

# Memorandum of Understanding between Northern Ireland Fiscal Council and the Department of Justice in relation to 'Access to Information'

## Background

1. The Northern Ireland Fiscal Council is a permanent body established in March 2021 in order to bring greater transparency and independent scrutiny to the current and future state of Northern Ireland's public finances.
2. The Fiscal Council will have an immediate focus to take forward the New Decade New Approach (NDNA) commitments to:
  - prepare an annual assessment of the Executive's revenue streams and spending proposals and how these allow the Executive to balance their budget; and
  - prepare a further annual report on the sustainability of the Executive's public finances, including the implications of spending policy and the effectiveness of long-term efficiency measures.
3. For the Council to perform its duties accurately and efficiently, timely information sharing from the NI Government Departments with the Council will be essential. The OECD<sup>1</sup> states that *'timely access to relevant and reliable information is critical to the work of all independent fiscal institutions. Without good information, the value and reliability of the assessments conducted by IFIs, and the information that they provide to parliamentarians, will be adversely affected. Out of date, insufficiently detailed or incomplete information can hinder the task of IFIs in fulfilling their functions and responsibilities or make their assessments less reliable, less helpful, incomplete or no longer valid'*.

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<sup>1</sup> OECD, 2020, Access to information for Independent Fiscal Institutions (IFIs) <http://www.oecd.org/gov/budgeting/OECD-PBO-Network-Briefing-Note-Access-to-information-for-IFIs.pdf>

## **Period Memorandum of Understanding covers**

4. The arrangements set out in this Memorandum of Understanding (MoU) will be in place until the Council has been set up as a statutory body. This MoU therefore has been developed and put in place to cover the initial period of the Council's work. The MoU will be reviewed and amended once the legislation is put in place for the Council in relation to the right of access to information.

## **Purpose of Memorandum of Understanding**

5. The initial Terms of Reference (see **Annex A**), which the Executive agreed on 11<sup>th</sup> March 2021, indicated that arrangements will be put in place to ensure the timely sharing of information. Therefore, close working will be essential to facilitate that.
6. The purpose therefore of this MoU between the Department of Justice and the Fiscal Council is to set out a foundation on which the arrangements for the sharing of information that they hold can be managed. It includes information requests throughout all parts of the Department of Justice. The other NI Departments will each individually agree and put in place a similar MoU with the Fiscal Council to manage the sharing of the information that they hold.
7. It sets out arrangements for expectations on information sharing to support the Council in delivering on its Terms of Reference. The arrangements are designed and intended to be managed in accordance with OECD principles for independent fiscal institutions.
8. It will be amended as necessary to take account of changing circumstances.

## **Points of contact**

9. OECD best practice guidance indicates that the Council should request and receive any required information directly from the relevant provider and in this case that means directly from the relevant Government Department which holds the information.
10. It is also desirable that a single point of contact, normally at Director level, is identified by each NI Government Department in their own MoUs. This will allow

an oversight role and key point of contact within each Department to facilitate a mechanism if any issues arise.

11. On that basis the key Department of Justice point of contact for the above is as follows:

- Head of Financial Services Division

12. The Head of Financial Services Division will also have responsibility for the function of assisting in resolving any issues around timeliness or quality of responses to requests for information, in the first instance. In order to assist the Head of Financial Services Division in this role, the Head of Financial Services Division, should be copied into all information requests made to any part of the Department of Justice and any responses back to the Council. The process for escalating issues should be first for the Fiscal Council Chief of Staff and the Head of Financial Services Division to seek to reach a resolution. If this is not possible, dialogue between the Permanent Secretary and the Chair of the Council will be the final stage in the resolution of any issues.

13. All information provided to the Council will be emailed to [info@nifiscalcouncil.org](mailto:info@nifiscalcouncil.org), as well as any specific members of the Council secretariat as requested.

## **Department of Justice information sharing**

### ***Routine Budget process information sharing***

14. To ensure the Council is fully sighted throughout the Budget process, the Department of Justice will routinely, and without the need for a separate request, automatically provide Departmental public expenditure returns it submits to Department of Finance (DoF) in tandem to the Fiscal Council. This includes routinely providing the following:

- a. All departmental returns to DoF in relation to Budget process;
- b. All in-year monitoring returns to DoF as part of the June, October and January rounds; and
- c. Annual AME Forecasts.

## ***Ad hoc requests***

15. The Department of Justice will also provide timely access to information it holds relevant to the Fiscal Council's analyses. The Department of Justice will provide information, with appropriate quality assurance and assistance to understand it, as requested by the Fiscal Council. The information to be shared is expected to be statistical in nature, anonymised, or derived from information in the public domain. However as might be necessary and in line with the Department of Justice Data Protection Policy, any sharing of personal information by the Department of Justice to the Fiscal Council will require a separate data sharing agreement to safeguard that information according to UK GDPR requirements and Data Protection Act 2018.
16. The type of information requested from the Council will include, although not be limited to:
- Economic and fiscal data used to produce or assess spending or revenue plans and forecasts, including those at budget and monitoring rounds;
  - Other administrative and statistical data: e.g. demographic and demand factors;
  - Costing assumptions, cost benefit analyses, impact assessments, plans for implementation, etc.;
  - Forecasting: how the Department of Justice uses the data it has to produce forecasts and plans;
  - Commentary: observations or explanation alongside data or other information provided.
17. Some of this information is already in the public domain, however, the Fiscal Council will also need access to detailed underlying data and assumptions, calculations and models that support results published.
18. To assist the Council in their assessments and work it will be critical that the form in which information is provided is in a suitable format. This may need to be discussed with the Council and the information provider within the Department of Justice for each specific request, depending on the complexity of the information held.

19. The Department of Justice should provide full access to relevant information at no cost to the Fiscal Council, in line with the OECD principles for Independent Fiscal Institutions. The information should be the latest information available in a readable format and within 10 working days (not counting the day of the request). Where this deadline cannot be met, the Department of Justice should provide a rationale to the Council to agree a suitable timeframe.
20. In requesting the information, the Fiscal Council should also set out an explanation of why the information is needed. The Council should submit their requests for information to the relevant provider in the Department of Justice in the information request template set out in **Annex B** and the Council should keep its own system to monitor requests and responses from the Department of Justice.
21. As each NI Department will have its own MoU in place, the Council should request any specific departmental information directly from the department concerned. However, where there is a central role or it is a cross cutting matter where DoF co-ordination / assimilation would be advantageous, this may be requested of DoF.

### **Confidentiality requirements**

22. The Fiscal Council will also be required to observe the standard confidentiality rules in relation to policy information and data sharing. In particular, the Council and its staff will keep all budget information confidential in advance of publication of the Executive's Budget. Information provided by the Department of Justice will not be published without prior agreement.
23. The Council will similarly protect all information that is commercial in confidence; the Department of Justice will ensure that any information it passes to the Council which may be regarded as commercial in confidence is marked as such.
24. Budget information and information which is marked as commercial in confidence by either party must not be shared with external parties without the prior agreement of both.

## **Public Communications**

25. Consistent with the shared principle of good and effective communications, the Council and the Department of Justice will wherever possible share with each other, in advance, any public communications that either intends to issue which have a bearing on the functions of the Council.

## **Fiscal Council analysis and publications**

26. The Fiscal Council's reports and analysis will be published and made freely available to all and these will be released in the Fiscal Council's own name as an independent body.

27. In its publications, the Council will act objectively, transparently and impartially, free from any political perspective, and on the basis of current NI Executive policy. The Council should not comment on the merits of individual policies, or examine alternative policy scenarios except insofar as these are required to, for example, compare or understand expenditure levels against other jurisdictions, or to establish an illustrative baseline against which the impact of decisions can be explained.

28. The Council will publish all the documents it produces in an accessible manner and should comply with the Code of Practice for Official Statistics in line with good practice.

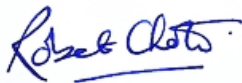
29. The Fiscal Council may share material from these products in advance of publication if it requires factual comments on the presentation of analysis or forecasts that have been produced with the assistance of Department of Justice officials, but is not obliged to do so. Pre-release information will be subject to confidentiality arrangements.

## External queries on Fiscal Council publications

30. As an independent body, it will be the responsibility of the Fiscal Council to respond to external queries on the data, analysis and judgements published in Fiscal Council documentation, consulting with other departments as necessary. The Fiscal Council and the Department of Justice will treat shared information in accordance with the requirements of the Freedom of Information Act 2000. Each organisation will notify the other in advance if an FOI request would potentially result in the publication of the other's material, for information purposes only.

### Signatures

For, and on behalf of,  
the Northern Ireland Fiscal Council



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Sir Robert Chote, Chair of the  
Northern Ireland Fiscal Council

Date 25/01/2022

For, and on behalf of,  
the Department of Justice



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Peter May,  
Permanent Secretary

Date 13/01/2022

## **Annex A: Initial Terms of Reference**

### **FISCAL COUNCIL – BRINGING TRANSPARENCY AND INDEPENDENT SCRUTINY TO PUBLIC FINANCES TERMS OF REFERENCE, MARCH 2021**

#### **Mission Statement**

1. The Fiscal Council is a permanent body which will bring greater transparency and independent scrutiny to the current and future state of Northern Ireland's public finances.

#### **Principles of Independent Fiscal Organisations**

2. In 2014, the OECD set out nine broad recommendations' principles for Independent Fiscal Organisations, drawing on the work of the network of Independent Fiscal Institutions across the organisation's members. This piece of work was partly assessing the nature of these organisations across the world (and acknowledging their heterogeneity) but at the same time coming up with a set of recommendations that all these types of organisations could aspire to.

3. This Terms of Reference for the Fiscal Council has been developed in line with these principles, which are set out in the attached **Annex**.

#### **Remit**

4. The Fiscal Council will have an immediate focus to take forward the New Decade New Approach (NDNA) commitments to:

- prepare an annual assessment of the Executive's revenue streams and spending proposals and how these allow the Executive to balance their budget; and
- prepare a further annual report on the sustainability of the Executive's public finances, including the implications of spending policy and the effectiveness of long-term efficiency measures.

5. As per NDNA the membership and terms of reference of the Fiscal Council will be agreed with the UK Government.



### ***Local Ownership***

6. The commitment to a Fiscal Council was included in the New Decade New Approach document published alongside the restoration of the political institutions at that beginning of 2020. The Executive has agreed this Terms of Reference setting out the remit of Council on its establishment, and how it will be developed going forward. This has ensured local ownership and that local needs will be met by the functioning of the Council.

### ***Independence and non-partisanship and transparency***

7. It will act objectively, transparently and impartially, free from any political perspective, and on the basis of current NI Executive policy. It will examine the impact on the public finances of decisions made by the Executive and have a focus on the sustainability of public finances by considering the Executive's budget decisions in light of its ability to deliver on the Programme for Government. The Council should not however comment on the merits of individual policies, or examine alternative policy scenarios. This will protect the independence of the Fiscal Council and ensure a clear separation between analysis (which is the role of the Fiscal Council) and policy making (which is the responsibility of the ministers).

8. The Council will publish all the documents it produces in an accessible manner and should comply with the Code of Practice for Official Statistics in line with good practice.

### ***Access to information***

9. For the Council to perform its duties accurately and efficiently, close working with the NI Executive and Departments will be essential, as will timely data / information sharing. Arrangements will be put in place to ensure this. Members will also be required to observe the standard confidentiality rules in relation to policy information and data sharing.

### ***Communications***

10. Upon establishment, the Chair and members of the Fiscal Council will develop a communications plan to clearly articulate the remit of the Council and engage with relevant stakeholders. This will include a range of consultations with the Executive and

MLAs, Government officials, economic commentators including the media, business and their representative bodies, although this is not exhaustive.

### ***Mandate and relationship with the legislature***

11. It is expected that the role and Terms of Reference of the Fiscal Council will be expanded once the Council has been established and is delivering on the above requirements. Such a wider remit is anticipated to include economic / financial modelling for example. The expanding nature of Independent Fiscal Institutions can also be seen from experience elsewhere in the UK and internationally where their remit over time has not been static.

12. Like other similar bodies elsewhere, the Council will be initially set up as a non-statutory body. Following its establishment, work will be undertaken to examine how the role and standing of the Council can be further formalised and legislated for on a statutory basis, so that its independence is safeguarded going forward.

13. This will include putting a competitive public appointments process in place to select future members that would maintain the required expertise and independence of the Council, and that would be conducted in line with the CPANI Code of Practice.

14. That legislation will need to include how the role of the Fiscal Council interacts with the Assembly and relevant Committees including the Finance Committee where relevant, including on the future appointments process.

### ***Resources - membership and staffing***

15. The Fiscal Council will comprise four individuals, including a chair, appointed by the Finance Minister. Robert Chote will become the Council's Chair for the set up period of around 6-9 months as we seek to formally establish the Council.

16. The other members, who will be appointed for a three year term will be:

- Dr Esmond Birnie, senior economist at Ulster University;
- Alan Barrett, Chief Executive Officer of the Economic and Social Research Institute; and

- Maureen O'Reilly, Independent Economist.

17. DoF will also put in place a full time permanent secretariat and support staff who will be recruited purposely to perform that function, headed by a G5 Chief of Staff, as well as supporting the Chair and members, the secretariat would have the capacity to undertake its own research and analysis and also contract out specialist pieces of work to external experts where required.

### ***External Evaluation***

18. In line with good practice an independent external evaluation will be conducted four to five years after the Council's establishment. This will include progress towards adhering to the OECD principles and recommendations on way forward to further aspire to these. This evaluation could be undertaken by OECD or another independent Fiscal Institution which is now well established. Key stakeholders, in particular the Finance Committee, would be consulted on the process for appointing an external evaluator, and the Terms of Reference for the evaluation.

## **Annex**

### **OECD PRINCIPLES FOR INDEPENDENT FISCAL INSTITUTIONS (IFIs)**

Source: OECD, 2014, Recommendations on Principles for Independent Fiscal Institutions  
- <https://www.oecd.org/gov/budgeting/OECD-Recommendation-on-Principles-for-Independent-Fiscal-Institutions.pdf>

The twenty-two Principles for Independent Fiscal Institutions (fiscal councils and independent parliamentary budget offices) proposed below are grouped under nine broad headings: (1) local ownership; (2) independence and non-partisanship; (3) mandate; (4) resources; (5) relationship with the legislature; (6) access to information; (7) transparency; (8) communication; and (9) external evaluation.

#### **1. Local ownership**

1.1. To be effective and enduring, an IFI requires broad national ownership, commitment, and consensus across the political spectrum. While a country seeking to establish an IFI will benefit from the study of existing models and experiences in other countries, models from abroad should not be artificially copied or imposed. Regional or international authorities may provide valuable support and protection.

1.2. Local needs and the local institutional environment should determine options for the role and structure of the IFI. Design choices may also have to take into account capacity constraints, particularly in smaller countries. The basic characteristics of an IFI, including specific protections, should be informed by the country's legal framework, political system, and culture. Its functions should be determined by the country's fiscal framework and specific issues that need to be addressed.

#### **2. Independence and non-partisanship**

2.1. Non-partisanship and independence are pre-requisites for a successful IFI. A truly non-partisan body does not present its analysis from a political perspective; it always strives to demonstrate objectivity and professional excellence, and serves all parties. This favours that IFIs should be precluded from any normative policy-making responsibilities to avoid even the perception of partisanship.

2.2. The leadership of an IFI should be selected on the basis of merit and technical competence, without reference to political affiliation. The qualifications should be made explicit – including professional standing and relevant government or academic experience. Qualifications should include proven competence in economics and public finances and familiarity with the budget process.

2.3. Term lengths and the number of terms that the number of terms that the leadership of the IFI may serve should be clearly specified in legislation as should be the criteria and process for dismissal for cause. The leadership's term should optimally be independent of the electoral cycle. Independence may be enhanced by defining the term span beyond the electoral cycle.

2.4. The position of head of the IFI should be a remunerated and preferably full-time position. Strict conflict-of-interest standards, particularly for institutions with council members employed on a part-time basis, should be applied equally vis-à-vis other employment in the public or private sector.

2.5. The leadership of the IFI should have full freedom to hire and dismiss staff in accordance with applicable labour laws.

2.6. Staff should be selected through open competition based on merit and technical competence and without reference to political affiliation. Conditions of employment should be along the lines of that of the civil (or parliamentary) service.

### **3. Mandate**

3.1. The mandate of IFIs should be clearly defined in higher-level legislation, including the general types of reports and analysis they are to produce, who may request reports and analysis, and, if appropriate, associated timelines for their release.

3.2. IFIs should have the scope to produce reports and analysis at their own initiative, provided that these are consistent with their mandate. Similarly, they should have the autonomy to determine their own work programme within the bounds of their mandate.

3.3. Clear links to the budget process should be established within the mandate. Typical tasks carried out by IFIs might include (but are not limited to): economic and fiscal projections (with a short to medium-term horizon, or long-term scenarios); baseline projections (assuming unchanged policies); analysis of the executive's budget proposals; monitoring compliance with fiscal rules or official targets; costing of major legislative proposals; and analytical studies on selected issues.

### **4. Resources**

4.1. The resources allocated to IFIs must be commensurate with their mandate in order for them to fulfil it in a credible manner. This includes the resources for remuneration of all staff and, where applicable, council members. The appropriations for IFIs should be published and treated in the same manner as the budgets of other independent bodies, such as audit offices, in order to ensure their independence. Multiannual funding commitments may further enhance IFIs independence and provide additional protection from political pressure.

### **5. Relationship with the legislature**

5.1. Legislatures perform critical accountability functions in country budget processes and the budgetary calendar should allow sufficient time for the IFI to carry out analysis necessary for parliamentary work. Regardless whether an independent fiscal institution is under the statutory authority of the legislative or the executive branch, mechanisms should be put in place to encourage appropriate accountability to the legislature. These may include (but are not limited to):

1) submission of IFI reports to parliament in time to contribute to relevant legislative debate; 2) appearance of IFI leadership or senior staff before the budget committee (or equivalent) to provide responses to parliamentary questions; 3) parliamentary scrutiny of the IFI budget; and 4) a role for parliament's budget committee (or equivalent) in IFI leadership appointments and dismissals.

5.2. The role of the IFI vis-à-vis parliament's budget committee (or equivalent), other committees, and individual members in terms of requests for analysis should be clearly established in legislation. Preferably, the IFI should consider requests from committees and sub-committees rather than individual members or political parties. This is particularly relevant for those IFIs established under the jurisdiction of the legislature.

### **6. Access to information**

6.1. There is often asymmetry of information between the government and the IFI – no matter how well an IFI is resourced. This creates a special duty to guarantee in legislation – and if necessary to reaffirm through protocols or memoranda of understanding – that the IFI has full access to all

relevant information in a timely manner, including methodology and assumptions underlying the budget and other fiscal proposals. Information should be provided at no cost or, if appropriate, sufficient resources should be provided in the IFI budget to cover analysis obtained through government actuarial services.

6.2. Any restrictions on access to government information should also be clearly defined in legislation. Appropriate safeguards may be put in place as regards protection of privacy (for example, taxpayer confidentiality) and of sensitive information in the areas of national defence and security.

## **7. Transparency**

7.1. Given that promoting transparency in public finances is a key goal of IFIs, they have a special duty to act as transparently as possible. Full transparency in their work and operations provides the greatest protection of IFI independence and allows them to build credibility with the public.

7.2. IFI reports and analysis (including a full account of the underlying data and methodology) should be published and made freely available to all. As noted in 5.1, all IFI reports and analysis should be sent to parliament in time for legislative debate and the leadership of the IFI should be given the opportunity to testify before parliamentary committees.

7.3. The release dates of major reports and analysis should be formally established, especially in order to co-ordinate them with the release of relevant government reports and analysis.

7.4. IFIs should release their reports and analysis, on matters relating to their core ongoing mandate on economic and fiscal issues, in their own name.

## **8. Communications**

8.1. IFIs should develop effective communication channels from the outset, especially with the media, civil society, and other stakeholders. Given that the influence of IFIs in fiscal policy making is persuasive (rather than coercive by means of legal sanctions or other punitive measures), media coverage of their work assists in fostering informed constituencies that may then exercise timely pressure on the government to behave transparently and responsibly in fiscal matters.

## **9. External evaluation**

9.1. IFIs should develop a mechanism for external evaluation of their work – to be conducted by local or international experts. This may take several forms: review of selected pieces of work; annual evaluation of the quality of analysis; a permanent advisory panel or board; or peer review by an IFI in another country.

**Annex B: Information Request Template**

**NIFC Ref:**

**NORTHERN IRELAND FISCAL COUNCIL – DEPARTMENTAL  
INFORMATION REQUEST**

<b>Department and official that information is being requested from:</b>	
<b>Detailed description of information being requested:</b>	
<b>Date of information request<sup>2</sup> (note 10 working day turnaround):</b>	
<b>Preferred Format of Data</b>  <b>e.g. Excel, Word etc.</b>	
<b>Rationale for Request:</b>	
<b>Fiscal Council Contact Details Information should be returned to or queries directed:</b>	

Notes: All information requested by the NI Fiscal Council should be provided at no cost and in a readable format.

NI Fiscal Council members and staff have signed agreements indicating that they will adhere to the confidentiality requirements when handling and processing information provided by NICS Departments.

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<sup>2</sup> NICS Departments have agreed with the NI Fiscal Council within their Memorandum of Understanding that information requests will be turned around within 10 working days (not counting the day of the request). Where this is not possible please inform the appropriate contact within the Fiscal Council above to agree an alternative turnaround period.