

A consultation on the Draft Scottish Fiscal Commission (Modification of Functions) Regulations 2017

October 2016



Scottish Government
Riaghaltas na h-Alba
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CONTENTS

- **INTRODUCTION** (page 3)
- **CHAPTER 1: INCOME TAX FORECASTING** (page 6)
- **CHAPTER 2: DEVOLVED SOCIAL SECURITY FORECASTING**
(page 7)
- **CHAPTER 3: GROSS DOMESTIC PRODUCT FORECASTING**
(page 8)
- **CHAPTER 4: EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.** (page 10)
- **CHAPTER 5: HOW TO RESPOND** (page 12)
- **LIST OF CONSULTATION QUESTIONS** (page 15)
- **ANNEX A: DRAFT OF THE SCOTTISH FISCAL COMMISSION (MODIFICATION OF FUNCTIONS) REGULATIONS 2016** (page 16)

INTRODUCTION

Purpose

1. This consultation provides an opportunity to comment on the drafting of regulations that expand the Scottish Fiscal Commission's ("the Commission") functions. The Scottish Fiscal Commission Act 2016¹ establishes the Commission as the producer of official forecasts to underpin the Scottish Budget. The expansion of functions is required to give effect to the Fiscal Framework² agreed between the UK and Scottish Governments and to reflect the further powers devolved by the Scotland Act 2016.

2. A draft of the regulations, which update the Scottish Fiscal Commission Act 2016³ ("the Act"), 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. Your response will help inform that process.

Scottish Fiscal Commission: Current Position

3. The Commission was established on a non-statutory basis in June 2014, with a remit reflecting the fiscal powers devolved to the Scottish Parliament under the Scotland Act 2012. It serves as Scotland's independent fiscal institution with a key role in enhancing the credibility and transparency of fiscal projections prepared by the Scottish Ministers.

4. The Commission's non-statutory purpose, remit and duties are set out in a "Framework Document"⁴ agreed between the Commission, the Scottish Government and the Scottish Parliament. Its key roles are to:

- Undertake independent **scrutiny** and **assessment** of forecasts, prepared by the Scottish Government, of receipts from Land and Buildings Transaction Tax, Scottish Landfill Tax and the Scottish Rate of Income Tax and of the economic determinants underpinning Scottish Government forecasts of Non-Domestic Rate Income.
- 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.
- Conduct its business independently with integrity and transparency.

¹ <http://origin-www.legislation.gov.uk/asp/2016/17>

² <http://www.gov.scot/Resource/0049/00494765.pdf>

³ <http://origin-www.legislation.gov.uk/asp/2016/17>

⁴ http://www.fiscal.scot/media/media_461055_en.pdf

5. It is intended that the Commission will be established on a statutory basis from 1 April 2017, at which point the Commission will become responsible for producing official forecasts to underpin the Scottish Budget, reflecting changes to the Commission's remit agreed in the Fiscal Framework.

6. Section 2 of the Act sets out the functions of the Commission. Under these provisions, the Commission is under a statutory duty to prepare forecasts of tax receipts and assessments of the Scottish Government's borrowing projections to inform the Scottish budget process. In particular, the Commission is to prepare 5-year forecasts of receipts from:

- devolved taxes, including Land and Buildings Transaction Tax and Scottish Landfill Tax and any future devolved taxes;
- non-domestic rates; and
- the Scottish rate of income tax.

7. In addition, the Commission must 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 have to 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.

Scottish Fiscal Commission: Context for Expanded Functions

8. Section 8 of the Act provides Scottish Ministers with the power to modify, by regulations, the powers of the Commission. This allows for the addition of new functions, modification of existing functions and removal of functions. Such regulations are subject to the affirmative parliamentary procedure.

9. The Scottish Government now intends to use the regulation-making powers provided in section 8 in the Act to expand the functions of the Commission to reflect the powers devolved through the Scotland Act 2016 and the content of the Fiscal Framework agreement. As the Act was passed before the Scotland Act 2016, the Scottish Parliament did not have competence to legislate for these functions during the parliamentary passage of the Bill.

10. In summary, the functions of the Commission will need to be expanded as follows (to take effect from the 1 April 2017):

- addition of a function to prepare forecasts of demand led social security expenditure, once devolved; and
- addition of a function requiring the Commission to prepare forecasts of Scotland's GDP excluding extra regio economic activity (i.e. Scottish GDP excluding oil, gas and other hydrocarbons produced in the Scottish sector of the UK Continental Shelf).

11. Further commentary on these various aspects is set out in the subsequent chapters of this consultation.

12. The requirement to produce forecasts of revenues from further devolved taxes is already provided for in the Act, which will automatically require the Commission to produce forecasts of revenues from Air Passenger Duty (due to be devolved in April 2018) and the Aggregates Levy once devolved. Therefore no modification is required to cover the Commission's role in relation to these additional taxes devolved under the Scotland Act 2016. The position in relation to income tax is considered further at Chapter 1 below.

13. The Scotland Act 2016 also provides for the Scottish Parliament to be assigned half of the VAT raised in Scotland. Receipts from the first 10p of the standard rate of VAT and the first 2.5p of the reduced rate of VAT in Scotland will be assigned.

14. The assignment of VAT will be based on a methodology currently being developed by the Scottish and UK Governments estimating expenditure in Scotland on goods and services that are liable for VAT. The two Governments have agreed that VAT assignment will be implemented in 2019-20.

15. The Joint Exchequer Committee will agree arrangements for production of VAT revenue forecasts closer to this time, 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.

CHAPTER 1: INCOME TAX FORECASTING

Income Tax

16. Whilst the Commission's role in forecasting income tax revenue will change as a result of the income tax provisions in the Scotland Act 2016 coming into force from 1 April 2017, in our view no legislative changes are required to enable the Commission to discharge that changed role.

17. From 1 April 2017, the Scottish Parliament will have expanded powers allowing it to set the Scottish rate resolution, which can consist of more than one rate. The Scottish Parliament will in effect have the ability to set all rates and thresholds for tax on non-savings, non-dividend based income of Scottish taxpayers.

18. Section 13 of the Scotland Act 2016 states that the Scottish rate resolution consists of the "the Scottish basic rate, and any other rates, for the purposes of section 11A of the Income Tax Act 2007 (which provides for the income of Scottish taxpayers which is charged at those rates)", whilst the SFC Act states that the Commission must publish 5-year forecasts of income tax attributable to the Scottish rate resolution.

19. Therefore changes in the Scotland Act 2016⁵ (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. This means that the SFC has a duty to carry out its function of forecasting revenue under the expanded Scottish rate resolution powers once in force. We therefore do not believe that any changes are required to the Act for the Commission to be under a duty to produce revenue forecasts in relation to expanded income tax powers from 1 April 2017, which in effect means forecasts for the 2018-19 budget year onwards.

QUESTION

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?

⁵<http://www.legislation.gov.uk/ukpga/2016/11/part/2/crossheading/income-tax/enacted>

CHAPTER 2: FUNCTION TO PREPARE FORECASTS OF DEVOLVED SOCIAL SECURITY EXPENDITURE

20. The Fiscal Framework agreement provides that the Commission will prepare independent forecasts of Scottish demand-driven social security spending.

21. Work to enable the Scottish Parliament to start legislating on social security and employability as provided for in the Scotland Act 2016 is currently underway. The powers will include control over certain aspects of housing related benefits, Disability Living Allowance, Personal Independence Payment, Attendance Allowance and Carer's Allowance.

22. The Scottish Government may choose to phase the process of implementing these new powers over a number of years, including bringing forward the necessary legislation. More detail on the timings of devolution can be found at: <http://news.scotland.gov.uk/News/Transfer-of-new-powers-26e4.aspx>.

23. The proposed regulations on which we are seeking views would add to section 2(2) of the SFC Act a function and a duty requiring the Commission to produce forecasts of demand led social security expenditure. The forecast would need to cover a five-year period, and would have to be produced at the same time as the devolved tax forecasts. This means that forecasts would 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.

24. The proposed Regulations (see Annex A) provides an update to section 3 of the Act, defining “demand led social security expenditure”. In the interests of efficiency, this drafting captures in full the requirement for the Commission to produce demand led social security expenditure forecasts. This means that further legislation does not need to be laid 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 powers in due course.

QUESTIONS

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?

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?

CHAPTER 3: FUNCTION TO PROVIDE GDP FORECASTS

25. In order to exercise the additional tax powers effectively, the Scottish Government and Parliament will need to have Scottish GDP forecasts to assess if the contingency borrowing criteria are forecast to be triggered as a result of an asymmetric economic shock (as defined in the fiscal framework – see paragraphs 64 and 66 set out in the box below) and to assist with the management of the Scotland Reserve. Further commentary on borrowing is provided in the box below.

26. At the UK level, the GDP forecasts which underpin the UK Government's Budget and Autumn Statement are produced by the Office of Budget Responsibility. As mentioned in paragraph 4, the Fiscal Framework states that the Commission will produce forecasts for Scottish onshore GDP. The draft regulations therefore add a new function to section 2(2) of the Act, requiring the Commission to prepare Scottish onshore GDP forecasts. Onshore is defined for this purpose as excluding *extra regio* economic activity, principally North Sea oil and gas extraction, but including the ancillary industries to the sector which are based onshore. This is the same definition used in producing the existing Scottish Quarterly GDP National Statistics publication,

27. The draft regulations also require that GDP forecasts should be produced on two occasions a year, including in time for the draft budget and then the laying of the subsequent Budget Bill. Forecasts will cover the period from the last published outturn GDP figures and the budget year split into quarters whilst the subsequent four years will consist of an annual figure. This will allow Scottish Ministers and the Scottish Parliament to assess borrowing parameters for the forthcoming budget year.

Paragraph 64 of the Fiscal Framework Agreement

Under this agreement, the Scottish Government will have the power to borrow up to £600m each year within a statutory overall limit for resource borrowing of £1.75bn, for the following reasons:

- for in-year cash management, with an annual limit of £500m;
- for forecast error in relation to devolved and assigned taxes and demand-led welfare expenditure arising from forecasts of Scottish receipts/expenditure and corresponding UK forecasts for the Block Grant Adjustments, with an annual limit of £300m; and
- for any observed or forecast shortfall in devolved or assigned tax receipts or demand-led welfare expenditure incurred where there is, or is forecast to be, a Scotland-specific economic shock, with an annual limit of £600m.

Paragraph 66 of the Fiscal Framework Agreement

A Scotland-specific economic shock is triggered when onshore Scottish GDP is below 1% in absolute terms on a rolling 4 quarter basis, and 1 percentage point below UK GDP growth over the same period. The shock may be triggered from outturn data or forecasts. In the event that forecast data shows an economic shock but outturn data does not, no retrospective revisions will be applied to borrowing powers.

Paragraphs C.65 and C.66 of the Fiscal Framework

C.65. A Scotland-specific economic shock is triggered when onshore Scottish GDP growth in real terms is or is forecast to be below 1% on a rolling 4 quarter basis (i.e. actual or forecast real terms GDP growth is to be measured over 4 quarters compared to the previous 4 quarters) and at least 1 percentage point below actual or forecast UK GDP growth in real terms over the same period. Where a revision to forecast or actual onshore GDP growth figures shows a Scotland-specific economic shock, the trigger will also apply. Where the provision is triggered, the Scottish Government will be able to borrow up to the agreed limits for the year in which the trigger applies plus the following two financial years. In the event that forecast data or GDP figures suggest an economic shock but outturn data or revised data does not, no retrospective revisions will be applied to borrowing powers.

C.66. Forecasts of onshore Scottish GDP growth will be produced by the Scottish Fiscal Commission. Onshore Scottish out-turn GDP will be estimated by the Scottish Government in their quarterly GDP National Statistics release.

QUESTIONS

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?

CHAPTER 4: EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

28. The Scottish Government assessed the potential impacts of the SFC Act 2016 on equal opportunities⁶. These regulations, that stem from the powers in the Act, do 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.

Human rights

29. These regulations do not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). These regulations have no identified differential impact on human rights nor any impact on any individual's civil liberties.

Business Impacts

30. These regulations will have no impact on Scottish businesses, relating solely to the scrutiny of the public finances, and in particular the changes to the functions of the Scottish Fiscal Commission.

Privacy impacts

31. 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, restrict access 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 legislation have been identified.

Island communities

32. The regulations have no identified differential impact on island and rural communities.

Local government

33. There are no additional responsibilities or costs for local authorities as a result of this legislation.

⁶ <http://www.gov.scot/Resource/0048/00485060.pdf>

Sustainable development

34. These regulations will have no impact on sustainable development.

QUESTION

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?

CHAPTER 5: HOW TO RESPOND

Responding to this Consultation

This consultation is your opportunity to comment on the regulations that will update the SFC's functions to accommodate the new fiscal powers devolved to Scotland.

We are inviting responses to this consultation by **Friday 30 November 2016**.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.scotland.gov.uk/fiscal-responsibility/modification-of-functions-regulations-2016>.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **Friday 30 November 2016**.

If you are unable to respond online, please send your hard copy response (along with a completed Respondent Information Form - see "Handling your Response" below) to:

David Kerrouchi
Fiscal Responsibility Division
Scottish Government
Area 3D-North
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using Citizen Space, you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published we will regard it as confidential and will treat it accordingly.

We would be grateful if you would use the consultation questionnaire provided or would clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

The Scottish Government intends to lay legislation in January 2017, updating the SFC's functions, to take effect from the 1 April 2017 – at the same time as it becomes a statutory body and new powers come into force. Your response will help inform that process.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

David Kerrouchi
Fiscal Responsibility Division
Scottish Government
Area 3D-North
Victoria Quay
Edinburgh
EH6 6QQ

Scottish Government consultation process

Consultation is an essential part the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>).

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals;
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Scottish Government consultations

The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult at: <http://www.gov.scot/consultations/seconsult.aspx>

A consultation on the Scottish Fiscal Commission (Modification of Functions) Regulations 2016



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

If you are an organisation please indicate which category best describes your organisation:

- Academic or Research Institute
- Community organisation
- Local government
- Private sector organisation
- Public body, including Executive Agencies, NDPBs etc.
- Representative body for professionals
- Third sector / equality organisation
- Others – please state:

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response.

Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous) – Individuals only
- Do not publish response

We will share your response internally with other Scottish Government policy teams and the Scottish Fiscal Commission who may be addressing the issues you discuss. We may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

LIST OF CONSULTATION QUESTIONS

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?

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?

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?

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?

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?

Draft Regulations laid before the Scottish Parliament under section 8(3) of the Scottish Fiscal Commission Act 2016, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

PUBLIC BODIES

**The Scottish Fiscal Commission (Modification of Functions)
Regulations 2017**

Made - - - - - *2016*

Coming into force - - - - - *1st April 2017*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 8(1) and (5) of the Scottish Fiscal Commission Act 2016⁽⁷⁾ and all other powers enabling them to do so.

In accordance with section 8(4) of that Act, the Scottish Ministers have consulted the Scottish Fiscal Commission and such other persons as they consider appropriate in preparing these Regulations.

In accordance with section 8(3) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

These Regulations may be cited as the Scottish Fiscal Commission (Modification of Functions) Regulations 2017 and come into force on 1st April 2017.

Amendment of the Scottish Fiscal Commission Act 2016

—(1) The Scottish Fiscal Commission Act 2016 is amended as follows.

In section 2(2) (forecasts and assessments)—

the “and” immediately following paragraph (a) is repealed, and
after that paragraph insert—

- “(aa) containing its 5-year forecasts of expenditure on demand led social security expenditure,
- (ab) containing its forecasts in respect of Scotland’s gross domestic product excluding the value of oil, gas and other hydrocarbons produced in the Scottish sector of the UK continental shelf for each of—
 - (i) the remaining quarters (if any) of the financial year in which the report is made and each of the quarters of the subsequent financial year, and,
 - (ii) the 4 subsequent financial years, and”.

⁽⁷⁾ 2016 asp 17.

In section 3 (meaning of terms used in section 2)—

after subsection (3) insert—

“(3A) “Demand led social security expenditure” means—

(a) payments under any provision relating to matters within—

(i) exceptions 1 to 10 in Section F1 of Part 2 of schedule 5 of the Scotland Act 1998,

(ii) exception 1 in Section H3 of that Part, or

(iii) any further exception in Section F1 or Section H3 of that Part added by any enactment,
and

(b) payments attributable to regulations made by the Scottish Ministers by virtue of section 29 or 30 of the Scotland Act 2016 (powers in relation to universal credit).”.

after subsection (4) insert—

“(4A) “Quarter”, in respect of a financial year, means a period of 3 months ending with the last day of June, September, December or March.”.

In section 4(1) (review of forecasting accuracy), after “2(2)(a)” insert “to (ab)”.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations expand the functions of the Commission to reflect the powers devolved through the Scotland Act 2016 and the content of the Fiscal Framework agreed between the Scottish and UK Governments.

In summary, the functions of the Commission are expanded as follows (to take effect from the 1 April 2017):

- addition of a function to prepare forecasts of demand led social security expenditure once devolved;
- addition of a function to require the Commission to prepare Scottish GDP forecasts (other than oil, gas and other hydrocarbons produced in the Scottish sector of the UK north sea continental shelf).

The effect of the regulations is to add to the Commission's functions to ensure fiscal transparency in relation to the new powers and to give effect to the provisions of the Fiscal Framework agreement.



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