



Chartered
Institute of
Taxation
Excellence in Taxation

Finance Committee

Scottish Fiscal Commission Bill

Submission from the Chartered Institute of Taxation

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.

¹ <http://www.gov.scot/Resource/0048/00484950.pdf>

² See in particular section 12 of the response:

http://www.scottish.parliament.uk/S4_FinanceCommittee/General%20Documents/Chartered_Institute_of_Taxation.pdf

³ Paragraph 7.2, Scottish Fiscal Commission – CIOT comments (26 June 2015):

<http://www.gov.scot/Resource/0048/00484950.pdf>

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:

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>

- **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.

⁶ Principle 2.6, 13 February 2014 - C(2014)17 - C(2014)17/CORR1 - Recommendation of the Council on Principles for Independent Fiscal Institutions:
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=301&InstrumentPID=316&Lang=en&Book=False>

⁷ Paragraph 8.4, Scottish Fiscal Commission – CIOT comments (26 June 2015):
<http://www.gov.scot/Resource/0048/00484950.pdf>

⁸ Principle 2.3, 13 February 2014 - C(2014)17 - C(2014)17/CORR1 - Recommendation of the Council on Principles for Independent Fiscal Institutions:
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=301&InstrumentPID=316&Lang=en&Book=False>

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.

¹⁰ Principle 2.3, 13 February 2014 - C(2014)17 - C(2014)17/CORR1 - Recommendation of the Council on Principles for Independent Fiscal Institutions:
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=301&InstrumentPID=316&Lang=en&Book=False>

- 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.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.

¹¹ Principles 2.5 and 2.6, 13 February 2014 - C(2014)17 - C(2014)17/CORR1 - Recommendation of the Council on Principles for Independent Fiscal Institutions:
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=301&InstrumentPID=316&Lang=en&Book=False>

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
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