

Protocol for engagement between the Scottish Fiscal Commission and the Scottish Government

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Purpose

1. This protocol fulfils the statutory obligation on the Scottish Fiscal Commission ('the Commission') and Scottish Ministers to agree and publish a protocol for their engagement relating to the forecasting and assessment process. As defined in the Scottish Fiscal Commission Act 2016 ('SFCA'), the forecasting and assessment process refers to all of the Commission's duties on the production of forecasts and forecast evaluation.

2. This protocol therefore covers the interactions between the Commission and the Scottish Government both during the formal periods of engagement around fiscal events, and engagement outwith fiscal events.

Context

3. Section 6 of the SFCA requires the Commission and the Scottish Government to agree a protocol for their engagement in relation to the forecasting and assessment process. The protocol, which the Commission must publish, must set out:

- the arrangements for meetings and communications between the parties (and their staff);
- 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 of the SFCA; and
- which (if any) documents relating to the forecasting and assessment process (other than reports prepared under section 2) are to be published and when.

4. It is the duty of the Commission to prepare forecasts at least twice a year to inform the Scottish budget. These forecasts should cover 5 years and include Scottish onshore GDP, Income Tax, devolved taxes, non-domestic rates, devolved demand-led social security payments. The Commission must also assess the reasonableness of Ministers' projections of borrowing.

5. The Commission is a Non Ministerial Department, consisting of Commissioners and staff, employed to produce independent forecasts which involves developing and running the forecasting models and producing the forecasts required to fulfil the Commission's statutory duties.

6. The Scottish Government is responsible for the development and modelling of policy options related to the Scottish budget, for advising and supporting Ministers in their decisions on policy measures, and for informing the Commission of any budget policy measures which will impact upon the forecasts that the Commission are responsible for producing.

7. This first protocol between the statutory commission and the Scottish Government has been agreed within a context of an evolving Scottish budget process and the on-going devolution of further powers. Specifically, the Budget

Process Review Group is reviewing the Scottish budget process, and is due to report in Summer 2017. Where there are any changes to the Scottish Budget process it is likely that the protocol will require revision. Any changes must be jointly agreed by the Commission and the Scottish Government. All changes to the protocol will be published on the Commission's website and shared with the Finance and Constitution Committee of the Scottish Parliament as soon as they come into effect. The process for revision is outlined below at paragraph 60.

Principles

8. The Commission and Scottish Government will adhere to the following shared principles:-

- In accordance with the OECD principles for independent fiscal institutions, the independence of the Commission, as enshrined in its founding legislation, will be respected at all times.
- The Commission is responsible for the independent production of forecasts and for all the assumptions and judgements informing those forecasts.
- The Commission will remain politically neutral and will avoid being engaged in political judgements.
- In carrying out its functions, the Commission must have regard to relevant Scottish Government policy and it will not consider what the effect of alternative policies would be. The Commission, may, however, consider the effect of alternative forecasting assumptions or methodologies on tax revenue, social security expenditure or GDP forecasts.
- The Commission will carry out its functions with integrity and in such a way as to promote transparency.
- With a view to increasing the **transparency of interactions** between the Commission and the Scottish Government during formal fiscal events, both bodies will abide by this jointly agreed protocol.
- The Commission will publish alongside its forecasts a detailed explanation of the methodology used and of factors that it has taken into account, in particular assumptions and risks.
- The Commission has a statutory **right of access** at reasonable times to any relevant information held by the Scottish Government that the Commission may reasonably require for the purpose of performing its functions. The timescales for requests are set out as part of this protocol, at paragraph 45.
- The Commission is bound by the **confidentiality** requirements set out in the *Code of Conduct for Members of the Scottish Fiscal Commission*. In particular, the Commission and its staff will keep all **privileged budget information** confidential in advance of publication of the Scottish Budget; the Scottish Government will ensure that all documents provided to the Commission which contain privileged budget information are marked as such.
- The Scottish Government will provide the Commission with **timely notice** of all Budget decisions which have an impact on the work of the Commission, including any proposed changes to tax rates or bands or to social security expenditure.
- The Commission and the Scottish Ministers will both work in ways which support the best principles of **corporate governance** and **financial accountability** as set out in the Scottish Public Finance Manual.

Engagement as part of fiscal events

Timings & Provision of Information

9. In order for the Commission to fulfil its statutory obligations, the timings for engagement between the Commission and the Scottish Government and for each fiscal event need to be specified. Currently the legislation specifies these fiscal events as the Draft Budget and the introduction of the Budget Bill. The process for the Draft Budget is shown below.

10. All reference to days should be taken to mean working days unless otherwise specified. Where 5 working days is specified, this means the end of the day 5 whole working days before the Draft Budget: so if the Draft Budget is on the Thursday, material should be provided by close on the previous Thursday.

11. Once the Scottish Government has notified the Commission of the week the Draft Budget is expected to be published a timetable will be drawn up and agreed by the named points of contacts in both the Commission and the Scottish Government with the deadlines for completion of each of the activities set out below.

Activity	Number of working days prior to the Draft Budget
Scottish Government give the Commission notice of the week the Draft Budget is expected to be published	50 days (so 10 weeks)
Commission provide the Scottish Government with copies of the forecasting models to allow for further policy development in advance of the budget. The Commission retains the right to further develop the models over the budget process	45 days
Round 0 meetings: the Commission to share initial pre-measures forecasts with Scottish Government analysts. Feedback provided will be incorporated into the next round if the Commission deems appropriate	40-30 days
Round 1 meetings: Commission produces pre-measures forecasts. Scottish Government shares initial policy measures for producing forecasts incorporating policies	25-30 days
Round 2 meetings: Commission produces pre-measures economic and fiscal forecasts. If there is a UK fiscal event in this period, an additional pre-measures round will be held following the UK fiscal event. The impact of a UK fiscal event will only be considered if it takes place more than 15 working days before the Scottish Draft Budget. Revised policy measures shared for costing	25-20 days
Commission shares final pre-measures economic and fiscal forecasts	20 days
Scottish Government shares near-final policy measures for inclusion in forecasts	18 days
Round 3 meetings: Commission produces forecasts incorporating Scottish Government policy.	15-10 days
Scottish Government shares finalised policy measures	10 days

with the Commission. <u>No policy changes after this point will be costed or included</u>	
Final Commission forecasts shared with the Scottish Government	7 days
Commission invites the Scottish Government to confirm the factual accuracy of their draft report.	7 days
Scottish Government return any comments on the factual accuracy of the Commission report	5 days
Commission shares a pre-release version of the report with the Cabinet Secretary for information	4 days
Press releases shared	1 day
Commission report laid in Parliament and published on the Commission's website after the Cabinet Secretary has presented the Draft Budget to Parliament	0

12. The timings for the Budget Bill introduction are somewhat dependent on the Draft Budget timing. If the Draft Budget is laid in Parliament in September, the process for the Budget Bill event can be similar to the Draft Budget process shared above, with some adjustment for the Christmas period. If, however, the Draft Budget is in December, this truncates any process for engagement ahead of the Budget Bill to the following:

Activity	Number of working days prior to the Budget Bill introduction
Scottish Government gives the Commission notice of the week the Budget Bill is expected to be introduced in the Scottish Parliament.	50 days (so 10 weeks)
Commission shares revised forecasts incorporating any new data available since the production of the forecasts accompanying the Draft Budget.	13-15 days
Scottish Government shares finalised policy measures with the Commission. <u>No policy changes after this point will be costed or included</u>	10 days
Final Commission forecasts shared with the Scottish Government and the Cabinet Secretary for Finance and Constitution	7 days
Commission invites the Scottish Government to confirm the factual accuracy of their draft report.	7 days
Scottish Government return any comments on the factual accuracy of the Commission report	5 days
Commission shares a pre-release version of the report with the Cabinet Secretary for information	4 day
Commission shares a copy of their press release with the Scottish Government	1 day
Commission report laid in parliament and published on the Commission's website after the Cabinet Secretary has presented the Budget Bill to Parliament	0

13. The timings shown here are designed to be an agreed reasonable timetable for the exchange of information. However, in exceptional circumstances, and subject to prior agreement of both parties, these timescales may be shortened if this can occur without affecting the quality of the forecasts produced.

14. As set out above, the timings as set out in this protocol may be subject to change following the publication of conclusions by the Budget Process Review Group.

15. The Commission will have a role in supporting the Budget process if, following the introduction of the Budget Bill and prior to Stage 3 in the passage of the Bill through the Scottish Parliament, there are changes to the Budget that will have a material effect on the policies that have been costed as part of the production of forecasts. If this situation arises:

- The Scottish Government will endeavour to give the Commission as much notice as possible of this circumstance
- The Commission will clearly set out to the Scottish Government the likely production timescales if new forecasts are needed
- The Commission will produce a further report proportionate to the changes that have been made, to be published at the same time as the formal announcement to Parliament
- The Commission will give the Scottish Government an opportunity to fact-check this additional report prior to publication.

Meetings

16. During fiscal events, a series of meetings will be held at a number of different stages with the likely timings set out above. There will be separate meetings for economic forecasts and each tax and social security area at each round, with the following attendees at each

- Commissioners (number & representation to be decided by the Commissioners)
- A named point of contact from the Commission and the Scottish Government
- Analytical Team from the particular area in the Scottish Government
- Analytical team from the Commission
- Other staff subject to approval by the Commission and Scottish Government, for example expert stakeholders on a particular tax area.

17. These meetings will be chaired by a member of the Commission. Papers for each of these meetings will be provided at least 2 working days in advance of the meeting. As above, these timescales may need to be reviewed by mutual consent particularly later on in the fiscal event process.

18. In addition, for any meetings in a fiscal round to which the Commission invite any external stakeholders such as the OBR, these external stakeholders would not be privy to any privileged budget information, i.e. would only be involved in pre-measures discussions.

19. The timings of these meetings, and anonymised attendee information, will be published alongside the Commission's report at the conclusion of the fiscal event.

20. Once the final forecasts have been provided, the Commissioners would expect to meet the Cabinet Secretary to discuss these forecasts. This will be organised through the named point of contact in the Scottish Government. Details of all engagement and contact between Commissioners and Scottish Ministers during fiscal events will be published alongside the Commission's report at the conclusion of the fiscal event.

Final report

21. The Scottish Government will be invited to confirm the factual accuracy of the Commission's final report so far as it relates to the presentation of Scottish Government policy. The Scottish Government will not offer comment on anything other than points of factual accuracy. The Scottish Government will be sent a copy of the report 7 working days in advance of the fiscal event, comments relating to the factual accuracy of the report will be returned to the Commission 5 working days in advance of the fiscal event.

22. The Commission will send a copy of the final version of its report and forecasts to the Cabinet Secretary for Finance and Constitution to arrive 4 working days before the date of publication of the Draft Budget. This report will be copied to DG Finance, the Chief Economist and to the named point of contact.

23. This report is embargoed until the time at which the fiscal event occurs and will not be released by the Commission or by the Scottish Government prior to this time.

24. The Commission will lay the report before Parliament as statutorily required and publish its report and final forecasts on its website at the same time as the fiscal event occurs.

25. The Commission will send a copy of any press release to accompany the report to the named point of contact at least 1 working day before the report is published.

26. The Scottish Government will send a copy of any draft press release or other communications related to the Commission's report and forecasts to the Commission by 2pm on the day before the report is published.

Points of contact

27. The Scottish Fiscal Commission and the Scottish Government will name a point of contact that will be responsible for ensuring efficient and effective communication between the Commission and the Scottish Government during fiscal events. All communications between the Commission and the Scottish Government regarding the formal meetings, as set out in the timetable above, during the fiscal event should normally be copied to this point of contact.

28. If issues cannot be resolved through this named point of contact or in exceptional cases due to the seriousness of the issue or because prompt senior management action is required, the Chair of the Scottish Fiscal Commission may directly approach DG Finance and the Director of Financial Strategy in the Scottish Government.

Engagement outwith fiscal event periods

29. Outwith fiscal event periods the Scottish Fiscal Commission will continue to develop and improve modelling and forecasting approaches. Throughout these development periods, the Commission will be engaging continuously and informally with a range of stakeholders to inform the modelling approach, continue to develop analysis and undertake activities to better inform the Scottish Parliament and the general public. This will ensure that the methods the Commission uses have the capability to adapt to different approaches and policy scenarios. The Commission remains responsible for the production of independent forecasts and will retain control over all models and forecast methodologies.

30. A key part of this engagement will be with policy and analytical staff in the Scottish Government. This engagement will take many forms:

- Working groups on particular tax areas or on particular modelling developments. These may include other bodies, such as Revenue Scotland.
- Informal bilateral engagement between policy and analytical staff in the Commission and Scottish Government.

31. Information on working group activity will be published as part of the Commission's annual report.

32. The Commission will commit to sharing, as required by the Scottish Government, relevant models, data (if possible) and plans for the development of approaches, to ensure that Scottish Government analysts are as well informed as possible.

Other reports and publications, including information or analysis provided to Scottish Parliament committees

33. For other reports required under the Commission's statutory functions, the process for sharing the report with the Cabinet Secretary and Scottish Government will be the same as those for a fiscal event report, namely:

- **7 working days** prior to publication: Commission report shared for fact-checking by the Scottish Government.
- **3 working days** prior to publication: Commission report returned with comments from the Scottish Government.
- **2 working days** prior to publication: Commission report finalised.
- **1 working day** prior to publication: Pre-release version of the report shared with the Cabinet Secretary.
- **Publication day**: Commission report laid in Parliament and published on the Commission's website.

34. The Commission will send a copy of any other reports, publications or analysis which it prepares in relation to its forecasts to the Cabinet Secretary for Finance and Constitution and to the named point of contact no later than the time of general publication or submission to committees of the Scottish Parliament.

35. The Scottish Government will likewise undertake to provide the Commission with a copy of any reports or publications which refer to the work of the Scottish Fiscal Commission no later than the time of general publication.

Parliamentary Questions

36. The approach to Parliamentary Questions (PQs) will be set out briefly in the Framework Document. The Commission may be asked to provide information to enable the Scottish Government to draft answers and briefing for written and oral PQs relating to the Scottish Budget or Scottish Public Finances.

37. For PQs which concern operational matters, the general principle is that it is not appropriate for Ministers to answer for the Commission. If it is appropriate for information to be provided, the Commission's Chief Executive will be asked to prepare the substance of the answer and it will be clearly identified as the Chief Executive's response. Where the matter is purely operational, the Scottish Government will refer the PQ to the Chief Executive, the answer will note that it is a matter for the Commission and the Commission may be asked to write to the relevant MSP direct.

38. If a contribution is requested from the Commission, the deadlines may be quite restrictive. For Oral PQs in particular, the Scottish Government will endeavour to make the Commission aware of PQs which may require a contribution as soon as Scottish Government becomes aware of them. The Scottish Government will then provide detail of deadlines when this information is available so as to maximise the time available to the Commission to prepare its contribution. For written PQs, provided appropriate notice has been given, the Commission will provide their contribution 7 working days before the deadline.

Ministerial Correspondence

39. If correspondence sent to Scottish Ministers relating to the Scottish Budget or Scottish Public Finances requires a contribution from the Commission, the Scottish Government will endeavour to inform the Commission of this within 3 working days of receipt, and set out deadlines for the provision of a contribution. In normal circumstances, the Commission will supply that contribution 2 working days before the deadline. Where appropriate, Ministers will invite the Commission to respond directly on operational matters. The Scottish Government will normally share replies with the Commission via the Chief Executive.

Freedom of Information, Environmental Information Regulations and Data Protection Act subject Access Requests

40. The Commission and the Scottish Government will make the other organisation aware of requests to the other organisation which may attract significant media or

public interest, contain potentially sensitive information, or relate to high profile issues.

41. Where information is shared between the Scottish Government and the Commission, the organisation which shares the information will, where reasonably practicable, make it clear at the time it is shared whether the information is considered by that organisation to be sensitive.

42. If a request is made to the Scottish Government for the disclosure of information received from, or that concerns information which might be sensitive or exempt under FOI legislation, the Scottish Government will inform the Commission before disclosing information in response to the request.

43. If a request is made to Commission for the disclosure of information received from, or that concerns information which might be sensitive for the Scottish Government or exempt under FOI legislation, the Commission will inform the Scottish Government before disclosing information in response to the request.

44. All information between the Scottish Government and the Commission on FOI/EIRs should be via the named point of contact.

Access to information

45. The Commission has a right of access to any relevant information held by the Scottish Government that the Commission may reasonably require for the purpose of performing its functions. The Commission will endeavour to set out requirements as far in advance as possible, although this may not always be possible. In the case of a request requiring new analysis by the Scottish Government, a turnaround time of 10 working days will generally be expected outwith fiscal event periods, although this can be adjusted by agreement if the request is particularly onerous or difficult. During fiscal events shorter timescales are likely to be appropriate and will be agreed on a case by case basis.

46. This right of access is subject to any enactment or rule of law that prohibits or restricts the disclosure of any information or the giving of assistance or explanation.

47. In addition, the Scottish Government will facilitate access to information, where possible, from other organisations, by providing key contacts and assisting the Commission.

Confidentiality / commercial in confidence

48. The Commission is bound by the confidentiality requirements set out in the Code of Conduct for Members of the Scottish Fiscal Commission. The staff of the Commission are bound by the Civil Service Code.

49. The Commission must keep all privileged budget information confidential in advance of publication of forecasts. Privileged budget information will include tax policy decisions which the Scottish Government intends to announce. This applies equally to the members of the Commission and to any staff employed by the

Commission. The Scottish Government will ensure that all documents provided to the Commission which contain privileged budget information are marked as such.

50. The Commission must also protect all information which is commercial in confidence. The Scottish Government will ensure that any information which it passes to the Commission which may be regarded as commercial in confidence is marked as such.

51. Privileged budget information and information which is marked as commercial in confidence must not be shared with external parties.

Scottish Government Statements to Parliament under section 7 of the SFCA

52. Section 7 of the SFCA creates the presumption that the Scottish Ministers will use the forecasts prepared by the Commission in preparing a draft Scottish Budget or a Bill for a Budget Act. If – exceptionally – they do not do so, then Ministers must provide a statement to the Parliament explaining why they disagree with the Commission’s forecast and they must lay this statement before the Parliament at the same time as the Budget documentation. This issue will be covered briefly in the Framework Document.

53. The Scottish Government will inform the Commission 3 working days, in advance of the publication of a Draft Budget or Budget Bill if a statement under section 7 is planned.

Consulting the Commission under section 8 of the SFCA on Regulations to modify the Commission’s functions.

54. The Scottish Government will consult the Commission formally if there is any proposal to modify the Commission’s functions. In the first instance, Ministers will write to the Chair of the Commission to provide details of such a proposal, and a meeting will then be held between the Scottish Government and the Commission to discuss the process for consultation (including whether a formal public consultation exercise will be required).

Publication of the Protocol

55. The Commission will publish the protocol on their website and will send a copy to the Scottish Parliament Finance Committee copied to the Cabinet Secretary for Finance and Constitution.

Revisions to the Protocol

56. The protocol can be revised as and when appropriate to ensure effective and transparent engagement between the Scottish Government and the Commission around fiscal events. Should either the Commission or the Scottish Government deem a material need for a review of the protocol this will be considered by both parties. Any revisions to the protocol require the joint agreement of both parties.

57. In particular, this initial protocol may require a review in light of the Budget Review Group final report in Summer 2017 and any subsequent decisions by Parliament on the budget timetable. As set out in paragraph 14 any revisions to the Protocol will be published and shared with the Finance and Constitution Committee of the Scottish Parliament as soon as they come into effect.