Response from ICAS to the Scottish Government consultation

‘A Consultation on the Scottish Fiscal Commission’

June 2015
About ICAS

1. The Institute of Chartered Accountants of Scotland (ICAS) is the first professional body of accountants. We represent over 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. ICAS members play leading roles in around 80% of FTSE 100 companies.

2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. Evidence provided by ICAS representatives aims to inform in a positive and constructive manner. ICAS is apolitical and will not take a stand for or against a particular political position. From a public interest perspective in relation to tax, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax system design, and to point out operational practicalities. Our representatives also contribute based on the collective experience of decades of work which ICAS members and staff have undertaken with both the UK and Scottish Parliaments and the tax authorities on the shared agenda of a better-balanced outcome for all tax stakeholders.

General comments

3. ICAS welcomes the opportunity to comment on ‘A Consultation on the Scottish Fiscal Commission’ issued by the Scottish Government in March 2015.

4. Independent scrutiny and assessment, and reporting thereon, of Scottish Government forecasting, the modelling of tax rates and receipts, and borrowing is vitally important. It is necessary therefore that the Scottish Fiscal Commission receives adequate funding and is appropriately resourced.

5. It is key that the Scottish Fiscal Commission is impartial, and the Smith Commission Report highlights the need for independent fiscal scrutiny. It may be beneficial to have the Commission on a statutory basis, but its independence is not necessarily obvious if it is a part of the Scottish Administration.

6. ICAS has some reservations regarding the nature of the proposed relationships between the Scottish Fiscal Commission and Scottish Ministers, and the Scottish Parliament. The nature of the relationships depends on whether the Commission is to be independent or is simply to be impartial. If it is to be independent then it is debateable whether this is accomplished by setting up a body within the Scottish Administration, and over which Scottish Ministers may exert significant influence by stating what reports are required, being involved in appointments, and being able to put forward statutory instruments which may change the functions of the Scottish Fiscal Commission. For the general public who are not accustomed to the detailed specifics of different public governance vehicles, the draft legislation does not look as though it would establish an independent commission. It may be that a more accurate analysis of the Scottish Fiscal Commission as currently proposed is one of impartiality within the Scottish Administration, rather than being an independent commission.

Specific questions

1. What are your views on the proposal to establish the Commission as a separate part of the Scottish Administration, and therefore directly accountable to the Scottish Parliament rather than through Scottish Ministers?

Whilst the proposed statutory structure may result in the Commission being directly accountable to the Scottish Parliament rather than being accountable through Scottish Ministers, this does not provide an independent Commission. As noted in the general comments above, based on the draft legislation Scottish Ministers could exercise considerable influence over the Commission.
The Smith Report called for Parliament’s oversight of Government to be strengthened, and also noted that there was a weak understanding amongst the public of the constitutional settlement. However, neither of these two issues are assisted with the current proposals. If the Scottish Fiscal Commission is within the Scottish Administration this does not signal an independent role.

2. **What are your views on the proposed statutory functions of the Commission?**

ICAS supports a function of impartial scrutiny of the Scottish Government’s forecasting and financial modelling. The functions as detailed in clause 2(1)(a)-(d) seem sensible, although in relation to the function in clause 2(1)(c) to assess income tax receipts care will need to be taken that there is coordinated working with the OBR and that there is not unnecessary duplication.

In relation to the Scottish Rate of Income Tax (SRIT), both the OBR and the Scottish Fiscal Commission 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. There is a need for coordination of the workload, and the way in which any scrutiny is handled and assessed.

The drafting of clause 2(1) could be tightened, for example, it could be worded as follows: ‘The Commission is to assess, and report thereon, on:’

We question whether clause 2, and specifically 2(3), is wide enough and whether this clause, or clause 4, should give the Commission a more general power to comment on broader fiscal matters other than at the request of the Scottish Government.

Clause 4 calls into question the independence of the Commission if Scottish Ministers may require the preparation of a report on any fiscal matter. Given that the intent is for the Scottish Fiscal Commission to be accountable to the Scottish Parliament it would be more appropriate for the Parliament to have the power to instruct or commission work from the SFC.

3. **Are there any other statutory functions which the Commission should be required to perform?**

It is questionable whether the Scottish Fiscal Commission remit to provide independent scrutiny is wide enough to encompass the whole picture. To be effective the Commission would need to scrutinise the whole budget. On the income side this would consist of both tax revenues and the block grant, based on the Barnett formula, but adjusted for devolved powers. The remit appears to be limited in that there is no reference to scrutiny 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.

4. **What are your views on the proposed future functions of the Commission?**

Clause 6 provides a regulation-making power so that the functions of the Scottish Fiscal Commission may be added to, modified, or removed. ICAS recognises, and agrees, that the role of the Commission may evolve and grow as fiscal powers and responsibilities are devolved.

However, ICAS does not support the use of secondary legislation to change primary legislation, particularly when this relates to the core functions of the Scottish Fiscal Commission. 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.
If the Scottish Fiscal Commission is expected to take on further functions in relation to Scottish Rate of Income Tax (SRIT), there will need to be clarity around this. Is scrutiny of SRIT forecasting in relation to how much will be raised, or how much needs to be raised? Also, there are a number of potential roles in relation to the scrutiny function. This could be an audit type role with the Commission scrutinising forecasts, whilst Audit Scotland would undertake this retrospectively. Alternatively, it could be a role to maximise SRIT revenues. For instance, the Scottish Government is to pay HMRC for collecting and managing SRIT but would this offer value for money. Would HMRC maximise its efforts to collect SRIT and what incentives or compliance measures are there to do this, such as a drive to identify Scottish taxpayers. For example, would this be a performance based fee?

5. **What are your views on the proposals set out in the draft Bill for the appointment, tenure and removal of members of the Commission?**

Clause 10(1) provides for a minimum of two members plus Chair, but this is too few and will not adequately provide for a diversity of views and expertise. If there are only three appointments, there will be a lack of resources and the Commission would not be large enough to operate in a truly independent manner.

Clause 10(2) – Scottish Ministers are to appoint the members but only if Parliament approves. However, concerns have been expressed that this still provides the opportunity for ministers to put forward their nominations.

Clause 12(1) looks very open ended and is surprising given that the intention as stated in the consultation document is to stagger rotation and have a maximum appointment period of 5 years, but this is not reflected in the draft clause.

6. **What are your views on the provisions of the draft Bill for the staffing and funding of the Scottish Fiscal Commission and other administrative matters?**

We question whether the draft legislation provides sufficient security of funding for the Commission to be truly independent.

7. **What are your views on the provisions of the draft Bill intended to safeguard the independence of the Commission? Are there any additional safeguards which you think should be added to the proposed legislation or which should operate on a non-legislative basis?**

As discussed in the general comments above, ICAS questions two elements relating to the independence of the Scottish Fiscal Commission. First, is it meant to be independent of the Scottish Government or simply impartial in its work? Secondly, if it is meant to be an independent body then we do not think that the draft legislation adequately provides for this. For example, it is difficult to understand how a body can be independent of Scottish Ministers if it must prepare reports that Scottish Ministers require (clause 2(4) and clause 4); must send a copy of any report to Scottish Ministers before laying if before the Scottish Parliament (clause 5(3)); and can have its functions added to, modified or removed by regulations.

Clause 7 (1) does not appear to sit easily alongside other elements of this draft legislation, particularly as Clause 7(2) states that the section is subject to any contrary provisions in this or any other enactments. The clause ‘the body shall be independent’ could be deleted. Furthermore, the clause does not necessarily make the Scottish Fiscal Commission independent, nor is it clear how this would be shown to be the case in practice.