scottish Parliament and Audit Scotland. In particular, in Spending Reviews, prior to determining DEL limits for Scottish Government portfolios, the SFC’s annual budget should first be deducted from total resources (the block grant and borrowing), using a procedure analogous to that used by the SG when it deducts the costs of the Scottish Parliament Corporate Body and Audit Scotland from total Scottish spending (determined mainly by the UK Spending Review).

Concerning multi-annual funding commitments, the SG does not yet submit a MTBF, with some details of estimated spending over a 3-5 year period, to the Scottish Parliament as part of its annual budget documentation. This does not obviate the SG and the SFC from drawing up multi-year funding agreements for the SFC’s future annual budgets.

Section 17 of the SFC bill does not provide assurances of the “permanency” of the SFC’s funding. It would be useful to strengthen this section so as to:

- Ensure the SFC’s budget will be charged on and paid out of Scotland’s Consolidated Fund.
- The SFC initial full-year base-year annual budget, e.g., those provided in the Financial Memorandum for 2017/18, be updated annually thereafter (e.g., by indexing the SFC to changes in a Scottish consumer price index)

The SFC bill could also add a section indicating that the annual and medium-term budget for the SFC would be drafted by the SFC. Outside the SFC bill, the SFC should be encouraged to enter various service level agreements, as needed, to operate the SFC, e.g., with the University of Glasgow should office space continue to be provided and a fully managed IT service contract (c.f., paragraph 15 of the Financial Memorandum).

(but note that Estonia’s budget excludes the cost of 2 staff and office space provided “free” by the Central Bank of Estonia) to about £40,000 per person in France. For the OBR, the per person cost is approximately £80,000, i.e., roughly similar to that for the SFC.
Recommendation 9. Providing the SFC with adequate resources

A. Note that SG’s estimates for the recurrent annual costs of operating the SFC are generous relative to the SFC’s limited mandate. The SFC’s budget estimate could be reduced, contingent mainly on re-assessing how many staff are actually needed during the next 2-5 years and whether non-executive Members (which would be low cost, since quite part-time) become part of SFC management.

B. Note that some EU countries have recently established Fiscal Councils with a considerable number of part-time council members (6 to 15) with few staff. As a result, the annual budgets of these councils are considerably less than the per person full-year costs of the SFC as estimated in the Financial Memorandum.

C. Take a view as to whether the Chair of the SFC should be a full-time, near full-time position, 50% FTE position, or less than 50% FTE position.

D. Consider involving a special SFC remuneration panel or the FC of the Scottish Parliament, instead of solely relying on Scottish Ministers, to determine SFC members’ remuneration or fees for expenses and/or time spent on SFC business.

E. Note that, for costing purposes, the SG has assumed that the SFC, once fully operational, would have six FTE staff and that this number is in line with comparable fiscal councils, notably those in Ireland and Sweden.

F. Consider recommending that three staff plus a secretary may be adequate for the SFC’s needs during the next 1-3 years, after which the need for more staff could be reviewed.

G. Encourage the SFC to recruit a Chief of Staff as a matter of urgency.

H. The SFC itself should determine the level of SFC staff remuneration and employment, with reference to guidelines of Scottish civil servants. In this context, remove the need for the SFC to seek prior approval of Scottish Ministers and re-write sub-section 18 (3) (see above, for a suggested text).

I. Provide, in each draft annual Budget (spending) Bill and in each periodic Spending Review, a budgetary treatment for the SFC similar to that of the Scottish Parliament and Audit Scotland.

J. Establish, with the Scottish Government, a multi-year funding agreement for the SFC, with the agreement being reviewed by Parliament’s Finance Committee and subsequently published. Insert in the SFC bill a section that indicates that the revenues of the SFC’s annual revenues shall be received from Scotland’s Consolidated Fund and that the SFC’s annual spending budget shall be prepared by the SFC (within the constraints of law).

K. Consider introducing a section in the SFC bill so as to ensure that the SFC’s annual budget increases in a transparent manner from an agreed initial base level (e.g., a revised estimate for 2017/18).

10. Ensuring transparency, accountability and oversight of the SFC

The SFC is designed to be a body that promotes fiscal transparency. At the same time, the statutory SFC must be transparent and accountable in its own operations. The transparency of the SFC will help to build its credibility.
The publication by SFC of its reports and main correspondence on its website www.fiscal.scot provides a good start to implementing OECD principles 7.1 to 7.4 on the transparency of IFIs. These four principles relate especially to the publication of IFI reports in the IFI’s own name, and the advance announcement of IFI report release dates.

The SFC’s first report (SFC, 2014) pointed to ways in which the SG could improve its methods for forecasting the devolved taxes. It also highlighted the need to improve the availability of data, including that needed by the SFC held by the UK and not yet available to the SFC. While it is too early to comment on the SFC’s track record of its assessment activities, the SFC’s recommendations are fully consistent with its independent fiscal watchdog role.

Section 4 of the draft SFC bill provides a legislative basis for continuing these practices. The SFC will have both the flexibility and the obligation to publish (after presentation to the Scottish Parliament) of any non-obligatory reports consistent with its mandate.

Apart from requiring the SFC to present an Annual Report to Parliament (section 8) the SFC bill does not contain provisions for the SFC’s accountability to Parliament in regard to the SFC’s financial management, including audit of its annual accounts. In this context, it would be useful to strengthen the SFC bill by including adding sections that require the SFC to:

- Appear before the Finance Committee of the Scottish Parliament as soon as practicable (and in agreement with the FC) after publication of its key annual report pertaining to the SFC’s assessments of the forecasts of revenues and spending in Scotland’s annual budget.
- Prepare annual financial statements in a format similar to those of other independent bodies (e.g., the Scottish Parliament) and present them to the Auditor General for audit, no later than, say, 3 months after the end of the year to which they pertain.
- Identify the SFC Chairperson as the Accountable Officer and require that person to appear before the Public Audit Committee of the Scottish Parliament if and when needed.

The present SFC bill is silent as to the SFC’s responsibilities to have its annual accounts audited by the Auditor General and to defend the SFC’s budget outcomes before the Scottish Parliament. As a possible model for a new section relating to these issues, see Box 1 of the note on Ireland’s IFAC (Annex 2).

Concerning the SFC Accountable Officer, the SFC bill’s Financial Memorandum assumes that the Chief of Staff post will incorporate the role of statutory Accountable Officer. It is preferable that the SFC Chair plays this role, given the Chair’s seniority, experience, and responsibility to “sign off” on all SFC activities, including the SFC’s Annual Report and Annual Accounts. By way of comparison, the Auditor General is the Accountable Officer of Audit Scotland: she defends Audit Scotland budget outcomes before the Scottish Parliament, as required by section 18 of the Public Finance and Accountability (Scotland) Act 2000.

In section 25 of the SFC bill, amendments to six Scottish Acts relating to public bodies are proposed. Each Act will add references to SFC. Under Sections 31 to 32 of Part 3 of the
Public Services Reform (Scotland) Act 2010, the SFC will have additional reporting requirements, which will add to the SFC’s accountability. In particular, the SFC will be required to publish detailed information on SFC expenditures on overseas travel, hospitality and entertainment, external consultancy, public relations, high-value payments, and improvements in SFC efficiency. Such reporting obligations will require the SFC to set up detailed accounting and reporting formats. The administrative costs of such obligations should not be underestimated.

Concerning accountability other than to Parliament, OECD principle 9.1 recommends that IFIs should develop a mechanism for an external evaluation of the IFI’s work. In this context, section 9 of the SFC bill already provides for an external review every 5 years. Additional options for enhancing external oversight of the SFC are: (1) appointing non-executive SFC members (see above); and/or (2) appointing a panel of independent experts to guide the formulation of the SFC’s annual work program. Such a panel (whose experts are unremunerated) exists in the UK (see Annex 3).

**Recommendation 10 – Ensuring SFC transparency, accountability and oversight**

A. The SFC should continue to maintain its openness, by publishing all reports and major correspondence, and to seize available opportunities to make its messages known in the media and elsewhere. In so doing, its credibility will be reinforced.

B. Consider, in the interests of ensuring that the SFC is an accountable institution, strengthening the SFC bill by adding provisions that require:

   - SFC appearances before the Finance Committee of the Scottish Parliament, especially for explaining the content of its key annual assessment report associated with the annual Scottish budget.
   - The SFC to prepare annual financial statements and submit them to the Auditor General for audit within statutory deadlines.
   - The identification of SFC Chair as the SFC’s Accountable Officer, who would be required to appear before the Public Audit Committee of the Scottish Parliament. Ideally, it would be desirable to initiate amendments in the UK Public Finance and Accountability (Scotland) Act 2000, with a view to putting the SFC on a similar footing to that of Audit Scotland.

C. Note that when other Scottish Acts are amended, as proposed in Section 25, additional detailed reporting obligations will be imposed on the SFC, which will enhance SFC accountability, while adding to the SFC’s administrative costs.

D. Consider adding to the SFC bill, or alternative less-formal arrangements, a reference to a panel of experts to advise the SFC on its annual work programme.

11. Placing the SFC on a statutory footing

The key issues for which there is room for further debate concern the:

- **SFC’s mandate.** This report has argued that the core mandate of the SFC should be to assess all forecasts of the SG – including its macroeconomic projections, its MTBF,
as well as the projections and the underlying assumptions of the annual forecasts of devolved taxes, the block grant transfers, SG borrowing and expenditures. The SG envisages that the SFC’s immediate obligatory role is confined to assessing forecasts of devolved taxes and borrowing, as permitted by the Scotland Act 2012 and the forthcoming Scotland Act 2015.

- **SFC independence, including access to information.** Recommendations 5 to 7 above make suggestions for augmenting further the independence of the SFC. The statutory SFC would be a stand-alone IFI, neither under the direct influence of the SG, nor under the Scottish Parliament.

- **Scottish Government influence on SFC governance arrangements.** In the SFC bill, some governance aspects of the statutory SFC risk being under the control of Scottish Ministers. Recommendation 8 makes several suggestions for strengthening the independence of the statutory SFC from the SG, including by establishing a special panel for determining SFC appointments and remuneration.

- **SFC size, governance, budget, and oversight arrangements.** There are a number of omissions, including the SFC’s accountability to the Scottish Parliament, which could usefully be addressed in the SFC Act.

Even prior to adoption of the SFC Act, the SFC could draft Memoranda of Understandings (MoUs) and Service Level Agreements (SLAs) with the bodies that provide economic and fiscal information. The SFC bill permits the SFC to regulate its own procedures (section 19). This report takes the view that the SFC Act, MoUs, SLAs and the SFC’s own internal regulations provide the basis for an adequate legal and regulatory framework for the statutory SFC.

It may be premature to consider widening the SFC bill to include wider fiscal framework issues such as requiring the SG to prepare a medium-term fiscal strategy, a MTBF, or adopt fiscal rules. At this stage, it may be preferable for the SFC Act to include sound provisions for the above four bullet points. Any widening of the SFC Act, to include wider fiscal framework issues and a broader mandate for the SFC, could take place in a future legislative session of the Scottish Parliament.

In the meantime, the SG could be encouraged to do what it can to reform institutional weaknesses in IGR at UK level. If new sections were to be drafted on an expanded mandate of the SFC, notably to include sections on the fiscal framework, including fiscal rules and an obligation for the SG to prepare a Charter for Fiscal Responsibility, there is a strong risk that this would retard adoption of the Act during the current legislative session. It seems preferable to wait until there is greater clarity and certainty concerning the wider fiscal framework issues.
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Annex 1: Belgium: High Council of Finance (HCF) and Federal Planning Bureau (FPB)

Background and legal basis of the HCF and the FPB

The HCF is an advisory body to the federal Ministry of Finance. It prepares normative recommendations and assessments of fiscal policy. According to CurrIstine et al. (2013) the HCF is not legally independent from the Government. The HCF has nonetheless gained a reputation for quality independent analysis.

The HCF was established by Royal Decree in 1936. Since 1969, the HCF has been restructured several times. In 1989 when federal constitutional reforms were being implemented to give more fiscal autonomy to sub-national governments, the Public Sector Borrowing Requirement (PSBR) section was established in the HCF, to reconcile increased subnational autonomy of regions with macroeconomic and budgetary stability (in 1988, the general government fiscal deficit was 7% of GDP and gross debt was 125% of GDP). In 2006 the Taxation and Social Security Contributions section of the HCF was revamped.

The Federal Planning Bureau (FPB) produces the macroeconomic forecasts used in the federal budget. The FPB was created in 1959. When a 1994 law created the National Accounts Institute (NAI), the FPB was placed under the NAI as one of the NAI’s three component bodies. The FPB’s role is to prepare economic analyses and forecasts. The 1994 law indicates that the FPB is under the joint authority of the Prime Minister and the Minister of Economic Affairs.

It could be considered that Belgium has two IFIs: the HCF, which deals with the “normative” side by making recommendations for fiscal policy targets; and the FPB, which is limited to “positive” economics (Bogaert et al, 2006), i.e., economic and fiscal analysis and, especially, forecasting. The publications of both IFIs are impartial. Although the federal government appoints the members of the HCF, the HCF is functionally independent.

In December 2013, under a cooperation agreement, the HCF was designated as Belgium’s “independent fiscal institution” under the new European fiscal framework. The cooperation agreement is between the federal, regional and community governments, and was ratified by the parliaments of each entity.

The HCF plays an important role relating to EU fiscal rules and the Stability and Growth Pact (SGP). Since 1998, based on the SGP, Belgium has drawn up medium-term budget targets for the federal and subnational authorities (regions, communities and local authorities). These generally follow the HCF’s recommendations for multi-year borrowing targets.

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42 Under the 1989 decentralization arrangements, the main sub-federal entities are three Regions and three Communities.

43 Although a legal entity, the NAI does not have any staff or budget; it regroups the FPB, Statistics Belgium and the National Bank of Belgium (central bank). As from 2016, the Flemish, Walloon and Brussels Regions will be represented on the governing Board of the NAI.
The mandates of the HCF and the FPB

The HCF’s 2006 decree (Article 2) provides the HCF with a broad mandate:

- “To be responsible for advising the Minister of Finance and the Minister of Budget in the development of fiscal, financial and budgetary policy”

The 1989 Special Financing Law requires the PSBR section of the HCF to:

- Prepare an annual opinion on the financing needs of the budgets of the governments at federal and subnational levels.

The PSBR section may, on its own initiative, or upon request of the federal Minister of Finance:

- Advise on restricting the borrowing requirements of one or more authorities should this be needed to avoid a structural derailment of the overall deficit. However, the HCF has until now never made use of its capacity of restricting the borrowing requirements of an authority.

The PSBR section must take into account the findings of the annual report on the budgetary and social consequences of ageing, which are published by the HCF’s Study Group on Ageing created by law in 2001.

The Taxation and Social Security Contributions section of the HCF can

- Issue an opinion on issues related to taxation and social security contributions.

The mandate of the PSBR section was enhanced in late 2013 (see Box 1, OECD, 2015b):

- The HCF proposes multi-year fiscal targets that are set in nominal and structural terms, taking into account a fair burden sharing of the fiscal consolidation efforts. On the basis of HCF’s Opinion, the federal, regional and community governments have to conclude an agreement on the fiscal path and its breakdown.

- The HCF monitors the different governments’ budget outcomes. In the event of significant deviations from the targets, a correction mechanism will be triggered, the implementation of which will, in turn, be monitored by the HCF.

In summary, the HCF plays a crucial role in not only setting coherent multi-year fiscal targets for the general government and for the sub-national governments but also for:

- Assessing compliance with fiscal targets, for both “general government” and the budgets of the federated entities.

The Federal Planning Bureau, on the other hand, has the role of:

- Preparing annual and medium-term macroeconomic and fiscal projections (see the Publications sub-section below)
Budget and staffing

The HCF consists of 24 members with five-year renewable terms. The 2006 HCF decree requires the Chair of the HCF to be the federal Minister of Finance. The PSBR section consists of 12 members, six of which must be experts in budgeting and economics. Three of these are proposed by the National Bank of Belgium, one by the federal Minister of Finance, one by the federal Minister of Budget and one jointly by the federal Ministers of Finance and Budget. These two ministers also propose the other six members, upon proposals from the governments of the communities and regions (see OECD 2015b for details). The other 12 members are nominated in the Taxation and Social Security Contributions Section, also with due regard for regional/community representation. The King formally appoints the members of the council.

Given Belgium’s delicate political, regional and linguistic balances, there can be delays in HCF appointments. For example, following regional elections in 2004, there was a two-year hiatus in the HCF’s activities, due to delays in finding the appropriate balance of HCF members.

The work of the two sections of the HCF is supported by a secretariat of 12 staff plus two administrators, appointed by the federal Minister of Finance. The Federal Planning Bureau provides separate administrative support to the HCF’s Study Group on Ageing. The staff are civil servants and full-time members of the Research Department of the Staff Service Strategic Expertise and Support of the Federal Public Service (= “ministry” of Finance). HCF staff work part-time on HCF business and part-time on other work.

The HCF does not have any significant expenditures of its own. Members do not receive any salaries, as they have other full-time jobs. Membership only entails attendance at a small number of meetings a year. Unlike some countries where fiscal councils have been threatened with budget cuts when they have been perceived to be overly critical of the government, this is not a possibility in Belgium.

The Federal Planning Bureau has its own annual budget to support a staff of nearly 100. In Belgium’s annual federal budget, the FPB has its own budget line item, amounting to about 10 million euros. About one third of the FPB’s staff work in the FPB’s General Directorate, which is responsible for preparing the economic and fiscal projections. The FPB also receives compensation for contractual research work completed for third parties.

The independence of the FPB is visible in its recruitment policy. The FPB has its own recruitment procedures and it is not subject to the rules that apply to most of the federal government (which is through the central recruitment service).

Access to information

The HCF has no difficulty in accessing data since the Minister of Finance appoints the secretariat staff from the FPS Finance. The Cooperation Agreement of December 2013 stipulates that the HCF should be granted access to all information it needs to carry out its mission, particularly the enhanced mandate of the PSBR section.

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44 Since reforms in public administration in 2000, use of the word “ministry” was replaced by “Federal Public Service” (FPS). Thus, the Ministry of Finance is now FPS Finance.
Publications of the HCF and the FPB

All reports of the HCF are published in both French and Dutch on http://finance.belgium.be/en/about_fps/high_council_finance. The reports are technical and include discussions of methods and assumptions. The PSBR section generally produces two reports a year\textsuperscript{45}, notably those relating to:

- The recommended multi-year fiscal targets for each level of government in view of the stability programme (the report is published in the Spring – often March).

- An assessment of the compliance of the budgetary outcomes of the previous year with the targets of the stability programme for each level of government, including for individual regions and communities. This report, which was formerly generally published in the autumn and now in July, may include specific recommendations for the budget balances of individual authorities.

The FPB prepares and publishes:

- Short-term (one-year ahead) economic forecasts (but not including fiscal projections). The so-called “economic budget” forecasts provide an input for budgetary policies and projections of the federal government, regions and communities.

- Medium-term (five year) economic outlook including detailed projections of the general government accounts (federal, social security, federated entities and local) based on a no-policy-change assumption. These projections are used by the HCF to make its recommendations for borrowing targets. The macroeconomic outlook also serves as a starting point for the elaboration of the stability programme.

- Long-term projections of age-related budgetary expenditures (for the HCF’s Study Group on Ageing).

As an example of its projections by region, in July 2015 the FPB published economic and fiscal projections year by year until 2020, with separate projections for the Flemish, Walloon and Brussels regions. Table 20 of FPB (2015) shows fiscal 5-year projections for the nation as a whole and Tables 21-23 show 5-year fiscal projections for the three separate regions (national and regional projections for GDP and its components are also published in the same report). Each table shows the following (but in more detail):

<table>
<thead>
<tr>
<th>Total Revenues</th>
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<tbody>
<tr>
<td>Taxes</td>
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<td>Nontax revenues</td>
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<td>Transfers</td>
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<table>
<thead>
<tr>
<th>Total Expenditure</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Primary Expenditure</td>
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\textsuperscript{45} In 2015 three reports will be published.
Operating expenditure
Investment spending
Non-social transfers
Social transfers
Interest on debt
Primary balance
Balance to finance

The FPB uses a macro-economic model with “top-down” features to produce its forecasts are national level. For its regional projections, the FPB collaborates closely with three forecasting bodies in each region,\(^\text{46}\) which contribute heavily to the regional projections.

**Relationship with parliament, government, other agencies and the media**

The HCF has no formal relationships with the federal and regional parliaments. While parliamentary committees generally do not discuss HCF reports and recommendations. The HCF is an advisory body for governments, with limited institutional independence from the Governments. As noted, the federal Minister of Finance officially chairs the HCF, without however being actively implicated in the concrete working of the HCF. The governments are not obliged to take on board the HCF’s recommendations. In practice, however, the HCF proposals are taken on board, especially since late 2013 when the HCF’s monitoring responsibilities were enhanced.

The FPB is an independent government agency under the “ministry” of Economy.\(^\text{47}\) The FPB has considerable autonomy in its operations. It provides the “no-policy-change” economic and fiscal forecasts to the HCF, for use in its target-setting and monitoring activities. The National Bank of Belgium is on the Scientific Committee of the Economic Budget and, as such, may comment on FPB’s forecasts.

**Oversight and evaluation of HCF and FPB**

The HCF does not have an oversight board or panel of advisors to guide its work. Nor is the HCF’s work systematically subjected to peer review. Although the independence of the HCF could be questioned (see, for example, Uhoda, 2013), the HCF has received some positive evaluations in the literature and by international financial institutions.

Being an autonomous agency of public interest, the annual accounts of the FPB are subject to audit by the Court of Audit [www.ccrek.be/EN/index.html](http://www.ccrek.be/EN/index.html).

\(^\text{46}\) Notably: Institut Bruxellois de Statistique et d’Analyse, Institut Wallon de l’Évaluation, de la Prospective et de la Statistique, et Studiedienst van de Vlaamse Regering.

\(^\text{47}\) In Belgium, besides FPS Economy, there are two other separate “ministries”: FPS Finance (primarily a “revenue ministry”) and FPS Budget that prepares the annual federal budget.
Annex 2. The Irish Fiscal Advisory Council (IFAC)\textsuperscript{48}

Background for establishing the IFAC and its legal basis

During 2008-10, Ireland’s financial and fiscal crises deepened. In late 2010, the government committed itself to reduce the very high fiscal deficit and approved a package of measures to improve budget management. These included introducing a medium-term budget framework (MTBF) with multi-annual ceilings on expenditure, creating a fiscal advisory council, and preparing a draft Fiscal Responsibility Act (FRA). These measures were included in Ireland’s financial assistance program for 2010-13 agreed with IMF/EC/ECB. At the time, the European Union was urging Euro-zone countries to strengthen their fiscal frameworks, including by introducing numerical fiscal rules and by establishing an IFI.

In July 2011, the Minister of Finance announced the establishment of the IFAC on an interim basis. There was wide support across political parties for IFAC (despite a change in government in early 2011). Sweden’s Fiscal Policy Council was influential in the design of the IFAC, as it was seen to be economical, with part-time council members (made up of academics and other independents), and the absence of making its own fiscal forecasts.

To get the IFAC operating quickly, the Economic and Social Research Institute (ESRI) provided support services and accommodation. These arrangements have continued, with the ESRI now being reimbursed from the IFAC’s operating budget for the services provided. The accounts, HR, IT and facilities support functions provided by the ESRI for IFAC are set out in a Service Level Agreement, which is reviewed annually by the two institutions.

During the interim period, the IFAC had a unique opportunity to contribute to IFAC’s design. In January 2012, the IFAC’s report on “Strengthening Ireland’s Fiscal Institutions” (McHale, 2012) included views on all pertinent issues for the creation of the IFAC as a permanent IFI. The majority of its recommendations were accepted and included in the FRA.

The IFAC was formally established as an independent statutory body in the FRA, approved by parliament in 2012. Besides laying out the IFAC’s mandate, the law requires the Government to prepare a MTBF and establishes fiscal rules consistent with EU fiscal rules.

The IFAC’s mandates

The IFAC has five main mandates (see www.fiscalcouncil.ie). The first four are included in the FRA 2012 and the fifth obtained a legal basis in the Ministers and Secretaries (Amendment) Act 2013.

\begin{itemize}
  \item To assess the official macroeconomic and budgetary forecasts prepared by the Department of Finance (DoF) and published twice a year: in the Budget and Stability Programme Update in the spring and in the annual Budget in the autumn.
  \item To assess whether the fiscal stance of the Government is conducive to prudent economic and budgetary management, with reference to the EU Stability and Growth Pact.
\end{itemize}

\textsuperscript{48} This chapter has benefited greatly from the note on Ireland in OECD (2015a).
• To monitor and assess compliance with the budgetary rule as set out in the FRA. The rule requires the Government’s budget to be in surplus or in balance, or is moving at a satisfactory pace towards that position.

• To assess whether any non-compliance with the budgetary rule is a result of “exceptional circumstances”. This could mean a severe economic downturn and/or an unusual event outside the control of Government.

• To endorse, as it considers appropriate, the macroeconomic forecasts prepared by the DoF. This role for the IFAC conforms to an EU regulation of July 2013 and it is elaborated in a Memorandum of Understanding between the IFAC and the DoF.49

To assist in fulfilling its mandate, the IFAC has developed a fiscal-feedback model for assessing the impact of macroeconomic/budgetary developments and whether the targets for the general government deficit will be achieved. While this model is helpful for one-year ahead forecasts, the IFAC has still working on developing a fiscal forecasting model that would be helpful for 5-year forecasts. Model developmental work requires skilled staff with prior modelling experience, which IFAC has, but it also requires time. This type of work can only take place in the “off-season”, i.e., outside the report preparation time.

Budget and staffing

During 2011-12 set-up period, the IFAC received a grant from DoF’s annual budget. As from FY2013, and based on provisions in the Fiscal Responsibility Act, the council’s budget is guaranteed as “non-voted expenditure”, i.e., it does not require annual parliamentary approval. Thus, the FRA provides assurances of ongoing annual funding for IFAC irrespective of the composition of the government and the parliament.

Box 1 provides key details of the Act’s provisions for the IFAC’s administration and budget. The IFAC has flexibility on how to spend its funds within the ceiling provided.

The 4-year terms of IFAC’s five members are decoupled from the 5-year parliamentary election cycle. The Minister of Finance can only dismiss Council members if they are incapable through ill-health, misbehaviour, conflict of interest, or other serious disqualifications listed in the FRA. Fiscal Council members are not required to be Irish nationals. Three of the five original members resided outside of Ireland. An international presence on the council is thought to have enhanced its objectiveness.

Although part-time, the IFAC members’ work requires a significant time commitment. Arrangements are in place either to compensate Council members’ full-time employers for the time spent on IFAC work, or to provide fees for services provided to the IFAC. Fees are set at a rate benchmarked on comparable other non-commercial State-sponsored bodies.

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Box 1. Key Legal Provisions Relating to IFAC’s Administration and Oversight

IFAC Members, Term of Office, Resignations and Terminations

The Fiscal Council consists of five members, each appointed by the Minister of Finance according to specific criteria (competence, domestic or international experience, etc.). Members have a 4-year term of office, with no more than two consecutive terms. Members may resign at any time. The Minister of Finance may remove a member from office, but only under very restrictive conditions (see below). Members must resign if they accept political positions or are candidates in Irish or European elections.

IFAC Staff

The Council appoints IFAC staff, after prior consent of the Minister, following consultation. The IFAC staff are paid out of the moneys at the disposal of the IFAC. If staff accept political positions, they stand seconded from IFAC employment and are no longer paid by the IFAC.

Funding

The expenditure incurred by the IFAC is charged on and paid out of the Central Fund. The amount since then are linked to the annual percentage change in the Harmonised Index of Consumer Prices.

Accounts and Audit

The IFAC must keep annual accounts of receipts and expenditure, which are signed by the chair. The IFAC chair is accountable before the Comptroller and Auditor General who reports annually to the House of Representatives of Parliament. After its establishment, IFAC worked hard to put in place appropriate policies and procedures, to conform to Ireland’s Code of Practice for the Governance of State Bodies, which imposes various reporting requirements on IFAC.

Appearances before Oireachtas Committees

The IFAC chair shall, when requested in writing by a Committee of the House of Representatives, give evidence to that Committee of IFAC’s financial management. Any parliamentary committee can request the IFAC chair to account for the performance of IFAC’s functions.

Annual report

IFAC must prepare a report of its activities during the year, as soon as practicable after end-year.


Initially the IFAC had three full-time secretariat staff, all of which were seconded from official agencies in Ireland. Since 2012, the IFAC has added two additional staff to develop its modelling and forecasting capabilities. IFAC has developed their own Code of Business Conduct that includes a section on conflict-of-interest. Most staff continue to be on secondment from bodies such as the central bank, the ESRI and the Department of Public Expenditure and Reform. This enables dynamic young people to gain in-depth experience and responsibility in fiscal forecasting and management before returning to their “home” institutions at the end of their secondment periods.
Access to information

The FRA is not explicit concerning the IFAC’s access to information. According to Article 8 (7), the Fiscal Council has all such powers as are necessary for, or incidental to, the performance of its functions. This phrasing is one possible weakness of the legislation. On the hand, the FRA prohibits the IFAC from disclosing confidential information. The Minister declares in writing the information that is considered confidential.

In practice, the IFAC has had reasonable access to government information. There have been cases where slow responses have delayed IFAC’s analysis (OECD, 2015a). The delays were due to the information not being easily accessible, rather than unwillingness to supply the information.

Publications

IFAC publishes two assessment reports a year. Typically these reports have four substantive parts, notably the assessments of: macroeconomic forecasts; budgetary forecasts; compliance with fiscal rules; and the fiscal stance.

The IFAC publishes analytical notes, working papers and other documents on its own initiative. In September 2014, the Council published its first Pre-Budget Statement, which set out the macroeconomic and fiscal context for the 2015 Budget. The council also publishes an Annual Report that summarizes its activities in the previous 12 months.

Relationship with parliament, government, other agencies and the media

The IFAC is independent from both the government and the Oireachtas in its operations. To assist parliamentary scrutiny of annual budgets, the Chair of IFAC presents IFAC’s Fiscal Assessment report to the Oireachtas Joint Committee on Finance, Public Expenditure and Reform and answers questions from committee members. Transcripts of these appearances are posted on the IFAC’s website. Council members may also appear before other parliamentary committees as requested.

The lower parliamentary house would approve any dismissals from the IFAC should the Minister of Finance ever initiate a dismissal. As noted, the hiring of IFAC staff needs prior consent of the Minister. These arrangements potentially limit the IFAC’s administrative independence.

For its assessment activities, the IFAC is reliant on access to information from the Department of Finance, as well as data of the Central Statistics Office (CSO) and the National Treasury Management Agency (NTMA). Although IFAC has suggested that it would be useful to have written memoranda of understandings (MoUs) pertaining to data sharing arrangements, to date no MoUs in this area have been drawn up with DoF, CSO and NTMA.

The IFAC is transparent and uses its website as the main way of communicating with the public and the media (see www.fiscalcouncil.ie/publications).
Oversight and evaluation of IFAC

Like all state-funded institutions, IFAC is subject to audit by the Comptroller and Auditor General. IFAC’s Annual Report includes audited IFAC financial statements. The relevant committee of the Oireachtas may choose to scrutinize the audit report.

IFAC’s Strategic Plan for 2014-2016 suggested that a peer review take place in 2015. Accordingly, in early 2015, an evaluation was prepared by a three-member independent peer review. The evaluation report (see Jonung et al, 2015) was submitted to the IFAC, sent by IFAC to the Minister for Finance and the Oireachtas Joint Committee on Finance and Public Expenditure and Reform, and published on the IFAC website in June 2015.
Annex 3. United Kingdom: Office for Budget Responsibility (OBR)

Background for establishing the OBR and its legal basis

As from 2000, fiscal forecasts in the UK were optimistic. Also, the credibility of the fiscal rules relating to borrowing and net investment “over the cycle” was undermined by the discretion the government exercised in deciding the dates on which the economic cycle started and finished. The fiscal rules were suspended in late 2008 following a sharp rise in the fiscal deficit.

The idea for an Office for Budget Responsibility (OBR) was first proposed in September 2008 by the then opposition Conservative party. Following the May 2010 parliamentary elections, the new coalition government launched the OBR in its interim form. The coalition government also replaced a temporary fiscal rule by a mandate to balance the cyclically adjusted current balance by the end of a five-year rolling horizon, with public sector net debt targetted to be falling as a share of GDP in 2015/16. Following the May 2015 parliamentary elections, the new Conservative government announced plans to replace these fiscal rules with a target for a headline surplus in 2019/20 and each subsequent year and for public sector net debt as a share of GDP to fall in every year.

In its interim form, the OBR comprised a three-person Budget Responsibility Committee (BRC) chaired by a former Treasury Chief Economic Adviser. Aided by a small secretariat of Treasury employees, the OBR quickly began preparing macro-fiscal forecasts. The interim OBR was also tasked with providing advice on the arrangements for the permanent OBR.

Following an inquiry by the House of Commons Treasury Select Committee (TSC), in September 2010 the TSC published a report pertaining to the OBR’s permanent arrangements. The interim OBR also provided advice on the permanent body. Both reports emphasized the OBR’s independence and accountability; the interim OBR elaborated on the permanent OBR’s roles and responsibilities. The reports’ key recommendations were taken on board in the Budget Responsibility and National Audit (BR&NA) Act, adopted in March 2011. These included:

- The OBR was established with its own legal personality and independence for appointing its own staff.
- A clear remit and core tasks for the OBR.
- Other requirements, notably that:
  - The responsible parliamentary select committee should have a veto over the appointment or dismissal of the Chair of the OBR and the BRC members.
  - Government officials should support the OBR when it prepares forecasts.
  - The OBR should have a right of access to the information it needs.
  - The legislation establishing the OBR should not require future governments to

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50 See [http://budgetresponsibility.org.uk/wordpress/docs/obrpermanent_body_advice_120710.pdf](http://budgetresponsibility.org.uk/wordpress/docs/obrpermanent_body_advice_120710.pdf)
use OBR forecasts.

- The permanent OBR should be subject to a comprehensive review no later than five years after it is established by statute.

Although the OBR was endorsed across party lines, the opposition in 2010 expressed some concerns about the adequacy of safeguards for the OBR’s independence.

**OBR’s mandate and tasks**

The BR&NA Act, along with the Charter for Budget Responsibility that elaborates on the Act, lay out the OBR’s responsibilities, which have a strong forecasting element.

**Mandate:** To examine and report on the sustainability of the public finances

**Tasks:**

(at least twice a year)

- Produce the official 5-year economic and fiscal forecasts, at dates determined by the Chancellor of the Exchequer.
- Assess the government’s progress in achieving its fiscal targets.

(at least once a year)

- Analyse the long-term sustainability of the public finances.
- Assess the accuracy of fiscal and economic forecasts previously prepared by OBR.

The Charter also requires the OBR to:

- Scrutinise and certify the government’s policy costings.\(^{51}\) The Charter makes it clear that the government, not the OBR, is responsible for all policy decisions and policy costings.

The UK government is responsible for all policy decisions. For policy costings, HM Treasury quantifies the direct impact of policy decisions on the public finances. In certifying the official estimates of policy costings, the OBR is required to state whether it agrees or disagrees with the government’s costings, or whether it has been given insufficient time or information to reach a judgement. To date, the OBR and HM Treasury have not disagreed on the estimates of the impact of any policy costings.

The Act proscribes the OBR from considering the impact of alternative policies. In contrast, many IFIs – particularly Parliamentary Budget Offices – quantify the budgetary impact of modified or new tax and/or expenditure policies. The OBR’s projections are based exclusively on government policy, including both existing policies and those communicated to the OBR by HM Treasury during the annual budget process.

With the exception of making policy suggestions, the OBR may undertake any other analysis relevant to its mandate. The OBR also provides testimony and evidence to Parliamentary committees, as required by the Act or upon request.

\(^{51}\) The costing of policies is described in an OBR briefing paper:

There have been proposals to expand the OBR's mandate to include the costing of pre-election policy proposals. While not ruling out this possibility, it would be difficult for the OBR to take on this role without considerable expansion of its present resources. Also, for policy costings, there would need to be a political consensus as to which parties would have access to the OBR's expertise, which policies would be assessed, the timetable for delivery, etc. (for further details, see Chote, 2014).

**Budget and staffing**

The OBR has a separate budget line in the Treasury Group budget (as is the case for other “arm’s length” agencies). As such, it is part of Treasury’s annual Departmental Expenditure Limits (DEL). In the two instances to date that the OBR’s budgets have been set, the OBR and the Treasury have agreed on a multi-annual budget for OBR. This provides some safeguards for the OBR’s budget.

The Chair of the OBR, who is also the OBR Accounting Officer, is personally responsible for safeguarding the public funds provided to OBR. Formally, he is responsible to the Principal Accounting Officer in the Treasury for ensuring that the OBR operates within its agreed budget and (if required) for appearing before the Public Accounts Committee of Parliament for the OBR’s stewardship of public funds. The OBR’s annual report, which is submitted to Treasury and laid before Parliament, includes details of the OBR’s budget and expenditure. The publication of OBR’s annual report also provides some safeguard for the OBR’s budget.

The Budget Responsibility Committee, comprising the OBR Chair (full-time) and two other members (part-time), has executive responsibility of the OBR. The BR&NA Act requires at least two non-executive members to support and challenge the three executive members. The Chancellor of the Exchequer appoints the OBR Chair with the consent (veto right) of the TSC of the House of Commons. The two other members are also appointed the Chancellor, after consultation with the OBR Chair. Appointments are for 5 years, renewable once. The BRC members’ remuneration follows that for similar senior civil service positions and is disclosed in the OBR’s annual report.

The OBR is responsible for recruiting and remunerating staff, consistent with the Civil Service Management Code and with the OBR’s operating budget. In 2015, the OBR had 19 full-time staff, in addition to the 3 BRC and 2 non-executive members. The multi-year funding agreement agreed with Treasury agreed in May 2014 envisaged an increase in staff through 2017/18, to allow resources to be devoted to the OBR’s expanded mandate, notably to assess the welfare spending cap and make medium-term forecasts for taxes devolved to Scotland and Wales.

**Access to information**

The BR&NA Act provides the OBR with the right of access (at any reasonable time) to all Government information, which it may reasonably require for the purpose of the performance of its duty. The Act also entitles the OBR to require from any person holding or accountable for any Government information any assistance or explanation which the Office reasonably thinks necessary for the performance of its duty. In practice, the law has been respected: the OBR has received and obtained data and analysis from relevant government departments
and agencies, especially the Treasury, HM Revenue and Customs (HMRC), and the Department for Work and Pensions (DWP).

**Publications**

The OBR must produce and publish:

- Economic and fiscal outlook, at least twice a year
- Fiscal sustainability report, annually
- Forecast evaluation report

Since 2014, the OBR has also produced a Welfare Trends report. This was requested by the Government at the same time that the OBR acquired a new role pertaining to the new welfare spending cap.

The OBR is required to lay its legally mandated reports before Parliament. Besides the Charter, Memoranda of Understanding between the OBR, the Treasury, HMRC and DWP provide details on the content, timing, etc. of data and information needed for the OBR’s publications.\(^{52}\)

The OBR has discretion to prepare additional reports. In practice, it publishes Discussion papers, Working papers, Occasional papers, Briefing papers, Monthly public finances updates, and Press releases.\(^{53}\) All OBR reports must be published and sent to Parliament.

**Relationship with parliament, government, other agencies and the media**

The OBR has closer relations to the government than to parliament. For example, the BR&NA Act states that *the Treasury may make to the OBR such payments out of money provided by Parliament as the Treasury considers appropriate*. The OBR is nonetheless a legally separate entity, with freedom to spend its own budget as it wishes. As mentioned above, the OBR has also been given a multi-year budget, which is published.

The OBR’s broad governance and management framework – and its relationship to the Treasury -- is laid out in “Framework Document” (updated in 2014). As noted, the Chancellor of the Exchequer appoints the Chair of the OBR, subject to a veto right of the TSC. Normally UK parliamentary committees do not have veto rights over appointments.

All of the OBR’s analytical and other budget-related reports, along with the OBR’s Annual Report, are laid before Parliament directly. The OBR is directly accountable to Parliament for the content of its publications and pronouncements. Importantly, neither the government nor the parliament has a right of direction over the OBR’s analysis.

The OBR’s outputs require close communication with government departments to get the information and data needed for its forecasts. The OBR has agreed to Memoranda of Understandings with HM Treasury, HMRC and the DWP. The interdependence with these

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\(^{52}\) The various documents are summarized in: [http://budgetresponsibility.org.uk/independence/legislation-and-related-material](http://budgetresponsibility.org.uk/independence/legislation-and-related-material).

\(^{53}\) For details, see [http://budgetresponsibility.org.uk/category/publications](http://budgetresponsibility.org.uk/category/publications).
three government departments provides the OBR with capacity far beyond its actual staff size. The OBR purchases administrative support services (finance and human resources) from the Treasury and accommodation services from the Attorney General’s Office (these are set out in service level agreements).

Besides testifying to Parliamentary committees, BRC members and OBR staff give presentations at outside events. More generally, the OBR operates in a transparent manner, using its website as the main way of communicating with the public and the media. Besides publishing all its reports on http://budgetresponsibility.org.uk, the OBR also publishes the assumptions and methodologies underlying its forecasts, as well as important correspondence, e.g., letters to the Director-General Finance of the Scottish Government concerning the estimates of receipts from taxes devolved to Scotland.

**Oversight and evaluation of OBR**

The non-executive committee of the OBR must keep under review the way in which the OBR's main duties are performed. In this context, the BR&NA Act requires that the non-executive committee appoints a person or body to review such OBR reports as the committee determines. The terms of reference (not required by the law) of the first external review of the OBR included examination of the quality of the OBR’s publications, the effectiveness of its methodologies and governance, and the capability of the OBR team. This external review was completed in August 2014 (see Page, 2014). The evaluation was positive concerning OBR’s fulfilment of its mandate. The report cautioned expanding the OBR’s mandate to cost the budgetary implications of opposition parties’ pre-election manifestos.

The OBR is subject to internal audit that follows UK government standards. The OBR’s annual accounts are subject to external audit by the Comptroller and Auditor General, who certifies the OBR’s accounts and reports to the Treasury, which in turn submits a copy of the audit report to Parliament.

On its own initiative, in 2011 the OBR established a seven-person panel of economic and fiscal experts to help develop and scrutinize the OBR’s work programme and methods. The advisory panel membership was refreshed and expanded to eight in 2014. Panel membership is on a pro bono basis for a three-year term extendable by mutual consent.
Annex 4. Legislative Budget Offices (LBOs) in 50 States of the United States

Background for establishing Legislative Budget Offices (LBOs)

The 50 States of the USA are mirror images of the federation, in the sense that each State has a written Constitution, a bicameral legislature (a House of Representatives and a Senate), and an Executive (“government”) headed by a Governor who is directly elected by citizens in elections that are independent from the elections for the State legislature. These arrangements are in sharp contrast to Westminster countries, where the Prime Minister and Cabinet ministers are elected in legislative elections and remain in parliament after elections, i.e., legislative and executive powers are not separate in countries of U.K. inheritance.

Budgets are annual in 30 States and biennial in 20 States. Budgets become laws when signed by the State Governor, who has the authority to veto budget line items approved in Appropriations Laws. In contrast, the President of USA can only veto an Appropriation Act in its entirety, i.e., he/she is not authorized to veto line items of Appropriations Bills.

Both houses of the legislature have equal powers and each house approves the annual/biennial budgets. Each house may have a “budget committee” and/or appropriations committees. Some States have established a Joint Budget Committee.

LBOs were established to provide budget support to the legislature. The precise reasons differ across states, but most often it was to provide to the legislature an analysis of the Office (IFO) in 2010. However, this is seldom a reason for establishing an independent LBO. Legislative Audit Offices have also been set up in many U.S. States. They are not considered in this section. The sole reason for excluding an analysis of these offices is to avoid this note becoming too long. Although independent legislative audit offices are distinct from the LBOs, in some States, they play an important role in evaluating tax and spending initiatives. Although these evaluations are usually ex post, in some States, such as Delaware, Virginia and Washington, the Legislative Auditor gets involved in costing draft budget proposals. Whether ex ante or ex post, such evaluations feed into State budget approval processes.

Models of LBOs and their legal status

All LBOs serve the legislature and every LBO is independent of the Executive, reflecting the strong separation of powers in U.S. States. LBOs service mainly the budget committee, but may also serve other committees and individual members. The appointment of the director of the LBO is exclusively made by the legislature.

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54 Both “LBO” and “budget committee” are used generically in this subsection, to denote offices and committees known by different names in various States.
55 Nebraska is an exception. It voted to merge its two houses in 1934. The first unicameral house in 1937 passed more bills than its predecessor, at half the administrative cost of running two houses.
56 In 16 States, biennial budgets are those that approve, once every two years, appropriations for spending in two consecutive years. In 4 States, the biennial budgets are appropriations that are approved, every two years, for a 24-month period. See NASBO, Table 1, including Notes.
Sixteen States have established a stand-alone LBO by a law (Table 1). California’s Legislative Analyst’s Office (www.lao.ca.gov) is the oldest. Established in 1941, it served as a model for the creation of the federal Congressional Budget Office (CBO) in 1974. About 2/3rds of the State-level LBOs were created prior to 1975, i.e., they have existed for over 50 years. Pennsylvania’s IFO, created in 2010, is an exception.

Other States have contemplated creating an independent LBO, with or without broadening the mandates of the nonpartisan staff that already serve the “budget committee”. For example, in 2015, in Minnesota, an initial proposal to create a stand-alone LBO was later changed to a LBO that would transfer some of the duties of the Department of Minnesota Management and Budget to the Office of the Legislative Auditor. In the event, political leaders were unable to agree and the proposal died, at least for 2015.

In 12 other states, a law (10 states) or a resolution (2 states) of the legislature have established a budget committee (joint or within each house). The legal framework provides for the committee (or “commission”) to be serviced by nonpartisan staff. In several States, the nonpartisan staff draft the appropriations laws. These staff could be considered to work for a LBO, even though the law has not formally created an LBO. Such “LBOs” have been in existence for many years, e.g., the nonpartisan staff serving Colorado’s Joint Budget Committee since 1959.

Thus, in 26 States, both houses of the legislature have adopted a law that establishes a LBO or nonpartisan staff serving the budget committee(s). The Governor also signed the LBO’s founding law. Hence, these LBOs had wide political support at the time of their creation. In addition, the legislatures of two other States (Hawaii, Michigan) led to the creation of a LBO by resolution of the legislature (Table 1).

In the 22 other States, the LBO is not a stand-alone office or dedicated nonpartisan staff serving primarily the budget committee. Rather, the “LBO” is a division of the legislature’s research department. Although the staff are nonpartisan, these divisions are not independent LBOs in that they do not have their own budgets nor authority over staffing. However, in practice, these divisions of legislative research offices have not suffered abrupt changes in budgets or in staff numbers, a reflection of the recruitment policies and governance structures for all nonpartisan staff of State legislatures.

In summary, all 50 states have some form of a LBO, even though 22 of them are not independent of the research offices of their legislature. In most states, the LBO has existed for several decades, despite political party power shifts in state legislatures.

**LBOs’ roles and remits**

U.S. States’ LBOs give emphasis to the following:

- **Assessing forecasts:** Only a few LBOs prepare medium-term projections for economic and fiscal aggregates (Pennsylvania’s IFO is one example). LBOs infrequently prepare comprehensive forecasts of budget developments for 1-2 years ahead, since the “official” revenue, spending, borrowing and debt forecasts are prepared by the Governor’s “central budget office(s)”. In some States, fiscal forecasts are prepared in a consensus manner, with input from the legislature’s “LBO”. Also, some LBOs are involved in revenue forecasting. In three States, revenue forecasting is completely independent from both the executive and the legislature (see below).
Table 1. Legislative Budget Offices – 50 States of USA

<table>
<thead>
<tr>
<th>Models of LBOs</th>
<th>Established by law, i.e., approved by both Houses of the Legislature plus the Executive</th>
<th>Established by Resolution or Administrative Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>LBO is: A stand-alone unit devoted to budget issues</td>
<td>Nonpartisan staff serving “budget” committee(s) or a Commission established in law</td>
<td>Nonpartisan staff of budget-related committee(s)</td>
</tr>
<tr>
<td>Serving primarily the budget and/or appropriations committees, but also other committees and members of both Houses (33 States)</td>
<td>Serving primarily the Joint Budget Committee of both Houses (5 States)</td>
<td>Serving primarily the budget committee(s) in each house or one house only (12 States)</td>
</tr>
<tr>
<td>16 States: AL, AK, CA, CT, DE, LA, MT, NC, NE, NH, OR, PA, TN, UT, VT, WI</td>
<td>4 States: AZ, CO, MS, NM</td>
<td>4 States: GA, MI, VA, WV</td>
</tr>
<tr>
<td>2 States: TX, WA</td>
<td>1 State: ID</td>
<td>1 State: OK</td>
</tr>
<tr>
<td>14 States: AR, FL, NJ, IN, IA, KS, MD, ND, NV, NY, OH, SC, SD, WY</td>
<td></td>
<td>2 States: HI, MN</td>
</tr>
<tr>
<td>1 State: KY</td>
<td></td>
<td>5 States: LA, MA, ME, MO, RI</td>
</tr>
</tbody>
</table>

Sources: Websites of the legislatures of 50 States; internal document of National Conference of State Legislatures (NCSL)

Note: For the list of standard abbreviations of each State, see [http://state.1keydata.com/state-abbreviations.php](http://state.1keydata.com/state-abbreviations.php)
• **Assessing fiscal stance**: LBOs do not make policy recommendations, but they may make suggestions for ensuring that the State’s Constitutional balanced budget rule is respected in the annual/biennial budget to be adopted by the General Assembly (the legislature). After adoption of the annual/biennial budget, some LBOs monitor budget implementation. Outside sessions of the legislature, budget analysts of LBOs may analyze specific fiscal policy measures, at the requests of House/Senate members (with a view to proposing them in future annual/biennial budgets or supplementary budgets). LBO analyses of such proposals are confidential until endorsed by the legislature’s budget committee(s).

• **Costing**. For most LBOs, detailed analysis and checking of the plausibility of spending policies of the Governor’s proposed annual budget is a very important activity. LBOs spend less time on analyzing revenue proposals. Many LBOs have a team of analysts to examine the spending requests of each State-owned agency. Proposals for changes in the budget are presented to relevant committees of the legislature. “Fiscal Notes”, which cost specific revenue or expenditure measures, are prepared for this purpose. Some LBOs prepare over 1000 Fiscal Notes during each budget session. Some LBOs are also charged with examining the budgetary cost implication of each new piece of legislation presented in the legislature.

Several LBOs are involved in drafting appropriation bills. This is a time-consuming activity during budget sessions, especially in the States that have multiple appropriations bills. In Arkansas, for example, the legislature approves over 100 appropriation bills every year.

**Size and budgets of LBOs**

Well over half of the LBOs have 15 professional staff or less. Only a few LBOs have more than 30 staff. California’s Legislative Analyst’s Office (LAO) has a staff of 43 analysts and about 13 support staff. The LAO is second in size to the 100+ staff (not counting a large number of IT staff) of Texas’ Legislative Budget Board (LBB). However, Texas’ LBB is active, along with staff under the Governor, in scrutinizing Texan government agencies’ initial draft proposals. In many States, the executive branch alone carries out such scrutiny, without input from the legislature at such an early stages of budget preparation.

The size of the LBO’s budget obviously varies with staff numbers. As a rough rule of thumb, for each staff member, the average operating cost of the LBO is $100,000. As one example: the annual budget for the 16 staff and non-salary expenses of the nonpartisan staff of Colorado’s Joint Budget Committee was $1.8m in FY2015.

Staff salaries are aligned to those of other nonpartisan staff serving the legislature. Remuneration packages are usually not much different from similar positions in the executive. However, in at least one State, the LBO staff salaries are a little lower than in the executive’s Budget Office, resulting in staff recruitment/retention difficulties. A university degree is a prerequisite and several LBOs have staff have Masters degrees and even PhDs.

**Assurance of LBO independence**

LBOs have been established by a political consensus. As noted, LBOs’ mandates have frequently been established in a law. LBOs are seen by political leaders to be most useful for

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57 Balanced budgets are a legal requirement in 46 States, debt/borrowing restrictions operate in 40 States, and revenue and/or expenditure rules are in place in 28 States (see Tables 9-11, NASBO, 2015). Also, some States require super-majorities to pass a tax or revenue increase.
providing budget analysis and drafting / analysing budget-related legislation, while refraining from making policy recommendations. Given this, to the knowledge of this author, no U.S. State LBO has ever had its activities deliberately cut back because of politics.

The Director of a typical State LBO is appointed by a bipartisan committee, which is composed of senior representatives of the two political parties (the Speakers, Majority and Minority Leaders of each house, plus the chair and/or delegated appointees of Budget or Appropriations and/or other Committees of the two houses). In principle, the same bipartisan committee should formally re-approve the Director every two years, following the biennial legislative elections for the House of Representatives and part of the Senate. In practice, however, the LBO’s Director’s leadership is usually not questioned by the incoming new political leaders. As a result, most LBO Directors stay in their positions for many years. For most LBO Directors, there are no term limits. One exception is the Director of Pennsylvania’s IFO, who is on a six-year term that can be renewed multiple times.

Directors of LBOs generally have the authority to appoint and fire their nonpartisan staff, without any oversight of a committee of the legislature. When recruited, the LBO director ensures that the incoming staff are not involved in politics.

Having established credibility over many years, LBOs’ own annual/biennial budgets are generally rolled over, with little change from year to year apart from inflation-linked increases for operating costs. If the LBO wishes to increase the number of staff, justification is needed. Increases in staffing can occur, for example, when the legislature decides to increase the number of its committees. Conversely, LBOs’ budgets can contract if the number of committees declines (this occasionally happens).

If there were a decline in the operating budget of the executive branch (for economic reasons or for balancing the State’s budget in the face of persisting revenue shortfalls), the nonpartisan staff of the legislature – including the LBO – would generally follow suit. LBO directors have discretion on how to manage infrequent budget cutbacks, e.g., by freezing or reducing non-salary costs such as postponing travel, placing staff on unpaid leave, or not recruiting temporary staff during legislative sessions.

**Workload and Standard publications of LBOs**

Many LBOs prepare the following documents for the budget committee(s) of the legislature:

- Analysis of draft legislation – the Governor’s proposed budget and the budget law as it evolves through the appropriations approval process in the legislature.
- Draft appropriations bills and supplemental appropriations bills.
- Briefings and drafts for hearings for committee members.
- Fiscal Notes for proposed measures or legislation that has a budget impact.
- Appropriations Reports of the approved budget
- Budget In Brief – a summary of the budget, as approved by the General Assembly.

Some LBOs participate in:
• Revenue forecasting. About half the States participate in “consensus forecasting”, in which the executive and legislative branches, possibly with inputs from outside forecasters (see below for more details).

• Monitoring budget execution, by publishing monthly fiscal reports.

• Hearings – to explain non-policy aspects of the proposed or approved budget, including budget approval procedures.

Few LBOs participate in:

• Preparation of medium-term fiscal projections.

• Monitoring compliance with fiscal rules, except to ensure that the adopted budget is consistent with the State’s balanced budget rule, debt/borrowing rule, and/or revenue/expenditure rules.

• Meetings with the media.

A lot of the LBO’s work is determined by regular outputs required by law. However, LBOs generally also have discretion to initiate their own work, which is completed during the “off-season” – when the legislature is not meeting.

Nearly all outputs of the LBOs are published, especially in those States with an Open Records Law. State legislatures’ committees’ proceedings are also generally open to the public (especially in States that have adopted Open Meetings Laws), although there are also a few statutory exceptions.

Revenue forecasting

Forty-six States have a legal obligation for the Governor to present a balanced (operating) budget to the legislature. Optimistic revenue projections would lead to the adoption of a budget with spending appropriations that would prove to be un-financeable, at least by regular revenues. When revenue shortfalls occur, either in-year spending cuts would be needed or short-term borrowing (if allowed) would take place.

To minimize the risk of projecting revenues optimistically, a number of States have adopted “consensus forecasting” for budget revenues, in which either: (1) the executive, the legislature, and possibly outside experts meet and agree on suitable budget estimates for each major tax; or (2) the most plausible individual revenue projections of each participant in the “consensus group” are combined.

In nearly all States, the executive branch takes the lead in revenue forecasting. The legislature is not involved at all in about one third of the 50 States. However, in about two thirds of the 50 States, the legislature at least monitors, and possibly changes, the “official” revenue forecasts. In Montana, the legislature alone prepares the official budget revenue projections. In three States – Hawaii, Nevada, and Washington – the official revenue projection process is “outsourced” to independent councils or experts (entirely the private sector in Nevada).58

58 For details of institutional arrangements, see pages 37-38 of Boyd and Dadayan, 2015.
Although one may expect that consensus forecasting and/or the outsourcing of revenue forecasting to independent bodies might reduce forecast errors, Boyd and Dadayan, 2015, observe that, in the literature, there is very little relationship between consensus forecasting and forecast accuracy. This could be because it takes time to reach a consensus and that less-timely forecasts are less accurate. However, based on their own survey of institutional arrangements in the 50 States these authors conclude that consensus forecasting tends to lead to lower forecast errors. They suggest that efforts should be made to insulate forecasting from the political processes.
Annex 5. Remit of the interim Scottish Fiscal Commission

The Commission’s initial non-statutory purpose, remit and duties are set out in the Framework Document drawn up between the Commission and the Scottish Government in September 2014. The SFC’s initial remit and duties are to:

1) Establish and maintain its independence from the Scottish Government;
2) Undertake independent scrutiny and assessment of forecasts, prepared by the Scottish Government, of receipts from Land and Buildings Transaction Tax and Scottish Landfill Tax and of the economic determinants underpinning Scottish Government forecasts of non-domestic rate income;
3) Decide what analytic method, modelling and approach to assessment the Commission will use to undertake its work;
4) Determine what analytic and secretariat resource the Commission requires and where to obtain that from;
5) Specify what information and data it requires from the Scottish Government;
6) Inform the Scottish Government of the timing of its programme of work;
7) Lay before the Scottish Parliament a report of its assessment of the Scottish Government’s forecasts of tax receipts from the devolved taxes, and of the economic determinants underpinning forecasts of non-domestic rate income, at the time the Scottish Government publishes, and lays before the Scottish Parliament, its draft Scottish budget;
8) Respond to external enquiries concerning the information, data, analysis, judgments and conclusions which the Commission publishes; and
9) Conduct its business independently with integrity and transparency, and ensure records are retained to provide an audit trail for the external assessment of its work and use of public funds.

Article 8 of the 2011 Law (Lei n.º 54/2011) Establishing the Council

1 — The Council shall have access to all the economic and financial information necessary for the accomplishment of its mission and all public entities are duty bound to supply this information in good time, as well as additional clarification in response to requests.

2 — The Council shall indicate the set of information to which it must have regular and automatic access, in accordance with a pre-defined calendar.

3 — The access to information mentioned in the above clauses 1 and 2 shall be subject to the legal restrictions in terms of State secrecy, judicial secrecy and banking secrecy.

4 — For the purposes of the assessment set out in paragraph a) of Article 6, the Government shall provide the Council with the macroeconomic models used and their underlying assumptions.

5 — Should any public entity not fulfil the duty of providing the information in good time, this shall be stated on the Council’s webpage.

6 — Should the Council consider such non-fulfilment serious, the President of the Republic, the Assembly of the Republic [Parliament], the Tribunal de Contas [External Audit Office] and the Banco de Portugal [Central Bank] shall be duly informed.
Introduction

1. This report summarises the key findings from the fact finding visit to Dublin. During the visit we met with representatives from the Irish Fiscal Advisory Council, Joint Committee on Finance, Public Expenditure and Reform, the Department of Finance and the Economic and Social Research Institute. We would like to express our thanks to everyone who took the time to meet with us.

2. The schedule and briefing note for the trip is attached at Annexe A to this paper. The main themes that arose from our meetings are set out below.

Background

3. The Irish Fiscal Advisory Council (the Council) has an obligation under the Fiscal Responsibility Act 2012 (the 2012 Act) to endorse, as appropriate, the macroeconomic forecasts prepared by the Department of Finance (DoF) on which its Budget and Stability Programme Update (SPU) will be based.

4. The letter of endorsement is published within the Budget / SPU document and a detailed discussion of the endorsement process and assessment of the macroeconomic projections is published by the Council in its Fiscal Assessment Report which is usually published around 6 weeks afterwards.

5. The process to be followed by the Council and the DoF, in relation to the endorsement function, is set out in a Memorandum of Understanding (MoU) which is published online.

Forecasting

6. We heard that the Council was set up to endorse DoF forecasts and the methodology underlying them rather than produce official forecasts for the DoF. One of the main reasons given for this approach was the importance of the DoF retaining its internal expertise during the period of financial instability. Had the Council been required to provide official forecasts, then due to the small pool of people with the skills required to do the work, the DoF would likely have lost essential staff at a critical time.

7. We heard that it soon became clear to the Council that in order to be able to assess the DoF’s forecasts thoroughly it would need to also produce its own to use as a benchmark. The set of benchmark forecasts help inform an ‘endorsable range’ in which the Council believes the official forecasts should fall within.
8. Professor Alan Barrett, Director of the Economic and Social Research Institute (ESRI), and previous member of the Council, told us that to do the endorsement work you need the skills required to produce forecasts. However, being required to produce the official forecasts would have changed the role of the Council fundamentally.

9. We heard that the Council’s Secretariat has significant levels of on-going interaction with officials from the DoF. The Council was clear that in its meetings with officials it does not give opinion on levels of figures or attempt to influence the direction the DoF is taking. The MoU ensures that once the date of the Budget has been announced only discussions around the clarification of technical issues can take place. The Council are clear on the importance of finalising its own forecasts before seeing the DoF’s.

10. The Council’s benchmark forecasts are not shared with the DoF in advance. The DoF states that this ensures that it doesn’t inadvertently tailor its own forecasts to ensure they receive endorsement from the Council. The DoF also highlighted the possibility that sharing forecasts in advance could lead to errors in the forecasts not being picked up.

11. The DoF has its own dedicated forecasting units for macroeconomics and fiscal policy and tax. The macroeconomic unit has 7 staff and a budget of 2 million euros; the fiscal policy and tax unit has 8 staff and a budget of 2 ¾ to 2 million euros.

12. The Council’s benchmark forecasts appear in its Fiscal Assessment Report, which as noted earlier is published 6 weeks after the Budget/SPU. We heard this ensures the media focus is on the Budget and not on comparing the two sets of forecasts. This also means the Council can focus on its role and does not need to defend its benchmark forecasts in the media.

**Endorsement**

13. The Council’s Secretariat gets an early view of the DoF’s preliminary set of forecasts around two weeks before Budget day. If there are no major differences between the Council’s forecasts and the DoF’s then a meeting will be held between the two bodies using the preliminary forecasts as the basis for informal discussion.

14. At first there was a concern, raised by the Parliament, around the Council seeing the forecasts before they were officially laid, however we heard this was resolved when reassurance was provided that the Council only see the technical aspects of the forecasts and not the policy detail of the Budget at this stage.

15. The DoF is keen to ensure that its Budget/SPU forecasts receive endorsement from the Council and it provides whatever information it can to the Council.
16. As part of the endorsement process the Council considers the DoF’s official forecasts against its benchmark forecasts and determines whether or not they fall within the endorsable range. The Council works on the understanding that if the methodology used is reasonable and the difference between the two forecasts is reasonable and falls within the endorsable range then they will be satisfied.

17. The Council does not endorse the Budget / SPU, only the consistency and methodology of the forecasts used to underpin them.

18. It is also possible for the Council to include caveats in its endorsement if it feels they are necessary. If the published figures differ from the forecasts that have been endorsed the Council can ask for a reconciliation table to be provided setting out the reasons why.

Reports

19. The Council begins working on its draft Fiscal Assessment Report in advance of the Budget / SPU being published due to the volume of work involved. The reports are generally published 6 weeks after the Budget / SPU. The Council will share technical aspects of its reports with the DoF officials to ensure accuracy.

20. The Council cannot publish a minority report; all reports must be agreed by the full Council.

21. We heard that the earlier reports published by the Council had been very academic and technical. Following an independent peer review\(^1\) changes have been made to the style of the reports to make them more accessible, this was welcomed by stakeholders including the Joint Committee on Finance, Public Expenditure and Reform (the Committee).

22. The Committee also has good links with the Council’s Secretariat and will meet with them to discuss the reports with a view to briefing Members. Clerks to the Committee feel that overall the work of the Council helps inform the Committee in its scrutiny of the Budget / SPU.

Independence

23. Given that the Finance Committee considers the independence of the Scottish Fiscal Commission to be an essential element of the process we asked specific questions on the success of the Council in demonstrating its independence from the DoF.

24. The Council believes that its independence has been built over time through continually challenging and criticising the DoF when it has been was necessary to do so. It has built its reputation for independence gradually. It does not see the DoF’s

\(^1\) [http://www.fiscalcouncil.ie/wp-content/uploads/2012/01/PeerReview_Formatted_23062015.pdf](http://www.fiscalcouncil.ie/wp-content/uploads/2012/01/PeerReview_Formatted_23062015.pdf)
Budget / SPU in advance and its MoU sets out the limits on how often and for what reason the Council can meet with the DoF during various parts of the process.

25. The Council believes that transparency is vital and publishes all its work; everything it does is open to FOI.

26. The DoF is very conscious of the need to ensure and maintain the reputation of the Council as an independent body. Under the 2012 Act it was established that the Council has a complete guarantee over its budget; Ministers are unable to remove or reduce its funding. Any increase in functions would lead to an increase in funding.

27. The 2012 Act also ensures that the DoF cannot require the Council to carry out any work for it. While there is a high level of contact between officials and the Council’s secretariat there is little or no contact between politicians and the Council.

28. The DoF recognises the importance of the Council’s credible reputation both to the Council and to itself. On an administrative side the DoF ensures records of all discussions with the Council are retained. A dedicated email address has been established and all email conversations between the DoF and the Council must copy in this email address to ensure they are captured and stored for FOI purposes. It is completely hands off regarding the administration arrangements of the Council.

29. The Committee and the ERSI have no concerns over the independence of the Council.

Appointments

30. Appointments to the Council are made by the Minister for Finance based on experience and competence in domestic and international macroeconomic and fiscal matters. We heard that it is critical to have people who have experience out with Ireland appointed to the Council as their knowledge brings added value. Currently four of the five members (who are all Irish) have experience of living and working abroad.

31. While appointments are made by the Minister individuals are recruited by open competition through the public appointments process. The appointments are for 4 year terms and are renewable once. This is in recognition of the difficulty of getting suitably qualified and experienced people in post. They are staggered over time to ensure they have different end times to avoid a sudden loss of institutional knowledge.

32. As part of ensuring independence Ministers only have power to remove members of the Council under specific circumstances and with the agreement of the Parliament.
Access to information

33. The 2012 Act does not provide the Council with a statutory right to obtain information from other bodies. The Council confirmed that while this has not been a problem for them to date it would be helpful to have an agreement to access information set out in a MoU. The independent peer review recommended the Council is given stronger, preferably statutory, rights to obtain information from public sector authorities and should also enter into MoU’s with other public sector authorities.

Governance

34. We were surprised to hear from the Council of the time it takes to meet all the statutory burdens of a public body. It appears that this was a challenge, the full scale of which was not anticipated in advance. It was required to set up policies such as, HR, travel and expenses, insurance, whistle blowing, FOI etc. The Council meets for 1 day per month and spends approximately 1-1.5 hours of each meeting on governance issues. It has also been required to set up an Audit Committee.

35. The Council has adopted a secondment model to recruit staff, 5 of the 6 are on secondment. It believes the benefits of this are that it is able to access expertise and knowledge and the staff are able to get up to speed quickly. It also reduces pension liability for the Council.

John Mason MSP (Deputy Convener)
Jean Urquhart MSP
November 2015

Annexe A

Schedule for Monday 9 November

0930–1100: Irish Fiscal Advisory Council

1130 - 1230: Officials to the Joint Committee on Finance, Public Expenditure and Reform; Houses of the Oireachtas

1245- 1400: Officials from the Department of Finance, Government of Ireland (working lunch)

1500-1630: The Economic and Social Research Institute.
Briefing Note for Visit

1: Irish Fiscal Advisory Council

http://www.fiscalcouncil.ie/

Meeting with: Secretariat (names TBC)

Background to the IFAC

The IFAC was established on an interim basis in July 2011 and put on a statutory footing in December 2012. It has 5 Council Members and a secretariat of 5 with an annual budget of not more than 800,000 euros which is allocated from a Central Fund so it does not have to be voted by Parliament each year. The actual spend in 2013 was 480,941 euros and 604,756 euros in 2014. The budgeted spend for 2015 is 731,749 euros.

The Council’s mandate is:

• To endorse, as it considers appropriate, the macroeconomic forecasts prepared by the Department of Finance on which the Budget and Stability Programme Update are based;

• To assess the official forecasts produced by the Department of Finance. These are the macroeconomic and budgetary forecasts published by the Department twice a year – in the Stability Programme Update in the spring and in the Budget in the autumn;

• To assess whether the fiscal stance of the Government is conducive to prudent economic and budgetary management, with reference to the EU Stability and Growth Pact (SGP). The SGP is a rule-based framework that aims to coordinate national fiscal policies in the economic and monetary union;

• To monitor and assess compliance with the budgetary rule as set out in the Fiscal Responsibility Act. The budgetary rule requires that the Government’s budget is in surplus or in balance, or is moving at a satisfactory pace towards that position;

• In relation to the budgetary rule, to assess whether any non-compliance is a result of ‘exceptional circumstances’. This could mean a severe economic downturn and/or an unusual event outside the control of Government which may have a major impact on the budgetary position.

The main publication of the Council is the biannual Fiscal Assessment Report following the Budget in the autumn and Stability Programme in the spring. The reports assess the Government’s macroeconomic and budgetary forecasts, the appropriateness of the fiscal stance, compliance with the budgetary rule as well as
detailing the Council’s endorsement function. The most recent report published in June 2015 is over 80 pages long and includes four main chapters on:

- Assessment of the Fiscal Stance;
- Assessment and Endorsement of Macroeconomic Forecasts;
- Assessment of Budgetary Forecasts;
- Assessment of Compliance with Fiscal Rules.

**The Endorsement Function**

The Council was established in 2011 to "assess" the Irish Government’s macroeconomic projections both on a backward and forward looking basis. There was no obligation for the Government to take the Council’s assessments into account and the Council did not comment on the forecasts in advance of the budget. In July 2013 the Council was given a new endorsement function in accordance with the requirements of EU regulations (No. 473/2013). The Council stated in its assessment report in November 2013:

“The obligation for the Department of Finance to submit its forecasts in advance to external scrutiny and endorsement is a significant change in Ireland’s budgetary architecture. Until recent years, there was no direct review of official forecasts produced by the Department of Finance and the new function is a significant extension of the Council’s role.”

The aim of the endorsement function is to help to ensure that forecasts are both unbiased and as accurate as possible.

The Council’s approach to endorsement focuses on whether the macroeconomic forecasts are within a range of appropriate forecasts. This “ endorsable range” is informed by benchmark projections prepared by the Council’s secretariat. It involves a full-scale forecasting exercise and the development of a range of forecasting tools. The benchmark projections are based around a “suite of models” approach. The models used include some based on the equations used by the Department of Finance and some developed by the Council’s Secretariat. The preparation of the benchmark projections also involves discussion and input from other forecasters including the Irish Central bank, the Economic and Social Research Institute, the European Commission and the IMF.

The Council’s examination of the official forecasts includes comparing them to the benchmark projections and the endorseable range as well as assessing the consistency of the overall set of projections. The Council states that while its benchmark projections may differ from the official forecasts they could still be endorseable:
“either because (i) the differences are sufficiently small to be within the endorseable range, or (ii) if the Department of Finance provides convincing reasons for forecasts further from the benchmark projections.”

In order “to provide an independent analysis of, and to effectively challenge the Department of Finance forecasts, the benchmark projections are completed before the Council engages in in-depth endorsement meetings with the Department of Finance.” These projections are not shared with the Department of Finance. However, they are included in the fiscal assessment report.

Memorandum of Understanding

The operational aspects of the endorsement function are set out in a Memorandum of Understanding (MoU) agreed between the Council and the Department of Finance. This includes informational requirements and approach to be followed. The MoU states that the Department “will set out its forecast methodology by way of a periodically-updated staff working paper, and engage in regular technical dialogue to ensure that Council staff and members have a full understanding of the process.” It is expected that this dialogue “will be ongoing, involving both written exchange of information and informal interaction. Interaction will mainly occur between members of the Council secretariat and the relevant Department of Finance staff.” The MoU also includes an agreed timetable and approach to the endorsement function. Table 1 demonstrates how this worked in relation to the Irish Budget 2014.

Table 1: Timeline for the Endorsement of Budget 2014 Forecasts

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
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<tbody>
<tr>
<td>23-24 September</td>
<td>Benchmark projections finalised in advance of receiving forecasts for Budget 2014 from the Department of Finance.</td>
</tr>
<tr>
<td>24 September</td>
<td>The Council received the preliminary set of “provisional final” forecasts from the Department.</td>
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<tr>
<td>25 September</td>
<td>These forecasts were presented by Department of Finance staff to the Council’s Secretariat explaining the underlying reasoning and answering clarifying questions. Two Council members also participated in the meeting</td>
</tr>
<tr>
<td>29 September</td>
<td>The Council met to discuss the Department of Finance forecasts</td>
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<tr>
<td>30 September</td>
<td>Department of Finance staff met with the full Council and Secretariat to present and answer substantive questions on the “provisional final” forecasts. These forecasts were unchanged from those provided to the Council the previous week. The Council raised questions on a number of issues. Following the meeting, the Department provided further clarification on their forecast for consumption. The Council</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
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<td>------------</td>
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<tr>
<td>1 October</td>
<td>As specified in the MoU, the Council Chair communicated its “significant reservation” to Department staff</td>
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<tr>
<td>1-3 October</td>
<td>The Department provided further clarification on its consumption forecast and committed to including information on the potential for upward revisions to Quarterly National Accounts personal consumption data for the first half of 2013 in the Budget documentation.</td>
</tr>
<tr>
<td>4 October</td>
<td>The Chair of the Council issued a letter to the Department of Finance endorsing the set of macroeconomic forecasts for 2013 and 2014 in Budget 2014.</td>
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</table>

**2: Joint Committee on Finance, Public Expenditure and Reform**

Meeting with: Michelle Grant (Committee Secretariat- EU and Intl Relations)
Eoin Hartnett (Policy Advisor- Finance Committee Secretariat)
Barry Kavanagh (Finance Committee Secretariat)
Barry Comerford (Library and Research Service)

Remit of the Joint Committee

Reform of the public sector and public expenditure is a top priority for this Oireachtas. The Joint Committee on Finance, Public Expenditure & Reform will play a key role in scrutinising the work of the two Departments tasked with responsibility in these areas - the Departments of Finance and Public Expenditure & Reform. The Committee will advise the relevant Ministers as to concrete progressive proposals to promote and coordinate economic and social planning.

**3: Department of Finance; Government of Ireland**


Meeting with: Niall Feerick and John Palmer, Fiscal Policy Division

Remit of the Department of Finance

The Department of Finance has a central role in implementing government policy and in advising and supporting the government on the economic and financial management of the State, and policies to ensure that Ireland's financial system will be able to operate on a stable, sustainable and commercial basis.
The work of the Department is carried out by four divisions and two offices. The Fiscal Policy Division is responsible for—

- Provision of high quality budgetary advice designed to restore / maintain the sustainability of the public finances
- Ensuring delivery against fiscal targets which involves, amongst other things, monitoring of fiscal risks and developing contingencies around these
- In terms of logistics, delivery of all budgetary commitments in line with our domestic and European requirements
- Enhancing the quality and accessibility of fiscal documents, eg. Introduction of Analytical Exchequer Presentation, to facilitate greater transparency

4: The Economic and Social Research Institute

http://www.esri.ie/

Meeting with: Professor Alan Barrett, Director

About the ESRI

The ESRI produces research that contributes to understanding economic and social change in the new international context and that informs public policymaking and civil society in Ireland.

Since its establishment, ESRI researchers have leveraged their conceptual and empirical research in economics and sociology to provide analysis that helps inform economic and social policymaking in Ireland. Key features of the research are its strong empirical base, its policy focus and its coverage of many of the major areas of relevance to current policy issues in Ireland and the European Union.

The Institute’s principal output is knowledge that is disseminated widely in books, research papers, journal articles, reports, and public presentations. All knowledge output is quality assured through rigorous peer review processes.
Scottish Fiscal Commission Bill: Stage 1

10:01

The Convener: Agenda item 2 is evidence taking from Scottish Government officials on the Scottish Fiscal Commission Bill. I welcome to the meeting Alison Cumming, Sean Neill and John St Clair and invite Mr Neill to make a short opening statement.

Sean Neill (Scottish Government): Thank you for the opportunity to make a short opening statement on the Scottish Fiscal Commission Bill.

The bill is a culmination of around two years of work, including two inquiries conducted by the committee and a Government consultation. It gives the Scottish Fiscal Commission a basis in statute, which safeguards its structural and operational independence, and it formalises the commission’s role in scrutinising the operation of Scotland’s devolved fiscal framework. The Scottish Government has always intended the commission to have a legislative underpinning, and it committed to bringing forward legislative proposals in the 2014-15 programme for government.

As the committee is aware, we published a consultation on a draft bill in March 2015. We have worked carefully over the summer to refine our legislative proposals, reflecting on responses to our consultation, the evidence gathered by the committee and international best practice, including the work of the Organisation for Economic Co-operation and Development and the International Monetary Fund. The bill that has been introduced to Parliament reflects a number of policy changes that we consider further strengthen the commission’s independence and which I am sure we will discuss further today.

The most significant change is the removal of the requirement for the commission to

“prepare other reports on fiscal matters as Ministers may from time to time require”.

Such a power could appear at odds with our policy intention to create a commission that is structurally, operationally and visibly independent of Government, and the bill now allows the commission to prepare such reports on

“other fiscal factors ... as it considers appropriate.”

Importantly, the commission’s remit as set out in the bill is designed to reflect and be proportionate to the fiscal powers that are devolved to the Scottish Parliament under the Scotland Act 2012. The commission’s core function is to report to the Parliament and the public on the tax estimates,
prepared by Scottish ministers, that underpin the Scottish draft budget. As such, the work of the commission is central to the integrity of the Scottish budget process.

The bill is also designed to provide flexibility to amend the commission’s remit in the future to reflect any expansion in the Scottish Parliament’s fiscal powers, including those contained in the Scotland Bill that is currently proceeding through Westminster. We need to future proof the bill to ensure that the commission’s functions adequately address any new settlement without recourse to primary legislation. The financial memorandum accompanying the bill demonstrates that the Scottish Government is committed to providing the commission with sufficient and appropriate resources to discharge its functions and to provide effective and robust scrutiny of the fiscal estimates that underpin the Scottish budget.

The Government has found the work that the committee has undertaken to date on the creation of the Scottish Fiscal Commission to be very helpful in informing the development of our legislative proposals. We look forward to considering and reflecting on the further evidence that the committee will gather at stage 1 of the bill process and to discussing our legislative proposals with you this morning.

The Convener: Thank you for that brief introduction. We will go straight to questions from me, after which I will allow other members of the committee to come in.

One issue that has been raised is forecasting. You will have read our report on Scotland’s fiscal framework, particularly the recommendations set out in paragraphs 131 to 133. Paragraph 131 states that

“The Committee is unaware of any other example of a fiscal council relying solely on official government forecasts”,

while paragraph 133 states that

“The Committee notes the strong level of support among witnesses for the SFC carrying out its own forecasts”.

Why is the Scottish Government insisting on the situation here being different from that in other countries, where other bodies are able to comment on other fiscal forecasts, including those produced independently?

Alison Cumming (Scottish Government): The Scottish Government considers that what it is doing is consistent with international best practice across the world. The OECD and the IMF both recognise that the specific roles and functions of a fiscal commission should be tailored to local political and institutional fiscal environments, and the Deputy First Minister has made clear to Parliament on several occasions that in his view the responsibility for preparing tax forecasts that appear in the Scottish budget is a primary responsibility of Scottish ministers, who should be directly accountable to the Parliament for those forecasts.

We believe that our approach maximises the transparency of the forecasting process. It ensures that there is a full account in the public domain of the Government’s forecasting methodology and the assumptions that underpin those forecasts. Also—and importantly—the results of independent scrutiny undertaken by the Fiscal Commission will be available. That information will include the commission’s assessment of the forecasts, and the impact on forecasts of any specific recommendations that the commission had made during the scrutiny process will be clearly set out.

We have looked carefully at the OECD evidence—this is also reflected in the Scottish Parliament information centre briefing on the bill—and it is clear that a very small number of fiscal councils in operation across the world, of which the United Kingdom Office for Budget Responsibility is one, produce official forecasts for Governments. In the majority of cases, the official forecasts are prepared by a ministry of finance or the equivalent.

What we have sought to do in the bill is to make clear that the process by which the commission will determine how it assesses the reasonableness of forecasts is a matter over which the Government will have no power of direction or involvement whatsoever. Indeed, that is also made clear in the framework document for the non-statutory commission. Crucially, we have not shut down in any way the commission’s ability to produce its own alternative forecasts of the tax revenues and other factors that are within its remit and in the draft budget. The commission will be empowered both through legislative powers and the resources that will be allocated to them as set out in the financial memorandum. There is scope for the commission to prepare alternative forecasts if it so chooses, but that is a matter for the commission to determine.

The Convener: Okay. We all have the same SPICE table that shows the number of Governments that produce their own forecasts, but SPICE also points out that

“it is common in independent fiscal institutions (IFIs) for there to be other economic and fiscal forecasts to draw on”

and that

“both the Irish and Swedish fiscal bodies have access to alternative forecasts and do not rely solely on Government forecasts.”

I think that that is the issue. You have just said that the SFC will be able to produce its own forecasts. Is that realistic, given the fact that it will also be involved in producing the Government’s
In that respect, there are parallels with public audit and other processes. In order to facilitate that, the bill requires the commission to send a copy of its report to the Scottish ministers in advance of laying it before Parliament. I suspect that you might want to explore that requirement this morning, but, again, it is consistent with the process for Audit Scotland reports. It also provides the opportunity for the Government to access and understand the nature of the commission’s findings. Importantly, it also gives time for ministers, if they so choose, to revise their forecasts in line with the commission’s findings.

The Convener: We heard in a private briefing from Ian Lienert, who has done an excellent piece of research on this area, that since 2013 the European Union has been putting pressure on eurozone countries to look at macroeconomic forecasts. Given that background, could the bill be amended to look at the sustainability of Scotland’s macrofinances as we progress?

Alison Cumming: One of the key narratives running through our policy proposals has been the recognition that the commission’s functions should be proportionate to the Parliament’s fiscal powers. As a result, we have sought to design a remit for the commission that reflects the current devolved competence of the Scottish Parliament.

The Deputy First Minister previously suggested to the committee that there is a role for Parliament in holding the Government to account on the sustainability of its spending decisions. Obviously we will look closely at ways of expanding the commission’s remit to reflect further fiscal powers that might come in a future Scotland Bill or, indeed, in the current Scotland Bill.

The Convener: On ensuring access to your information, the bill gives Scottish ministers considerable discretion to decide what can “reasonably” be provided within “reasonable” time limits. Should the bill not be more unequivocal in this area?

10:15

Alison Cumming: This might be an area where John St Clair will wish to expand on what I say. In section 7, we have presented what we consider to be a very robust right of access to information for the commission. Indeed, it is a specific “right of access” for the commission, rather than a right to request information. We would be looking to underpin the statutory provisions with a more detailed memorandum of understanding, which would explain how things would work in practice. That said, although we consider that we have set out a robust right of access, we are very much open to suggestions on how we could strengthen it further.

Alison Cumming: The commission’s scrutiny of the Government’s fiscal forecasts and estimates is central to the integrity of the Scottish budget process. The Deputy First Minister has made it clear on several occasions that he would not want to bring forward forecasts underpinning a Scottish budget that were not assessed as reasonable by the independent commission. The main area of value that the commission can add is in undertaking its scrutiny prior to the budget’s publication to ensure that when the budget comes forward it is underpinned by forecasts that are as robust and reasonable as possible.

Under the present process, Scottish Government economists prepare forecasts and forecasting methodology papers, which are presented to the commission for discussion. Those are subject to robust scrutiny and review by commission members, who will ask the economists to justify the basis for the judgments that have been made and the techniques that they have applied in arriving at those forecasts.

We are working with the commission to look at ways of maximising the transparency of that scrutiny process. Obviously it is difficult to do that while the scrutiny process is on-going, but we anticipate that when the Scottish draft budget for 2016-17 is published—and the commission’s report alongside that—we will see clearly the impact of the commission’s scrutiny on the Government’s forecasts. There will be transparency with regard to the interactions that have taken place between the Government and the commission and the nature of those interactions.

The Convener: I am sure that colleagues will want to explore that area further, so I will turn to another issue.

The bill as introduced requires the commission to publish its report on the assessment of the reasonableness of the forecasts for the devolved taxes on the same day that the draft budget is published. Why is that? Surely one would expect the commission to have some time after publication to look at that instead of its having to phone you up while you are all scurrying around trying to dot the i’s and cross the t’s on the draft budget. The fact that the report has to come out on the same day does not seem to be a recipe for producing it in the most efficient or effective way. What is the thinking behind that approach?

Alison Cumming: The commission’s scrutiny of the Government’s fiscal forecasts and estimates is central to the integrity of the Scottish budget process.
John St Clair (Scottish Government): As Alison Cumming has said, there is a statutory right to information as well as a powerful right to require information. We do not mention legal powers in the bill, but those could be invoked, if necessary, by a declarator or some other action in the Court of Session if somebody refused to hand over information or give an explanation.

That said, these provisions relate to Government departments, and it is almost inconceivable that one bit of the Administration would litigate against another. One does not put that in statute. There are legal back-up powers, but they will not be invoked. Usually there is an MOU between departments or some sort of political settlement. It would be a sign of some crisis if one bit of the Administration was not able to get from another bit information that it is entitled to.

We think that the measures are robust. As for reasonability, that is a very common issue. It would be possible to ask for almost any information, but it would not be possible to say, for instance, “We need every single taxpayer’s report by tomorrow afternoon.” That is the sort of thing that the provision is trying to stop. The powers of Revenue Scotland are framed in very similar terms and, indeed, they run through most tax legislation. Powers must be tempered to a certain extent to ensure that departments are not overloaded with requests.

The Convener: We know from the bill how much additional funding is going to be provided to the Scottish Fiscal Commission, but how much internal resource is being allocated within the Scottish Government to help prepare and enhance the quality of forecasts?

Sean Neill: As Alison Cumming has mentioned, there has been input from a number of analytical services and departments across the Government. In my division, Alison and her team work very closely with the commission. Across key areas such as environment, communities and the office of the chief economic adviser, significant resources have been allocated to support work on assessing the reasonableness of our forecasts.

The Convener: I will raise one more topic before I allow colleagues to ask questions. I note that “the OECD has developed a number of minimum requirements or principles that are deemed suitable” for such commissions, “regardless of local circumstances.” Have all those principles been met?

Alison Cumming: We consider that they have been met, to the extent that it is possible for the Government to do so. A number of the principles relate to the commission’s activities and to the way in which the commission conducts itself, and we have set out in the policy memorandum our assessment of how we believe our legislative proposals deliver against those OECD principles.

One of the policy changes that we introduced following our consultation on the draft bill over the spring and summer was a statutory requirement for independent evaluation of the commission’s performance every five years. That was driven, in part, by the responses to the consultation. It also involved further reflection on how the bill might reflect the OECD principles, one of which is to ensure that such a body’s work is subject to external scrutiny.

The Convener: Do you wish to comment on that, too, Sean?

Sean Neill: I should just mention that that sits alongside the requirement in the bill for the commission to prepare an annual report that sets out how it is getting on with its work.

The Convener: A number of colleagues wish to ask questions. We will start with Gavin Brown.

Gavin Brown (Lothian) (Con): Good morning. Let us go to section 4 of the bill. The convener asked you about ministers getting copies of reports prior to those reports going before Parliament. Will you reiterate the policy reason why ministers would get those reports before Parliament?

Alison Cumming: That would be to ensure that the process of scrutiny supports the integrity of the Scottish budget process so that there is an opportunity for ministers to ensure that the forecasts that they provide to Parliament in the draft budget have been independently assessed as reasonable. We consider that there is public interest in ensuring that the forecasts that underpin the Scottish budget are independently assessed as being robust.

We accept that there is a need for such arrangements to be as transparent as possible and have been discussing with the Fiscal Commission the possibility of developing a protocol that is similar to the ones that exist between the Scottish Government and Audit Scotland, which are published as annexes to the Scottish public finance manual. That protocol would provide Parliament and the public with information on how the relationship is to be managed and how information, including draft and final reports, is to be exchanged.

Gavin Brown: So, the process will mirror the Audit Scotland process in some ways. Exact details might not be available on timing, but how
much earlier than Parliament do you envisage the Scottish Government getting reports?

Alison Cumming: That would be a matter for agreement with the commission; we would not seek to dictate or specify that to it. To take Audit Scotland reports as an example, the Scottish Government receives a clearance draft of a report in order to check its factual accuracy, and has three weeks within which to provide comments on it. The protocol requires that the Scottish Government is, thereafter, provided with an embargoed copy of the final report three days prior to publication. I suggest that we would use that benchmark as a basis for discussion with the commission, but agreement would be based on timescales with which the commission was comfortable.

Gavin Brown: There is no fixed answer yet, but is it your understanding that we could have a scenario in which the Scottish Fiscal Commission would send to the Government a clearance draft of a report three weeks before Parliament would see it, and would then send to the Government an embargoed copy three days before Parliament would see it?

Alison Cumming: That is potentially the case; that is how it works for Audit Scotland reports. The budget process can be quite time pressured. I am not saying that three weeks would be the appropriate period; it is what we would use as a reference point for discussions with the commission.

Sean Neill: It is probably important to make it clear that, when we talk about clearance, we refer to clearance for factual accuracy as opposed to clearance of the report. The Fiscal Commission will produce its own report independent of Government and we should not in any way seek to influence what is in it.

Gavin Brown: This might not be a question that you can answer, but can you envisage any areas of dispute or discussions about the clearance draft being made public at some later point?

Alison Cumming: If there were any disputes to be had, they would be over factual accuracy. Our experience is that the commission would want to be sure that whatever it was putting into the public domain was factually accurate. We are also mindful of exchanges on draft reports in recent months between the Treasury and the OBR. We would therefore, as far as is possible and practical, seek to be transparent about changes, but as Sean Neill said, the only changes that we envisage would be to clarify understanding of the forecasting processes and methodologies that the Scottish Government had put in place.

There are robust measures in the bill and in the framework document for the non-statutory commission that make it clear that the Government would not seek to influence in any way the commission’s judgements, or the presentation of its findings.

Gavin Brown: I will move on to a different issue, which relates to section 2 of the bill, on the commission’s functions. Under section 2(1)(a), the commission will look at “forecasts of receipts from the devolved taxes”.

That is fairly straightforward, but I struggle with section 2(1)(b). Instead of looking at the forecasts for non-domestic rates, the commission will look at “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)”. I have looked at what the OBR does; basically, it produces a forecast for non-domestic rates. Why could the commission not just take a view on the overall forecast for non-domestic rates, rather than taking the more convoluted approach that section 2(1)(b) provides for?

Alison Cumming: The approach that is set out in the bill for non-domestic rates is consistent with the role that the non-statutory commission has in relation to the economic determinants of non-domestic rate forecasts, which are defined as the buoyancy assumption and the inflation-rate assumption. In designing the remit of the non-statutory commission, a decision was taken that there are elements of the non-domestic rate forecast that are driven by commercial assumptions on issues such as bad debts and appeal losses, which are based on experience and assessments made by the Scottish Government and local authorities. Those areas of judgment might be less suited to the expertise of the Scottish Fiscal Commission, which will be more focused on economic forecasting assumptions.

Gavin Brown: You are right to say that what is provided for in the bill mirrors the functions of the non-statutory commission, but I did not really understand at the time why the functions of the non-statutory commission were defined in that way. The OBR is obviously bigger than the SFC, but I am still confused about why the SFC could not assess the overall forecast rather than just looking at the buoyancy factors, when other fiscal commissions such as the OBR can forecast how much is likely to be collected in business rates. Will you explain why the commission could not simply forecast the receipts from business rates?

Alison Cumming: The reason for that is to do with commercial assumptions, which was thought to be an area on which the commission could not reach a judgement in the same way as it can on the economic factors that drive the forecasts. Those assumptions tend to be based on judgment,
experience and commercially sensitive data. At the time, the Deputy First Minister made it clear which areas of non-domestic rates he considered to be suitable for the commission to review, but we will certainly reflect further on the issue.

**Gavin Brown:** That is fair enough. Of course, there are commercial judgments involved, but given that we are asking the commission to look at the successor to stamp duty land tax—land and buildings transaction tax—which is volatile, too, and the forecast for which involves commercial assumptions, I am still at a loss to understand the reason for the Government’s position. However, you have said that you will reflect on the matter.

Similarly, the OBR forecasts receipts from council tax. Why are we not asking the commission to look at the forecasts for council tax, which will have a big impact on public spending in Scotland?

**Alison Cumming:** In designing the scope of the commission’s work, we have focused strongly on forecasts that underpin the Scottish budget. Because the Scottish budget is not underpinned by council tax forecasts, which are a matter for local authorities, we have not in the bill provided for a function in relation to council tax.

**Gavin Brown:** Again, that mirrors the position of the non-statutory commission, which I accepted at the time. However, although the council tax forecasts do not affect the Scottish budget, they affect the spending power of councils and therefore the economic position of Scotland as a whole. Has the Government reached a fixed view on that or would it be prepared to reflect on the matter?

**Alison Cumming:** That goes back to the fundamental fact that the commission’s primary role relates to the Scottish budget rather than to wider public finance issues.

10:30

**Gavin Brown:** I will move on to my last issue, which is forecasting. I guess that that is usually the one that takes up the most time, although the convener has clearly covered it in a bit of detail.

The Scottish Government position is—I think that you have said it again today—that what it is doing is consistent with international best practice. You are right to say that not every fiscal commission does the official forecast—I think that there are three fiscal commissions that do that, of which the OBR is one, so I accept your point entirely. However, I am struggling when I look at all the other fiscal commissions. I have looked at the other commissions through the work of independent experts, SPICe and anyone else that I can find. Every one that I have looked at either prepares alternative forecasts or has access to independent alternative forecasts, whether it is the IMF, the OECD, the EU or another body, such as the one that they have in Sweden. However, I have not been able to find any fiscal commissions that look only at Government forecasts as the only option that they have for making decisions. I ask this question quite genuinely: has the Scottish Government done research on this? Given that you have said that its practice is consistent with international best practice, in what countries do the fiscal commissions look only at the Government forecasts?

**Alison Cumming:** There are two main points that I would like to make here. The first is about the role of the commission being proportionate to the fiscal powers of the Parliament. We are establishing a fiscal commission for a sub-sovereign Parliament, which changes the nature of the forecast and assumptions that the commission will look at, compared with what the sovereign commissions that exist around the world do.

On alternative forecasts, those sovereign commissions would, to my knowledge, look at forecasts of gross domestic product assumptions, fiscal aggregates and so on, and do not necessarily look at alternative forecasts for individual taxes, which tend to be treated slightly differently. To that extent, we have sought in the bill to empower the commission to determine how it will assess the reasonableness of forecasts. Within that, it will be open to the commission to determine whether the best way to do that is to prepare alternative forecasts either by itself or by commissioning those from external parties. We have included provision in the financial memorandum for external research costs.

We have also underpinned that, as we discussed, by a right of access—a right to receive data from the Scottish Government and from Revenue Scotland and other public bodies that would hold relevant data. It is difficult for the Government to comment too much on what the commission should do in that area because, clearly, that would be a matter for the commission. However, we have sought through the legislation to enable the commission to do that and not in any way to restrict its ability to do that.

**Gavin Brown:** You may not have a live example of a country now, which is fair enough, but are there international examples where the fiscal commissions look only at the Government forecasts? I am genuinely interested, because I have not found any examples, although I have looked quite hard.

I take your point that the situation for subnational legislatures is slightly different. However, at the end of the day, if we get it wrong or we suffer from optimism bias, we will be left with
the same problems, in that suddenly we may have a shortfall. It may not be of the degree that it would be for a fully sovereign commission, but the error would grow year on year and could become a pretty big problem. I simply leave that point out there.

On your last point about not wanting to be too prescriptive on how the commission does its job, I have to say that I am quite heartened by what you said. I scribbled it down, so I do not have an exact quotation, but you basically said that you have not shut down the Fiscal Commission’s ability to prepare alternative forecasts. I hope that that is correct, but it seems to be slightly at odds with at least the tone of the previous evidence that I have heard from the Government. Again, I cannot quote it exactly, but I was given the impression that if the commission were to do alternative forecasts, that would be unnecessary duplication. It certainly seemed to me that the Government view at that time was that it not only did not want to put that in the bill, but wanted to discourage it, because it felt that that would be duplication. Is the Government’s view different now? Saying, “We haven’t shut the door,” is slightly different from saying, “We think it would be quite a good idea and we wouldn’t be against it.” Again, maybe you cannot go too far on this, but is there a Government view that alternative forecasting would be a positive thing, or are you simply saying that you would not legally block it?

**Sean Neill:** It is important to be clear that what we are saying is that we have left open to the Scottish Fiscal Commission the option to determine how it assesses reasonableness.

When we were considering the financial memorandum, we had a dialogue about the resources that the non-statutory commission felt that it needed to discharge the functions. That is reflected in the financial memorandum and the resources that are set aside for, as Alison Cumming said, staffing, and for potential further research. We are clearly saying here that we want to leave it up to the commission to determine how it assesses reasonableness. We are trying to enable that by giving it the resources, as well as, in section 2(5), the legislative cover, if the commission thinks that that is right.

**Gavin Brown:** Just to be clear, it is no longer the official Government view that alternative forecasts would be duplication.

**Alison Cumming:** That issue has been considered, and if the Fiscal Commission were preparing official forecasts, the Government would also need to produce its own forecasting models to support on-going policy development and financial planning. If the Fiscal Commission prepares alternative forecasts, there will be potential duplication of effort. However, as Sean Neill said, that is for the commission to determine.

**John St Clair:** There is a practical point to make here. We are leaving it to the commission to decide about the forecasts. If the commission says that the Government’s forecasts are unreasonable, one would expect the commission to identify what it thinks is the reasonable way of forecasting. It would then be up to either the commission or outsiders to work the projections from that reasonable basis, which may already be implicit in a criticism of the reasonableness of the forecasts.

**Gavin Brown:** Okay. I am grateful to you. Thank you.

**The Convener:** The next question is from John Mason, to be followed by Mark McDonald. [Interuption.] Sorry, Jackie—I thought that you had been in already.

**Jackie Baillie (Dumbarton) (Lab):** Are you suggesting that Gavin Brown has been going on for too long? I would not dream of suggesting that.

**The Convener:** Certainly not. Jackie will be followed by John Mason. I apologise for that.

**Jackie Baillie:** I will be much briefer than I had intended because a lot of the ground has been covered.

First, I come back to the issue about testing the independence of the commission, which I think is critical to whether people accept the commission. The relationship with Audit Scotland is interesting, as is the parallel that you chose to draw. I remember, in the not too dim and distant past, a degree of controversy over the sharing of an Audit Scotland report with the Government, and changes that were being made which were considered to be—I refer to those who were critical of it at the time—not factual but presentational. Surely it is in the Government’s interests for the Fiscal Commission to act truly independently in order to avoid the perception that there is any collusion behind the scenes. Therefore, do you think that the Audit Scotland model is appropriate?

Secondly, I would agree about same-day reporting if the situation was as it is with the OBR, because the OBR does the official forecasting for the UK Government. You are not asking the Fiscal Commission to do that, which is why I think that a separation in time might not be a bad thing. If we are being honest about it, the capacity in Scotland—even in Government—to do that kind of forecasting is limited, and we will need to increase that capacity for Scotland as a whole. I cannot imagine a situation in which you are waiting for the Fiscal Commission to tell you that a forecast is
okay, because the Government has the greatest capacity to do that kind of forecasting.

Will you comment on both of those issues?

Alison Cumming: Certainly. On the Audit Scotland issue, the example of the protocol was really more in terms of the process. There is a published protocol that specifies things including time limits. I am not saying that that would be replicated in its entirety for the Fiscal Commission. There are clearly other considerations. The Scottish Government has been very robust in stating its position that we will not seek to influence the commission’s judgments on our forecasts. It is important for the commission’s credibility, however, that there is an opportunity to comment on factual accuracy. I do not think that that is in dispute.

We would seek to ensure that the protocol was very clear and continued the theme of the framework document for the non-statutory commission, so that on any clearance draft—for want of a better term—that was submitted to the Scottish Government, the Government would offer its views to the commission only on matters of factual accuracy. We would not seek to offer any views on the commission’s findings or on how it presented those findings.

Jackie Baillie: History tells us that that has not necessarily been the case in all the Government’s dealings with people with which it has understandings.

To guard against any suggestion that the Fiscal Commission is tied up with the Government, I wonder whether you will, if there is a process of advance notification to allow issues to be raised regarding factual accuracy, publish as a matter of course any amendments that are made.

Alison Cumming: We will take that point away and discuss it with the commission. We are very open to considering any ways in which we can maximise the transparency of the relationship and interactions between the Scottish Fiscal Commission and the Scottish Government. I cannot comment on any previous Audit Scotland reports.

Your second set of points was about the desirability of the Scottish Government having access to a report in advance and about reports being published at the same time as the Deputy First Minister or the finance secretary of the day stands up to deliver the draft budget. That comes down to the value that the Fiscal Commission adds to the integrity of the Scottish budget process.

We suggest that it might not be in the public interest for a Government to bring forward a budget that is underpinned by tax forecasts that determine the overall amount of spending power available to that Government if independent experts subsequently say that those forecasts are unreasonable. The public interest is in maintaining the integrity of the draft budget process, so that the draft budget that is brought to Parliament comes with the assessment having already taken place and there is no need to revise parts of the budget to reflect changes in the forecasts after the draft budget has been published.

Jackie Baillie: By its nature, the budget is revised as it makes its way through Parliament, so surely it would not be difficult for the Government to do what I have suggested.

Alison Cumming: It might not be practically difficult, but we think that the integrity of the Scottish draft budget is maximised if the assessment takes place prior to publication and if there is complete transparency about that assessment.

Jackie Baillie: Sure. The idea could equally— as you would expect me to say from a Finance Committee perspective—lend more robust scrutiny to the process.

I will deal with flexibility in forecasts, although you dealt with many of the issues in response to Gavin Brown’s questions. You point to section 2(5)—I confess that I do not have the wording in front of me. Does that provision explicitly give the Fiscal Commission the power, if you are prepared to be that flexible, to do forecasting itself if it chooses to do so?

Alison Cumming: Section 2(5) provides that reports that are prepared by the commission

"may include such other information relating to the assessments being made as the Commission considers appropriate."

That power would enable the commission to publish alternative forecasts.

Section 6 is another key provision, which makes it clear that the commission is not subject to Government direction in deciding how it undertakes its assessment of reasonableness. It is implicit in that provision that the commission can determine how it undertakes that assessment, and that it can if it so chooses determine whether it prepares alternative forecasts or assumptions as part of that.

Having discussed the matter with our legal counsel, we understand—John St Clair might want to add to this—that there is no legal requirement to provide specifically for a function to allow the commission to prepare alternative forecasts. We can look at that; the explanatory notes to the bill make it clear that it is open to the commission to

"consider the effect of alternative forecasting assumptions or methodologies on revenue forecasts."
10:45

John St Clair: Our legal advice is that the bill leaves it wide open for the commission to make explicit alternative forecasts or, alternatively, it can just identify where there has not been reasonableness, provide what it thinks is reasonable and have others make their projections.

Jackie Baillie: Equally, there would be no harm—given that the Government appears to be open to it—in putting that in the bill.

Alison Cumming: We can reflect on that.

Jackie Baillie: Finally—I promise that this is final, convener—I will stick with the independence of the Fiscal Commission. You take quite sweeping powers in section 26 for ministers to change the functions by regulation. You would naturally expect me to prefer primary legislation to regulation, because it has more scrutiny. Would you shift on that? The importance of the body demands primary legislation.

The Scottish Government is quite heavily involved in the appointment of members to the Fiscal Commission. Scotland is a small place and we all tend to know one another. What other options did you consider to ensure the body’s independence? We have been presented with alternative suggestions that do not involve the Scottish Government but are robust.

Alison Cumming: I might ask John St Clair to explain the legal position on section 26 afterwards. It is certainly our intention that it will be more of a contingency or emergency provision than something that is routinely used, but he could comment on that in greater detail.

I give as an example section 5, which provides the power for the Scottish ministers to make regulations to confer additional functions and modify or remove functions. We have entrenched some of the commission’s core functions in primary legislation so that they cannot be removed using those regulation-making powers. We very much see that there are areas where we need to provide flexibility, but the core functions and operation of the commission are seen primarily as a matter for primary legislation.

On the appointments process, we have looked at examples of how ministerial appointments work. The key elements are that ministerial appointments are all regulated by the Commissioner for Ethical Standards in Public Life in Scotland and that the appointments process will be subject to the code of practice for ministerial appointments to public bodies in Scotland, which will provide safeguards about the process and about there being a fair and open competition and will ensure that appointments are made on merit.

Thereafter, there is in effect a veto for Parliament, because it will scrutinise the nominations that are brought forward for appointment, as the Finance Committee and the Parliament did for the appointments to the non-statutory commission.

Jackie Baillie: I have a tiny question, convener. Did the Government consider alternative options?

Alison Cumming: I have set out the policy position that the Government has arrived at.

John Mason (Glasgow Shettleston) (SNP): I will follow up the point that Jackie Baillie made. I know that the Delegated Powers and Law Reform Committee has looked at the bill, as I am also a member of that committee. Is part of the thinking behind having the powers as they are and giving ministers power that, as devolution progresses, primary legislation will not be needed every time a new tax or a new power comes? Is that broadly the thinking?

Alison Cumming: Yes. We recognise that we are going through a process to consider the devolution of further fiscal powers to the Scottish Parliament, so we wanted to ensure that there is reasonable flexibility in the bill for Parliament to modify the functions to reflect any expansion in fiscal powers without having recourse to primary legislation.

Sean Neill: Some of that is set out in how the bill is drafted. We talk about devolved taxes in the broadest sense instead of naming the two devolved taxes, so the wording covers all devolved taxes. Wherever possible, we have tried to future proof the bill, but we recognise that devolution of further powers is in transition.

John Mason: We have devolved taxes such as LBTT, but we will also have assignment of taxes, as in VAT, so there might be more options in the future.

Sean Neill: Yes.

John Mason: You are fairly comfortable that what we have will cover all those options.

Alison Cumming: The bill covers the full devolution of tax powers in relation to, for example, the powers to replace stamp duty land tax and the UK landfill tax. Air passenger duty and the aggregates levy would be automatically covered under the existing power, given the way in which we have defined devolved taxes. Assigned revenues for VAT, for example, would need to be considered; that would depend on how the power was framed and how the fiscal framework operated. It probably depends on who produces the forecasts but, if the Scottish ministers produced VAT forecasts to support assignment of VAT, we could envisage an additional function being conferred on the commission to review the reasonableness of those forecasts.
Sean Neill: The public consultation document that went out contained a list of other functions that the commission could have, and such a function was set out in relation to further devolution.

John Mason: We have spent a lot of time on who makes forecasts and all that kind of stuff, so I do not want to repeat that. If the commission set up its own forecasting model, do we have any idea of what that would cost?

Alison Cumming: We do not have specific estimates of that. The cost would depend on how the commission wished to go about the activity. The estimates that were drawn up for the financial memorandum were produced in consultation with members of the non-statutory commission and they are intended to cover, within the total resource envelope, the resource that the commission feels would be required to exercise its scrutiny as set out in the bill.

John Mason: We have £850,000 per year going forward. If the commission did substantial forecasting, would we be talking about double or triple that figure?

Alison Cumming: In the category of staffing costs, there might be a requirement to increase the staffing allocation for strategic and analytical support to the commission, or the commission might wish to use the provision of around £100,000 that we have suggested for research. However, without being able to specify exactly what the commission might want to do, it is difficult to give a precise figure. That would very much be a matter for the commission. If it felt that it was not adequately resourced within the resource envelope, the Government would take that seriously and discuss that further with it.

John Mason: I do not want to press you unreasonably, because I am asking about something that you are not planning to do. However, do we have an idea of how many Government staff are involved in forecasting? Is that not clear-cut, because staff are doing umpteen different jobs?

Sean Neill: That is a good assessment of forecasting. There is a limited number of people in the Government who exclusively do forecasting. They undertake a number of roles, including forecasting, so it would be quite difficult to say exactly how much of their job was spent exclusively on forecasting as opposed to undertaking other analyses.

John Mason: It could be useful if we had some idea as to what extra costs might be involved, because forecasting is a key issue. For me, one of the answers involves the costs, and knowing those would help us to make our decision. I realise that the bill makes a proposal already but, if it was possible in the future to get any kind of figure on the forecasting, that would be helpful.

The relationship between Audit Scotland and the Government is relevant, but the relationship between auditors and their clients in general is important. In one sense, I see the Fiscal Commission as auditing the Government’s forecasts. On the relationship between the two, is it your understanding that the auditors of any large organisation would be in it throughout the year to assess what was going on and would not just turn up on 31 March or whatever? Is that a fair comparison?

Alison Cumming: I am an accountant by profession and have experience of both the auditor and auditee sides of the public audit relationship. It is very much my experience that throughout the year there is engagement and reviewing of systems and controls that underpin the financial management and financial reporting arrangements, for example. The audit parallels are familiar to me, and they offer a helpful comparison with how the Fiscal Commission might conduct its work. There needs to be an opportunity for such challenge and scrutiny to take place; that might look to be behind the scenes, but the product of that should be made as transparent as possible.

I will draw a specific parallel. With the auditing of financial accounts, it is clear that the Government or the audited body puts forward its draft unaudited accounts for review by the auditor. The auditor undertakes their work, and at the end of the process the auditor prepares a report that clearly sets out the adjusted audit differences that have impacted on the accounts that were presented for audit before the final signed-off versions for audit were produced. The auditor also draws out any unadjusted material audit differences that were identified during the process, so that there is transparency about the areas that the auditor or external scrutineer looked at and that is put in the public domain.

John Mason: So you argue that it is possible for an auditor—or the Fiscal Commission—to engage regularly throughout the year and maintain their independence.

Alison Cumming: Yes.

John St Clair: Yes.

John Mason: When we talked about the right of access, Mr St Clair mentioned the possibility of a memorandum of understanding. Do we need to refer to that in the bill?

John St Clair: We do not. Memorandums of understanding are informal. They are not legally binding, and they usually just express on paper an on-going relationship between two bits of the
Administration. I have never seen them referred to in legislation.

John Mason: I think that we were broadly comfortable with the idea of members of the commission doing just one fixed term. I still wonder whether we have that many skilled people in Scotland, but I suppose that we could use people from outside Scotland. I understand from one of the reports that we saw that, in Ireland, people have a maximum of two terms of duty or spells on the equivalent body. Is the Government committed to one term? Might two terms work?

Alison Cumming: The Deputy First Minister has been clear in his position on that. That might even have been from the January 2014 evidence, but it was certainly the case in bringing forward the proposals for the non-statutory commission. The Scottish Government thinks that one of the key safeguards that we can put in place to support the commission’s institutional independence is ensuring that there is no perception that people have any regard to their personal prospects of reappointment in how they report their findings or in the conclusions that they reach. We see that as strengthening the commission’s independence.

John Mason: Audit Scotland said that it would be an improvement if the commission was funded through the Parliament’s budget rather than the Government’s budget. Do you have any thoughts on that?

Alison Cumming: We are open to considering that. The Government has made repeated assurances to Parliament that we will ensure that the Fiscal Commission is adequately resourced to fulfill its functions, and it will be subject to scrutiny in the normal way through the draft budget process and our spending proposals. We have spoken to the commission about administrative arrangements that we might be able to put in place to provide longer-term certainty to it about its resource allocation. The policy memorandum refers to that.

11:00

Mark McDonald (Aberdeen Donside) (SNP): I have just a couple of questions, because some of the questions that I was going to raise have already been asked.

I do not mean to dwell on the forecasting issue, but a point that has been made to the committee is that if the Fiscal Commission were to produce its own forecasts, it could give rise to a conflict of interests, in that it might err in favour of its own forecast and the outcomes of that rather than the Government’s forecasts. This question might be more for the commissioners but, in leaving the door open for the commission to produce its own forecasts, does the Government recognise that conflict of interest?

Alison Cumming: That is probably a question for the commission, but I point out that a core function of the commission as set out in the bill will be to assess the reasonableness of forecasts that are put forward by Scottish ministers. In other words, the commission will be under a statutory duty to prepare reports assessing the reasonableness of the Government’s forecasts.

Mark McDonald: The deputy convener has covered the other points that I was going to make, but I have one other question about term lengths for commissioners. Leaving aside the fixed-term element, I note that, first of all, although Parliament will approve the appointments, ministers will determine the length of term and that the bill itself does not define the term limit. Is there a reason why the term limit has been left open ended instead of being defined?

Alison Cumming: My understanding is that that is consistent with practice elsewhere in Scottish legislation; we tend not to specify in bills term lengths for such appointments and, instead, tend to reference the code of practice for ministerial appointments to public bodies, which sets out maximum term lengths in an administrative way. It is certainly an issue that we would be willing to reflect on when we look at the findings at stage 1.

Mark McDonald: It might give the impression that an appointee could be given a very long term length. Parliament might approve the appointment, but it has no official role with regard to the term that the appointee would serve. That could be a means of squaring the circle, but I will leave you to reflect on the matter further.

Richard Baker (North East Scotland) (Lab): I have a very brief question of clarification on the forecasting issue and the resources for that. I welcome what has been said this morning about leaving the door open to the potential for the commission to undertake its own forecasting, not least as part of its job in assessing the reasonableness of the Government’s own forecasts. I also welcome your indication to John Mason that you are willing to look into providing further information about the resource impact that that might have on the commission. Have your discussions on the resources that the commission will need also included any discussion on whether the current resource allocation will allow independent forecasts to be commissioned, or is the expectation that that will require significant extra resource?

Alison Cumming: We have not specifically addressed the alternative forecast issue in our interactions with the commission on the financial memorandum; instead, we have been speaking
more generally about the overall resource envelope and whether the commission considers that to be sufficient and adequate for it to discharge its statutory functions.

Richard Baker: That is helpful, and I think that the further information that Mr Mason has requested would also help the committee.

The Convener: That concludes questions from committee members, but not necessarily from me.

The last question that I was going to ask was almost exactly the same as Richard Baker’s, but I want to follow on from that to ask why the Scottish Fiscal Commission’s budget is substantially higher than that for the Irish Fiscal Advisory Council, even though the latter has a wider mandate.

Alison Cumming: There are two main areas of difference here, the first of which relates to the remuneration of commission members. The second area relates to something that we are trying hard to avoid through the proposals in the financial memorandum; we do not want to constrain in any way the decisions that the commission might make on how it organises itself as it moves to a statutory footing. All those questions will be considered as part of a transition programme. We have, for example, provided for accommodation costs based on commercial rates, which provides flexibility should the commission decide to locate itself in such premises. Of course, that is not to say that the decisions taken by the commission might not end up costing slightly less than what we have provided for in the financial memorandum.

The Convener: Sticking with the Irish model, I wonder whether you have looked at the fact that that particular fiscal council produces its report a month after the Irish draft budget. Do you feel such an approach to be disadvantageous?

Alison Cumming: It comes back to the point about the Scottish Government’s view of how the commission can maximise the integrity of the Scottish draft budget process and the fact that the Deputy First Minister has made it very clear that he does not want to take a budget to Parliament that is underpinned by forecasts that the Fiscal Commission does not consider to be reasonable.

The Convener: So you think that the Irish have got this wrong.

Alison Cumming: I would not say that they have got it wrong. We are taking forward suggestions that we think suit the Scottish Parliament’s arrangements.

The Convener: That is fine.

I have one final question before we wind things up. I have already asked Alison Cumming about the principles for effective independent fiscal institutions, which are set out in the SPICe briefing that we all have. One of those principles relates to a clear mandate, in respect of which the SPICe briefing says:

“The OECD state that the mandate of IFIs should be clearly defined in ‘higher-level legislation’ or ‘clearly stated in primary law’. This principle is met by the SFC Bill’s proposals for the SFC in year 1, but may not be met if the SFC’s remit is expanded via regulations subject to affirmative procedure in the future.”

Can you comment on whether that is the case?

Alison Cumming: As a general point, I would say that, although we consider that this bill delivers on all the OECD principles, we are very interested in hearing any suggestions that might be made at stage 1 of ways in which this aspect could be strengthened, and we are certainly open to looking at and reflecting on them.

The powers in section 5 reflect the unique situation that we have in Scotland with regard to the devolution of further fiscal powers, and we have sought to strike a balance between giving Parliament the flexibility to tailor and amend the Fiscal Commission’s functions to reflect the expansion of those powers without recourse to primary legislation and entrenching the commission’s core functions, including the requirement on it to

“prepare reports setting out its assessment of the reasonableness of” various factors—although the specific factors set out in section 2(a) to (d) could be subject to review—as well as entrenching its power to prepare reports on

“such fiscal factors ... as it considers appropriate.”

Removing those would require primary legislation. We have sought, as far as we can, to strike a balance between providing as much certainty as possible on the commission’s functions in primary legislation and leaving some flexibility to take account of the devolution that is on-going and which might come in the future.

The Convener: Thank you. I said that that would be my final question, but I was only kidding on—I have another one.

On the independence of the Fiscal Commission and institutional capture, I note that the SFC’s staff include someone seconded from the Scottish Government. Issues have been raised, not least by the Institute of Chartered Accountants of Scotland, about the Scottish Government’s closeness to the Scottish Fiscal Commission. Surely if we want a body that is not only independent but seen to be independent, it does not really help matters if Scottish Government officials are effectively being seconded to an
organisation that is scrutinising the Scottish Government itself.

Sean Neill: I make it clear that this particular arrangement is only an interim one—it is not something that has been established and which will continue. As the letter to the committee makes clear, the member of staff in question has nothing to do with the forecasting; the key area in which they are working is more to do with the transition to a statutory body and ensuring that the systems are in place in line with the requirements outlined in the framework agreement. It is all about process and transition, and it has nothing whatever to do with forecasting.

I repeat that this is only an interim arrangement; it is not long established, and it will come to an end. It will be up to the commission to determine the staffing, skills and resources that it needs within the envelope provided for in the financial memorandum.

The Convener: Thank you very much. That concludes questions from the committee and from me. Do you wish to make any other points before we wind up the session?

Sean Neill: No.

The Convener: In that case, thank you very much for your time and for answering our questions.

I suspend the meeting until 11.15 to give members a natural break and to allow a changeover of witnesses.

11:10

 Meeting suspended.
Scottish Fiscal Commission Bill: Stage 1

09:30

The Convener: Our second item of business forms part of our scrutiny of the Scottish Fiscal Commission Bill. First, we will take evidence by videoconference from Robert Chote, who is chairman of the Office for Budget Responsibility. I welcome him to the meeting. He will give us a brief statement, after which we will go to questions.

Robert Chote (Office for Budget Responsibility): Good morning, convener. It is a great pleasure to be with the committee. I apologise for not being with you in person. There ended up being a gap in the diary, but not a gap on the sleeper.

All that I want to say by way of introduction is that the Scottish Fiscal Commission is a great innovation and that we have already established a very good working relationship with it, as we have done with the Scottish Government officials whom we deal with on the devolved taxes forecasts.

One key lesson from international experience with fiscal councils is that there is no one-size-fits-all template. Therefore, in responding to the committee's questions, I am bound to focus on what has worked well or less well for us, given the tasks that we have been given. That may or may not be a good guide to how things would or should work in Scotland.

I hope that, however things turn out, the arrangements will be set up in such a way that we can co-operate effectively, as we will have to answer some of the same questions, while respecting our respective independence. We are very keen to have an open and collaborative relationship with the commission and, indeed, the Scottish Government. We invite Scottish Government officials and the commission to participate in the meetings at which we discuss our forecasts for the devolved taxes, and we have found that to be useful. I hope that we can carry on in that spirit as the scope of devolution and the commission’s role broaden.

I am happy to take questions.

The Convener: Thank you for that. It is great to have you back at the committee again, albeit not in the flesh, so to speak.

You said in your brief opening statement that there is no template and that it is about what works well and what has not worked so well. What has worked well and what has not worked so well for the OBR?
Robert Chote: Things have worked probably better than I would have expected when things were set up. As Ian Lienert’s excellent paper makes clear, we are quite an unusual model in that the task of forecasting has been contracted out to us by the Government rather than our scrutinising the Government’s forecasts or producing parallel forecasts. That necessitates a relationship in which we need to have a private interaction with Government officials in the run-up to budgets and autumn statements, and that has worked better than I expected. The working relationship is a good one.

It is interesting that, in a review of external stakeholders, they said that they had confidence in the OBR’s work. I was pleased to see that. They attributed that to the quality of the staff and the nature of the day-to-day workings, and they did not put a great deal of emphasis on the formal legal and institutional underpinnings. However, it would be a great mistake to conclude from that that those formal underpinnings do not work. They are an essential backdrop, and the way in which the working relationship operates is conditioned, perhaps subconsciously to a degree, by the knowledge that there is that structure of agreed rules and working relationships.

Although I would not describe this as not working so well, it is clear that there is a more difficult environment in which to demonstrate independence where there is necessary discussion that takes place in private. When I ran the Institute for Fiscal Studies, things were slightly easier because the Government would produce numbers and, after the event, we would look at them, talk about them and say whether we thought that they were too high or too low. There was no interaction. If we had that relationship, we would not add anything to what the IFS did anyway.

I think that the approach has worked. It is necessarily more difficult to persuade people that there is a clean distinction, but I think that it is the only way that we would have added value to what I did for the previous eight years in the old job.

The Convener: Given the position of the OBR and what you have just said, do you feel that the Scottish Fiscal Commission should prepare its own forecast independently of the Scottish Government?

Robert Chote: As I said, we are relatively unusual in doing it ourselves and providing the official forecast. The Netherlands is the only other obvious example of that approach.

If, as the Scottish Government desires, you set up a situation in which it produces the forecast and the commission scrutinises it, the experience from the Irish Fiscal Advisory Council suggests that, with time, the commission will pretty much end up having to do a forecast of its own in order to be able to critique the forecast that it looks at from the Government. There might be a risk in thinking to begin with that the commission can do this, as it were, looking from the sidelines, without getting involved in the mechanics of producing its own forecast. In the Irish experience, over time, they found that that was harder to do.

It might also be harder to do in this context because we could argue that, if people are interested primarily in the view of real gross domestic product growth for the United Kingdom—although producing that is not our key role—a wide variety of other forecasts are available in the public domain. One way of reviewing the reasonableness of a forecast would be to say, “I’m not going to do a forecast of my own and compare it with this forecast. I’m going to look at how it compares with the other forecasts that are out there.” In the environment that we are discussing, given the things that the Scottish Government will forecast and the Scottish Fiscal Commission will scrutinise, there is not a wide range of other forecasts to look at. Once again, that leads me in the direction of saying not necessarily that the commission should do the forecast but that, over time, it might find itself wishing to get pretty close to doing its own forecast in order to produce adequate scrutiny.

To date, the commission has focused on whether it believes that the methodologies are reasonable, which is a sensible approach to begin with while the system is being set up. Once the commission has been running for a while, it will come down more to issues such as whether the commission accepts as reasonable the interpretation that the Government has put on recent outturn data and the way in which that data compares with the forecasts. Again, that gets the commission into more of a parallel forecasting mode. It would certainly be a good idea for the commission to have the resources to do that should it wish to do that.

The Convener: You are saying that, even if the commission does not have the role of producing its own forecast, it will de facto more or less do a forecast—maybe in five or 10 years or possibly sooner—in any case.

Robert Chote: It will quite possibly be sooner. A lot of this comes down to reasonableness. The function is set out in the bill as judging whether the forecasts that are produced and the assumptions that are made for non-domestic rates are reasonable. It will be for the commission to define what it means by “reasonable”. As I said, to date, it has focused primarily on methodology—very sensibly—but it will get to a point at which it has to ask, “How do we define reasonable?” Will it define “reasonable” in terms of a numerical range of
outcomes for a particular forecast that it thinks are acceptable? That range could be quite wide.

At present, the Scottish Government does not publish five-year forecasts. However, if it were to say what would be, from this point, a reasonable range for forecasts of land and buildings transaction tax revenues in five years’ time, it could be quite a wide range, because the revenues will depend on movements in house prices and transactions. The decision on where to draw the line between reasonable and unreasonable is not straightforward, but it is implicit in that model.

**The Convener:** Obviously, you have looked at the bill and the resources behind it in some detail. Do you feel that the Scottish Fiscal Commission will have the resources to be able to do the job? The OBR has much greater resources than the Scottish Fiscal Commission has or is likely to have.

**Robert Chote:** I think so. I think that Ian Lienert says somewhere in his paper, which I thought was an excellent one, that the Scottish Government’s assessment of the resource needs was munificent. From personal experience, I know that the resources that are needed to do the job properly may be rather larger than some people who have not engaged in the process think, so I suspect that the Scottish Government has made quite a good judgment on that rather than an excessively generous one. However, it will depend on the allocation.

You are right to say that we have more resources than are proposed for the Fiscal Commission. We have a wider forecasting remit, but even the resources that we have are nowhere near adequate on their own to do the job that we do. We depend, crucially, on our access not merely to information but to the assistance, time and effort of civil servants, particularly in HM Revenue and Customs and the Department for Work and Pensions, to do our job properly. In effect, we have about 120 people working for us, particularly in the immediate run-up to forecasting events in those departments.

Another issue for the Fiscal Commission is not merely the resources that it has to play with but the expectation about the time and effort that people in Revenue Scotland or the Scottish Government administration will be able to provide in assisting with information about and analysis of the judgments that they have made. It is not just a question of how much cash is in the kitty.

**The Convener:** You have almost pre-empted my next question. Will you expand on the level of private contact that you have with UK departments and the basis of those discussions? You touched on that to some degree.

**Robert Chote:** If you were to look at who is devoting most person hours to working for us, you would see that it is HMRC on the various tax forecasts and the DWP on the welfare forecasts.

The key thing to bear in mind is that the forecasts that we produce for welfare and tax spending are our forecasts. The departments provide us with technical assistance by making recommendations about, for example, whether the models that are used to forecast these things should be changed, but whether that happens is always our decision. The departments might have ideas about how to interpret outturn data, but at the end of the day it is our forecast.

I have been pleased that relationships with officials in those departments have been conducted professionally. I rarely get the sense that there is a political spectre lurking behind the officials that I am talking to. I am wary of any occasions when it looks as though the material or assistance that we are being provided with is being clouded by that sort of political intervention. However, as I say, to date that has worked reasonably well.

The other part of the relationship is with HM Treasury. In a sense, it needs us more than we need it. It brings to us the policy measures that the Government is thinking of announcing at a particular fiscal event and we scrutinise them and have a debate about what we think the right numbers are. At the end of the day, the Government can publish its own numbers, but we produce a central forecast, and if we do not like the Government’s numbers, we will put different ones in our forecast. We are very transparent about that.

There is quite a lot of contact. A possible lesson for the Scottish environment is that I find the fact that HMRC is at arm’s length from the Treasury is a practical and symbolic source of reassurance. I do not know what the relationship between Revenue Scotland and the Scottish Government is or will be like, or the extent to which there is that arm’s-length separation. If there is such separation, it will be a source of additional confidence for the commission in the scrutiny work that it does.

**The Convener:** How do you feel about the Fiscal Commission exerting influence over the forecast at the same time as providing an assessment of reasonableness?

**Robert Chote:** It is interesting. It is a sort of hybrid model that is being proposed. At one level, obviously, one would hope that there is going to be influence. The whole point of independent scrutiny is that the Government knows that it is being scrutinised and so comes up with more sensible forecasts.
We have the whole debate behind closed doors and we produce the forecast on the same day. In the Scottish context, there are two issues. One is whether the commission exerts influence between the draft budget and the subsequent budget. The commission cited an example in which it said that it thought that some of the assumptions that were made in the non-domestic rates forecast were a bit over-optimistic and the Scottish Government said, “We responded to that between the draft budget and the subsequent budget.” That is one way in which influence shows up. The other way is when it shows up in the run-up to the draft budget forecast.

09:45

As I said, it seems to be a hybrid model. In the IFS model, there is no contact before the draft budget. Some time after it comes out, the IFS looks at it and says, “That seems reasonable.” “That looks a bit high,” or, “That looks a bit low,” and it sets out its expectations. If you took that approach, the Scottish Government could presumably decide whether to amend things afterwards. I think that Ian Lienert leans in that direction. As I understand it, however, the proposal is that there will be an interaction in private prior to the draft budget, and there is not necessarily anything wrong with that.

Again, the question of reasonableness is opened up. Do you want the system to work in such a way that the Scottish Government can have a private conversation with the commission in the run-up to publishing the draft budget? Essentially, the Government would be saying, “If we publish this, would you say that it was reasonable? If not, and we published something slightly different, would you say that was reasonable?” The question is to what extent you want that negotiation to take place in private. I am not sure that the outcomes at the end of the day would necessarily be different.

Our experience suggests that, if there is that sort of debate beforehand, it might be harder to satisfy everybody and demonstrate that the commission is being independent. Clearly, however, there would be more opportunity for the commission to influence the numbers if it has that prior discussion rather than waiting for the draft budget to come out, looking at the numbers at that point and drawing its own conclusions in order to influence the subsequent forecast.

The Convener: Should the Scottish Fiscal Commission have a wider remit? For example, should it look at the sustainability of Scotland’s public finances, and particularly the fiscal rules?

Robert Chote: Personally, I see no problem with that. Our remit is drawn fairly widely in that it gives us an overall duty to report on and examine the sustainability of the public finances, and then specific requirements are made of us—in legislation and the charter for budget responsibility—to produce particular reports.

It seems to me that the questions that you asked are good ones and that the Scottish Fiscal Commission would be a good set of people to put them to. I guess that it partly depends on whether university bodies or research institutes are doing that work in the way that, for example, the IFS does it for the UK as a whole. If so, you might argue that there is no point in having the commission do it as well.

It is hard for me to tell at a distance whether there is that range of alternative opinion. If there is not, I would have thought that there would be a good case for the commission having the ability to talk about those things.

The Convener: Should the bill be amended to reflect that?

Robert Chote: The best outcome is probably a broad overarching duty for the commission, with a list of things that are required of it and a list of things that you are clear you do not want it to do. As you are in the process of setting it up, there is a reasonable case for having breadth to start off with so that you do not have to go back and amend the legislation if you want to go in that direction. However, the overall remit question is one of choice and not of how the commission is doing its job. My personal preference would be for the remit to be broader rather than narrower.

The Convener: I have one final area to touch on before I open it up to questions from the committee. Dr Jim Cuthbert, who will give evidence to the committee later, has produced an interesting paper, as he always does. He talks about what he describes as "the problem forecasting Scottish government’s overall revenues" because "only about half of the Scottish government’s revenues will come from devolved taxes."

He says:

“Forecasting the overall revenues will be a difficult task, quite unlike that undertaken by the OBR when it forecasts the UK government’s tax revenues”.

The OBR is in a completely different position in its forecasting. In some ways, you can get your teeth into a lot more. Will the situation that the Scottish Fiscal Commission faces make it more difficult to assess or forecast Scotland’s finances and so on? How do you feel about the position that the SFC is in, relative to the OBR, in looking at finances and forecasts?
Robert Chote: Jim Cuthbert makes a good point. As you said, we can go into considerable detail, but at the end of the day we produce a comprehensive, bottom-up forecast over a five-year time horizon. It is important to point out that if we do not produce a forecast of what we think the most likely outcome will be; we produce a forecast of what we think the most likely outcome will be on currently stated Government policy. That requires us to ask the Government to be clear about what its policy is regarding, for example, public services and expenditure on grants over a five-year period. When we do that, the concrete plans are laid out only for a relatively brief period. For example, at present, we have detailed spending plans set out only for 2015-16. Basically, we get the Government to tell us transparently what it wishes to assume about the total envelope for spending on public services and grants over the subsequent five years. Of course, when we get to 25 November, that will be filled in for most of the Parliament.

Coming back to Jim Cuthbert’s point, I note that, if you were doing an overall forecast of revenues for Scotland over a five-year horizon, you would have to make assumptions about what the UK Government’s policy was likely to be on grant spending over that period. As I said, we get the Government to be as clear as we can get it to be about that. The challenge for the Scottish Fiscal Commission would be to decide whether to take the UK Government at its word and how to interpret what it said given that there would not be a full breakdown so it would not be known whether particular sorts of grant spending would be more or less protected. Alternatively, would the commission produce a forecast based on how it thought the UK Government might behave over the next five years, rather than on what its stated policies were? That adds in an extra wrinkle of difficulty or an extra set of choices to be made with regard to how the forecasts are done.

The Convener: Thank you very much for that. I open up the session to colleagues round the table. The first colleague to ask questions will be Richard Baker, to be followed by Mark McDonald.

Richard Baker (North East Scotland) (Lab): Thank you, convener, and thank you, Mr Chote, for your very helpful evidence this morning.

You have talked about the importance for the OBR of having effective dialogue with departments of Government and other Government agencies in order to do your job. The right of access to information for our Fiscal Commission is obviously going to be a very important matter for it. We have already suggested that there should be a memorandum of understanding between the Fiscal Commission and other bodies, such as the Scottish Environment Protection Agency, the Scottish Government and Revenue Scotland, so that we can be reassured that it will have the right of access to information.

Do you feel that that needs to be set out in legislation? I do not know what the arrangements are for the OBR on this matter. Should there be something on the face of the bill to that effect, or could there be an agreement between the Fiscal Commission and other agencies?

Robert Chote: I do not think that it necessarily has to be on the face of the bill, because the equivalent arrangement for us is not. However, that is not to say that the memorandum of understanding is not very important. I think that it is an extremely important document in which all the participants in the process set out their expectations of one another on what sort of information is going to be provided and when.

From our point of view, that is even more important, because we have to get to a process whereby we have a fully articulated post-measures forecast on the day of the budget. We need to have deadlines set out by which the Treasury has a right to expect us to produce a forecast of what would happen if there were no changes at a particular point; and we need the Treasury to tell us about the policies by a particular point for us to have time to integrate them later on.

Some of those issues will not arise for the Fiscal Commission in the same way, because it is not doing the forecast. Nonetheless, the memorandum of understanding is very important and useful. As I said, it is a way of setting out expectations. You do not necessarily want to approach it in a very legalistic way so that you can wave it around, but it is certainly always useful to have something as a backstop when you think that you might be getting into disagreements; it is always nice to be able to cite the fact that you had an agreement beforehand and that that is the basis on which you will set out to operate.

I think that the memorandum of understanding is a very useful intermediate step between the legislation at the top and the way in which the day-to-day working relationship operates, which is fundamentally the most important thing at the end. Having that set of agreements in the middle has been very useful for us.

Richard Baker: You say that having those official agreements has been a useful backstop. Have you had to use that backstop very often in your dialogue with other agencies?

Robert Chote: No—not a great deal. Obviously, we have interaction with the Treasury on the material that we are going to publish, because we need to check that our interpretation of the policy decisions that will be announced is correct. Basically, there is a requirement that, when the
Treasury provides input in that direction, it should be on the basis of fact checking and ensuring that our interpretation is right—it is not an opportunity to badger us to change the opinions that we have reached. It is occasionally useful to remind the Treasury of that, but it has not arisen as a serious problem.

Richard Baker: My final question is on forecasting. As I am sure you realise, the committee has been exercised a great deal by the role that the Fiscal Commission should have in forecasting. Your helpful evidence this morning has been that it should perhaps have that role or ability, perhaps at an earlier rather than a later point. You said that, at any rate, a few years down the line, the commission might develop a role in forecasting in order to fulfil its remit of assessing the reasonableness of forecasts.

Is it fair to say that the commission will not be working from a blank sheet of paper in developing that role? I presume that it will be able to consult the OBR. Would you be willing to assist or advise the commission on some of the issues that it will encounter in developing that forecasting role? You have highlighted the importance of not only resources but building up relationships with other people who work in Government, academia and other sectors. Would you be able to assist the commission with that or would it need to develop that itself?

Robert Chote: We are always happy to provide assistance. As I said, in developing the additional methodologies that we have used and each time we update the forecast, we have found it useful to get the input of the Scottish Fiscal Commission and Scottish Government officials when we are addressing those. When you start out on the process—this has been true with the commission to date—you are focused on the overall methodology or approach that you are going to use in developing the forecast. As time goes by, the methodology might not change very much and the key issue then is how to interpret the news.

If a forecast says that a particular tax is going to raise £200 million a year in each of the next five years and then, in the first year, it raises £100 million, how do you interpret that information? Do you conclude that the later-year forecasts are probably too high or do you say, “Oh well, £200 million a year is probably the best, so it might well overshoot in the other direction next year”? There is no monopoly of wisdom or folly with those sorts of judgments and issues of interpretation.

We will continue to have to produce forecasts for all the things on which the Scottish Fiscal Commission will scrutinise the Scottish Government’s forecasts. I am happy to have as open a discussion as we can about that. At the end of the day, it is important that we are independent. The Scottish Government should produce the forecasts that it wants to produce and we should produce the forecasts that we want to. It does not matter if those are different, but it is useful for us to have a shared understanding of why they are different and to be able to explain it to the committee and other people who are interested.

It is important to make the point that there is a world of difference between saying that somebody else’s forecast is different and saying that somebody else’s forecast is unreasonable. As I say, the big challenge in initial interpretation is how to define reasonableness, particularly when there is not a large cluster of other forecasts of the same thing, so you cannot just say that reasonable is somewhere in the middle of the pack.

Richard Baker: Thank you very much, Mr Chote.

10:00

Mark McDonald (Aberdeen Donside) (SNP): Good morning, Mr Chote. You mentioned that the role of forecasting has, in effect, been contracted out to the OBR. Are you the only ones who are producing forecasts at a UK level?

Robert Chote: We are the only ones who are producing and publishing a fully articulated, disaggregated, bottom-up fiscal forecast. The closest comparator is the annual green budget process of the Institute for Fiscal Studies, which I did for eight years and which is still going on. However, it is fair to say that the IFS now places less emphasis on producing an alternative bottom-up forecast now that we do it. Although it still provides very useful scrutiny of the work that we do, it is not quite the fully articulated alternative forecast that it was.

There is a much larger population of people who produce alternative estimates—there are roughly 35 of them—for the macroeconomic forecast, which is an input into the fiscal forecast. Every month, the Treasury does a round-up of people’s forecasts for GDP growth, inflation, the balance of payments and so on, and a much larger number of people produce such forecasts at a UK level. We make sure that, in our reports, we compare the latest forecast that we have produced with the distribution and evolution of those external forecasts.

However, on the fiscal side, many fewer people are producing such forecasts. The story on fiscal forecasts is very different from that on macroeconomic forecasts.
Mark McDonald: The question has been raised whether the Scottish Fiscal Commission should produce its own forecasts alongside those that the Government produces. I wondered whether that is happening at a UK level, but you seem to be saying that, for fiscal forecasting, the OBR is the only game in town.

Robert Chote: We are the only game in town for producing a really big, bottom-up forecast. City forecasters and academic institute forecasters produce forecasts for, for example, public sector borrowing—the headline budget deficit—but I suspect that quite a lot of those start with our forecast and then say whether the figure is likely to be higher or lower on the basis of whether economic growth or inflation is likely to be higher or lower than the OBR assumes. They may take a different view of oil prices or something like that. There are forecasts of the headline fiscal variables, but they are not generated from the bottom up, from lots of different forecasts for particular tax receipts and particular bits of spending, in the way that ours are.

Mark McDonald: The Cabinet Secretary for Finance, Constitution and Economy, John Swinney, has told the committee that the Fiscal Commission exercises a kind of veto in the sense that, if it believed that his projections were unreasonable, he would not feel able to continue with those projections but would have to revise them. Is there a similar check and balance on the forecasting that is being done at a UK level?

Robert Chote: In a sense, you have to flip it round. We produce our forecast on the basis of our best judgment, and the Government must decide whether to set policy on the basis of our forecast or whether to say, "We think things are going to turn out differently," and, accordingly, set its forecast in a different way. I am sure that the Government does not accept every last bit of our forecast but, to date, on each occasion on which we have produced a forecast, the chancellor has been happy to use that forecast as the basis for the fiscal decisions that he has made and the narrative that he has set out. For example, from 2012 we started to forecast that the Government would no longer achieve its target of a falling debt-to-GDP ratio in 2015-16. The Government's response was to accept our forecast, but it was happier to miss the target than to announce an additional fiscal tightening that would be needed to hit it.

That is a useful and transparent process. For one thing, it demonstrates that we are willing to tell the Government unpleasant stories such as that it is not going to achieve what it has set out to achieve. Secondly, it is absolutely right that it is for elected ministers to decide what to do about that and whether it is more important to hit a target or to achieve some other objectives. Thirdly, experience has shown that the decision can go either way. Sometimes, we have told the Government that it will not hit its target if it does not take policy action and it has taken policy action to hit the target; sometimes, we have told the Government that it will not hit its target and it has said, "Fair enough. We'll have to live with that. We think that's better than the alternative."

As I said, the area of responsibility is flipped round. It is for the Government to respond to us; it is not for us to respond to the Government. That is the opposite of the way in which things would operate under the Scottish Government model.

Mark McDonald: You have said that it is for ministers to choose whether to take your forecasts on board. It has not happened yet, but the Treasury and the Government could, in effect, disregard what the OBR has produced if they felt that they wanted to pursue a policy objective that was at variance with what you have suggested.

Robert Chote: They could say that they did not believe the forecast and that they would operate on a different basis. They would have to make a decision on how much detail they wanted to be set out in the forecast. That would not be catastrophic for the system. Reasonable people can disagree about economic forecasts. Anybody who has conducted, read or used them knows that. That would not be a disaster.

There is a separate issue about policy advice. We clearly do not provide policy recommendations. If, in our view, the Government is not on course to hit its target, it is not our job to say whether it ought to do what is necessary to hit the target, or whether it would be better to miss it. For quite a lot of fiscal councils in other countries, it is part of their responsibility to say, "You're not on target, and this is what we think you ought to do about it." That is not part of our responsibility. It is the quid pro quo for having a very detailed role in the forecasting process, with the interaction with Government that that implies.

The counterpart to that is that we should not be providing policy advice. We are providing the numbers, and it is for other people to draw the policy conclusions from that. I am not sure, looking at the bill, whether the idea is that the commission should recommend particular policies or particular actions if the numbers are coming out in a particular way, or whether, as I understand it to be, it is more a matter of asking whether the numbers are reasonable—as opposed to suggesting what to do about it if they are not.

Mark McDonald: I do not think that that is the suggestion. I was not trying to imply that the OBR would or should recommend policy.
When we have considered LBTT, income forecasts have been produced by the Scottish Government and by the UK Government via the OBR. Those were at variance, particularly when it came to deciding the block grant adjustment.

Scottish Government forecasts will be subjected to scrutiny by the Scottish Fiscal Commission for reasonableness. What check or balance would there be on OBR or UK Government projections to the same extent, particularly when they turn out to be at variance with Scottish Government projections?

Robert Chote: We will obviously be transparent, and we produce a very detailed publication explaining why our forecasts change from one forecast to the next. As you know, we produce a specific paper on the details of the devolved tax forecast. When we discuss those forecasts, we have representatives of the Scottish Government and the Scottish Fiscal Commission in the room, via telephone more often than physically. They are there as we discuss, for instance, how we ought to interpret recent outturn data, why shares have moved or whether there is any evidence on whether Scottish house prices are moving differently from those in the rest of the UK.

We will then produce our forecast. I do not think that there is any need to worry if we have a different forecast from that of the Scottish Government, particularly on matters such as LBTT. Taxes on property transactions inevitably swing around a lot more than taxes on income or consumer spending, because they depend in part on house prices, which can move around quite a lot, and on the level of transactions—how many purchases and sales are taking place.

It is useful to have a shared recognition on both sides of the table that, even if we do not come up with the same answer, a sharing of information and understanding and a discussion of how to interpret the information are useful to us. I hope that it will be useful to the Scottish Government and the Scottish Fiscal Commission in producing the numbers that are required.

For the purposes of the general public and the committee, I suspect that what you would most like is, if the numbers were different and I or the Scottish Fiscal Commission came to you and tried to explain why they were different, our having a shared understanding of why that was. That may be because the forecast was done at a different time of year or because you took a different view of what a particular economic determinant of that forecast—house prices or transactions, for example—would do, or it may be down to the fact that we had chosen a different methodology to produce the forecast.

I am very keen that we have a free discussion about that, and I hope that the Scottish Government will see that we obviously have a responsibility to the citizens of Scotland as much as to everybody else to produce the best UK forecasts that we can. We are very happy to discuss the approaches that we are taking and our judgments, and I hope that the Government and the commission will be happy to do that as well. We will not necessarily get the same answers, but we would then all understand better where each other was coming from.

Mark McDonald: Thank you.

John Mason (Glasgow Shettleston) (SNP): Obviously, we have covered quite a lot of ground already. Earlier, you mentioned the body in Ireland, which started off one way and evolved—I do not know whether that word was used—or slightly changed how it did things and developed more forecasting ability. It has been suggested in some submissions to the committee that the SFC will just need to evolve, especially because we may get more powers in the future. Has the OBR evolved over the years, or has it been very much a fixed entity?

Robert Chote: The OBR has been largely fixed. The main additions to our role will be through the Scotland Act 2012. Obviously, when we started out, we did not know that we would be doing devolved tax forecasts, but we will. That has probably been the major change in the remit.

On the process, obviously we have tweaked and refined the nature of the publications that we produce as we have gone along, and we have been able to produce different sorts of material as we have gone further.

On the next change that is coming up, the charter for budget responsibility has been revised such that we will now produce a specific publication on fiscal risks, probably every two years. I look forward to discussing with Jim Cuthbert, among others, how one would set about that process. A lot of other countries do that, either at finance ministry or fiscal council level. It will mean that we must bring together a lot of the work that we already do on things such as sensitivity analysis and highlighting risks, and perhaps focus it all in a single publication.

Those are the main changes that we have seen so far. Other proposals for us—that we should start to look at opposition party policies and do distributional analyses, for example—have been raised at various times but rejected. However, the core economic and fiscal forecasting role has basically been unchanged. We have developed and refined it as we have gone along, but there has not been a big shift.
John Mason: Within your remit, do you have the freedom to produce more or fewer reports and freedom in how you produce the reports, for example?

Robert Chote: The charter for budget responsibility sets out some things that we must produce. We had previously to produce a fiscal sustainability report every year, but we can now make the interpretation, in effect, that we have to produce that once every two years, which will allow us to alternate it with the fiscal risk report. We are required to produce forecasts twice a year to accompany the budget and the autumn statement, and to produce a report that looks back and compares our forecast performance with the outturns in data.

However, the overarching duty, which we are allowed to fulfil as we want, has allowed us to produce, for example, a detailed working paper on why public finances evolved as they did over the course of the recession, the financial crisis and then the subsequent improvement. We have also produced papers on particular measures of inflation.

There is scope for us to produce additional material that we think is helpful in fulfilling our overall duty of reporting on and explaining our views on the sustainability of the public finances.

I go back to my initial response to the convener: there is an overarching duty, and there are things that we can do and things that we cannot do. That is the context in which we operate.

John Mason: That is helpful. It has been suggested that those are things that the Scottish Fiscal Commission should also be able to do. Another suggestion is that the Scottish Parliament might ask the Fiscal Commission to produce extra reports. Is the OBR asked to do such work?

Robert Chote: Occasionally, we are asked for particular bits of information. We try to be responsive not just to parliamentarians but to other people who might ask about our forecasts, about whether we can publish additional data and so on. We do not have a pot of spare resources that allows us to take regular commissions from people who might want a big report on X or Y. If people make the case that it might, as part of our duties, be helpful if we were to look in more detail at oil prices and so on, we might take that on board, but we do not have a huge slush fund of uncommitted resources that we deploy on particular wheezes that people come up with.

John Mason: That is useful. I suspect that it will be the same for the SFC.

We are trying to deal with relationships and independence, but we keep hearing different suggestions. At one extreme, it has been suggested that there should be a very interactive approach, with the SFC being able to influence things as they go along, while at the other extreme we have been told that the SFC should have a much more formal arrangement in which we would know that, for example, it will meet ministers on specific days. How do you get that balance right? How have you found that to be?

Robert Chote: It is not straightforward to set that sort of thing out in advance, rather than see how the process works in practice. We make a distinction in that respect. On the one hand, there are the interactions that we have with Government ministers, their political advisers and their private offices—we log, on our website, our meetings with them when particular forecast material has formally passed over in one direction or another, and so on. That is important and useful.

On the other hand, we rely enormously on a good interactive day-to-day working relationship at staff level between, for example, the officials in our office who look at the details of the revenue forecasts and the HMRC officials who are working on those forecasts. It is very important to us that that relationship works unimpeded, that there is mutual respect and that we do not get a sense that the people in HMRC, the Treasury or the DWP are being leaned on by their political masters in respect of their willingness to co-operate on that basis.

When we embarked on the process, my Swedish counterpart said that he just did not think that the OBR could be genuinely independent with that sort of behind-the-scenes interaction. However, as I have said, if we did not have it, we would not be adding anything to what the IFS already does.

In Scotland, you have a slightly different opportunity, because you have a draft budget before the full one. In that world, there might be no interaction prior to the draft budget; the commission would then come in and there would be an opportunity to take on board any recommendation that it might make. However, at the moment, it is felt that the Government should have an opportunity to take advice on board earlier in order to end up with a “better”—I will put that in quotation marks—forecast at the time of the draft budget. If you do that, you will be in the world of private interaction.

There is a trade-off to be made with regard to how early you want advice and recommendations to be listened to and influence to be felt. From your point of view, having a timely draft budget that is a good guide to what you are going to end up with has its attractions, but the counter side is
that, for that to happen, there needs to be private interaction. There is no right answer—you just have to decide where on the spectrum you want to be.

Because the OBR produces the forecast, we are very much at the interaction end of the spectrum. That means that, in order to allay as best we can any concerns that people might have, it is incumbent on us to be as transparent as we can about the process and how our forecasts have moved.

John Mason: That is helpful. Obviously the Scottish situation will be slightly different, but you—and, from what I have seen, other people—seem to be happy with the balance that you have managed to strike between that type of interaction and maintaining a reputation for independence. Do you think that that kind of reputation is as much about the individuals, their integrity and how they are seen as it is about any kind of formally laid-down process?

Robert Chote: That is interesting. That was certainly the conclusion of the review of the OBR that was carried out in 2014 by Kevin Page, the former parliamentary budget officer for Canada. In his survey of external stakeholders such as think tanks and journalists, he asked whether they had confidence in the OBR, and generally the answer was yes. He asked why, and people tended to say that it is to do more with the staff—with the people and how the work is done—than with the formal legislative underpinning. It would, however, be dangerous to conclude from that that the formal legislation and the formal rules do not matter. I think that they do and are an important underpinning.

The other thing that in practice helps to develop a reputation for independence is the first forecast that the office produces that says that the Government will not hit the objectives that it has set itself. People will then say that the office is more independent than they had thought it was. There was, for example, an occasion when the Prime Minister misrepresented—by accident or otherwise—what we had said about the relationship between austerity and economic growth, so I wrote an open letter. It became the lead item on the “Ten O’Clock News”, which had an impact on people’s views of our independence. Clearly, we do not want to be in a world in which we deliberately go out and pick fights in order to demonstrate independence, but it is the nature of the job that over five years there will have been enough occasions on which we have had to say things that politicians do not want to hear that that reputation can be built up on the basis of how we do business year in, year out.

John Mason: That resonates with the committee; we do that kind of thing as well, sometimes. The final point that I want to touch on is the forecasting. As I understand it, the Treasury forecasting has been contracted out to you—I think that that was the term that was used. One of the comments that we heard from John Swinney and the Government was that if the Scottish Fiscal Commission were to do forecasts, the Government would still have to do forecasts itself, so there would be parallel forecasts. However, from what I understand of the OBR’s situation, the Treasury is not doing parallel forecasts and then checking up on you.

Robert Chote: The Treasury is certainly not publishing forecasts: it is not like man-for-man marking on the pitch; it does not have people doing equivalent jobs to every one of our officials. I suspect that the Chancellor of the Exchequer tells his officials that he will get the OBR forecast in a few weeks and will ask what they think that it is likely to say, I suspect that the officials will not go through the whole exercise, but they will want to provide an answer to that question.

The Treasury may well do more scenario analysis around what it thinks are particular risks, in order to inform policy judgment. It is not as though it has got rid of every forecaster or there is nobody doing macroeconomics or fiscal analysis: of course they are. However, the nature of how the Treasury can add value is different, and I do not think that it would add value by completely replicating what we do. It has to provide the chancellor with a commentary on how our forecasts are likely to evolve. That requires that it examine the forecasts, but that is different from just having a parallel set of numbers.

In Korea, I think, and in the United States with the Office of Management and Budget and the Congressional Budget Office, they just have two sets of numbers that they can compare in public. That is not how it works here.

Jean Urquhart (Highlands and Islands) (Ind): Good morning, Mr Chote. As long as this country is not independent, there will be many strands to the communications that go on. If you were heading up the Scottish Fiscal Commission, what relationship with the OBR would you recommend for the commission?

Robert Chote: If my job was to scrutinise the Scottish Government’s forecasts, I would want such help from the OBR as we are able to provide in forecasting the same things and in being as transparent as possible with the commission about how we are doing that, on the ground that that would provide useful input to the commission in scrutinising what the Scottish Government does.

We are trying to do that now. We hope that it will be helpful for the Fiscal Commission, in addition to being helpful for us, to have it involved in our
discussions around particular forecasts ahead of each autumn statement and ahead of each budget. I hope that the discussions will also be useful to the commission because, although it is not doing a forecast, we are having to answer some of the same sorts of questions. How do we interpret the fact that the revenues of a particular tax came in higher or lower than we and/or the Scottish Government had expected? Is that news or is that just volatility in the data? Is there some way of explaining that? If there is a way of explaining it, do we think that it will persist?

I would like the OBR to be as transparent as possible in how it does its job of giving me raw material that I can use when I am doing my job. I hope that that is what we are doing. If it is felt that we can do more, we are happy to do that.

Jean Urquhart: Given that there is, of course, the rest of the budget and the reserved matters that Scotland does not involve itself with, is there a relationship with the Scottish Fiscal Commission and what used to be known as the Scotland Office? How does it fit into the mix with the OBR?

Robert Chote: We have no interaction with the Scotland Office, at all. Depending on how widely the remit of the Scottish Fiscal Commission is set, we might come to a point at which the Scottish Fiscal Commission would necessarily have an interest in more of our forecast than merely what we are forecasting for the devolved taxes. Again, however, we are trying to be as transparent as we can about that, anyway.

If there are particular questions about the rest of the forecast or—to come back to our earlier discussion—the assumptions that we had made about what will happen to Government expenditure over a five-year period, some of which would not be covered by a spending review, there might be more areas of mutual interest. For example, although it is not a devolved issue, there has been a lot of interest from this committee and others about what we have said on the North Sea oil forecasts. However, we hope that the OBR will be as transparent as we can about those, as well as about the devolved taxes.

Jean Urquhart: There has been criticism of the fact that some members of the SFC are also members of the Scottish Government’s Council of Economic Advisers. Do you see any conflict of interests?

Robert Chote: I would say that there is not. My understanding of the nature of the Council of Economic Advisers is that it is not very much involved in the detail of policy formulation. If it were, you might have greater concerns. However, if its members are providing external advice, as academics, I suspect that that is probably not too great an issue. I presume that the work that they do in that role and what they say are relatively transparent. I am not hugely knowledgeable on exactly what the advisers have done, but it does not strike me to start with that there is a problem of a conflict of interests.

The Convener: That concludes questions from committee members. I want to put a couple of final points to you.

Has the Scottish Fiscal Commission had any discussions with the OBR about the methodology for forecasting the devolved taxes?

Robert Chote: We had a discussion with the commission when it was set up. Methodology arises whenever we discuss a particular fiscal event that is taking place. We ask whether the forecasting methodology is working okay, whether there are, for example, asymmetries—the share is rising or falling—in the Scottish share when compared to the UK total, and so on. We discuss those things every time we do the forecasts; I am happy to do so.

The Convener: Is there agreement on how methodologies are deployed?

Robert Chote: We produce our forecasts and we try to be open and to get as much input to them as we can. Obviously, the Scottish Government produces its own forecasts, but it has not asked us to contribute to discussions on those before it publishes them. Again, we would be happy to do that if it wished us to do so.

Take the example of the land and buildings transaction tax. It is evolving from the costing of a new policy into something that will involve forecasts being produced year in, year out. It is useful for us to have a discussion about the best approach to that. Obviously, the Fiscal Commission has produced a paper in which it talks about the methodology for that. When the changes were made, we explained in detail why we had made the forecasts that we made.

In an ideal world, we would have a shared methodology for producing the forecasts, but if we arrived at different judgments about how to apply that methodology or if we produced forecasts at different times of the year, the answers would come out different.

That said, there is no requirement for us to use the same methodology. If we could agree on one that worked for both of us, that would be great, but if people do not agree on the methodology, that would be fine as well. Ideally, we and the Scottish Government, helped by the Fiscal Commission, would be able to explain why the forecasts were different if they were different, but we would not need to be anxious about the fact that they were different. Differences are inevitable in a forecasting process.
The Convener: So there should be no anxiety about differences between methodologies as long as it can be explained exactly how forecasts are arrived at.

Robert Chote: That is right. LBTT provides a good example again. If we were to use different methodologies, it would be difficult to work out whether accuracy in one forecast was the result of good luck or a better methodology. I suspect that whether a forecast of LBTT at any particular time horizon is accurate in a purely arithmetical sense will depend much less on methods than on whether the forecaster happened to make the right judgment on the level of transactions. Such things are hugely important.

I would be wary of a world in which we had alternative methodologies and expected to have enough data after two or three years to know which was the better methodology. Unfortunately, we need an awfully long run of data to be able to distinguish between luck and judgment. Normally, by the time that we have managed to distinguish between the two, policy has changed and we are not dealing with the same thing anyway. Using the same method is helpful, but it is not a spot-the-ball competition.

The Convener: One of the commission’s functions will be to assist the Scottish Government’s forecasting of receipts from the Scottish rate of income tax. What level of access to HMRC data will the Scottish Government and the commission require in order to produce those forecasts?

Robert Chote: The commission will, as the OBR does, have to respect taxpayer confidentiality, so there will be a limit to how disaggregated the information that is provided to you can be. The OBR does not have access to all the data, and I do not expect that the Scottish Government or the Scottish Fiscal Commission will have access to all of it. For us, the same issue arises in relation to corporation tax; that can be important because there can be a relatively small number of firms making large contributions in particular sectors. As we have discussed before, the big difference with the Scottish rate of income tax is the fact that we are moving into a world in which taxpayers will be explicitly flagged as being Scottish or non-Scottish taxpayers. We will no longer have to rely on survey estimates of the Scottish share, so that clarification will help both offices.

One important question is how behaviour on both sides of the border is likely to respond to the Scottish rate being different from the UK rate. Who knows whether that will happen? That is the sort of issue on which it would be jolly useful for us to have a discussion with the people who are producing and scrutinising the forecasts in Scotland. It would be interesting to know what they think the answer to that question might be, although I would not be at all surprised if people come up with different answers, because it is a very difficult question to answer.

The Convener: We will put those questions to Professor David Bell in our third evidence session this morning. We will be interested in his answers, as, I am sure, you will be.

That concludes my questions and the committee’s. Thank you for assisting the committee by giving evidence this morning. I hope that we will see you in the flesh next time. Is there anything that you want to cover that has not been touched on, or are there any further points that you want to make?

Robert Chote: No. It has been a comprehensive discussion and has covered everything. Thank you very much. I will see you soon.

The Convener: I call a five-minute suspension for a change of witnesses—in this case, also a change in technology—and to give members a natural break.

Meeting suspended.

On resuming—

The Convener: We continue our consideration of the Scottish Fiscal Commission Bill by taking evidence from a panel of three witnesses. I welcome to the meeting Dr Jim Cuthbert, Professor Ronald MacDonald and Mark Taylor. Members have received papers submitted by each of our witnesses, so we will go straight to questions.

The first question—it is for you, Mr Taylor—is on something that we have not discussed at all so far in the meeting. I thought that I would freshen things up a wee bit by going to an issue that you refer to in paragraph 16 of your submission. You say:

“The Smith Commission made a number of proposals about ‘no detriment’ when fiscal changes are made by the UK or Scottish Governments. This is likely to be difficult to implement in practice, and the Commission could play a useful role in reporting on the mechanisms for achieving no detriment.”

I find that paragraph very interesting. Can you expand a wee bit on that role of reporting on the mechanisms and say how it would work in practice in relation to the commission?
Mark Taylor (Audit Scotland): I am certainly happy to do that. I will start with the principles from which that point comes. We think that the Fiscal Commission will play a strong role in giving assurance and helping transparency around all areas of fiscal estimation that affect the Scottish budget. Clearly, one of the key factors in implementation of the Smith commission principles is how the no-detriment principle will work. We think that the commission is likely to have a valuable role in looking at some of that.

I do not think that we have any insight as to how that might work in practice. However, we can speculate that a degree of economic forecasting might be built into the way in which the no-detriment principle works, and that therefore the commission could have a role in looking at that.

The Convener: Thank you. Does either of the other panellists want to comment?

Dr Jim Cuthbert: Yes. Mark Taylor has made a good point that I very much agree with. There is a real danger that discussions about the Scottish budget post Smith will degenerate into a sort of yah-boo exercise between the Scottish Government and Westminster. It would be very important for the Scottish Fiscal Commission to play an independent and well-respected role as an arbitrator in such disputes.

That would be similar to the role that the IFS plays down south. If the IFS comments on a Government policy, that comment is generally taken seriously and people think about it. It would be valuable if the Fiscal Commission could play that role with respect to the arguments and debates about how the post-Smith fiscal arrangements were working.

10:45

The Convener: Am I right that you see an expanded role for the Scottish Fiscal Commission?

Dr Cuthbert: Yes, very much so. I tried to make the point in my submission that although forecasting the devolved tax revenues will be extremely important, the operation of the remaining half of the Scottish budget will be complex. It is not something that has been done well so far.

I was looking recently at an IFS paper on non-domestic rates. You will be aware of the issue. The IFS identified a problem in that regard and estimated that Scotland had gained to the tune of £1 billion, essentially because the Government down south had switched resources away from local authorities and into central Government expenditure. Because the central Government departments have a higher comparability percentage, we therefore benefited through the Barnett formula. In a sense, that slipped through under the radar. There will be much more scope for such points to arise, and they will need to be identified and argued out. The Fiscal Commission should play a huge role in doing that.

The Convener: I will stick with Jim Cuthbert for the moment. In the second paragraph of your submission, you say:

“the role of assessing risk should, in many ways, be more important than the actual production of forecasts.”

That is a continuation of what you have just said, is it not?

Dr Cuthbert: Yes. I very much welcomed what Robert Chote said about the Office for Budget Responsibility starting to produce regular reports on fiscal risk. We have been arguing for that for some time.

Robert Chote perhaps gave a slightly too glowing account of the IFS’s success. In many ways, the IFS is overconcentrated on forecasts. I may be doing him a disservice here, but I detected a slight shift in how he talked about forecasts. As I recall, and I may have got this wrong, the IFS always represented its forecasts as median forecasts—in other words, the outcome is as likely to be above the median as below it. However, he definitely said that the current forecast represented the most likely outcome. That is very relevant because I would not regard the current OBR forecast as representing the median. The risks all seem to be on the downside. If there has been a little shift of ground there, that perhaps conceals how some of the risks in the current OBR forecasts are lying, which seems to be on the downside.

The Convener: Professor MacDonald, you say in your submission:

“It would make sense for an independent body to assess the sustainability of Scotland’s public finances and adherence to any fiscal rules devised”.

Professor Ronald MacDonald (University of Glasgow): Yes, that is right. I want to link up with what colleagues have said, because we have covered a lot of ground. I agree that, in moving forward, the no-detriment issue must be taken seriously. I know that Jim Cuthbert has highlighted the risks associated with the form of indexation that we may have. As he said, it is important that some group carefully scrutinises how the block grant is adjusted, for example. I have argued to this committee and elsewhere that we should move away from Barnett. If we moved to a more transparent and open system, that might deal with some of the trickier no-detriment problems. The Fiscal Commission could look at that.
In general, I favour the Fiscal Commission having a potentially broader role, because there is no one out there who could do that as an alternative to the commission—if it is set up appropriately.

**The Convener:** Thank you. I will not jump in on forecasts at the moment—we spent so much time on forecasts in our earlier session that I will leave that to my colleagues.

Professor MacDonald, in your submission you also talk about independence and transparency. You say:

“I would give priority to independence, transparency and openness in the working relationship between the Fiscal Commission, the Scottish Government and other public bodies. You go on to say:

“I think there should perhaps be a clause ruling out members transferring from a body such as the Council of Economic advisors straight to the FC without any lag in service.”

You will have heard Robert Chote being asked a question about that issue. He basically said that as long as there is transparency he does not see any difficulty, given that the people who serve on these bodies tend to be fairly eminent, well-respected individuals. What is your view on that?

**Professor MacDonald:** As is suggested in my submission, it could work both ways. Someone who has been on the Council of Economic Advisers might want to be seen as even more independent than someone who did not come from that background. There is also that side to it.

The point that I make in my submission is that this is about public perception. Can people who serve on a body that advises Government ministers separate themselves from that advice and be seen as purely independent? We know, for example, that the UK chancellor has a council of economic advisers, and if one of those people was to be appointed to Robert Chote’s job, serious questions would be raised.

**The Convener:** Yes, particularly by Robert Chote, I imagine.

**Professor MacDonald:** Yes—exactly.

**The Convener:** The Audit Scotland submission says:

“Overall the proposals in the Bill appear to provide a significant degree of independence for the Scottish Fiscal Commission. This could be further increased by moving the balance of influence on appointments and financing further towards the Parliament.”

How would such a mechanism work? Who within the Parliament would fulfil that role?

**Mark Taylor:** I guess that detailed questions about arrangements in the Parliament are for the Parliament. The Parliament makes similar appointments through the parliamentary appointment process. Our experience is that that process supports the independence of the Auditor General role, for example, very well.

Our general point is that independence is important. Having the Parliament more involved and ministers less involved would help to deal with some of the issues that are being outlined. The perception of independence is as important as how it happens in practice.

We also make suggestions about how the funding could work, to which the same principle applies. Perceptions around who has control over the funding and financing of the body are important, and we think that anything that moves the balance towards Parliament and away from ministers would help to strengthen the position. That said, a lot of what is in the bill emphasises the independence of that funding, and we give credit for that in our submission.

**The Convener:** Thank you.

Jim Cuthbert’s paper says:

“The Treasury should be added to the list of bodies with whom the SFC will need to have a good, and well understood, working relationship.”

Can you talk to us a wee bit about how you see that relationship working in practice?

**Dr Cuthbert:** The answer is that I do not know because the Treasury is a strange body. If the Fiscal Commission is to fulfil that broader role of taking an overview of what is happening in the whole budget—I think that that is essential; I certainly recommend it, and I think colleagues do, too—it will have to have assumptions on what will drive the Barnett formula, for example, or the trend in expenditure on devolved public services down south. Ideally, it will need to know a bit about how that trend will shift between different programmes.

I mentioned the importance of the Westminster Government’s shift in expenditure from local government to central Government and the effect that that had on the Barnett formula. The Fiscal Commission will need to have information and assumptions about such aspects—and about the aspects that will drive indexation, if we are going to go down the road of Holtham indexation, which will involve assumptions about the growth in the income tax base in the whole of the UK, for example. The only people who can give those assumptions are the Treasury and HMRC. The Treasury will be essential, because the assumptions will depend on Government policy.

However, I do not know how willing Westminster Governments will be to engage in meaningful dialogue on those points, how willing the Treasury will be not to be a dog in the manger, and how one secures the proper co-operation. I think that it will
be difficult for the Fiscal Commission to do a proper forecast of the overall Scottish budget without a good relationship with the Treasury and Westminster.

The Convener: You talked about Holtham indexation. In fact, much of your paper actually covers that issue. It also includes some mind-numbing calculus that I will ask Richard Baker to go through for the committee at some point—in private.

I could not let you off without mentioning your comment that

“Scotland would always ultimately be better off under fiscal autonomy than under Holtham indexation”.

How did you come to that conclusion? Can you talk a wee bit about your concerns about Holtham indexation?

Dr Cuthbert: The mind-numbing calculus was not primarily for your eyes. It followed on from my appearance before the House of Lords Economic Affairs Committee. I made that point about fiscal autonomy and the House of Lords committee asked for proof. The paper is the proof of that assertion.

Members might remember that, at a previous appearance before the committee, I said that we would not know how the indexation would operate until it was modelled. I then sat down and tried to do some modelling. I published a Fraser of Allander institute paper on modelling the indexation arrangements, which has been sent to the committee and which showed that Holtham indexation, as originally proposed, is very unstable. It has two main drawbacks. It is inequitable because, if the Scottish Government sets a neutral tax rate—the same tax rate as that in the rest of the UK—Holtham indexation would be neutral only if the Scottish tax base grew at the same rate as the rest-of-UK tax base. Given that the rest-of-UK population is growing relative to our population, that would require our per capita tax base to grow faster than that in the rest of the UK. There is therefore an equity point.

However, there is also an instability point. If we failed to meet that neutrality condition—if we fell below it—the revenues of the Scottish Government would go down and down and eventually, if the system was left to itself, they would become negative. That will never happen, but it is an indication of the pressures that are in a sense built into Holtham indexation, unless we meet the target of growing our tax base as fast as the tax base in the rest of the UK. I argued to the House of Lords that Holtham indexation was in essence a non-starter.

Another suggestion that I have made to this committee is that an improvement to Holtham indexation would be to correct the indexation factor for relative population movement. In the Fraser of Allander paper, I worked through the implications of that and it turned out to be a better, although by no means perfect, solution. It is more equitable, in that the neutrality element is that we grow our per capita tax base at the same rate as the per capita tax base in the rest of the UK. It is also more stable, in that, under reasonable assumptions, relative per capita spending will tend to a limit. However, that limit would actually not be politically acceptable, because it implies that per capita spending in Scotland would be about half the level of that in the rest of the UK. I was surprised when the figure of about half tumbled out so neatly from the modelling, but it did.

Therefore, I argued to the House of Lords that pure Holtham indexation is very unacceptable and that adjusted Holtham indexation is not really acceptable. I put forward another proposal altogether, which is that the indexation of the abatement should be based on some fixed factor. It would be indexed at X per cent in real terms, where X is initially some fairly modest factor—say, 1 per cent. That would have big advantages. It would need to be subject to regular review, and the mechanisms for regular review would need to be well understood. I went into that in a bit of detail in the paper for the House of Lords. There would be secondary implications for the indexation problems that we face. It would make the whole indexation and forecasting problem much simpler.

We would not need an assumption from the UK Treasury about what was happening to the overall UK devolved tax base; we would just apply the appropriate factor at the time.

There are a number of big advantages in having quite a radical rejig of the indexation arrangements that are currently being worked out by the commission.

The Convener: I will let your colleagues in to comment on that but, obviously, we are talking about the Scottish Fiscal Commission Bill, and we do not want to wander off the subject too much. Professor MacDonald, what is your view on what role the Scottish Fiscal Commission could have in those discussions and details?

Professor MacDonald: I agree with Jim Cuthbert’s point. Indeed, I think that I argued in a previous written submission to the committee that we should index the growth of the block grant to a separate fixed factor. I did not do that in quite as sophisticated a way as Jim Cuthbert did; nonetheless, the point was there. Therefore, I agree that, in moving forward, it is important that the issues are addressed, whether or not we retain Barnett and whatever the form of indexation is. As I said earlier, an independent body must look at that. If there is no other independent body in town,
it would be good if the Fiscal Commission was tasked with taking forward those issues.

The Convener: Do you share that view, Mr Taylor?

Mark Taylor: I will of course not get into the available policy choices on how the process works, but it is fundamentally important that how it works is clear and transparent and that the public have confidence in how it is working. We see the Fiscal Commission as being able to play a role in relation to how the block grant works and how Barnett functions—if it continues to operate—and how the block grant adjustment works.

11:00

One point that we make in our submission is that we have block grant adjustments now, and there may be a role for the Fiscal Commission in providing some views on how that system is operating at present. That need not necessarily wait until the fiscal framework and the Smith proposals are implemented and considered.

The Convener: Thank you. I will now open up the session to colleagues around the table, as quite a few of them are keen to come in. Gavin Brown will go first, to be followed by the deputy convener.

Gavin Brown (Lothian) (Con): Good morning. My first question is for all or any of you. When we get the next draft budget, which will presumably be at the beginning of next year, we will also get the Fiscal Commission’s views on the forecasts for that period. In your view, should we get the forecast for the entire economic period—over three or four years, for example—rather than for the single year of the budget that the forecast sits alongside? Is there merit in having medium-term projections instead of just single-year projections?

Professor MacDonald: I would argue that there is merit in moving towards a longer horizon, largely to address sustainability issues. The UK Government has a medium-term budget forecast. If the Fiscal Commission is to be charged with looking at fiscal rules, which I presume will be—at least in part—about sustainability, the short answer is yes, we need to look at a horizon that is longer than the annual horizon that the commission is currently charged with looking at.

Dr Cuthbert: I agree, although there is a range of different horizons, and it is not necessary to produce forecasts every year for all of them.

Another important requirement is for someone every now and then to look forward 15, 20 or 25 years and ask, “How are things going on present trends? What will the Scottish Government’s finances be like on present trends in 15, 20 or 25 years?” An authoritative view on that will be fundamental to the long-term discussion about how Smith is operating and whether any adjustments need to be made.

It will also be fundamental to the Scottish Government’s long-term planning for its public expenditure strategy. Every now and then we will need a very long-term forecast; more frequently, we will need medium-term forecasts, and we will need annual forecasts every year. Different forecasts might be needed for different periods.

Gavin Brown: What is your view on having something in the bill that relates to forecasting for the Fiscal Commission? The bill as drafted does not mention forecasting at all. Over the past year, the Scottish Government has said various things, one of which is that it feels that forecasting by the commission would be duplication. However, last week—or it might have been the week before—it basically said that there was nothing in the bill to prevent the Fiscal Commission from doing its own forecasting. The position has been slightly different at different times. Do you think that the bill needs to contain something on forecasting so that, regardless of who is in Government, there is a clear steer on what the Fiscal Commission should be doing, or can that aspect be left out of the bill entirely and the commission itself can decide what to do?

Professor MacDonald: I said in my written submission that there should be something in the current bill, even if the forecasting is not done in the short term.

This is a tricky issue, because, as I again point out in my submission, Scotland is a small country, and we know from previous discussions with the committee that there are data limitations here. One of the civil servants said that it is only a halfway house, which means that any forecasting model that will be produced will be relatively small and tractable. It seems to me that if the Scottish Government is already building and working on a model and we say to the Fiscal Commission that it now has to start building its own model, those models might end up being very similar, especially given the data limitations.

I would argue for a tapered approach. In the short term, the Fiscal Commission can act as scrutineer of the Scottish Government model, but if it is to be truly independent, it should be able to produce its own forecasts. I presume that, as we move forward, the data will become available to produce what might be an alternative to the Scottish Government’s forecasting model. Perhaps, in the longer term, the Scottish Fiscal Commission will become a bit more like the OBR and be charged with doing all the forecasting. I have to say that I do not see the point about forecasts being duplicated if in the longer term forecasting becomes more sophisticated and the
Fiscal Commission is to be a truly independent body.

Mark Taylor: From our perspective, it is fundamentally important for it to be open to the Scottish Fiscal Commission to decide how best to assess reasonableness. The bill should ensure that that independence is protected, as we think that there are possibly some risks in being over-prescriptive in that respect.

As has already been reflected this morning, the sentiment in our conversation is about the real opportunities for developing that sort of thing over time. We need to ensure that the role of the Fiscal Commission and its independence are protected in the bill. The committee got some reassurances on that from the Government at its previous meeting, but that is fundamental to how the commission will work in practice.

Dr Cuthbert: I agree with my colleagues. One can always argue both ways, but the important thing is to make the commission’s remit broad so that it can make forecasts if it wants to and to ensure that it is resourced appropriately. The commission should certainly be producing long-term forecasts from time to time.

With the forecasting role come certain dangers. It is resource intensive, and there is the duplication aspect. In addition, if the commission is concentrating on forecasting, it might in some circumstances tend—perfectly legitimately—to assume the success of policy and underplay the uncertainties around what is happening. There are arguments to be made in both directions, but we should broaden the commission’s remit and resource it well.

Gavin Brown: In their written evidence, Professor MacDonald and Mr Taylor make the point that we should specify in the bill the length of time in which commissioners remain in office. How strongly do you feel about that? Do you think simply on balance that that ought to be done, or do you feel that it is absolutely critical for the exact number of years to be specified in the bill?

Professor MacDonald: Again, it is important for transparency and the commission’s independence that, as the cabinet secretary pointed out, there should be a separation between the political cycle and the appointment cycle. I see no reason why that should not be stipulated in the bill.

Mark Taylor: I should clarify that the intent of our submission is not to say explicitly that the bill should make it clear that the period should be X number of years but to say that the bill should enshrine the principle that the cycle of appointments is independent of the electoral cycle. Such a provision could be drafted in a number of ways; it is not necessarily about putting a number in the bill but about enshrining the principle that

this is not an appointment that starts at the beginning of and ends at the end of a political period and that it operates entirely independently of politics. That has not been the practice in this country, but that is not to say that it might not be in the future.

Gavin Brown: That is fair enough. Thank you for that clarification.

I will stick with you, Mr Taylor, if that is okay. Interestingly, in paragraph 22 of its submission, Audit Scotland questions whether we might try to shift the balance of influence away from the Scottish Government and more towards the Scottish Parliament. Can you expand on what lies behind that suggestion and how, specifically, that principle could be applied?

Mark Taylor: I touched on that earlier with the convener. Our thinking is that the perception of independence is as important as the practice. Instead of the Parliament having a veto on ministerial decisions for appointment, both ministers and the Parliament will have an interest in who is appointed, but the appointments will ultimately be parliamentary appointments. We suggest that shifting the balance towards Parliament will strengthen the perception of independence that we think is important to the role.

Gavin Brown: When you talk about shifting the balance towards Parliament, are you talking about Parliament as a whole or are you envisaging the Finance Committee having a more proactive role earlier in the process?

Mark Taylor: Again, I would not like to prescribe how Parliament might go about that, but I would expect it to happen at committee level. Given the way in which things are currently constituted, the Finance Committee will have a significant interest in that respect.

Gavin Brown: Dr Cuthbert, you have said in evidence that you do not feel that a copy of any report should go to ministers first. Can you expand on that?

Dr Cuthbert: If there are, as there should be, close working relationships between the Fiscal Commission and civil servants, ministers should have a pretty good idea about what any report is likely to contain. However, giving them a copy too soon or too far in advance will open the door to their occasionally trying to influence what is coming out, and I suggest that a courtesy period of 24 hours before publication, or some other relatively short period, would be appropriate.

John Mason: When, in our questioning of Mr Chote, we suggested that having two bodies—the Fiscal Commission and the Scottish Government—do the forecasting would result in
duplication, his answer seemed to be that the UK Treasury did not do any forecasting or, at least, did only little bits just to challenge the OBR. Clearly, there is a resource implication. Dr Cuthbert, you said that the Scottish Fiscal Commission should be resourced appropriately if it wants to do its own forecasts, but that resource might be quite sizeable. In other words, if the commission does its own forecasts, it will need a lot more resource and if it does not, it will not need so much. How do we work our way around that?

Dr Cuthbert: The answer is probably to do pretty much what is done in relation to the OBR. In a sense, the OBR is the forecasting body but, as Robert Chote said, there are 120 civil servants in Whitehall who, at appropriate times, work away on those forecasts. I do not know what the current situation is but when the OBR was set up, it used the Treasury model, and it was important that it developed the capacity to run that model itself, which I think it has. As I understand it, there is a strong symbiotic relationship between the OBR and Whitehall. With that sort of input, you cannot really say that the OBR is doing independent forecasting, but I see nothing wrong with working towards a similar model here.

One safeguard would be to emphasise not so much the production of a forecast and whether it has been produced by the Fiscal Commission or the Government and to have the Fiscal Commission produce a reasoned assessment around that forecast and examine the judgments behind it, the risks that attach to those judgments and the risks that are associated with the forecast, even if it thinks that, on balance, the forecast itself is reasonable. That sort of assessment would increase the Fiscal Commission’s authority and mean that it would not matter so much who produced a forecast or how it was produced.

John Mason: Are you saying that the OBR is not and cannot be completely independent?

Dr Cuthbert: I think that, de facto, that is the case. That is no criticism of its bona fides, but it works extremely closely with Government. As Robert Chote said, 120 civil servants in Whitehall work with or for the OBR at some times. In such circumstances, there will inevitably be not political influence but a lot of cross-fertilisation. The OBR’s forecasts must be influenced by Government thinking.

Furthermore, as I have mentioned, when you forecast certain things in a policy-influencing environment, it is usual for a rational forecast to involve the success of the policy. That is because you are aware that someone out there is pulling levers to try to bring about a particular end and, unless you have strong reasons for believing that those levers have become inoperational and the ship is going to hit the rocks, it is rational to forecast that the policy will succeed. For example, the OBR has always assumed that, at the end of the five-year forecasting period, the Government will have got the economy back on track and will be operating at full capacity in a low-inflation environment. That forecast has been pushed further and further back. It is not that in making that forecast the OBR is politically dependent; it is that, in a policy-influencing environment, that is usually the rational forecast to make.

For both of those reasons, the OBR forecast is not truly independent, but that is no criticism whatever of the bona fides of the OBR people.

John Mason: If I understood Mr Chote correctly, I think that the main people who challenge any forecast made by the OBR are the IFS. If the Scottish Fiscal Commission produced a forecast, who would challenge it?

Dr Cuthbert: My view is that there should be less of an emphasis on the forecast. It does not matter whether it is the Scottish Government or the Fiscal Commission that produces the forecast; what is important is that, as well as the forecast, there is a reasoned assessment that involves the key parameters, the sensitivities to variation in and the risks attaching to those parameters and, beyond that, an assessment of black-swan events whose timing no one can predict. If you had that sort of reasoned assessment around and understanding of the forecast, it would not matter so much who produced it.

11:15

John Mason: Perhaps other members of the panel might comment on that. Professor MacDonald, I note that you use the word “devolution”; indeed, I picked up on that and asked Mr Chote about it. Is that how you see it? Is it your view that we do not want a fixed picture but something that will develop?

Professor MacDonald: That is how I see it. The Scottish Government has already started on its forecasting model, and for the reasons that I mentioned earlier, I expect it to be relatively small. If you were to ask the Fiscal Commission to produce its own model, it would probably end up with something quite similar.

I envisage that, in the first round, the Fiscal Commission will simply comment on and criticise the Scottish Government’s model. As you move out from that, it might choose to develop its own model—as we have said, it should have the ability to do that—or it might decide to develop the Scottish Government’s model. In broad terms, I agree with Jim Cuthbert that, as long as there is transparency about the model, the assumptions that are made and the uncertainty with which we
regard those assumptions, either group could run it.

At the end of the day—and I think that this summarises what Robert Chote was saying—forecasting is as much an art as it is a science. We cannot write down an economic model, press a button and get some results out. Even if the world were certain, that would not work. There has to be some art, and the art relates to the assumptions that are made about, say, particular coefficient numbers thrown up by the data that we do not regard as reasonable and about which we must make some assumptions in order to get a reasonable forecast.

As long as the art—the assumptions part—is transparent, either group can produce the forecast. What I am saying is that, in the longer term, we do not need duplication, so either the Scottish Government should continue to produce forecasts or the Fiscal Commission should start to produce them. If the Fiscal Commission is to be an independent group, it might be better to let it take over the running of the model in the longer term. If we do that, we get into the issue that Jim Cuthbert has raised about the fact that there will be civil servant involvement with the group anyway. That kind of involvement will not necessarily compromise the commission’s independence because—and I think that this is what Robert Chote was getting at—even though a lot of civil servants are working on the forecast, which is after all a huge model of the whole of the UK economy, they are actually providing data such as customs and excise and pensions figures. Presumably, there are assumptions hidden in there that the OBR does not see, but the big assumptions will be made by the modelling group itself. In that sense, the Fiscal Commission will be independent.

**John Mason:** Mr Taylor, do you have anything to say on that?

**Mark Taylor:** The choice of whether the Government or the SFC produces the forecast is obviously a political one. We feel that if the policy position is that the Government produces the forecasts and the SFC assesses reasonableness, the legislation should not box in the Fiscal Commission with regard to that assessment. It would be strange if the legislation said that the Fiscal Commission could not produce forecasts, even if it was thought that that would be the best way to proceed. Of course, there is nothing like that in the legislation, but that is the point that we were making in that respect.

**John Mason:** The other angle that we are coming at this from is the cost of the whole thing. The more flexibility we have, the less certainty we have over cost, and that becomes a problem for this committee. Presumably the answer would be for the SFC to spend a couple of years in its present situation and then come back and ask for more resources.

**Mark Taylor:** I do not think that anyone is suggesting that there should be a blank cheque. That organisation will be, as we all are, subject to the strictures of public finance, but a fundamental question is about who makes the decisions on resources and whether the Government is placing itself or future Governments in a position in which it can restrict the Fiscal Commission’s ability to do a proper job. The question of where such decisions are made is a fundamentally important one.

**John Mason:** The point that I was going to raise specifically with you was about the whole concept of independence. In your submission, you state:

> “Audit Scotland, the Auditor General for Scotland and the Accounts Commission have all been set up in ways that establish their independence from the Parliament and the Government”.

You then mention some practical issues. Is it the structure of Audit Scotland that makes it independent? In my opinion—indeed, in the opinion of a lot of people—Audit Scotland is seen as being independent and as quite a strong challenger of different parts of Government. Is that because of the structure and the rules that have been set down, or is it because of the professional attitude of your staff?

**Mark Taylor:** The short answer is both. Robert Chote said that the structure is important. I agree fundamentally with that—the structure is, of course, important—but behaviours, too, are important, as are, in an audit context, the ethics that we apply in our work. In the culture that we have in Audit Scotland, they have been and will continue to be given a fundamental importance, because they condition how we do our work and allow us to engage with Government and others over the course of the year while protecting and maintaining our independence.

From our experience, that engagement helps to reinforce our effectiveness as auditors and our independence, because we have a better handle on what is going on. That means that we are able to discuss some of the nuances of issues as they come up instead of taking a more stilted, formal approach in which we attempt to enact independence in the rules that surround that relationship. However, the short answer to your question is both.

**John Mason:** I would like to tease that out a little bit more. We have said that the appearance of independence is as important as the reality of it. As I understand it, an auditor will visit or interact with some clients very regularly—perhaps even weekly—right through the year. If that much
interaction takes place, is there not always going to be a danger of people not seeing the auditor as independent?

Mark Taylor: In managing that interaction, we are always clear about the cultural importance of independence, and we also have a number of practical rules about how that interaction happens. Our experience is that such on-going interaction is fundamentally important to our ability to do our job well.

We are always clear about that relationship and the professional duties on both parties. At the end of the day, we stand or fall by what we report. As you have acknowledged, there is a strong recognition that Audit Scotland’s reports and the audit work that auditors do on its behalf really demonstrate that independence.

John Mason: You mentioned having a culture of independence. Where did that come from? How did you get that?

Mark Taylor: There are some organisational mechanics about value statements and the like, but the ways in which the organisation works reflect something that is very precious to both the Auditor General for Scotland and the Accounts Commission with regard to how they operate and how they expect us as Audit Scotland to operate. That concept of independence was established and the tone set in legislation going back to the establishment of Audit Scotland in the year 2000, but it is also embedded in the audit profession, in how the profession operates and in the ethics behind the work that we do.

The legislation in question has been important in setting the tone of the political discourse with regard to what the body has been set up to do, and it is important that such a tone is set. However, there is then an ownership of that concept of independence within the organisation itself. I expect that something similar will happen as the Scottish Fiscal Commission becomes and itself. I expect that something similar will happen as the Scottish Fiscal Commission becomes and continues to operate as a statutory body and continues to protect and engender that independence.

John Mason: Thanks.

Mark McDonald: We have covered quite a lot of ground already, but there are a couple of points that I want to pick up on. Dr Cuthbert, you spoke about the relationship that the SFC would need to have with the Treasury. Robert Chote’s view earlier appeared to be that the relationship essentially boiled down to forecasting on devolved taxes. However, it appears from your submission that a wider consideration is the impact on the block grant, which then has an implication for forecasting and for the policy on taxation. Could you go into a bit more detail about that?

Dr Cuthbert: It is an important point. The OBR’s role is in some respects very much simpler than the role of a body that is trying to forecast the Scottish Government’s budget. In effect, the OBR takes the UK Government’s expenditure forecasts and uses them to forecast the economy and various tax revenues. That is very simple. However, anyone who is forecasting the Scottish budget will have to look at not only the devolved Scottish taxes but the operation of the Barnett formula, and I have already gone into some of the difficulties that are involved in that.

These things have not been done well in the past. The operation of the Barnett formula has been a bit of a mystery, and what should have been quite predictable with regard to what was going to happen to the Scottish Government finances has not been picked up. There are other less predictable aspects such as the shift in Whitehall between expenditure on local government and central Government responsibilities, and there are additional complexities in forecasting the operation of the indexation of the abatements for devolved taxes and further difficulties with forecasting the abatements for the no-detriment principle. That process is going to be very complicated, and a lot of the relevant assumptions will come from the Treasury with regard to the evolution of devolved expenditure and the evolution of the tax base and so on down south. A very close working relationship with the Treasury will be essential if you are going to make that kind of forecast.

Mark McDonald: There has been talk about the memorandum of understanding that will need to exist between the SFC and the Scottish Government and possibly Revenue Scotland and others. Does the SFC need an MOU with the Treasury so that the commission can get hold of the data that it requires?

Dr Cuthbert: Absolutely. If the Scottish Fiscal Commission is to have this broader role, which I think is the general view of the committee, it absolutely should have a memorandum of understanding with the Treasury on the data that is required.

Mark McDonald: Do you agree with that, Professor MacDonald? In your submission, you mention not only the MOU but an arbitration mechanism beyond that to deal with disagreements over reasonableness. Can you go into some detail about how that would work? Should that be on the face of the bill, or should it be developed beyond the bill?

Professor MacDonald: First of all, I broadly agree with Jim Cuthbert. If things go ahead as they appear to be at the moment, there will need to be considerable involvement with HMRC. As a
result, there should be a memorandum of understanding with it.

Secondly, I believe that I say in my submission that I have a quibble about the use of the term “reasonableness” with regard to the Scottish Fiscal Commission’s access to data or information from the Scottish Government. What I mean is this: what happens if the Scottish Government says, “Well, we don’t think that that’s a reasonable request”? None of the documents seems to refer to any form of arbitration to address that issue. All I was flagging up was that, if the committee thought that that was an issue, it should think about how a rejection of a request for something that was felt to be unreasonable could be addressed.

Mark McDonald: With regard to commissioners’ terms of office, I note that you go beyond the idea of establishing term limits in the bill to suggest that commissioners should have the opportunity to serve two terms instead of just one. Is there any particular reason why you have suggested that?

Professor MacDonald: Not really. It is just that other groups do that; it is the practice at the OBR and certainly on the Bank of England monetary policy committee. If someone is seen to have done a good job in their period in office, there is no reason why they should not be reappointed for a second term. I certainly would not rule that out.

Mark McDonald: I am trying to think of the best way to ask this question, but I think that you and Dr Cuthbert have identified that there would have to be an assessment of the Barnett implications, and I believe that Dr Cuthbert said that many people throughout history have tried very hard, with limited success, to predict what will happen as a result of Barnett. How open will the Treasury need to be in relation to Barnett to ensure meaningful assessment of the Barnett mechanisms and their implications?

11:30

Professor MacDonald: We will need complete transparency on all the assumptions that Jim Cuthbert mentioned with respect to devolved spending, non-devolved spending and the whole issue of indexation. There will need to be complete transparency across all those ranges that impinge on Scottish revenue.

You alluded to the point that Barnett is not a transparent block grant system. That is why I and others have argued that we should be moving away from it. That is perhaps something that the Fiscal Commission should be charged with, along the lines of the Australian body that considers how the block grant should be defined in the first place and how it should evolve over time.

Mark McDonald: That is the Australian Grants Commission.

Professor MacDonald: Yes.

Mark McDonald: I put this question to the whole panel. I think that it was Dr Cuthbert who suggested that the SFC could have an arbitration role between the Scottish Government and the Treasury. When we produced our report on the fiscal framework, we said that there needed to be some form of arbitration mechanism for where disagreements arose between the Scottish Government and the Treasury. First, do you agree with that? Secondly, do you see the SFC as the vehicle for that? I would have some reservations about the SFC being asked to comment on Scottish Government forecasts while at the same time being asked to hold the jackets, as it were, between Scottish Government and Treasury.

Dr Cuthbert: To clarify, I did not mean that the commission should in any sense have a formal arbitration role. What I meant was that it would be good if it established itself as being authoritative and independent in the common view, much like the IFS at present, so that, if it pronounced on something and said, for instance, that, the way things are going, the finances of the Scottish Government will decline by X per cent over the next 10 years, that would be seen as something serious and well researched and would influence the public debate, rather than just having one side in the debate saying one thing and the other side saying something else. However, I was not thinking of it having a formal role in any sense.

Mark McDonald: I see. Thank you for the clarification.

Professor MacDonald: If we need an independent arbiter, perhaps it should be Audit Scotland. [Laughter.]

Mark McDonald: Well, Mr Taylor has the opportunity to accept or decline the challenge.

Mark Taylor: I think that I will avoid that opportunity just at the moment, thank you.

Transparency is important, but you cannot take the politics out of this. Ultimately, there will need to be political negotiation and agreements about aspects of the matter. It is impossible to remove that. If the SFC establishes itself as authoritative and independent, as we all hope it will, that will carry weight in those discussions, as will other factors. There should be a recognition that, ultimately, there needs to be agreement on those things. In the short term, that has been demonstrated in the need for political agreement on the block grant adjustment in the current period.

Mark McDonald: I refer to the evidence from Robert Chote. The indication appears to be that
the OBR produces forecasts, and nobody else is producing alternative forecasts. I wonder whether, as you seem to have suggested yourself, Dr Cuthbert, we are getting a bit hung up on who produces forecasts and how many forecasts are produced. The question is whether the accuracy and integrity of the forecasts that the Scottish Government produces are properly interrogated. That should be the focus, rather than whether the SFC produces an alternative forecast. What are the panel’s views on that?

Mark Taylor: To start with some principles, from our perspective, transparency is important, as I have said before. There is an assurance role in assessing reasonableness, but that is fundamentally in order to support scrutiny and that is where the value comes from. Having that transparency and having the assurance process allows the committee and others to scrutinise, and put forward alternative views on, how robust the system is.

Professor MacDonald: We must remember that, when Robert Chote was talking about other units not doing forecasts, that was for the fiscal side of things. There are other forecasting groups in the UK that do macroeconomic forecasting, which can offer alternative scenarios to that of the OBR, for example. We do not have that in Scotland. Therefore, we perhaps need an independent set of macroeconomic forecasts, at least. If those are being done, it follows that you are as well to do an independent set of revenue forecasts as well.

Dr Cuthbert: My view is that there is indeed a danger of getting too hung up on forecasts. On the other hand, because of the dearth of forecasts, the Fiscal Commission might decide to do forecasts—it should certainly have the capacity to do so—but it need not do so. The important thing is the assessment around that. To use an analogy, supposing one had some money to invest in the stock market, one would not go to a stockbroker and say, “What do you forecast the market will be a year from now?”, and act according to that. You might ask him what he thinks the market is going to be, but the really interesting thing will be his assessment of the risks on either side and what events might take place; on the basis of that assessment, you would then form a judgment. We are in much the same position on forecasting. It is important, but we should not get too hung up on it. We should look at the broader picture and the assessment of the risks around the forecasts, which in many ways is more important.

Richard Baker: Following on from that, what I took from some of your earlier comments, Professor MacDonald, although I might have misunderstood, is that you saw the Fiscal Commission potentially taking on a similar role to that of the OBR and becoming the forecaster for the Scottish Government or Scotland as a whole. However, given your comments about the fact that we do not have alternative forecasts in Scotland and have a dearth of forecasts on macroeconomics—certainly in comparison with the UK, which has a number of them—does that make the argument that, on occasions, when it might be justified by assessing reasonableness or even on a more regular basis, it would be good to have a Government forecast and a Fiscal Commission forecast if the Fiscal Commission thought that that was useful, not least to inform parliamentary and other debate on economic policy?

Professor MacDonald: In principle, yes, but we then come back to the point that some committee members raised earlier about the expense of the whole exercise. To have two units doing something very similar will be very expensive, assuming that both are funded from the public purse. That is another aspect to consider.

I agree with Jim Cuthbert that we should not get too hung up on the forecasting. As we said earlier, as long as there is transparency about the assumptions used, it is perhaps unnecessary to have duplication. However, to go back to a point that was raised earlier, it is really for the Scottish Fiscal Commission to decide whether it wants to set up its own model. It would be interesting, though, if the commission decided to set up a very different framework from the model that was being used by the Scottish Government. In that situation, there might be a greater case for allowing the commission to have a different modelling set-up so that we get two very different kinds of forecasting models. That may—I emphasise may—address some of the uncertainty issues that Jim Cuthbert referred to. However, it is obviously not a straightforward situation.

One of the reasons why we do not have alternative outfits forecasting the Scottish economy is that we do not have a very good data set. That goes back to the point that I made earlier that, as the data becomes better, as it surely must if the forecasting exercises get under way, we may see independent forecasters in Scotland starting to develop their own models. That scenario might be going on in the background, which might alleviate the need for two models, one from the Scottish Government and one from the Scottish Fiscal Commission.

Richard Baker: How soon will we be in a position where the data has improved and is more accessible? Is that happening now? How do we get to that point?

Professor MacDonald: I think that you had a piece about this in your most recent report. As I recall, you questioned the civil servants on the
issue and I think that they said that it was a "halfway house" at that stage, so we still have some way to go. It goes back to what I said earlier, which is that it is most likely that the initial models that the Scottish Government uses will be relatively small and tractable models because the data is not there to provide for a fuller, more fleshed-out model.

Richard Baker: In that report, we also highlighted some difficulties in accessing data and getting data from different departments. Robert Chote did not seem to be particularly concerned earlier about the memorandum of understanding being in the bill, but you said that it should be. Given Robert Chote’s comments, do you still think that it is necessary for the memorandum of understanding to be in the bill? Is it more important to have a detailed and transparent memorandum of understanding?

Professor MacDonald: Yes, as long as there is a truly transparent and well-thought-through memorandum. It would make the Scottish Fiscal Commission more independent and transparent if that was in the bill because, essentially, a memorandum agreement moves people beyond a gentlemen's agreement, and I think that that is what you want to do in this case.

Richard Baker: Do the other panellists have any views on access to data or developing more data, which Professor MacDonald referred to?

Dr Cuthbert: One aspect that we should not neglect is the role of the Office for National Statistics.

Richard Baker: Sure.

Dr Cuthbert: In so far as the forecasting comes down to forecasting the Scottish economy at some stage, that is critically dependent on data from the Office for National Statistics. It has had its problems over the past few years, and it is not clear that they are being sorted out rapidly. A lot of what is going on is not really in the hands of the Scottish Government, and there is an important implication there.

Mark Taylor: There is a distinction between UK data and Scottish Government data. In our paper, we are clear that we think that the rights of access in the bill are sufficient and broadly drawn. I do not think that having more detail and greater specificity in the bill is necessary, because those rights of access are broadly drawn and, we think, quite powerful.

A point to be made about an MOU with the Scottish Government and potentially Revenue Scotland and others is that it is helpful for transparency, and it is helpful that working relationships and the way in which things operate are clear, but care has to be taken to avoid a proliferation of such agreements because, in practice, they could dampen down the rights of access that those in the Scottish Fiscal Commission have. Getting the balance right in how much detail everything needs to be specified in is an important consideration as the Fiscal Commission sets itself up on a statutory basis and begins to develop ways of working.

Richard Baker: Dr Cuthbert made an interesting point about accessing data that is not under the control of the Scottish Government or, indeed, the Scottish Parliament. Perhaps we need to consider that as we look towards the arbitration process for these issues in the future.

Jean Urquhart: We often have discussions about the Barnett formula calculus and the Treasury, and we have taken evidence from different people about that, but there is still mystery around how it operates. We want absolute clarity. Is the word "trust" needed somewhere? I presume that there has to be an element of trust in the relationships between the different organisations.

Dr Cuthbert: Yes, that is right. There must be trust and good will. For example, it is ridiculous that the Treasury has not produced the funding statement. That is the fundamental thing that tells us the comparability percentage for each Whitehall programme, which is one of the key things that drive the Barnett formula. That has not been updated for five or six years. The current operation of the Barnett formula is not up to what it should be, and things will be much more complex in the future. Therefore, there really needs to be a step change in what the Treasury produces and how it goes about that aspect of its functions.

Jean Urquhart: Are you hopeful that that can happen?

Dr Cuthbert: I do not have any insight into what goes on in the Treasury or the Government. The little hints that one gets suggest that they are not being entirely co-operative or reasonable in the current negotiations, but that is very much an outsider’s view. Given the Treasury’s past record, I am not optimistic, but that is not an informed view.

Professor MacDonald: I have said previously that I do not like the lack of transparency with the Barnett formula and would prefer to move away from it for that and other reasons. I take the point that there has to be trust, good will and cooperation between the relevant parties.

Mark Taylor: I entirely agree that trust is important, but the key ingredients of the operation of bodies such as the Scottish Fiscal Commission, whose primary purpose in my mind is to help to protect and engender the public’s trust in how the system works, are as much transparency as possible about how the system works, the
assurance role that the body will have, and the
scrutiny process that goes on alongside all that.
Those are the key ingredients of that trust.

Jean Urquhart: Do you agree that trying to
legislate for everything can introduce suspicion?
Should we assume a culture of trust to a certain
extent when we look at the bill?

Dr Cuthbert: We are into deep water on the
whole operation of the United Kingdom post-
referendum. It will not work if the system is seen
as opposing factions not trusting each other and
not co-operating. If we want it to work reasonably,
there has to be good will, but I do not know how
one achieves the good will that is necessary to
make the system work while politicians quite
legitimately have different and inconsistent political
aspirations. There is a major problem there and,
unfortunately, people are liable to suffer in
Scotland if there is not openness about how the
funding processes work. They will not be properly
debated, they will not work equitably and they will
not evolve in a proper fashion. There are real
dangers in there.

Jean Urquhart: Thank you.

The Convener: That concludes our questions.
Do our panellists want to make any further
comments before we wind up the session? Is
there anything else that they want to add that has
not been covered? I see that they do not want to
add anything.

I thank the panellists very much for their
evidence. We will have another short break to
allow a changeover of witnesses and give
members a natural break.

11:46

Meeting suspended.
Scottish Fiscal Commission Bill

09:30

The Convener: Our second item of business is for John Mason and Jean Urquhart to report back from their recent fact-finding visit to Dublin. Members have received copies of a short written report that sets out their key findings.

John Mason (Glasgow Shettleston) (SNP): Jean Urquhart and I feel that we had an extremely useful time. I thank Alison Wilson for writing the report and for looking after us.

There are many parallels. Obviously, Ireland is an independent country, so that makes it slightly different.

The Convener: Slightly?

John Mason: It is slightly different, but there are many parallels and points that we could learn from, especially given that Ireland is a small country and, like us, does not want to waste resources.

The Government does the forecasting, but I think that the Irish Fiscal Advisory Council has gradually changed its position and is doing a little bit more. Rather than it being a black-and-white situation, the Irish seem to have seen it as a gradation, which we can perhaps learn from.

IFAC has to endorse the forecasts. At first, there was confusion as to whether it was endorsing the whole budget or just the forecasts. I suspect that we might need to consider that issue as well. It seemed to be difficult for it not to endorse the budget, but it can make various comments and caveats along the way.

We spent a fair bit of time talking to people about the independence of the council. That is partly about what is in the legislation and the rules, but it is also partly about the reputation that is built up. We have noticed that in Scotland. We did not pick up from anyone any questions about independence.

There are five people on the council, and they all have Irish backgrounds, but not all of them are based in Ireland. We think that that is useful, because it gives the perspective of being outside the country and looking at the issues more internationally. Because Ireland is a small country and the Irish feel that the number of people who could be appointed to the council is limited, they are allowed two terms of office, which is positive.

The act that established the council does not give it a statutory right to information. The council has been challenged about that through a peer review and it is unusual in Europe. That point is being considered.
The final point that the members of the council made concerned how much time they have to spend on governance. Because the council is a statutory body, it has to consider its human resources policy and audits, for instance. Even though the council is small, that is almost as time consuming as it is for a large organisation. The council had not expected that and we wonder whether the members of our Scottish Fiscal Commission realise that they might have to spend quite a lot of time on that as well.

The Convener: Thank you very much, John.

Jean, would you like to add anything to John’s comments?

Jean Urquhart (Highlands and Islands) (Ind): I have only a couple of things to add. First, it is interesting that the staff who are employed by the council are all seconded, some from the central bank.

Secondly, the council was at pains to talk about how it recorded everything for freedom of information purposes. There is an extraordinary amount of clarity on everything, whether it is conversations or emails. Rather than spend time being challenged on anything after the event, the council records everything so that the material can be ready for any freedom of information request.

I agree with everything that John Mason said. I, too, thank Alison Wilson, because it was sometimes not an easy job to follow our conversations.

The Convener: It is an excellent report. It seems clear and detailed. I thank you both for that and I also thank Alison Wilson for the work that she has done to put together such an excellent report.

I have a couple of points to raise. In relation to forecasting, paragraph 7 of the report says:

“We heard that it soon became clear to the Council that in order to be able to assess the DoF’s forecasts thoroughly it would need to also produce its own to use as a benchmark.”

John Mason: My understanding is that the council does not do the full thing from the grass roots up. I am sure that we will come on to that issue later this morning. I think that the council does some forecasting, but not the whole thing from scratch—I do not know whether that was the impression that Alison Wilson and Jean Urquhart gained. That is what I meant when I said that there are grey areas concerning who does the forecasting.

The Convener: Paragraph 26 says:

“Under the 2012 Act it was established that the Council has a complete guarantee over its budget; Ministers are unable to remove or reduce its funding. Any increase in functions would lead to an increase in funding.”

Is that an automatic financial increase or does the council have to negotiate that? It obviously helps the robustness of the independence of the organisation if it does not have to worry about the funding ever being cut.

John Mason: Yes. From memory, I think that the budget is €800,000, which makes ours look quite generous. That limit goes up by the rate of inflation every year. In the first two years, the council did not use it all because it was just getting going, but by the third year it was pretty close to using the full budget.

The Convener: Paragraph 11 of the report says:

“the fiscal policy and tax unit has 8 staff and a budget of 2 ¼ to 2 million euros.”

John Mason: That is the Government.

The Convener: It is the Government’s unit. I thought that the macroeconomic unit was in the Department of Finance and that the fiscal policy and tax unit was part of the Fiscal Advisory Council. I apologise—thanks for that clarification.

Jean Urquhart: It seemed that quite a bit of the council’s budget is spent on flying the four members who live abroad to Dublin, where the council meets 12 times a year. I do not know whether we would have an equivalent to that.

The Convener: I do not know whether that would amount to quite a bit out of €800,000, to be honest.

Gavin Brown (Lothian) (Con): I was interested in the point about appointments for two terms. What is the duration of a term?

John Mason: It is either four or five years, I think.

The Convener: It is four years. Quite a number of the witnesses who we will hear from later today have suggested that there should be two four-year or five-year terms.

Richard Baker (North East Scotland) (Lab): John Mason said that over time the Irish council has taken on a greater forecasting role, to whatever degree that is. Has that required it to increase its budget, which seems fairly limited if it includes a forecasting role?

John Mason: No. The budget is fixed—there was no negotiation over that.

Richard Baker: That is interesting.

The Convener: Thank you very much for that and for the report.
Scottish Fiscal Commission Bill: Stage 1

The Convener: Our third item of business forms part of our on-going scrutiny of the Scottish Fiscal Commission Bill. We will hear from two panels of witnesses today. First, we will take evidence from Charlotte Barbour of the Institute of Chartered Accountants of Scotland, John Cullinane of the Chartered Institute of Taxation, and Alan Bermingham of the Chartered Institute of Public Finance and Accountancy. I welcome them to the meeting.

Members have received papers from each of the witnesses, so we will go straight to questions from the committee. As you will be aware, I usually ask some opening questions and then we move to colleagues round the table. When I ask questions, each of you should feel free to answer them, but you do not have to answer. You do not all have to answer every question, so please do not feel that you have to.

We might as well start at the very beginning. ICAS has said:

"From reading the Bill ... it is not clear exactly what the Scottish Fiscal Commission ... is to do."

That is an interesting start. There seems to be an issue about being "precise and clear regarding the scrutiny function", but ICAS thinks that "the SFC should provide external oversight and scrutiny but without having to re-do the forecasting."

It agrees with the policy memorandum, which says:

"it is critical to the effectiveness and credibility of the Commission that it is independent of government and seen to be so."

Will Charlotte Barbour give us some comments on her thinking on that?

Charlotte Barbour (Institute of Chartered Accountants of Scotland): Thank you for inviting us to give evidence.

The functions in section 2 of the bill are very high level and principled. The commission has the responsibility to write reports on various things. That allows a lot of room for deciding what will be done thereafter, but I was not completely sure from reading the bill and from some of the questions that were raised in earlier discussions exactly what the commission is being asked to do and whether it is being asked to oversee assumptions and methodology, which would be really useful and would offer a bit of challenge—it would be like a risk committee—or whether it would check all the forecasting. If the commission
really wants to check forecasting properly, it will maybe have to go back and do some of it. That seems to me to be a bit of duplication of work, which is perhaps not value for money. We would veer towards an oversight role and something that is more like a risk or audit committee function.

The Convener: It is interesting that you consider that the bill is not clear enough. If people are not sure what the bill is trying to achieve, despite the fact that that should be explained in the policy memorandum, that is obviously an issue of concern and we will raise the issue in our report.

Paragraph 12 of your submission states:

"ICAS does not consider that there is a need for the SFC to prepare independent forecasts as this would create duplication of work".

You have just said that. The Scottish Property Federation is not giving evidence to us today, but it and others, such as Dr Armstrong, who will give evidence today, have said that that is important. The Scottish Property Federation said:

"The Committee has previously noted that it is important that the SFC is perceived to be independent of the Scottish Government. This could be difficult to achieve without a means of producing and publishing its own independent forecasts."

Obviously, you have caveats about the duplication of work. Do you take the view that there is no concern about that and that duplication is more of an issue than the perception that the forecasts would not be independent?

Charlotte Barbour: That is one of the areas in which there is perhaps a lack of clarity. If we want a completely and totally independent institution that does completely separate forecasts, we will move off towards something that is closer to the Institute for Fiscal Studies south of the border. It would be completely separate. If we want a mechanism that is a check and balance on forecasting, the forecasts do not need to be completely redone. That would be duplication.

John Cullinane (Chartered Institute of Taxation): With the benefit of hindsight, almost any forecast that was produced by anybody before the credit crunch was insanely optimistic. It is not so much a matter of one forecast being better than another, as they will all be wrong to some degree; it is a matter of the key assumptions, varying the assumptions slightly and getting a very different result, and what happens that is different and unexpected and is so bad that we have to think about how we might cater for it anyway. It is more about having the ability to challenge than about investing in an alternative analysis, which might take up a lot of time and reduce the effective scrutiny of the official forecasts.

The Convener: Paragraph 2.2 of the Chartered Institute of Taxation submission says:

"At this stage, we do not think it would be a realistic demand in terms of capacity and resources for the Scottish Fiscal Commission to prepare its own forecasts."

John Cullinane: I agree. I think that would just divert it from the job of challenge, which could be very productive.

Charlotte Barbour: Yes.

The Convener: Sticking with Mr Cullinane, I note that paragraph 3.1 of the Chartered Institute of Taxation's submission states:

"If the Commission exerts significant influence over the Scottish Government forecasts, in the sense that it is involved in their preparation and has a vested interest, this will harm both actual and perceived independence."

You are saying that the commission should have a hands-off approach.

John Cullinane: There is a balance. When the commission is doing its detailed work, it should be independent. However, we would expect the Government to take on board the constructive criticisms that the commission makes over the years. We would expect some influence over the long term but not a lot of working together at the initial stage.

09:45

The Convener: Mr Bermingham, your submission is different from the other submissions that we have had in that it puts a focus on the issue of borrowing. It says:

"Firstly, in relation to borrowing, we would advocate that the statutory powers here should be expanded from projections of borrowing requirements to assessments of the sustainability, affordability and prudence of the Scottish Government’s Borrowing."

Could you talk us through your thinking on that?

Alan Bermingham (Chartered Institute of Public Finance and Accountancy): CIPFA is leaning towards the view that, once we have a fiscal framework and are perhaps setting out fiscal rules, the scrutiny should be at the level of the whole public sector, to include the Scottish Government and local government, which has its own borrowing powers. The fiscal rules should be geared towards ensuring that there is not an intergenerational indebtedness that is unaffordable. That sort of fiscal sustainability needs to be examined at the level of the whole of the public sector. At the moment, we view the approach that is being taken as restricting the examination to the Scottish Government and the rules and borrowing levels that are in the Scotland Bill as opposed to considering the issues in totality. That is where the fiscal rules should be
applied, in CIPFA's view. The borrowing question becomes important in that context.

On whether the commission should make its own forecasts and so on, CIPFA probably agrees with the other witnesses that it should not and that, in terms of the budget, there should be scrutiny and assessment of the reasonableness of the forecasts. However, the commission should be able to do sensitivity analysis and say whether the fiscal rules and the fiscal framework are financially sustainable and are in keeping with the wider United Kingdom fiscal rules—Smith and others have suggested that the fiscal framework should be consistent with that.

That is the role of the Scottish Fiscal Commission, in CIPFA's view. We recommend that the financial management aspects should be strengthened to look at the totality of the public sector rather than just focus on the borrowing of the Scottish Government alone.

The Convener: Mr Cullinane, on additional powers, your submission says:

"It might be appropriate to leave the Bill as it stands currently, with the proviso that functions should be added, by affirmative resolution".

However, it goes on to say:

"A further suggestion would be to consider whether the Commission should have the ability, where requested, to examine the results of consultations in relation to fiscal matters or to monitor the consultation process to ensure that due regard is given to the views of respondents where appropriate."

Is that not happening at the moment?

John Cullinane: I think that that passage is a recognition that we are in a kind of evolving situation in that there is a schedule for powers to increase and the model will develop as that happens. We do not know how the model will develop in the future. There is also the fact that, even within a statutory remit, the commission will have some autonomy with regard to how it develops its work. Some things will probably gel better than others, so it is reasonable to keep a degree of openness about how things might develop.

The Convener: Ms Barbour, paragraph 21 of the ICAS submission says:

"In clause 5 there is a power to confer, modify or remove the SFC’s functions by regulations. ICAS does not support the use of secondary legislation to change primary legislation, particularly when this relates to the core functions of the SFC."

Do you have concerns that that might happen? What concerns do you have in that regard?

Charlotte Barbour: I suppose that, if it is not going to happen, there is no need for the provision in the bill. However, that might not be the right answer to your question.

We have discussed this issue before in relation to some of the tax acts that have been passed. The view of ICAS is that, as a point of principle, any powers, duties or functions should be set out in primary legislation, because the state is giving out powers or imposing duties and it is not appropriate to do that in secondary legislation, which is much more to do with how powers are exercised.

The Convener: I am going to open up the session in a wee minute to colleagues around the table. On the bill's provisions on the staffing and funding of the fiscal commission, CIPFA's submission states:

"CIPFA considers that appropriate funding and staffing arrangements are proposed. These include the recognition of potential for increased resources as the devolved fiscal arrangements for Scotland increase."

You were sitting in the gallery when we were discussing the report back from Dublin, which said that the Government in Ireland cannot reduce funding of its version of the Fiscal Commission so that it can remain independent, and if additional powers are given to it, resources must go with that, which gives it a guarantee that it will not have its staff and budget cut. Would that be appropriate for Scotland?

Alan Bermingham: The research on the Irish Fiscal Advisory Council as a comparison seems to indicate that the Fiscal Commission will be quite well resourced. However, my view is that, similar to the funding of the National Audit Office, Audit Scotland and so on, there should be an element of direct allocation from Parliament as opposed to the commission having to go through a normal estimates process or something like that, so that it would sit a little outside the funding of regular directories, departments and so on.

I am not sure that the commission should be totally immune from any squeeze on resources—I would not say that you should leave it completely alone. Resources should be allocated to it differently—for example, in the way in which resources are allocated to Audit Scotland—from the normal allocation of resources to directorates, and the commission should manage those resources completely independently and make its own decisions. However, I am not sure that the commission should be totally immune from the kind of cuts that any other public or quasi-public body is open to. Our view is that there should not be capping of resources.

The Convener: Do you have any comment to make on that, Charlotte?

Charlotte Barbour: I support that view.
The Convener: Thank you. I will open up the questioning to colleagues around the table.

Mark McDonald (Aberdeen Donside) (SNP): I want to focus first on appointments and term lengths. I note that there is a degree of disagreement in the submissions that we have had, in that CIPFA supports the process of appointment, ICAS raises some concerns in relation to the process and the Chartered Institute of Taxation also suggests that the appointments process should be looked at. Is CIPFA given comfort by the fact that parliamentary approval would be required for appointment?

Alan Bermingham: Yes, I think that we are given comfort by that. Our only concern about this aspect of the bill is about removal. We are not clear: would a minister be able, off his or her own bat, to remove a person from the commission if that person is deemed to be unfit or has not attended meetings, or would removal be suggested to the minister through the commission’s governance arrangements? From where would the suggestion come? We are satisfied about appointments and so on and Parliamentary approval.

Mark McDonald: Does that need to be on the face of the bill rather than in guidelines?

Alan Bermingham: Yes. It appears from the bill that the minister will have the power to step up and remove somebody from the commission. To me, that would mean an element of control rather than independence. The decision to make that recommendation should remain with the commission’s governance arrangements, although a minister might have the final sanction.

Mark McDonald: Is further clarification needed around that element?

Alan Bermingham: Yes.

Mark McDonald: ICAS’s submission raises some concerns about the appointment process. What appointment process would ICAS prefer to what is in the bill?

Charlotte Barbour: There are two points to make. First, an absolute fixed term—full stop—cuts off the ability to have other people. The term ought to be specified in the bill and there ought to be scope for two terms, which you discussed earlier.

Secondly, on appointments, it is crucial that the commission is seen to be independent or impartial—whichever word we want to use. In absolutely technical terms, the right controls might be in place in that it will be answerable to Parliament and so on, but from cold reading of the bill, it looks as though ministers will perhaps have quite a bit of influence, if not absolute control: that the commission will be completely independent does not stand out, to me. I would have thought that the commission would be appointed and that it would then be up to the commission to get rid of somebody or to appoint another person, if that were needed. The commission should have its budget and be left to get on with it.

Mark McDonald: There needs to be an appointments process. Are you suggesting that the commission should be responsible for appointments or should there be some other mechanism? Obviously, in the bill as drafted, ministers can recommend appointments but Parliament has to rubber-stamp and approve them—or, equally, not approve them.

Charlotte Barbour: Yes.

Mark McDonald: What is your preferred option?

Charlotte Barbour: Ministers being key to the process seems to have things the wrong way round because it does not suggest independence. Parliament, therefore, should make appointments, or the commission should make its own appointments.

Mark McDonald: If the commission were to make its own appointments, should they still require parliamentary approval?

Charlotte Barbour: Yes—you might want parliamentary approval because the commission would report to Parliament. They might also be approved through the normal public appointments processes. I do not see that ministers should be involved in it.

Mark McDonald: I wonder whether being responsible for appointments would add a resource demand to the commission.

You touched on term lengths, so let us look at that. You said that five years is your preferred option. There has been some discussion previously about the need to decouple the appointment term from the electoral cycle. Without prejudging the forthcoming election bill, I say that it looks as though Parliament is moving to five-year terms. Would five-year terms for the commission and Parliament mean that we would not have that required decoupling?

Charlotte Barbour: ICAS would be perfectly content to see decoupling whether the term is four years or five years. Our experience as an institution that runs rather a lot of committees—dare I say it?—is that finite periods will be necessary. The periods should be set from the outset so that there is no debate. Set periods make commission or committee management far more straightforward and less antagonistic.

I think that appointees need three years as an absolute minimum to know the job, so three years plus three years is quite a good time profile. Four
years is a fine time profile and five years has been suggested before. Any of those would do, but the term needs to be finite.

**Mark McDonald:** Paragraph 6.3 of the CIOT submission says that reappointment should be possible, but you also suggest different term lengths to ensure that the entire commission is not turned over at the same time. How do you envisage that working? You suggest that half the initial appointments could be for a longer period than the standard term. Would that mean appointing people for longer than an initial five-year term?

**John Cullinane:** Yes, it could mean that. The main thing that we have picked up on is that the term of office should be explicit in the legislation. Once the commission is up and running, there could be a standard term of office—perhaps of five years. The terms would have to be varied in order to get the initial staggering.

That view is largely a reflection of the fact that the Organisation for Economic Co-operation and Development has a set of recommendations that signal that such commissions and bodies should be independent. It seems to be fairly straightforward to reflect that in legislation. Departing from those OECD recommendations would be a bit of an odd signal to give out.

10:00

**Mark McDonald:** I am not expressing a view in asking this. Should the legislation specify, in addition to a maximum term length, a minimum term length, or would that create difficulty around the ability to remove members, should that be required?

**John Cullinane:** I admit that our submission did focus a great deal on the need to remove people exceptionally and I cannot say that the CIOT has, as a body, thought deeply about that. However, I agree with Charlotte Barbour’s comment that a period is needed for a person to get into the role in order to make sure that they are doing the job properly and that they are perceived as having a bit of independence. I would not quarrel with a three-year term. In our submission, we said that the term could be five years—although, because we were thinking more about continuity, the period could be longer for initial appointments.

The most important point to the CIOT is that there should be a standard fixed term that should be staggered at the outset in order to avoid a situation in which everyone in the commission would change at the same time.

**Mark McDonald:** We will get different views on forecasting from the next panel. Is it this panel’s opinion that the important element here is not so much who does the forecasting but how robust the forecasting is and how it is assessed? Is your general view that that is what the commission’s role should be?

**Charlotte Barbour:** That sums the matter up from the ICAS perspective.

**Mark McDonald:** Within that, should the commission undertake small-scale forecasting? Rather than carry out a full forecast, as the Government does, it could probe specific areas. Is that a fair assessment?

**Alan Bermingham:** Yes. If the commission is to be accountable to Parliament, that must be recognised. If Parliament were to scrutinise a topic and the Scottish Fiscal Commission said, “If this methodology or assumption is to be used in this tax modelling, we have some concern about X”, the next logical question would be to ask what the impact would be. As far as I can see, the SFC doing small-scale forecasting or sensitivity analysis is provided for in the bill. That is welcome—it should be the commission’s function. If we move to a more fully fiscally autonomous position, the role may change slightly—you might want complementary forecasting. Until that point, the provisions are adequate.

**Mark McDonald:** In your opinion—I am happy for the other witnesses also to express a view on this—if that requirement were to be added, would there be an impact on capacity and resource? If so, what would be the likely impact, or is that something on which you would not have a view?

**Alan Bermingham:** It is not a matter on which I can give a view now. Using the Irish Fiscal Advisory Council as a comparison, I say that it seems to be able to do an element of independent forecasting with the resources that it has. As I have said, the resources that are to be allocated to the Scottish Fiscal Commission seem to be appropriate—indeed, it seems that it will be reasonably well resourced. My only concern about the Scottish Fiscal Commission’s ability to do its own forecasts is that it works at subnational level and some of the forecasts are geared to national level. There may be difficulty in establishing such forecasts in the first place. That is my only comment on the matter. I am not sure that it would not have enough resources already to do that, however.

**Mark McDonald:** Does Charlotte Barbour or John Cullinane have anything to add to that?

**Charlotte Barbour:** I have nothing to add to that.

**Mark McDonald:** Thank you.

**Gavin Brown:** I will start with Charlotte Barbour. In answer to the convener’s question earlier, you spoke about points being in primary legislation and
said that, as a general proposition, you are not in favour of using secondary legislation to decide issues of importance. It is quite difficult to disagree with that in principle, so I am with you there.

Your submission refers specifically to section 5. Let us say that, a couple of years down the line, a small tax is devolved. Section 5 would allow changes to be made so that the commission could include reviews of that tax, as opposed to such provisions being made in new primary legislation. Should section 5 be ditched in its entirety, or should the wording be tightened up in some way?

**Charlotte Barbour:** If another tax—one such as air passenger duty, for example—was devolved, that would probably be covered by section 2. If Parliament took the opportunity to set a completely new tax—a tourist or hotel tax, for example—that would be completely different. I would think that you would want to bring that before the committee and it would—I hope—be addressed through primary legislation. I do not think that the modifying function should be in the bill, so you could probably get rid of section 5.

**Gavin Brown:** I just wanted to be clear on your position. That is pretty clear. Thank you.

I will stick with the ICAS paper, in which forecasting comes up—as it does in every one of the submissions. The ICAS position is that there would be a degree of duplication and so is not, on balance, in favour of forecasting. How strong is that view across ICAS?

**Charlotte Barbour:** Our submission has been considered in the main by our tax committee—the Scottish taxes subcommittee, to be precise. It is not a view that has been tested across the whole of ICAS, but the subcommittee has the authority to make submissions to Parliament, so that is where that comes from.

**Gavin Brown:** I asked because paragraph 6 of your submission asks a question that puts forward a cogent case for why forecasting might be important. I will read out the relevant bit of the paragraph, because it is worth putting on the record. You ask whether forecasting

"is ... to be conducted by simply checking Scottish Government figure work and assumptions or is the SFC to undertake its own forecasting from a zero-base to then truly have an independent comparison to use as a check of the reasonableness of the Scottish Government figures?"

That is an interesting question to ask, and in some ways it puts forward strongly, and articulates better than I have done in the past, why forecasting might be important. Can you explain how ICAS went from asking that question to concluding that, on balance, forecasting is not something that it favours?

**Charlotte Barbour:** We did not have extensive discussions about that. The response was drafted, and the subcommittee reviewed and agreed to it. The initial general comments—of which paragraph 6 is one—ask what it is that you want. That brings us back to an earlier point: I am not quite sure that it is clear—either in the bill or from the questions that the committee has asked—what is being asked of the commission.

The ICAS position is that you need to look at the scale of operation that is needed at present, at resource allocation and at how far you want to duplicate work. Re-doing forecasts or doing separate forecasts would involve duplication. That is what we discussed in ICAS, but there was not a huge amount of debate around how we got from one position to the other.

**Gavin Brown:** I have one last straightforward question on the ICAS paper. Is the ICAS view that the term length, whether it is four or five years or anything else, should be explicit in the primary legislation?

**Charlotte Barbour:** Yes—I think that it should.

**Gavin Brown:** Thank you.

I move on to the Chartered Institute of Taxation. My first question is the same as the one that I have just asked. Your view as an institution is also that the term length, whatever it is, should be stated clearly in primary legislation.

**John Cullinane:** Yes. We see no obvious reason that it should not be.

**Gavin Brown:** At paragraph 2.2 of your submission, you make an interesting point. You state that, if the commission is not going to do forecasting,

"it may be more appropriate to explore whether there are alternative forecasts, produced by other bodies, which the Scottish Fiscal Commission could use in its work."

That is a perfectly reasonable question. From my investigations, however, I am not aware of any such alternative forecasts. Did you have any particular bodies in mind, or were you making the theoretical point that it would be good to examine such an approach?

**John Cullinane:** It was partly theoretical—we perhaps did not put that very well in the submission. The implication is that we are talking about a full-blown forecast, whereas obviously it would depend on the particular issue that you wanted to pick up on.

There will be some contexts in which UK-wide or even international experiences would be useful for challenging some aspect of the forecast. It is not necessary to have a full-blown forecast that exactly matches the scope of the Scottish
Government’s forecast in order to mount a challenge.

Gavin Brown: With regard to potential tax forecasts, did you have any bodies in Scotland in mind?

John Cullinane: No.

Gavin Brown: The bill as it is drafted says that, when the Scottish Fiscal Commission produces a report, the Government must get a copy first, but it is not explicit on how much notice should be given and so on. There has been some debate around whether the Government should get advance notice, and if so how much.

You have addressed that issue. What is your formal position on the matter?

John Cullinane: On the whole, we think that the Government should get advance notice, but only a limited amount. A lot of these things will come down to how the initial experience goes and the kind of behaviour that is established and built up.

It is a question of trying to avoid any suggestion that the commission is being unduly leant on. We do not see the role of independents as deliberately trying to cause controversy and squalls. We are trying to make informed, reasonable criticisms, and we think that it is reasonable for ministers to know what is going to be said and to have some time to consider the implications for what they are putting forward and how to respond. As I said, there should be a limited amount of notice, because we want to avoid any suspicion that the commission is being leant on.

Gavin Brown: You do not need to give an exact definition, but did you have an idea in mind for what you meant by “limited” notice?

John Cullinane: A day or two.

Gavin Brown: I move on to the CIPFA submission, which refers to the additional things that the commission might do, including the potential production of a Scottish balance sheet. If that suggestion was to be followed up and taken forward, how do you envisage it working?

Alan Bermingham: That is ultimately linked to the fiscal framework, and what is included in that. It would provide transparency for the electorate so that they can understand the Scottish Government’s finances. The balance sheet—as I may have mentioned earlier—would apply across the public sector rather than just to the Scottish Government, so it would include local government and other bodies within the public sector boundary.

That gives us an opportunity to understand exactly what we own, what we owe by way of borrowing, what our indebtedness is and what the liabilities on future generations will be. Without that tool, we would see a more independent state as a little bit weak in its financial management. That tool, and that kind of methodology, links in closely with fiscal rules and other such aspects.

We agree that the Scottish Fiscal Commission does not need to do independent forecasts at this stage, but it needs the ability to do sensitivity analysis, which might lead to a limited internal kind of forecasting. However, if there is a fiscal framework, the commission will have a role in assessing its reasonableness and whether the measures that are being taken and the forecasts that are being made are in keeping with the fiscal rules and are designed to meet them. The balance sheet and other areas of strengthened financial reporting will underpin that, which is why we support that approach.

10:15

Gavin Brown: When you talk about looking at the borrowing that the Scottish Government undertakes, you make the point that it should not just be about the total amount and sustainability of that borrowing; you go further and say that we should look in the round at borrowing by the public sector as a whole, including local government.

Alan Bermingham: Yes. That comes back to points that we made about the Scotland Bill. The Smith commission advocated a prudential framework to support that, and we still believe that that should be the approach. Obviously, if there is a prudential framework, the onus is on the Government to set an affordable level of borrowing. That is why we believe that we need to look at the totality of borrowing across the public sector and we need a balance sheet to be able to do that and make that assessment. The Scottish Fiscal Commission would as part of its remit have a role in considering whether the affordable limit that is set is reasonable. That ties all that area together.

Gavin Brown: Thank you.

John Mason: I will continue on the issue of borrowing, because I am interested in that, too. Mr Bermingham, you specifically mention that local government borrowing should be included. That point has been raised in the past when we have discussed the subject. However, it seems to me that we are not clear about which borrowing would be included. The UK does not seem to be very clear about that. There are questions about housing associations, colleges and the non-profit-distributing programme. Will we ever get a clear balance sheet? Is it the balance sheet that is important? You also talk about commitments. Even if we are renting a road, that is a commitment for a long time, is it not?
Alan Bermingham: Yes, it is. Obviously, there are accounting rules that would be adhered to that would determine whether some of those things are included on the balance sheet. There are defined accounting rules that cover that. I am aware of the issue with housing associations.

John Mason: As an accountant, I know that those rules have changed quite a lot over the years.

Alan Bermingham: They have evolved, shall we say, but they are reasonably settled now. People have moved to the international financial reporting standards, and I do not envisage that those will change much in forthcoming years.

John Mason: Does that not put a big emphasis on Government trying to get round that by putting money off balance sheet?

Alan Bermingham: Yes, but the accountancy rules are developing and the accounting profession recognises that having things off balance sheet is not necessarily a good thing. Analysts and other investing institutions tend to make adjustments for that when they are looking at accounts. The accounting rules tend to deal more with the area of control and therefore more things are recognised on the balance sheet. Certainly, the new leasing standard, which is up for debate at the moment, is likely to lead to more things being on balance sheet. That is the general direction. The rules are certainly changing to make it tougher to put things off balance sheet.

John Mason: Most of the other issues that I wanted to raise have been touched on already. The question of the independence of the commission appears in one or two of the submissions and the committee has discussed it previously. There is a suggestion that there should be more in the bill about independence. Is it just inevitable that the commission will have to build up its reputation over time, as for example auditors do in their relationship with any organisation? The feeling that we got in Ireland was that the Irish Fiscal Advisory Council has fairly successfully built up its reputation, and part of the reason for that has been that it has challenged the Government every so often. How do we get a balance between what we put in the bill and the need to build up a reputation?

John Cullinane: I agree with your general observation that a large part of that is down to behaviour and, inevitably, behaviour in the early years and how the commission builds up a reputation. The problem cannot be totally solved by putting something in legislation. I go back to the point about the term of office. I do not want to exaggerate its importance, but that is a specific way in which the bill departs from the OECD recommendations on how to establish independence. It is difficult to see exactly what the reason is for not including the term in the bill. However, I do not disagree with your general observation at all.

John Mason: Does ICAS have a view? Of course, it must be my ICAS background that is making me think like this.

Charlotte Barbour: I am in agreement with you, John.

John Mason: That is great.

There is probably broad agreement that the bill should say what the term is. There is also the question of whether it should be one or two terms. The Government has been strong on the idea that there is more independence if there is only one term, because then people can do anything that they want and not worry about being reappointed, whereas we have had quite a lot of evidence that having two terms is a good idea. How do you see that balance?

Charlotte Barbour: Speaking as someone who has been a secretary for many years at ICAS, I believe that an organisation can lose valuable members if only one term of office is allowed. However, it is not essential for people to serve two terms—it should be one plus one. There are usually quite robust procedures to appraise members and decide whether they fit in, and these are almost always two-way things. Someone either likes being part of a commission or committee or they do not. One term might be enough for some people, but if someone is bringing value, both sides will want two terms. It would be a mistake to lose the opportunity for that.

John Mason: Do the other witnesses feel the same way, broadly?

John Cullinane: Yes.

Alan Bermingham: Yes. I imagine that it will be quite hard to come by the right people with the right skill set for the commission. Therefore, it would be valuable to be able to provide some continuity of expertise, whether that means that an element of the members of the commission can stay on for one extra term or something else.

John Mason: I want to return to the issue of independence and ask about the commission's on-going involvement and contact with the Government, especially around the time of the budget, and how much the commission knows. Another interesting point that we picked up in Ireland was that the Parliament there is insistent that it should hear the details of the budget from the Government before the Fiscal Advisory Council hears that. The council sees the big broad forecasts but not the details of the budget. How do we get a balance so that information is passed backwards and forwards but there is enough
distance between the two to ensure that the commission is independent?

**Charlotte Barbour:** To return to your earlier point, the distance will come in large part through how people conduct themselves. Really, we are talking about independence of mind and people conducting themselves in an impartial fashion in which they bring challenge and, if necessary, positive criticism rather than absolute complete separation. If there is complete separation, the two will not really work together, but that is surely the point.

**John Mason:** So from that point of view, what is in the legislation is not so important; the more important thing is how we appoint and who we appoint to those positions.

**Charlotte Barbour:** These things usually come down to the people.

**Alan Bermingham:** The Scottish Government's research suggested that the commission could exert “significant influence”—I think that that was the wording that was used. My view is that the memorandum of understanding should have some underpinning principles on challenge, openness and honesty and what the behaviour should be—the kind of principles that there would be in a ministerial or civil service code. That would help. If the commission challenges the Government during the process of making the forecast, does that mean exerting significant influence or is it just about being able to say that there is a question about how risky some of the assumptions are and that the Government should look at them again? Is that exerting significant influence or is it being open and honest and sharing information, which is what the principles should be about?

If we say that the commission exerts significant influence, to me, that is almost saying that it is a quasi-pressure group that is inside Government exerting direct influence over financial policy. It is an unelected body, although it is accountable to Parliament, so that does not seem to be what it should do. It is important to have principles in the memorandum of understanding, or something along those lines, on how the commission will work with the Scottish Government in the forecast process.

**John Mason:** So you would put that in the memorandum of understanding rather than trying to put something in legislation.

**Alan Bermingham:** Yes.

**John Mason:** Fair enough.

A linked issue is the interesting comment from ICAS, in paragraph 19 of its written submission, about “a clear delineation between the work of the SFC and any oversight role of the Finance Committee.” I do not think that anybody else has raised that issue with us. Is there a danger that we all do each other’s work?

**Charlotte Barbour:** Perhaps not, but clearly you will have oversight from the Parliament’s perspective of forecasts and budgets, because they all come here to be discussed. There is a question about exactly who is doing what in the operation. We should not have too much checking of checking.

**John Mason:** I will leave it at that. Thanks very much.

**The Convener:** That concludes questions from the committee. If the witnesses have no further points for the committee, I thank them for their evidence.

We will have a short suspension to allow for a natural break and to enable the changeover of witnesses.

10:26

**Meeting suspended.**

10:33

**On resuming—**

**The Convener:** We continue our consideration of the Scottish Fiscal Commission Bill by taking evidence from a second panel of witnesses. I warmly welcome some old hands to the committee: Professor Jeremy Peat, Dr Angus Armstrong, Chris Stewart and Professor Peter McGregor. Members have received our witnesses’ submissions, so we will go straight to questions.

The first question is for Dr Armstrong, whose submissions are always nice and provocative; there is always lots of good stuff to chew over. I hope that your leg gets better soon—thank you for explaining during the suspension why you are wearing a leg brace. Your submission says:

“In our view the SFC’s role in preparing reports with the assessment of reasonableness is too narrow. Our preferred arrangement would be for the SFC to prepare its own independent forecasts both from revenue and expenditure sides, using inputs from the Scottish Government and civil servants and evaluating the fiscal consequences of their policy proposals.”

We will dig into that in a wee second. It is interesting that none of the witnesses on our previous panel who had made submissions thought that there should be independent forecasting, whereas all four of the current witnesses are of the view that there should be independent forecasting. Perhaps we should have
mixed and matched a wee bit. Will you talk us through that statement, Dr Armstrong?

**Dr Angus Armstrong (National Institute of Economic and Social Research):** Good morning. It is a pleasure to be back here. The submission was jointly authored by my colleague Dr Katerina Lisenkova, so it is shared work.

We think that it is important that the SFC has the capacity to make a forecast, for a number of reasons. I refer to the committee’s excellent report “Scotland’s Fiscal Framework”, in which there is a substantial section on moral hazard, which is important. Moral hazard arises through a lack of equal information because of imperfect information, which is why having a separate forecast is so important.

Why is the forecast more important than a test of reasonableness? As someone who is involved in forecasting, I think that reasonableness is quite a low threshold, because there is a lot of uncertainty. To be unreasonable, you have to really push somebody but, year after year, quite substantial errors can build up. Therefore, it is better to say, “Have your own forecasts and we’ll start from there,” than to test the bounds of reasonableness. Our first point is that the threshold of reasonableness is inappropriate—it is too difficult to say that something is unreasonable, because that is quite a strong requirement.

Our second point is that the rigour of going through a forecast is important because, the more we look at the data, the more we realise where all the nooks and crannies are. Until we play with the data, it is hard to understand where a lot of the uncertainties lie. That is important as a discipline.

Thirdly, it is important for the overall framework of what is in the Smith commission’s recommendations that the Scottish fiscal framework sits within the UK fiscal framework. All that we know about devolving fiscal powers to sub-central Government institutions is that moral hazard has tended to come up. To mitigate that and provide confidence, the more independence, scrutiny and transparency that can be given, the better. The best way of ensuring that is to enable the independent commission to make the forecast and do the policy costings.

**The Convener:** Thank you for those opening comments. My next question is for Jeremy Peat. At the start of your submission, in the summary, you say:

“In line with the Finance Committee’s recommendation, the RSE is firmly of the view that the Scottish Fiscal Commission ... should be capable of producing its own independent fiscal forecasts in assessing the Scottish Government’s fiscal projections. In doing so, the SFC should have the freedom to develop its own framework of analysis, data sources and methodology ... The SFC does not currently have access to data from HM Revenue & Customs ... The UK and Scottish Governments will need to address this so that the SFC has direct access to HMRC data.”

Will you talk us through that?

**Professor Jeremy Peat (Royal Society of Edinburgh):** Good morning. I am speaking not as an individual but on behalf of the Royal Society of Edinburgh, as a representative of a group that worked on this topic.

I very much agree that, for the reasons that Angus Armstrong just set out, it is necessary for the Scottish Fiscal Commission to have the ability to undertake forecasting. Primary among those reasons is the fact that, until a body undertakes its own forecasting, it does not get a feel for how the data are working and for the key parameters that matter most in the forecast that is being derived. For example, as we note in paragraph 7 of our submission, it is suggested that the SFC will have the power to assess the impact on projected revenues of changing the value of the underlying assumptions, but it is difficult to see how that could be undertaken without its having its own forecasts that it could play with to test the sensitivity to variations. That ability is critical.

In an ideal world, Scotland would have several independent forecasts that could be used, but we do not have that proliferation. I hope that we will have more of them going forward. I am delighted that the Scottish Government is doing work on that and that the University of Strathclyde, which Peter McGregor comes from and with which I have an association, is doing a forecast, but there are not enough independent forecasts to rely on. It therefore makes sense for the SFC to develop its own capability.

The point that was made about data is important. There are two elements. One is that it is necessary that MOUs be established with those who provide data at the UK level as well as those who provide data at the Scottish level. It is also necessary that a very close working relationship be established with the Office for Budget Responsibility.

A number of items of data might not be available in Scotland at the moment in the right form and at the right time. One role of the SFC should be to point out the limitations on data and to work with the Scottish Government on improving data sources, so that forecasting can be better embedded.

There are a number of reasons why independent forecasting makes sense. I was surprised to read the submissions from the panel members who the committee spoke with earlier. I note that they are all accountants rather than economists, which may have something—
The Convener: Do not rise to it, deputy convener.

Professor Peat: Maybe it could be argued that the economists are just looking to the self-interest of their profession, but I hope not. The ability to create independent forecasts is necessary, but the point about data is equally critical—we have to have the right data to do the job properly.

My last point is that no forecast is ever going to be right; every forecast is subject to error and uncertainties. Unless a body has its own model to play with, it cannot explore those issues and it will never get a good feeling for what really matters to make a forecast with the right balance.

The Convener: Professor McGregor, your submission says:

“The ability of the Commission to assess the Scottish Government forecasts/ projections would be significantly enhanced if it had the capacity to generate its own forecasts for comparative purposes”.

You agree with the panel on that point, and in the following paragraph you talk about data limitations.

In paragraph 12 of its submission, ICAS says that it “does not consider that there is a need for the SFC to prepare independent forecasts as this would create duplication of work and not provide value for taxpayers.”

I suppose that that is not necessarily the committee’s view, but it is the Scottish Government’s view. Will you discuss why you think that ICAS’s assessment is in error?

Professor Peter McGregor (University of Strathclyde): It would be foolish to deny that there are costs associated with providing independent forecasts. The costs should be proportionate to the sophistication that is used in generating the forecasts. There will clearly be a learning process. At this point, exactly what models the Scottish Government is going to use is not clear. We do not want to use a sledgehammer to crack a nut; we need something that is proportionate to the activity that is undertaken in the forecasting process.

However, there is no doubt in my mind—I agree with the other panellists and for the same reasons as they put forward—that the provision of the forecasts and the process of generating the forecasts are very important. I would expect those independent forecasts to draw liberally on the expertise that exists in the Scottish Government. We know that the Scottish Government has been seeking to develop its own expertise in economic modelling. I will not list all the possibilities now, but we know that it has been looking at macroeconometric modelling and computable general equilibrium modelling, that it has done some microsimulation modelling and that it has a range of energy models. All of that is good news.

We need it to be able to properly understand the potential impact of policy.

Equally, we need an external body to assess what is being done with the models and the quality of the analysis. The value added will vary and will depend on the extent of fiscal autonomy that the Government has. The greater the autonomy, the stronger is the case for analytical ability and independent forecasting ability. Given what we know now about the future extent of fiscal autonomy, that kind of analysis really is needed. For much lower levels of fiscal autonomy, I would have accepted that it was not required, but we are about to go into a situation in which that ability is essential.

10:45

As I have said, there are roles for others in the independent evaluation. I doubt that the independent Fiscal Commission will be given a broad-ranging remit that encompasses, for example, assessing contributions to the ultimate objectives of Government policy. Sustainable growth is an objective, but it contains a number of objectives that could conflict. We might want to understand the impact of the policies that we are pursuing on the range of goals. I doubt very much that the Fiscal Commission will be given such powers, although I would like it to have them. The fewer powers the commission has, the more important it will be that we have other external independent sources—including, of course, the academic institutions that are partially represented around the table today.

The approach depends on circumstances and on the degree of sophistication and fiscal autonomy. My judgment is that, given what is likely to happen here in the near future, independent forecasting is absolutely essential.

The Convener: Thank you for that passionate response.

At paragraph 6 of its submission, the Scottish Property Federation basically supports what has been said. However, you say at paragraph 3 that “With powers being devolved on income tax it is important for the economic competitiveness of Scotland that effective tax and finance scrutiny of Scottish Ministers’ decisions is assured for the parliament and the wider public.”

Mr Stewart, you are in effect building on a lot of what Professor McGregor said. In line with what Dr Armstrong said, do you not agree that such scrutiny is assured merely by commenting on the reasonableness of Scottish Government forecasting? Will you expand on your thoughts?

Chris Stewart (Scottish Property Federation): Sure—thank you for the opportunity to speak. We represent the property industry in Scotland, which
relies heavily on international markets for our capital—that is one of the key issues behind our industry.

We deal with the word “reasonableness” all the time in our contractual responsibilities as property developers, and it does not necessarily have the teeth that one would expect. From a capital markets perspective, the need for independent assessment is critical, because benchmarking against Government policy is required. That needs to be there to assure the capital markets that policy is being made with benchmarking and stress testing and with a robust challenge in place. That is one of our critical points: the closer you get to the bond markets, the more ability you have to raise finance from those markets and the more they want to see stronger disciplines in place, so that is necessary.

**The Convener:** Professor Peat, you state in your submission under the heading “Assessing the long-term sustainability of the public finances” that “The RSE has frequently raised concerns that the focus on short term priorities drives the Scottish budgetary process” and that the RSE “agrees with the Finance Committee recommendation that the functions of the SFC should include assessing the performance of the Scottish Government against its fiscal targets and an assessment of the long-term sustainability of the public finances.”

How crucial do you think that is?

**Professor Peat:** In my view, that is becoming increasingly important. Peter McGregor referred to the extent of fiscal devolution, which I think we can all accept is likely to increase rather than reduce over the years ahead. The more the fiscal devolution route is taken, the more important it is that the Scottish Government does not just look at the short-term perspectives but at the medium-term and longer-term perspectives.

That is why we very much agree with the committee that looking at performance against fiscal targets and critically assessing the long-term sustainability of the public finances should be a substantial element of the SFC’s role. That would be assisted if the Scottish Government prepared a medium-term budget framework alongside its annual budget bill. The SFC should look at that and at long-term sustainability and provide comments.

As we note in our submission, nothing is perfect in this world, but the SFC would at least be able to point out critical issues and identify matters that needed to be looked at from a policy or budgetary planning perspective. That element is extremely important. The more we go down the fiscal devolution route, the more that will be critical.

When we get to the stage of having fiscal rules that need to be adhered to at different times, it will be a valuable role for an independent—a truly independent—Fiscal Commission to look at adherence to fiscal rules by the Scottish Government and to assist in Scottish Government contacts with the UK Government.

**The Convener:** You say “truly independent” as if you suspect that the commission is not or might not be. Do you have concerns on that front?

**Professor Peat:** It is critical that everything possible is done to ensure that the commission is truly independent. Significant progress has been made over the past couple of years—a lot of it has been a result of what the committee has said and what others have said to the committee in evidence—but we cannot as yet be 100 per cent certain that the independence is entrenched and will necessarily be sustained throughout.

There are issues that need to be addressed. We need to ensure that as much as possible that relates to the commission’s role is in legislation and can therefore be relied on; we make that point further on in our submission. I was not casting doubts on the commission’s independence, but I underline the need for utter independence and the utter perception of full independence.

**The Convener:** Dr Armstrong, you say in your submission that the SFC “should have a wider role in assessing the sustainability of Scotland’s public finances”.

You go on to state:

“To work out modalities, we recommend creation of a Forecast Liaison Group (as per the OBR MoU) headed by the SFC but involving the civil servants working on the forecast.”

**Dr Armstrong:** I concur with the view that the SFC should ideally prepare a long-term fiscal sustainability report—or whatever the name of it would be; that would be the idea—for three reasons.

First, a lot of the challenges that Governments face lie in the long term. In particular, the demographics challenge is a longer-term challenge that needs to be considered in shorter-term decision making, because that is where a number of the difficulties will come from.

Secondly, we are notoriously bad at discounting the future properly. The climate change work has involved a lot of discussion in that area. Our way of taking adequate account of possible future events when they are uncertain is notoriously poor. In other words, we do not put enough weight on what will happen in the future. That is not a criticism of Scottish policy making at all—the position is the same around the world. It is simply the way in which human beings tend to operate.
We could mitigate against that by assigning such a role to an independent body.

Finally, the task is a public good—if the SFC does not do it, who else is going to? I say with the greatest respect to academic colleagues that it is a public good that must be communicated to the public in ways that we can all understand. I do not understand half the papers that are written. Something needs to be made that is readily accepted by the public so that it can influence policy properly, which is why the function should reside with the SFC.

A fiscal liaison group has been successful in the OBR model. It is as much about having the powers as it is about using them, if that is clear. The fact that the OBR has powers to call on civil servants and other people to provide evidence, to give it information and to help it in its preparation—civil servants would have a responsibility to respond if the fiscal liaison group asked for information—puts the burden the other way round, so people have to co-operate with the OBR.

The model also gives the OBR access to a wide range of people. The independent report on the OBR pointed out that, at any one time, it might have 100 people working on various tasks, because it has a broad network of people who have such a responsibility.

Making the head of the SFC the chair of a liaison group that reported to this committee would be the most transparent and democratic way in which to set the process up. That is important as a modality for making the system work.

There are two separate answers: one on fiscal sustainability and one that relates to a liaison committee.

The Convener: I will switch the emphasis a wee bit. Professor McGregor, you refer in your submission to borrowing and “deficit bias”. Will you talk us through that a little? Could you also comment on a comment in CIPFA’s submission? It says:

“in relation to borrowing, we would advocate that the statutory powers here should be expanded from projections of borrowing requirements to assessments of the sustainability, affordability and prudence of the Scottish Government’s Borrowing.”

Professor McGregor: The term “deficit bias” refers to the notion that Governments might be tempted, for a variety of reasons, to spend in excess of their revenues. There is a range of possible sources of that. One would be overoptimistic forecasts of tax revenues and another might be based on the political cycle. Whatever the reason, there has been a tendency towards the creation of deficits that are often judged to be excessive.

Tackling that deficit bias and providing independent monitoring and checking of the policy position that has been adopted have been major motivations in the formation of fiscal councils round the world. That implies a need to be able to project forward for Government expenditure and tax revenues; to assess the difference between them, depending on the precise fiscal rules that are in place; and to monitor that and react if a problem is anticipated further down the line.

An important role of the Fiscal Commission is to try to anticipate what possible problems might develop. If the commission has the ability to do that or to require others to do that, that implies that it should take responsibility for monitoring progress on and adherence to fiscal rules. That responsibility might also involve advice on when it might be sensible to depart from those fiscal rules. If there were particular economic circumstances that suggest that there should be some deviation from the rules, it would be appropriate for the Fiscal Commission to comment on that and provide some assistance.

The Convener: I have one further question, which is for Mr Stewart, and I will then open the discussion to the rest of the committee.

One of the things that Mr Swinney says when he comes to the committee is that the SFC has had an influence on the Government in forcing it to make changes on non-domestic rates income. Last year, the SFC said that the Scottish projections were overoptimistic and the Scottish Government changed them.

The SPF suggests in paragraph 11 of its evidence to the committee that “there is a significant role for the SFC to play in verifying Scottish Government forecasts that will be aligned to the forthcoming revaluation”.

It continues:

“We welcome strongly therefore the inclusion of this as a specific part of the Bill”.

It goes on to say:

“it is important that it forms a core part of the SFC’s considerations.”

Will Mr Stewart tell us more about the SPF’s views on that?

Chris Stewart: That is a general point about alignment with markets. In the principal towns and cities such as Edinburgh, Glasgow and Aberdeen, there have been fluctuations in valuation over the past eight or nine years. However, in some places, rents have halved. There are major divisions in how the market has moved in different areas.

Especially on non-domestic rates, the way in which forecasting happens is critical to understanding the impact on those markets and
ultimately the tax take from them. It is such a big part of property’s contribution. We do not think that the nuances of those markets are reflected as they should be, and they need to be reflected by the new SFC. That theme of market alignment goes through the whole issue, because the impact on markets is critical.

The Convener: I will now open up to questions from the committee.

Richard Baker: My first question is for Professor McGregor. Certain witnesses have expressed concerns about the production of independent forecasts in relation to resources and how much it would cost the commission to do those forecasts, but your paper suggests that the commission should be able to access staff resources and modelling work that is already being done in the Scottish Government. Could the commission do that and so minimise additional cost while maintaining independence in its forecasting?

11:00

Professor McGregor: Clearly, that is a challenge and the commission would need to be very careful, but I do not really see why not. For example, the Scottish Government economists could be given a set of alternative assumptions that the commission would like to explore. One example that has been mentioned is what will happen to net migration, which is going to be key. That is not easy to judge. It would be perfectly reasonable for a number of groups to take different views of that future. It may be very important to understand the fiscal consequences of those alternative futures. That is a comparatively straightforward example of a variation in assumptions.

If we think of all the assumptions that have to go into the future revenue and costs projections, it is clear that such projections are challenging. Each of the individual components is difficult, but when we are talking about forecasting deficits it can be really challenging. It is inevitable that there will be alternative views about the likely futures. It would be great if the Fiscal Commission could do that or require others to do it.

Assuming that the commission was satisfied with the modelling and the methodology, we are talking about using the same models to do alternative simulations. That is a way of minimising the cost, although it does not eliminate it. I will not pretend that it is not costless, because part of the burden is then shifted to the Government economists, who will require the capacity to handle that.

Professor Peat: I agree with Peter McGregor that there is no problem with using models that exist in the Scottish Government or elsewhere, provided that those who use them have a total understanding of the models and full access to them, so that they can use them as they wish. My preference would be not for the commission to ask the Scottish Government to test some sensitivities through its model, but for the commission to have the model in its hands and to have the skills, expertise and computing capability to use it and undertake its own calculations. That would work better than asking the Scottish Government officials to do it.

A proliferation of models will be required to forecast the different elements. Peter McGregor and Angus Armstrong are much more practitioners than I am, but I think that it will be difficult, and therefore making use of good modelling, wherever it exists, makes every sense. However, the person using the model must know how it works and be satisfied that it works well and be happy with the data. It is preferable for people to do the work themselves so that they can be satisfied that the results are ones in which they can place credence.

Richard Baker: The commission is not starting from scratch in this work, which is a key point in relation to resources. Are you saying that models will exist but that the commission will use them in a different way with its expertise and views, and so will come up with an independent forecast without the necessity of creating a whole infrastructure?

Professor Peat: Yes, that is right. Let us be grateful that, rather than a budget of £20,000 a year, we are talking about £850,000. The budget of £20,000 a year was an absolute nonsense. Now, we are talking about what looks to be a reasonable level of resourcing, at least for the initial stages of the commission. It is true that the commission must be cost efficient in its use of resources and make use of what exists elsewhere, where that is of the quality and independence that is required.

Professor McGregor: I agree with Jeremy Peat. The point about transparency is crucial and should characterise all aspects of the behaviour of the Fiscal Commission. My personal preference—the Scottish Government economists seem to tend to this view—is for the models to be in the public domain. They ought to be accessible not just by the Fiscal Commission but by others who have an interest in independent analysis.

I also agree that, ideally, all of the work would be done within the commission, but I do not see a fundamental objection to part of the work being done according to the request of the Fiscal Commission but by the modellers themselves.

Richard Baker: What reasons have been given for the models not being in the public domain already? Perhaps Dr Armstrong can comment.
Dr Armstrong: At the beginning of your first question you mentioned resources. That is why having a fiscal liaison group that has the right to the information and to an explanation is important. When people know that they really have the power in their back pocket to call on, that makes the communication and dialogue much easier. That has been the experience with the OBR.

On the models, I add a note of caution. We have wonderful macro models but, when it comes to forecasting fiscal revenue, they are pretty crude spreadsheets. I would love to have a really fancy model that is nicely coded up, but we do not. We have big 60 or 70-page Excel spreadsheets that are a nightmare to get through. They are full of data, some of which just happens to be market-sensitive and unpublished HMRC data. I do not see how that can be made public, but that is exactly why the SFC needs to have such data sheets.

I do not see how it is possible to make a judgment on reasonableness without starting from the base of going through the numbers. It is not possible for someone to do that until they have looked at them and thought, “What are those elasticities and why are they that number? What happens if I put a different number in? Oh my word, look at all of that!” It would take a very competent user a couple of weeks just to figure their way round some of the models.

Richard Baker: That is interesting, because it indicates that there may be problems with the public accessing the data. However, everyone has stated how important it is that the commission has access to the data that it needs. Do you foresee any problems for the commission in getting data from other agencies, particularly UK departments, or are you confident that it will be possible to put in place robust memorandums of understanding to enable that to happen? Do you have a view, Professor Peat? Perhaps from your previous experience of Government you will know how open and transparent some of the agencies are.

Professor Peat: There is a parallel in my experience in the Competition Commission and then the Competition and Markets Authority. With that hat on, we run what we call data rooms in which data is put into a room and people who have signed confidentiality agreements can access it, run their own models and work with it. That means that they can make full use of it but they cannot take the full data away; they can take the results and the evidence. Members of the independent Fiscal Commission or their staff could be allowed to use particularly sensitive data such as the kind that Angus Armstrong referred to within that confidential context and then make use of the results without disclosing the highly confidential information to a wide spectrum of people. It can be done.

Richard Baker: Professor McGregor, do you want to comment?

Professor McGregor: No, I agree with that.

Richard Baker: It is certainly doable, anyway. That is the key issue.

My final question is about ensuring that the SFC’s independence is guaranteed by legislation. Professor Peat answered very carefully the earlier question on that issue. My understanding is that, at the moment, civil servants consult the Fiscal Commission in producing Government forecasts. In your submission, Professor Peat, you said:

“It would be alarming if the SFC were to have a role in producing the same forecasts that it is tasked with assessing.”

Does that suggest that its role needs to evolve quickly? Are you satisfied that its independence is fully guaranteed in the bill or does the bill have to go further or change in any way to ensure that the commission is as independent as it should be?

Professor Peat: On the second part of your question, we say in our submission that one area in which the bill could be enhanced is that the terms of appointment should be clearly set out in legislation as opposed to being left to the discretion of the Scottish ministers. That would make it easier for independence to be assured.

I am trying to recall what the first point was.

Richard Baker: It was about the practice that I understand currently exists whereby Scottish Government officials consult the commission about their forecasts. You said in your submission that you would not encourage that.

Professor Peat: I apologise for missing that. What we have said is absolutely the case. If the SFC gave comments throughout the forecasting process and was alongside the Scottish Government as the forecasts were produced, it would be difficult for it to stand back once they were published and say where it disagreed with them. There is no harm in it being involved in technical aspects of how the forecasting is undertaken through the fiscal liaison group that Angus Armstrong referred to or another means. However, the Scottish Government alone should undertake the actual forecasting—the making of assumptions and working through the process—and the Fiscal Commission, with its own forecasts and with a good understanding of how the Government forecasts were derived, should then be in a position to make informed and objective comments that can be put into the public domain.

If the commission was in the camp as the forecasts were made, it would be really strange for
it to come out and make severe criticisms afterwards. The only way that it works is if it is separate.

Richard Baker: Thank you.

John Mason: The opening paragraph of Professor Peat’s submission states:

“the SFC should have the freedom to develop its own framework of analysis”

and

“data sources”.

How would that work in practice? How could it develop its own data sources? I presume that HMRC has to be the data source for income tax, for example.

Professor Peat: It would not be a data collection agency. It would identify which elements of data were inadequate or lacking and work with the UK and Scottish agencies that were actual or potential providers of the data to ensure that the data were enhanced and improved over a relatively short period so that the commission’s work would be better founded. The commission would not go out and collect data; it would work with the other agencies through MOUs to ensure that the data that are required for the process are all available.

John Mason: Do we need more about the availability of data in the MOUs or in the bill?

Professor Peat: That is a good question. There should be something in the bill to say that it is part of the SFC’s role to work to ensure the availability of adequate data for the forecasting role. That would give it a locus. Preferably, MOUs should be established as soon as possible and it should be clear in the bill that they are anticipated. However, if the SFC’s role is set out in the bill, it can develop it in the short term thereafter.

John Mason: Is it totally black and white that the Scottish Fiscal Commission either produces forecasts or does not, or is there any grey area in the middle where it plays with the model or, as one of our previous witnesses said, does some of the forecasting? Is there a halfway house or does it really have to be all or nothing?

Professor Peat: There is no halfway house as to what the SFC is empowered to do. It must be empowered to do as much of the forecasting as it sees fit. What it chooses to do and how it does it is fine, following what Peter McGregor said. However, it must have the full power to do as much of the forecasting as is possible now and as devolution is extended. I would like the bill to be future proofed to allow for extensions as devolution is extended.

Dr Armstrong: I completely endorse what Jeremy Peat just said. It is a bit like being half pregnant—the SFC is either independent or it is not. Either the commission stands with total responsibility for the forecast that it has made or it is not the commission’s.

John Mason: However, although we would give it the power to do the forecasting, it would not necessarily need to do every step itself, because it would be comfortable with bits of it. Is that correct?

Dr Armstrong: No, it would sign off on the forecast. If it does that, that implies that it is signing off on every step and has taken part in that. It is fully entitled to use part of the forecast that the Government civil service or the Scottish Government has given to it on its request, but it does that accepting full responsibility. That gets to Jeremy Peat’s point. The commission has to have capacity to have full control over the forecast. How it would like to use that power in practice is its judgment alone. If it wants to do all the minutiae, it can do it. However, the chances are that it will largely accept what HMRC provides it with, although it might tweak it. The processes will evolve in time through the experience of using them. However, if it does not accept the data or analysis that is provided by somebody else, it needs to have the capacity and the right to call for more data or to do it itself. It has to have that capacity in order for the forecast to be its forecast.

11:15

John Mason: Is there a danger that we end up with a position whereby the Government produces a forecast, the SFC produces a forecast and they both dig in and defend their forecasts, and there is nobody neutral to comment?

Dr Armstrong: That is a good point. Our suggestion is that the SFC should provide a forecast, which the Government then uses. We do not think that there should be a beauty contest between two agencies. The problem with forecasting is that, if you make a forecast next week, the whole world could change the week after for a reason that is completely unforeseeable, and it might make one of the forecasts that was not reasonable become exactly accurate by default. That kind of situation gives a false impression of forecasting and makes it ambiguous and difficult to decide who is doing a better job.

From our point of view, the first best model would be to have only the SFC doing a forecast that the Government would be obliged to use in setting its overall budget.

John Mason: That would be more like the OBR model.
**Dr Armstrong:** Absolutely. That is our first best model. Assuming that that is not going to happen, we strongly support the committee’s view in its fiscal framework paper that the SFC has to have full power to do its own independent forecast, although that would result in an unfortunate beauty contest between two agencies. However, we would go for that option, as our first best option does not seem to be available.

I endorse Jeremy Peat’s point that that means the SFC having full capacity to do all the forecasts, if it needs to. It is important that the fiscal liaison group can request an explanation from HMRC or Government forecasters about work that they have done. That should be part of the MOU. The MOU that works for the OBR and the British Government is very important to the understanding and co-operation between them—co-operation is vital in this area. The MOU is an important part of the framework and I believe that it should be referred to in the bill.

**John Mason:** Would the absolute ideal be that the Government produces a forecast and somebody else—for example, the University of Strathclyde—produces a forecast, and the SFC stands back and comments on them?

**Dr Armstrong:** No. I see the OBR model being perfect for what is required. The SFC would do the forecast, which would become part of the Government’s overall budget—that is the first best option. I do not think that the forecasting is a job to put on to academics who, with the best will in the world, are paid by the Government. That would be a mistake. We should stop putting things on to other people.

In the setting of the whole framework, if we believe in avoiding moral hazard, we need transparency, and that requires that whoever makes the assessments can do it completely independently and can be seen to be independent. I am not casting aspersions on people and saying that they would not be independent, but they have to be seen to be independent.

Chris Stewart is right about the situation when the Scottish Government eventually goes to credit markets to start borrowing. I assume that the Government will have to do that eventually; my view is that that will be necessary because of the amount of power that the Government will have. For the credit markets, the issue is not just whether someone is independent; it is whether they are seen to be independent—that is absolutely crucial. That is why I am slightly hardline on the need for the SFC to be not only independent but to have the full powers of explanation from other agencies.

**John Mason:** My next point is on independence, but does anybody else want to come in just now?

**Chris Stewart:** I just want to make the point that it is central to the organisation’s credibility that it is independent. Perception will be everything in that regard, especially the capital markets’ perception. If the SFC is not truly independent and just analyses or uses reasonableness, that will not be good enough—it must have complete independence. The SFC’s responsibilities will clearly grow, so its credibility needs to be strong.

**John Mason:** To be slightly cynical, can you ever have complete independence? When we were over in Ireland, where all the key people know one another, we heard that one of the people on the council was checking on somebody with whom he was pretty friendly.

**Chris Stewart:** It is perception, and the organisation will have to do everything that it can about that. This is a small place, clearly, but I do not think that that is an excuse.

**Dr Armstrong:** Jeremy Peat made an important point about the terms of appointment. I take the point about whether you can ever prove independence—you cannot. However, if you make the terms of appointment sufficiently clear and open to public scrutiny, you can minimise the risk of having something that people view with some doubt. It is more about minimising that; that will be crucial in the terms of appointment.

**John Mason:** Professor Peat very much emphasised having independence in the legislation. How much can we force that into legislation and ensure that the right people are appointed—people who will be independently minded, who will stand up to John Swinney and so on?

**Professor Peat:** It is a mixture of both, as ever. I agree that you cannot provide a 100 per cent guarantee of independence, but you can avoid obvious pitfalls. For example, you should not appoint people to the commission who are members of the Council of Economic Advisers. That would clearly be inconsistent with setting up an independent body and it has been removed. That is not to cast any aspersions on the individuals concerned; it was just the wrong way to go.

**John Mason:** Is that the only body with which you would not allow an overlap?

**Professor Peat:** I would be very careful about other agencies. I suspect that the council is probably the one that matters most. However, one would have to be very careful about appointing people from any other body that gave advice to the Scottish Government on matters that are
related to the fiscal situation. That could come out in the appointment process. One could have a note in the terms of appointment to say that, like knowledge and understanding, absolute objectivity is critical. It is a matter of touching it and seeing whether it works, rather than absolutely prescribing who can or cannot be on the commission. It is so important that one gets this right that the more that one can build that approach into legislation, the better.

I note in passing that the RSE agrees with Angus Armstrong that the first best solution would be for the commission to undertake forecasts and for those to be used. I suppose that my hope is that, over time, as we get experience of the IFS, as it proves its worth and gets comfortable in its working relationship with Government and peers, and as fiscal devolution extends, the Government will feel comfortable, within a relatively short period, to say that it will move to an OBR-type model and allow the IFS to produce forecasts that are then used in the Government’s budget.

**John Mason:** So the Government would not produce forecasts—

**Professor Peat:** I hope that the Government would become comfortable with that. The IFS has come a long way over the past couple of years in terms of enhancing its independence and resources. It may be that, at this stage, giving it the right to produce the forecasts that are then used in budget is a step too far. However, I hope that, in time, that might be achievable.

**The Convener:** I take it that when you say the IFS you mean the SFC.

**Professor Peat:** I apologise. Yes, I mean the SFC.

**The Convener:** It was just for clarification.

**Professor Peat:** Let us keep the IFS out of this.

**John Mason:** I have a couple more points. Dr Armstrong, towards the end of your submission you said:

“we believe that SFC should take the OBR forecast as given.”

Will you unpack that a bit? Do you mean for whole UK things or for Scotland? Our understanding is that the OBR does pretty rough and ready stuff for Scotland. It just says “8 per cent” and that is it, whereas we expect the SFC to dig in a bit more.

**Dr Armstrong:** Forgive me. I was not specific enough. I was dealing with the macroeconomic forecasts that the OBR produces. When the OBR says that it expects UK growth next year to be 2.5 per cent or whatever, that 2.5 per cent should be given as a UK macroeconomic forecast. That presents an interesting problem. Let us suppose that the SFC was to say, “We think Scotland will grow by 10 per cent”, which would imply that the rest of the UK would grow by 1 point something per cent. That could become tricky, because there could be a clash with what the OBR has been saying about the rest of the UK. That is a remote possibility. Because of the size of those economies—one is 10 times bigger than the other—there must be a big divergence to make it statistically meaningful and identifiable. However, the OBR’s 2.5 per cent UK forecast should be taken as a given and any Scottish gross domestic product should operate within that.

It would be ideal if the OBR in conjunction with the SFC came up with an indicative Scottish macro forecast. It would have to be indicative because we do not currently have the data to be certain about it.

The weakest part of the data is the external accounts for Scotland. How could we have a current account for Scotland with regard to the rest of the UK? That is really messy. We would have to work out who owns what companies north and south of the border, and being able to do that properly opens up a whole can of worms. That is why the neatest approach is just to take the OBR headline macro number as a given until such time as we have the right Scottish data to be able to say, "Let's have a rethink about whether this is the best way to go about it."

**Professor McGregor:** I agree with that up to a point. However, it is very important that we appreciate the degree of interdependence between the Scottish and rest-of-UK economies and the extent to which spillovers are likely to occur, depending on policy initiatives in either region. We have done preliminary work that looks at that and at the scale of those spillovers, which, in fact, can be quite surprising and substantial. Given the existing data on interregional trade—this is an important qualification—it looks as if, when an expansion is conducted in Scotland, for example by stimulating exports, and assuming that that expansion is successfully achieved, the impact on the rest of the UK is almost on the same scale as the impact on Scotland. That is because of the trade data that exist. We really need to understand the extent of the interdependence of the economies if we are to appropriately understand the impacts of policies and if we are ever to aspire to any kind of no-detriment principle on a wider scale.

I basically agree that this begins to raise questions about the nature of the interregional trade data, but they are fundamental to understanding the extent of policy spillovers between Scotland and the rest of the UK. I would use that as a reason for suggesting that, not only in the short term, but in the medium to longer term,
we ought to be trying to correct that data problem and to look at the matter in detail.

**Professor Peat:** The solution in the short term is that, as part of the arrangement with the OBR, the OBR and the SFC should liaise as the OBR is finalising its forecasts, and any input that the SFC can make as it sees how the OBR is moving to take account of particular issues that pertain in Scotland and may be relevant to the macro forecasts at the UK level—and vice versa—is taken into account. Therefore, as part of the process of the OBR producing its forecasts, it would talk to the SFC and take account of its expertise as it reaches its final decisions at the UK level.

**John Mason:** There is a whole area that we could go into there, but we will leave it just now.

My final point is for Mr Stewart, in case he feels left out.

**Chris Stewart:** I am listening intently.

**John Mason:** Towards the end of its submission, the Scottish Property Federation talks about land and buildings transaction tax. That is interesting, as it is already happening, albeit that it is early days. The submission says:

> “an independent forecast of the consequences of higher rates on pricing, transactions and consequent revenue would have helped with current LBTT forecasts”.

The following paragraph makes the point that it appears, at the moment at least, that residential revenue is below what was expected, although we have to put in some caveats—it is the first year, and the first half of the first year, for example. Let us assume that the forecast was wrong and that an independent forecaster would have given us a lower forecast of incoming taxes. That would have encouraged the Government to raise the tax level. Would you have been happy with that?

**Chris Stewart:** It is more about the behavioural analysis behind the forecast and looking at the stress tests. Ultimately, a segment of the market—its top end—has really stopped moving. That can be completely attributed to the change in LBTT rates.

11:30

That has several implications. It means that the market is not functioning as well as it should: some people want to move up and some people want to move down, and if part of the market is sticking, the whole market is affected. Our comment in relation to the decision that was made really goes to how much analysis was done of the banding to understand the behaviour that has occurred since the change was made.

If the SFC did its own forecasting and stress testing, and if that could be analysed, that could help to inform the decision. I do not think that it is because it is the first year; I think that it has just stopped dead a part of the market. Other parts of the market are performing well, and that is why there is a clear differentiator.

**John Mason:** Is it perhaps just that some things, especially new things, are almost impossible to forecast?

**Chris Stewart:** I would have thought that the whole point of the SFC and an independent forecast is that you can use that data to be more informed about the thresholds. This is about getting it as accurate as you possibly can, I think. From a market perspective, what has happened to the market has been pretty blunt at that top end and is affecting other parts of the market. I am sure that that was not the intention when the changes were decided on. There must be a better way to do that, and clearly the SFC and an independent forecast would assist that process.

**John Mason:** I take your point. My own feeling is that it is still early days but we will see what happens.

**The Convener:** Mark McDonald has a brief supplementary to John Mason’s question.

**Mark McDonald:** I want to explore this a little bit further. The OBR has been held up as a standard that we should perhaps be looking at with regard to the SFC. However, the OBR also did forecasting around LBTT, and its forecast was that the income from LBTT would be even higher than the income that was forecast by the Scottish Government. There are no guarantees that if an alternative forecast is produced to the one from the Scottish Government, it will necessarily be accurate, based on what the OBR predicted in relation to LBTT—if what you are saying about the income that is derived from LBTT transpires to be the case.

**Chris Stewart:** I will not comment on the OBR. My comment is about what has happened to the market and how we can better inform the decision making so that that behavioural analysis happens. The top rate of LBTT is now pretty overwhelming, and it is stopping transactional activity. Whether that is about the introduction of different banding or whether it is perhaps more interim or whatever, my point is that it is really just about having better information at the point of decision making. I am sure that that is what we are looking for from an independent SFC forecast.

**Mark McDonald:** I am interested in the point because I know that the Scottish Government forecast is for all transactions to bring in £381 million. In March 2015, the OBR made an estimate of £431 million, which it then revised in July 2015.
to £540 million—it lifted the estimate after LBTT had been introduced.

**Chris Stewart:** Again, my comment is not about the OBR and its forecasting; it is about asking how you collect the appropriate amount of tax from the real estate market and how you make sure that your forecasting delivers the take that you predict. With the residential market, a lot of it is about behavioural analysis, and it should be easier to try to make that prediction, whatever the level.

It seems that perhaps that ability to predict was not there in the case of LBTT, and it very clearly caused part of the market to stall. That is a different question—it is about the amount that you recover. LBTT is making the market not work as it should, which is not good for the market as a whole.

**Mark McDonald:** I am aware that we have an evidence session with Revenue Scotland coming up—the issue might leak into that session.

**Jackie Baillie (Dumbarton) (Lab):** I suspect that most of my questions have been asked and answered already, but I want to tease out a couple of things. I think that it was Professor McGregor’s submission that referred to scrutiny of the block grant mechanism. We are all clear about testing Scottish Government assumptions, but he was also clear about testing a UK Government assumption—the block grant mechanism. I ask him to expand on that, and the rest of the panel whether they agree.

**Professor McGregor:** I do not think that the committee could be charged with coming up with an alternative block grant mechanism. I was suggesting that there should be an exploration of the consequences of the mechanism that is eventually agreed and, perhaps, an exploration of the possible consequences of alternative mechanisms.

There has been a lot of discussion in the committee and elsewhere about the precise nature of that adjustment mechanism, which can be very important in determining the revenue that is available to the Scottish Government. For that reason, some independent analysis of it would be very welcome. If the Scottish Fiscal Commission was in a position to require others to do that, I think that that would be helpful and useful.

In the longer term, I think that it would be useful to monitor the behaviour of that mechanism and, if necessary, to think about whether there are grounds for renegotiating it if it is believed to be prejudicial in some way, appealing to the no-detriment principal—if we are still doing that. I do not know whether that would work, but I certainly think that we should be informed about the consequences, given their potential importance.

**Jackie Baillie:** Do the other members of the panel agree?

**Dr Armstrong:** I have a view on that. I think that the matter is extremely political. The formula and any adjustment is not just a Scotland issue—it is an issue for all parts of the UK and for the UK Parliament overall. That is the place for it to be discussed.

I think that it would be bad—in fact, it would be negative—to give it to the SFC because it is such a political question; we would be throwing that body into the politics of the situation straight away. The SFC will need to co-operate closely with the Government and we cannot legislate on every item. There will need to be confidence between the two sides. Including something so overtly political would make that difficult, and I would not do it.

The Finance Committee’s report makes the very good point that intergovernmental relations need to be put on a better standing; they are weak, informal and ad hoc. That is not the right way to look at the application of the formula and to decide what expenditure is what. There will be a rule—the Barnett formula and its design. Once that has been decided by Westminster, its application, which is in itself quite an opaque process, will need to be scrutinised by a body such as the joint exchequer committee. That would bring all the constituent parts of the UK together to discuss its application—it could be much more wisely put there for scrutiny.

If an independent assessor needed to be on that committee, I do not see why that would be a problem. I would like to think that the constituent parts of the UK, in a public committee that was open to public scrutiny, could make a reasonable judgment about how to apply the formula. I do not think that that should be an SFC issue—it is too political.

**Professor Peat:** It is a complicated matter, as members have just heard from those different views. In our submission, we suggest that, if the SFC is monitoring adherence to the Scottish Government’s fiscal rules, it could have a role in assisting the Scottish Government and the Scottish Parliament in considering the implications for those fiscal rules and the overall fiscal position of prospective adjustments to the Barnett formula and/or further devolution of taxes.

The SFC should certainly not become engaged in the politics of what should take place, but—if sensitively handled—it could be valuable to give it a role in analysing potential or proposed changes and in helping the Parliament, in particular, to understand what those might mean.

**Jackie Baillie:** Thank you. Mr Stewart, do you have any observations to make?
Chris Stewart: No.

Jackie Baillie: The second thing that I am picking up from you all is that, in an ideal scenario, the SFC would do the forecasting; and, in a less than ideal scenario, the Scottish Government would do the forecasting and the SFC would comment on those forecasts. How can we ensure that there are Chinese walls in both scenarios? I suspect that it would come down to the timing and choreography of some of the different inputs. For example, we understand that the Scottish Government would require to see the published SFC forecast in advance of producing its own forecast and budget. There is the Audit Scotland model whereby the Government would see the forecast a couple of weeks in advance and would be able to amend some of it by discussion and agreement. There is also a suggestion that providing the forecast 24 hours in advance would be much more effective and would ensure independence. How would you arrange the choreography? Should the Government see the forecast before or during the budget proposals or afterwards?

Dr Armstrong: You are talking about the SFC producing a forecast, and there are three scenarios. First, the SFC could produce the forecast that is used by the Scottish Government. In that case, there would need to be an iteration on an informal, co-operative basis. I do not think that you could legislate for that, and the confidence and respect of both parties would be important in making that work. I would expect that, at least a month before the budget, there would already be informal discussions—by "informal" I mean not that they would not be serious but that both sides would sit down in private and set out their questions and the things that they thought were difficulties. The number of meetings that would take place would be governed by what the Government’s policy proposals were and the difficulty of the forecast—some are easier than others.

I do not think that you could legislate beforehand for anything like that. To make the process work would require co-operation and confidence on both sides, which it would be much easier to have—this is the really important experience from the OBR—if, in advance, when it was created with statutory elements and so on, the SFC were given more independence than it would ever have to use. The point is that it would never have to use half its powers, but it would have them if it needed them. That is the most important thing.

Our second-best scenario is competing forecasts, whereby the SFC would produce an independent forecast. It would be useful to have a number of meetings, but I do not think that one should try to prescribe what they would address—that would depend on the issues involved. As long as the commission had the power to use its independent judgment, you could be confident that both sides of the discussion would work in the best interests, knowing what their parameters were. Therefore, sorting out those parameters at the outset would be very important. Quite a few meetings take place between the OBR and the Government. That is not spilling any secrets.

Professor Peat: I agree that the model of how the OBR works with the UK Government is a valuable precedent, because it seems to have settled down very well. Professor Lienert’s report is valuable because it looks at alternatives, although there are not many examples of an independent commission providing the forecasts. Nevertheless, we have that evidence, and I bow to Angus Armstrong’s experience of how that works in practice.

I think that it would be dangerous for the Government to receive the report two weeks in advance. One day would give the Government plenty of time to react initially. If there has been the right informal contact and the Government understands the issues that matter and the scope for potential differences, without having been given absolute numbers, getting the numbers a day in advance should give it more than enough time. One would then be assured that the report that came from the SFC was its report and that the report that came from the Scottish Government was its report and had not been produced jointly with the SFC. That is critical. Twenty-four hours seems to be plenty of time.

Gavin Brown: Up until now certainly, the Scottish Government has not been enthusiastic about the SFC having forecasting powers or capabilities. When the bill team gave evidence a couple of weeks ago, they changed slightly to say that they would not do anything legally to prevent the SFC from forecasting, but that certainly did not sound like a ringing endorsement. With that in mind, do we need to have something about forecasting in the bill?

11:45

Professor Peat: My view is that, yes, it has to be clear in the legislation that the commission has the right to develop and undertake its own forecasts in such a way as it sees fit as it develops its role. That is important. I read the evidence from the bill team and others and I did see movement, which was excellent to see. Including that in the legislation will be important.

Dr Armstrong: Doing so would be helpful in achieving what we all agree needs to be achieved, which is that more power needs to be devolved to
the Scottish Parliament. With devolving power comes moral hazard, which we have observed in just about every other country that has devolved powers to sub-central Governments. It is difficult to see how you could have less independent scrutiny at sub-central Government level than at central Government level and make it work well. That is an invitation for moral hazard. The threshold should be that whatever independent scrutiny you have at central Government level is at least matched at sub-central Government level. Therefore independence for forecasting should be in the bill.

**Gavin Brown:** Do other panellists agree?

**Chris Stewart:** I agree.

**Professor McGregor:** I agree on the same grounds as Dr Armstrong.

**Gavin Brown:** Everything else has already come up, but I have one other thing to ask about. I do not think that it came up in any of the papers, so the panellists should feel free not to share their view at this stage and to reflect on it if they wish.

There is an anomaly in the current set-up and in the bill in that business rates are not treated like other taxes. Instead of judging the forecast of business rates, the SFC is to look at some of the buoyancy estimates that underpin the forecasts, which strikes me as a bit convoluted. Council tax is controlled directly by the Scottish Government at the council level and it affects overall public spending in Scotland. I cannot see why both of those are not explicitly included in the bill in the same way as for the OBR, which will give a forecast for council tax and business rates. If any of the panellists have thought about that, do they wish to share their view?

**Professor McGregor:** I had not thought about it until you mentioned it. Your position seems to be entirely reasonable, but I am not an expert on either of those things, so I do not know whether there are technical reasons for the situation. I cannot think of any. It seems to be entirely reasonable to treat them in the same way—symmetrically.

**Chris Stewart:** Yes, they need to be included. As I said earlier about non-domestic rates, there is volatility in what underpins them and I do not think that anyone completely understands the buoyancy model—I certainly do not. It is critical to get to the bottom of all that and they should be part of the legislation.

**Professor Peat:** I have no expertise in the area, but the logic of what you say rings true to me.

**The Convener:** There appear to be no further questions from the committee, but I have a couple of others to finish off with. The commission has endorsed the Scottish Government’s initial forecast for residential LBTT without any behavioural analysis. Is it reasonable to produce such a forecast without looking at that?

**Professor McGregor:** I assume that this is a first step and that we are engaging in a developing process. I also assume that there is no behavioural model available at the moment that can be used, so the commission is resorting to mechanistic methods of forecasting revenue on a pragmatic basis. To answer the question, it would be unsatisfactory to be relying on mechanistic methods in the long term. They might be okay on a short-term basis but they get things very wrong over the longer term. Also, we need to be sensitive to policy changes, which you cannot possibly capture with a mechanistic model, other than judgmentally. I would expect that, in the longer term, behavioural models will be developed for important sources of taxation.

**The Convener:** Is that the general view of the panel?

**Dr Armstrong:** It is my view, yes. Property-related taxes are notoriously difficult to work with, because of the length of cycles that are involved. To a certain extent, there is mean reversion in many of these series. It would be surprising if a well-thought-through forecast did not contain some sort of behavioural assumptions. I do not think that it would be easy to do a forecast purely mechanistically.

**Chris Stewart:** I am not an expert in this area but, clearly, I understand property. We know that the whole of the market needs to function as one. That is clear. If there is an overly weighted banding against one part of the market that has the effect of stopping it, that affects the whole market.

It is demonstrable in what has happened on the back of LBTT that some kind of understanding of how the market operates is critically important. The closer the forecasting can get to the market, the better. We have capable agencies throughout Scotland that are directly involved in the market and know day by day what is trading and what is not and how things are working. I do not know how you build in that connection, but it is critically important.

**Professor Peat:** If this issue was on my desk, the first thing that I would examine with great care was why the Scottish Government forecasts and, in particular, the OBR forecasts had gone so wrong. What were the assumptions that were incorrect? Were they due to a failure to bring in behavioural assumptions? Were the data poor and misleading? I would want to look at that in detail and think about whether the best way of improving forecasting would be to insert behavioural forecasts or some other changes to the data or
models that might lead to a greater probability of being closer to actuality.

The Convener: That is an important point. You are probably aware that the OBR forecasts for LBTT income varied enormously. The most recent forecasts are 20 per cent changed from the initial ones. Even on a biannual basis, there were quite dramatic changes. As Mark McDonald pointed out, initially, the OBR simply extrapolated Scottish figures from UK data, which were, obviously, skewed by London in particular.

Chris Stewart: One of the misconceptions about the property market is that it has recovered. It has not recovered; it is recovering. For example, when the market was buoyant, the commercial transactions that have been a big part of the commercial property transactions in Scotland happened in Aberdeen. That will stop now. There are fairly major shifts in the market because of its fragility. It can be severely affected by subtle changes in LBTT. If part of the market stops operating, as has happened in Aberdeen, that will have a consequence for the numbers overall, as can be seen in this quarter’s numbers. That link to the market is critically important.

The Convener: To be fair, I do not think that LBTT is considered to be one of the major components of what is happening in the property market in Aberdeen at this time.

Chris Stewart: That is correct, but the key point is that, as a market, we are funded by international capital. I would say that 70 per cent of the funding in our market is not from domestic banks and domestic equity but is international. How our market operates is not consistent with how the market operates in the rest of the UK, where the funding for a lot of transactions is based in its own market. The frequency with which buyers come into the commercial property market, for example, and the consequence on LBTT, depends largely on which assets are for sale. It is not as though they are investing in the market as a whole and you can predict the market; rather, they are investing in what asset comes up. Atria Edinburgh, which is beside the Edinburgh international conference centre, is for sale. That is a good asset; it will attract attention. However, other secondary assets will not. The LBTT take will depend entirely on what comes up for sale in the year.

The Convener: Thanks. I have a final point. The commission has described its role as one of challenge and inquiry, with the aim of improving the Scottish Government’s forecasting methods. What level of transparency should that work have?

Professor McGregor: Ideally, the work should be as transparent as possible, including on the model. Of course, as was mentioned, you cannot release details of confidential data but, subject to that restriction, I do not see why there should not be complete transparency about that interaction and the responses to it. It would be great if the core models—if they did not have confidential data—were made widely available for others to use as well.

Professor Peat: I agree entirely that the work should be as transparent as possible. That should include evidence to this committee and wherever else is appropriate. It should also involve putting forecasts and comments into the public domain in an accessible manner. I am not talking about including complex econometric modelling or even Angus Armstrong’s 50 pages of spreadsheets; rather, I am talking about including documentation that can be read by the interested public. They can then form a view of the issues that matter and make their own judgments. Accessibility, as well as transparency, is critical.

Dr Armstrong: The transparency of the SFC’s findings and forecasts is critical. However, as we have discussed, some elements contain sensitive information and some of the models are just too cumbersome. Therefore, if there has to be opacity, what is important is that whoever is in charge has complete impartiality. We just have to accept that some things are confidential and that some information is sensitive—that is life. However, if we cannot have transparency, and that is the case to a certain extent in the models that the SFC uses, we need impartiality. Indeed, at that point impartiality becomes super-important, which is when some of the governance issues and the independence of the SFC become so important.

The Convener: Thank you very much for your evidence this morning. Does anyone want to make any final points to the committee before we wind up?

Dr Armstrong: I will make a final point. There is no discussion in a number of the submissions about how the Scottish Government will do its borrowing. I have given evidence a number of times that if we want to have responsibility, it has to come from independent parties—for example, external debt. An issue has just struck me: who is going to make an assessment of the cost efficiency of some of that debt finance and fundraising? That matter seems to have slipped through the net in the papers. That is just a comment, but perhaps the issue needs to be thought about in the overall framework.

The Convener: As no one else wants to make a comment, I thank everyone very much for their contributions. It has been an excellent session. To conclude, I just want to say to Angus Armstrong that the Sacha Distel look suits him. [Laughter.]
We will suspend briefly to allow a changeover of witnesses.
On resuming—

Scottish Fiscal Commission Bill: Stage 1

The Convener: Under item 3 we will hear from members of the Scottish Fiscal Commission on a separate topic, which is our consideration of the Scottish Fiscal Commission Bill at stage 1. Members have received a written submission from Lady Rice; I invite her to make her second opening statement of the day.

Lady Rice: Thank you, convener. You are obviously gluttons for punishment.

We are very grateful for the chance to come to the committee and discuss what is, clearly, an extremely important piece of legislation for us. We have read the written responses to the consultation received by the committee, and we are interested in how broad the range of views and perspectives is. There is clearly not just one right way to set up such a commission, but it is important to say that we must choose the right way to shape the commission for Scotland.

We have given a lot of thought to the issues, particularly forecasting—an issue that has been raised a number of times by the committee and others—and the fact that we need not only to act independently, as we believe that we are doing, but to be seen to be independent. Some of the propositions in our response aim to address that particular issue.

I have one point on forecasting. As a banker, I used to despair at the fact that everyone calls everything a bank, whereas some things are banks and some are not; the word “bank” is used widely. Forecasting is a little bit like that. There are official forecasts, which are done by the Scottish Government, but there is also forecasting as a tool. Richard Baker was beginning to get at that point in relation to our table on forestalling. Along with analysis and research, forecasting is a tool that can help to inform debate and judgment. It is almost as though there is forecasting with a capital F and forecasting with a little f, and the distinction must be clear.

Some of the topics raised in the call for evidence relate to matters that will arise from the fiscal framework. We have tried to address them, although only briefly, because we do not know what the final outcome in the development of the fiscal framework will be—no one does. When we know whether there is a charter or fiscal rules, and what the borrowing arrangements might be, we can expand our perspective on those points. For now, we have given the committee just some general responses.

Overall, our views are set out in the submission and we are happy to take your questions.

The Convener: I will have to enforce a self-defying ordinance, because there are so many things that I could ask—I see Gavin Brown shaking his head. I shall try to limit myself.

Lady Rice: May we exercise a self-denying ordinance in our responses?

The Convener: Certainly not. I have a good mind to keep you here until tea time for that cheeky comment. [Laughter.]

I will ask about something that comes from the end of your submission. I thought that I would start with this, rather than delve into the other areas that will no doubt be the subject of a considerable number of questions. You say:

“The term of office should be stated in the Bill and the SFC believes, on the whole, that a single non-renewable term as currently pertains is effective, and that individual terms should be staggered.”

I was quite surprised by that because many of our witnesses agreed with staggering terms but suggested that members should serve two terms for reasons of continuity. Has it been that onerous so far?

Lady Rice: We discussed the question, and we could be persuaded in different directions. In setting up the Scottish Fiscal Commission, we subscribed to the strong view that we should take on the role without any feeling in our own minds that we might like another term, which could colour our responses or the work that we do, even subconsciously. There is real value in having just one term.

The term can be shorter or longer. Staggered terms are important. Some of the respondents who have said that there should be two terms perhaps believe that there may be a dearth of other qualified and able people. I personally take the view that, given Scotland’s 13, 14 or 15 universities and the great deal of talent in the UK, we should be able to find people of talent here or more widely.

We discussed the possibility of having two terms as long as there was a process for renewal, or possibly a break of two years and then a return that was not necessarily guaranteed. We would not stake our feet to the ground on the issue of one term, but we see the advantage of it, and we have no debate with it for ourselves.

The Convener: So you would consider the President Putin approach of having a term of office—

Lady Rice: For ever?
The Convener: A term of office followed by a gap, and then a return to the SFC by popular demand.

I will again move on to discuss something different: additional functions. You say on page 3 of your submission:

“The SFC believes it should have responsibility for assessing the Scottish Government’s forecasts on the sustainability of Scotland’s public finances, such as adherence to fiscal rules as an example, and it would welcome the Bill being amended now to anticipate this additional responsibility when it arises.”

I am sure that that paragraph will be welcomed by a number of our witnesses who have given evidence so far, and by some committee members, too. Can you talk us through a wee bit more of your thinking on the issue?

Professor Leith: I have been asked to give evidence to the committee several times, including prior to the Fiscal Commission being created. One of the main objectives of creating a fiscal commission is to ensure fiscal sustainability. The raison d’être of a fiscal commission is exactly that.

Professor Hughes Hallett: I could go on at length about this—I have in the past.

If we take the view about the commission’s remit as it is expressed in the bill as introduced—that it should examine and comment on information and revenues that the Scottish Government may use to make up its budget—we have to worry about fiscal sustainability as a minimum. At the moment, I am not quite sure what that means. It may mean sustainability against the rules that are currently in place, under which borrowing is minimal. If that is the case, it is not a big operation, but it might be different in some other context. The work is one part of the minimum; it is not explicitly in the bill, and it might help if it were.

A second issue relates to sensitivity analysis. It would be rather difficult to say that we think that a given forecast is reasonable without having poked it a little to see whether it stands up against shocks of different sorts or slightly different outcomes in the rest of the economy. Sensitivity ought to be covered, and it would help if it were nominated, so that everybody knows that it will be one of the things that the commission considers.

The Convener: What you have just touched on—the issue of reasonableness—has come up before: we had some discussions about that in taking evidence. What is your view of what reasonableness is? How do you define whether a forecast is reasonable? That is something that we have tried to get to grips with, and a lot of our witnesses had some issues with the question at previous evidence sessions, as you will be aware.

Professor Hughes Hallett: I wonder whether you will get any reasonable responses.

The Convener: Let us see.

12:00

Professor Hughes Hallett: I do not like trying to define reasonableness because it is one of those things like the prime rate. What is the prime rate? It is what we say it is. It is like something from “Alice in Wonderland”. Defining it precisely is rather difficult.

The next thing that people tend to do is have a checklist to see whether a forecast satisfies this or that, and the obvious question is whether it is accurate. That has a place in this discussion. I caution you not to be too prescriptive. In attempting to make something objective instead of subjective, you will find it difficult to introduce any judgment and, of course, the forecasts have to judge what is likely to happen in future. I would therefore not be too prescriptive.

I note by way of illustration, with the indulgence of Lady Rice, that the American SAT scores for getting into university make an attempt to show what a reasonable performance is, and the work is done with checklists. What we observe now is that most universities do not use the SAT system because it is too inflexible.

Having said that much, I will give you a different answer about what we actually do. In the case of LBTT, I was trying to assess the forecasts not by producing official forecasts but by doing our own calculations to see whether we would do something similar.

To start off with, we look at specific scenarios around the tax, which is how we go about establishing reasonableness. We check whether the methodology is okay, whether things have been left out, whether specific economic factors that should have been taken into account have not been, and whether the assumptions about the forecasts are sensible. People often pick on last year’s example of the non-domestic rates being overoptimistic. We did not change the forecast; we changed what we thought was an unreasonable assumption up front. We do those sorts of things at the first stage.

We can also check against other available forecasts. It is difficult in this context but not impossible. Of course, the OBR forecasts are available all the time so we can check against them, although I am beginning to get the feeling that there is not a huge amount of competition because the OBR does work on a UK basis and, if Scotland is a bit different, something else will happen.
The third thing is to do the simple calculation—I emphasise that it is a simple calculation and not a forecast—to back up the position. I ask myself: if I did it myself, would I get a similar number? It would not necessarily have to be the same number but a similar number. This is the point: if the number is different, we can dive in to find out why it is different and learn something from what is wrong. That helps us to decide whether what the Government has put out is reasonable. If not, we do not then say that the Government should change the number but that we think that a different process or extra information would be a good idea.

That is how we decide whether a forecast is reasonable. I am sorry for the rather waffly answer.

**The Convener:** I found it very helpful. If you think that the Scottish Government’s figures are not really as accurate as they should be, when do they become unreasonable? Is it at a 1 per cent, 5 per cent or 10 per cent differential?

**Professor Hughes Hallett:** They should be better than they were last year.

**The Convener:** So you would not pin down a figure.

**Professor Hughes Hallett:** No, because circumstances might change. If we get into a recession, the 1 per cent would go out of the window.

**The Convener:** I am not suggesting that the differential should be 1 per cent. I am asking what the Scottish Fiscal Commission thinks would be reasonable.

**Professor Hughes Hallett:** That is where judgment comes in.

**Lady Rice:** It is important to emphasise Professor Hughes Hallett’s point. It is not simply a matter of metrics: it is a question of judgment and numbers, and judgment is really important. If we went through the rational or intellectual exercise of saying that, for one particular case or one particular tax, we would expect to look at A, B, C, D, E and F—whatever those things are—and we found that the Scottish Government team had looked at only one or two of those factors, we might find it difficult to say that the Scottish Government’s forecast is rational. That is not just because we are judging the numbers that it comes out with but because of the approach taken. That is all about judgment and it is the kind of thing that comes out in our challenge meetings.

**The Convener:** On page 2 of your paper, you talk about transparency and you say:

“In order to ensure transparency at every stage, the SFC would publish Minutes of its meetings with the Scottish Government”.

Transparency takes a number of forms. For example, we talked about forestalling at the earlier session but we did not have any detailed example from you that shows the work that you did to come up with the numbers.

Andrew Hughes Hallett touched on non-domestic rates, but the figures for the original forecast were not provided, so it is not really possible for us to identify how much it was changed, and it is also not clear why the recommendation led to a change in the official forecast when other Scottish Fiscal Commission recommendations did not. For example, the SFC recommended the need to account for behavioural responses in producing forecasts for residential LBTT, but the report does not mention whether that was raised with the Scottish Government as part of the process of inquiry and challenge, and what response, if any, was provided. There is no mention of that in the Scottish Government’s own methodology paper.

Surely transparency goes a lot deeper than just producing minutes of meetings and decisions made.

**Lady Rice:** The production of the minutes, now that we have a bit of support, is one aspect of transparency. We publish our work and comments on our activities on our website, all of which is expanding over time.

We are also learning what it is that you as a committee consider transparency to be, so it is a learning process for us as well. If you want a lot of the detail behind a table, we can provide that. We are new to this work and to your expectations, so we are happy to take guidance and advice about what you want.

Overall, transparency matters greatly. There is no point in having any of the debates or discussions without being quite open about what we are basing things on. We might be wrong about things too, and there may be others who come to us and point out that we are actually off base in looking at certain things. That can happen only if we are transparent, so we are looking for ways to increase that transparency and to increase our overall communications. We are happy to take any pointers you can give us.

**Professor Leith:** Looking to the medium to longer term, we have already begun a number of what could be called research projects that will examine more deeply various aspects of the modelling of some taxes. We asked for provisions in the bill to allow us to publish technical working papers, which would allow us, on an ad hoc basis,
to publish the details of the research. That will also contribute to the transparency of what we do.

**The Convener:** That is helpful. In your paper, you say on the right of access to information that memorandums of understanding “are the normal way of working across public sector areas; if the SFC’s right to establish relevant MOUs would be better safeguarded with more explicit wording on the face of the Bill, then the SFC would support doing so.”

I take it that you would be quite keen for that to happen. Your wording is a wee bit tentative.

**Lady Rice:** MOUs appear to be the way to establish good working relationships, but the ultimate good working relationship depends on the people and the good will involved. MOUs alone—perhaps this is reflected in the tentativeness of the wording—do not ensure what we want to achieve, but they certainly help. They set out the boundaries and the fencing around what we might do.

Just so that you know, I should tell you that we developed an MOU with Revenue Scotland specifically for the data that we needed to analyse in relation to the outturns paper that we did. Revenue Scotland was extremely helpful, and we are now in conversation with that organisation to develop what I would call—although this is probably not the language that you would use—a perpetual MOU, so that we do not have to do one each time that we go to it with a request for information. It is helpful to have such memoranda in place.

**The Convener:** I take it that you hope to develop MOUs with HMRC and the OBR. Your paper states:

“Over time and in order to do its job properly, the SFC’s goal would be to have a deeper relationship with the OBR and HMRC.”

**Lady Rice:** Yes, and the import of that statement is that, once the new powers on taxes and related matters are finally agreed and come to Scotland, it will be more and more important over time to have those connections formalised.

The OBR’s doors have been open from the very beginning. Its staff have been co-operative and supportive, and they have invited us into their challenge meetings when they have been looking at Scottish taxes over last year and this summer. We have joined those meetings and have had access to their working and thinking along the way, and we have provided some challenges back as well.

In a way, some of the work is already happening. An MOU does not make it happen—or, at least, does not make it happen perfectly—but we think that it is a useful tool, which is why we made that statement.

**The Convener:** The last point that I want to touch on before I open the questioning out to colleagues is, obviously, forecasting. You say in your submission that you are looking for better interaction, “direct engagement” and “contact with the forecasters” and suggest that “The SFC could have direct engagement with the forecasters in the early part of the year when the forecasters are developing or refining their models” and that its “role would be to challenge and influence the efficacy of Scottish Government processes and approaches”.

Moreover, you say:

“In a rational world, there should be one official forecast of tax revenues and there should be an independent assessment of that forecast. These activities should lead to a check on the official forecast. They should not become the basis in themselves for informing the Draft Budget.”

Finally—and your position on this has been quite consistent—you say:

“The SFC, as the ‘assessor’, believes it should develop the latter type of forecasts alongside research, modeling and analysis.”

However—and, as you will expect, I am going to quote some comments here—you will know that most of the witnesses that we have heard from are not of the same view. Instead, they take the view that the SFC should produce its own forecasts. For example, the Royal Society of Edinburgh is “firmly of the view that the SFC should be able to originate its own independent forecasts of the future fiscal revenues ... Indeed, to fulfil its functions the SFC will need to be able to produce independent forecasts.”

Professor MacGregor and Professor Swales have pointed out that “international practice” suggests that where “fiscal bodies do not provide their own forecasts they typically have access to sufficiently detailed independent forecasts”, and the Canadian parliamentary budget officer has stated, if the SFC produces its own forecasts, it will allow Parliament “to challenge the assumptions underlying the forecasts of the Scottish Government”.

There are loads of similar comments, which I will not read out, but I just want to finish with Dr Armstrong and Dr Lisenkova, who argue that the SFC should prepare its own independent forecasts on the basis that “Producing a forecast greatly adds to discipline.”

Of course, not all commentators hold the same view—I note the views of the Institute of Chartered Accountants of Scotland and others—but the general thrust among your academic colleagues is that the SFC should produce its own forecasts. Why are you continuing to take the view that you...
should just comment on the Scottish Government's forecasts?

Lady Rice: I think that there are a number of topics that pertain in response to that. I will start and then turn to both my colleagues.

We have talked about this issue a great deal, and it brings us back to the comment that I made in my opening statement about the official forecast and other forecasts. I wonder whether some of the comments that you have quoted relate to the latter kind of forecast. One of the tools in our toolbox should be the ability to produce forecasts, possibly for some taxes at certain points in time and for some other elements. That would be our choice, but we would need to see. You have already referred to the work on forestalling as being a sort of mini-forecast. We think that that should be in our toolkit, along with the ability to carry out analysis and, as Campbell Leith has suggested, do some technical papers and research.

However, that is different from producing the official forecast. We think that there needs to be one producer and one assessor of the official forecast. If you were to turn to the Fiscal Commission and say, “Actually, we've changed our minds. You do the official forecast,” we would need to be assessed by someone. If we were to do the entire forecast ourselves, we would just be duplicating what the Government was doing, which does not seem to make a whole lot of sense in value-for-money terms. If we did our own forecast and then needed to defend it, we, too, might be biased. We have had a conversation about a lot of these elements, but we believe that there should be the official forecast, which, right now, is done by the Scottish Government, and that that forecast needs to be assessed, which is our role. We should not be doing an official forecast as well.

I turn to either or both of my colleagues for their comments.

Professor Leith: My view on this goes back to some of the issues that we have already discussed with regard to types of economic forecasting and analysis. At the moment, the Scottish Government has to produce the forecast, and it uses statistical models based on historical data to do short-term projections of that data. If we were to produce an alternative or indeed the official forecast on a day-to-day basis, we would probably have to replicate that style of modelling, and I do not think that there is a great deal of added value in having the Fiscal Commission replicate that kind of modelling.

I think that there would be added value if we were to do deeper, more fundamental projects that delve more deeply into behavioural aspects and results of policy change, and bits of analysis of the economy that are not currently featured in the forecasting methods. The need to do those things would depend on the economic circumstances, because sometimes some issues will be more relevant than others. That is the point at which we would need to do such a piece of analysis and bring it to the fore in order, in effect, to evaluate the quality of the short-term forecast.

Therefore, I would give us the role of doing that portfolio of research. We are not just sitting there twiddling our thumbs when we are not doing an official forecast; we are doing lots of bits of research that, fundamentally, go to the heart of what drives the official forecast.

12:15

The Convener: Andrew, do you want to come in?

Professor Hughes Hallett: Yes—at length.

What Campbell Leith said is right. That is one aspect of the issue; I will not comment on it further. What he said is absolutely right.

I suggest that my reading of what is going on is slightly different from yours, convener. There are some people who say that we should be doing forecasts, and there are plenty of people who say that we should not, one of whom is the International Monetary Fund. I think that it is well worth listening to the IMF, which has oversight of such commissions everywhere else. There are not many such commissions at the—what should I say?—regional level as opposed to the sovereign level.

If we look at the numbers, we find that two—I think—out of 23 such bodies in the Organisation for Economic Co-operation and Development are doing forecasts as the official forecasts and nothing else. Then there is the question of second opinions. We are doing a kind of second-opinion exercise—the Government will produce its forecasts and we will provide a second opinion. I go back to a very old experience of mine in the Netherlands when the central planning bureau was doing the forecasts and it was the only body that was doing them. The constant complaint was, “We don't know whether to believe the forecast; we'd like to see some second or third opinions.” That aspect is important. Doing it this way round gives us the freedom to compare the Government’s forecast with other forecasts, of which there are not many. There is the OBR’s forecast, and one would assume that, when Smith comes in, there will probably be a new industry in doing that sort of thing.

If I am to depart from what my colleagues have said—I do not know that I am departing from what they have said; it is just that they have not said
this—I think that being asked to do the official forecasts would seriously compromise our independence. To do the forecasts, it is necessary to get data. We do not have access to all the data in the world, so we would have to talk to other people and share some knowledge of what we were trying to do. If we were to put forward one forecast as the official forecast and the one that was favoured over other possibilities—as has been said, there are many alternatives at any one point—that would leave the perception in the world that the policies that underlay that forecast were the ones that were favoured. Therefore, in some sense, we would be prejudicing the discussion.

An important point that I did not realise but which I discovered when I talked to OBR people a month ago is that, when the OBR does the official forecasts, the Treasury often comes along with a proposition—it says that it is thinking of making a particular policy change, it presents its projections and it asks the OBR what it thinks of them. It is natural enough for the Treasury to want to do that, because it would not want to be slapped down by the OBR saying, “Total rubbish,” at a later stage, but that shows that the Chinese walls have been broken down and the influence of the Treasury is seeping in.

Therefore, having outsiders having no influence over independent forecasts made by us does not guarantee that outsiders will not try to influence the commentaries that we produce. It is one thing to have an independent forecast; it is quite another thing to have an independent commentary attached to it. The OBR has problems with that.

Those are various different possibilities that suggest that our independence would be compromised if we were to produce the forecasts. What we are doing is the other way round, and that is a different matter altogether. We take what we are given and we say, “Is this reasonable?” We give the reasons for our view, albeit that we might not have published enough yet. At that point, we can make a judgment and people can take it or dislike it as they wish.

Lady Rice: I have a final comment to add. This is a personal view that is based on informal and other conversations that I have had. I think that, over time, a bit of an industry will develop in Scotland of think tanks, university bodies or whatever doing their own versions of forecasts or delving into some of these areas. A comment that the committee has had from others is that there is nothing else to refer to—what else is out there? I think that that will develop over time. It is not surprising that it has not developed yet, because the devolved taxes are so new. It is almost a market thing and I think that it will happen.

Professor Hughes Hallett: This is an enduring conversation, but I would like to add an extra point. I had not realised that, when the OBR was set up and given an exclusive, official forecasting-only mandate—give or take a little sensitivity analysis—that was done secure in the knowledge that the IFS would do the further analysis. That does not exist in Scotland. If you did not allow us to poke about and think of other factors that should be important, and we had to make the only official forecast, we would be in a worse place.

The Convener: I am keen to probe further, but I am under a self-denying ordinance and I know that a lot of colleagues want to come in, so I invite Richard Baker to ask the next question.

Richard Baker: The Scottish Government has informed the committee that no restriction will be placed on the commission to engage in forecasting if it wishes to do so, and there is nothing in legislation that would stop the commission from engaging in forecasting, but is it the case that, as it stands, you have no intention of engaging in any forecasting and that any forecasting you do is for yourselves as part of the practice of assessing the reasonableness of the Scottish Government’s forecasts?

Lady Rice: If you do not mind, I would like to go back to what could be described as forecasting with a lower-case f. We have started doing that kind of thing, so we are engaging in forecasting as an exercise, and that is absolutely something that we will do, but what we ought not to do is develop an alternate official forecast. That does not make sense, and would compromise our ability to assess the official forecast.

Professor Leith: We are doing lots of pieces of economic analysis and we have lots of projects starting up, but we do not plan to replicate item by item the entire set of Scottish Government forecasts.

Richard Baker: Of course, there will be a learning process for the Parliament in scrutinising the work that you are carrying out to assess reasonableness. In making international comparisons, we have looked at the Swedish example, which I know you have studied. In Sweden, the Swedish Fiscal Policy Council does not produce its own forecasts, but the National Institute of Economic Research does, and there are many bodies producing their own forecast figures. That means that there can be a lively public debate about how accurate the Government’s forecasts are and how close they are to the National Institute of Economic Research’s figures. Is it beneficial to have such comparisons out there? Given that, as things stand—it may or may not change in future—there is a dearth of separate forecasts from Scottish Government figures, would it be beneficial for the commission to consider taking on a greater forecasting role than is currently envisaged?
**Professor Hughes Hallett:** That is a fair point. I can understand that you want not just a second opinion but a third opinion and a fourth, so that you can make some comparison. Our comparative advantage would be in making the comparisons between them, and you are right to say that there is a dearth of such things at the moment. There may be forecasts of particular taxes or particular bits of the market from professional agencies, but there is not much else available apart from the OBR. The OBR forecasts everything that we want to talk about but on a different basis, so we already have a second opinion, and I am sure that there will be more in the future.

The deeper economic analysis in the rest of the UK is pushed by the IFS and there is not such a body here. If there were one here, that is likely to be where that would happen. If you look at Belgium and the Netherlands, you will see that, in those countries, the functions have been split between separate agencies, so they have obviously recognised the point. It is just a question of whether resources are available and which is the most efficient way of doing it. It would be nice if other forecasts came from somewhere.

**Professor Leith:** If we had alternative forecasts, that would provide some additional information. It may be slightly overstated how much additional information that would provide, though. If there were other bodies providing additional forecasts using techniques similar to those that were used for the official forecasts, they might make different assumptions at different points and there might be different numbers, but they would be within the bounds to which such forecasts vary. What you really want to see is additional information on some aspect of behaviour or some aspect of development of the economy that is not being captured in the official forecasts or is not being addressed in the methods that underpin the official forecasts. That is the bit that gives you genuinely new information and allows for more fundamental scrutiny of the official forecast.

**Richard Baker:** Bearing in mind the duplication of effort in producing a full, separate forecast, is the primary concern duplication, or is there a resource issue? If you chose to undertake such an exercise, would you have the resources to carry it out, as things stand?

**Lady Rice:** If we chose to or were required to undertake such an exercise, we would resource up in order to do it, but we could not do it with today’s resources.

We already have the ability, under the financial memorandum, to increase our staff to some extent. What we would do with that increase in staff would reflect what Campbell Leith has just said—it would be to look into some elements more deeply to understand what is really happening, so that we could make a better, more refined judgment about the reasonableness of the official forecast. If we had to do forecasting, we would simply say to you that we needed to resource up to do that. We would have no hesitation, and it would be our choice, to the extent that we would need more resource.

**Richard Baker:** The experience in Ireland was that its Fiscal Advisory Council decided to undertake its own forecasting later on, as it developed its own work. If it transpired that there was not the additional forecast that you are expecting, you could take on that role to a greater extent later if you thought it appropriate.

**Lady Rice:** You make an interesting point. My sense of a number of the independent financial institutions is that they have evolved over time. I would be surprised if we did not evolve, but I do not know whether we will evolve in that direction.

**Richard Baker:** Before I ask my final question, I thank the panel members very much for their answers so far.

We have spoken about how important memorandums of understanding are, and you have an initial one with Revenue Scotland. You have had a lot of meetings with different agencies. Are there any problem areas concerning access to information? Are there any departments at Scottish or UK Government level that you think need to be a bit more receptive to your requests for information? Have you found those relationships to be broadly quite constructive?

**Lady Rice:** Where we have requested information, those requests have broadly been met. I do not know whether “concerned” is the right word, but we are certainly interested to see how the relationship with HMRC develops. The Scottish rate of income tax is not yet in place, so all that we have is anecdotal evidence about what that agency may or may not be able to deliver to us. Our understanding is that HMRC is very conscious of the need to deliver data to us in a way that keeps safe what has to be kept safe under privacy regulations and law, just as Revenue Scotland has to do. There are some areas that are not tested, but we have not had major issues to date.

**Jackie Baillie:** The subject of forecasting has been explored with you, so I will move on to the question of appointments and reports. I think that your independence is critical in moving forward. Would you accept that you cannot really both be an adviser to Government and scrutinise what it does?

**Lady Rice:** Yes—“adviser” may need definition, so that we are saying the same thing, but we do not conceive of ourselves as advisers to
Government on policy or whatever. We see ourselves as assessors and as the body that scrutinises what Government produces. That requires interaction with the Government teams.

Jackie Baillie: I entirely accept that. I was referring, in particular, to the fact that members of the commission had a role on the Council of Economic Advisers. In that case, there could have been a perception that would have been unfortunate. However, I gather that the position there has now changed.

Lady Rice: That position changed, and it was raised at our appointment hearings—I am sorry, but I do not know what the correct term for that is. We took action at that time to end our terms with the Council of Economic Advisers. I can say to you that there would not have been a conflict, but that is a case where one might be perceived, and we wanted to address that.

12:30

Jackie Baillie: Perception is all, unfortunately.

Some witnesses have suggested that the powers that ministers wish to have over appointments and all of that area might be excessive and be considered to be—dare I say it?—interfering. Do you think that the balance of powers is right, or would you again, to secure your perceived independence, prefer a more direct relationship with Parliament?

Lady Rice: I will look to both my colleagues to give a view; we have talked about the issues. At the end of the day, we are answerable to Parliament; Parliament approved our three appointments. We were recommended through the ministerial line, but we were debated—I read the debate in the Official Report; we were actively debated—in Parliament and then our appointments were approved. We are also answerable here; the committee represents the wider Parliament. That is ultimately how we perceive ourselves. My colleagues may have another view.

Professor Hughes Hallett: No—I essentially agree with that.

I will slightly rephrase Jackie Baillie’s question, if I may. I will do it anyway. It is not so much about the power of ministers, but the suggestion that an alternative appointments committee or something should sit to make nominations, rather than ministers. I would not want to intervene on that. I do not think that it would make much difference in reality, but the perception might be important.

Lady Rice: We will hire individuals externally as we build a team to help us in our work. We have started that in recent months with two part-time research assistants, and we will probably look for some full-time economist strength. We will advertise and have an open process to hire such individuals. Perhaps that is helpful to your thinking.

Jackie Baillie: Again, perception is all. I do not think that the fact that ministers control that degree of the appointment process and take powers to themselves to do so is helpful to that perception.

Let me see whether I can manage my next question without it being rephrased. It concerns submission of the SFC report. We obviously have experience of public bodies submitting reports to Government in advance of publication. Technically, that is done for checking accuracy, but in practice issues of presentation have been covered as well. Again, there is in some cases a perception that there is Government interference in that process. Some witnesses have suggested that you should not give the Government any notice of your report, or that it should, if you are being generous, have 24 hours to respond. I am interested to hear your view on what would be appropriate, given that the OECD thinks that providing a report in advance favours the Government.

Lady Rice: We have given a lot of thought to that, and we have heard views from the Finance Committee in the past as well. We have produced one report, which Jackie Baillie very kindly said that she had read, being new to the committee. In that case we submitted it in advance for a fact check, because we were told last year that that was the proper thing to do. That was very helpful to us and we continue to think that it is helpful to us to make sure that we have our facts correct. There is something in that. We did not change our findings—we were not concerned that we were offending anyone by doing what we did, and no-one asked us to change anything. It was purely a fact check.

That kind of engagement can be helpful, but one can play with the timings. The forecasters could have the forecast essentially complete, not to be changed, and they could see our report and correct any facts or suggest that the facts are different, or the report could be submitted before the forecast is finalised. We could look at those details, but we think that the process is valuable. It is hugely valuable to have a series of challenge meetings with the forecasters, because that is the value that we add, as Campbell Leith has said.

What we have tried to lay out in our submission to the committee is a way to balance what is a bit of a conundrum: how do we get that right? It may or may not be right—we would happily accept guidance—but we propose having the challenge meetings early in the process.

We would go back to the previous year’s budget and discuss suggestions or criticisms, and we
would find out how the forecasters were changing or adapting their approach to a forecast and whether they were taking on a new, devolved tax—we will face new taxes relatively soon. In the early days, we would give the forecasters our challenges or whatever, but that would not be advice. We do that in OBR teleconferences that we join; it seems to be normal practice. We would then let the forecasters get on with running the numbers—we would not be part of that, because we do not look at numbers and outputs; we look at their thought processes going into that.

We could produce our report on the budget right at the end of the process. However, quite honestly, if we are to add value we need to be involved at the right points instead of simply sitting aside, as a think tank might do, and analysing the budget once it comes out. Forgive me for speaking in slang, but if the draft budget turned out to be rubbish—I do not think that it would—that would surely do no one in Parliament any good, and it would not do the commission any good, because people would ask, “Where were you?” We need to engage in the right way, and our thinking just now is that that is how we should do it.

Jackie Baillie: I accept that you look at the processes and the assumptions that are made, but from our perspective, you gave advice on non-domestic rates, the cabinet secretary reflected on the assumptions and the modelling and made a change. We have no idea what he changed the forecast from or what was wrong with the underlying assumptions. Equally, with LBTT, you made a recommendation about behaviour and we do not know what has happened since then—we do not know whether the Scottish Government has taken that on board. It feels as though there is something not transparent about what has happened since you said what you said on those issues. My fear is that the interaction that you describe—which might be quite reasonable among reasonable people—is not transparent and the perception is that there is something not quite right.

My approach to this is not necessarily to make things difficult, but how can we ensure that your independence is guarded? That is the most precious thing.

Lady Rice: Our independence is the most precious thing, so we continue to ponder how best to engage. One thought that occurs to me is that when we write our report on the draft budget, we should give the committee—or indeed, anyone who reads it—more detail of the “He said,” “She said,” type of thing. It may be helpful to detail such movements.

On the change that the cabinet secretary made regarding the economic determinants of non-domestic rates, we did not advise what that change should be, nor did we give a parameter; it was simply our judgment that the range looked somewhat optimistic. In such a case, we would probably have to have the Government spell out what the forecast had changed from, or you would have to ask the Government that question.

Keep challenging us, because we will improve the process as we hear those perspectives.

Jackie Baillie: Thank you.

John Mason: I like your use of the word “conundrum” in your written submission and in your answers to Jackie Baillie. That seems fair. More interaction might get us a better result; less interaction might be perceived as evidencing more independence but might not get us the best result. Do we need to have some of this in legislation or can we leave the legislation as it is? Is there going to be a memorandum of understanding or just practice? How can we put all that into practice?

Lady Rice: I am not an expert on legislation. I will give my two colleagues a minute to think about how to respond to your questions.

My first thought is that, in all my professional experience—I am thinking of regulation, which is what I have dealt with a lot in my business life—I have learned that the more restrictive those statements are in trying to anticipate something, the more they omit things and do not anticipate the full story. More general expectations can be enshrined in legislation, but instinctively I say that we should not be very specific in legislation because, ultimately, that will have unintended consequences or lead to omissions.

John Mason: Is your key point that all minutes would be published and that that would be how we answer the questions, in a sense?

Lady Rice: Yes. People would be able to see iteratively what was being discussed, what had come to the table and the challenges that we raised. We started taking minutes of those challenge meetings once we had a bit of assistance, which was the beginning of the summer, and we have already put summaries of them on our website. In essence, we say what topics we discussed in a challenge meeting. We have the full minutes and will append them to our draft budget report so that they are completely public.

Professor Leith: I agree with Susan Rice. It is an evolutionary process. We will post the minutes and add commentary in our report. If the committee then finds that that is insufficient demonstration of independence or that the method is still not quite convincing enough, then, in an iterative process, we will—

Lady Rice: Find something else.
Professor Leith: We will find something else until it works to everyone's satisfaction. We are here to make it work.

Lady Rice: Our goal is the same as the committee's: that we are perceived as being independent.

Professor Hughes Hallett: I back that up. When the minutes come out, the committee will see some thoughts and comments about what the Scottish Government might do next about a particular problem. They are not just, "So and so said such and such"; they are a bit more detailed than that. What we are talking about is exactly what the monetary policy committee in London does: it puts up transcripts of who said what. Our minutes are likely to be a bit briefer than those are. For transparency, the MPC does exactly the same thing: it works on the minutes.

John Mason: As I understand it, that model is similar to what happens in Ireland. Jean Urquhart and I were in Dublin to meet the Irish Fiscal Advisory Council and others. The council came up against a problem this year. It was also involved early on with many of the macroeconomic forecasts but not in the detail of the budget. However, when the budget was announced, there was such a big increase in spending—because the Irish are doing so well, apparently—that it had a knock-on effect on the macroeconomic forecasts. There was a bit of tension between the Government and the council as to exactly what was, in their words, being endorsed: what was reasonable, in our words. Is there a potential problem if you are not involved at the latter stages of the budget's preparation?

Professor Leith: That would depend on the forecasting methods that are employed. If there is a big regime change—a big change in tax policy—that no one has discussed before that point, there could be behavioural consequences and, if the modelling does not take account of that, it is late in the day for us to intervene to factor in the effect.

John Mason: The model should be robust enough to cover the different scenarios.

Professor Leith: That is the ideal situation.

John Mason: IFAC also moved from a non-statutory to a statutory basis and was somewhat taken aback at the amount of administration, human resources policy, health and safety procedures and all the things that fall in once a body becomes statutory: although it is small statutory body, it has many of the same responsibilities as a big one. Are you aware of that and have you taken it into account?

Lady Rice: We are very much aware of that. We have been thinking about it and are discussing and giving some shape to a transition team or board that would be supported through the civil service. That team would take us through all the stages.

We will go on to a statutory footing on 1 April 2017 so, from now, we have 16 or 17 months. However, we need to get ourselves ready well before that. We understand from the keeper of the records of Scotland that we have to keep records of all of our exchanges, emails and notes—everything. As a banker, I am used to that, and we have put in place processes to maintain those records. We want to get ourselves into those good habits well ahead of time.

We will need a risk register and we will need to have our finances audited. Over this year, we have started to have quarterly governance meetings—although we discuss such matters more frequently—specifically to focus on governance issues. We are trying to anticipate: we are planning what we need to do over the next year or so and are putting a number of things in place now, so that we are ready.

12:45

We also understand that we have to have an accountable officer. We have talked about hiring a senior officer—I have suggested the title "chief of staff", but that may change. We would advertise that post. I would look to that individual to keep us right. I do not underestimate the amount of time that all that would take. We appreciate that such things are important and we will certainly undertake them.

John Mason: In the final paragraph of your letter you talk about resources and say that if your remit expands in the future you would have to commit more time. On the commission, you go on to say:

"The resources available to it will need to grow prudently to support the additional work."

There has been some suggestion that we are funding the Scottish Fiscal Commission quite generously if we compare ourselves to IFAC, which has a full range of responsibilities, or to Sweden's equivalent. Do you anticipate that your budget might not be sufficient?

Lady Rice: The budget is partly built on an assumption of the Scottish Government's pay rate for however many full-time economists; the rate might be different in other countries. The proposed budget also anticipates the potential need for us to use fully commercial office space. At the moment, as you know, we are being hosted in our non-statutory phase by the University of Glasgow—very generously—and that change will mean some additional cost.
I read the notes of the committee’s visit to IFAC, which points out that they have half a dozen or eight secondees. The notes do not say whether the secondees were carried in IFAC’s budget or came from Government. Robert Chote of the OBR has been very open with the Finance Committee in talking about the number of people in the UK Government who provide data and information and support the work of the OBR. I would not want to say that the proposed budget is right, wrong, generous or not, because that will depend on what it encompasses.

I assure members—my colleagues and I have talked and we are in absolute agreement on this—that we have no intention of spending up to budget. The budget is not there to be spent; it is there to allow us to grow and develop as we see fit in this incredibly important moment as we move from a non-statutory to a statutory footing. We would not go out and hire four full-time economists just because that was allowed by the budget; rather, we would hire one. We might in the future, if we felt that we needed another or as new taxes come in, decide to add to that.

To answer an earlier question, if we found that we had much-expanded responsibilities, we might have to come back and say that the budget is not enough. However, today we would not say that. It is a very fair budget that gives us scope to make independent decisions about how and in what ways to expand.

Jean Urquhart: As John Mason said, considering the Irish experience was very interesting. Two things come to mind. Ireland is a smaller country, but it is in the eurozone and is independent. You are right to say that the staff were seconded—from memory, I think that they were all seconded for a certain period of time, including one from the central bank. The staff came with different experiences and they changed.

Of course, IFAC has five members and I wonder whether you have thought about that, given that you only have three. Is that under discussion? You mentioned the pool of expertise being very small. That was also a matter for discussion in Ireland and four of the five commissioners live abroad, although they are Irish. That was a revelation to me. Suddenly, we could look internationally. The Scottish diaspora is even bigger than the Irish diaspora, so there might be expertise around the globe that we could encourage.

You said that, given that we have 13 or 14 universities in Scotland, there should be plenty of people with the expertise to step into your shoes. Are there really people in Scotland with a very high profile and so on—again, perception being everything? Is that pool available here?

Lady Rice: My colleagues may have anecdotal views, as they are academics and know their peers. We have not sat down as a commission and asked who those people are likely to be, but the governance of succession and succession planning should become part of our conversation. In a way, your question is a good trigger for us to move in that direction.

On whether the commission should have more than three members, it seems to me that two would be too few, and there is always the number 27 bus risk. Increasing our number might be a thought. All of us are quite prudent in saying, “Let’s grow in anticipation.” Our view is, “Let’s grow as we need to, as we become bigger, as we go into statute, if we need to grow.” I would not be surprised if we spoke to the committee at some point and said that we needed another commissioner. Their term would then be staggered, and they would gain the experience and the knowledge that was needed to keep all of it going.

You asked whether the pool is out there. I think that the committee occasionally talks to academics who might well be considered candidates, if they were interested in something like the commission. We have not determined who those people might be or how big the pool is.

Professor Hughes Hallett: I do not disagree at all. I would rather fix on particular expertise and skills than fix on a particular number—on having four commissioners instead of three, for example. There is a comparative advantage within the commission at the moment and it is working fine. We will keep an eye on that. We have certainly talked about it.

On the diaspora point, it is not just Ireland that has gone international. A lot of commissions do that. From my perspective, that is not an issue; it would be fine.

On the point about whether the pool is too small, there are plenty of people out there but the question is whether you actually want them. It is a question of what kind of people are out there. The answer might make the pool a bit more restricted; it depends.

Lady Rice: It also depends on whether they would want to take on the role.

Professor Hughes Hallett: Yes; they might not want to do it. I know quite a lot about these things. In the Swedish example, the original chairman walked out in a huff because it was taking too much time. He wanted to publish a few academic papers at the same time; I sympathise enormously. Some people may not want to do it. It is a bit tricky.
Jean Urquhart: Finally—time is moving on—you see yourselves not as duplicating work that has been done in a full forecast but as selecting particular pieces of work. Would you say that the change from stamp duty to LBTT, and the figures that we have on that at the moment, merit that being the kind of work that you would home in on? It is quite a small part of the budget overall, but it is important.

I can see that Government policies come through into such types of forecast. How would you deal with drilling down into, or looking more comprehensively at, any one particular part of the forecasting, while avoiding or ignoring Government policy that will actually be a determinant of the outcome?

Professor Leith: In our initial report, there are several instances in which we suggest that it would be best if the behavioural effects of policy could somehow be incorporated into the method of producing the forecast. We could analyse those behavioural effects, build up a model or piece of analysis and feed into it whatever the policy happened to be. In that way, it would be ready to do the policy analysis that you needed to do.

Lady Rice: There might be factors other than Government policy changes to consider. For example, regulation over the past year has made the mortgage application process much more rigorous than ever before, particularly for first-time home buyers. There is a lot of debate going on about the number of people who can qualify for a mortgage and is completely outside Government policy. It is therefore important that we look at all those factors, including the external ones.

Professor Leith: If there is any kind of break in the economic conditions that underpin an extrapolation of historical data, it is behavioural responses to those changes that you will be starting to look at.

Professor Hughes Hallett: You are quite right about the need to set priorities with regard to which taxes to look at and so on. They also come in different sizes, and I would put more weight on the bigger ones and insist that the errors—if and when we quote them—are set out not only in percentages but in pounds so that we can see, as it were, what bang they will have on the budget. That would help with prioritisation quite considerably, and I hope that we do that in future.

I also think it important to avoid commenting implicitly on the underlying policies. In other words, you have to take them as is for now. If you are told, “We are going to put this tax up for sure”, you might be able to make such a comment, because you would be commenting on a public announcement. Otherwise, we do not want to be put in the position that everyone has referred to of saying, “This forecast’s rubbish, because everyone knows that this tax rate’s going up or down or whatever.” That is the reason for the slightly delayed effect with regard to forestalling; indeed, that is a case in point, because it is the sort of issue in which you are able to say what effect it will have in terms of pounds only when it actually comes in—and even then things are somewhat uncertain. It is important to do that work at that point, but we should not second-guess ahead of time.

Jean Urquhart: Thank you.

Mark McDonald: I want to ask a very brief question about forecasting just to get my head around where we are. Lady Rice has tried very helpfully to disaggregate forecasting with a capital F and forecasting with a lower-case f, and I think that the analogy is a very helpful one. I presume that your work involves a degree of modelling that essentially replicates elements of the forecasting method in order to test the robustness of forecasts without having to begin at the beginning and end at the end of the whole forecasting process. Is that a fair assessment of your work?

Professor Leith: It involves a mixture of things. We go through the nitty-gritty of the Scottish Government’s methods but, as I have said, we are also undertaking a series of projects on things that are not contained in the methods that are being used. We are not just replicating an element of the forecast but looking at something that, as far as the Scottish Government is concerned, is off-model to find out whether that is an influence or factor that should be taken account of but which currently is not. It is a mixture of a step-by-step analysis of what is actually being done and looking at other off-forecast issues that probably should be taken account of but which are not at the moment.

Mark McDonald: On the separation between you and the Scottish Government, there is a perception that you are looking over the Government’s shoulder and asking, “Are you sure about that?” How involved or otherwise do you think you need to be to ensure that the challenges that you make are taken seriously and that the information that is laid before Parliament is as robust as it needs to be?

Lady Rice: It is not really our job to ensure that information laid before Parliament is as robust as it could be—that is the Government’s job, because the Government lays the information before Parliament. We are not saying, “You must do this”; we are suggesting that the Government considers certain factors because they might have a big impact. The Scottish Government can take that on board or not. At the end of the day, that is the Government’s choice.
If the Government produced a forecast that, in our judgment, was not particularly robust, we would say so. In that case, the Government would have laid a non-robust forecast before Parliament. It is not our job to ensure that the Government does its job. The specification for our role would be different if that were the case.

13:00

Mark McDonald: I appreciate that. Ian Lienert, who has done some work around comparisons, suggests that the exertion of influence over forecasts changes the definition of the role from independent assessor to adviser. In your perception, is your role as independent assessors maintained or do you become advisers? To me, an advisory role is much more heavily involved in directing what happens, rather than challenging the Government.

Lady Rice: On whether we would expect the teams to be answerable to us in some way as to why they did or did not take advice that we gave them, we are not in that kind of relationship with them.

As I said before, this is how the OBR operates. It has a series of challenge meetings, produces tables and data and explains its thinking so far; it speaks to key individuals in the meetings, who raise questions and challenges and then go off and do more work. We are doing the same thing in Scotland.

Professor Leith: As an academic economist, I am used to academic seminars in which someone presents their work and is interrogated as they do that. That is not always comfortable for the person who is presenting their work. People go through the work line by line and make very critical comments. That toughens up what the person does. That is the model that I have in mind.

When we do our independent pieces of research, the intention is that we would release them as technical working papers. We would present them to interested audiences and go through the same process as the academic seminar—come and get it, see what we have done and kick holes in it if you can.

Professor Hughes Hallett: As I said some time back, our approach is motivated by the question whether we would do something the same or differently. At that point, you can suggest that someone considers a variable or other factor that has been left out. It is up to them to decide what to do. They might come back and say, “We tried that and it did not work”, although if we have an extended purdah in which we are not talking, that might be more difficult. However, it is entirely up to them whether they try it and come back or not.

The motivation from our side is whether we would do the same, which is the same for a seminar.

If you go beyond that, you get more heavily involved and, as I said in the general peroration on forecasting, you would then find that your independence was compromised. That is why I do not think it a good idea to do that. I suspect that most commissions have reached the same conclusion and so produce back-up calculations, rather than the official forecasts.

The Convener: That concludes questions from committee members, although I have three or four still to ask—I am only joking.

It has been a long session. We appreciate your involvement, concentration and the clarity of your answers.

Lady Rice: It has been very useful, as all such conversations are.

The Convener: Thank you very much. No doubt we will see you at the committee again before too long.

13:03

Meeting continued in private until 13:05.
Scottish Fiscal Commission Bill: Stage 1

09:30

The Convener: Our second item of business is to continue our stage 1 scrutiny of the Scottish Fiscal Commission Bill by taking evidence from the Deputy First Minister, Mr Swinney, who is joined by Alison Cumming and John St Clair of the Scottish Government. I welcome our witnesses to the meeting and invite Mr Swinney to make an opening statement.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): Thank you, convener. I welcome the opportunity to discuss with the committee issues in connection with the Scottish Fiscal Commission Bill, which delivers a long-standing commitment from the Government to give the Scottish Fiscal Commission a basis in statute.

The bill will secure a permanent role for the commission in strengthening the operation of Scotland’s devolved fiscal framework through scrutinising the forecasts and projections that support the Scottish budget. The Scottish Government recognises that it is critical to the effectiveness and credibility of the Scottish Fiscal Commission that it is structurally, operationally and visibly independent of Government. Legislating for the commission further demonstrates that by formally safeguarding its independence.

We have sought to learn from international experience in designing our legislative proposals and have reflected on the work of the Organisation for Economic Co-operation and Development and the International Monetary Fund. That work recognises that there is not a one-size-fits-all model for fiscal councils. We have also considered the responses to our consultation earlier this year and the evidence that the committee has gathered over two previous inquiries and at stage 1 of the bill. I thank all those who have contributed to a thoughtful and thorough discussion of the issues at stage 1. The Government will reflect carefully on all the points that have been raised with the committee and any conclusions that the committee arrives at.

As it is for the non-statutory commission, the core function of the statutory commission will be to scrutinise and report on the Scottish Government’s forecasts of tax revenues that are published in the Scottish budget. I have previously set out to the committee my view that the Scottish ministers should be responsible for the production of tax revenue forecasts and should be directly accountable to the Scottish Parliament for those
forecasts. Although I appreciate that there is a range of views on whether the commission should prepare official tax forecasts, I believe that the balance of stakeholder and international evidence supports the position in the bill: that the Government will prepare and the commission will independently assess forecasts. That approach maximises the transparency of the forecasting process.

The bill will also give the commission full freedom to determine how it scrutinises those forecasts, and it protects the commission from any actual or perceived direction or interference from the Government in carrying out that scrutiny. If the commission chooses to do so, it can prepare and publish alternative forecasts. Nothing in the bill prohibits it from doing that. It is solely for the commission to determine whether it considers the production of such alternative forecasts to be necessary as a tool to support its assessment of the reasonableness of the Government’s forecasts.

The remit of the statutory commission is designed to reflect and be proportionate to the fiscal powers that are devolved to the Scottish Parliament under the Scotland Act 2012, but we recognise that the process of devolution is ongoing and that it is important to provide flexibility to amend the commission’s remit in future to reflect any expansion of the Parliament’s powers. Respondents to the committee’s call for evidence have suggested potential additional functions for the commission under either existing or future fiscal powers. Some members of the committee have also made their own suggestions.

The Government will carefully consider all such proposals, but we are strongly of the view that the core purpose of the commission should be to maximise the integrity of the forecasts and estimates that have been prepared by the Scottish ministers to support the Scottish budget. We must also recognise that the commission is accountable to the Scottish Parliament and has a role in supporting Parliament in holding the Scottish ministers to account. Any proposals for new or different functions for the commission must be viewed in that context.

Taken together, the provisions in the bill and the resourcing proposals in the financial memorandum will create a statutory commission that is well equipped to assure the robustness of the tax forecasts that underpin the Scottish budget.

I look forward to answering the committee’s questions.

The Convener: Thank you very much for that opening statement.

Obviously, you have been to the committee many times, so you will know that I will ask some opening questions and my colleagues will then have the opportunity to ask questions.

Let us consider how the Scottish Fiscal Commission has been working to date. When the SFC published its first report, on the same day as the 2015-16 draft budget was published, it described its approach to its non-statutory powers as

“one of enquiry and challenge, followed by response, followed by further enquiry and suggested improvements.”

In evidence to us, the Irish Fiscal Advisory Council emphasised that the challenge function should be carried out transparently. However, there is little detail, either in the SFC report or in the Government’s methodology paper, about how the process of inquiry and challenge influenced the Scottish Government’s methods in producing its 2015-16 forecasts. The committee will be interested in exploring that further as we progress our consideration of the bill.

Has the Scottish Government modified the methods for forecasting devolved taxes based on the SFC’s suggestions?

John Swinney: The whole process was designed to ensure that we had a robust approach and methodology in place. The methodology that underpins the forecast has been published, with a comprehensive and transparent explanation of the methodological basis for the estimates that the Government has made, which have been challenged and then given assurance by the Scottish Fiscal Commission. In essence, the approach has been to ensure that the commission has the ability to arrive at a conclusion—which is that the estimates are assessed to be reasonable—by a process of detailed scrutiny, challenge and engagement, to establish that there is a sound basis for publishing the forecasts. I think that that serves the public interest.

The Convener: Transparency is an issue that the Finance Committee has discussed on myriad occasions. The figures for the initial forecasts were not provided, so it is not possible to ascertain how much they changed in response to the recommendations of the Scottish Fiscal Commission. If the SFC did not assess forecasts as being reasonable, what would be the Scottish Government’s response?

John Swinney: You raised two points, the first of which is about the publication of one or more forecasts. I cannot see how it would serve the public interest to have a multiplicity of forecasts—I just do not see what the argument is for that. The forecast on which we settle is the one on which the budget is predicated, and I do not think that it serves the public interest for there to be doubt and debate about the robustness of that forecast.
cannot see the rationale for having a multiplicity of forecasts.

On your second point, about what the Government would do if the commission was unable to certify a forecast as reasonable, the blunt answer is that the Government would have to change its forecast. I have rehearsed this ground with the committee. I would be in a pretty weak position if I stood up in the chamber and told Parliament that I did not have a certification of reasonableness for the forecasts that underpin the budget. I think that that would be the first line of weakness in any Government budget.

That is why my view is that the commission has, in essence, a veto over the Government. My view is that, until such time as the commission is prepared to certify a forecast as reasonable, the Government's forecast cannot be published. I am only ever going to want to publish a forecast that I can say the commission has judged to be reasonable.

The Convener: I appreciate the second part of your answer, but the first part was a response to a question that I did not ask, because I did not ask about a multiplicity of forecasts—I do not intend to do so, because I am sure that other members of the committee will explore the issue. My point was that, because the figures for the initial forecasts were not provided, it was not possible to identify how things changed.

Furthermore, it is not clear why the Scottish Fiscal Commission's recommendation on non-domestic rates income led to a change in the forecast while other recommendations that it made did not. Was the need for a behavioural analysis discussed in the challenge meetings between the SFC and the Government? If it was, what was the outcome of those discussions? That all relates to the issue of transparency about how some decisions were arrived at and why other decisions were not taken.

John Swinney: I answered the first part of your question in the way that I did because if both a starting position and a concluding position were published, there would inevitably be two forecasts, and I see no merit in there being two forecasts. If a change had been made as a consequence of the interaction with the Fiscal Commission—that was not the case; the commission did not make a change to the forecast that the Government put forward as part of the 2015-16 budget process—it is inevitable that we would have published two sets of numbers. I do not see what value there would be in debating two sets of numbers, when the budget is predicated on a particular assessment of the forecast, which has been judged by the Fiscal Commission to be reasonable.

In relation to the other points that you raised, for me the question is about the transparency of the methodology that we use. That is all published, so it can be scrutinised by anyone who wishes to do so. The Fiscal Commission will bring forward a variety of other challenge issues that will inform that methodology. Ultimately, that leads to the publication of the methodological statement, the publication of the estimates and the publication of the Fiscal Commission's view that the estimates are reasonable. In my view, a pretty comprehensive amount of information is conveyed about the manner of the discussion that has gone on in arriving at a conclusion whereby the Fiscal Commission certifies the Government's estimates as reasonable. I think that that is a pretty comprehensive explanation of the basis on which the estimates are arrived at.

The Convener: But it is curious that the SFC’s recommendation on non-domestic rates income was acted on while others were not.

John Swinney: Some of the commission's recommendations on the forecast will be immediate, but others might be of a longer-term nature. The element of the process over which I have and should have no control is the commission saying whether it considers the estimates to be reasonable. That is the answer that I need to get for me to be able authoritatively to communicate a budget estimate to Parliament. That is clearly the outcome that I want because, as I said in my previous answers, I would be in a very weak position if I were to say to Parliament, "I have a forecast that underpins my budget, but the Fiscal Commission does not believe it to be reasonable." I invite members to consider how long I would last if I gave that explanation of the position to Parliament.

That is why the Fiscal Commission has a veto. It knows that I need it to say that the forecast is reasonable, and I must put forward a convincing argument to it that enables it to judge the forecast to be reasonable.

The Convener: I am still a bit puzzled about why some recommendations are accepted and some are not. You accepted the SFC’s recommendation on non-domestic rates income, but you did not accept other recommendations that it made. For example, the SFC’s report questioned the lack of any behavioural analysis in producing the forecasts for residential land and buildings transaction tax. Given that the Government decided that it was going to make changes to the forecast based on the SFC’s recommendation on non-domestic rates income, I would have thought that it would have been better for the Government’s position in the round if, at the same time, it had explained why it thought that the
SFC’s recommendations in other areas should not be pursued.

09:45

John Swinney: We have not said that. What we have from the SFC in relation to the 2015-16 estimates is an assessment that they are reasonable forecasts. There are other recommendations that are more about the longer-term development of the capability for estimating taxes, which the Government is taking forward. We have not rejected them—we are taking them forward. The SFC said that it considered the 2015-16 estimates to be reasonable; that is the basis on which I accepted its view.

The Convener: Let us move on. Robert Chote of the Office for Budget Responsibility said that “the whole point of independent scrutiny is to exert influence”;

and the International Monetary Fund noted that “there is clearly a trade off between exerting influence and providing independent assessment.”

Where do you think the balance should be struck?

John Swinney: The questions of influence and independence are entirely related. The commission is free to exercise influence to ensure that a strong and robust approach is taken to the estimation of tax revenues and to the establishment of forecasts. However, it controls its independence—ultimately, it is the body that decides whatever it says about particular forecasts. The commission is in a position to push, challenge and influence to make sure that a robust position is established. If it is not satisfied that that is being done, its independence enables it to say, “This is not good enough.”

I understand the point that the IMF is making about the relationship between influence and independence. I do not think that there is any conflict between those two concepts. The influence and the challenge can be exercised but, ultimately, the commission alone is the guarantor of its independence and it can determine whether the actions that are taken are good enough as an acceptance of the views that it has expressed.

The Convener: Thank you.

The SFC proposes in its submission that “it would have no contact with the Scottish Government during the period when it is developing its forecasts.”

There has been a wee bit of an issue concerning whether the SFC could be seen to be too close to the Government in terms of providing advice, but at the same time we have just talked about its ability to exert influence. There is a bit of a grey area. When should the SFC stop having contact when forecasts are being developed? How early in the process should that be?

John Swinney: That is not a matter for me, convener—it is for the commission to determine what it considers to be appropriate. It would be wholly wrong for me to specify that. I do not think that there is anything wrong with the commission deciding whatever level of contact or communication it decides is appropriate—that is a matter for it.

On the question of advice, there is a difference here. I do not think that the word “advice” describes what the commission is doing—I think that the commission is challenging. My officials and I find the commission challenging, as we should. I do not feel that I am on the receiving end of advice from the commission; I feel that I am being challenged, as I should be. That is the purpose of the commission.

We need to avoid getting into a position where we say that there is something wrong with dialogue and conversation between the commission and the Government. In my experience, that dialogue and conversation is not cosy conversation; it is challenge, and we cannot have challenge unless we speak to each other. We could do it all by certified email but, given some of the complex issues that we are talking about, that is not really the best way. We have to be careful not to label the dialogue between the commission and Government officials and ministers as advice, because I do not consider it to be that; I consider it to be challenge.

The Convener: I will let in colleagues in a minute or two, but I first want to ask about potential additional functions. The bill is intended to reflect the existing legislative competence of the Scottish Parliament. Obviously, the Scottish Government expects the functions of the SFC to develop substantially to take account of the new fiscal powers under the Scotland Bill. The committee has recommended that the Scottish Fiscal Commission Bill should be amended to widen the functions of the commission to include assessing the performance of the Government against its fiscal rules and assessing the long-term sustainability of the public finances. At this stage, it might not be competent to legislate for additional functions, but there has been broad agreement among witnesses that the remit should be widened. What is your view on that?

John Swinney: I do not agree with the widening of the remit to cover the aspects that you talk about. We have discussed these issues in committee before. Many of those questions are, frankly, the responsibility of the committee and Parliament. It is the proper preserve of the Finance Committee and Parliament to scrutinise the decisions that ministers take and to assess the
The Convener: I do not know that we look at the long-term sustainability of the public finances. The Royal Society of Edinburgh and various academics feel that the Scottish Fiscal Commission should have a role in looking at where the Parliament might be in four or five years. We tend to work on almost an annual basis. For example, this year, we are unable to scrutinise the budget until 16 December, when we will get the figures for the forthcoming year. Although we can touch on some of the finances going ahead following the comprehensive spending review figures, we cannot devote the time that perhaps the Scottish Fiscal Commission could to looking at the long-term sustainability of the decisions that are made.

John Swinney: The Finance Committee has in the past undertaken inquiries on the sustainability of public finances. It is open to the committee to undertake such inquiries if it chooses. It is not for me to determine that it should do so. The constraints that exist on the availability of financial information, such as those that the convener has highlighted in relation to the role of the Finance Committee in the current budget cycle, would also apply to the Fiscal Commission. Up until last Wednesday when the Chancellor of the Exchequer stood up, the commission would not have been in receipt of any more longer-term information on the United Kingdom’s public spending than any of the rest of us were. For me, the role of the Fiscal Commission is properly defined as that of focusing on the estimation of the Government’s taxation forecasts and reporting accordingly. Obviously, the bill makes provision to expand the remit and responsibilities of the commission commensurate with any wider devolved responsibilities.

The Convener: Thank you. I will now open up the session to colleagues round the table.

John Mason (Glasgow Shettleston) (SNP): As you know, cabinet secretary, we have spent a lot of time thinking about forecasts, who forecasts and who does not forecast and all those kind of things.

I was struck by your comment that there is not a one-size-fits-all model for fiscal councils. Is it your feeling that we should launch the Scottish Fiscal Commission, that we and the commission should review the situation after a certain amount of time and that there might be a change of emphasis or priorities as we go ahead?

John Swinney: We should certainly be open to reviewing the Fiscal Commission’s performance. I make it clear that that is part of the provisions, but I certainly think that we should be open to reviewing the arrangements that we put in place. We are obviously in new territory and we should be open to considering the implications in due course.

John Mason: A couple of us visited the equivalent body in Ireland. My feeling is that it started off not doing any forecasts, but it has gradually started to do a bit of forecasting as it has felt necessary as things have developed, which strikes me as quite good. The situation is not totally black and white—the Irish body does a bit of forecasting if it feels that it needs to. Would you feel comfortable with such a model?

John Swinney: I am not sure what you are suggesting.

John Mason: I am suggesting that the Fiscal Commission might do a bit of forecasting when it feels the need, but that we do not need to say right now in black and white that it must forecast or that it must not forecast.

John Swinney: I have tried to reflect two things in the bill. The first is the need for the Fiscal Commission to respond to the forecasts that are made by ministers, because I believe that it is right and proper that it is the role of ministers to make the forecasts of tax revenues and the role of the commission to challenge and to provide assurance about those forecasts. The second is the need for the commission to be able to undertake the additional work that it decides that it should undertake. Those are essentially the twin purposes of the commission. It would be up to the commission to determine what falls into the latter category.

John Mason: The budget for the SFC seems quite generous in comparison with the budget for the equivalent bodies in Ireland and Sweden, which are both independent countries with much wider powers than we have. Ian Lienert made the point that the

“estimates are generous relative to comparable small IFIs elsewhere”.

Are we being a bit overgenerous with the finances, or do you think that the figures are justified?
John Swinney: I seem to remember that the last time I was here I was criticised for not being generous enough.

The Convener: Not by the same people.

John Mason: Probably by the same people.

John Swinney: We have engaged in dialogue with the commission. At the outset, when the commission was a non-statutory body, we formulated what we thought was a reasonably tight approach—maybe “tight” is the wrong word for a finance minister to use—as a reasonable starting point for it, and I got a fair amount of criticism that it did not appear as if we were giving the commission enough resources to enable it to exercise its functions properly. I have responded to that and, in discussion with the commission, have formulated a proposition that is there to be tested.

On the first question that Mr Mason asked, there is obviously the opportunity for review if that is judged to be necessary in due course, so we will be able to see whether the resources that we have put in place are actually required to fulfil the commission’s functions.

John Mason: To be frank, I was one of the people who thought that £20,000 was a little bit on the low side, but I wonder whether £850,000 is a bit on the high side. The point has been made that, if the commission took on more responsibilities, the budget might increase further, and yet it would still have fewer responsibilities than the bodies in Ireland and Sweden have. I suppose that I just want to put down a marker that I would not want the budget to go much higher than it is.

John Swinney: I am acutely aware of the challenges in public expenditure terms, so I do not take any of these decisions lightly. I give the committee the assurance that I will look carefully again at the financial estimates for later years. The estimate for 2016-17 is pretty much of the order that we will have to deliver, but I will look again at the estimate for 2017-18.

10:00

John Mason: Section 6 of the bill, which is quite short, concerns the independence of the commission. The committee has discussed with witnesses the degree to which we can legislate for independence and the degree to which the issue concerns having people on the commission who can openly challenge the Government and build up a reputation for independence. Do you think that we can legislate for independence or do you think that the issue concerns the reputation that the commission builds up over time?

John Swinney: I think that the issue is a combination of a number of things. First, it is important that section 6 contains the explicit statement that

“In performing its functions, the Commission is not subject to the direction or control of any member of the Scottish Government.”

That is an important protection for the commission. If it is ever necessary to do so, the commission can say to a member of the Scottish Government that section 6 applies and that they have no ability to direct or control the commission.

Secondly, there is the question of the wider approach to appointing members of the commission. For example, with regard to creating an atmosphere of independence around the commission, I took the view that it would be better for the commission members never to be dependent on a minister for reappointment. I took the view that it strengthened the credentials of the commission for the members never to have to think about their reappointment, because they could not be reappointed. That was my thinking—I volunteer that to the committee. I thought that that would really assure the wider community about the independence of the commission. However, I have seen some comments to the effect that that approach does not allow for a build-up of expertise in the commission, because it means that people cannot be there for more than one term. I set out the intention behind the approach in the bill, but I quite understand the view that giving people a couple of terms would allow for a build-up of expertise. However, it might constrict or constrain the atmosphere of independence.

Thirdly—this is the key point—we have to appoint people of capability and authority, whose reputations in their wider fields depend on their ability to exercise independence in the commission. For them to be successful in their other fields of activity and involvement, they have to be able to demonstrate that they have exercised independent judgment in the commission. That is, perhaps, one of the best safeguards that we have.

John Mason: You have mentioned appointments. Would the commission be more independent if, instead of ministers appointing people and Parliament effectively having a veto, Parliament made the appointments and ministers had a veto?

John Swinney: No, I think that that would be much worse. How on earth can I veto what Parliament wants to do? I do not think that that would be a healthy relationship. The arrangement that we have in place enables ministers to be involved in recommending propositions to Parliament and enables Parliament to undertake scrutiny and have the final say.
John Mason: You mentioned the issue of second terms. I totally agreed with you at the beginning of this process that having commission members serve only one term underlined their independence. However, we heard that in Ireland it was felt that there was not a huge degree of expertise out there—or, if there were people with expertise, they were perhaps not available because of other commitments and so on—and that having people serve only one term restricted the pool of candidates unnecessarily. That was one of the arguments for having a second term. Am I picking up that you are perhaps open to that argument?

John Swinney: I have set out honestly what my policy intention was, but I accept that it might have an unintended consequence. The point that Mr Mason makes is fair. A range of people could sit on the commission; whether they are available is a different matter. I have set out the basis of my thinking on this matter, but I am quite happy to consider what the committee concludes on it.

John Mason: Thank you.

On staff, there is a question about whether the commission members should have complete freedom as to who they appoint and how, and about how much involvement the Government and the Parliament should have. Section 18(3) says: “The Chief of Staff and other staff are to be employed on such terms as the Commission may, with the approval of the Scottish Ministers, determine.”

Why did you involve the Scottish ministers in that regard, instead of giving the commission members complete freedom?

John Swinney: That was simply to enable ministers to be assured that the approach to employment policy that we consider appropriate for a non-ministerial department—which will be the status of the Scottish Fiscal Commission—is properly in place. We have to be satisfied that employment policy is consistent with what we would expect and with public pay policy.

John Mason: You used the word “reasonable” in your answers to the convener. In section 7, which is entitled “Access to information”, the words “reasonable” or “reasonably” come up quite a lot of times—four times in subsection (1), I think. The commission will have “a right of access at reasonable times to any relevant information that the Commission may reasonably require”, and it “may require any person who holds or is accountable for relevant information to provide at reasonable times any assistance or explanation that the Commission may reasonably require”.

The word “reasonable” can be interpreted in different ways, so are the provisions solid enough?

Does section 7 give the commission enough clout?

John Swinney: I think that it does. When you quoted from section 7 you laboured the word “reasonable”, if I may say so—I know exactly why you did that. If I was looking at paragraphs (a) and (b) of subsection (1) together, I would focus on the word “require”, which is a hard word in legislation.

The commission will have “a right of access at reasonable times”, but to request, at 9 o’clock at night, a complete recasting of methodology by 8 o’clock the following morning would not be reasonable. However, the commission will be able to require information—I stress “require”. When we look at the two paragraphs together, I think that we can see a strong foundation for the commission to be able to get the information that it requires.

John Mason: Thank you.

Gavin Brown (Lothian) (Con): I want to follow up some of the convener’s questions, because I think that some information remains to be teased out. The convener asked about what happens if the commission deems the Government’s forecasts not to be reasonable. Let us say that the commission says that a forecast is not reasonable, so the Government has to make a change of some sort and present it to the commission again. Is it the intention that the initial forecast, the changes and the final forecast will all be published?

John Swinney: No.

Gavin Brown: What will be published?

John Swinney: The final forecast.

Gavin Brown: Just the final forecast?

John Swinney: Just the final forecast.

Gavin Brown: How is that in tune with the idea of transparency, if disagreements between you and the Scottish Fiscal Commission are never made public?

John Swinney: What matters is whether the Scottish budget is underpinned by a reasonable forecast of the tax income that will be generated. That is the piece of information that the public and the Parliament require. Therefore, the commission must be able to test and challenge the Government to the extent that, unless it is prepared to use the word “reasonable”, the Government knows that it cannot publish its forecast.

I come back to the point that I made to the convener, which I have made to the committee previously: I do not see the value in there being a multiplicity of forecasts. I have yet to hear it argued that that would be helpful or in the public
interest. I cannot understand why that would be of interest. What the public want to know is how much of the budget is underpinned by assessments of the tax revenue to be generated and whether they can have confidence in that number. I think that people are looking for that, rather than looking for a multiplicity of numbers floating about and thinking, “It could be this. It could be that.”

Let us take as an example the issues around the OBR forecast for land and buildings transaction tax. For the last wee while we have been round the houses on that in Parliament—I am looking for a piece of information, but it seems that I do not have it with me. Essentially, in the space of a few months the OBR has taken its estimate of the amount of tax to be generated from land and buildings transaction tax in Scotland from £560 million in July to £427 million in November. My estimate all along was £381 million. What is the value of having a multiplicity of forecasts floating around when the one that matters is that the Scottish budget is underpinned by my forecast of £381 million, which has been verified as reasonable by the Fiscal Commission?

I can tell you what would have happened if we had all taken decisions based on a forecast of £560 million that we now find is £427 million—and I do not think that many members would have been queuing up to say, “Thank goodness for the OBR.” Rather than debate possible scenarios, I am trying to get across to the committee the importance of what underpins our budget, because that is what public expenditure depends on.

Gavin Brown: I will resist the temptation to ask what would have happened if we had based our finances on £7 billion-worth of oil revenues.

John Swinney: We could have all sorts of distractions, Mr Brown.

Gavin Brown: Let me stick to the point, then.

John Swinney: I am making a serious point, which I ask the committee to consider. What is the point of having a variety of forecasts when the budget has to depend on a particular number? Which number do I settle on? My view is that I should settle on the number that the Fiscal Commission, established by statute, says is the number.

Gavin Brown: The point for me is one of transparency. The policy intention is not to publish anything other than the final result. Would you be hostile to or indeed block the publication of those discussions or initial forecasts by the SFC?

John Swinney: I will have a quick look at the bill because I suspect that I might be in conflict with section 6 if I was to block such a proposition, although I would argue strongly against its desirability, for all the reasons that I have just put on the record to the committee.

Gavin Brown: Sure. We disagree, but I will not dwell on the point.

I was heartened by something that you said earlier, if I have written it down correctly. If the SFC wishes to, it can prepare and publish forecasts. Is that a fair summary of what you said?

John Swinney: That could be covered by section 2(3).

10:15

Gavin Brown: I am heartened by that.

Just for clarity, given what the Government and you personally have said about forecasts in the past, can you tell us whether you would be against section 2 being amended, through an amendment lodged by either the Government or a member that said in essence what you have just said—that, if it wished to do so, the SFC could prepare and publish forecasts? Would you be hostile to such an amendment?

John Swinney: Yes, because I do not think that it is necessary. I think that it is already covered by section 2(3). That is my explanation of the basis of the provision.

Gavin Brown: Given that you have said on a number of occasions that you do not want other forecasts, and that—as you have said again today—you do not see the rationale for additional forecasts, do you not think that stating that in the bill would give clarity?

John Swinney: No, because I think that the clarity is in section 2(3).

Gavin Brown: Let us go back to what happens in practice. I am concerned about the transparency issue, as I have indicated.

The SFC published a list of the meetings between you and it for last year’s budget process. The report was finalised in the week beginning 6 October, which was the same week as the draft budget was published. In the week beginning 29 September—the week before that—we see the following item:

“Meeting with the Cabinet Secretary to present draft report and discuss logistics for release of the final version”.

What was the nature of the presentation that was given by the SFC to you during that week?

John Swinney: That presentation of the report in September was designed to do two things. First, we wanted to fact check the contents of the report. It was the first time that it had all been done, and the Fiscal Commission was anxious to make sure
that the report was factually correct. Secondly, because it was the first time that we were going through the process, we had to have a conversation about choreography—to put it bluntly, we had to determine how it was to be done. What happened was what we agreed would happen. The Fiscal Commission’s view—the reasonableness test—was published contemporaneously with my budget statement, but it was published by the Fiscal Commission, not by me. As I recall, they were published at the same time.

Gavin Brown: We are in a budget process at the moment. Will there be a similar meeting in the week before the budget this year?

John Swinney: There will be a meeting with the Fiscal Commission on Tuesday next week.

Gavin Brown: Is that meeting purely to fact check, as in the Audit Scotland process?

John Swinney: Yes, and for the commission to raise any issues that it wants to raise with me.

Gavin Brown: Let us move on to reasonableness. I am sure that you have read the evidence from our previous evidence sessions. Dr Angus Armstrong of the National Institute of Economic and Social Research said:

“I think that reasonableness is quite a low threshold, because there is a lot of uncertainty.”

He went on to say:

“Our first point is that the threshold of reasonableness is inappropriate—it is too difficult to say that something is unreasonable, because that is quite a strong requirement.”—[Official Report, Finance Committee, 18 November 2015; c 22.]

How would you respond to Dr Armstrong’s comment that reasonableness is a pretty low threshold?

John Swinney: I think that it is an appropriate term. If we start going up the list of terminology, we get to terms such as “appropriate” and “reasonable”—which I would say are much of a muchness—or “precise” and “definite”. If anything was to be put to our friends at the OBR’s on LBTT, “definite” would be nowhere to be seen.

I am not going to sit in front of the committee and say that I will be able to forecast precisely the revenues that I will generate. I will make a reasonable stab at getting it right. That is all that any commission will be able to say about the issue. If the committee thinks that there should be a higher threshold, I am willing to consider that, but if we were to go up from “reasonable” to “precise” or “definite”—those are perhaps the choices—it would get very difficult for anyone to sign up to that. I could not sign up to saying that something was a precise estimate.

Gavin Brown: That takes us on to my next point. Another point that Dr Armstrong and Professor Jeremy Peat made was that, rather than just choosing a different word, as you suggested in your answer, if the commission had the ability to forecast and then compare its forecast with yours, that would give a much better indication of the likely differences and challenges that we might face. Dr Armstrong said:

“the rigour of going through a forecast is important because, the more we look at the data, the more we realise where all the nooks and crannies are. Until we play with the data, it is hard to understand where a lot of the uncertainties lie.”—[Official Report, Finance Committee, 18 November 2015; c 22.]

You said that you cannot see any rationale for having different forecasts. That rationale was put to the committee by an economist, so I wonder how you respond to that.

John Swinney: I completely disagree with it. What matters is that there is a forecast that underpins the budget, because public expenditure depends on that forecast. The value of the Fiscal Commission and the extra scrutiny that it can provide is in exactly the point that Dr Armstrong made about getting into the “nooks and crannies” of the model. That is what the Fiscal Commission can do. It has an absolutely unimpeded opportunity to go wherever it wants to go on the methodology, the thinking, the analysis and the preparation of the forecast that we have come to. It can look at any bit that it wishes to look at. The public interest is best served by having that strength of independent analysis that the commission represents challenging and agitating about the Government’s forecasts and the methodology that has been used to get there, so that whatever number comes out has been tested to such an extent that we can be as confident about it as we can be about any number.

To show the danger, let me play back the problem with the OBR’s LBTT analysis, which is that it takes a subdivision of the UK market and arrives at its number. We take a different methodology that is based on actual housing transactions as charted by Registers of Scotland over many years, which builds up a profile of the housing market and the transactions market in Scotland, to which we apply a variety of economic variables. They are two different models. Unsurprisingly, they came up with two very different answers. One of them, six months ago, gave a figure of £560 million, whereas my one says £380 million, which is a difference of £180 million. That is a difference of nearly 40 per cent from my core LBTT estimate.

I do not see the value of having two competing models, because that is where we would end up. I would rather have a model that is absolutely shaken to bits by the Scottish Fiscal
Commission—which is what happens—to get us the strongest number so that I can say to Parliament that that is the number that we should go for.

**Gavin Brown:** Can the SFC in effect take the model away or have access to it at any time to run all the numbers and change the parameters, or does the commission have to ask you to run the model? Does it have full and independent access to the model at all times?

**John Swinney:** It has copies of the model, yes. The point that Mr Brown is raising has to be looked at on two levels. First, do the members of the commission have access to the model in their own time to put in whatever numbers they want to put in? Yes, they do.

Secondly, and more importantly, the Fiscal Commission has the ability to interrogate and challenge the detail of the model: not just the variables that are put in—the numbers that are put in, where the thresholds are put and where the numbers are put—but the workings of the model.

As regards the points that I laboured about how the model has been constructed, the commission members can explore and examine them all. I do not think that they can do that at their own behest, because we have to own the model so that it remains the model. However, the Fiscal Commission is able to ask, “Why do you not look at this, that or the next thing?” It is entirely appropriate that it should do that.

The commission’s role has to be seen not just in relation to its ability to look at different variants of what scenario A looks like against scenario B, but in relation to what it is all founded upon, which is the more important point.

**Gavin Brown:** I have just a couple more questions because I am sure that other members want to get in. The convener asked about the changes that you made to NDR as a consequence of comments from the Fiscal Commission, but you did not appear to make any changes in relation to behavioural impact, which was another point that the commission raised. Have you now changed the model, or changed your methodology, so that behavioural impact is factored into any forecast?

**John Swinney:** That remains a work in progress. There will be developments in the model that are designed to reflect that, but our understanding of behavioural factors will, in itself, be a developing part of our thinking.

We introduced a new tax in year 1. We know that there has been a forestalling effect as a consequence of changes in the UK regime, which will have created behavioural impacts. I would be very nervous about configuring the model based on that particular behavioural impact, but I accept that there will be other behavioural impacts that will be relevant. We have to remain open to developments and changes that could be reflected as a consequence of behavioural changes.

**Gavin Brown:** Finally, why can the Fiscal Commission not just look at the overall forecast for non-domestic rates as opposed to looking at the buoyancy assumptions? Non-domestic rates are treated very differently in the bill, but the OBR will look at them in the same way that it looks at other taxes for the UK Government. Why can the Fiscal Commission not just look at the non-domestic rates forecast in the same way that it looks at other forecasts?

**John Swinney:** The key variable is about economic performance, where the commission can add value. Some of the other issues that underpin the NDR income forecast—appeals losses and debt—are issues that are essentially driven by performance in relation to payment of non-domestic rates. Those are less matters of judgment and more almost matters of fact about what underpins the changes in the design of the non-domestic rates system, so they are of a different character from the economic determinants, which is the area where we think that the Fiscal Commission has to challenge the Government’s judgment—and challenge it independently.

**Gavin Brown:** Is it your view that the Fiscal Commission could not add any value by looking at the overall forecast?

**John Swinney:** The element that we have identified is the area where I think the Fiscal Commission can exercise that independent challenge effectively.

10:30

**Jean Urquhart (Highlands and Islands) (Ind):** Some of the points that I wanted to raise have been teased out, but I want to ask again about clarity. When we were in Ireland we learned that they are absolutely comprehensive in keeping the detail of meetings, conclusions, figures, forecasts and so on in the public domain. They said that the reason was that if a freedom of information request comes in they have no work to do, because any information is readily available and can be produced at any point. There have been suggestions that things are not quite as clear as they might be and I wonder whether you are satisfied that that would be as easily done here?

**John Swinney:** Yes, because the FOI legislation will apply.

**Jean Urquhart:** The FOI legislation will apply, but are we content that the structure that we have provides clarity about what the Fiscal Commission
does, when it meets, what conversations it has, its workings out and whatever, so that that can all be accessed very easily?

**John Swinney:** Yes. The Fiscal Commission published a comprehensive report on the process that it went through to verify the estimates that we made for the 2015-16 budget; that was a comprehensive piece of work that was proactively put in public domain at the time that they provided me with the assessment of the reasonableness of the forecast. That was done in an open and transparent way. There will obviously be full scrutiny of the implications of that decision as we move forward. The commission is structured to be accessible in that respect. I come back to my point about section 6 of the bill—a lot of those questions are for the commission to determine. It is not for me to specify how they organise and communicate.

**Jean Urquhart:** It may be a matter of semantics, but Ian Leinert was curious about the idea that the SFC was an independent assessor as opposed to an adviser. I remember an earlier meeting at which you were absolutely committed to the fact that, whatever the SFC outcome was, you would accept it. It seems to me, because of your determination to accept the commission's forecast on your modelling, with all the challenges that it provides, you accept its advice.

**John Swinney:** We come back to some of the territory that I discussed with the convener earlier in the meeting. I do not consider the SFC to be an adviser—I consider it to be a challenger and an assessor. That is different from being an adviser.

I want to convey to the committee the nature of the relationship between the Fiscal Commission and the Government. The Fiscal Commission is there to challenge us, to push us and to make sure that we are coming to the correct answer, and its members will verify whether they think that we have come to the correct answer. I do not view the commission as an adviser and I would be very surprised if it viewed itself as an adviser to the Government. I think that it considers itself to be a challenger to the Government, as it should be.

**Jean Urquhart:** The lack of published findings from the commission in the public domain does not allow anybody else to be aware of what the outcome of those challenges was, because you automatically accept them. What if the commission is wrong?

**John Swinney:** What if it is wrong? The forecast is my forecast, so I own it, and the Fiscal Commission is able to challenge that. I have been clear that, to get to the point of satisfaction at which I could set out the numbers to the Parliament, I would have to address the issues that the commission had raised. We appoint people to a commission because we believe that they have the capability and strength to provide that challenge function.

**Jean Urquhart:** Would you ever challenge the Fiscal Commission?

**John Swinney:** I have accepted that it essentially has a veto over my forecast. That is why I appointed it—to do that—so I have to accept its ability to challenge me to ensure that the numbers are robust and I have to accept the conclusions that it arrives at. I cannot foresee circumstances in which I would prefer to go to the Parliament and say that I think that the view from the commission is wrong and that my view is better.

**Jean Urquhart:** If the figures are never produced to the Parliament, how could it ever challenge you and say that they were wrong?

**John Swinney:** Because I would not have a certificate of reasonableness from the commission. I need to be able to stand up in the Parliament and say, “I have formulated an estimate of land and buildings transaction tax, I have put it to the Fiscal Commission and it considers that estimate to be reasonable.” If I could not say that, I would have a problem on my hands and I would have to think carefully about going to the Parliament. I cannot envisage marshalling an argument that, in essence, I was dissociating myself from the commission’s view. I appointed its members because of their expertise and to give us that challenge function.

**Jean Urquhart:** Thank you.

**Jackie Baillie (Dumbarton) (Lab):** I would like to pursue that point a little bit further, because it is not just about semantics. It is interesting to consider what you would do in those circumstances.

I preface my question with a comment. You are saying very carefully today that the Fiscal Commission would “essentially” have a veto. In a response that she made at last week’s First Minister’s question time, the First Minister said that it would have a veto. Can you point me to where in the bill it says that the commission has a veto?

**John Swinney:** It has a veto in the sense that we have established it to challenge and assess our forecasts. Essentially, the power in section 2(1) of testing the reasonableness of the forecast is where the commission has its veto.

**Jackie Baillie:** But it does not, with all due respect. I have read that very closely. It talks about the commission preparing reports and setting out its assessment of reasonableness, but it does not then say that the commission has a veto if the Government disagrees.
**John Swinney:** My reading and interpretation of what section 2(1) means conveys to me the concept of the veto that I have shared with the committee.

**Jackie Baillie:** As far as legislation is concerned, concepts and interpretation cause problems for people in the future. If you mean the commission to have a veto, it should be there in black and white. Do you intend to lodge an amendment to clarify that point? As written, the commission does not have a veto.

**John Swinney:** I think that the section adequately conveys that point.

**Jackie Baillie:** We will need to disagree, because there is no mention of a veto at all in there. I genuinely believe that you should spell it out in black and white if that is your intention.

My next question is about this veto and how it would be exercised. You said that you would think carefully—I would expect nothing less from you—but are you saying that, if the commission disagrees, perhaps not with the methodology but with the forecast, you would put off the budget process, and its strict timetable, indefinitely until you arrive at agreement?

**John Swinney:** No. I would reach agreement so that I delivered a budget that had a certificate of reasonableness.

I must be able to stand up on 16 December with a letter from the Fiscal Commission giving a certificate of reasonableness. I have a budget to deliver: I cannot stand up and say, “Sorry folks, we will have to come back next Wednesday”. That is the veto: the commission knows that I have to get there, which is why section 2(1) conveys the point.

**Jackie Baillie:** Leaving aside the politics for the moment, there is a practical point. If the methodology is not right, are you saying that, within the space of a week, you can change the methodology to reflect the concerns in order to get a certificate of reasonableness? People outside the Parliament, who are experts in the field, would have some trouble agreeing to that.

**John Swinney:** That is not what would happen.

**Jackie Baillie:** What would happen, then?

**John Swinney:** The Fiscal Commission has been looking at the methodology for some time. We will get to a point at which the commission has no more issues to raise and we are agreed on the methodology. That process has been going on for some time; it went on last year in the formulation of the model.

We get to that point of agreement on the methodology weeks before the budget, and then we introduce the numbers. I say, “This is what I want to do”. The commission tests that to see whether the numbers and propositions that I am suggesting, when applied through the methodology that has been prepared, are robust.

**Jackie Baillie:** The convener gave the example of the caveat on the LBTT methodology in relation to modelling human behaviour in the face of a changed market. Though the commission said that the assumptions made were reasonable, it did caveat that by saying that it was unconvinced by the assumptions made about behaviour.

As far as we were aware, there was silence from the Scottish Government as to whether you accepted or rejected that point. I understand that you said earlier this morning that you had accepted it and are doing further work. None of that was self-evident.

**John Swinney:** I can check what we have said publicly about that.

The key point is to make the distinction between that and the most important part, as I said in my answer to Mr Brown, which is the commission interrogating and challenging the model to make sure well in advance that it is a robust model for generating the numbers that need to go into the budget.

**Jackie Baillie:** I accept that. But where the commission caveats its response to that model—the case of LBTT is one example—there does not seem to have been any corrective action. What I am trying to do—

**John Swinney:** Well, if there had been some factor of significance that the commission judged to be of sufficient merit, the commission should not have given me the certificate of reasonableness.

**Jackie Baillie:** Perhaps it will bear that in mind next time.

It did caveat that certificate of reasonableness by talking about behaviour. What is interesting is that it would appear that the commission has been proved right.

It would be very useful to understand how the Government is going to reflect and negotiate with the Fiscal Commission if it says that it is not reasonable or it caveats the certificate of reasonableness in the way that it did with LBTT.

**John Swinney:** I do not follow the point that Jackie Baillie makes about the commission being proved right.

**Jackie Baillie:** It would take us down a side track but I am happy to talk to the cabinet secretary afterwards—

**John Swinney:** Where comments of that sort are put on the record and I challenge them, it is not appropriate for the point not to be explained.
Jackie Baillie: It can be explained. In relation to LBTT, as you probably know, there are a number of people sitting in larger properties with a particularly significant value who have decided not to sell.

Their behaviour has been a consequence of changes made to LBTT. Whether we agree with that or not, it is happening. That is what the commission pointed to in saying that there was no modelling of behaviour. I hope that that is sufficient explanation.

10:45

John Swinney: I do not think that the evidence bears that point out. We will have much more debate about those particular points. Essentially, the commission judged our forecast to be reasonable, and it must have felt that it was sufficiently clear to be able to offer that in 2015-16.

Jackie Baillie: So, in summary, you would keep putting off finalisation of the budget until you had that forecast, or an agreement that the forecast was reasonable.

John Swinney: I have said nothing of the sort. I said that I have a budget date of 16 December, upon which I have to sign a budget. The veto that the Fiscal Commission has over me lies in the fact that it knows that I have to set out a budget on 16 December—it cannot be delayed. I have to come to some form of agreement with the commission, to its satisfaction. That is the veto that the Fiscal Commission has. There is a budget date a fortnight today, and the commission can look at everything that I have put on the record about the fact that I cannot come before the Parliament without an assessment of reasonableness from the commission.

Jackie Baillie: There is still not a veto in the bill. I am sure that we will debate that further.

I wish to follow up John Mason’s question. John spoke about the Parliament appointing and ministers having a veto. I would chop the end bit off. What is wrong with the Parliament appointing? The Parliament already appoints in a number of areas without ministers having to recommend and it does so in accordance with all the frameworks that have been laid out. Has that been rejected for a particular reason?

John Swinney: The difference lies in the fact that the Government has a particular involvement. The Government has no involvement in some areas of activity with regard to many of the parliamentary appointments that Jackie Baillie talks about, whereas the Fiscal Commission has an integral part to play in the Government’s budget process and it has to verify the estimates of taxation that are made by the Government.

The Government plays an integral part in the process. We have to have the confidence that the people who are put forward for approval by the Parliament have the necessary capability to perform a function that is absolutely material to the budget process.

Jackie Baillie: The Children and Young People’s Commissioner Scotland, for example, has a clear role in commenting on legislation and practice regarding children and young people, which is the preserve of the Government. Why is that substantially different?

John Swinney: The Children and Young People’s Commissioner has a much broader policy perspective, which is not just about the Government. The role of the Fiscal Commission is to examine the Government’s estimates of taxation. It is on that basis that the Government must be confident in the capability of those who are selected and approved by the Parliament to undertake that role.

Jackie Baillie: I do not want to put words in your mouth, but are you in effect saying that you do not think that the Parliament is up to ensuring that the people who are selected would meet the tests that are set out?

John Swinney: Those are most definitely not my words, and they are most definitely not to be put into my mouth. What I am trying to say to the committee is that this is a shared area of activity, where the Government has a legitimate interest in ensuring that technical capability is in place. That is why the Government should be making the nominations for the Parliament to approve.

Jackie Baillie: Let us move on to forecasting, an area that has been touched on by many members of the committee. I think it is the case—I am sure that the cabinet secretary will point it out if I am wrong—that there are no avenues of independent, alternative forecasting in Scotland. We just do not have the institutions that do that, as would be the case elsewhere, notably in Ireland. Does the cabinet secretary think that it is useful for benchmarking purposes to have that kind of basket of different forecasts? If he does not find that useful, could he point to any other fiscal commission anywhere in the world that has a lack of access to alternative forecasting?

John Swinney: I do not have an encyclopaedic knowledge of every other jurisdiction in the world—

Jackie Baillie: Is there not one such commission—anywhere at all—that you can point to?

John Swinney: —so I will not comment on that.

There are institutions in Scotland that look at different areas of public policy and estimation of
the public finances. The Fraser of Allander institute is one such example, as is the institution that Professor David Bell is involved in. I can think of numerous other examples around the academic community where such expertise lies. Of course, some of the members of the Fiscal Commission are appointed to it because of their expertise in the area of fiscal predictive activity.

Jackie Baillie: It is those very experts, some of whom you pointed to, who suggested that having access to a basket of forecasting that is independent would be quite useful for benchmarking purposes. As you cite them, I assume that their evidence has validity, too.

John Swinney: My position is pretty clear—I think that the budget must be predicated on a reliable and robust estimate of what is likely to be generated from the taxes that we levy, and that that must be scrutinised and challenged to the maximum degree. Those are exactly the legislative arrangements that I am putting in place.

Jackie Baillie: I have a final question, for the purpose of clarity, because what is written in legislation does not always mean the same thing to different people. Section 2(3) talks about the commission being able to

>"prepare reports setting out its assessment of the reasonableness of such fiscal factors (other than those mentioned in paragraphs (a) to (d) of subsection (1)) as it considers appropriate."

In layperson’s terms, are you saying that section 2(3) explicitly allows the Fiscal Commission to commission forecasting for benchmarking purposes? In response to a similar question, you referred my colleague Gavin Brown to that subsection.

John Swinney: I think that section 2(3) speaks for itself when it comes to the scope that the commission has to decide of its own free will what reports it wishes to produce. Given the contents of section 6, it would be inappropriate for me to specify what the commission should decide to do under section 2(3).

Jackie Baillie: I am not asking you to instruct the commission to do anything; I am asking you whether section 2(3) confers on the commission the ability to forecast independently, if that is what it wishes to do.

John Swinney: I think that it could probably do that under section 2(3) or under section 2(5).

Jackie Baillie: I am looking for an answer rather than a reference to another bit of the bill, which I have read through.

The Convener: He has given you an answer.

John Swinney: Forgive me, convener—I have just referred the member to sections 2(3) and 2(5), which would provide for exactly what she is talking about.

Jackie Baillie: What I am looking for, for the purpose of clarity, is an indication on the record—it just requires a yes or a no; it is that simple—whether section 2(3) would explicitly allow the Fiscal Commission to forecast for benchmarking purposes.

John Swinney: If Jackie Baillie wants a specific on-the-record comment, I say to her that she would be better off looking at section 2(5), as I have said already.

Jackie Baillie: I have done. Section 2(5) is one line that talks about something different.

John Swinney: Well, that is my answer, convener, and I have given it courteously several times.

Mark McDonald (Aberdeen Donside) (SNP): I have got the impression during the bill process that there seems to be a view afield that the absence of an institute for fiscal studies or similar body outside the sphere of Government has led to a yearning on the part of some people for the SFC to fill that vacuum by producing a forecast that they can look at alongside the work that the Scottish Government produces. Is that a fair reflection of where we are? Would there be any merit in that?

The commission members seemed to suggest that if the commission were to produce forecasts, that would lead to some difficulty in respect of their challenge and scrutiny role, because they would be wedded to those forecasts rather than being able to provide a sober analysis of what the Scottish Government had provided.

John Swinney: There is a fundamental issue about the Fiscal Commission’s purpose. It is not to become an IFS. There may be an appetite for such a body in Scotland, but that is for others to sort out: it is not for me to sort out and it is definitely not for the Scottish Fiscal Commission to undertake such a role. The statutory role is set out clearly to enable the commission to prepare reports on the reasonableness of the forecasts that the Government makes and on which its budget is predicated.

Mark McDonald: Last week, Lady Rice spoke of "forecasting with a capital F and forecasting with a little f"—[Official Report, Finance Committee, 25 November 2015; c 45.]

She said that, although small-scale forecasting would be done to test the robustness of the models that the Scottish Government had produced, that was different from producing the entire forecast that will lie behind the
Government’s budget. Is it a question of terminology and how it is applied, rather than of the role that the Fiscal Commission will undertake of probing the model and ensuring that the figures are reasonable?

**John Swinney:** That is the function that the commission must undertake because the function that Parliament and the public interest require is that we have a robust estimate in which we can place a great deal of confidence. I want the commission’s expertise and capability to be deployed to ensure that that number is the most robust number it can be. If the commission spends its time developing another forecast, I will be left wondering what the right forecast is. I want the commission to challenge our forecasts so that we get to the number upon which Parliament’s budget can most reliably be predicated. I do not understand—this underpins all my evidence to the committee this morning—the point of having another number out there because, when that happens, it creates confusion. It also creates the potential for estimates that others make to damage our public finances and the judgments that we make.

**Mark McDonald:** The bill specifies no term length for commissioners. Will you expand on the reasoning behind that? Staggering the terms so that not all the commissioners serve the same term length from the same starting point has been suggested. Is there a reason why the bill does not specify minimum or maximum term lengths?

**John Swinney:** I said earlier that one of the purposes of independence is to ensure that individuals are able to say what they like and to make inferences as they want without fear of how that might affect their reappointment. I feel that the best way of guaranteeing that is to stagger the length of service of individual members of the commission over time so that new people would be brought in and we could retain continued expertise in the commission. The code of practice for ministerial appointments to public bodies says that no individual should hold public office for longer than eight years, so I suppose that that is a maximum. However, we will work to try to minimise the degree to which individuals’ terms of office do not work in sync in order to ensure that we maintain expertise in the commission.

**Mark McDonald:** Another point about the length of term and reappointment—forgive me, but I cannot remember where the evidence came from—involved discussion around trying to ensure that the electoral cycle does not coincide with appointment periods or interfere with them, in order to ensure that the Fiscal Commission can sit outside the politics of potential future changes of Government. Should it just be taken as read that that approach will be taken or does it need to be underpinned either in the legislation or in the guidance that lies behind it?

**11:00**

**John Swinney:** I am sure that we can organise that in a fashion that does not require that it be put on the face of the bill.

**Richard Baker (North East Scotland) (Lab):** I have two very quick questions. First, there has been some debate about whether the SFC’s report should go to the Government a few days before its publication or on the same day as it goes to everybody else. Do you have any strong views on that?

**John Swinney:** I think that an approach that is consistent with the basis on which we receive reports from Audit Scotland would be appropriate—if memory serves me right, we get them about four days before publication.

**Richard Baker:** So, the Government should get the report about four days before publication.

**John Swinney:** Yes.

**Richard Baker:** For clarification, I take it that you would not expect to have much dialogue with the Fiscal Commission about the content of the report and that it would simply be a matter of the Government receiving it for information.

**John Swinney:** Yes.

**Richard Baker:** I do not want to labour the point about forecasts because it has been debated before, but do you accept that in other countries—for example, Sweden—there are a multiplicity of forecasts, which does not seem to diminish the quality of analysis of the economy, or of debate in Parliament but, rather, seems to enhance it?

**John Swinney:** I certainly acknowledge that different approaches are taken in other countries. I question the value of having several forecasts, because we need to make a judgment based on the most reliable forecast for our public finances.

**Richard Baker:** I shall spare the cabinet secretary from having to go back round the houses on this issue.

**The Convener:** You might, but I will not.

That concludes questions about the Fiscal Commission, but I want to wind up on forecasts, which I did not touch on in my opening questioning because I wanted colleagues to have the opportunity to explore the issue more deeply, which they have done.

I listened carefully to all that you said, cabinet secretary. You made it clear that you do not want “a multiplicity of forecasts” and that there is no point in having another number. However, a key
point that a lot of witnesses have made is that if there is going to be only one number, it should not come from the Scottish Government. For example, the Royal Society of Edinburgh is

"firmly of the view that the SFC should be able to originate its own independent forecasts of the future fiscal revenues" and that

"to fulfill its functions the SFC will need to be able to produce independent forecasts."

The Scottish Property Federation suggested that if the SFC

"is only able to verify Scottish Ministers' assessments then it may be difficult to convince the wider world that it is truly an independent body."

You will recall, Deputy First Minister, that at First Minister's question time, the leader of the Opposition made—in my view—a quite disgraceful slur on the individual integrity of Fiscal Commission members by calling the commission "a pup". Clearly, though, if the Scottish Government is producing forecasts and others—namely, the Fiscal Commission—are commenting on them, we are likely to hear that kind of rhetoric in the future.

Professor McGregor and Professor Swales have said that it

"would seem sensible ... to aim gradually to build internal forecasting/analytical capability"

in the SFC.

Professor MacDonald prefers a similarly evolutionary approach, and believes that the SFC should initially use the Scottish Government's forecasting model rather than seek to develop its own, but should take on responsibility, as its role evolves, for producing official forecasts.

Given the evidence that we have received and the politics around the issue, if there is to be only one forecast I foresee the commission being continually derided by Opposition members as being, in effect, a subset of the Government, irrespective of whether it is or not. Given all that, would it not be better—in the Scottish Government's interests and in the interest of producing robust financial forecasts—if the official forecasting body was the SFC?

**John Swinney:** Let me walk my way through all of this, if I may, convener. The starting point for answering your question lies in the central choice that has been exercised by the Government in the bill. The choice was whether the forecast of the revenues to be raised should be undertaken by the Government or put out to an independent body such as the Fiscal Commission. Who should produce the forecasts and tell the Government what they are?

The Scottish Parliament information centre report on the Scottish Fiscal Commission Bill—I cannot see a date on it—has a very handy graphic that shows the number of countries in which forecasts are originated by an external body. There are three: the United Kingdom, the Netherlands and Belgium. In another column, the purple blocks show all the other countries where an independent fiscal institute assesses the official forecasts. They include Australia, Austria, Canada, Croatia, Denmark, Finland, France, Ireland, Italy, Sweden, Spain, Slovenia, Slovakia, Serbia and the United States—a load of them.

It is evidenced by international judgement that you can go either way on the question—a Government forecast or a forecast that has been farmed out to an independent fiscal institute. The choice of principle that we made on that question is to have a Government forecast that is challenged by an external institute. We then had to see how best we could be confident that that institute has the expertise to challenge the forecast by the Government. We have been over the appointment process—how members are chosen and their skills and capabilities.

Because of the nature of the statute that we have put in place, the Fiscal Commission's purpose is to be absolutely focused on testing to make sure that the forecast is reasonable, because that forecast will go into the budget and our public expenditure will be dependent on it. That should give the public and members of Parliament reassurance that we have recruited capable external opinion to challenge the Government's forecast, and that the commission will, ultimately, be able to say that it does not think that the forecast is reasonable. I cannot be clearer than to say to the committee that, if the Fiscal Commission were to say that it thinks that our forecast is not reasonable, I would have to produce a different forecast.

I am trying to convey to the committee the importance that I attach to having a strong challenge function on what the Government sets out in its tax forecasting proposition.

**The Convener:** I accept that and I am sure that many of my colleagues accept it. Do you not accept, however, from the evidence that I read out to you, that the perception will be somewhat different, regardless of the high standing and integrity of the individuals in the commission, if it comments on the Scottish Government's forecast rather than producing its own forecast as an official forecaster, and that that will be detrimental to how it is perceived outside these four walls? Do you not accept that it would be better for the Scottish Government, for Parliament and for all concerned if the Scottish Fiscal Commission were to produce the forecasts, because that would
mean that there could be no mudslinging claims that the commission is part of the Scottish Government and not independent or, as we heard at FMQs, "a pup"—as unfair as that is?

John Swinney: No. I think that I have given the committee a lot of reassurance on that point. I have gone through it in detail.

The IMF’s written evidence to the committee in October 2015 said:

“There is no need for the SFC to present its own forecasts. The key requirement is that it is able to provide an independent assessment of the official forecasts.”

I would have thought that the International Monetary Fund’s strength of authority would give reassurance in addition to what I have said to the committee this morning.

The Convener: I will allow Jackie Baillie to come in briefly on that point.

Jackie Baillie: We are painting the situation as a decision between two options: either you forecast or you do not. There is a third way—yes, I dare to say that—that would involve enabling the Fiscal Commission to commission forecasting against which to benchmark the Government forecasting.

John Swinney: I have laboured the point considerably; there is nothing to prevent the Fiscal Commission from commissioning forecasts if it wishes to do so. However, with regard to the statute that is to be put in place, it is important that there is a Government forecast that the commission can use its energy and resources to challenge. That will give the public—who, we must remember, depend on our judgments being correct—confidence that the commission’s expertise is being deployed to provide the maximum possible assurance about the reasonableness of the estimate.

The Convener: John Mason wants to come in with a brief comment.

John Mason: Is there a danger that there would be a great deal of duplication and waste of resources, were the SFC to forecast? We are a relatively small country and we have only devolved powers. It seems that some people—I do not know whether you will agree with this, cabinet secretary—just want us to ape the UK and copy the OBR because they are in thrall to what goes on in London. What we want is something different. Ireland is a much better model than London for us to copy.

John Swinney: There is a real danger that there would be duplication and that misconceptions would be created. I can, for example, confidently say that the OBR’s estimate of £560 million to come from land and buildings transaction tax in July is excessive and will not be realised. I do not know what good it serves to have that number floating around out there. Of course, it has been revised down by more than £130 million in the space of four months.

I am trying to convey to the committee that the public finances require rigorous challenge of the number that we produce, because our public expenditure depends on it. The Fiscal Commission will provide the independent authority to enable that challenge to take place.

The Convener: To be fair, the duplication issue was covered by the Chartered Institute of Taxation and the Institute of Chartered Accountants of Scotland, which take the same view.

Mr McDonald, are you wanting to come in with a brief supplementary?

Mark McDonald: I will, if you will be lenient enough, convener.

The Convener: You will be the last one.

Mark McDonald: I wonder whether another point has been overlooked. If we had gone with the OBR estimate at the outset, that would have dictated the block grant adjustment that would have taken place. In other words, if we had gone with a significantly overoptimistic estimate at the beginning of the process, there would have been knock-on consequences for the block grant as well as consequences further on for the public finances in terms of income from LBTT.

John Swinney: Mr McDonald is correct. I am pretty sure that I have the numbers correct in my mind, but I do not have them right in front of me, so I ask the committee to forgive me if I am wrong. The estimate that I had for the devolved taxes to be generated was at that time £461 million. The OBR estimate was £526 million, and the UK Government initially took the view—I was going to say that it was keen, but that is perhaps not fair—that it should go with the OBR estimate for the block grant adjustment.

The former Chief Secretary to the Treasury, Danny Alexander, accepted—to his credit—that we had a potentially valid alternative estimate, so we settled on a block grant adjustment of £494 million, which—if my recollection of the numbers is correct—is mid way between the two numbers. Mr McDonald is absolutely correct: we could have had a much higher block grant adjustment; that is one of the key points. It matters that we put all our resources into trying to get the most reliable estimate possible, because our public expenditure depends on it.

The Convener: I was going to add a further comment, but I will ask just one other question instead. It is on a different subject, which I touched on in my opening questions.
The fiscal framework will set out the role and responsibility of the Fiscal Commission and the OBR with regard to devolved taxes. Has a wider remit been discussed as part of the negotiations on the fiscal framework?

John Swinney: Wider issues could emerge from the fiscal framework, which may have implications for the contents of the Scottish Fiscal Commission Bill.

The Convener: Thank you for answering questions, cabinet secretary.

The cabinet secretary will join us again for the next evidence session. I suspend the meeting briefly to allow for a change of witnesses.

11:16

Meeting suspended.
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Overview of the Bill</td>
<td>2</td>
</tr>
<tr>
<td>Delegated Powers Provisions</td>
<td>5</td>
</tr>
</tbody>
</table>
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.

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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.
Delegated Powers Provisions

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.
1 Scottish Fiscal Commission Bill (as introduced) is available at the following website:  
pdf [Accessed October 2015]

2 Scottish Fiscal Commission Bill Delegated Powers Memorandum is available at the following website:  
http://www.scottish.parliament.uk/S4_Bills/Scottish%20Fiscal%20Commission%20Bill/SPBill78DPMS042 
015.pdf [Accessed October 2015]
Dear Kenneth,

SCOTTISH FISCAL COMMISSION BILL – STAGE 1 REPORT

I welcome the Committee’s support for the general principles of the Scottish Fiscal Commission Bill, as set out in your Stage 1 report. I am grateful to the Committee, and all those who provided evidence at Stage 1, for a detailed consideration of the Bill and underlying policy issues. I would like to share my reflections on the Stage 1 report with the Committee in advance of the Stage 1 debate on Thursday 14 January as I believe there are issues of substance which we will each wish to consider and challenge in the course of that debate.

Many of the Committee’s Stage 1 recommendations relate to the operation of the Commission and how it discharges its scrutiny functions. These are clearly matters for the Commission and over which the Scottish Government rightly has no jurisdiction, so I will not comment on these in my response. I continue to emphasise that the Scottish Government recognises that it is critical to the effectiveness and credibility of the Commission that it is structurally, operationally and visibly independent of Government. Furthermore, the Bill expressly provides that the Commission will not be subject to the direction or control of any member of the Scottish Government in performing its functions.

Forecasting

I note the Committee’s recommendation that the Commission should prepare the official forecasts which underpin the Scottish Budget. I remain firmly of the view that the current policy position, whereby the Commission provides independent scrutiny of forecasts prepared by Scottish Government, maximises transparency and public value in safeguarding the integrity of the forecasts in the Scottish Budget and ensures that Scottish Ministers are properly and democratically accountable to Parliament for those forecasts.
While I recognise that there are multiple options available to us in designing the functions of the Commission, and that stakeholders expressed a range of views on this issue in providing evidence to the Committee at Stage 1, I consider that the Bill as introduced reflects the most effective solution in support of the responsible exercise of the modest tax powers devolved to the Scottish Government.

Under current arrangements, a detailed account of the Scottish 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 all publicly available. This is clearly evidenced by the devolved taxes forecasting methodology paper which we published alongside the 2016-17 Draft Budget\(^1\) and by the Scottish Fiscal Commission’s independent report assessing those methodologies\(^2\). The Commission also published minutes of forecast challenge meetings which it held with my officials as an annex to its report.

It may also be useful to reflect upon how the OBR forecasts for individual taxes are produced – the OBR relies upon HM Revenue and Customs to prepare such forecasts, which are then passed to the OBR for scrutiny and subsequent publication. This form of scrutiny is less transparent than the model which we propose for the Scottish Fiscal Commission as it not clear either how this scrutiny operates or the effect which it has on the final forecasts. Indeed, Edward Troup, Second Permanent Secretary at HMRC, told the Committee in January 2015 that: “although the OBR has been praised for its independence, from our perspective, the process feels very much the same as it was when the Treasury was doing the forecasting”.

Should the Commission prepare official forecasts, the independent scrutiny function which we propose would be lost and there would be no formal institutional arrangements to provide timely assurance over the reasonableness of each forecast produced by the Commission. It is not clear how the Parliament, the Government or the public would be assured as to the robustness of forecasts which are critical to determining the level of resources available for allocation in the Scottish Budget and to the responsible management of Scotland’s public finances.

Members of the Scottish Fiscal Commission raised similar concerns in evidence to the Committee on 25 November 2015. I have included some relevant extracts from the Official Report below.

Lady Susan Rice CBE – “We think that there needs to be one producer and one assessor of the official forecast. If you were to turn to the Fiscal Commission and say ‘Actually, we’ve changed our minds. You do the official forecast’, we would need to be assessed by someone… If we did our own forecast and then needed to defend it, we, too, might be biased.”

Professor Andrew Hughes Hallett – “Then there is the question of second opinions. We are doing a kind of second-opinion exercise – the Government will produce its forecasts and we will provide a second opinion… Doing it this way round gives us the freedom to compare the Government’s forecasts with other forecasts… I think that being asked to do the official forecasts would seriously compromise our independence.”

\(^1\) [http://www.gov.scot/Publications/2015/12/7589](http://www.gov.scot/Publications/2015/12/7589)

\(^2\) [http://www.fiscal.scot/media/media_437935_en.pdf](http://www.fiscal.scot/media/media_437935_en.pdf)
I therefore question whether the alternative approach put forward by the Committee would meet a public interest test, and I would welcome the Committee’s observations on this point.

Should the Commission prepare the official forecasts, this would inevitably lead to duplication of resources and effort. As I have previously set out to Committee, the Scottish Government would need to retain in-house forecasting expertise to support policy development and to support budget planning and management. The resources required by the Commission would increase, without any commensurate decrease in the forecasting resource required within the Scottish Government.

I believe that our policy position is supported by international evidence. As I and others have previously highlighted to the Committee, both the OECD and the International Monetary Fund (IMF) recognise that the precise form and functions of an IFI should be determined by local needs and the fiscal and institutional environment. The SPICe briefing on the Bill (SB 15/67) notes that it is “usually the Ministry of Finance that produces official fiscal forecasts, while other publicly funded agencies, including IFIs, prepare alternative fiscal forecasts” and demonstrated that of 23 IFIs in operation in OECD countries, only three have a role in preparing official forecasts with the remaining 20 assessing official forecasts, which may include the preparation of alternative forecasts.

The IMF provided written evidence to the Committee which made explicit that “there is no need for the SFC to present its own forecasts” and Robert Chote, Chairman of the OBR, told the Committee on 4 November 2015 that “we are relatively unusual in doing it ourselves and providing the official forecast. The Netherlands is the only other obvious example of that approach.”

In summary, I am not persuaded by the case made in the Stage 1 report that the Commission should prepare official tax forecasts. I would welcome further clarification from the Committee as to the basis for this position, including responses to the specific concerns which I have outlined above, and look forward to debating these issues later in the week.

Alternative forecasts

I am aware that the Committee has shown considerable interest in the issue as to whether the Commission is able to prepare alternative forecasts on items within its remit.

As I first set out in my response of 28 August 2015 to the Committee’s report on Scotland’s Fiscal Framework, it remains open to the Commission to prepare alternative forecasts or assumptions to support its scrutiny of the government’s forecasts. I provided assurance to the Committee on 2 December that the Bill as drafted does not preclude the Commission from producing such alternative forecasts. The Commission is empowered to determine how it chooses to assess the reasonableness of our forecasts, which may include the preparation of alternative forecasts.

Independence

The Scottish Government is committed to legislating for a Scottish Fiscal Commission which is structurally and operationally independent of Scottish Ministers.

I welcome the Committee’s suggestions as to how the operational independence of the Commission could be strengthened. These recommendations generally pertain to non-legislative operational issues and are matters which I hope the Commission will reflect carefully on and take forward.

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Where the responsibility for action falls to the Scottish Government, I will seek to take further actions to reassure Parliament that I am doing all that I can to promote the independence of the Commission. In particular, I would be willing to consider introducing an amendment at Stage 2 to require the SG and the Commission to agree and publish a protocol detailing the scrutiny process, respective responsibilities and procedures for handling the draft report and to regularly review that protocol. While I have reservations about the public interest which would be served by publishing multiple forecasts, I am willing to revisit the Committee’s recommendation that both the original and revised forecast should be published where changes are made to Scottish Government forecasts following Commission scrutiny. I have also asked my officials to consider further ways in which we could strengthen the transparency of administrative arrangements supporting the relationship and interactions between the Scottish Government and the Commission.

I am committed to take action to improve the robustness of our forecasting methodologies in response to Commission scrutiny and welcome the Committee’s recommendation that the Scottish Government should in future provide a written response to recommendations made by the Commission within four weeks of the publication of the Draft Budget.

Appointments

I welcome the Committee’s support for the appointment process provided for in the Bill.

I accept the Committee’s recommendations that the Bill should be amended to include term lengths and to allow members to serve two consecutive terms of appointment of no longer than five years each. I plan to bring forward associated amendments at Stage 2.

I am giving careful consideration to the Committee’s recommendation that the exercise of the power to alter the number of Commission members by regulations should first be agreed by Parliament, having been considered by the Finance Committee, as this may have wider implications for other bodies. Section 11 provides that the Commission should have at least 3 and no more than 5 members, one of whom is to serve as Chair. The Bill provides that regulations to change the size of the Commission would be subject to negative procedure. This is in line with legislative provisions for membership of other public bodies, including provisions in the Crofting Reform (Scotland) Act 2010, Police and Fire Reform (Scotland) Act 2012 and Historic Environment Scotland Act 2014.

UK institutions

I welcome the Committee’s recognition of the importance of the Commission having appropriate access to relevant information held by UK agencies and that this should be provided for on a statutory basis. This matter is beyond devolved competence, and would require changes to UK legislation. I am already in discussions with UK Government counterparts on this issue of statutory access to information and will continue to press for the Commission and for Scottish Ministers to have the appropriate access to data which is relevant for forecasting, scrutiny and policy formulation. This will build upon the requirements already set out in the Memorandum of Understanding agreed between HMRC and the Scottish Government concerning the Scottish rate of income tax (SRIT) which states that “HMRC must provide information to SG that will enable Scottish Ministers and officials to discharge their duties in respect of Parliamentary accountability, scrutiny, rate setting and forecasting in relation to SRIT”.

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Additional functions

The initial statutory remit of the Commission will be reviewed and expanded to reflect further powers devolved to the Scottish Parliament, including those provided for in the Scotland Bill currently proceeding through Westminster. I plan to bring forward specific proposals for consultation and parliamentary scrutiny in due course, assuming enactment of the Scotland Bill and agreement of the associated fiscal framework.

While I note the Committee’s recommendation that the Bill should be amended to add additional functions to include assessing adherence to fiscal rules and an assessment of the long term sustainability of Scotland’s devolved public finances, I believe that these issues would most appropriately be revisited when we consider how the remit of the Commission should be expanded to reflect the Smith powers. I remain of the view that assessment of the long term sustainability of the public finances is primarily a role for elected Members of the Scottish Parliament, who should hold Ministers directly to account for the robustness of our financial judgements.

Financial memorandum

I note the Committee’s recommendation that the resources of the Commission should be proportionate to its remit and that the Committee does not anticipate that the full budget will be required on the basis of the functions proposed in the Bill. The resource estimates set out in the financial memorandum were developed in consultation with the Commission, and intended to reflect our collective best estimate of the resources which would be required by the Commission to both discharge its statutory functions, and to fulfil the governance and statutory obligations of a Scottish public body.

As I set out to Committee on 2 December 2015, I consider the resources proposed for 2016-17 to be of the order of magnitude required for the Commission to deliver its non-statutory functions and to transition to a non-ministerial department with effect from 1 April 2017. However, I have undertaken to look carefully again at the financial estimates for 2017-18 and beyond as the Commission’s transition programme is delivered.

As noted above, the resources available to the Commission would need to be reviewed and may be increased substantially if the Commission were to produce official forecasts.

I trust that this response is helpful to the Committee. I look forward to debating these issues on Thursday.

I am copying this letter to Lady Susan Rice CBE, Chair of the Scottish Fiscal Commission.

JOHN SWINNEY

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
EXTRACTS FROM THE MINUTES OF PROCEEDINGS
Parliamentary Year 5, No. 69 Session 4
Meeting of the Parliament
Thursday 14 January 2016

Note: (DT) signifies a decision taken at Decision Time.

**Scottish Fiscal Commission Bill:** The Minister for Parliamentary Business (Joe FitzPatrick) moved S4M-15303—That the Parliament agrees to the general principles of the Scottish Fiscal Commission Bill.

After debate, the motion was agreed to (DT).

**Scottish Fiscal Commission Bill: Financial Resolution:** The Minister for Parliamentary Business (Joe FitzPatrick) moved S4M-14626—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Scottish Fiscal Commission Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).

P E Grice
Clerk of the Parliament
14 January 2016
The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-15303, in the name of John Swinney, on the Scottish Fiscal Commission Bill.

15:37

The Minister for Parliamentary Business (Joe FitzPatrick): The Deputy First Minister is unable to participate in the debate, as he is attending a family funeral. Therefore, I will be representing the Scottish Government in the debate.

The Scottish Fiscal Commission Bill will secure a permanent role for the commission in strengthening the operation of Scotland’s devolved fiscal framework. The bill delivers a long-standing commitment from the Government to give the Scottish Fiscal Commission a basis in statute and further demonstrates our commitment to fiscal discipline.

The non-statutory commission has been in operation since June 2014, with a core function of scrutinising and reporting on the Scottish Government’s forecasts of tax revenues that support the Scottish budget. The bill provides that that should remain the core function of the statutory commission. I will return to that issue later.

The commission’s core purpose should be to maximise the integrity of the forecasts and estimates that are prepared by the Scottish ministers to underpin the Scottish budget. By bringing independent scrutiny to bear on those forecasts, the commission provides Parliament and the public with independent assurances of the robustness of revenue and borrowing estimates, which, together with the block grant, determine the total resources that are available to ministers to deploy in the budget. As such, the commission’s work is central to the integrity of the Scottish budget process.

The bill is a culmination of years of work, which included inquiries that were conducted by the Finance Committee and a Government consultation. We are grateful to all those who have taken the time to contribute evidence, which has helped to shape the development and refinement of our policy. In particular, I thank the committee and all those who provided evidence at stage 1 for their detailed consideration of the bill and the underlying policy issues.

The committee made a number of recommendations in its stage 1 report, and the Deputy First Minister has provided a detailed written response to it on the legislative and
Government policy issues that it raised. The committee also made a number of recommendations that pertain to the operation of the commission and how it discharges its functions. Those are matters for the commission, over which the Government rightly has no jurisdiction. My remarks will therefore focus on the issues for which the Scottish Government has responsibility.

The Scottish Government remains of the view that Scottish ministers should be responsible for preparing official tax revenue forecasts. The position that is set out in the bill is that the commission will independently assess and report on those forecasts, maximise the transparency of the forecasting process and ensure that Scottish ministers are properly and democratically accountable to Parliament for those forecasts. The Government believes that the bill, as introduced, reflects the most effective solution in support of the responsible exercise of the modest tax powers devolved to this Parliament.

Under current arrangements, a detailed account of the Scottish Government’s forecasting approach, the findings of an independent evaluation of that approach and the changes that the Government has made in response to those findings are all publicly available. The comprehensive reports that were published by the Scottish Government and the Scottish Fiscal Commission alongside the 2016-17 draft budget are evidence of that. I understand that the committee will have finished its deliberations prior to those documents being available.

The commission rightly challenges the Government to ensure that our forecasting methodologies are as robust as they can be. Any observer of the budget process or reader of the Scottish Fiscal Commission’s report on our forecasts would see that that is exactly what the commission does. We are committed to acting on the commission’s recommendations and Parliament can hold us to account for our response to the issues that the commission raises.

The independent checking function would be lost if the commission were to prepare official forecasts. There would be no formal institutional arrangements to provide timely assurances of the reasonableness of each forecast produced by the commission. It is not clear how Parliament, the Government or the public would be assured about the robustness of forecasts that are critical to determining the level of resource that is available for allocation in the Scottish budget and to the responsible management of Scotland’s public finances.

The committee’s recommendation would lead to duplication of effort and resources—a point recognised by the Institute of Chartered Accountants of Scotland—as the Scottish Government would need to retain in-house forecasting expertise. The resources required by the commission would increase, without any commensurate decrease in the forecasting resource required within the Scottish Government. Our policy position is supported by international evidence, including written evidence that the International Monetary Fund submitted to the committee at stage 1.

**Jackie Baillie (Dumbarton) (Lab):** I am sure that the minister will be aware of the Organisation for Economic Co-operation and Development principles that apply to financial institutions of this nature. It strikes me that countries that do forecasting outwith Government manage well. Would the minister give us an example of one that does not work, which would support the Government’s position?

**Joe FitzPatrick:** That brings me to my next point. The Scottish Parliament information centre briefing on the bill demonstrates that, of 23 independent fiscal institutions in OECD countries, only three have a role in preparing official forecasts. The remaining 20 assess official forecasts. The United Kingdom Office for Budget Responsibility is clearly in the minority among fiscal institutions throughout the world in producing official forecasts.

**John Mason (Glasgow Shettleston) (SNP):** We heard yesterday at the Finance Committee that, although the OBR speaks to the Department for Work and Pensions and HM Revenue and Customs, they are not allowed to share information. Does the minister share my surprise about that very disjointed process at the UK level?

**Joe FitzPatrick:** Everyone across the UK should thank the Finance Committee for the light that it has shone on the way in which the OBR deliberates. There are some good quotes from HMRC about how its relationship with the OBR is very similar to its previous relationship. What is clear is that there is a lack of transparency in that process south of the border. Of course, there is no question but that it is possible to arrange the process that way round, but the evidence that is clearly set out in the SPICe document is that countries whose independent fiscal institution produces the official fiscal forecast are very much in the minority.

Nothing in the bill prohibits the commission producing alternative forecasts. It is solely for the commission to decide whether it considers that the production of such forecasts would be desirable to support its ability to assess the reasonableness of the Government’s forecasts, and that is the way it should be. I look forward to hearing members’ points on that matter.
I see that time has flown.

The Scottish Government recognises that it is critical to the effectiveness and credibility of the commission that it is structurally, operationally and visibly independent of Government. We have been explicit in the provisions in the bill that the commission will not be subject to the direction or control of any member of the Scottish Government. However, in his response to the stage 1 report, the Deputy First Minister undertook to take further action to reassure Parliament that he is doing all that he can to promote the independence of the commission. He will consider legislative and administrative changes to strengthen the transparency of the operation of the relationship and interactions between the Government and the commission.

The Government welcomes the committee’s support for the appointment process that is provided for in the bill. The Deputy First Minister has already intimated to the committee that the Government will bring forward amendments to the bill at stage 2 to give effect to recommendations to include term lengths in the bill and to allow members to serve two consecutive terms of appointment of no longer than five years each, as recommended by the committee.

The committee raised the issue of the commission’s remit. We recognise that the process of devolution is on-going, with the Scotland Bill going through Westminster and an associated fiscal framework being negotiated. That is why we have provided that the functions of the commission may be expanded in future by regulations, following consultation with the commission and with the express approval of Parliament.

The committee talked about two areas in particular. It suggested that the commission be given the functions of assessing adherence to fiscal rules and assessing the long-term sustainability of devolved public finances. Those issues would most appropriately be revisited following the devolution of further powers. However, it is very much the view of the Government that assessment of the sustainability of public finances is primarily a role for elected members of the Scottish Parliament, who should hold ministers directly to account for the robustness of our financial judgments.

Taken together, the provisions in the bill and the resourcing proposals in the financial memorandum will create a statutory commission that is well equipped to assure the robustness of the tax forecasts that underpin the Scottish budget.

The Government remains of the view that our approach—whereby the commission independently assesses and reviews official forecasts that are prepared by Scottish ministers—maximises transparency and delivers public value by offering the strongest safeguard over the robustness of the forecasts that underpin the Scottish budget. We are not persuaded by the committee’s case, but we will to listen to all the points that are made today. I look forward to hearing members’ views on those and other issues.

I move,

That the Parliament agrees to the general principles of the Scottish Fiscal Commission Bill.

15:48

Kenneth Gibson (Cunninghame North) (SNP): I am pleased to speak in this debate on the Scottish Fiscal Commission Bill, and I want to highlight some key areas that the Finance Committee considered during its scrutiny of the stage 1 evidence.

The committee has taken a keen interest in the development of the Scottish Fiscal Commission for several years now and published a report on proposals for its creation in February 2014. The committee welcomes the Scottish Government’s willingness to engage with the proposals that we put forward and we support the general principles of the bill. However, based on the extensive evidence that we received—including an excellent piece of research that we commissioned from Ian Lienert, an independent consultant in public financial management—there are some fundamental issues on which we disagree with the Government. The committee also learned a lot from member visits to the Swedish and Irish independent fiscal bodies, and I want to thank everyone who supported us in our important work on the issue.

The most common theme to emerge in evidence from across the board was the importance of the commission’s independence from Government—not only that it is independent but that it is seen to be so; the minister alluded to that just a few moments ago. The current non-statutory commission’s approach has been described as “one of enquiry and challenge, followed by response, followed by further enquiry and suggested improvements.”

The bill seeks to put that role on a statutory basis and to enable “the Commission to exert significant influence over the forecasts which underpin the Scottish Draft Budget”.

In evidence, witnesses spoke of the trade-off between exerting influence on forecasts and providing an independent assessment of them. That, in the eyes of the committee, was perhaps the most significant issue to arise during our scrutiny of the bill at stage 1.
The International Monetary Fund, for example, noted that, although early intervention would give the SFC greater influence over the forecasts in the short term, it would

“involve some degree of ownership, which would reduce its independence over the medium term.”

According to Ian Lienert, that position was undesirable as it could change the commission from being an independent assessor of the forecasts to being an adviser to the Government. Questions were also raised in evidence about the timing of the publication of the SFC’s report on the draft budget. The bill requires it to be published on the same day as the draft budget, but concerns were raised that that too could be seen as undermining the SFC’s independence.

In order to address such concerns, the committee recommended that a formal memorandum of understanding between the commission and the Government, setting out agreed processes and timings, should be published. I am pleased that the Government has agreed to consider amending the bill at stage 2 to require both parties to agree and publish such a protocol.

The majority of witnesses from whom we heard expressed their view that the commission should produce its own forecasts, with some suggesting that they should constitute the official ones and others that they should be produced purely for comparative purposes. Yet others were of the view that having more than one set of forecasts would lead to a duplication of effort and add little value to the annual budget process, as the minister mentioned.

The model that is proposed in the bill depends on a high level of behind-the-scenes interaction between the commission and the Government. Indeed, the SFC’s report on the draft budget helpfully provides minutes of the challenge meetings that took place between the commission and Government staff prior to its publication. Those minutes show that provisional forecasts for residential land and buildings transaction tax were considered in a joint meeting on 27 August before an uprated provisional forecast was considered on 23 September. Further provisional forecasts were then considered on 20 November. The minutes from that meeting confirm that the Government revised its forecasts

“following comments made by the Commission in the August 27th challenge meeting.”

The committee believes that the commission needs to demonstrate how its role in exerting significant influence on the Scottish Government’s forecasts can be combined with its role as an independent assessor. In particular, there must be greater clarity regarding how the commission works in practice. For example, the SFC told us that its role was to provide a challenge function early in the process and that it does not look at numbers and outputs. It is not clear how that fits with the SFC considering and commenting on a series of provisional forecasts for residential land and buildings transaction tax between August and November.

The Deputy First Minister also explained to the committee that he would reach agreement with the commission on the forecast methodology prior to the production of the official forecasts. The commission told us that it is up to the Scottish Government whether it takes on board its suggestions or not, and at the end of the day it is the Government’s choice. It is not clear, therefore, whether the commission is being asked to agree the provisional forecasts and the methodology in advance of the production of the official forecasts.

The committee agrees with the OECD that there is a need for full transparency in this work. At present, no information is provided on the extent to which the forecasts were changed following the challenge meetings. The committee recognises that there needs to be some interaction between the commission and the Scottish Government. However, in the other models that we looked at, that is done primarily to share technical information, not to seek agreement on methods or to consider provisional forecasts. It is not clear to the committee how that role can be combined with the commission’s role as an independent assessor. The committee therefore recommends that, to ensure that the commission is seen to be independent, it should produce the official forecasts.

The committee believes that giving the commission ownership of the forecasts in this way addresses many of the concerns raised in relation to the perception of independence. If the commission does not produce the official forecasts, those concerns could remain, even though the committee accepts that the SFC is independent of Government.

The IMF raised concerns about the role of the commission in influencing the forecasts prior to publication. Others disagree. An argument against the proposal, which we have already heard, is that another independent body would have to scrutinise the commission’s official forecasts. It is not clear why, given that the committee heard that the most significant reason for establishing any fiscal commission is to provide reassurance that the forecasts will not be subject to any optimism bias. Full transparency in how the commission arrives at the forecasts is needed, and the Parliament and the Finance Committee in particular will have a role in holding it to account if the forecasts are off the mark.
I have been unable to deal with many of the report’s sections in the short time available; I hope that colleagues will cover some of them in the rest of the debate. In particular, the committee recommends that the bill should be amended to widen the commission’s functions to include assessing the Government’s performance against its fiscal rules and an assessment of the long-term sustainability of the public finances. I look forward to hearing colleagues’ view on that and other issues in our report as the debate progresses.

15:55

Jackie Baillie (Dumbarton) (Lab): I am grateful for the opportunity to speak in the debate on the Scottish Fiscal Commission, and commend the Finance Committee, which I have recently joined, the clerks and SPICe for all their work.

About one year ago, Scottish Labour set out its plans for and thinking on a Scottish office of budget responsibility: a truly independent body, with teeth, to ensure that we have greater transparency and scrutiny of Scotland’s public finances. The Finance Committee undertook a substantial inquiry, which has helped thinking in this area. I commend Kenny Gibson’s speech to the chamber. I am sure that he will not hear me say that that often, but I genuinely mean it.

I know that I keep saying this, but it is an exciting time in Scottish politics. We have substantial new powers coming over taxation and welfare, first from the Scotland Act 2012 and now from the Smith commission, whose recommendations are contained in the Scotland Bill 2015. No longer will we just spend what someone gives us, but we are charged with raising that spend. That brings considerable new responsibility. Taking away from ministers responsibility for being honest with the Scottish people about what the economy’s future holds and placing it in the hands of experts free of political manipulation is the right thing to do. That applies to Governments of all colours.

With the new powers coming, we need to know that a watchdog is holding ministers to account. The need for independent, reliable and impartial economic forecasting and analysis has never been more important.

John Mason: I am interested in the member’s use of the word “watchdog”. A watchdog does not do the work itself; rather, it watches someone else doing it. Does she mean to use the word “watchdog”? Does she not think that there would be a cost involved if we were to have both the Government and the SFC doing the forecasting?

Jackie Baillie: It sounded as though that was Mr Mason’s conversion to the commission doing the forecasting. If that is so, I very much welcome that.

I will look at the context today, because that is important. I heard on the radio this morning that, for the first time in more than a decade, oil is below $30 a barrel, with all the associated negative consequences for our economy, as demonstrated by the gross domestic product figures that were released yesterday. Growth is effectively flat. We are increasingly diverging from the UK, whose growth is better than ours.

Of course, only 18 months ago the Scottish Government’s Oil and Gas Analytical Bulletin estimated oil at $113 a barrel. Perhaps we might not have foreseen what was to come, but an independent body that does our forecasting is likely to enjoy much more confidence than the Government has.

When we called for a Scottish OBR, the existing Fiscal Commission had a limited remit. It had no role in producing forecasts, it was underresourced and the finance secretary appointed all three members to serve on it—indeed, two served on the Council of Economic Advisers. However, one cannot be an adviser and provide independent scrutiny at the same time.

I am pleased to say that much of that position has changed and will change further. I welcome the bill to give the Scottish Fiscal Commission a statutory footing. The Finance Committee’s report gives a considered view on where the bill needs to be strengthened, and I would urge the Government to listen.

I will touch on two areas. First is the question of independence; second is the issue of who should do the forecasting.

Independence from Government is essential for the Fiscal Commission if it is to have any credibility, yet it will interact regularly with Government officials—

Chic Brodie (South Scotland) (SNP): Will the member take an intervention?

Jackie Baillie: Let me make some progress.

The commission will interact regularly with Government officials and ministers in order to do its job. Witnesses who gave evidence to the committee stressed that the way to overcome any perception of bias is to be completely open and transparent. Discussions should be published, disputes should be in the public domain and outcomes should be shared. Where the commission and the Government disagree, we should know about it, and we should know what is being done to resolve the disagreement.
Joe FitzPatrick: Has Jackie Baillie read the Fiscal Commission’s report on the draft budget 2016-17?

Jackie Baillie: Indeed I have, and if the minister had read the previous report he would know that the commission keeps asking for information about behavioural forecasting in relation to LBTT and has yet to receive that information. I invite him to read last year’s report and this year’s report, and then come to a conclusion about what is going on.

Forecasting is not an exact science—I wish that it were—so there will be differences in approach, but we should not be afraid to test them to arrive at the best. Governance arrangements also matter for the perceived independence of the Fiscal Commission, so the mechanism for appointment needs to command confidence. There must never be a circumstance in which a commissioner acts as an adviser to the Government, as that would conflict directly with the commissioner’s role as scrutineer. That needs to be made crystal clear.

Forecasting is not separate from the discussion about independence. The Finance Committee took a considerable volume of evidence on that point, both in its original work on Scotland’s fiscal framework and in its scrutiny of the bill. Many witnesses expressed a clear wish that the commission should undertake forecasting. There was a strong level of support for that among experts in the field, including from many notable economists and the Royal Society of Edinburgh.

Joe FitzPatrick: Will the member take an intervention?

Jackie Baillie: No—I really am running out of time.

We—including the minister—would be wise to listen to the views of those experts. They believe that the Scottish Fiscal Commission should be able to develop its own framework of analysis, data sources and methodology and to originate its own independent forecasts. The Finance Committee agrees, but regrettably the Scottish Government does not yet agree. I respectfully ask the Government to think again.

Frankly, the question of who challenges the commission is complete nonsense. Parliament, Government and external experts will all fulfil that role, so I respectfully ask the Government to think again. When we look at the OECD’s recommended principles for financial institutions and at examples around the world, we see that the Scottish Government is much too limited in its approach to the Fiscal Commission. We should seek to be the best.

Scotland is on the verge of gaining substantial new powers over taxation and welfare, and with new powers come new responsibilities. We should be open and transparent so that the people of Scotland have confidence in the stewardship of the nation’s finances. To do that, we need a truly independent body to provide economic analysis and forecasting that will scrutinise Government, whatever colour that Government might be.

Gavin Brown (Lothian) (Con): I, too, thank the clerks, witnesses, experts and SPICe for all their efforts in helping us to scrutinise the bill. I express personal gratitude—at the risk of hindering his career—to the convener, Kenneth Gibson, who in my opinion has shown personal leadership on this particular issue.

We welcome the formation of the Scottish Fiscal Commission. It is critical that we have such a commission, and it will become more critical with each year that passes, which is why it is so vital that we get it right first time round. The bill as it stands is inadequate and does little but put into statute the Fiscal Commission that we currently have. That will not be enough for next year and will be nowhere near adequate for future years.

I will focus on the most glaring weaknesses in the bill. First, the Fiscal Commission has been given the job of simply assessing the reasonableness of the Scottish ministers’ forecasts. That is all: it must assess the reasonableness and, ultimately, decide whether the forecasts are reasonable or not. Most of the experts who were asked about that made it very clear that being reasonable is an extremely low threshold, and it is difficult to find examples of circumstances in which forecasts would be unreasonable.

Indeed, that was confirmed last week when we spoke to the Fiscal Commission. I asked it whether, given that the prediction for the amount from the devolved taxes next year is £671 million, it could tell me approximately what sort of number below and above that figure would mean that a forecast could be classed as being unreasonable. The Fiscal Commission told me that it was impossible to do that. So, in the current format, it is impossible for the Fiscal Commission, which consists of extremely gifted and experienced individuals, to tell me what would be an unreasonable number in that regard.

Joe FitzPatrick: Will the member take an intervention?

Gavin Brown: Perhaps Mr Fitzpatrick will tell me what is an unreasonable number—we live in hope.

Joe FitzPatrick: In the Fiscal Commission’s reports on last year’s budget, it made it clear to the
Deputy First Minister that it thought that his predictions for non-domestic rates income were buoyant, and the Government then changed those predictions, so the member can see how reasonableness works in real life.

Gavin Brown: The minister would have been better to stay away from that example, because it contradicts what he said in his opening speech and what the Deputy First Minister said to us. We were told by the Deputy First Minister that changes to the forecasts would be publicly available, but that simply is not true. There was a dispute last year, but we do not know what the initial forecast for non-domestic rates was and, a year later, we do not know the magnitude of the change as a consequence of that disagreement; we were presented only with the final forecast. So, the minister’s own words make it clear that the changes to the forecasts are not made publicly available. Again, that is one of our problems with the bill as it stands.

On reasonableness, there is a low threshold. The Fiscal Commission also made it clear in writing to the committee that it looks not at the final numbers—the outputs—but purely at the methodology.

The second problem is that the minister has tried to suggest that the committee’s position of wanting the Fiscal Commission to do the forecasting is the outlier. However, that is not correct either, because the true outlier is the commission proposed by the bill.

Some fiscal institutes do official forecasts, some prepare their own unofficial forecasts and some rely on a number of different forecasts in order to reach their view. We would have the only fiscal commission on the planet that would rely solely on the official Government forecasts when looking at what we are likely to bring in. I could not find another example of such a fiscal commission. When I asked the Government for such examples, I was told that Sweden and Ireland were the examples to follow. However, we went to Sweden and found that that was incorrect, because the institute in Sweden examines at least six forecasts when deciding how much is likely to be brought in. Other committee members went to Ireland and found that the statement about the example there was not true either, because the Irish fiscal institute prepares not the official forecast but its own forecasts.

There are glaring weaknesses in the bill as it stands. On top of that, there is the issue of the lack of transparency. Okay, the Fiscal Commission will produce a report, but it was made clear to us by the Deputy First Minister himself that any disagreements between the SFC and the Scottish Government about numbers would remain private. The Scottish Government said that it would refuse to publish any earlier figures that show a disparity and any figures that explain in numerical terms what changes have been made. The Government wanted to show us only the final forecast and went as far as saying that it would try to prevent, if it could, the SFC from publishing of its own accord details of disagreements over numbers.

Under the bill, therefore, we would end up with only a certificate of reasonableness from the Scottish Fiscal Commission that we could not look into and examine carefully. That is why the committee reached the position of welcoming the bill and supporting it at stage 1 but stating that huge changes need to be made to it at stages 2 and 3.

That is the committee’s view on the bill, and I look forward to hearing the rest of the debate.

The Deputy Presiding Officer: We now move to the open debate. I call Chic Brodie, to be followed by Dr Richard Simpson. Four minutes, please.

16:09

Chic Brodie (South Scotland) (SNP): Thank you, Presiding Officer—although I confess that I do not know how to compress into a four-minute speech the importance of the creation on a statutory basis—as Kenneth Gibson pointed out—of the independent Scottish Fiscal Commission to review Scotland’s proposed tax and borrowing powers and, indeed, the budget. However, I will try to do that.

This subject is a staging post in the journey that we are on. That journey already has the signposts of the additional tax powers that we have now and those that we know will come.

The Scottish Fiscal Commission will sit easily alongside what will, I believe, eventually be a Scottish treasury—in an independent Scotland—that interacts with the Government and provides assessment but does not manage the forecasting process. The oversight of budgets and financial forecasting is a reflection on how our country’s fiscal process, rules and framework will work in its relationships—initially with the United Kingdom. However, as more and more financial powers are devolved the function will become even more critical, as we take overall control of the Scottish financial and fiscal landscape.

What is just as critical in the interim and final stages will be the commission’s secured independence from Government. I was interested to hear Mr Brown talk about two countries, one of which was Sweden. If he had read the independent consultant’s report, he would have found that Sweden does not have an independent fiscal institution.
It is inconceivable to think anything other than that the demand for purity in oversight of financial rules, processes and forecasting, and a robust relationship between that oversight and our overall economic strategy, are paramount—as are the methodology and analytical professionalism. I cannot help but draw a comparison between that and what Ms Baillie said about the UK OBR. She will know that, in the 34 OECD countries, the OBR is one of eight such offices that are under the control of the Government.

Jackie Baillie also mentioned the oil forecast, which the OBR was responsible for producing for the UK budget.

Jackie Baillie: Will Chic Brodie give way on that point?

Chic Brodie: No, I will not. I have only four minutes.

The OBR made a detailed projection of economic performance parameters, including the oil and gas outlook, as the basis for the Chancellor of the Exchequer’s autumn statement. That was all changed within seven weeks and the UK gross domestic product forecast was changed downwards. The UK balance of payments was wrong, as was the forecast of UK borrowing. All that lends credence to what Alistair Darling said in 2010 about the OBR being a wing of the Tory party. Those forecasts might have had a significant impact on the Scottish fiscal and economic outlook; such forecasts destroy confidence.

Let us consider the statement in the OBR’s “Economic and fiscal outlook—November 2015”. It said:

“We published a methodology note in March 2012 which described how we planned to forecast these Scottish tax receipts ... In particular, the macroeconomic data that we would need to produce a Scottish macroeconomic forecast and economic determinants were generally not available at a Scottish level ... That remains the case.”

The OBR is producing a forecast that impacts on Scotland. It continues:

“We are therefore not able to produce a Scottish macroeconomic forecast to drive the Scottish tax forecast.”

That was November 2015—two months ago—and it is still the case.

Therein lies the reason for having a commission that is independent of Government, that is qualified, experienced and robust, and is underpinned by a clearly defined fiscal process and framework. The German Länder can do it, the Belgian High Council of Finance can do it and the Irish Fiscal Advisory Council can do it. So can we.

Independent scrutiny, forecasting, fiscal projections, and setting the fiscal rules are all key foundations of what will be a strong Scottish economy.

16:13

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I have read the Finance Committee’s report and think that it is one of the best that I have read. I also thought that the convener’s speech got to the nub of the problem, although he said that there are other issues. Chic Brodie’s speech illustrated the point that forecasting is an inexact science. We all know that, and we know that there are some areas in public life in which duplication is appropriate. In this area, such duplication and understanding of the differences between forecasts are fundamental to the Parliament’s understanding.

I welcome some aspects of John Swinney’s response to the committee; I accept and welcome the five-yearly independent review, as I welcome the fact that we are going to get an annual report from the SFC.

However, the Government will endanger its own creation by giving the SFC a greater advisory role. Although that could be seen in the short term as being okay, it could also, as the convener pointed out, damage the independence of the commission. If we are to have confidence in our new situation, with our new taxation powers, that independence is absolutely important.

John Mason: Does Richard Simpson accept that Audit Scotland, which gives advice, is independent?

Dr Simpson: Yes—but Audit Scotland’s function is somewhat different. It does not forecast; it scrutinises in retrospect, which is quite different.

The Finance Committee’s report is useful in that it seeks clarity on the functions of scrutiny through a memorandum of understanding. Some of the issues, such as agreement to the methodology, might be clarified by that. There can be differences between methodologies because econometrics is not a precise science. Other issues include assessment of the forecasting methods, testing of the suggested numbers and propositions, commentary on initial assumptions and forecasts, and assessment of the reasonableness of the forecasts and any revised forecasts. Even that duplication does not give me the comfort that I would like, because “reasonableness” is a fairly low threshold, as a Conservative colleague indicated.

One of the biggest problems that we have had throughout my time in Parliament has been that we have looked only one year ahead; there has been a lack of looking forward and of long-term
strategies. For example, although we have a long-term strategy for climate change, the Government has, for one reason or another, missed the annual targets. I accept that has not been entirely its fault. The Scottish Fiscal Commission should look not just at the Government’s forecasts for its one-year budgets; it should insist on long-term scrutiny. How will things be made up over the long term?

It is the same with health; as Audit Scotland has told us, our health budgets have all been short term. We need to think about the long-term prospects. We hold our health boards to account only for one-year periods, with a bit of brokerage. That does not serve us well as a country, so we need to take a much longer perspective. If the Fiscal Commission’s independence is clear and is not jeopardised by its having an advisory role, it will be very effective.

The bill is welcome, although some issues could be addressed. I hope that at stage 2 the Finance Committee continues the excellent work that it has done by lodging amendments that will at least challenge the Government to look closely at the alternatives at stage 3, in order to ensure the independence of this important commission.

16:17

Mark McDonald (Aberdeen Donside) (SNP): I will cover a couple of areas on which the committee took evidence. My colleague John Mason dissented on areas in the report about forecasting, on which he holds very strong views. Committee members know that I expressed a number of reservations, but without going as far as dissenting. I will touch on those reservations.

I am always interested in the world according to Jackie Baillie. She again held up the OBR as an example of an organisation to which we should aspire. She spoke of lack of Government intervention and she spoke about oil forecasts. I want to speak about a letter that the OBR sent to the committee in July 2014. It said:

“Our medium term forecast for oil and gas production is based on projections by the Department of Energy and Climate Change”.

That strikes me as the OBR relying on Government projections and forecasting to facilitate its work.

We were told that the Scottish Government’s prediction of an oil price of $113 per barrel was some kind of outlier, in terms of the international projections of oil price. The OBR’s letter said:

“In our central scenario oil prices rise from $102 a barrel in 2015 to $160 a barrel in 2040. Under the EIA ‘high price’ scenario shown above, oil prices rise from $138 a barrel in 2015 to $350 a barrel in 2040, delivering £71.8 billion more revenue than our central projection. Under the EIA ‘low price’ scenario, oil prices drop to $77 a barrel in 2015”.

The idea that the Scottish Government was way out in left field in its oil price projections and that there was a range of soothsayers who had correctly predicted what was going to happen with the oil price simply does not bear scrutiny in any way, shape or form.

Jackie Baillie: Will Mark McDonald take an intervention?

Mark McDonald: If I can have a little bit of time back, I will take the intervention.

The Deputy Presiding Officer: You will have to take it out of your own time.

Mark McDonald: Jackie Baillie must talk fast, in that case.

Jackie Baillie: I will indeed.

The point that I was making was that perhaps nobody could have made that assessment and that judgement, and that therefore somebody independent of Government would instil more confidence, whether or not they are right about what actually happens. I also note that the OBR predicted a lower level than the Scottish Government predicted.

Mark McDonald: I am quite sure, Presiding Officer, that had the projections that the Scottish Government used been based on something that had been produced by the Scottish Fiscal Commission, Jackie Baillie would in no way whatever criticise or impugn those projections. I know that she would never seek to do that.

Let us look at forecasting, because that is where the nub of the disagreement arises. I share the reservations that John Mason has and, indeed, that the commissioners themselves have, around forecasting. I hear the point that has been made about the role that the Finance Committee could perform in scrutiny, but I have reservations about that; I do not think that I am in a better position than Professor Andrew Hughes-Hallett to scrutinise forecasts. What I think is important, first and foremost, is that the projections are analysed and scrutinised and that we can have confidence in them. I believe that when the Scottish Fiscal Commission provides its seal of approval for projections, that will be an important endorsement.

From listening to evidence from academics who came before the committee, I believe that there is a need for academic expertise and capacity to be built up. As powers come to the Parliament and as things develop, that will happen and it will enhance the forecasting by the Scottish Government and the analysis by the commission. At this early stage, to give the commission responsibility for the official forecast while that other capacity does not yet exist would be jumping the gun.
16:22

John Mason (Glasgow Shettleston) (SNP):

There are a lot of good comments and recommendations in the report, and I associate myself completely with the bulk of them.

Clearly one of the main topics that we are discussing this afternoon, and have been discussing in committee, is who should do the forecasting. On that point I dissented from the Finance Committee’s stage 1 report, as can be seen at paragraphs 69 and 136, so I will focus most of my remarks on that topic.

I find this a slightly unusual position to be in: the committee and the Government disagree on a point, and I am the only one who sides with the Government. I hope that members will believe that that comes not out of fear of challenging the Government, but from genuine belief.

The OBR is a relatively unusual model in that the UK Government has outsourced forecasting to it. The model proposed in the bill, in which the Scottish Government forecasts and the commission comments on the forecasts, is much more common. I do not think that we should be fixated on how London does things and I feel that some of the witnesses who came to our committee were slightly overawed by London. Jean Urquhart and I visited the Irish Fiscal Advisory Council in Dublin. Broadly speaking, its model is to check on and challenge Government forecasts. The IFAC is still developing—as is the SFC—and it can do some forecasting along the way, but in essence it looks at and challenges Government forecasts.

That is the model that is used, as I suggested earlier, for audits and for Audit Scotland, and it seems to work pretty well. Audit Scotland is an independent body that examines the Scottish Government, local government, the national health service and so on. It produces very challenging and respected reports, in my opinion, which often attract media attention, and politicians on all sides often refer to and quote them. It seems to me that that is a good model to follow: the Government produces forecasts and the SFC does the checking and challenging.

The need for independence is absolutely essential; however, independence is not linked to who does the forecasts. Rather, I suggest that independence comes, first, from having proper checks and balances in place and, secondly, from having the right people on the commission. It means, in particular, that commission members will have the courage to challenge Government. That is covered in paragraphs 41 and 42.

The ability to challenge forecasts is important. Just last week at the Finance Committee we had the SFC with us as we examined its “Report on Draft Budget 2016-17”. As members might know, the report runs to some 60 pages and is excellent. Some of it is quite technical: for example, in paragraph 3.32 the SFC considers the pros and cons of univariate and multivariate modelling. I suspect that some members might struggle to explain the difference between the two approaches.

If the SFC was to produce the forecasts, who would challenge those forecasts? Government is not independent enough, and the Finance Committee does not have the in-depth skills that would be required, as Mark McDonald said. Would we need another body? I put that question to the SFC last week and to the cabinet secretary yesterday, but neither the SFC nor the cabinet secretary could give me an answer. In my opinion, that is because the OBR model is not a good one. We heard yesterday, as I said, that the OBR is hampered because it cannot exchange information with Government departments.

Cost is a factor here too. Are we saying that a relatively small country such as Scotland, which has pretty limited powers over tax and the economy, needs two organisations to do the forecasting? That would cost us a bit. Are we saying that the Scottish Government should just not do any forecasting? That would seem a bit strange.

The SFC has a potential budget of £850,000, although its members assure us that they will try not to spend it all. The proposed budget compares favourably with the Irish body’s €800,000 and the Swedish body’s €1 million. The SFC is well resourced and we should not be upping the budget to duplicate work.

Although the subject is quite technical, it has been fascinating. I think that we made a pretty thorough study of the issues. I have every respect for the three commission members: Lady Rice, Professor Hughes Hallett and Professor Leith. I am happy to support the main recommendations of the committee.

16:26

Elaine Murray (Dumfriesshire) (Lab):

I congratulate the Finance Committee on the considerable amount of work that it has undertaken, not just on the bill, which was introduced at the end of September, but on its report on proposals for a Scottish Fiscal Commission almost two years ago and its visits to Stockholm and Dublin last year to meet the Swedish and Irish equivalents of the Scottish Fiscal Commission, along with representatives of Government and Parliament and fiscal forecasters—I thought that Chic Brodie seemed to suggest that Sweden does not have an equivalent body; if that is actually what he said, I wonder
what some committee members were doing in Stockholm.

I read the committee’s report with considerable interest. It makes important points, which the convener summed up eloquently. The Scottish Fiscal Commission is intended to be an independent fiscal institution. The tension between its roles of influencing Scottish Government forecasts and providing an independent assessment of those forecasts was thoroughly discussed, and the report makes several recommendations in that regard, including for a memorandum of understanding between the Scottish Government and the commission.

In its report, the committee pointed out the need for more clarity on the commission’s functions and greater transparency in how it carries them out. The bill will require the SFC to lay its report on the reasonableness of the Scottish Government’s tax forecasts on the same day as the draft budget is laid. Any other reports to the Parliament must be copied to ministers in advance of being laid.

Some witnesses, including the Royal Society of Edinburgh, argued that commission assessments of Government forecasts should be carried out after the forecasts’ publication, to ensure transparency. The committee recommended that the SFC should be able to challenge and criticise Government publicly when necessary and that disagreements with the Government and their outcomes should be published. I welcome those recommendations.

The financial memorandum to the bill states that it relates only to powers that are transferred under the Scotland Act 2012; for understandable reasons it does not relate to the additional powers to be transferred as a result of debates on the current Scotland Bill. The resourcing of the SFC will therefore require to be reviewed in light of the Scottish Government’s additional tax raising responsibilities and the additional responsibilities for the SFC in that regard.

It appears that resourcing to enable the commission to undertake its own forecasts has not been included. A majority of witnesses argued that the SFC should produce the official forecasts. Professors McGregor and Swales pointed out that forecasting, whether official or not, is international practice, and the experience of the Irish Fiscal Advisory Council was that it soon realised that it needed to be able to produce its own forecasts if it was to be able to endorse—or not endorse—the Government’s forecasts. Resourcing for forecasting therefore appears necessary.

The committee rightly questioned the ability of the processes for which the bill provides to demonstrate the SFC’s independence. In its recommendations on page 12 of the report, it noted:

“The model being proposed in the Bill depends on a high level of behind-the-scenes interaction between the Commission and the Scottish Government.”

That includes interaction to seek agreement on methods and to test numbers and propositions. As has been discussed, the committee has, therefore, recommended that the commission should produce the official forecasts.

On the issue of governance and who appointment the committee, I note that the committee supports the appointment processes that are described in the bill, whereby the members are to be appointed by ministers but approved by Parliament. I accept that the committee has perused the evidence on that, and I respect its view. However, having very recently been involved in the appointment of the chair of the Scottish Human Rights Commission, I feel that there is considerable merit in appointments being made by Parliament in order to secure cross-party agreement and confidence. The latter will be essential if the SFC is to operate effectively.

I have been a member of the Justice Committee for the past two years, but I was previously on the Finance Committee. The Justice Committee has influenced and changed legislation, and I am hopeful that the Finance Committee will play that role with regard to this bill. I am happy to support the principles of the bill at stage 1, but I hope that the Finance Committee’s views prevail in the long run.

16:30

Joan McAlpine (South Scotland) (SNP): I will take a slightly different tack and look more generally at forecasting and its unreliability. Other members have mentioned oil forecasting, and I have in front of me the Department of Energy and Climate Change’s July 2013 fossil fuel price predictions. For 2015, it predicted a low of $92 a barrel and a high of $137 a barrel. That shows that, even when predictions are made by experts, they often go wrong.

On 21 October 1929, the Yale economics professor Irving Fisher said:

“Stocks have reached what looks like a permanently high plateau.”

Three days later, on black Thursday, the market collapsed and the great depression arrived. In 1984, The Economist conducted an unusual survey for its Christmas issue. It invited four chairmen of big multinational companies, four University of Oxford students and four London bin men, or dustmen as they call them down there, to offer their predictions on the economy over the next 10 years. A decade later, the accuracy of
their forecasts was checked and each group was given a mark for their predictions. The bin men scored joint top, along with the company bosses. In fact, the bin men demonstrated more foresight than any other group when it came to the price of oil—perhaps that is where we all went wrong. As the economist John Kenneth Galbraith once said:

“The only function of economic forecasting is to make astrology look respectable.”

I am being only half-serious in saying those things. However, as other members have said, even the independent OBR, which has been suggested as a model for the commission to emulate, admitted in its 2012 forecast evaluation report that projections are always a best guess. It said:

“we have been at pains to point out that there is enormous uncertainty around any economic forecast and that policymakers and others need to recognise this when taking decisions based on them.”

In any event, as members have noted, HMRC continues to produce tax forecasts on behalf of the OBR. In January last year, Edward Troup, the second permanent secretary at HMRC, told the Finance Committee.

“We measure and forecast, and the published forecasts are signed off by the Office for Budget Responsibility ... Although the OBR has been praised for its independence, from our perspective, the process feels very much the same as it was when the Treasury was doing the forecasting—we had the same conversations with colleagues in the Treasury, and the Treasury would make those forecasts.”—[Official Report, Finance Committee, 21 January 2016; c 43, 45.]

If the Scottish Fiscal Commission prepares official forecasts, it may be similarly reliant on Scottish Government and Revenue Scotland data and resources, leading, as others have noted, to duplication of effort within the commission and the Government.

In my view, the most important thing is that we get the commission’s role as a commentator right. Its independence is being assured by the bill and it must be fully resourced—if there is duplication, that might mean that it is not fully resourced. That is important, as it needs to develop analytical capability and capacity in order to provide a benchmark set of projections.

Of course the commission will be free to make its own forecasts, which offers a wider range of options. It is answerable to this Parliament and, I assume, the Finance Committee, which has shown its independence in producing its report.

I am confident that the commission’s initial remit will be expanded to reflect further powers as they are devolved to the Scottish Parliament and I welcome the bill.

16:35

Nigel Don (Angus North and Mearns) (SNP):
This has been a very interesting debate.

I note that the commission’s purpose is to provide independent scrutiny of Government tax forecasts and economic conditions. In passing I will put on my convener’s hat, as I have done before, to note that the ancillary powers and all the other delegated powers in the bill were considered by the Delegated Powers and Law Reform Committee and we had no concerns whatever about what was proposed.

There has been discussion about the independence of the forecasting. However, before I turn to that, I will refer to the way in which it is suggested that members of the commission will be appointed. As Dr Murray said, they will be removable and it is a matter of some concern that that be done on appropriate terms. I note that section 16(1)(b)(i) states the Government may remove members of the commission only when they are “otherwise unfit” or make themselves unavailable and, even then, that may happen “only with the approval of the Scottish Parliament.”

It seems to me that that is about as good as it is going to get in a parliamentary democracy and that it is probably the right approach.

I welcome the minister’s comments about allowing commission members to have a second term, having defined lengths of term and having terms staggered—which has already been agreed—because continuity is extremely important.

There has been some comment about whether the bill restricts the commission’s functions. The commission itself suggested on page 3 of its letter to the Finance Committee that it would like to have other powers to assess the sustainability of Scotland’s public finances and the Scottish Government’s adherence to its own financial rules. Section 2(3) of the bill probably covers all that, given that it states that

“The Commission may from time to time prepare reports setting out its assessment of the reasonableness of such fiscal factors (other than those mentioned in paragraphs {a) to (d) 25 of subsection (1}) as it considers appropriate.”

I think that that is wide enough to cover precisely the things that the commission mentioned in its letter and probably pretty much anything else that might come up.

I will skip on past the discussion about the independence of forecasts, which I do not have time to add to, to look at the question of reasonableness. I think that Gavin Brown commented on whether what is provided for in that regard is appropriate and Dr Simpson mentioned...
methodology and final numbers. I suggest that what is being proposed is probably very sensible.

A few years ago, back in the days when planes used to crash rather more often than, mercifully, they do now, I was much struck when, following a plane crash, the chairman of the company came on the television and assured us that planes were run using two parallel computer systems and that it was quite impossible that both would have failed at the same time. That demonstrated that he was not a systems man at all, because he completely missed the point that if we give the same system the same data it will make the same mistake; the only way that we will get different economic predictions is by having a different methodology because we will undoubtedly be putting in the same basic data, assuming that we have it.

Professor Hughes-Hallett put it nicely in his evidence to the committee. When the convener asked him what reasonableness was about, he said that the predictions should get better from year to year. To quote him directly, he said that predictions

“should be better than they were last year.”—[Official Report, Finance Committee, 25 November 2015; c 49.]

He wants to see better data and we understand that it is not there.

It seems to me that all of this is in its infancy. We are starting in a good place and we need to recognise that things will develop. What is before us now is not the finished article, but it is a very good place to start.

The Deputy Presiding Officer: Before we move to the closing speeches I invite all members who have taken part in the open debate to return for them. I call Gavin Brown, who has four minutes.

16:39

Gavin Brown: It has been an interesting debate and it was pleasing to hear a number of members praise the Finance Committee’s work.

It is worth reflecting on a comment that was made by Jeremy Peat of the international public policy institute at the University of Strathclyde. He published a paper last month that said:

“the Finance Committee of the Scottish Parliament is to be praised for its continuing robust examination of the Government’s proposals and willingness to seek and take full account of informed commentary.”

It is worth the Government reflecting again on the report and the central conclusions that the majority of the Finance Committee reached about stages 2 and 3 because, if we proceed with the bill without substantial change, we will be left with a group of highly qualified advisers. They will, ultimately, perform an advisory role. Yes, they will scrutinise forecasts in private and challenge the Government but, if the only forecast that is ever published is the final result that the commission deems to be reasonable, we will not get the level of scrutiny that we require or what is defined internationally as an independent fiscal institution. The Parliament wants and needs such an institution and it becomes more important with every extra power that we get.

Joe FitzPatrick: Does Gavin Brown accept that, in OECD countries throughout the world, the overwhelming majority of independent fiscal institutions do not produce the forecasts? The forecasts are produced by the Governments and the institutions assess them.

Gavin Brown: The minister needs to go into a bit more depth on that. As I said in my opening speech, some institutions do the official forecasts, some produce their own unofficial forecasts and others scrutinise the Government forecasts alongside several other independent forecasts. If we proceed with the bill as it is, we will have the only fiscal institution that I can find on the planet that scrutinises solely the official Government forecasts. I have put that point to the Government at least half a dozen times.

As we have heard from the convener and many experts, Governments, regardless of their stripes, have an optimism bias by definition. Governments want to do things; they do not want to have the blocks put upon them. Therefore, there is an optimism bias. I do not want to dwell on oil revenues, but the oil revenue projections that the Government produced just before the referendum are a clear example of the fact that optimism bias affects it as much as it does any other Government.

Mark McDonald: At the same time, the projections on LBTT from the Scottish Government and the OBR were a long way apart, and the OBR has had continually to revise downwards its projections for LBTT and other devolved taxes to bring them more into line with the Scottish Government’s more realistic estimates.

Gavin Brown: Okay, so the Scottish Government was closer to the mark on a smaller tax but it was miles adrift on a far larger tax at a time when it would have affected the country hugely.

I am a little surprised and disappointed at Mr McDonald’s position in the debate. The report was published a week ago and he signed up to it without dissenting from any paragraphs. He signed up to the entire report, including the central conclusions, but eight days later, he tries to distance himself from those conclusions. I leave it
to him to defend that position but, if committee members sign up to a committee report, they ought to stand by it and not fall away from it just a week later.

The crucial point relates to forecasting. There are big dangers in having only an official Government forecast. That is why we reached the conclusions that we did. However, the weaknesses in the bill go deeper than that. The idea of only assessing reasonableness without commenting on the final numbers does not go anywhere near far enough. The idea that any disagreements over numbers will never be published so that they can be scrutinised is unacceptable and goes against the basic OECD principles. Again, if we stick with the Government’s position, we will have the only fiscal institution that we have been able to find on the planet that considers only Government forecasts.

The Conservatives will vote for the bill. We support the setting up of the Scottish Fiscal Commission but it must be more than a group of advisers if we want to get it right. Eventually, we will be talking about billions upon billions of pounds, so we have to get it right. That is why we will need to make changes at stages 2 and 3.

16:45

Lewis Macdonald (North East Scotland) (Lab): It has been a productive debate. The Finance Committee’s convener and a number of its members have laid out the basis for their report very clearly and have pointed us towards the changes that we will undoubtedly debate at stage 2.

We all agree on the need for an independent fiscal institution for a devolved Scotland. The nature of the Scottish Parliament is changing, thanks to the Scotland Act 2012 and the changes arising from the Smith agreement. The question is whether the Scottish Fiscal Commission as it is currently proposed is fit for purpose, or whether more should be done to give it the power that it needs to do its job.

The 2012 act prompted the creation of the Scottish Fiscal Commission in 2014. As Jackie Baillie said in her summary, it was initially set up as a non-statutory body to deal with issues surrounding the taxes that were being devolved to the Scottish Parliament for the first time. Given that a further Scotland Bill is set to devolve much more extensive financial powers to the Scottish Parliament, it is clear that the role of the Fiscal Commission needs to be formalised and placed on a statutory footing, independent of ministers, so we welcome the bill, but we want it to be strengthened.

The main functions of the Fiscal Commission as proposed would be to assess fiscal forecasts that are produced by other organisations, and to commission research and appoint committees to consider relevant issues. As has been said, unlike the Office for Budget Responsibility, it would not produce its own fiscal sustainability report, nor would it have the power to examine the affordability or sustainability of policies.

Even to carry out the more limited functions that are intended for it, the Fiscal Commission will require to have access to financial information from the Scottish Government. As we have heard, the bill allows the commission to have access to but not to publish relevant information from the Government and other Government agencies such as Revenue Scotland. The Finance Committee has rightly called for that right of access to be established on a statutory basis. There can be no meaningful assessment of fiscal forecasts that are produced by the Scottish Government without the relevant information being to hand. After all, that is the point of creating the new body.

Independence from the Scottish Government is another key aspect of the bill and an issue that a number of members have touched on. The OECD has developed a number of minimum requirements for independent fiscal institutions, and the importance of that independence is covered in some depth. For example, independence in the recruitment and management of staff was highlighted by the Scottish Government’s Council of Economic Advisers in its 2013 report, “Fiscal Rules and Fiscal Commissions”, in which it said:

“An important aspect is to avoid institutional capture whereby those working in an independent fiscal commission are formally—or informally—part of the government”.

That is clearly something to which we would all subscribe—that is the whole point of a fiscal commission.

Like Audit Scotland, which has also been mentioned, the Scottish Fiscal Commission must be free to speak the truth to those with power, and it must not depend on the good will of ministers to respect the proper boundaries. If the Government’s own advisers understand that point, ministers should accept it, too.

That is of particular importance during the Fiscal Commission’s transition from a non-statutory to a statutory body. Seconding staff with relevant expertise and experience from the Scottish Government might be helpful to get the commission started, but that must not be done in a way that compromises its independence or makes it dependent on any Government directorate.
The issue of independence is not just about staffing and recruitment. Without the powers that the OBR enjoys to produce its own economic and fiscal forecasts, the Fiscal Commission will be wholly reliant on the figures that are produced by the Scottish Government in making its assessments. There has been some discussion about whether the capacity of the OBR to produce its own fiscal forecasts is unusual or whether its character is significant. Other such bodies in Belgium and the Netherlands do the same sort of thing, and it is common for fiscal institutions in other countries to use information and forecasts from Government and independent experts, as members of the committee have witnessed for themselves.

Joe FitzPatrick: Does the member recognise that the bill as drafted does not prohibit the Scottish Fiscal Commission from producing its own forecasts or looking at any others that it wishes to?

Lewis Macdonald: Indeed it does not, but as we have heard, some of those who resist the proposition that the Fiscal Commission should produce its own forecasts have said that, were it to do so, that would be duplication. Of course there is no statutory bar to it. I think that what the Finance Committee is arguing is that statute should encourage it, make it possible and specifically provide for it. That is where there is a deficit.

In interventions, the minister has suggested that, because independent forecasting is not done by many parallel bodies, that implies that it should not be done in the case of the Scottish Fiscal Commission. Surely in devising appropriate institutions for a modern devolved Scotland, we should seek not the weakest form of independence or power, but the most robust. That is what the Finance Committee has proposed, and the Government should at least reconsider the point before stage 2.

The commission should have the powers to test the Government’s fiscal rules and the long-term sustainability of the public finances. On transparency, the Scottish Government’s reluctance to reveal details of disagreements is revealing in itself.

All those matters have rightly been highlighted in the debate. I look forward to continuing cross-party efforts to improve the bill further at stage 2.

Joe FitzPatrick: I genuinely thank members for their contributions to the debate and for offering their views on the Scottish Fiscal Commission Bill. The Government will, of course, consider those views as the bill continues through the parliamentary process, subject to its being passed at decision time.

I will try to cover some points that have been raised. Dr Simpson and Nigel Don, I think, talked about additional powers and functions, and Dr Simpson suggested the idea of longer-term scrutiny. In fact, this year, for the 2016-17 budget, we published five-year forecasts for the devolved taxes, which were scrutinised by the Scottish Fiscal Commission. Dr Simpson also talked about when additional powers come to the Parliament. The Government is clear that, when those additional powers come to the Parliament, we will consult on proposals for how the commission’s remit should be expanded.

The committee talked about the long-term sustainability of public finances. The Government very much takes the view that holding the Government to account and holding ministers directly to account for the robustness of our financial judgment are primarily roles for members of the Scottish Parliament. Obviously, the Parliament as an institution will look to ensure that members have the resources to do that. I remember that, when I was a member of the Finance Committee in the previous session, there was no financial scrutiny unit. That was a Parliament innovation to bolster the robustness of the support that could be given to members as the Parliament’s powers grew. That is a very important point.

John Mason, Mark McDonald and, I think, Joan McAlpine referred to the arrangements around the Office for Budget Responsibility. It is a fact that it is not as transparent as people perhaps once thought it was. HMRC continues to produce tax forecasts on behalf of the OBR, as the second permanent secretary at HMRC told the Finance Committee in January last year. There is really a lack of transparency about the nature and effect of the OBR’s scrutiny of forecasts that HMRC has prepared. The Scottish Government is determined to ensure that there is transparency in the process that we take forward.

Gavin Brown: If the Government is so keen on transparency, why will it not publish any numerical disagreements between the Scottish Fiscal Commission and the Government?

Joe FitzPatrick: I will deal with that point right now. In his contribution earlier, Gavin Brown suggested that the Deputy First Minister had said that he would block the publication of such figures. I have the Official Report of what the Deputy First Minister said. He said:

“I will have a quick look at the bill because I suspect that I might be in conflict with section 6 if I was to block such a proposition, although I would argue strongly against its desirability”.—[Official Report, Finance Committee, 2 December 2015; c 15-16.]
Although the Deputy First Minister said that he was unconvinced about the desirability of publishing two sets of figures, he made it very clear that it was not in his power to block such things, and he has gone further.

**Gavin Brown:** The minister has just said that the Government is keen on transparency. Why, then, is he not encouraging transparency?

**Joe FitzPatrick:** I thank the member for helping me to come to my second point. I am sure that he has read the Deputy First Minister’s letter to the committee in response to the stage 1 report, in which he says:

> “While I have reservations about the public interest which would be served by publishing multiple forecasts, I am willing to revisit the Committee's recommendation that both the original and revised forecast should be published where changes are made to Scottish Government forecasts following Commission scrutiny.”

That is the way in which the Deputy First Minister and the Government have approached this. We are listening to the committee. Dr Simpson praised the committee for its work and the way in which its report is written. I would echo that. It is a very thorough piece of work. Although we remain unconvinced by the committee’s central disagreement with the Government about who should produce the forecasts, we are keen to work with the committee to improve transparency and ensure that the commission is not just independent but seen to be independent. Those are important points.

It has been suggested that we should propose to the commission that, as part of its process, it should produce alternative forecasts. In committee, Jackie Baillie called it “a third way”. In some of the countries that were visited, Sweden in particular, alternative forecasts are produced by the fiscal body. That is allowed for in the bill. The bill has specific provisions to allow the commission to publish such forecasts. However, it is very clear that that is not necessary. In its evidence at stage 1, the International Monetary Fund said:

> “There is no need for the SFC to present its own forecasts.”

It is really a matter for the commission to determine.

**Gavin Brown:** The minister said that the bill has provisions for the Scottish Fiscal Commission to publish forecasts. Which specific provisions are those?

**Joe FitzPatrick:** Section 2(5) allows for the commission to publish any other information that it wants to publish. The commission is an independent institution. It is for the commission to determine whether it wants to publish alternative forecasts, although the commissioners are not of the view that that would be helpful. Lady Rice said:

> “We think that there needs to be one producer and one assessor of the official forecast. If you were to turn to the Fiscal Commission and say, ‘Actually, we’ve changed our minds. You do the official forecast,’ we would need to be assessed by someone ... If we did our own forecast and then needed to defend it, we, too, might be biased.”

Professor Andrew Hughes Hallett concurred. He said:

> “Then there is the question of second opinions. We are doing a kind of second-opinion exercise—the Government will produce its forecasts and we will provide a second opinion ... Doing it this way round gives us the freedom to compare the Government’s forecast with other forecasts”.

He went on to say:

> “I think that being asked to do the official forecasts would seriously compromise our independence.”—[Official Report, Finance Committee, 25 November 2015; c 53-55.]

Another thing that I think would seriously compromise the commission’s independence would be if we were to tell the commission that it had to produce alternative forecasts. In his report to the committee, Ian Lienert, the independent public finance consultant whom the committee commissioned to produce a report on the matter, said:

> “It is rare for an independent fiscal institution to be obligated by legislation to prepare alternative fiscal forecasts.”

Although it is absolutely clear that the commission can do that, it would be detrimental to its independence if we were to sit here and say that it must do that.

This has been a fantastic debate. I thank all members for their contributions and hope that everyone will be able to support the general principles of the bill at decision time.
Scottish Fiscal Commission Bill: Financial Resolution

17:00

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-14626, in the name of John Swinney, on the financial resolution to the Scottish Fiscal Commission Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Scottish Fiscal Commission Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.—[Joe FitzPatrick]

The Presiding Officer: The question on the motion will be put at decision time.
Scottish Fiscal Commission Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 28 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Gavin Brown

5 In section 2, page 1, line 9, at end insert—

<(A1) The Commission is to prepare reports setting out its forecasts of receipts from the devolved taxes.>

Gavin Brown

6 In section 2, page 1, line 9, at end insert—

<(B1) The Commission is to prepare reports setting out its forecasts of receipts from income tax attributable to a Scottish rate resolution.>

Gavin Brown

7 In section 2, page 1, line 9, at end insert—

<(C1) The Commission is to prepare reports setting out its forecasts of receipts from non-domestic rates.>

Gavin Brown

8 In section 2, page 1, leave out line 12

Gavin Brown

9 In section 2, page 1, leave out lines 13 to 15

Gavin Brown

10 In section 2, page 1, leave out lines 16 and 17

Gavin Brown

11 In section 2, page 1, line 19, leave out subsection (2)

Jackie Baillie

12 In section 2, page 1, line 23, at end insert—

<( ) The Commission is to prepare reports on at least one occasion each financial year setting out—
(a) its assessment of the Scottish Ministers’ performance against any objectives set by them relating to the formulation and implementation of fiscal policy,

(b) its analysis of the sustainability of the public finances,

(c) an assessment of the accuracy of fiscal and economic forecasts previously prepared by it.

( ) Any report which the Commission makes in pursuance of its duty under this section must include an explanation of the factors which the Commission took into account when preparing the report, including (in particular)—

(a) the main assumptions made by the Commission, and

(b) the main risks which the Commission considered to be relevant.

Gavin Brown

13 In section 2, page 1, line 25, leave out <paragraphs (a) to (d) of>

Gavin Brown

14 In section 2, page 2, line 5, after <the> insert <forecasts or>

Section 4

Gavin Brown

15* In section 4, page 2, line 22, leave out <2(1)> and insert <2 (except a report prepared under subsection (3) of that section)>

Gavin Brown

16 In section 4, page 2, line 25, leave out from <2(1)> to <2(3)> in line 26 and insert <2>

After section 4

John Swinney

1 After section 4, insert—

<Protocol between the Commission and the Scottish Ministers

(1) It is the duty of the Commission and the Scottish Ministers to agree a protocol for their engagement in relation to the scrutiny process.

(2) In particular, the protocol must set out—

(a) the arrangements for meetings and communications between the parties (and their staff),

(b) the expectations as to the information to be exchanged between the parties during the scrutiny process including, in particular, in relation to draft reports prepared under section 2, and

(c) which (if any) documents relating to the scrutiny process (other than reports prepared under section 2) are to be published and when.

(3) The Commission must publish the protocol and may do so in such manner as it considers appropriate.
(4) The Commission and the Scottish Ministers may from time to time agree revisions to the protocol.

(5) Subsections (2) and (3) apply to a protocol which has been revised as they apply to the protocol agreed under subsection (1).

(6) For the purposes of this section, a reference to the scrutiny process is a reference to the Commission’s performance of its functions under sections 2 and 4.

Section 12

John Swinney

2 In section 12, page 6, line 1, leave out subsection (3)

Section 13

John Swinney

3 In section 13, page 6, line 3, after <period> insert <not exceeding 5 years>

John Swinney

4 In section 13, page 6, line 3, at end insert—

< ( ) A person may be reappointed as a member if—

(a) the person—

(i) is a member at the time of reappointment, or

(ii) ceased to be a member not more than 3 months before the date of reappointment, and

(b) the person has not previously been reappointed.

( ) Subsections (1) and (2) of this section and sections 11, 12 and 14 apply to the reappointment of a person as a member as they apply to the appointment of a person as a member.>
Scottish Fiscal Commission Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Forecasting**
5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16

**Additional reporting functions**
12

**Protocol between the Commission and the Scottish Ministers**
1

**Term length and reappointment of members**
2, 3, 4
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

6th Meeting, 2016 (Session 4)

Wednesday 10 February 2016

Present:

Jackie Baillie               Lesley Brennan
Gavin Brown                 Kenneth Gibson (Convener)
John Mason (Deputy Convener) Mark McDonald
Jean Urquhart

Scottish Fiscal Commission Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3 and 4.

The following amendments were disagreed to (by division)—
5 (For 3, Against 4, Abstentions 0)
6 (For 3, Against 4, Abstentions 0)
7 (For 3, Against 4, Abstentions 0)
12 (For 3, Against 4, Abstentions 0)

The following amendments were not moved: 8, 9, 10, 11, 13, 14, 15 and 16.

The following provisions were agreed to without amendment: sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 and the long title.

The following provisions were agreed to as amended: sections 12 and 13.

The Committee completed Stage 2 consideration of the Bill.
Scottish Fiscal Commission Bill: Stage 2

09:30

The Convener: Agenda item 2 is stage 2 consideration of the Scottish Fiscal Commission Bill. We are joined by the Deputy First Minister, who is accompanied by Alison Cumming and John St Clair of the Scottish Government. I welcome you all.

We move to the formal proceedings on the bill.

Section 1 agreed to.

Section 2—Functions

The Convener: Amendment 5, in the name of Gavin Brown, is grouped with amendments 6 to 11 and 13 to 16.

Gavin Brown (Lothian) (Con): The substantive amendments in the group are amendments 5 to 7, the combined effect of which is that official forecasts would be produced by the Scottish Fiscal Commission rather than, as currently under the bill, the Scottish Government. That reflects the conclusion that the committee reached in paragraph 69 of its stage 1 report, which says:

“The Committee, therefore, recommends that, in order to ensure that the Commission is seen to be independent, it should produce the official forecasts. The Committee believes that giving the Commission ownership of the forecasts in this way addresses many of the concerns we have raised in the previous section of this report on independence. If the Commission does not produce the official forecasts then these concerns could remain.”

Accordingly, amendment 5 instructs the Scottish Fiscal Commission to

“prepare reports setting out its forecasts of receipts from the devolved taxes”;

amendment 6 instructs the commission to

“prepare reports setting out its forecasts of receipts from income tax attributable to a Scottish rate resolution”;

and amendment 7 instructs the commission to

“prepare reports setting out its forecasts of receipts from non-domestic rates.”

I reflected the wording of the bill as closely as possible.

John Mason (Glasgow Shettleston) (SNP): You have put forward some of the arguments for the Scottish Fiscal Commission producing its own forecasts, but do you accept that a body can be independent while performing a checking function? For example, Audit Scotland, which is very independent, does not produce anything but checks other people’s work. The proposed approach leaves the question of who would check
the forecasts if the Scottish Fiscal Commission actually made them, given that the commission currently does the checking. Also, would there not be duplication of resources if both the Scottish Government and the commission produced forecasts?

Gavin Brown: On your point about Audit Scotland, auditing is, by its nature, backward looking, so it is a very different beast. We can distinguish auditing from forecasting reasonably straightforwardly.

I accept that there might be a degree of duplication, but let us look carefully at the sums that we are talking about. According to the financial memorandum, the maximum spend for the Scottish Fiscal Commission would be £850,000 per annum, but the commission would be looking at tax receipts of about £600 million in land and buildings transaction tax, more than £100 million in landfill tax, £4.9 billion in income tax—this year’s figure—and something like £2.7 billion in non-domestic rates.

When we add all of that together, we arrive at more than £8 billion of public spend. Being out by a fraction of a percentage point could make a huge difference. Given that the commission’s total budget will be £850,000, I think that we can easily argue to the general public that it is in the public interest to take a belt-and-braces approach, even if there is a degree of duplication. The level of duplication relative to the size of the sums that we are talking about is, in my view, de minimis.

On the question of checking, I think that the point is dealt with in the Organisation for Economic Co-operation and Development principles for independent financial institutions. The last principle, which comes under the ninth heading, “External evaluation”, states:

“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.”

There are therefore clear ways of carrying out such evaluation, but it is not clear to me that with the current format we are getting independent external evaluation. I think that there are blurred lines between the advisory process and the evaluation process. It was unclear to the committee where one started and the other ended, which was one of the reasons why we reached the conclusions that we did.

Coming back to the specific amendments, I have outlined what amendments 5 to 7 do. As I have said, I have attempted to mirror the wording of the draft bill as closely as I can. Amendments 8 to 10 remove the commission’s function of assessing Scottish Government forecasts, which would be unnecessary if the commission was doing the official ones. Amendment 11 removes the definition of “economic determinants”, again because the commission would be doing the official forecasts. Amendments 13 to 16 are technical in nature and reflect the changes made in amendments 5 to 7.

Presiding Officer—convener, I mean; I gave you a promotion there—I think that the committee made clear in its report why it reached this particular view. It was because of the quality of the evidence that we received, particularly from Dr Armstrong, Professor McGregor, Professor Peat and Chris Stewart. The current set-up leads to blurring. It is unclear where the challenge function stops and the evaluation function begins, and there are legitimate concerns that we could end up with advisers as opposed to an independent fiscal institution.

The commission has said to the committee on the record that it does not look at numbers or outputs, and it was unable, when I put the question, to say what would be classed as not reasonable. That caused me huge concern. By having the commission do the official forecasts, we avoid the optimism bias that can plague any Government; it removes the inbuilt incentive to be optimistic. Ultimately the commission needs to be independent and—just as important—needs to be seen to be independent.

I move amendment 5.

Mark McDonald (Aberdeen Donside) (SNP): I have a couple of points. Members will know from my statements in the chamber and discussions that we have had in the committee that I had some reservations around this area. Those reservations remain. After listening to Gavin Brown, particularly his citation of the OECD principle, I remain unclear as to the exact mechanism through which the work of an SFC that produces forecasts would be appropriately and adequately scrutinised.

Gavin Brown talks about checking after the fact, for example. However, we have seen from the reports that the SFC has produced that the commission is performing an on-going challenge function. Gavin Brown categorises that as an advisory role, but I see it as a challenge role; indeed, it is an important challenge role, because it ensures that when the final forecasts are produced, they have been subject to challenge throughout the process and then, at the end, they are subject to analysis by the SFC.

There is also a question around the independence of the SFC, as Gavin Brown puts it. I think that it would be dangerous for us to assume that the individuals on the SFC would not be capable of exercising their functions with the
degree of independence that we would expect from them.

The SFC’s evidence makes it clear that it is discharging its functions with independence as well as taking on board the importance of its role. There is also a question here around individual reputation and credibility; if individuals on the SFC were authorising as “reasonable” forecasts that they were not convinced were reasonable, they would be staking their reputations and credibility against those assessments.

From that perspective, I am unconvinced by the proposed amendments. Gavin Brown has cited the OECD principle, but nothing in amendment 5 says how the forecasts would then be scrutinised or what the roles of different bodies would be. There had been discussion and debate about this committee having a role, but I would have great reservations about its—or a successor committee’s—capacity and expertise to enable it to perform that role to the same degree as the SFC is currently doing. At the moment, I do not see where that question is answered in the amendments. The citation that Gavin Brown gave is helpful in outlining what he thinks will happen, but given that nothing that I see in the amendments would lead to that automatically being the case, I am afraid that at the moment I cannot support them.

John Mason: I echo quite a few of the things that Mark McDonald has said. My understanding is that, internationally, it is quite normal for the independent institution to do the challenging and checking and not actually produce the forecast itself. The situation is not totally black and white. On the visit that Jean Urquhart and I made to Ireland, it was clear that although the Irish equivalent had started off in a purely checking, examining and challenging role, it had started to do some of its own forecasts in specific areas. That is fine—I am quite happy with that—but that is quite different from saying that the main role of the Scottish Fiscal Commission as an independent body should be to produce the main forecasts.

I want to raise three points with Gavin Brown. First, independence is an issue that we discussed a lot during committee meetings. I am convinced that we get independence partly because of the structure, and partly because of the attitude of the individual people involved. You could have a good structure, but if you did not have the right people, you would not have independence. On the other hand, you could have all sorts of other structures, but you would still have independence if you had the right people. We might have put a little bit too much emphasis on linking independence only to the structure. If we get the right people—and they are, after all, going to be appointed by the Parliament—they can be independent. I still think that Audit Scotland is a good model for that, as it can be very critical and challenging of Government at all levels and is widely seen as independent.

The question of who does the checking remains open. The Scottish Fiscal Commission itself has said that if it were to produce the forecasts there would need to be some kind of checking role.

Finally, on the question of duplication, I take Gavin Brown’s point that the costs are not huge. However, they are already quite considerable compared with the costs in Ireland and Sweden—and given that we are tight for money these days, doubling up on forecasting is not where I would be spending any extra money that I had.

Lesley Brennan (North East Scotland) (Lab): The importance of having an independent forecast ought not to be underestimated. I note John Mason’s comment about getting the right people, but as somebody who has produced forecasts for different organisations, I know that you cannot depend solely on an individual’s agency. There might be a model that everybody agrees on, but the variables that you put into the model will affect the outcome. You have to detach the politics from the economics. This is not a precise science. One of my degrees is a masters in science; it is in economics, and I know that economics is an art. It is about picking variables, and optimism bias will always be a significant factor. That is why peer review is important, but it is also why there really needs to be independence. The body must be at arm’s length, and it must be independent. Forecasting is not like audit. In auditing, you go through the actuals, and actuals are actuals; they are either right or wrong. Forecasting is a completely different ball game.

John Mason: I think that Lesley Brennan is being a little bit unfair to auditors—

Jackie Baillie (Dumbarton) (Lab): She is being perfectly fair.

John Mason: Auditing, which I have some experience of, is also about valuing buildings and a whole range of other things. I accept that that is not the major point, but my basic argument is still that independence comes more from the attitude of the individuals than from the structure. Does Lesley Brennan not accept that?

Lesley Brennan: You cannot just factor that in and say that it is going to be dependent on an individual’s agency; you need to have the structure, too. That is why I think that Gavin Brown is right to say that the body needs to be independent in order to have credibility. I really do not think that we can pin the whole independence factor on an individual’s agency.
Jean Urquhart (Highlands and Islands) (Ind): John Mason has summed up what I was going to say. I, too, wanted to mention our experience in Dublin. Some forecasting was done by the Irish commission, but that approach had developed. What we are doing here is very new; we are at the very start of the Scottish Fiscal Commission. Indeed, the letter from Lady Susan Rice, the chair of the Scottish Fiscal Commission, is relevant in that context.

I feel that we are trying to anticipate issues and, by doing so, are perhaps creating problems where problems do not exist. We should let the Scottish Fiscal Commission do the job provided for in the bill but, as with everything that the Parliament does, the situation should be reviewed—and, in this case, reviewed in consultation with the commission.

Lesley Brennan: You talked about creating problems where they do not exist. A later item on today’s agenda is prevention. Do you accept that we are trying to prevent problems from arising?

Jean Urquhart: Not really. The Parliament has been here for 17 years, and we are at the start of a process. We must acknowledge that we have professional people on the Scottish Fiscal Commission—people whom the Parliament accepted were the people for the job—and we should hear what they have to say, just as we hear what you have to say.

Lesley Brennan: I wonder whether I might make one final point. The Parliament’s whole focus has been on a cultural shift from being reactive to being preventative, and it has been trying to mainstream preventative measures in health and other spheres. That is what this group of amendments is trying to do.

Jean Urquhart: You might also say that the establishment of the Scottish Fiscal Commission is a preventative measure. The approach offers a degree of reassurance and security. We should accept the bill as it is, on the basis that things can always be reviewed.

Jackie Baillie: This is the most important element of the bill, so it is critical that we get it right; after all, it is all about securing the independence of the commission for the future. I have heard what people have said about individuals, and with all due respect to the many individuals who are serving and will serve on the commission, this is about not them but the commission itself. It is about how we secure the operation of the commission for all time, irrespective of who serves on it. That is critical.

Gavin Brown has mentioned the OECD principles for independent financial institutions. It is not beyond us to draw from that approach and put a robust scrutiny regime in place.

The Deputy First Minister has said in the past that other, similar bodies do not do the kind of forecasting that is envisaged and that that is not something that he has seen. In fairness to him, he has not said that in many of those other cases—in Ireland and elsewhere—there are other independent institutions that produce forecasts on which the commissions rely. There is no similarity with Scotland in that regard, because there are no independent organisations out there producing forecasts.

Mark McDonald: Do you accept that, as Jean Urquhart has pointed out, we are at the beginning of a process? The independent institutions that exist elsewhere have been absent from Scotland because until now there has been no requirement for such a role to be performed here. Perhaps we need to develop the capability and capacity of such organisations—some of which have given evidence to the committee—to allow them to undertake that function.

We have also taken evidence from the Office for Budget Responsibility, which has said that although the OBR produces forecasts it is in the gift of the Treasury to ignore and reject them. Would you be happy with a situation in which the Scottish Government could do the same thing?

Jackie Baillie: I do not think that the Scottish Government would reject forecasts; I think that it would seek to work with whatever commission was in place to arrive at a conclusion. That has certainly characterised the method of operation so far so, as far as Mark McDonald’s second point is concerned, I do not see that as an issue.

In relation to his first point, Mr McDonald has put forward one argument that could be made, but surely when we have the opportunity to set out in legislation what a fiscal commission should do, we should take that opportunity instead of hoping that somebody else out there might do those independent forecasts. We have no control over those organisations, but we do have control over the bill that is before us, and I would hate us to miss the opportunity that it presents.

Many witnesses, including—and I would like to highlight this to Jean Urquhart—professional people from the Royal Society of Edinburgh and others besides, have made a compelling case for why the commission should do forecasting. I respect Lady Rice, but the fact is that others hold a differing but equally valid point of view, and it is our job to balance that.

Irrespective of the Government—because this will impact on future Governments, too—this is all about setting out how we want to proceed in future. We need to be quite clear that we should
have a robust scrutiny regime and that we have nothing to fear from that, and I think that giving the commission the power to forecast and to be responsible for forecasting is exactly what we should be doing.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): I acknowledge that this is a central issue for the debate and I respect the committee’s interest and the energy that members have applied to considering the issues as part of their scrutiny of the bill and of the wider questions with which the committee has been engaged for some considerable time.

I would like to go through some points of principle and some points of detail about the amendments that are before the committee today. As the committee knows, I believe that the core function of the statutory commission should be to independently scrutinise and report on the Government’s forecasts of tax revenues published in the Scottish budget. I have previously set out to the committee my view that Scottish ministers should be responsible for the production of tax revenue forecasts and should be directly accountable to Parliament for those forecasts.

The Scottish Government’s proposed approach maximises the transparency of the forecasting process and maximises public value by ensuring that the forecasts underpinning the Scottish budget are independently assured as reasonable. There is indisputable evidence that the weight of international practice favours the approach that is provided for in the bill as introduced. That is clear in the Scottish Parliament information centre briefing on the bill and in the various OECD publications. Twenty of the 23 independent fiscal institutions that are in place in OECD countries do not prepare official forecasts. They independently review those forecasts and some of them may also prepare alternative forecasts—something that the Scottish Fiscal Commission is already, and will continue to be, empowered to do.

There are also practical and resourcing issues to consider. The Scottish Government would need to retain a forecasting function to support policy development and responsible management of Scotland’s public finances. The amendments would inevitably increase the operating costs of the commission above those that are provided for in the financial memorandum. They would either give rise to significant duplication of effort and resources, at significant cost to the public purse, or lead to a replication of the OBR model, whereby fiscal forecasts continue to be produced by Scottish Government or Revenue Scotland staff, potentially threatening the commission’s independence. That is an important point, given the evidence that the committee heard from Edward Troup of Her Majesty’s Revenue and Customs. Mr Troup made the point that the groundwork and the detailed work in the preparation of OBR forecasts were invariably undertaken by officials of Government, and that that had the potential to undermine the independence of the OBR. That is my interpretation of Mr Troup’s remarks.

John Mason: That is an interesting point. Would the cabinet secretary therefore say that the OBR is not completely independent, in the sense that it is impossible to have an organisation that is completely independent, because it needs input from the other side?

John Swinney: It is perfectly possible for an organisation to be independent in its decision-making capability because, once presented with the evidence and information, that body can determine and take forward its stance. What we have to be careful about—and I think that this is the point that Mr Troup was making to the committee—is the danger that, although we may label an organisation such as the OBR as independent, its source of information and of interpretation of a lot of data is actually the Government.

Therefore we have to be careful about the degree to which we believe an organisation to be independent in that respect. In the model that I am putting forward to the Parliament, it is crystal clear that the Government is doing the forecast and then the Fiscal Commission—free of Government and absolutely distinct from Government—is able to challenge that forecast.

Aside from those issues of principle and practical application, I consider that Mr Brown’s amendments would not provide for a workable statutory solution should the commission be required to prepare official forecasts.

I would like to go through some technical issues for the benefit of committee members in their discussions today. The amendments would reduce rather than increase the scrutiny of forecasts used in the budget. They make no provision for timely, independent checking of or assurance over official tax forecasts prior to their inclusion in the Scottish budget. The amendments would undermine the challenge to which official forecasts are subject and lead to a diminution of scrutiny, with a consequent increase in the risk that forecasts may not be robust. That concern was also raised by the Fiscal Commission when it gave evidence to the committee in November.

It is not clear how Parliament, the Government or the public will be assured as to the robustness of the forecasts, which are critical to determining the level of resources that are available for allocation in the Scottish budget and critical for the
responsible management of Scotland’s public finances.

Parliament and the public would be reliant on the existing requirement for the commission to subject its performance to independent review at least once every five years. I believe that that could undermine or even threaten the integrity of the Scottish budget. Furthermore, the amendments do not address the additional access to information that the commission would require if it were to prepare official forecasts.

The commission would require statutory rights of access to additional sources of information, in particular to support the proposed new function to prepare forecasts of revenues from non-domestic rates. The amendments therefore do not equip the commission to prepare robust and reliable tax forecasts.

The amendments to section 4 do not require the Scottish Government to use the forecasts prepared by the Fiscal Commission to underpin the Scottish budget. It would remain open to Scottish ministers to make their own forecasts and to use those forecasts in the Scottish budget, just as the charter for budget responsibility enables the United Kingdom Government in effect to disregard OBR forecasts. It is therefore not clear what public value is served by the amendments. The commission would be required to produce forecasts, but the Government could simply replace them with forecasts of its own.

Indeed, in her comments to the committee, I think that Jackie Baillie accepted that the existing SFC arrangements essentially subject the Government to accepting the SFC’s analysis and perspective because of the test of reasonableness that is inherent in the Government’s—

Jackie Baillie: Would the cabinet secretary give way on that point?

John Swinney: Of course.

Jackie Baillie: Gavin Brown has already demonstrated that the test of reasonableness is such a high one that there are going to be very few occasions, if any, when the Fiscal Commission is not going to say that your assumptions have been reasonable.

John Swinney: I do not share that opinion, for many of the reasons that Lesley Brennan put to the committee earlier. There will be assumptions that will underpin the forecasts that are made. Those assumptions are utterly exposed to challenge by the Fiscal Commission. If the commission considered the assumptions that the Government made in its forecasting not to be appropriate or correct, it would explain—just as Lesley Brennan set out earlier—the basis on which it judged our forecasts not to be reasonable.

The test is one whereby the assumptions made by the Government must be subjected to significant rigour of analysis.

Amendments 15 and 16, which would amend reporting functions in section 4, do not provide for a workable process by which the commission prepares forecasts to feed into the budget process. There is no indication of how the forecasts are to be provided to the Scottish Government in time for it to prepare the draft budget. Forecasts that are delivered on the day of the budget are of no purpose in setting a budget that must be finalised several days before the budget announcement is made to Parliament. Indeed, section 4(1), as amended by amendments 15 and 16, would not require a report on all matters in time for the budget; it would require a report on only one of them. If so minded, the commission could choose not to produce developed tax forecasts.

I suggest that that is a fundamental weakness of these amendments. They clearly do not provide a workable legislative vehicle by which the commission could be required to produce official tax forecasts to support the production of the Scottish budget. Critically, the Scottish Government would be under no obligation to use the commission’s forecasts when preparing its budget. The amendments would create duplication; they could dramatically increase costs; they make no provision for access to relevant information; and they do not provide for independent scrutiny of the forecasts that underpin the Scottish budget. That places the integrity of the budget at risk.
challenge to the forecast for non-domestic rates last year, and we still do not know what fiscal changes were made between the initial forecast and the published one. Therefore, there is a lack of transparency and, in my view, the bill as drafted does not change that.

**Mark McDonald:** I think that the cabinet secretary has been on the record about this. Does Gavin Brown not accept that putting two different forecasts into the public domain, rather than putting forward only the forecast that has been assessed as reasonable and which has been subjected to challenge throughout the process of compiling it, would lead to confusion? That is why the Scottish Government has only ever put forward the final forecast that has been arrived at following that challenge process.

**Gavin Brown:** I entirely accept that the cabinet secretary said that, but I think that one of the weaknesses of the bill is a lack of transparency caused by not being able to see both forecasts. Mark McDonald may remember signing up to a recommendation in the committee report that everything ought to be published, so it is interesting that he brings that argument forward at this stage.

**John Swinney:** Gavin Brown makes a reasonable point, but I think that he is confusing two things. One is the transparency of the process, and the other is the exercise of a challenge function. The Fiscal Commission said—and I confirmed this—that it exercised a challenge function, because it led me to change the forecast. It is beyond dispute that the commission exercised that leverage over me.

Mr Brown also raises the issue of transparency, which is fair. That issue is about whether all the traffic regarding the change in forecast should be published. It is reasonable that that issue should be addressed. It has always been my view that we should not have competing numbers, as that may lead to a question as to which is the right number. That is why we settle on one forecast. However, if publishing the traffic around how that was arrived at would help transparency, I am entirely prepared to consider that.

**Gavin Brown:** I certainly welcome that. I think that that is a change in your position from the last time that you gave evidence.

The second point we hear is that, because those on the commission are capable individuals, they would not say that the budget was reasonable unless they thought that it was reasonable. I suspect that that is probably correct. However, witnesses pointed out to the committee that “reasonable” is an extremely low bar to set. After our report, we took evidence from members of the commission on that point. I stress that they were unable to give us a single number that could be classed as unreasonable. They told us specifically that they do not look at the numbers or the outputs but at the methodology. For that reason, I do not think that there was a genuine, full assessment that could be seen to be independent.

The cabinet secretary raised the issue of international practice. He suggested that the changes that I have suggested would somehow make us an international outlier, or certainly close to being one of those outliers. Actually, the changes that I put forward bring us closer to international practice than the current bill is. Yes, it is a matter of fact that the majority of OECD independent fiscal institutions do not do the official forecast, but there is not a single IFI on the planet that I, or the Government, have been able to find that looks only at the official Government forecast, does none of its own forecasting and does not have another independent forecast to use as a benchmark for the Government’s forecast.

**Mark McDonald:** Mr Brown will know that there is nothing in the bill that prevents the SFC from undertaking its own forecasting. The cabinet secretary has confirmed that on the record today, so to categorise it as a fiscal institution that does not do its own forecasting is incorrect.

**Gavin Brown:** I do not agree. The OECD principles say pretty clearly that the functions of an IFI should be on the face of a bill, and it lists examples of functions, including forecasting. Forecasting is not on the face of this bill, and I think that there is a severe danger that the SFC will argue that it is not in its official remit to produce them and that they will not be produced.

When you add to that the statements over a period of time from the Scottish Government and in particular from the cabinet secretary—who has made it clear that he does not approve of the SFC doing forecasting and that, although he is not going to stop it legally, he wants to discourage it with his statements—I do not think that there is sufficient comfort in the bill as it stands.

**John Swinney:** I hear what Mr Brown says, but we have been round the houses on those matters before, during the committee’s scrutiny of them. I have put on the record very clearly my view that the ability of the commission to prepare any alternative forecast it wishes is adequately provided for in sections 2(1), 2(3) and 2(5). I do not think that it is in any way fair to say that it is not on the face of the bill.

**Gavin Brown:** The word “forecast” is not in the bill.

**John Swinney:** The issue of the commission being able to exercise that function if it wishes to do so is provided for by three subsections that I have set out.
Mr Troup.

It countered a number of the points that were made by Mr Troup.

In terms of international practice, I repeat that there is not a single country—not a single IFI—that relies on Government forecasts and nothing else.

John Mason: On that point, although clearly the cabinet secretary and I want us to be an independent country, the reality is that we are not. We count as a subnational Government, I believe. I think that it is very unusual to have any forecasting by a body equivalent to the SFC at that level. Can the member not accept that we do not need quite the same level of forecasts, or are we not going to have the same level of forecasts, as an independent country would have?

Gavin Brown: I cannot point to a subnational IFI either that relies only on an official Government forecast. If Mr Mason can, he is welcome to do so. We were told that Sweden and Ireland were in a similar basket, but we now know, from having visited both, that that simply is not the case.

The next argument in principle that was brought forward might be described as the Troup argument, which the cabinet secretary has raised before. It gives a very misleading picture of reality to quote only Edward Troup and not the very clear and exact response to that quote from Robert Chote. I will quote from that response, because it is important. A couple of months after Mr Troup spoke, the convener of this committee asked Mr Chote for his comments on that quote, and he said:

“He is right in the sense of the ‘first cut’ ... What then happens is that we have very detailed discussions in which we tell HMRC how we want it to change those numbers ... It is our forecast; we tell HMRC what the forecast is ... the key point is that these are our forecasts ... That may well condition what sort of first cut they bring to us, as distinct from the sort of first cut that it might have brought to the politicians in the old days ... it does not have the whiff of political interference about it.”

Mr Chote concluded:

“Speaking personally on how we are doing the job, I take comfort from the fact that, at the end of the day, I am coming up with a central forecast and not judging whether I am willing to accept someone else’s forecast. I also take comfort from the fact that we have HMRC as a good, robust professional organisation providing us with material that, as I say, does not ... have the whiff of politics about it.”

It is important to put that on the record, because the convener’s response was:

“Thank you very much for that comprehensive answer”—[Official Report, Finance Committee, 1 April 2015, c 36-8.]

It countered a number of the points that were made by Mr Troup.

Gavin Brown: Convener, I stress again that the word “forecast” is not in the bill. We have been round the houses, and we disagree with the Government on that particular issue.

In terms of international practice, I repeat that there is not a single country—not a single IFI—that relies on Government forecasts and nothing else.

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Lesley Brennan: Will the member give way?

Mark McDonald: Will the member give way?

Gavin Brown: I will give way to Lesley Brennan first and then to Mark McDonald.

Lesley Brennan: Does Gavin Brown agree that the cabinet secretary is coming up with process issues to do with timing and access to data rather than focusing on the substantive point about having an independent forecast?

Gavin Brown: They are process issues. I intend to address the process issues because they have quite rightly been raised, but I addressed the principles first, in the same way that the cabinet secretary did. Those are the principles, and I have set them out pretty clearly.

Mark McDonald: Gavin Brown cites some of the evidence that Robert Chote gave to the committee. He will recollect that Robert Chote also confirmed in that evidence session that it is in the gift of the Treasury to disregard the OBR forecasts should it wish to do so.

Gavin Brown: I can quote exactly what was said in the charter of budget responsibility, which is the secondary legislation:

“The Government intends to adopt the Office for Budget Responsibility’s (OBR) fiscal and economic forecasts as the official forecasts for the Budget Report. The Government retains the right to disagree with the OBR’s forecasts and, if this is the case, will explain why to Parliament.”

So, yes, the UK Government is perfectly at liberty to do that, should it choose to. It has never happened, and it would be a pretty unusual situation in which a Chancellor of the Exchequer had to go to Parliament to explain why the independent experts that the Government had appointed were going to be ignored.

John Swinney: Mr Brown makes my argument for me. He has just said that it would be a very unusual circumstance for a Chancellor of the Exchequer to go to the House of Commons and disagree with an OBR forecast. Can Mr Brown therefore not accept my argument that it would be an inconceivable situation for a finance secretary in the Scottish Government not to change his forecast if the SFC said that it was unreasonable?

Gavin Brown: The point is this, and in some ways Mr Swinney makes my argument for me too. First, in its report, the SFC has expressed huge concern about the lack of behavioural analysis and yet no change has been made in a year and a half by the cabinet secretary or the Government in relation to that analysis on the residential aspects of land and buildings transaction tax.

John Swinney: Could I—

Gavin Brown: Let me finish the answer first. The commission has expressed huge concerns,
yet the forecast is still deemed to be reasonable. I return again to the point that the commission could not give me a single number that would be deemed to be unreasonable—not a single one. The bar is therefore so low that I cannot foresee a circumstance in which the commission would say, “This is unreasonable.”

John Swinney: The issue that Mr Brown raises about the commission’s comments on behavioural analysis essentially confuses the point that he is trying to make. The issue is about the assessment of the reasonableness of the forecast. That is the test in law that the commission must assess. The commission considers that issue in law and it judges whether the forecast is reasonable. If it judges it to be unreasonable, how on earth could a finance secretary put that forecast to Parliament?

As part of its reporting, the commission has said that the Scottish Government needs to improve its behavioural analysis. In no way does that question the reasonableness of the forecast. It means that we have a job to do, which I have already told the committee will be done before the next forecasts are undertaken.

Two things are being confused to try to suggest that something other than a very hard test in statute has been applied to the Fiscal Commission.

Gavin Brown: It is not an attempt to confuse at all. I just do not accept that it is a hard test. When the commission is unable to give me a single number that would be unreasonable, it seems pretty unlikely that it is ever going to—

Mark McDonald: Will the member give way?

Gavin Brown: I will give way once more, but I feel that the committee is now attempting to prevent me from getting to the technical points. We are going round the houses a little.

The Convener: I can assure you that I will allow you to get to the technical points. I am not going to cut you short.

Gavin Brown: Thank you, convener.

Mark McDonald: I am in no way seeking to filibuster Gavin Brown. He is being very generous in accepting interventions.

The discussion has brought us back to Lesley Brennan’s point about economics being an art rather than a science. If we fixate on the number that comes out at the end of the process, rather than focusing on the robustness of the methodology that is applied, as we should do, we get away from the point about reasonableness. The issue is whether the methodology that is applied in coming to a conclusion is reasonable, rather than the precise number that is arrived at in the conclusion.

10:15

Gavin Brown: I make no apology for fixating on the final number, which is pretty important. I do not accept the idea that we would not look at it.

Let me move on to the technical points that were made about the effect of my amendments. One point was that the commission would lack the right to information. I am not sure that I accept that. Section 7 gives the commission pretty significant powers to access information. Indeed, the commission will be able to get information that is “in the possession or under the control of ... any member of the Scottish Government”. If the Scottish Government has information and is able to use it, it seems pretty obvious that the Scottish Fiscal Commission will be able to have it and use it.

If the Deputy First Minister thought it necessary to add a paragraph (f) to the list in section 7(2), to include local authorities, I would have no objection. Under paragraph (e), the Scottish ministers will be able to make regulations to specify “such other person” as they want to specify, but it probably would be wise to add in local government at stage 3. However, the fact that the Scottish Government already has the information and the commission can get it from the Government means that what has been suggested about the commission lacking information is not a concern. It is certainly not a reason to object to my amendments.

Given that the Government is keen on framework acts—I think that most of the bills that the committee has seen have been classed as framework bills—and that it often argues that it should not include every piece of procedure in a bill because it wants to deal with such matters in secondary legislation, the Government’s approach in this context is confusing. The Budget Responsibility and National Audit Act 2011 was a very basic act; the detail was filled in by secondary legislation. The idea that the UK Government might disagree with a forecast was established in the charter for budget responsibility, under secondary legislation. If, at a later stage, the Scottish Government wants to include a provision that gives that sort of comfort, it is perfectly entitled to do so.

The fact that the bill does not specify the number of checks that need to take place over a year does not nullify my amendments in any way. Section 9 clearly provides for a review of the commission’s performance every five years. If the amendments in my name are agreed to, I will want to lodge amendments to decrease that timeframe massively, and I suspect that I will be beaten to it by the Government, to ensure that there is a much
shorter timeframe for review—that would be sensible. I do not accept that that is a reason to object to the amendments. Section 9 could be bolstered pretty easily at stage 3 or indeed by using one of the regulatory powers that are present throughout the bill, although I think that it would be better to amend the bill at stage 3 in that regard.

I have mentioned the principles behind my amendments, and I have said that the technical arguments against them do not stack up. I have attempted to deal with every point that has been put forward and every intervention that has been made. For all the reasons that I have given, I press amendment 5.

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brown, Gavin (Lothian) (Con)

Against
Gibson, Kenneth (Cunninghame North) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 5 disagreed to.

The Convener: I call amendment 6, in the name of Gavin Brown.

Gavin Brown: Convener, if it is helpful, I should say that the other amendments in my name in this group all flow from amendments 5, 6 and 7—

The Convener: I am aware of that, but I still have to ask whether you intend to move them.

Gavin Brown: I do not intend to move any of them. That might speed things up.

The Convener: Okay, but I also have to check that no other member of the committee wants to move them. You are not moving amendments 8 and 9, so no question will be put—

Gavin Brown: I can say “not moved” if it helps, convener.

The Convener: Indeed—you have already said it. The clerk wants us to go through everything precisely; we have got the general drift.

The question is, that amendment 10, in the name of Gavin Brown, be agreed to. Are we agreed? No, because he is not moving it.

The question is, that amendment 11 be agreed to. Again, Gavin Brown is not moving it, so that amendment is not being taken forward.

Amendments 8 to 11 not moved.

The Convener: Amendment 12, in the name of Jackie Baillie, is in a group on its own.

Jackie Baillie: The committee was unanimous in its view that the bill should be amended to widen the functions of the commission, in particular to include assessment of the Government’s performance against its own fiscal rules and of the long-term sustainability of public finances. That view was shared by many of the professional witnesses who came before the committee. Amendment 12 therefore reflects what I regard as an emerging consensus.

Scottish ministers have already set a few fiscal rules, and it is entirely appropriate to judge how the Government’s performance can be measured
against them. A long-term look at public finances and their sustainability must be a positive thing. Amendment 12 would enable the commission to look back and see whether it got the forecasts right—not that it will be producing them now.

**John Mason:** Will the member give way on that point?

**Jackie Baillie:** Fine.

**John Mason:** I thank the member for giving way. Paragraph (c) of the new subsection that her amendment proposes to insert in section 2 refers to

“an assessment of the accuracy of fiscal and economic forecasts previously prepared by it.”

Does that refer to the commission? If so, is the amendment dependent on the commission preparing the forecasts?

**Jackie Baillie:** It presumed that the commission would prepare forecasts. From listening to the cabinet secretary, it seems that he has not closed down the possibility of the commission producing its own forecasts, and therefore the amendment still stands. I see that members are nodding. If it is clear to John Mason, that is great.

The OBR produces reports on financial sustainability, and it is not alone in doing so. I will read from a list of fiscal councils that have such powers and actually use them. They include the fiscal councils in Austria, Belgium, Canada, Denmark, Germany, Hungary, the Netherlands, Slovenia, Sweden and the UK—as I have mentioned—as well as the US Congressional Budget Office. It is not a strange thing to do; it is quite usual in countries around the world.

When we look at the International Monetary Fund fiscal council data set, we see that the second most important function of both previous and new and emerging fiscal councils is to judge the long-term sustainability of public finances. The third most important function of the emerging new generation of fiscal councils is to check the Government’s compliance with its own fiscal rules. It is nothing unusual. Across the range of fiscal bodies, particularly those that have been most recently established, assessing long-term sustainability and compliance with rules is a very important part of their remit.

I move amendment 12.

**Gavin Brown:** I support the amendment entirely. It reflects the conclusion at paragraph 119 of our report, which was reached unanimously by the committee, and it backs up the Scottish Fiscal Commission’s evidence to the committee.

I have to say that the commission’s letter yesterday was extremely surprising in both its timing and its content. In its written evidence to us, the SFC said that it

“believes it should have responsibility for assessing the ... forecasts on the sustainability of Scotland’s public finances, such as adherence to fiscal rules ... and it would welcome the Bill being amended now to anticipate this additional responsibility”.

Professor Hughes Hallett said in evidence to us that the bill should be amended to make explicit that the commission has a role in carrying out sensitivity analysis and in assessing fiscal sustainability.

The wording of the amendment appears to be similar to the wording in the 2011 act, which is quite clear and exact. At one stage, the Government argued that this is a role for members—it is, but having the SFC look at the overall finances in terms of longevity would do nothing to diminish our role; indeed, it would enhance it. If members look at any budget debate in the House of Commons, they will see that MPs from every party regularly quote the OBR analysis, which enhances their ability to hold the Government to account and look at the state of public finances. For all those reasons, I support amendment 12.

**John Swinney:** I acknowledge the committee’s interest in the point, but the purpose of amendment 12 is far from clear. Having listened to how Jackie Baillie has explained it and how Gavin Brown has supported it, I think that its purpose is rather confused.

I would like to comment on three separate elements of the amendment: the proposed requirement on the commission to assess performance against fiscal policy objectives; the proposed requirement to analyse the sustainability of public finances; and the proposed requirement to assess the accuracy of forecasts that the commission has previously prepared.

I turn first to the proposed function to assess performance by Scottish ministers against fiscal policy objectives. I understand that the provision is an attempt to require the commission to assess the Scottish Government’s performance against fiscal rules. However, the amendment seems to include assessment of performance against policy objectives as well as against any strictly termed fiscal rules that would normally relate to levels of borrowing. It is not clear whether Jackie Baillie intended the proposed function to be so wide in its scope but, as currently drafted, it would conflict with the OECD principles for independent fiscal institutions, which provide that such institutions should not have a role in normative assessments or evaluations of the merits of Government policies. That is where I think that the amendment is confused.
That highlights the difficulty of defining fiscal rules under the devolved fiscal framework that supports the exercise of the tax and borrowing powers under the Scotland Act 2012. The Scottish Government is subject to statutory aggregate borrowing limits and annual borrowing limits that are set administratively by the UK Government. We do not have free rein to act or operate outside those predetermined limits.

We are also subject to budgetary rules, performance against which is assessed firmly by the Auditor General as part of the annual audit of the Scottish Government’s annual financial statements. I am concerned that the amendment would intrude on the proper statutory arrangement of the Auditor General holding the Government to account.

My points reinforce the Government’s view that it would be more appropriate to consider the proposed function when we collectively assess how the commission’s remit should be expanded to reflect the Smith powers that are proposed to be devolved.

Turning to the proposed function in relation to fiscal sustainability, I remain of the view that that is primarily a role for elected members of the Scottish Parliament, who should hold ministers directly to account for the robustness of our financial judgments. It is not an appropriate role for the Scottish Fiscal Commission; it is appropriate for Parliament to determine the robustness of the Government’s budget choices.

Gavin Brown: Do you accept that members would be aided in that scrutiny by having such reports from a Scottish Fiscal Commission? Do you seriously think that scrutiny would be diminished by those reports?

John Swinney: Members would be aided by having such reports from a range of bodies. In the earlier debate, Jackie Baillie mentioned that we do not have any bodies that comment on some of these issues. Last week, she hosted an event in Parliament on behalf of the Fraser of Allander institute, which has made very clear its aspiration to challenge and scrutinise aspects of the Government’s delivery of policy. However, that would be different from the Fiscal Commission’s specific statutory role.

I know that Mr Brown takes a different view of the Fiscal Commission’s role, but in my view it faces a hard test in assessing the robustness of the Government’s forecast of revenues. The evaluation of policy and the consideration of long-term fiscal sustainability are issues on which plenty of commentators can comment but, ultimately, they are for members of Parliament to form a judgment about. That is what we are here to do; that is the role that the Finance Committee undertakes.

The final aspect is the amendment’s reference to the accuracy of economic forecasts prepared by the commission, but neither the bill as introduced nor any amendment lodged at stage 2 requires the commission to prepare any economic forecasts. It is therefore unclear what the commission would be tasked with doing here and how much resource it would require to—

10:30

Jackie Baillie: Will the cabinet secretary take an intervention?

John Swinney: Of course.

Jackie Baillie: I think that I recall the cabinet secretary saying earlier that the commission had the ability to do its own forecasting. That ability is not excluded by the bill and therefore it would be appropriate for the commission to be able to do that forecasting.

John Swinney: Clearly, the commission has the scope to undertake that activity. However, the question of economic forecasts gets us into even more uncertainty about the purpose and scope of the amendments. I have been making the point that amendment 12 has been drafted with a scope that is broader than is compatible with the remit and outlook of the Scottish Fiscal Commission.

I would suggest that the area is revisited once the fiscal framework has been agreed and the Scottish Government has greater fiscal flexibility and, potentially, can set fiscal rules within that flexibility, which would extend beyond the constraints that are applied by the United Kingdom Government’s borrowing rules. Therefore, I invite Jackie Baillie not to press her amendment. Failing that, I ask that members do not support it.

The Convener: I call Jackie Baillie to wind up and to indicate whether she wishes to press or withdraw amendment 12.

Jackie Baillie: I will be pressing the amendment in my name. There is nothing terribly confused about it; it is quite simple in what it wants to achieve. The approach is common to other countries, so there is nothing unusual about it either.

The drafting of the amendment was done on the basis of looking at OBR practice and seeking to emulate that practice here. The Scottish Government sets fiscal rules on borrowing, and I entirely accept that the significance of that will increase once the fiscal framework is agreed. Nevertheless the amendment stands now and can be applied now, so we do not need to put it off.
Of course I expect Parliament to scrutinise the long-term sustainability of public finances and whether the Government is meeting its own fiscal rules. However, I see the work of the Fiscal Commission informing the work of the Finance Committee and the Parliament in that regard. I recognise that the amendment is all about the future—it is about Government implementing systems that are as robust as they can be as we assume new powers.

The cabinet secretary said that it was the aspiration of the Fraser of Allander institute to set up a body to look at the financial aspects of this, and that is indeed welcome. However, the speed at which it would be set up and what its coverage would be is not something over which we have control. Therefore, it is important, as a signal from the Government, that we give the Fiscal Commission the power to take on that role.

Lesley Brennan: You mentioned the Fraser of Allander institute’s aspiration. It does not have that role, and it may say that, due to scarce resources, it can no longer take it on.

The cabinet secretary said that the amendment’s scope was too wide, but paragraph (a) of the new subsection that the amendment would insert refers to the Fiscal Commission’s “assessment of the Scottish Ministers’ performance against any objectives set by them relating to the formulation and implementation of fiscal policy”.

Do you agree that, rather than being too wide in scope, the amendment is explicit and focuses on what would be looked at, namely the “formulation and implementation of fiscal policy”?

Jackie Baillie: I agree with that. Amendment 12 is focused, and it is entirely appropriate for the Fiscal Commission to undertake such scrutiny. As I have said, such a role is not unusual, and the amendment is not too wide. Of course one needs to look at economic policy if one is to be able to look at the money that this Parliament raises through taxation.

The amendment has a significant number of supporters. They included the committee—I hope that that remains the case.

Carlo Cottarelli of the IMF talked about fiscal rules often being part of a fiscal commission’s responsibility—

John Mason: Will the member give way?

Jackie Baillie: Let me finish making this point.

Ian Lienert, who was the adviser to the committee, made similar comments. In its written submission, the Fiscal Commission talked about having responsibility for assessing the Scottish Government’s forecasts on the sustainability of Scotland’s public finances and aspects such as its adherence to the fiscal rules. Professor Hughes Hallett and Professor Campbell Leith have both been quoted in support of the commission having that remit.

On that point, I am happy to give way.

John Mason: Jackie Baillie says that the committee has signed up to the provisions of the amendment. My agreement to paragraph 119 of the committee’s stage 1 report was based on the understanding that the Fiscal Commission can assess the Government’s performance against its fiscal rules, but the amendment refers to assessing the Government’s performance against fiscal policy. The cabinet secretary made the point that those two things are not the same, and I agree with that. Does Jackie Baillie accept that the two are not the same?

Jackie Baillie: I do not. Paragraph 119 talks about the commission “assessing the performance of the Government against its fiscal rules and an assessment of the long-term sustainability of the public finances.” It needs to be done in the round.

I am genuinely disappointed that members of the committee are not—

Mark McDonald: Will the member give way?

Jackie Baillie: No, I will not. Frankly, I have heard enough excuses. As a committee, we agreed this—

Mark McDonald: Aw—the consensual approach.

Jackie Baillie: I am genuinely disappointed that that consensus has not held good.

I will press the amendment on that basis.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Brennan, Lesley (North East Scotland) (Lab)
Brown, Gavin (Lothian) (Con)

Against
Gibson, Kenneth (Cunninghame North) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 12 disagreed to.

Amendments 13 and 14 not moved.

Section 2 agreed to.
Section 3 agreed to.

Section 4—Reports
Amendments 15 and 16 not moved.
Section 4 agreed to.

After section 4
The Convener: Amendment 1, in the name of the cabinet secretary, is in a group on its own.

John Swinney: As I indicated in my response to the committee’s stage 1 report, I will seek to take all action that I can to promote and safeguard the independence of the commission. Amendment 1 responds to the committee’s recommendation that there should be greater transparency in interactions between the Fiscal Commission and Scottish ministers.

Amendment 1 introduces a requirement for a protocol between the commission and Scottish ministers, and for the commission to publish that protocol. The protocol must set out the manner in which the parties are to engage during the scrutiny process; the parties’ respective responsibilities; and the procedures for handling draft reports. The amendment also requires that the protocol be regularly reviewed and revised over time, as appropriate.

Amendment 1 has been crafted so that the protocol focuses on the relationship between Scottish ministers and the commission. That is important because it avoids requiring the parties to agree to anything that might impinge on the independence of the commission or its approach to the discharge of its statutory functions.

I move amendment 1.

Amendment 1 agreed to.

Sections 5 to 11 agreed to.

Section 12—Disqualification for appointment
The Convener: Amendment 2, in the name of the cabinet secretary, is grouped with amendments 3 and 4.

John Swinney: Amendments 2 to 4 respond to the committee’s recommendations on the subject of term length and the ability to reappoint members of the commission to serve a second consecutive term. Amendments 2 and 4, which amend sections 12 and 13, allow for the reappointment of members on one occasion. Members will therefore be eligible for one reappointment, provided that they are a member of the commission at the time of the reappointment, or that they were a member no more than three months prior to the reappointment. The period of three months is designed to ensure that there is sufficient time to follow the procedure for reappointment, including parliamentary approval. That applies even when the vacancy arises around the time of the summer recess.

The changes also remove the proposed statutory bar on the reappointment of the current members of the commission, who will now be eligible for appointment for a second term.

Amendment 3 relates to the committee’s recommendation that maximum term length should appear on the face of the bill. It provides that members, including the chair, may be appointed for a term of up to five years. I urge members to support amendments 2 to 4.

I move amendment 2.

Amendment 2 agreed to.

Section 12, as amended, agreed to.

Section 13—Period and terms of appointment
Amendments 3 and 4 moved—[John Swinney]—and agreed to.

Section 13, as amended, agreed to.

Sections 14 to 28 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

10:40
Meeting suspended.
CONTENTS

Section

Scottish Fiscal Commission

1 Establishment

Functions

2 Functions
3 Meaning of terms used in section 2
4 Reports
4A Protocol between the Commission and the Scottish Ministers
5 Power to modify the Commission’s functions
6 Independence
7 Access to information
8 Annual report
9 Review of Commission’s performance

Corporate status

10 Corporate status

Membership

11 Members of the Commission
12 Disqualification for appointment
13 Period and terms of appointment
14 Disqualification after appointment
15 Resignation
16 Removal

Remuneration and expenses

17 Remuneration and expenses

Staff

18 Chief of Staff and other staff

General

19 Regulation of procedure
20 Validity of things done
21 Committees
22 Authority to perform functions
23 General powers
Scottish Fiscal Commission Bill

Transitional and consequential

24 Initial members
25 Amendment of public bodies’ legislation

Ancillary provision

26 Ancillary provision

Final provisions

27 Commencement
28 Short title
Scottish Fiscal Commission Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish the Scottish Fiscal Commission and to provide for its functions.

Scottish Fiscal Commission

1 Establishment

(1) The Scottish Fiscal Commission (in Gaelic, Coi misean Fiosgail na h-Alba) is established.

(2) In this Act, it is referred to as “the Commission”.

Functions

2 Functions

(1) The Commission is to prepare reports setting out its assessment of the reasonableness of—

(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.

(2) For the purposes of subsection (1)(b), the determinants are—

(a) the change predicted to the rateable value of the lands and heritages on the valuation rolls, and

(b) the rate of inflation used for the purposes of the forecast of the non-domestic rate to be prescribed under section 7B of the Local Government (Scotland) Act 1975.

(3) The Commission may from time to time prepare reports setting out its assessment of the reasonableness of such fiscal factors (other than those mentioned in paragraphs (a) to (d) of subsection (1)) as it considers appropriate.
(4) For the purposes of subsection (3), a “fiscal factor” is any forecast, assumption or projection which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000.

5 (5) Reports prepared under this section may include such other information relating to the assessments being made as the Commission considers appropriate.

(6) Where a policy of the Scottish Ministers is relevant to the Commission’s performance of its functions under this section, the Commission—

(a) must have regard to the policy, but

(b) may not consider what the effect of any alternative policy would be.

3 Meaning of terms used in section 2

(1) This section defines terms used in section 2.

(2) “Devolved taxes” is to be construed in accordance with section 80A(4) of the Scotland Act 1998.

(3) “Non-domestic rates” means non-domestic rates levied under section 7B(2) of the Local Government (Scotland) Act 1975.

(4) “Scottish rate resolution” is to be construed in accordance with section 80C(1) of the Scotland Act 1998.

(5) “Valuation roll” is to be construed in accordance with section 1 of the Local Government (Scotland) Act 1975.

4 Reports

(1) The Commission must lay a report prepared under section 2(1) before the Scottish Parliament on the same day as that on which the Scottish Ministers lay before the Parliament the draft Scottish budget for the subsequent financial year.

(2) The Commission must lay any other report prepared under section 2(1) or a report prepared under section 2(3) before the Scottish Parliament as soon as reasonably practicable after the report is prepared.

(3) Before laying a report prepared under section 2 before the Scottish Parliament, the Commission must send a copy of it to the Scottish Ministers.

(4) Once a report prepared under section 2 has been laid before the Scottish Parliament, the Commission must publish it.

(5) The Commission may publish reports prepared under section 2 in such manner as it considers appropriate.

4A Protocol between the Commission and the Scottish Ministers

(1) It is the duty of the Commission and the Scottish Ministers to agree a protocol for their engagement in relation to the scrutiny process.

(2) In particular, the protocol must set out—

(a) the arrangements for meetings and communications between the parties (and their staff),
(b) the expectations as to the information to be exchanged between the parties during the scrutiny process including, in particular, in relation to draft reports prepared under section 2, and

c) which (if any) documents relating to the scrutiny process (other than reports prepared under section 2) are to be published and when.

(3) The Commission must publish the protocol and may do so in such manner as it considers appropriate.

(4) The Commission and the Scottish Ministers may from time to time agree revisions to the protocol.

(5) Subsections (2) and (3) apply to a protocol which has been revised as they apply to the protocol agreed under subsection (1).

(6) For the purposes of this section, a reference to the scrutiny process is a reference to the Commission’s performance of its functions under sections 2 and 4.

5 **Power to modify the Commission’s functions**

(1) Subject to subsection (2), the Scottish Ministers may by regulations—

(a) confer functions on the Commission,

(b) modify the functions of the Commission,

(c) remove functions from the Commission.

(2) Regulations under subsection (1) may not remove the Commission’s functions under section 2(1) or (3) (but may remove or modify any paragraph in subsection (1) of that section).

(3) Regulations under subsection (1) are subject to the affirmative procedure.

(4) In preparing a draft of a Scottish statutory instrument containing regulations under subsection (1) for laying before the Scottish Parliament, the Scottish Ministers must consult—

(a) the Commission, and

(b) such other persons as they consider appropriate.

(5) Regulations under subsection (1) may—

(a) modify this Act or any other enactment,

(b) include incidental, supplementary, consequential, transitional, transitory or saving provision.

6 **Independence**

(1) In performing its functions, the Commission is not subject to the direction or control of any member of the Scottish Government.

(2) This section is subject to any contrary provision in this or any other enactment.

7 **Access to information**

(1) The Commission—
(a) has a right of access at reasonable times to any relevant information that the
Commission may reasonably require for the purpose of performing its functions,
(b) may require any person who holds or is accountable for relevant information to
provide at reasonable times any assistance or explanation that the Commission
may reasonably require for the purpose of—
   (i) performing its functions, or
   (ii) exercising the right conferred by paragraph (a).

(2) In subsection (1), “relevant information” means information in the possession or under
the control of—
   (a) any member of the Scottish Government,
   (b) Revenue Scotland,
   (c) the Keeper of the Registers of Scotland,
   (d) the Scottish Environment Protection Agency,
   (e) such other person, or person of such description, as the Scottish Ministers may by
      regulations specify.

(3) Subsection (1) is subject to any other enactment or rule of law that prohibits or restricts
the disclosure of any information or the giving of any assistance or explanation.

(4) Regulations under subsection (2)(e) are subject to the affirmative procedure.

8 Annual report

(1) The Commission must, as soon as reasonably practicable after the end of each financial
year—
   (a) prepare and publish a report on its activities during the year,
   (b) lay a copy of the report before the Scottish Parliament, and
   (c) send a copy of the report to the Scottish Ministers.

(2) The Commission may publish its reports under this section in such manner as it
considers appropriate.

9 Review of Commission’s performance

(1) The Commission must, at least once in every 5-year period, appoint a suitable person or
body to review and prepare a report on the Commission’s performance of its functions
during the period.

(2) For the purposes of subsection (1), a person or body is suitable only if—
   (a) the person or body has expertise likely to be relevant to the assessment of the
       performance of the Commission’s functions under section 2, and
   (b) the person or body is not—
      (i) a member of the Commission, or
      (ii) disqualified from appointment as such a member by virtue of section
           12(1)(a).
(3) The Commission may make such payment to a person or body appointed under subsection (1) in respect of a review as it may, with the approval of the Scottish Ministers, determine.

(4) The Commission must—

(a) publish each report prepared under subsection (1),

(b) lay a copy of it before the Scottish Parliament, and

(c) send a copy of it to the Scottish Ministers.

(5) The Commission may publish reports prepared under subsection (1) in such manner as it considers appropriate.

(6) In this section, “5-year period” means—

(a) the period of 5 years beginning with the date on which section 2 comes into force,

(b) each successive period of 5 years.

Corporate status

The Commission is a body corporate.

Membership

The Commission is to consist of—

(a) a member to chair the Commission, and

(b) at least 2 but no more than 4 other members.

The Scottish Ministers are to appoint the members.

The Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment.

The Scottish Ministers may by regulations amend subsection (1)(b) by substituting a different number for any number for the time being specified there.

Regulations under subsection (4) are subject to the negative procedure.

Disqualification for appointment

The Scottish Ministers may not appoint a person as a member if the person—

(a) is—

(i) a member of the Scottish Parliament,

(ii) a member of the House of Commons,

(iii) a member of the National Assembly for Wales,

(iv) a member of the Northern Ireland Assembly,

(v) a member of the European Parliament,

(vi) a councillor of any local authority,
(vii) the holder of any other relevant elective office within the meaning of paragraph 1(8) of schedule 7 to the Political Parties, Elections and Referendums Act 2000,

(viii) a member of the Scottish Government,

(ix) a Minister of the Crown,

(x) an office-holder of the Crown in right of Her Majesty’s Government in the United Kingdom,

(xi) an office-holder in the Scottish Administration,

(xii) a civil servant,

(b) is or has been insolvent,

(c) is or has been disqualified as a company director under the Company Directors Disqualification Act 1986,

(d) is or has been disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005, or

(e) is or has been disqualified under any disqualification provision analogous to either of those mentioned in paragraphs (c) and (d), anywhere in the world.

(2) For the purposes of subsection (1)(b), a person is or has been insolvent if—

(a) the person’s estate is or has been sequestrated,

(b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,

(c) the person is or has been the subject of any other kind of arrangement analogous to either of those described in paragraphs (a) and (b), anywhere in the world.

13 **Period and terms of appointment**

(1) A member is appointed for such period not exceeding 5 years as the Scottish Ministers may determine.

(1A) A person may be reappointed as a member if—

(a) the person—

(i) is a member at the time of reappointment, or

(ii) ceased to be a member not more than 3 months before the date of reappointment, and

(b) the person has not previously been reappointed.

(1B) Subsections (1) and (2) of this section and sections 11, 12 and 14 apply to the reappointment of a person as a member as they apply to the appointment of a person as a member.

(2) The Scottish Ministers may determine other terms of an appointment, so far as not provided for by this Act.

14 **Disqualification after appointment**

(1) A person’s appointment as a member ceases if the person becomes disqualified as a member after appointment.
(2) A person becomes disqualified as a member after appointment if, during the person’s period of appointment as a member, any of paragraphs (a) to (e) of section 12(1) applies to the person.

15 Resignation

A member may resign by giving notice in writing to—

(a) the Scottish Ministers, and

(b) the Presiding Officer of the Scottish Parliament.

16 Removal

(1) The Scottish Ministers may remove a member, by giving the member notice in writing, if—

(a) the member has been absent from meetings of the Commission for a period longer than 3 months without permission from the Commission, or

(b) the Scottish Ministers consider that the member is—

(i) otherwise unfit to continue to be a member, or

(ii) unable to perform the member’s functions.

(2) The Scottish Ministers may remove a member under subsection (1) only with the approval of the Scottish Parliament.

Remuneration and expenses

17 Remuneration and expenses

(1) The Commission may pay to its members such remuneration as it may, with the approval of the Scottish Ministers, determine.

(2) The Commission may pay to its members such sums as it may, with the approval of the Scottish Ministers, determine in respect of expenses incurred by them in performing their functions.

Staff

18 Chief of Staff and other staff

(1) The Commission must employ a person to act as the Commission’s Chief of Staff.

(2) The Commission may employ other staff.

(3) The Chief of Staff and other staff are to be employed on such terms as the Commission may, with the approval of the Scottish Ministers, determine.

General

19 Regulation of procedure

The Commission may regulate its own procedure (including quorum).
20 **Validity of things done**

The validity of anything done by the Commission is not affected by—

(a) a vacancy in membership,

(b) a defect in the appointment of a member,

(c) disqualification of a person as a member after appointment.

21 **Committees**

(1) The Commission may establish committees.

(2) The membership of a committee may include (but may not consist entirely of) persons who are not members of the Commission but those persons are not entitled to vote at meetings.

(3) The Commission may pay each person mentioned in subsection (2) such remuneration and allowances as it may, with the approval of the Scottish Ministers, determine.

22 **Authority to perform functions**

(1) The Commission may authorise—

(a) any of its members,

(b) any committee established by it,

(c) any member of its staff,

(d) any other person,

to perform such of its functions (to such extent) as it may determine.

(2) The giving of authority under subsection (1) to perform a function does not—

(a) affect the Commission’s responsibility for the performance of the function,

(b) prevent the Commission from performing the function itself.

23 **General powers**

The Commission may do anything that appears to it—

(a) to be necessary or expedient for the purpose of, or in connection with, the performance of its functions,

(b) to be otherwise conducive to the performance of its functions.

24 **Initial members**

(1) The person who was, immediately before the commencement date, the chairing member of the non-statutory Commission is, on that date, taken to have been appointed under section 11(1)(a) as the member to chair the Commission.

(2) Any person who was, immediately before the commencement date, a member (other than chairing member) of the non-statutory Commission is, on that date, taken to have been appointed under section 11(1)(b) as a member of the Commission.
(3) A person to whom subsection (1) or (2) applies is referred to in this section as an “initial member”.

(4) An initial member’s period of appointment as a member—
   (a) is to continue to be the same as that for which the member had been appointed as a member of the non-statutory Commission, and
   (b) accordingly expires at the time at which the period of appointment as a member of the non-statutory Commission would have expired.

(5) Except as may be agreed between the Scottish Ministers and an initial member, the other terms of the member’s appointment are to continue to be the same as the terms on which the member had been appointed as a member of the non-statutory Commission, so far as consistent with this Act.

(6) In this section—
   “commencement date” means the day on which section 1 comes into force,
   “the non-statutory Commission” means the body known as the Scottish Fiscal Commission established by the Scottish Government following the Scottish Parliament’s resolution of 24 June 2014 endorsing its establishment and supporting the appointment of the persons nominated to be members.

25 Amendment of public bodies’ legislation

(1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Scottish Fire and Rescue Service insert—
   “The Scottish Fiscal Commission”.

(2) In the Freedom of Information (Scotland) Act 2002, in Part 2 of schedule 1 (non-ministerial office holders in the Scottish Administration), after paragraph 18A insert—
   “18AA The Scottish Fiscal Commission”.

(3) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), under the heading “Executive bodies”, after the entry relating to the Scottish Fire and Rescue Service insert—
   “Scottish Fiscal Commission”.

(4) In the Public Services Reform (Scotland) Act 2010, in schedule 8 (listed public bodies), after the entry relating to the Scottish Fire and Rescue Service insert—
   “Scottish Fiscal Commission”.

(5) In the Public Records (Scotland) Act 2011, in the schedule, under the heading “Scottish Administration” after the entry relating to the Scottish Courts and Tribunals Service insert—
   “Scottish Fiscal Commission”.

(6) In the Procurement Reform (Scotland) Act 2014, in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13B insert—
   “13C Scottish Fiscal Commission”.
Ancillary provision

26 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may—
   (a) make different provision for different purposes,
   (b) modify this Act or any other enactment.

(3) Regulations under this section containing provision which adds to, replaces or omits any part of the text of an Act are subject to the affirmative procedure.

(4) Otherwise, regulations under this section are subject to the negative procedure.

Final provisions

27 Commencement

(1) This section and sections 26 and 28 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—
   (a) include transitional, transitory or saving provision,
   (b) make different provision for different purposes.

28 Short title

The short title of this Act is the Scottish Fiscal Commission Act 2016.
Scottish Fiscal Commission Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to establish the Scottish Fiscal Commission and to provide for its functions.

Introduced by: John Swinney
On: 28 September 2015
Bill type: Government Bill
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.
This document relates to the Scottish Fiscal Commission Bill as amended at Stage 2 (SP Bill 78A)

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
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.
Scottish Fiscal Commission Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 28 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

John Swinney

1 In section 2, page 1, line 10, leave out subsections (1) and (2) and insert—

(A1) It is the duty of the Commission to prepare forecasts and assessments to inform the Scottish budget.

(1) In particular, the Commission must on at least 2 occasions for each financial year prepare reports—

(a) containing its 5-year forecasts of receipts from—

(i) the devolved taxes,
(ii) non-domestic rates, and
(iii) income tax attributable to a Scottish rate resolution, and

(b) setting out its assessment of the reasonableness of the Scottish Ministers’ projections as to their borrowing requirements.

(1A) Reports prepared under subsection (1) must, in relation to each forecast and assessment, include an explanation of—

(a) the methodology used by the Commission, and
(b) the factors which have been taken into account including, in particular—

(i) the assumptions which the Commission made, and
(ii) the risks which it considered to be relevant.>

Jackie Baillie

29 In section 2, page 1, line 23, at end insert—

( ) The Commission is to prepare reports on at least one occasion each financial year setting out—

(a) its assessment of the Scottish Ministers’ performance against the fiscal rules,
(b) its analysis of the sustainability of the public finances.

( ) For the purposes of this Act “fiscal rules” means—

(a) the expenditure limits authorised by the Budget Act for that financial year,
(b) capital borrowing or revenue borrowing limits for that financial year,
(c) any other rules as the Scottish Ministers may prescribe as “fiscal rules”.

John Swinney
2 In section 2, page 1, line 24, leave out from <setting> to <(1)> in line 26 and insert —
(a) containing its forecasts, assumptions or projections in relation to such fiscal factors as it considers appropriate, or
(b) setting out its assessment of the reasonableness of the Scottish Ministers’ forecasts, assumptions or projections in relation to such fiscal factors.

John Swinney
3 In section 2, page 2, line 1, leave out from <any> to <projection> in line 2 and insert <anything>

John Swinney
4 In section 2, page 2, line 5, after <the> insert <forecasts, assumptions, projections or>

Section 3

John Swinney
5 In section 3, page 2, line 12, at end insert —
<( ) “5-year forecast”, in relation to a report prepared under section 2(1), means a forecast in respect of the financial year for which the report is prepared and each of the 4 subsequent financial years.>

John Swinney
6 In section 3, page 2, line 19, leave out subsection (5)

After section 3

John Swinney
7 After section 3, insert —
<Review of forecasting accuracy>
(1) The Commission must prepare reports for each financial year containing an assessment of the accuracy of the forecasts prepared by it under section 2(1)(a).
(2) Reports prepared under this section may include such other information relating to the assessment being made as the Commission considers appropriate.

Section 4

John Swinney
8 In section 4, page 2, line 21, at end insert —
<(A1) The Commission must send—
(a) a report prepared under section 2(1) to the Scottish Ministers in sufficient time for them to use the report to prepare the draft Scottish budget for the subsequent financial year, and
(b) another report prepared under section 2(1) to the Scottish Ministers in sufficient time for them to use the report to prepare a Bill for a Budget Act for that year.

John Swinney

9 In section 4, page 2, line 22, leave out from <a> to end of line 24 and insert <before the Scottish Parliament—

(a) a report prepared under section 2(1) on the same day as that on which the Scottish Ministers lay before the Parliament the draft Scottish budget for the subsequent financial year, and
(b) another report prepared under section 2(1) on the same day as that on which a member of the Scottish Government introduces a Bill for a Budget Act in the Parliament for that year.>

John Swinney

10 In section 4, page 2, line 26, after <2(3)> insert <or (Review of forecasting accuracy)> 

John Swinney

11 In section 4, page 2, line 28, after <2> insert <or (Review of forecasting accuracy)> 

John Swinney

12 In section 4, page 2, line 29, after <Ministers> insert <(unless one has already been sent under subsection (A1))>

John Swinney

13 In section 4, page 2, line 30, after <2> insert <or (Review of forecasting accuracy)> 

John Swinney

14 In section 4, page 2, line 32, after <2> insert <or (Review of forecasting accuracy)> 

Section 4A

John Swinney

15 In section 4A, page 2, line 36, leave out <scrutiny> and insert <forecasting and assessment>

John Swinney

16 In section 4A, page 3, line 2, leave out <scrutiny> and insert <forecasting and assessment>

John Swinney

17 In section 4A, page 3, line 4, leave out <scrutiny> and insert <forecasting and assessment>

John Swinney

18 In section 4A, page 3, line 12, leave out <scrutiny> and insert <forecasting and assessment>
After section 4A

John Swinney

19 After section 4A, insert—

<Scottish Ministers’ statement

(1) This section applies where the Scottish Ministers prepare—
   (a) a draft Scottish budget for a financial year, or
   (b) a Bill for a Budget Act for a financial year,
which has not been informed by a forecast for that financial year contained in a report
prepared by the Commission under section 2(1).

(2) The Scottish Ministers must prepare a statement explaining why they disagree with the
forecast.

(3) The Scottish Ministers must lay the statement before the Scottish Parliament on the
same day as that on which (as the case may be)—
   (a) they lay before the Parliament the draft Scottish budget for the financial year, or
   (b) a member of the Scottish Government introduces the Bill for a Budget Act for the
financial year.>

Section 5

John Swinney

20 In section 5, page 3, line 20, leave out <2(1)> and insert <2(A1)>

John Swinney

21 In section 5, page 3, line 20, leave out from <(but> to end of line 21

Section 7

John Swinney

22 In section 7, page 4, line 13, at end insert—

< ( ) a local authority, a valuation authority or an assessor (or depute assessor)
appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994,>

After section 7

John Swinney

23 After section 7, insert—

<Duty to co-operate with the Office for Budget Responsibility

The Commission must, so far as necessary for the performance of the Office for Budget
Responsibility’s functions, co-operate with the Office.>
Section 9

John Swinney
24 In section 9, page 4, line 28, leave out <5-year> and insert <review>

John Swinney
25 In section 9, page 5, line 10, leave out <5-year> and insert <review>

John Swinney
26 In section 9, page 5, line 11, leave out <5> and insert <2>

John Swinney
27 In section 9, page 5, line 11, at end insert <and>

John Swinney
28 In section 9, page 5, line 12, leave out <successive> and insert <subsequent>
Scottish Fiscal Commission Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Forecasting**
1, 2, 3, 4, 5, 6, 8, 9, 12, 15, 16, 17, 18, 20, 21, 22

**Group 2: Review of performance against fiscal rules and sustainability of public finances**
29

**Group 3: Review of accuracy of forecasts**
7, 10, 11, 13, 14

Debate to end no later than 40 minutes after proceedings begin

**Group 4: Scottish Ministers’ statement**
19

**Group 5: Duty to co-operate with the Office for Budget Responsibility**
23

**Group 6: Review of Commission’s performance: review period**
24, 25, 26, 27, 28

Debate to end no later than 1 hour after proceedings begin

SP Bill 78A-G (Timed)  Session 4 (2016)
Note: (DT) signifies a decision taken at Decision Time.

Scottish Fiscal Commission Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28.

Amendment 29 was disagreed to ((by division): For 43, Against 63, Abstentions 0).

Scottish Fiscal Commission Bill - Stage 3: The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney) moved S4M-15869—That the Parliament agrees that the Scottish Fiscal Commission Bill be passed.

After debate, the motion was agreed to (DT).

P E Grice
Clerk of the Parliament
10 March 2016
Scottish Fiscal Commission Bill: Stage 3

16:35

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 of the Scottish Fiscal Commission Bill. [Interuption.] Is there a problem? Thank you, Ms Baillie.

In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on a group of amendments should press their request-to-speak buttons as soon as possible after I call the group. Members should now refer to the marshalled list of amendments.

Section 2—Functions

The Deputy Presiding Officer: Group 1 is on forecasting. Amendment 1, in the name of the Deputy First Minister, is grouped with amendments 2 to 6, 8, 9, 12, 15 to 18, 20, 21 and 22.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): I am grateful for the opportunity to speak to the amendments. The fiscal framework requires the Scottish Fiscal Commission to prepare forecasts of tax revenues, demand-led social security expenditure and Scottish gross domestic product. We currently have competence to legislate for commission functions based on the fiscal powers that are devolved to the Scottish Parliament under the Scotland Act 1998 and the Scotland Act 2012. We have lodged the amendments to provide that the Scottish Fiscal Commission should prepare rolling five-year forecasts of receipts of fully devolved taxes, which will initially cover land and buildings transaction tax and Scottish landfill tax and, in due course, other taxes that are to be wholly devolved to the Scottish Parliament, including air passenger duty, the aggregates levy, receipts from non-domestic rates and receipts from the Scottish rate of income tax.

The non-statutory commission currently has a role in scrutinising the economic determinants of the Scottish Government’s forecast of non-domestic rate receipts. The agreement that has been reached in the fiscal framework covers the entirety of the NDR forecast: amendment 1 caters for that change in function.

Amendment 22 will ensure that the commission will have direct statutory rights of access to the data that are held by the Scottish assessors and by local authorities, which it will require in order to prepare NDR forecasts.

The commission’s current function in relation to borrowing has been retained. The commission will continue to be required to prepare reports setting out its assessment of the reasonableness of Scottish ministers’ projections of borrowing requirements. We further propose that the commission should retain the general function that is currently provided for in section 2(3) of the bill, which enables it to undertake work on other fiscal matters, in addition to its specific functions. Amendments 2 and 3 are intended to ensure that that flexibility reflects the commission’s new statutory functions.

The purpose of amendment 8 is to require the commission to provide the Scottish ministers with forecasts in sufficient time to support finalisation of the Scottish budget.

Gavin Brown (Lothian) (Con): At this stage, does the Deputy First Minister have a view on what is meant by “sufficient time”? Does it mean a day, a week or a month?

John Swinney: In reality, I suspect that the time would probably be less than two weeks before the date of the budget. That will not be specified. We can probably shed more detail on that in the memorandum of understanding, which I suspect will be deployed to inform relationships between the Government and the Fiscal Commission on working practices. The commission would be fully empowered to determine what it thought to be reasonable in that context.

The prior notification is essential to the Scottish budget process because the commission’s forecast will determine the overall resources that will be available to deploy in that budget. The timing of that advance access to forecasts will be specified in the protocol, as I have indicated to Mr Brown, and as provided for in section 4A.

Amendment 9 will adjust the process for laying reports before Parliament as a consequence of the change to the forecasting model. The purpose of amendment 12 is to dispense with the requirement for the commission to provide Scottish ministers with a copy of a report that is prepared under section 2(1), where it has already been sent by virtue of the changes that will be introduced by amendment 8.

Amendments 15 to 18 are technical consequential amendments that reflect the shift in the forecasting functions in amendment 1.

The purpose of amendments 20 and 21 is to protect the core forecasting function as set out in
proposed new section 2(A1) from being removed through regulations. That means that primary legislation would be required to remove the general forecasting function from the Scottish Fiscal Commission. The amendments will create a statutory framework that could be added to by regulations as the competence of the Scottish Parliament is expanded by the Scotland Bill. We have undertaken to consult on the scope of the commission’s expanded powers, and we will bring forward a timetable for doing so after the bill has been passed.

I invite members to agree to amendment 1 and the other amendments in the group.

I move amendment 1.

Jackie Baillie (Dumbarton) (Lab): I support and very much welcome amendment 1 and all the other amendments in the group.

Scottish Labour first argued in January 2015 that the Fiscal Commission should produce the official forecasts. We supported the Finance Committee’s view, which was reached after about two years of deliberation, that the Fiscal Commission should do the official forecasts. The committee’s report is one of the best that it has produced, and I commend those who were involved in it. In particular, I commend the convener of the committee, who said:

“we are strongly of the view that not only should the Scottish Fiscal Commission be independent, but it is vital that it is perceived to be independent. That is why we are calling for the Bill to be amended to strengthen the Commission’s role and to give it responsibility for producing the official forecasts.”

I think that we were all surprised when the bill was introduced. The cabinet secretary appeared to have ignored the Finance Committee and to have ignored his colleagues, and the bill was a pale imitation of what was required. The Government was intent on keeping control, and the Fiscal Commission was not to do the official forecasts.

At stage 1, the committee, with one exception, maintained its position and rejected the Government’s attempt to make the Fiscal Commission a less powerful body, so John Swinney was sent away tae think again. We were clear that in order to secure the Fiscal Commission’s independence and robustness in forecasts, it should be responsible for the official forecasts.

A few days later, that all changed. Scottish National Party members, including the convener of the committee, had somehow become converted. Some who are less generous than I might say that they had been nobbled, because they were suddenly convinced of John Swinney’s arguments. Was that a case of thumbscrews being applied, or did the convener of the committee believe that he had been wrong all along? I cannot ask Kenny Gibson that question, because he and Mark McDonald, who was one of the Finance Committee’s SNP members, are not in the chamber.

I am disappointed that it appeared that all that work was just being thrown away. However, having marched them up to the top of the hill, the cabinet secretary abandoned them there as he made a deal with the Chief Secretary to the Treasury that the Fiscal Commission would, contrary to his own view, do the official forecasting. Mr Swinney must be positively dizzy with all the about-turns that he is making, but I very much welcome them.

It is right that the Fiscal Commission should do the official forecasting. As a consequence, it will demonstrate its independence from Government. With new powers and new responsibilities coming to the Parliament, we must ensure that the institutions that we put in place are robust and transparent. John Swinney’s amendments will help us to do just that.

Gavin Brown: The journey on fiscal forecasts has indeed been a rich tapestry, but I am delighted to say that we are getting there in the end.

The change is probably the most important change that needed to be made to the bill. It is quite right that official forecasts should be carried out by the Fiscal Commission and not by the Scottish Government. There are a number of reasons for that. Most important, the forecasts have to be independent and have to be seen to be independent.

The amendments will also get rid of a rather weak reasonableness test that would not offer much scrutiny. They will get rid of the messing about with economic determinants for non-domestic rates and look at the non-domestic rates themselves, and they will avoid, or at least weaken, the built-in optimism bias that any Government that produces forecasts is at risk of producing.

For all those reasons, I support all John Swinney’s amendments in the group.

As I said, we got there in the end. I hoped that we would get there at stage 2, but I failed to convince the cabinet secretary. I was just not quite up to the mark in convincing Mr Swinney, but I am glad to say that George Osborne was up to the mark: he managed to convince John Swinney about the right way to go. Thank goodness for the persuasive powers of George Osborne.
16:45

**John Mason (Glasgow Shettleston) (SNP):** It is no secret that, as one of the members of the Finance Committee, I have at no point been convinced that the SFC should do the forecasting. My main reasons for that are that, first, it is fundamentally better to have one organisation to do the work—in this case forecasting—and a separate organisation to check it. That is what happens with audits; both auditors and the SFC look to the future and the past.

Secondly, it will be more resource intensive and therefore more expensive to have such duplication of work. Thirdly, I am not convinced that the Office for Budget Responsibility model is that great—it is certainly in a minority internationally. Finally, the issue of independence and the issue of who does the forecasting are completely separate and should not be conflated.

However, I accept that the bargaining with Westminster over the fiscal framework has meant that we do not have the ideal situation in every case—this being one in which we do not. Although I will vote for amendment 1, if after the election I am returned here and it all goes belly up, I will be standing here to say that I said it would.

**John Swinney:** In her initial comments, Jackie Baillie said that she was rising to support the amendments. If that was a speech of support, I would hate to hear a speech that was not supportive. Maybe that is how the Labour Party goes about its business. With Jackie Baillie delivering speeches of support of that nature, maybe the Labour Party operates constantly in such a ferrets-in-a-sack-like mode.

I accept that it has been a long and winding journey. I record my acknowledgement that Mr Mason has been absolutely and totally consistent in his arguments throughout the process. However, if the Finance Committee had not voted against the provisions at stage 2, I would have had nothing to give away in the fiscal framework negotiations.

If it comes down to a bargain—saving the Scottish budget from a Tory attack of £7 billion of cuts to public expenditure by my compromising to put these plans in place—I think that it is a price worth paying.

**Gavin Brown:** In that case, did the minister encourage or attempt to persuade SNP members on the committee to change their view at stage 2?

**John Swinney:** I would make absolutely no attempt to try to persuade members of the committee to do anything other than what they thought was the right thing to do, in the circumstances, in a parliamentary process.

**Jackie Baillie:** Did the cabinet secretary perhaps share with them the negotiations that were going on on the fiscal framework?

**John Swinney:** As Jackie Baillie knows, I have maintained absolute confidentiality around negotiations with the Treasury, which was the proper approach for me to take to ensure that the issues were resolved.

I am glad that the amendments seem to command support in Parliament. They are part of the fiscal framework agreement that we are putting in place. We want to ensure that all details of the fiscal framework are put into practice in the fashion that is envisaged by the fiscal framework agreement. That is precisely what the Scottish Government has placed on the record in the amendments. I invite Parliament to support amendment 1 and, at the appropriate moments, the other amendments in the group.

**Amendment 1 agreed to.**

**The Deputy Presiding Officer:** Group 2 is on review of performance against fiscal rules and sustainability of public finances. Amendment 29, in the name of Jackie Baillie, is the only amendment in the group.

**Jackie Baillie:** Amendment 29 seeks to give the Fiscal Commission responsibility for, first, scrutinising the Government’s performance against fiscal rules and, secondly, considering the sustainability of our public finances. In lodging the amendment, I have reflected on the cabinet secretary’s comments at stage 2 and the original intentions of the Finance Committee, both in its report on fiscal institutions and in its stage 1 report on the bill.

Across the world, fiscal institutions have a role in looking at fiscal rules and the future sustainability of public finances, so that role is nothing new. In the 17 Organisation of Economic Co-operation and Development countries that have been researched on the issue, 15 have institutions that have a responsibility for looking at the long-term sustainability of public finances and 11 have institutions that have a role in monitoring compliance with fiscal rules: Austria, Belgium, Denmark, Finland, Portugal, Sweden and the United Kingdom, to name but a few. It is normal for fiscal institutions to do those things.

Mr Swinney asked at stage 1, and has asked since, what the fiscal rules are. I would expect him, as finance secretary, to know that, but I will help him. There are the fiscal rules that are set out in the Public Finance and Accountability (Scotland) Act 2000. There are also the fiscal rules in relation to capital borrowing, revenue borrowing and the budget exchange mechanism, all three of which will change when the new Scotland Bill is enacted. There is also the fiscal rule that is set by
the Scottish Government itself: the 5 per cent revenue-financed projects cap. In addition, there are the rules that are set out in the fiscal framework agreement, including on the Scotland reserve. We should be interested in making sure that those are scrutinised and reported on to Parliament.

I turn to the sustainability of public finances. When we consider the International Monetary Fund fiscal council data set, we can see that the second most important function of the emerging new generation of fiscal councils is to judge the long-term sustainability of public finances. I do not see why we should not want that to be done. The majority of expert witnesses to the committee agreed that it was important to look at both the fiscal rules and the long-term sustainability of public finances.

The Scottish Fiscal Commission said in a letter to the committee that it

"believes it should have responsibility for assessing the Scottish Government’s forecast on the sustainability of Scotland’s public finances, such as adherence to fiscal rules ... and it would welcome the Bill being amended now to anticipate this additional responsibility".

Indeed, Professor Andrew Hughes Hallett, a member of the Scottish Fiscal Commission, said in evidence to the Finance Committee that the bill should be amended to make explicit that the commission has a role in assessing fiscal sustainability.

Professor Campbell Leith, another member of the commission—we should remember that the members of the commission are appointed by the cabinet secretary himself—said:

“One of the main objectives of creating a fiscal commission is to ensure fiscal sustainability.”—[Official Report, Finance Committee, 25 November 2015; c 47.]

The committee convener, Kenny Gibson, in reflecting the committee’s unanimous view on the role of the commission, said:

“We believe it should assess the Scottish Government’s adherence to its fiscal rules and assess the long-term sustainability of the public finances. This will further strengthen the independent scrutiny role of the Commission and reflects the view of many witnesses who have appeared before the Committee.”

Those are not my words; they are Kenny Gibson’s words. The IMF, the OECD, SFC members, the Finance Committee and numerous expert witnesses say that it is a good thing, so I hope that the cabinet secretary is listening and will indeed support my amendment 29.

I move amendment 29.

**Gavin Brown:** I rise to support amendment 29, on fiscal rules and sustainability of public finances. As Jackie Baillie said, the Finance Committee agreed in its entirety on the matter for our report—there was no dissent whatsoever. I therefore look forward to hearing John Mason’s comments to see whether he is as keen on consistency for amendment 29 as he was for the previous group of amendments.

The committee’s agreement in January backed up its previous report on the fiscal framework in June of last year, when we made exactly the same recommendation. A day after stage 2, the Scottish Affairs Committee at Westminster seemed to support our view as well, because it said:

“An enhanced Scottish Fiscal Commission should monitor and report on the Scottish Government’s performance against those targets”—namely, the fiscal targets that will be set out.

The fiscal framework itself, at paragraph 101, talks about relying, if there is a dispute, on the “technical input” of the Scottish Fiscal Commission. If the SFC is going to be of use in a dispute, it has to have as wide a remit as possible, rather than only producing the official forecast, as it is destined to do at the moment.

In lodging amendment 29, Jackie Baillie has made a number of changes to the amendment that she lodged at stage 2. She has removed any reference to policy objectives, which I think is the right thing to do. She has sought expert advice, and I know—as a matter of fact—that she shared it with all members of the committee at least a week ago to ensure that there were no technical objections and that we could debate purely the principle.

I note previous arguments that it is the job of Parliament to assess and scrutinise the long-term forecast of public finances. Yes, it is, but Parliament would certainly be aided in doing that job by having access to work that has been done by the Scottish Fiscal Commission.

Jackie Baillie read out two quotes from the Scottish Fiscal Commission, and I repeat what it said in its written submission to the Finance Committee:

“The SFC believes it should have responsibility for assessing the Scottish Government’s forecasts on the sustainability of Scotland’s public finances, such as adherence to fiscal rules as an example, and it would welcome the Bill being amended now to anticipate this additional responsibility when it arises.”

For all those reasons I support amendment 29. I genuinely hope that the Government will back it, so that we can have a Fiscal Commission that really is worth shouting about.

**John Swinney:** I welcome the opportunity to debate Jackie Baillie’s amendment, which, as she and Gavin Brown indicated, was debated at stage 2 in a different form, although the principle was largely similar.
I remain unclear of the added value or enhanced scrutiny that would be provided by way of the commission assessing Scottish ministers' performance against fiscal rules. The Scottish Government is subject to budgetary rules, which Jackie Baillie includes in her definition of fiscal rules, and performance against them is already effectively assessed by the Auditor General as part of the annual audit of the Scottish Government's annual financial statements. We are also subject to statutory aggregate borrowing limits and annual borrowing limits that are set administratively by the United Kingdom Government. There are already established mechanisms for reporting to Parliament on those issues. Whether the Scottish Government operates within the limits is a matter of fact, so it remains unclear what public value the commission could add in carrying out assessments against the limits.

Should the Scottish Government gain borrowing flexibilities that would enable us to set further, more flexible fiscal rules, I would suggest that we revisit the issue and consider whether the commission could add value in reporting on the Government's adherence to such rules.

On the analysis of fiscal sustainability, I remain of the view that that is primarily a role for elected members of the Scottish Parliament, who hold ministers directly to account for the robustness of our financial judgments.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Would it not be difficult for members to hold the Government to account on that issue if they did not have a level of analysis from the Fiscal Commission or suchlike that gave them the necessary information?

John Swinney: My judgment is that there is no lack of financial information that circulates around in relation to the budget-setting process. Malcolm Chisholm and I are both former members of the House of Commons. The degree of scrutiny around financial provisions in this Parliament is significantly stronger and more detailed than anything that I experienced in the House of Commons. There are spring and autumn budget revisions, there is all the information that is set out, and there is the scrutiny that we are subjected to by the Auditor General and by the wider role that the Auditor General undertakes. Members have very strong access to data and information to enable them to undertake that task.

Annabel Goldie (West Scotland) (Con): I was struck by the cabinet secretary's comment that if further borrowing powers emerge, he might be prepared to look at this issue again. Is that not to concede in principle that Jackie Baillie's amendment 29 is sensible? The whole point about the Fiscal Commission is that we are creating a very important body that we have never had before. For many onlookers, the attraction is that it is the first time that we have had that composite umbrella body with an important job and important duties to perform. I would have thought that, far from seeing the provisions in amendment 29 as in some way tiresome, restricting or distracting, the cabinet secretary would have seen them as a support to the important job that he is charged with doing.

John Swinney: At no stage did I use any of the language that Baroness Goldie used when she suggested the reasons why I do not support amendment 29. At no stage did I use the word "tiresome" about financial scrutiny. I have said that I believe that the financial scrutiny is there, by virtue of the current exercise of its functions by Audit Scotland and the fact that I am obliged to operate under fiscal rules, such as the revenue limit, the capital departmental expenditure limits requirement and the fixed borrowing limit, which will be set at £450 million per annum. In fact, we cannot borrow £450 million: we would be prevented from doing so as that would breach our administrative limits.

My point is that I do not see the added value of the proposal in Jackie Baillie's amendment. I do not think that it is an appropriate role for the Scottish Fiscal Commission and, as I indicated in my responses to interventions, the amendment risks duplicating the roles that are already fulfilled by the Parliament and the Auditor General. Therefore, I ask Jackie Baillie not to press her amendment, failing which I recommend that Parliament does not support it.

17:00

Jackie Baillie: I intend to press the amendment.

The cabinet secretary has deployed some of those arguments previously, so let me take them in turn. First, he says that this is a role for Audit Scotland. The role of the Auditor General is to

"appoint auditors to Scotland's central government and NHS bodies ... examine how public bodies spend public money ... help them to manage their finances to the highest standards",

and to

"check whether they achieve value for money."

I do not see mention of fiscal rules or sustainability of finances in the definition of the role.

Audit Scotland has published——

John Swinney: Will the member give way?

Jackie Baillie: I will give way in a second.
Audit Scotland has published a number of reports on developing financial reporting in Scotland, and it recently wrote to the Finance Committee about the fiscal framework. It very strongly expresses the fact that it wants reporting of Scotland’s public finances to be “comprehensive, transparent, reliable and timely”, and that the “overall account of revenues, expenditure, assets and liabilities of the Scottish public sector as a whole” are "key" to achieving that.

Audit Scotland agrees about the need to scrutinise the sustainability of public finances. The measure complements Audit Scotland’s work, and I am sure that, as with other bodies that the cabinet secretary referred to when we debated the bill at stages 1 and 2, the facility of a memorandum of understanding could be put in place to ensure co-operation between the bodies.

I will take an intervention now.

John Swinney: I am grateful to Jackie Baillie for giving way.

I wanted to intervene when Jackie Baillie set out Audit Scotland’s functions. Essentially, those functions are about assessing the quality of the judgments that are made about the financial decision making that is undertaken. That is already part of Audit Scotland’s remit, and that is why I think that the provision in the amendment would duplicate that essential role.

Jackie Baillie: I do not think that the amendment is unnecessary, or that it provides duplication. Nevertheless, I suggested to the cabinet secretary a way of ensuring that duplication does not happen—through a memorandum of understanding. That approach is quite commonly used by other bodies.

I turn to the role of Parliament. Ultimately, the role of Parliament is to hold the Executive to account. Parliament can and should be assisted in that task. Currently, we benefit hugely from information from the Scottish Parliament information centre and its financial scrutiny unit, and others besides. I expect that, in future, the Finance Committee and the Parliament will benefit hugely from the work of the Fiscal Commission. Malcolm Chisholm is absolutely right: we should be equipped with the financial and factual information on which we can make informed judgments. I would have thought that that is something that the Parliament aspires to.

My final word is a reflection on the committee’s consideration of the bill. This measure was supported by every single member of the Finance Committee in its report on fiscal institutions and subsequently in its stage 1 report on the bill. I will be hugely disappointed if those members change their minds today. I cannot ask the convener or Mark McDonald about that, because they are not here. I would genuinely be hugely disappointed if the man who has been consistent throughout the process—John Mason—changed his mind.

I will take an intervention from John Mason.

John Mason: I make my intervention for the sake of completeness, seeing as Jackie Baillie mentioned me.

I do not think that this issue is absolutely central. I felt very strongly about the forecasting and, as John Swinney said, I have been consistent on that matter. I struggle to understand the difference that this amendment would make.

Jackie Baillie: John Mason says that he struggles to understand what difference my amendment would make. I simply observe that, for two years, he has nevertheless supported the proposal. He supported it in the committee’s original report and in its stage 1 report. I have much more respect for people if they are consistent. That is particularly so because, as Gavin Brown said, I consulted each and every member of the Finance Committee to ensure that I properly reflected the committee’s view. Needless to say, I did not get a response to my email from any of the Scottish National Party members, which again is disappointing.

This is what fiscal institutions do. If we want to be in line with what the rest of the world does, we should support amendment 29. It is clear, however, based on what the cabinet secretary has said, that I am unlikely to be happy when the amendment is voted on.

The Deputy Presiding Officer: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division, I suspend the meeting for five minutes.

17:05

Meeting suspended.

17:10

On resuming—

The Deputy Presiding Officer (Elaine Smith): We proceed to the division on amendment 29.

For

Baillie, Jackie (Dumbarton) (Lab)
Beamish, Claudia (South Scotland) (Lab)
The purpose of amendment 7 is to provide a basis for scrutiny by and accountability to the Scottish Parliament in relation to the commission’s previous forecasts. It is important that the forecasts that underpin the Scottish budget process are as robust as possible and informed by previous experience.

[Interuption.]
The Deputy Presiding Officer: Can we have some order in the chamber, please?

John Swinney: Therefore, the commission will conduct a self-evaluation of its previous forecasts for each financial year. It is for the commission to determine the content of its reports, which might include comparisons of the assumptions, risks and projections that were used by the commission against the actual outturn and results.

Amendments 10, 11, 13 and 14 are consequential amendments, which will ensure that reports on the accuracy of previous forecasts are laid before the Parliament and published by the commission. I ask members to support all the amendments in the group.

I move amendment 7.

Amendment 7 agreed to.

Section 4—Reports

Amendments 8 to 14 moved—[John Swinney]—and agreed to.

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

Amendments 15 to 18 moved—[John Swinney]—and agreed to.

After section 4A

The Deputy Presiding Officer: Group 4 is on Scottish ministers’ statement. Amendment 19, in the name of the Deputy First Minister, is the only amendment in the group.

John Swinney: The fiscal framework agreement specifies that the commission should prepare the tax and GDP forecasts that support the framework’s operation. I consider it to be equally important that we legislate to ensure that the commission’s forecasts have official status and to create a presumption that those forecasts will inform the Scottish budget.

The intention of amendment 19 is to ensure that the Scottish ministers are required to account to the Scottish Parliament if they do not use the forecasts that the commission prepares in the Scottish budget. In such an instance, which I would expect to arise only in truly exceptional circumstances, the Scottish ministers must make a statement to the Parliament to explain the basis of any disagreement. The statement must be laid before the Parliament at the same time as the budget documentation.

That requirement, read together with amendments 1 and 8, will create a presumption that the Scottish ministers will use the forecasts that are prepared by the commission in the Scottish budget and requires them to report to Parliament so that the basis of the decisions that are made by ministers is transparent and can be appropriately scrutinised.

I move amendment 19.

Amendment 19 agreed to.

Section 5—Power to modify the Commission’s functions

17:15

Amendments 20 and 21 moved—[John Swinney]—and agreed to.

Section 7—Access to information

Amendment 22 moved—[John Swinney]—and agreed to.

After section 7

The Deputy Presiding Officer: Group 5 is on the duty to co-operate with the Office for Budget Responsibility. Amendment 23, in the name of the Deputy First Minister, is the only amendment in the group.

John Swinney: The purpose of amendment 23 is to implement a requirement in the fiscal framework agreement that the Scottish and United Kingdom Governments will introduce a reciprocal statutory duty of co-operation between the commission and the Office for Budget Responsibility. The amendment will support the two independent bodies in discharging their statutory functions, both as they exist now and as they will be amended once the Smith proposals are fully implemented.

Although the amendment places a duty on the Scottish Fiscal Commission only, we expect the United Kingdom Government to introduce a reciprocal arrangement through a section 104 order under the Scotland Act 1998 in due course.

The fiscal framework anticipates that the statutory duty will be underpinned by a memorandum of understanding between the two bodies that will set out more detailed practical working arrangements.

I move amendment 23.

Amendment 23 agreed to.

Section 9—Review of Commission’s performance

The Deputy Presiding Officer: Group 6 is on review of commission’s performance: review period. Amendment 24, in the name of the Deputy First Minister, is grouped with amendments 25 to 28.
John Swinney: The amendments bring forward the timing of the first external review of the commission’s performance, so that the first review will occur after two years have passed since the commencement of the statutory functions. After that, a review will be required at least once every five years. Those measures will help to ensure an early review of how the commission is performing its functions and will provide assurance that the forecasting arrangements are robust and working well. That will be particularly relevant in the early phases of the commission’s work, when there will not be the same legacy of reporting on forecasts for the commission to build on.

The commission itself will determine the scope of the first—and, indeed, every—review. That means that it can ensure that the scope of the first review is proportionate to the status and situation of the commission at that time.

There is a clear public interest in ensuring that there is an early check on the commission’s work and emerging operational and governance arrangements. By requiring the first external review after two years, we are taking additional steps to ensure that the Parliament and the people of Scotland can have confidence that the commission’s forecasts, which will underpin the Scottish budget, are robust.

I move amendment 24.
Amendment 24 agreed to.
Amendments 25 to 28 moved—[John Swinney]—and agreed to.

The Deputy Presiding Officer: That ends the consideration of amendments. I will allow a few moments for the chamber to clear before we move on to the next item of business.

Scottish Fiscal Commission Bill

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-15869, in the name of John Swinney, on the Scottish Fiscal Commission Bill.

17:20

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): The Scottish Fiscal Commission Bill will ensure that there is an independent fiscal institution operating at the heart of Scotland’s devolved fiscal framework. The bill safeguards the Scottish Fiscal Commission’s independence, transparency and accountability to Parliament and the public, and I commend it to Parliament.

The Finance Committee devoted many hours to scrutiny of the Government’s proposals for the Fiscal Commission prior to and during the legislative process. I am grateful to the convener and members of the committee for the thoughtful consideration that they have given to the issues and the challenge that they have brought to bear. That challenge has helped us to test and refine our proposals so that we can all be satisfied that the bill delivers the strongest possible arrangements to safeguard the forecasts that support the Scottish budget.

I would also like to put on record my thanks to the individuals and organisations that took time to respond to the Government’s consultation on our legislative proposals last year and to the various calls for evidence on the topic that the Finance Committee has issued since 2013. Those contributions have provided fresh perspectives, which have guided and helped us to shape our policy.

Parliament is aware that, in order to secure a fair deal for Scotland on the block grant adjustment that ensured that there was no detriment to Scotland’s budget, I agreed to compromise on the production of forecasts in the fiscal framework agreement. I have previously expressed significant reservations about the proposed forecasting model, but I am confident that the arrangements in the bill will ensure that the commission is equipped to produce robust forecasts to underpin the Scottish budget, and that Parliament can appropriately hold the commission to account for its work.

The amendments that Parliament has agreed to mean that the commission will prepare five-year forecasts of receipts from the fully devolved taxes, from non-domestic rates and from the Scottish rate of income tax, and that those forecasts will be
prepared in time to meet the needs of the Scottish budget process.

The commission will be required to publish an explanation of the methodology and assumptions that it applied in preparing its forecasts so that those can be scrutinised by Parliament, academic commentators and others. Furthermore, our amendments will ensure that the commission’s forecasts are the official forecasts that support the Scottish budget. The commission’s core statutory function is to prepare forecasts and assessments that inform the Scottish budget.

I have gone further than the equivalent obligations on the United Kingdom Government by providing in statute that the Scottish ministers must make a statement to Parliament if they depart from the commission’s forecasts in preparing the Scottish budget. That will ensure that Parliament can properly hold ministers to account for choosing such a course of action. I anticipate that the Scottish ministers would not take such a decision lightly and that alternative forecasts would be used in a Scottish budget only in truly exceptional circumstances.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): What resources will the Scottish Government have? The cabinet secretary is talking about the possibility of the Government rejecting a commission forecast. Will the Scottish Government have the same resources for forecasting or will it have fewer resources? It is not clear to me what the case will be.

John Swinney: I intend to maintain the resources within Government to ensure that we can satisfy ourselves that we have a forecast from the Fiscal Commission that we believe to be credible and deliverable to underpin the Scottish budget.

The timing of commencement of forecasting responsibilities is still to be discussed and agreed with the Fiscal Commission. I want us to be in a position whereby the commission can exercise its full forecasting responsibilities as early as possible, but it is important to allow the commission time to put robust resourcing and operational arrangements in place, so that the Government and Parliament can be assured of the integrity of the forecasts that underpin the Scottish budget. I have every confidence that the chair and members of the commission will do just that as they oversee the transition to a statutory body, but I put on record the need to agree the transition arrangements with the commission to ensure that we have robust forecasts to underpin the Scottish budget.

The Parliament currently has competence to legislate for a fiscal commission with functions that relate to the tax and borrowing powers that were devolved by the Scotland Act 1998 and the Scotland Act 2012. Once the current Scotland Bill has been enacted, we will be able to move quickly to expand the functions of the commission in accordance with the fiscal framework agreement. We plan to use the regulation-making powers in the bill to require the commission to also produce forecasts of devolved demand-led social security expenditure and Scottish gross domestic product, and the existing function in relation to income tax will be modified to reflect the wider powers that are due for devolution in 2017.

The Government has lodged amendments that not only deliver the changes to statutory functions necessary to fulfil my obligations under the fiscal framework agreement but build in additional safeguards that strengthen the scrutiny and accountability arrangements underpinning a forecast preparation model. I have already referred to the requirement on the commission to publish details of its forecasting methodology, as the Scottish Government has done for the past two years. In addition, the commission will be required to prepare a report evaluating the accuracy of its previous forecasts to provide transparency on the past precision and accuracy of its technical analysis.

The commission will also be subject to an external review of its performance two years after the commencement of its statutory functions. That recognises the strong public interest in ensuring that the forecasting arrangements that underpin the Scottish budget and our new fiscal framework are operating effectively and are supported by robust institutional and governance arrangements. All of the reviews and reports must be laid before Parliament to provide additional tools by which Parliament can hold the commission to account.

I also want to ensure that we retain a form of the challenge function that is currently carried out by the non-statutory commission and which I believe has greatly enhanced the Government’s forecasting abilities. I envisage that, in future, forecasts will be prepared by a professional group of staff appointed by the commission and that those forecasts will in turn be scrutinised by the commission members. I have shared that view with members of the commission, who will determine how forecasts will be produced and what quality assurance processes are required to vouchsafe the integrity of the forecasts.

At its introduction, the bill delivered a Scottish Fiscal Commission that was structurally, operationally and visibly independent of Government. Independence has been a key feature of our proposals for the commission, with Audit Scotland commenting that the consultation paper that we published almost a year ago on 26 March 2015
“rightly identifies the independence and impartiality of the Commission as being of paramount importance and sets out proposals to achieve this.”

The bill expressly provides that in performing its functions the commission will not be subject to direction or control by any member of the Scottish Government, thus guaranteeing its operational independence. Moreover, the amendment that I lodged at stage 2 requiring the commission and the Government to agree and publish a protocol delivers greater transparency on the interaction between the commission and Scottish ministers. The commission will retain the flexibility to determine its own work programme within the scope of devolved fiscal powers, and that will enhance its operational independence.

The commission will rightly be directly accountable to Parliament for the discharge of its functions, and Parliament will play a key role in approving the appointment of commission members. In light of issues raised by the Finance Committee in its stage 1 report, I lodged amendments at stage 2 that allow members of the commission to be appointed to serve a second consecutive term of office and which specify that an appointment term will be a maximum of five years.

Everybody across the chamber should welcome the creation of the Scottish Fiscal Commission, because it demonstrates how seriously we are committed to establishing robust forecasting arrangements to support the operation of new tax and borrowing powers. The continuation of the Scottish Fiscal Commission but as a statutory body is another important milestone in the journey to enhance Scotland’s fiscal powers. The commission already plays a key role in supporting the exercise of the tax powers devolved under the Scotland acts of 1998 and 2012 and the bill provides for an institutional and operational framework that enhances that role, protects the commission’s independence and creates a solid basis for the commission to expand its functions over time in line with the fiscal powers of this Parliament.

I move,

That the Parliament agrees that the Scottish Fiscal Commission Bill be passed.

17:28

Jackie Baillie (Dumbarton) (Lab): I very much welcome the opportunity to participate in this stage 3 debate on the Scottish Fiscal Commission Bill. At the outset, I thank my colleagues on the Finance Committee, the clerks and all those who gave evidence, and I also acknowledge the role of the Tory chancellor, George Osborne, who apparently convinced the cabinet secretary to make the Fiscal Commission more robust.

It was in January 2015 that Scottish Labour set out our plans for a Scottish office for budget responsibility—a truly independent body with teeth that would ensure greater transparency and scrutiny of Scotland’s public finances. Its importance cannot be overstated given the substantial new taxation and welfare powers that are coming. No longer will we just be spending money that someone else has given us; we will now be responsible for raising some of it, too. As a result, being honest and open with the Scottish people about what the economic future holds and placing forecasting in the hands of experts free of political manipulation are absolutely the right things for us to do. Of course, that applies to all Governments, of whatever political colour.

Let us look at the context. During stage 1, I noted that, for the first time in a decade, the price of oil was below $30 a barrel. Gross domestic product figures have clearly been affected in a negative way. Growth in Scotland—onshore and offshore—is not good, and Scotland is certainly not performing as well as the rest of the UK.

Just yesterday, the “Government Expenditure and Revenue Scotland” figures were published. I understand from James Kelly that they were published not once, not twice but three times because the figures that were provided by the Scottish Government were incorrect. I am sure that the cabinet secretary regrets that, but he will also acknowledge that that does not fill people with confidence. GERS, which is the Scottish Government’s balance sheet, tells us that there is a staggering £15 billion gap in our public finances. That is more than the funding for the entirety of the national health service.

When Labour called for a Scottish office for budget responsibility, the existing Fiscal Commission had a limited role—the fact that it had no forecasting responsibility and that its members were appointed by the cabinet secretary, serving as advisers at the same time as providing scrutiny, did not provide reassurance about the independence of the body. I am pleased that that has changed. The Fiscal Commission is now to be on a statutory footing and responsible for the official forecast and for assessing expenditure and income across the Scottish Government’s responsibilities, with better governance arrangements than we had before.

I confess that I am disappointed that the cabinet secretary has rejected my amendment on scrutiny of fiscal rules and the sustainability of public finances. I regret that he and his party have turned their face against ensuring that the Fiscal Commission is truly robust. Having those responsibilities is the normal stuff of fiscal institutions across the world but, hey, it is not to be that way in Scotland—yet it is, or was, something
that SNP members of the Finance Committee agreed with. I was delighted to see Kenny Gibson and Mark McDonald make their way to the chamber for a couple of seconds to vote against my amendment, which concerned something that they believed in for more than two years but, of course, they have left again. I do not know why that is. Maybe it is to hide their embarrassment.

The Finance Committee produced a much-welcomed report on the need for a robust fiscal institution. That was followed by an equally thoughtful and robust stage 1 report. In both reports, only one member dissented from the idea that the Fiscal Commission should produce the official forecasts. As I said earlier, that was John Mason. I respect his consistency on that issue, even if I disagree with him. However, I regret his subsequent lack of consistency on other areas of the committee’s thinking.

What genuinely disappoints me is that other members and the convener changed their minds at the 11th hour, just before stage 2. Lo and behold, days later—before the fiscal framework was announced—they changed their minds again: official forecasting was now to be the responsibility of the Fiscal Commission. When it comes to the Fiscal Commission scrutinising fiscal rules or considering fiscal sustainability, they all agreed, but now they have changed their minds. The cabinet secretary had clearly marched his SNP members up to the top of the hill and promptly abandoned them there.

The cabinet secretary says that he did not influence those members and that he did not tell them about the fiscal framework negotiations. I ask people to think about it. Those members of the committee held a strongly expressed view consistently for two years and then, remarkably, they changed their minds at the 11th hour. I do not know what happened. It is a matter for individual members to determine how they protect their own credibility as politicians, but I care about the credibility of the committee. The flip-flopping was embarrassing. It did no credit to the committee or the Parliament, and I hope that we can all reflect on that.

Scotland is on the verge of gaining substantial new powers. With those new powers come new responsibilities. We need openness and transparency in the stewardship of the nation’s finances, and the Scottish Fiscal Commission will be a welcome addition to that process.

We support the bill at stage 3.

17:34

Gavin Brown (Lothian) (Con): I will begin on a positive note. The bill that we now have—the bill that I hope will pass at decision time today—is considerably better than the bill that was originally drafted. The bill as introduced had a number of flaws. First, it allowed only the Scottish Government to do the forecasts; it did not really encourage any alternative forecasts to be published, and the cabinet secretary made clear his view that there ought not to be any alternative forecasts.

The position was that the Scottish Fiscal Commission was simply to assess the “reasonableness” of the Scottish Government forecasts. In looking through that over the course of the budget process, I note that the reasonableness test was such a low bar that it was difficult to foresee a situation where the commission would do anything other than pass the Government’s forecasts as reasonable. When quizzed on whether it could suggest any numbers at all that would be deemed to be unreasonable, the commission was unable to say so. It stated bluntly that it did not look at the numbers. It did not look at the outputs at all; it looked at the models underpinning those numbers.

I hugely welcome the amendments that were passed in group 1 earlier today. They were fundamental. I genuinely think that, without them, we would not have had a Fiscal Commission worthy of the name. Without them, we would have had a series of educated, useful, intelligent advisers who would make the budget process better than it would be without them but would be nowhere close to being what is known internationally as an independent fiscal institution. That change to the bill rescued the commission from being something that would still have been a little helpful, perhaps, but would have been of almost no real regard in terms of scrutiny, particularly concerning the powers that will be introduced in the years to come. That makes a huge improvement and, for that reason, we will continue to support the bill and will vote for it at stage 3.

However, having worked on the matter for well over two years now, I have to say that I am left with a bit of a feeling of dissatisfaction at the end of the process, for a number of the reasons that Jackie Baillie outlined in her speech. I guess that I have been working on the Finance Committee for a couple of years extra as it has taken into account a huge amount of evidence over the course of the process.

I am disappointed that we do not have an amendment to ensure that the commission addresses the sustainability of the finances and the adherence to the fiscal rules. That seems to happen throughout the Organisation for Economic Co-operation and Development countries. We have looked at the materials from the Scottish Parliament information centre, which got a
document from the OECD, and we have been examining practice in 17 countries. All 17 of them consider at least one or the other. All 17 consider the long-term sustainability or the monitoring of fiscal rules, and nine of the 17 do both. The fact that we will do neither here makes us a bit of an outlier.

I was dissatisfied, too, with the Finance Committee at stage 2. I will return to that in closing. In attempting to be helpful by answering a question from me, the cabinet secretary has just opened up more questions. At stage 1, we all agreed in relation to fiscal rules, without anyone going away from it, and we all thought that that was the way we had to go. We had held that position for well over a year. Then, all of a sudden, at stage 2, four members of the Finance Committee voted against the relevant amendment, which failed. If the cabinet secretary did not attempt to put any pressure on those committee members at all, and if confidentiality was maintained—I have no reason whatever to doubt that—what was it that made those members change their minds? What was the intervening evidence between the report being published in the middle of January and the vote being taken in early February that made them vote the way that they did? As a committee member and a member of the Parliament, I think that we are entitled to an explanation of why that was the case. I hope that we get that over the course of the debate.

17:39

John Mason (Glasgow Shettleston) (SNP): I am happy to speak in today’s debate. I very much welcome the fact that we have a Fiscal Commission in place. We are now going to have a strengthened Fiscal Commission that will, through the bill, be put on a statutory footing. As other members have said, we have spent a fair bit of time in the Finance Committee examining and discussing such commissions and how they work; we were also the lead committee for the bill.

Although Scotland aspires to be an independent country at some point, with all the extra powers and responsibilities that that would involve, we are clearly not at that point yet. Internationally, there are not that many examples of devolved administrations, or states in federal systems, that have their own independent fiscal institutions. Some of the states in the USA do, Ontario does, and Catalonia does, but not many others do. We have tended to look at smaller independent countries for models. Some of the committee visited Sweden and a couple of us went to Ireland.

Scotland has the opportunity to set an example and to lead the way for devolved Governments and Parliaments, with the commission. As we studied more international examples, and as we thought through how a commission would work, I became increasingly convinced that the normal international model of an independent commission commenting on or endorsing forecasts is the best model. That is the norm internationally; the UK model is an exception. In that respect, I agreed with the Scottish Government and disagreed with the majority of the committee. In fact, the commission’s members were not convinced by the OBR model, either. I must say that I have a great respect for all three commission members, and I hope that they will be willing to take on a role that is different to the one that they had expected. However, as part of the negotiations over the fiscal framework, I accept that Westminster was keen to have us adopt its OBR model and I accept that the Scottish Government agreed to that as part of the bargaining process. That was the main area of disagreement at committee.

Mention has already been made of one amendment today. I must say that there was a bit of tokenism going on: Labour, as the Opposition, in fighting off the Tories, was trying to show that there was something that it must oppose. It hunted through the bill, found a little thing and created an amendment on it.

Jackie Baillie: John Mason has believed in the measure for more than two years. It was not about hunting for something to disagree with; it was about making sure that we have a robust Fiscal Commission that is worthy of this Parliament.

John Mason: We have that. As I have said, a major issue is who does the forecasting. Jackie Baillie’s amendment was on a peripheral issue. I find it hard to get excited about it and I do not believe that Jackie Baillie is excited about it. She is just making a mountain out of a molehill.

We all agree that the independence of the Scottish Fiscal Commission is essential. That independence comes about partly by its having appropriate structures, but I remain convinced that other essential elements are the integrity and independence of the individuals involved. In that regard, forecasting and independence are two distinct concepts, and whether the Fiscal Commission does the forecasting does not affect its independence. We have the good example of Audit Scotland, which checks other people’s work and comments on it. It is hugely respected. I found amendment 7 strange in that regard, although I voted for it. It talks about the commission preparing reports

“containing an assessment of the accuracy of the forecasts prepared by it”.

We have been forced into a slightly odd position in which the commission will have to comment on its own forecasts.
The Deputy Presiding Officer: Draw to a close, please.

John Mason: Right. We have been very generous so far with the Fiscal Commission. It costs £850,000, which is more than the Irish or the Swedes get, and we should not throw more money at it without a lot of caution.

I very much welcome that we have an expanded Scottish Fiscal Commission, and I hope that members will support the motion at decision time.

17:43

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): As members have explained, this has been a long and twisting road. I am afraid that I have not been able to follow every turn—I am not on the Finance Committee—but I am pleased at the destination at which we have arrived.

When the original model was proposed, I had two worries about it. First, although the theory was that we would have Government forecasts on which the commission would then comment, it seemed as though SFC members were to act more as advisers to the Government, and there was to be constant interaction during the process. That may have meant that it had influence, but it also reduced its independence. That was a flaw in the model.

The more fundamental flaw was the commission not being involved in the forecasts. We were told that there is not a single fiscal commission anywhere that looks only at official Government forecasts, so that needed to be sorted out.

David Bell made an interesting comment about why that was necessary:

“I think it is essential that the forecasting is done outside Government, then you will know if they are wrong, which is probably going to be true, they will be honestly wrong rather than dishonestly wrong.”

I suppose that a more neutral way of putting that is that Governments tend to indulge in optimism bias. Therefore, I am pleased that the commission will now have an enhanced role. It is going to be reviewed—that is good—and that there can also be external evaluation of the commission’s work. Perhaps we can have a mechanism to do evaluation through local or international experts, as the Organisation for Economic Co-operation and Development recommends.

Beyond that, I am slightly worried about the overemphasis on checking, which we still hear from the cabinet secretary. I may have it wrong, but it appears that forecasters will be appointed and the SFC members will check them, which seems to me to be rather overengineered. I was also slightly surprised to hear that the Scottish Government will have its current forecasting capacity checking the SFC. That departs from the OBR model, so we need to keep an eye on it. One reason for that is that there will be increased expenditure; if all that capacity still exists in the Scottish Government and there is now to be extra capacity in the SFC, that will have financial implications.

Tax will be critical, but the commission will also have a role in relation to the new social security powers. The main issue that could be controversial between the two Governments in the next five years relates to spillover effects. The cabinet secretary pointed out in one or another of his committee appearances that information from the OBR and SFC would be helpful in resolving any controversies on those.

John Mason said that he is not excited by Jackie Baillie’s amendment and claimed that none of us is, but it is an important amendment. I hope that it will be revisited in due course. Many European countries have one or another of the responsibilities that are referred to in it.

I am particularly interested in an assessment of the long-term sustainability of the public finances. It is not one of Audit Scotland’s functions to project five years ahead what we know about policies and tax. The cabinet secretary says that I and everyone else can hold him to account on that, but we cannot. We do not have that information unless we have experts projecting over five years, as the OBR does. One of the problems is that there is almost a prejudice against the OBR among some members of the Parliament. The OBR produces good reports on financial sustainability five years ahead; I do not see why the Scottish Fiscal Commission should not perform the same function.

Although I welcome the changes that have been made in the bill, I hope that it is not the end of the process. I am sure that members who are coming back after the election will keep a close watch from inside the Parliament. I—and, no doubt, Gavin Brown—will keep a close watch from outside.

The Deputy Presiding Officer: We come to the closing speeches. I understand that this will be Gavin Brown’s last speech so, on behalf of the Presiding Officers, I thank him for his contribution to the Parliament and wish him all the best for the future. [Applause.]

17:48

Gavin Brown: Presiding Officer, I did not realise until now that this would be my last speech. You obviously know something that I do not. The whip in this Parliament must move in very mysterious ways. I hope that I do not get dragged into anything next week or the week after.
This has been a short debate. It is always a difficult job to sum up only a handful of speeches since I last spoke. However, the starting point must be that we all want the bill to pass. As I said in my opening speech, the bill is considerably better than it was at the start. For that reason alone, it deserves the support of the entire Parliament.

If we examine the genesis of fiscal commissions throughout the world—why they came about and come about—we find that, in almost all cases, the reason that a fiscal commission came about was that there was a big recession, a downturn that was not predicted or a downturn that turned out to be demonstrably worse than anyone predicted and that it was all driven by optimism bias from Government. Therefore, Government after Government has set up a fiscal commission to ensure that the pence and the pounds are managed, to ensure that optimism bias is minimised or, indeed, eradicated and to get independent expertise along with a set of checks and balances. That is one of the reasons why we are doing it now, coupled with the fact that we already have some financial powers and we are getting considerably more.

If we have financial powers only over, for example, LBTT, if we get it slightly wrong, we could find a way to accommodate that change to ensure that it does not impact on the services that we can provide. However, once we move into income tax, non-domestic rates and a portion of VAT, with the greater number of powers that we have, the greater is the risk that we get it wrong. If we got it wrong at the forecast stage, particularly in predicting that we will get more than we actually do, we would have serious problems in the Scottish budget and difficulties in correcting those errors going forward. For that reason, the Fiscal Commission becomes even more important. That is why we should all back it today.

I want to pick up on the one key point of the debate. John Mason—a man I respect hugely, who has done a very good job as deputy convener of the Finance Committee—is simply wrong to say that the issue was tokenism. Jackie Baillie's amendment reflected the second most important thing that the committee reviewed and considered. Issue number 1, far above the rest, was forecasting, but issue number 2 was having a responsibility for the long-term sustainability of the finances and ensuring that the fiscal rules were adhered to.

It is incorrect to suggest that that responsibility is tokenism. OECD principle 3.3 outlines the functions that fiscal commissions ought to have:

“economic and fiscal projections ... baseline projections ... analysis of the executive’s budget proposals”

and

“monitoring compliance with fiscal rules or official targets”.

Monitoring compliance is one of the key things that have to be done by any fiscal commission, anywhere on the planet.

The committee thought all the way through that the commission had to do that. In rejecting that today, I hope that Mr Swinney can at least keep the door open. As our powers increase and we become a stronger fiscal Parliament, it is critical that we get that right. We need somebody other than Government to keep control. That will not just be better for the country, but will help Mr Swinney or his successor to do their job even better. For that reason, I hope that we ultimately get that responsibility for the Scottish Fiscal Commission.

17:52

Dr Richard Simpson (Mid Scotland and Fife) (Lab): I have come late to the topic. I have not served on the Finance Committee, although I have watched some of its ambulations over the period. We have reached a point that is good on the whole. The bill will be supported unanimously tonight.

There is now international recognition that independent fiscal institutions 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 past decade—particularly, as Gavin Brown said, since the 2008 financial crisis. Prediction is a difficult game. Who would have known that the oil price today would have been what it is? Certainly the Government was not able to predict that and I do not altogether blame it for that, although the comments that have been made today on the GERS not being relevant seem extraordinary.

We have no argument with placing the Fiscal Commission on a statutory footing. That is a significant improvement on its previous basis, which was to be helpful and useful, but essentially an adviser to the Government.

The vexed questions that we have faced today have been only half resolved. First, there is the question of the commission producing the macroeconomic forecasts. The Deputy First Minister called it a winding road and it certainly has been. The resolution is in line with the committee's original view on the issue, although as we have heard, the Scottish National Party members have latterly followed the Deputy First Minister up and down the hills like the Duke of York—although as Jackie Baillie said, the Deputy First Minister abandoned them at the top.

In evidence, the International Monetary Fund said:
"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".

However, having independent forecasts is a much better way of doing it. The SFC is to have its own forecasts, so we will watch with interest—in my case, from afar—to see whether those forecasts match. We welcome the amendment that provides that if they do not match, the Government will have to give Parliament an explanation.

The important thing is that the forecasts are five-year rolling forecasts. That is critical because, in the whole period since the Parliament was established, we have not really looked far ahead. Perhaps we have not had the necessity for that. Audit Scotland has repeatedly said that all our institutions fail to look ahead. They look ahead on an annual basis, and they still try to balance the books at the end of the year. That is not the way to run the country, particularly when we are going through huge changes, as we are with health and social integration. That will take five to 10 years, and balancing the books on an annual basis will be difficult.

The OECD talks about nine principles:

- local ownership ... independence and non-partisanship ... mandate ... resources ... relationship with the legislature ... access to information ... transparency ... communications; and ... external evaluation."

Gavin Brown gave us some of the additional wealth of information behind those principles. Many of them have been met, but the principle that has not been met as a result of the rejection of what John Mason quite extraordinarily described as "tokenism”—I do not understand that, as there has been consistency on the issue over time—is that of measuring performance against fiscal rules and sustainability. That seems to me to be the bit that is now missing, and it is a great pity that we will not have it. To say that Audit Scotland would do that is quite inappropriate. That is not its role. I have a great amount of time for Audit Scotland, which has been hugely valuable, as Mary Scanlon and I said in committee the other day. It has made an enormously important contribution, but that is not the contribution that it should make.

Despite the contortions of SNP members on the issue, which have been quite revealing of how our committee structure has worked in the Parliament, at least the Deputy First Minister—if I understand him correctly—has agreed to re-examine it, particularly if we get greater flexibility in setting our own fiscal rules. That at least is to be welcomed.

I very much welcome the changes to the appointments system. Some might want to go further and have hearings for the chair before the chair is appointed. I would certainly favour that. At least the Finance Committee will be able to call members for evidence.

The reciprocal arrangements for co-operation between the commission and the OBR are welcome, and the external evaluation is important, although there is a lack of detail on that.

I make a final plea. Ever since the Parliament started, there has been a lack of strategic clarity and transparency in the budget process. I do not deny that the books have been balanced—that is great—but nevertheless it is a matter of looking ahead, as Audit Scotland has said and as I mentioned earlier. The long-term view of where we are going to go is really important. I hope that some of our discussions in the opening session about Oregon and how well it worked are reflected in where we go in future.

Seventeen years on, there are many issues on which there has been no progress, such as health inequality. There was initial progress on child poverty—in fact, the OECD said that that was among the fastest that it had ever seen—but that is going backwards, and the homelessness target has not been met. There are many social objectives that we need to meet, and that has to be done within an overall framework. We will have that partially tonight, and I hope that we will eventually have it in full measure.

My party and I support the bill.

17:58

John Swinney: I begin with a comment that Malcolm Chisholm made. He was concerned about the Government maintaining its capacity to undertake the tax-forecasting function to enable us to be informed about whether we could come to the view that we accept the Scottish Fiscal Commission's estimates. That is an elementary proposition. Would not the Government be in dereliction of its duty if it did not undertake such an assessment to satisfy itself that a body that is not accountable to it—I concede that it is accountable to Parliament—is able to formulate a set of numbers that will be significantly influential on the public finances of Scotland? Would it not want to be assured that the commission has come to the correct judgment and proposition—or range of propositions? After all, members are absolutely right: there is no precision about these points. However, we certainly need to satisfy ourselves that the estimates and forecasts that have been put forward are appropriate and dependable for the purposes of the Scottish budget process.

If the Government decides that the forecasts do not command its confidence, a mechanism is in place. That is part of the OBR framework, as well—the OBR can be challenged by the United Kingdom Government if it does not believe its
forecasts, and we have put arrangements in place to enable us to take the same approach. It is absolutely correct to enable the Scottish Government to properly exercise its financial management responsibilities for the people of Scotland.

Richard Simpson set out some arguments about the international evidence on external forecasting. If Dr Simpson was to look at the analysis undertaken by the Scottish Parliament information centre, he would find that the OBR model is the outlier. When Robert Chote gave evidence to the Finance Committee, he made the point that the OBR model was not the norm. Of course, as part of the negotiations on the fiscal framework, I have accepted a proposition that is closer to that model. I am prepared to accept it if it is necessary to get the United Kingdom Government to agree to a reasonable fiscal framework. However, when we are coming to a considered judgment about this, we should bear in mind the fact that the Scottish Government’s position in the debate, to begin with, was founded on a strong body of international evidence that indicated that the approach that we were taking was robust and would allow the Scottish Fiscal Commission to fulfil the function that was envisaged for it.

In the course of the debate, there has been a lot of discussion about Jackie Baillie’s amendment 29. Gavin Brown observed that the amendment would have had two functions: first, to enable us to have clarity about responsibility for the long-term sustainability of the public finances; and, secondly, to enable us to see whether the Government was observing its financial rules. On the latter, my problem with a lot of what was said in the debate on the amendment was that the question of whether the Government is observing its financial rules is entirely black and white. As I explained to Baroness Goldie, in response to her intervention, it is a matter of fact.

On the question of where responsibility lies for judging the long-term sustainability of the public finances, in my view that rests ultimately with members of Parliament—informed, yes, by the consideration of the Finance Committee and, significantly, by the judgments of the finance secretary. Ultimately, it is the responsibility of members of the Parliament to determine whether they believe the public finances to be undertaken sustainably.

Gavin Brown: Of course that responsibility falls to Parliament but, as we have heard time and time again, members of Parliament will be aided by the SFC’s analysis. As parliamentarians, we will do our job of looking at the public finances better if we have the analysis from the SFC.

John Swinney: That is a matter of opinion on which Mr Brown and I are going to have to disagree. There is plenty of information and analysis available that will enable Parliament to form that judgment. Ultimately, it is a judgment for elected members of Parliament; it is not a judgment for people appointed by Parliament on its behalf. It is a responsibility that all elected members of Parliament should take seriously.

I hate to close my speech tonight on a discordant note, as the Presiding Officer has informed us that it is Mr Brown’s final speech to Parliament. Mr Brown seemed to be surprised that it was his final speech, but I can advise him that the source of that information was in fact the Conservative chief whip. Maybe Mr Brown will take a message from that revelation.

I want to share with Parliament a little story about Mr Brown. I was on my summer holidays last year, escaping from it all, and was waiting in the queue to get on the ferry at Oban for my summer retreat to the Argyll island so magnificently represented in this Parliament by Mr Russell. As I pulled up in my car to join the queue for the ferry to Mull, who was in the car next door but Mr Gavin Brown and his family? It was a real get-away-from-it-all break for the Swinney family.

Mr Brown has been a creditable and commendable adversary for me in this Parliament but also a friend. I commend him for his distinguished contribution to Parliament, which will be the poorer for his not being a member of it after the election. If I may give some private advice to the Conservative Party, it is that it will be significantly weaker for not having Mr Brown in its ranks. However, I thank Mr Brown for his contribution. [Applause.]

Jamie McGrigor (Highlands and Islands) (Con) rose—

John Swinney: If Jamie McGrigor will forgive me, I am going to have to bring my remarks to a close.

Mr Brown has not always been my strongest ally on what I have brought to Parliament, but I thank him for his distinguished contribution to Parliament. [Applause.]

The Presiding Officer (Tricia Marwick): That concludes the debate on the Scottish Fiscal Commission Bill.

Before we move to the next item of business, I am minded at this stage to accept a motion without notice from Joe FitzPatrick, on behalf of the Parliamentary Bureau, to bring forward decision time to 18.05.

Motion moved.

That, under Rule 11.2.4 of Standing Orders, Decision Time be brought forward to 18.05.—[Joe FitzPatrick.]

Motion agreed to.
Scottish Fiscal Commission Bill
[AS PASSED]

CONTENTS

Section

Scottish Fiscal Commission

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Establishment</td>
</tr>
<tr>
<td>2</td>
<td>Functions</td>
</tr>
<tr>
<td>2</td>
<td>Forecasts and assessments</td>
</tr>
<tr>
<td>3</td>
<td>Meaning of terms used in section 2</td>
</tr>
<tr>
<td>3A</td>
<td>Review of forecasting accuracy</td>
</tr>
<tr>
<td>4</td>
<td>Reports</td>
</tr>
<tr>
<td>4A</td>
<td>Protocol between the Commission and the Scottish Ministers</td>
</tr>
<tr>
<td>4B</td>
<td>Scottish Ministers’ statement</td>
</tr>
<tr>
<td>5</td>
<td>Power to modify the Commission’s functions</td>
</tr>
<tr>
<td>6</td>
<td>Independence</td>
</tr>
<tr>
<td>7</td>
<td>Access to information</td>
</tr>
<tr>
<td>7A</td>
<td>Duty to co-operate with the Office for Budget Responsibility</td>
</tr>
<tr>
<td>8</td>
<td>Annual report</td>
</tr>
<tr>
<td>9</td>
<td>Review of Commission’s performance</td>
</tr>
</tbody>
</table>

Corporate status

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Corporate status</td>
</tr>
</tbody>
</table>

Membership

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>Members of the Commission</td>
</tr>
<tr>
<td>12</td>
<td>Disqualification for appointment</td>
</tr>
<tr>
<td>13</td>
<td>Period and terms of appointment</td>
</tr>
<tr>
<td>14</td>
<td>Disqualification after appointment</td>
</tr>
<tr>
<td>15</td>
<td>Resignation</td>
</tr>
<tr>
<td>16</td>
<td>Removal</td>
</tr>
</tbody>
</table>

Remuneration and expenses

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Remuneration and expenses</td>
</tr>
</tbody>
</table>

Staff

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Chief of Staff and other staff</td>
</tr>
</tbody>
</table>

General

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Regulation of procedure</td>
</tr>
<tr>
<td>20</td>
<td>Validity of things done</td>
</tr>
<tr>
<td>21</td>
<td>Committees</td>
</tr>
<tr>
<td>22</td>
<td>Authority to perform functions</td>
</tr>
</tbody>
</table>

SP Bill 78B  Session 4 (2016)
23 General powers

Transitional and consequential

24 Initial members
25 Amendment of public bodies’ legislation

Ancillary provision

26 Ancillary provision

Final provisions

27 Commencement
28 Short title
Scottish Fiscal Commission Bill

[AS PASSED]

An Act of the Scottish Parliament to establish the Scottish Fiscal Commission and to provide for its functions.

Scottish Fiscal Commission

1 Establishment

(1) The Scottish Fiscal Commission (in Gaelic, Coimisean Fiosgail na h-Alba) is established.

(2) In this Act, it is referred to as “the Commission”.

Functions

2 Forecasts and assessments

(A1) It is the duty of the Commission to prepare forecasts and assessments to inform the Scottish budget.

(1) In particular, the Commission must on at least 2 occasions for each financial year prepare reports—

(a) containing its 5-year forecasts of receipts from—

(i) the devolved taxes,

(ii) non-domestic rates, and

(iii) income tax attributable to a Scottish rate resolution, and

(b) setting out its assessment of the reasonableness of the Scottish Ministers’ projections as to their borrowing requirements.

(1A) Reports prepared under subsection (1) must, in relation to each forecast and assessment, include an explanation of—

(a) the methodology used by the Commission, and

(b) the factors which have been taken into account including, in particular—

(i) the assumptions which the Commission made, and

(ii) the risks which it considered to be relevant.
(3) The Commission may from time to time prepare reports—
   (a) containing its forecasts, assumptions or projections in relation to such fiscal factors as it considers appropriate, or
   (b) setting out its assessment of the reasonableness of the Scottish Ministers’ forecasts, assumptions or projections in relation to such fiscal factors as it considers appropriate.

(4) For the purposes of subsection (3), a “fiscal factor” is anything which the Scottish Ministers use to ascertain the amount of resources likely to be available for the purposes of sections 1 to 3 of the Public Finance and Accountability (Scotland) Act 2000.

(5) Reports prepared under this section may include such other information relating to the forecasts, assumptions, projections or assessments being made as the Commission considers appropriate.

(6) Where a policy of the Scottish Ministers is relevant to the Commission’s performance of its functions under this section, the Commission—
   (a) must have regard to the policy, but
   (b) may not consider what the effect of any alternative policy would be.

3 Meaning of terms used in section 2

(1) This section defines terms used in section 2.

(1A) “5-year forecast”, in relation to a report prepared under section 2(1), means a forecast in respect of the financial year for which the report is prepared and each of the 4 subsequent financial years.

(2) “Devolved taxes” is to be construed in accordance with section 80A(4) of the Scotland Act 1998.

(3) “Non-domestic rates” means non-domestic rates levied under section 7B(2) of the Local Government (Scotland) Act 1975.

(4) “Scottish rate resolution” is to be construed in accordance with section 80C(1) of the Scotland Act 1998.

3A Review of forecasting accuracy

(1) The Commission must prepare reports for each financial year containing an assessment of the accuracy of the forecasts prepared by it under section 2(1)(a).

(2) Reports prepared under this section may include such other information relating to the assessment being made as the Commission considers appropriate.

4 Reports

(A1) The Commission must send—
   (a) a report prepared under section 2(1) to the Scottish Ministers in sufficient time for them to use the report to prepare the draft Scottish budget for the subsequent financial year, and
   (b) another report prepared under section 2(1) to the Scottish Ministers in sufficient time for them to use the report to prepare a Bill for a Budget Act for that year.

(1) The Commission must lay before the Scottish Parliament—
(a) a report prepared under section 2(1) on the same day as that on which the Scottish Ministers lay before the Parliament the draft Scottish budget for the subsequent financial year, and

(b) another report prepared under section 2(1) on the same day as that on which a member of the Scottish Government introduces a Bill for a Budget Act in the Parliament for that year.

(2) The Commission must lay any other report prepared under section 2(1) or a report prepared under section 2(3) or 3A before the Scottish Parliament as soon as reasonably practicable after the report is prepared.

(3) Before laying a report prepared under section 2 or 3A before the Scottish Parliament, the Commission must send a copy of it to the Scottish Ministers (unless one has already been sent under subsection (A1)).

(4) Once a report prepared under section 2 or 3A has been laid before the Scottish Parliament, the Commission must publish it.

(5) The Commission may publish reports prepared under section 2 or 3A in such manner as it considers appropriate.

4A Protocol between the Commission and the Scottish Ministers

(1) It is the duty of the Commission and the Scottish Ministers to agree a protocol for their engagement in relation to the forecasting and assessment process.

(2) In particular, the protocol must set out—

(a) the arrangements for meetings and communications between the parties (and their staff),

(b) the expectations as to the information to be exchanged between the parties during the forecasting and assessment process including, in particular, in relation to draft reports prepared under section 2, and

(c) which (if any) documents relating to the forecasting and assessment process (other than reports prepared under section 2) are to be published and when.

(3) The Commission must publish the protocol and may do so in such manner as it considers appropriate.

(4) The Commission and the Scottish Ministers may from time to time agree revisions to the protocol.

(5) Subsections (2) and (3) apply to a protocol which has been revised as they apply to the protocol agreed under subsection (1).

(6) For the purposes of this section, a reference to the forecasting and assessment process is a reference to the Commission’s performance of its functions under sections 2 and 4.

4B Scottish Ministers’ statement

(1) This section applies where the Scottish Ministers prepare—

(a) a draft Scottish budget for a financial year, or

(b) a Bill for a Budget Act for a financial year,

which has not been informed by a forecast for that financial year contained in a report prepared by the Commission under section 2(1).
(2) The Scottish Ministers must prepare a statement explaining why they disagree with the forecast.

(3) The Scottish Ministers must lay the statement before the Scottish Parliament on the same day as that on which (as the case may be)—

(a) they lay before the Parliament the draft Scottish budget for the financial year, or

(b) a member of the Scottish Government introduces the Bill for a Budget Act for the financial year.

5 Power to modify the Commission’s functions

(1) Subject to subsection (2), the Scottish Ministers may by regulations—

(a) confer functions on the Commission,

(b) modify the functions of the Commission,

(c) remove functions from the Commission.

(2) Regulations under subsection (1) may not remove the Commission’s functions under section 2(A1) or (3).

(3) Regulations under subsection (1) are subject to the affirmative procedure.

(4) In preparing a draft of a Scottish statutory instrument containing regulations under subsection (1) for laying before the Scottish Parliament, the Scottish Ministers must consult—

(a) the Commission, and

(b) such other persons as they consider appropriate.

(5) Regulations under subsection (1) may—

(a) modify this Act or any other enactment,

(b) include incidental, supplementary, consequential, transitional, transitory or saving provision.

6 Independence

(1) In performing its functions, the Commission is not subject to the direction or control of any member of the Scottish Government.

(2) This section is subject to any contrary provision in this or any other enactment.

7 Access to information

(1) The Commission—

(a) has a right of access at reasonable times to any relevant information that the Commission may reasonably require for the purpose of performing its functions,

(b) may require any person who holds or is accountable for relevant information to provide at reasonable times any assistance or explanation that the Commission may reasonably require for the purpose of—

(i) performing its functions, or

(ii) exercising the right conferred by paragraph (a).
(2) In subsection (1), “relevant information” means information in the possession or under the control of—

(a) any member of the Scottish Government,
(b) Revenue Scotland,
(c) the Keeper of the Registers of Scotland,
(d) the Scottish Environment Protection Agency,
(da) a local authority, a valuation authority or an assessor (or depute assessor) appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994,
(e) such other person, or person of such description, as the Scottish Ministers may by regulations specify.

(3) Subsection (1) is subject to any other enactment or rule of law that prohibits or restricts the disclosure of any information or the giving of any assistance or explanation.

(4) Regulations under subsection (2)(e) are subject to the affirmative procedure.

7A Duty to co-operate with the Office for Budget Responsibility

The Commission must, so far as necessary for the performance of the Office for Budget Responsibility’s functions, co-operate with the Office.

8 Annual report

(1) The Commission must, as soon as reasonably practicable after the end of each financial year—

(a) prepare and publish a report on its activities during the year,
(b) lay a copy of the report before the Scottish Parliament, and
(c) send a copy of the report to the Scottish Ministers.

(2) The Commission may publish its reports under this section in such manner as it considers appropriate.

9 Review of Commission’s performance

(1) The Commission must, at least once in every review period, appoint a suitable person or body to review and prepare a report on the Commission’s performance of its functions during the period.

(2) For the purposes of subsection (1), a person or body is suitable only if—

(a) the person or body has expertise likely to be relevant to the assessment of the performance of the Commission’s functions under section 2, and
(b) the person or body is not—

(i) a member of the Commission, or
(ii) disqualified from appointment as such a member by virtue of section 12(1)(a).

(3) The Commission may make such payment to a person or body appointed under subsection (1) in respect of a review as it may, with the approval of the Scottish Ministers, determine.
(4) The Commission must—
   (a) publish each report prepared under subsection (1),
   (b) lay a copy of it before the Scottish Parliament, and
   (c) send a copy of it to the Scottish Ministers.

(5) The Commission may publish reports prepared under subsection (1) in such manner as it considers appropriate.

(6) In this section, “review period” means—
   (a) the period of 2 years beginning with the date on which section 2 comes into force, and
   (b) each subsequent period of 5 years.

Corporate status

10 Corporate status

The Commission is a body corporate.

Membership

11 Members of the Commission

(1) The Commission is to consist of—
   (a) a member to chair the Commission, and
   (b) at least 2 but no more than 4 other members.

(2) The Scottish Ministers are to appoint the members.

(3) The Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment.

(4) The Scottish Ministers may by regulations amend subsection (1)(b) by substituting a different number for any number for the time being specified there.

(5) Regulations under subsection (4) are subject to the negative procedure.

Disqualification for appointment

12 Disqualification for appointment

(1) The Scottish Ministers may not appoint a person as a member if the person—
   (a) is—
      (i) a member of the Scottish Parliament,
      (ii) a member of the House of Commons,
      (iii) a member of the National Assembly for Wales,
      (iv) a member of the Northern Ireland Assembly,
      (v) a member of the European Parliament,
      (vi) a councillor of any local authority,
      (vii) the holder of any other relevant elective office within the meaning of paragraph 1(8) of schedule 7 to the Political Parties, Elections and Referendums Act 2000,
(viii) a member of the Scottish Government,
(ix) a Minister of the Crown,
(x) an office-holder of the Crown in right of Her Majesty’s Government in the United Kingdom,
(xi) an office-holder in the Scottish Administration,
(xii) a civil servant,
(b) is or has been insolvent,
(c) is or has been disqualified as a company director under the Company Directors Disqualification Act 1986,
(d) is or has been disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005, or
(e) is or has been disqualified under any disqualification provision analogous to either of those mentioned in paragraphs (c) and (d), anywhere in the world.

(2) For the purposes of subsection (1)(b), a person is or has been insolvent if—
(a) the person’s estate is or has been sequestrated,
(b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,
(c) the person is or has been the subject of any other kind of arrangement analogous to either of those described in paragraphs (a) and (b), anywhere in the world.

13 Period and terms of appointment

(1) A member is appointed for such period not exceeding 5 years as the Scottish Ministers may determine.

(1A) A person may be reappointed as a member if—
(a) the person—
(i) is a member at the time of reappointment, or
(ii) ceased to be a member not more than 3 months before the date of reappointment, and
(b) the person has not previously been reappointed.

(1B) Subsections (1) and (2) of this section and sections 11, 12 and 14 apply to the reappointment of a person as a member as they apply to the appointment of a person as a member.

(2) The Scottish Ministers may determine other terms of an appointment, so far as not provided for by this Act.

14 Disqualification after appointment

(1) A person’s appointment as a member ceases if the person becomes disqualified as a member after appointment.

(2) A person becomes disqualified as a member after appointment if, during the person’s period of appointment as a member, any of paragraphs (a) to (e) of section 12(1) applies to the person.
15 **Resignation**
A member may resign by giving notice in writing to—
(a) the Scottish Ministers, and
(b) the Presiding Officer of the Scottish Parliament.

5 **Removal**
(1) The Scottish Ministers may remove a member, by giving the member notice in writing, if—
(a) the member has been absent from meetings of the Commission for a period longer than 3 months without permission from the Commission, or
(b) the Scottish Ministers consider that the member is—
   (i) otherwise unfit to continue to be a member, or
   (ii) unable to perform the member’s functions.
(2) The Scottish Ministers may remove a member under subsection (1) only with the approval of the Scottish Parliament.

17 **Remuneration and expenses**
(1) The Commission may pay to its members such remuneration as it may, with the approval of the Scottish Ministers, determine.
(2) The Commission may pay to its members such sums as it may, with the approval of the Scottish Ministers, determine in respect of expenses incurred by them in performing their functions.

18 **Chief of Staff and other staff**
(1) The Commission must employ a person to act as the Commission’s Chief of Staff.
(2) The Commission may employ other staff.
(3) The Chief of Staff and other staff are to be employed on such terms as the Commission may, with the approval of the Scottish Ministers, determine.

**General**

19 **Regulation of procedure**
The Commission may regulate its own procedure (including quorum).

20 **Validity of things done**
The validity of anything done by the Commission is not affected by—
(a) a vacancy in membership,
(b) a defect in the appointment of a member,
(c) disqualification of a person as a member after appointment.
21 Committees

(1) The Commission may establish committees.

(2) The membership of a committee may include (but may not consist entirely of) persons who are not members of the Commission but those persons are not entitled to vote at meetings.

(3) The Commission may pay each person mentioned in subsection (2) such remuneration and allowances as it may, with the approval of the Scottish Ministers, determine.

22 Authority to perform functions

(1) The Commission may authorise—

(a) any of its members,
(b) any committee established by it,
(c) any member of its staff,
(d) any other person,

to perform such of its functions (to such extent) as it may determine.

(2) The giving of authority under subsection (1) to perform a function does not—

(a) affect the Commission’s responsibility for the performance of the function,
(b) prevent the Commission from performing the function itself.

23 General powers

The Commission may do anything that appears to it—

(a) to be necessary or expedient for the purpose of, or in connection with, the performance of its functions,
(b) to be otherwise conducive to the performance of its functions.

Transitional and consequential

24 Initial members

(1) The person who was, immediately before the commencement date, the chairing member of the non-statutory Commission is, on that date, taken to have been appointed under section 11(1)(a) as the member to chair the Commission.

(2) Any person who was, immediately before the commencement date, a member (other than chairing member) of the non-statutory Commission is, on that date, taken to have been appointed under section 11(1)(b) as a member of the Commission.

(3) A person to whom subsection (1) or (2) applies is referred to in this section as an “initial member”.

(4) An initial member’s period of appointment as a member—

(a) is to continue to be the same as that for which the member had been appointed as a member of the non-statutory Commission, and
(b) accordingly expires at the time at which the period of appointment as a member of the non-statutory Commission would have expired.
Except as may be agreed between the Scottish Ministers and an initial member, the other terms of the member’s appointment are to continue to be the same as the terms on which the member had been appointed as a member of the non-statutory Commission, so far as consistent with this Act.

In this section—

“commencement date” means the day on which section 1 comes into force,

“the non-statutory Commission” means the body known as the Scottish Fiscal Commission established by the Scottish Government following the Scottish Parliament’s resolution of 24 June 2014 endorsing its establishment and supporting the appointment of the persons nominated to be members.

Amendment of public bodies’ legislation

(1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Scottish Fire and Rescue Service insert—

“The Scottish Fiscal Commission”.

(2) In the Freedom of Information (Scotland) Act 2002, in Part 2 of schedule 1 (non-ministerial office holders in the Scottish Administration), after paragraph 18A insert—

“18AA The Scottish Fiscal Commission”.

(3) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), under the heading “Executive bodies”, after the entry relating to the Scottish Fire and Rescue Service insert—

“Scottish Fiscal Commission”.

(4) In the Public Services Reform (Scotland) Act 2010, in schedule 8 (listed public bodies), after the entry relating to the Scottish Fire and Rescue Service insert—

“Scottish Fiscal Commission”.

(5) In the Public Records (Scotland) Act 2011, in the schedule, under the heading “Scottish Administration” after the entry relating to the Scottish Courts and Tribunals Service insert—

“Scottish Fiscal Commission”.

(6) In the Procurement Reform (Scotland) Act 2014, in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13B insert—

“13C Scottish Fiscal Commission”.

Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.

(2) Regulations under this section may—

(a) make different provision for different purposes,

(b) modify this Act or any other enactment.
(3) Regulations under this section containing provision which adds to, replaces or omits any part of the text of an Act are subject to the affirmative procedure.

(4) Otherwise, regulations under this section are subject to the negative procedure.

**Final provisions**

27 **Commencement**

(1) This section and sections 26 and 28 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under subsection (2) may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

28 **Short title**

The short title of this Act is the Scottish Fiscal Commission Act 2016.
Scottish Fiscal Commission Bill
[AS PASSED]

An Act of the Scottish Parliament to establish the Scottish Fiscal Commission and to provide for its functions.

Introduced by: John Swinney
On: 28 September 2015
Bill type: Government Bill