

**A CONSULTATION ON The Scottish Fiscal Commission (Modification of Functions) Order 2017**

**Analysis of Responses**

**&**

**Scottish Government Response**

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**Executive Summary**

From the 1 April 2017, the Scottish Fiscal Commission will become a statutory body responsible for producing official forecasts that will underpin the Scottish Budget. The Scottish Fiscal Commission Act[[1]](#footnote-1) received Royal Assent in April 2016 and amongst other things, sets out the functions of the Scottish Fiscal Commission.

The Fiscal Framework Agreement between the Scottish and UK Governments requires an expanded role for the Commission following devolution of the 2016 Scotland Act powers. In addition to producing forecasts for the fully devolved taxes and non-domestic rates, the SFC is also to assume responsibility for forecasting income tax, social security expenditure and onshore GDP. As the SFC Act was passed before the Scotland Act 2016, the Scottish Parliament did not have competence to legislate for these functions during the Bill process.

Legislative changes to the Commission’s functions are therefore required. There are regulation-making powers in the SFC Act 2016 that allow Ministers to expand the functions of the Commission. The Scottish Government (SG) launched a consultation from 27 October to 30 November seeking views on draft changes to the Commission’s remit agreed in the Fiscal and the new powers of the Scottish Parliament provided for in the Scotland Act 2016. There is a requirement in section 8 of the SFC Act 2016 that Ministers, “must consult – the Commission and any other person’s as they consider appropriate” on draft regulations changing the Commission’s functions. The SG formally sought views from Lady Susan Rice, Chair of the Commission on the draft regulations. The Commission’s response was supportive of the proposed scope and drafting of the order[[2]](#footnote-2).

We received four additional responses from organisations and one from an individual (see Annex B). All responses were generally supportive of our approach and the drafting of the order.

The Chartered Institute of Taxation however highlighted concerns over tax payer confidentiality. Audit Scotland suggested that additional quarterly GDP forecasts may be required in order to monitor for economic shocks covering part of the budget year under consideration and the subsequent one and the corresponding trigger for additional borrowing powers.

A Scottish Government response to this consultation can be found in Annex A. The Scottish Government intends to lay finalised legislation in Parliament in January 2017. The intention is for this to take effect from the 1 April 2017 – at the same time as the Commission becomes a statutory body and the first of the new powers also commence.

**Question 1:** Do you agree that no changes are required to the Scottish Fiscal

Commission Act in order for the Scottish Fiscal Commission to produce forecasts of

revenue from the expanded income tax powers?

All respondents that answered question one agreed that no changes would be required to the Commission’s functions requiring the Commission to produce income tax forecasts once the new powers take effect. The Commission stated, “we agree with the Scottish Government’s conclusion (Question 1) that no changes are required to the Scottish Fiscal Commission Act 2016 in order for the Commission to produce forecasts of revenue from the expanded Income Tax powers available from 1 April 2017.”

The CIOT stated, “Yes, we agree that the wording of the Act mean that no changes are required in order for the Commission to produce forecasts of revenue from the expanded income tax powers. The Act refers to ‘income tax attributable to a Scottish rate resolution’ and the Scotland Act 1998 also continues to refer to a ‘Scottish rate resolution’ following the changes introduced by the Scotland Act 2016.

**Question 2:** Do you agree with the approach of adding a social security forecasting

function to section 2(2) of the Scottish Fiscal Commission Act 2016 as outlined in

this consultation and in Annex A?

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**Question 3:** Do you agree that the wording of the regulations will avoid Scottish

Ministers having to make further changes to the Scottish Fiscal Commission Act

2016 as and when the new social security powers take effect? If not, what alternative

approach would you suggest?

Respondents were broad in agreement with the proposed SG approach. The Commission stated, “We also agree (Question 2) with your proposed approach of adding a social security forecasting function to section 2(2) of the Act; and (Question 3) that the proposed wording of the Regulations will avoid the need to make further changes to the Act as and when the new social security powers take effect.”

The CIOT stated, “Yes, we agree with the approach of adding a social security forecasting function, subject to our comments at paragraph 2.2 above (that it is essential that the Commission is funded and provided with the resources to ensure it has the capacity to fulfil its remit). We think that the wording of the regulations should avoid having to make further changes to the Act as and when the new social security powers take effect.”

Respondent Paul Whyte wrote, “I would like to have the Fiscal Commission have the power to compare how Scottish Budgets will impact on those on lower incomes, will the decisions made have a proportionately higher impact on minimum wage recipients or people on benefits than those on average to higher wages.”

**Question 4:** Do you think the approach in the proposed regulations will successfully

place a duty on the Scottish Fiscal Commission to produce onshore GDP forecasts,

excluding North Sea oil and Gas extraction?

&

**Question 5:** Do you think that the regulations, and the resulting GDP forecasts, will

enable Ministers and Parliament to assess Scottish Government borrowing

parameters for the budget year?

Respondents supported the SG’s approach as set out in the consultation. The Commission stated , “We agree (Question 4) that the proposed formulation in the draft Regulations will successfully place a duty on the Commission to produce forecasts of onshore GDP in Scotland, i.e. excluding oil and gas extraction in the Scottish sector of the UK continental shelf.”

CIOT wrote, “Yes, we think the approach adopted will place a duty on the Commission to produce onshore GDP forecasts, excluding North Sea oil and Gas extraction. We would expect the regulations and resulting GDP forecasts to assist Ministers and Parliament in assessing borrowing parameters for the budget year.

To be helpful, the forecasts should adopt proper accruals basis accounting, to ensure losses and uncollectable items are included. It would also be helpful if there could be alignment between forecasting for Scotland the UK as a whole.”

Respondents were in agreement that the draft regulations would enable Minister to assess borrowing parameters. Audit Scotland questioned whether the production of additional quarterly forecasts should be prescribed in legislation, stating – “In the circumstance that the conditions for a Scotland specific economic shock were met for the periods from Q3 2019 to Q2 2020, Q4 2019 to Q3 2020 or Q1 2020 to Q4 2020 this would not be able to be identified prior to the budget year 2019/20, although there would be implications for the borrowing parameters for the 2019/20 budget. This would only become apparent when forecasts for the 2020/21 budget were prepared, part way through the 2019/20 budget year.

Such a position could be avoided if the proposed requirement were extended to prepare quarterly forecasts for the two subsequent financial years. Ministers and Parliament would be able to determine whether the provisions for a Scotland-specific shock would be met at any time during the budget year being considered.”

Paul Whyte response focused on how the information could help inform policy dealing low income families writing, “If they do not provide information that can be used by Ministers to help them decide the best way forward in regards to what impact lower income families will affected.”

The CIOT stated that, “Yes, we think the approach adopted will place a duty on the Commission to produce onshore GDP forecasts, excluding North Sea oil and Gas extraction. We would expect the regulations and resulting GDP forecasts to assist Ministers and Parliament in assessing borrowing parameters for the budget year. To be helpful, the forecasts should adopt proper accruals basis accounting, to ensure losses and uncollectable items are included. It would also be helpful if there could be alignment between forecasting for Scotland the UK as a whole.

**Impacts and General Comments from Respondents**

**Question 6:** Do you think that these regulations will in any way impact upon equal

opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

No major impacts where identified following the consultation exercise The Commission themselves were supportive of the SG’s approach, stating, “we agree with your assessment (Question 6) that these proposed Regulations will not, as currently drafted, have any impact on the various categories listed.”

Whilst the draft regulations do not alter the non-domestic rate forecasting function, ICAS used the opportunity to highlight potential risk that work by local authorities may be duplicated when the commission starts to undertakes the forecasting role and that efforts should be made to avoid this. ICAS was also broadly supportive of the SG approach , "ICAS has no objections to the proposals made in the consultation document relating to the modification of functions and agrees the proposals are rational and are unlikely to result in adverse implications for any stakeholders, other than adding an additional burden to local authorities who may need to duplicate the work they do in providing non-domestic rates receipts figures to the Commission and the UK Government. The question of duplication may indeed be eliminated if the information required by the Commission is in the same format and covering the same periods as that already provided to the UK Government.”

Paul Whyte highlighted the need for Ministers use the data to inform policy that assists lower income families. Paul Whyte stated that, “If they (SFC) do not provide information that can be used by Ministers to help them decide the best way forward in regards to what impact lower income families will (be) affected.”

The CIOT stated, “We comment only in relation to privacy: we recognise the need for the sharing of anonymous aggregate data. In principle, we agree that aggregate data, which cannot be manipulated in order to identify specific individuals (whether natural or non-natural) should be able to be shared, provided sufficient public benefit has been identified.

CIOT also stated, “We recognise the need for the sharing of anonymous aggregate data and in principle, we agree that aggregate data, which cannot be manipulated in order to identify specific individuals should be able to be disclosed, provided sufficient public benefit has been identified. We have a significant concern that sophisticated modelling techniques could result in the identification of specific individuals, even from anonymous aggregate data. Where aggregate data is shared with specific third parties therefore, sufficient deterrents and safeguards should be present.”

Audit Scotland expressed the view that – “The proposed Regulations will provide independent forecasts that would contribute to such an approach. Given the significance of the 2016 Act and Fiscal Framework for the Scottish public finances, the Scottish Government may wish to consider:

* whether the proposals to require forecasts for five years ahead cover a sufficient period ahead on which to base a more strategic approach to financial management. In our view, this is the minimum period for which such forecasts would be required, but the Scottish Government may wish to consider extending this. We note that section 4(a) would appear to provide discretion to the Scottish Fiscal Commission to prepare reports containing forecasts for a longer period.
* whether it would be appropriate to extend the functions of the Scottish Fiscal Commission to include a duty or ability to examine and report on the sustainability of the Scottish public finances. In our view such an approach would help demonstrate the objectivity of any such assessment. “

A respondent who wished to remain anonymous stated that, “This is just expanding its functions in light if a changing environment - i.e. the devolution of more powers.”

**ANNEX A**

**Scottish Government Response**

1. The Scottish Government would like to thank all those who took the time and effort to respond to this consultation. The information obtained has helped to inform the policy and drafting of *‘The Scottish Fiscal Commission (Modification of Functions) Order 2017’* (the order) which, subject to Parliamentary approval, will modify the Scottish Fiscal Commission’s functions.
2. The Scottish Government is content that no change will be required to the Commission’s functions on Income Tax. Changes in the Scotland Act 2016 (to 80 (C) of the 1998 Scotland Act) to expand income tax powers are worded in such a way that the Commission’s duties in relation to the additional powers are already captured in section 2 of the SFC Act. The SFC has a duty therefore to carry out its function of forecasting revenue under the expanded Scottish rate resolution powers once in force. Responses to the consultation have confirmed this assessment. We note the CIOT’s comments on taxpayer confidentiality. Any information provided by HMRC or Revenue Scotland to the Commission will be subject to data protection provisions in the, ‘*Revenue Scotland and Tax Powers Act 2014’* and the, *‘Commissioners for Revenue and Customs Act 2005’* and will protect tax payers from being identified from data supplied to the Commission.
3. The Scottish Government also notes the response from Audit Scotland with regards to the potential need for additional quarterly GDP forecasts in order to monitor potential economic shocks and the trigger for additional borrowing powers available to Ministers. The Fiscal Framework agreement sets out that, amongst other things, that a full rolling four quarters of GDP growth below the UK [[3]](#footnote-3) (as compared to the proceeding four quarters) is required before additional borrowing parameters are triggered. If there is not four qualifying quarters prior or during the budget year in consideration then the additional borrowing parameters will not be triggered in that budget year but when the Commission produces forecasts and the Scottish Parliament considers the budget for the subsequent budget year. As quarterly forecasts will become less accurate as they extend forward, it is the Scottish Government’s belief that the proposal in the consultation (forecasting to the end of the budget year in consideration) represents a sensible cut off point.

1. In the advent of a financial crash or similar scenario, there is nothing to prevent Commissioners from producing updated forecasts extending into the subsequent budget year. Ministers and/or Parliament could also request (but not direct) the Commission to produce forecasts outside of the statutory reporting framework, which theoretically would also trigger the additional borrowing parameters, providing that the OBR produce similar UK forecasts for the equivalent quarters.
2. The Scottish Government is confident that *‘The Scottish Fiscal Commission (Modification of Functions) Order 2017’* provisions on social security, as drafted and consulted on, will provide in full the requirement for the Commission to produce demand led social security expenditure forecasts. Responses to the consultation confirm our assessment that further legislation will not be required as each of the new social security powers take effect in Scotland. The function should therefore be “future proofed” should there be further devolution of social security/welfare powers, within the context of the Scotland Act 1998, in due course.
3. The order will therefore update section 2 of the Act which sets out the functions of the Commission. Subject to the approval of the Scottish Parliament, from the 1 April 2017 the Commission will prepare 5-year forecasts of receipts from:
   * + - devolved taxes, including Land and Buildings Transaction Tax and Scottish Landfill Tax and future taxes such as Air Departure Tax and the Aggregates Levy;
       - Non-Domestic Rates;
       - Scottish Income Tax;
       - demand led social security expenditure and;
       - GDP forecasts that will cover the period from the last published outturn GDP figures and the end of the budget year under consideration - split into quarters whilst the subsequent four years will consist of an annual figure.
4. In addition, the Commission will assess the reasonableness of Scottish Ministers’ borrowing projections and may also prepare reports on other fiscal factors (including forecasts, assumptions or projections prepared by Scottish Ministers). Forecasts will be provided twice a year – once in sufficient time for the Scottish Ministers to formulate the draft budget and the other in time for the Scottish Parliament to use forecasts to support scrutiny of the Budget Bill for that year. The timing of other reports is at the Commission’s discretion.
5. As mentioned in the consultation document the Joint Exchequer Committee will agree arrangements for production of VAT revenue forecasts for 2019/20, with the intention that there will be a transitional period within which the methodology and modelling will be refined. If a decision is taken that the Commission should produce these forecasts, further Regulations will be brought forward at the appropriate time.
6. Following the results from this consultation Scottish Ministers intend to make minimal changes to the Order and lay a finalised draft in Parliament in late January 2017. The intention is for the Order to take effect from the 1 April 2017 – at the same time as the Commission becomes a statutory body and the first of the new powers commence.

**ANNEX B**

**List of Respondents**

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| |  | | --- | |  | | Scottish Fiscal Commission | | Paul Whyte (individual) | | ICAS | | Audit Scotland | | The Chartered Institute of Taxation (CIOT) |   \*One respondent asked to remain anonymous. |
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1. [2016 asp 17](http://www.legislation.gov.uk/asp/2016/17/contents) [↑](#footnote-ref-1)
2. <https://consult.scotland.gov.uk/fiscal-responsibility/modification-of-functions-regulations-2016/consultation/published_select_respondent> [↑](#footnote-ref-2)
3. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508102/Fiscal_Framework_-_Text_-_Annex_to_the_fiscal_framework_-_15th_March_201....pdf> [↑](#footnote-ref-3)