

## **POLICY NOTE**

### **THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (TREATMENT OF SCOTTISH FISCAL COMMISSION AS SPECIFIED AUTHORITY) ORDER 2016**

#### **SSI 2016/375**

The above instrument was made in the exercise of the power conferred by section 3(3) of the Public Appointments and Public Bodies (Scotland) Act 2003. The instrument is subject to the affirmative procedure.

#### **Policy Objectives**

1. Section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (“the 2003 Act”) provides that where an office or body is to be established, and when established is to be specified in schedule 2 to that Act, the Scottish Ministers may by order provide that the office or body is to be treated, for the purposes of or in connection with any appointment to the office or body, as if it were one of the specified authorities.
2. The purpose of this power is to enable the Scottish Ministers to bring appointments to bodies which are not yet existing in law within the remit of the Commissioner for Ethical Standards in Public Life in Scotland, and therefore enable the Commissioner to regulate the appointments process under the powers conferred upon the Commissioner by the 2003 Act.
3. Scottish Ministers could make unregulated appointments to the Scottish Fiscal Commission meaning that this Order would not be necessary. Section 28 of the Scottish Fiscal Commission Act 2016 (SFC Act 2016) provides for members of the non-statutory Commission to become members of the statutory Commission when it comes into existence. However, it is deemed important for the appointments process for new members to be as rigorous and transparent as possible and the involvement of the Commissioner for Ethical Standards in Public Life is desirable in achieving this.
4. Section 1 of the SFC Act 2016 provides for the establishment of the Scottish Fiscal Commission, and section 15 of the Act provides for the appointment of members to the Commission by the Scottish Ministers. The Scottish Parliament must approve all member (and chair) appointments. Section 29 of the Act amends schedule 2 to the 2003 Act by adding a reference to The Scottish Fiscal Commission in the list of ‘specified authorities’ which are subject to the Commissioner’s jurisdiction for the purposes of exercising the Commissioner’s functions under the 2003 Act. As these provisions will not come into effect until commenced in 2017, an order is necessary under section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (“the 2003 Act”) to facilitate the involvement of the Commissioner for Ethical Standards in Public Life in the appointments process. This approach follows precedent set by a number of other new public bodies.
5. The effect of the draft order is therefore to enable the Scottish Fiscal Commission to be treated as a specified authority for the purposes of the 2003 Act so that the process of appointing members to the Scottish Fiscal Commission will be subject to supervision by the Commissioner for Ethical Standards in Public Life. This will in turn enable the public

appointments process to begin before the Scottish Fiscal Commission becomes a statutory body on 1 April 2017.

### **Consultation**

6. The Public Appointments and Public Bodies etc. (Scotland) Act 2003 does not require Scottish Ministers to consult on changes proposed under section 3(3) of the Act. The Commissioner for Ethical Standards in Public Life and the Scottish Fiscal Commission have been notified of these proposals.

### **Financial Effects**

7. The instrument has no financial effects on the Scottish Government, local authorities or business.

The Scottish Government  
Fiscal Responsibility Division  
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