

Finance Committee

Scottish Fiscal Commission Bill

Submission from the Institute of Chartered Accountants of Scotland

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.