

Marine Scotland

Crown Estate – Consultation on Proposals for
Establishing the Interim Body to Manage
the Crown Estate Assets in Scotland Post-Devolution



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CROWN ESTATE - CONSULTATION ON PROPOSALS FOR ESTABLISHING THE INTERIM BODY TO MANAGE THE CROWN ESTATE ASSETS IN SCOTLAND POST-DEVOLUTION

Ministerial Foreword

Almost all of Scotland's seabed, most of Scotland's foreshore and some other public assets have historically been managed by a body that is not accountable to the Scottish Parliament, with revenues flowing out of Scotland to Westminster.

The Scottish Government has continued to believe that there is a better way to manage Scotland's natural assets in the public interest, a modern approach that brings decision-making closer to the people and would be of benefit to the nation, especially to the many remote and island communities in Scotland whose livelihood and future depends on the sea.

The Scotland Act 2016 introduced a new era for the management of Crown Estate land, marine and other natural resources in Scotland. One of the key elements of the Act provides for the devolution of the management and income of The Crown Estate in Scotland and provides a framework to establish optimal management of Scotland's assets.

I believe this presents a genuine opportunity to deliver added benefit to Scotland and local communities. We must not let the opportunity pass Scotland by and it is imperative that, as we progress along this journey, we continue to work closely with local communities and channel the benefits back to the people of Scotland.

Building on engagement through The Crown Estate Stakeholder Advisory Group, we have advocated a phased approach to the new management arrangements which will begin when the Scottish functions, and associated rights and liabilities, will be transferred and a new interim body is established.

Our focus is to ensure that this interim body provides stability and continuity of service to those that rely on Crown Estate leases or services as the responsibilities are devolved to Scotland and during the time needed for establishing the long term framework.

This consultation is about creating Crown Estate Scotland (Interim Management) to manage Crown Estate assets in Scotland on an interim basis. I hope you are able to contribute your views on these proposals and I invite you to let us know what you think.

Roseanna Cunningham MSP
Cabinet Secretary for the Environment, Climate Change and Land Reform

Introduction

1. This consultation is the first opportunity to help shape the devolved management of The Crown Estate in Scotland. It focusses on the interim arrangements that are needed to progress a smooth transition, from the point of devolution, until the Scottish Parliament has legislated on the long-term framework for management of the assets.

2. Good management of our land, marine environment and other natural resources is of crucial importance to the Scottish Government and essential for Scotland's future prosperity. Through the devolution of the management of The Crown Estate assets in Scotland there is an opportunity to ensure that decisions on use of Crown Estate assets in Scotland are more transparent, and new processes for decision-making are put in place to take account of the priorities of Scotland and which meet the needs of the Scottish people and local communities.

3. The devolution of the management and revenue of The Crown Estate assets also provides an opportunity to use capital assets in a way that enhances their contribution to the achievement of the following National Outcomes:

- *We value and enjoy our built and natural environment and protect it and enhance it for future generations.*
- *We realise our full economic potential with more and better employment opportunities for our people.*
- *We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.*

4. Establishing the interim body is only the beginning of the transfer journey for The Crown Estate in Scotland. Scottish Ministers plan a further consultation on the long-term management framework, including opportunities for further devolution of management of Crown Estate assets. Progressing the smooth transition of devolution for The Crown Estate in Scotland through first establishing the interim body will begin to help deliver greater benefits to Scotland and its communities.

Background

5. The Crown Estate Commissioners is a unique body which administers certain property, rights and interests which historically belong to the Crown. In Scotland, The Crown Estate manages leasing of the seabed out to 12 nautical miles and rights to renewable energy, cables and pipelines on the Continental Shelf; 37,000 hectares of rural land; gold and silver; and approximately half of Scotland's foreshore including 5,000 licensed moorings, 800 aquaculture sites, and salmon fishing rights. The Crown Estate Commissioners exercise powers under The Crown Estate Act 1961 in managing The Crown Estate on a UK-basis, and currently transfer surplus revenues to the UK Government. Further information on The Crown Estate is contained in **Annex A**.

¹ http://www.legislation.gov.uk/ukpga/1961/55/pdfs/ukpga_19610055_en.pdf

6. There is an overriding duty placed on the Commissioners to maintain and enhance the value and the return obtained from The Crown Estate while having due regard to the requirements of good management.

7. It has been a long-standing policy of the Scottish Government that there should be reform of the administration of The Crown Estate. The Scottish Government is committed to the principle of Scotland's communities benefitting directly from our natural resources, and ensuring that decisions on use of Crown Estate assets in Scotland are more transparent and take account of the priorities of Scotland and its communities.

8. The Crown Estate Commissioners' operations in Scotland have been considered in recent years by a number of Parliamentary Committees and inquiries including the 2006 Report of The Crown Estate Review Working Group Report and the 2012 House of Commons Scottish Affairs Committee Report on The Crown Estate in Scotland. The 2014 Empowering Scotland's Island Communities and the 2014 Report of the Land Reform Review Group also include sections on The Crown Estate.

9. Most recently, the Smith Commission (November 2014)² made recommendations on The Crown Estate:

32. Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

33. Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.

34. The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to U K-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate's foreshore and seabed assets to the UK as a whole.

35. Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.

² https://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

10. The Scottish Government is fully supportive of the Smith Commission's recommendations to devolve powers in relation to the management and revenues of Crown Estate assets in Scotland. Over the longer term Ministers intend to put in place a new legislative framework for management of Crown Estate assets - accountable to the Scottish Parliament and ensuring alignment with Scottish policy objectives. The new permanent framework can only be delivered once the transfer completes the devolution of legislative competence. Interim arrangements for the management of The Crown Estate are required until the longer term arrangements come into force.

11. The Scotland Act 2016 provides for the transfer of specific functions, rights and liabilities to a single Transferee on a transfer date. It is only then that the Scottish Parliament has legislative competence for the management and revenue of the Crown Estate in Scotland.

12. Under the interim arrangements, it is proposed that The Crown Estate assets, and the associated rights and liabilities, will be managed as a single entity commencing from the point of transfer of the existing Scottish functions. Section 36 of the Scotland Act 2016³ which gained Royal Assent in March 2016 enables the Treasury to make a Transfer Scheme to transfer the management functions and revenues of The Crown Estate in Scotland to Scottish Ministers, or another body nominated by Scottish Ministers. The Transfer Scheme has not yet been made by Treasury but will require agreement from Scottish Ministers as well as the approval of the UK Parliament. The Scotland Act also makes provision for an Order in Council to be made, making arrangements for the management of the transfer of Crown Estate assets, including establishing the interim body.

13. After the transfer, the Scottish Parliament will have the power to legislate on the new framework for managing Crown Estate assets in Scotland. There will be a further public consultation prior to a Bill being brought before the Scottish Parliament.

Policy Statement

14. There are a number of options that can be considered for the day-to-day management of the Crown Estate assets in Scotland as a single entity during the interim period. That function could potentially be undertaken by the Scottish Government or an existing or new public body.

15. Our aim is to ensure that the business is operational on day one of the transfer and that it continues to be so until such time as decisions are made on the long-term future. The Scottish Government is mindful of the need to ensure that service delivery is maintained, but also that the interim arrangements do not constrain further devolution opportunities.

³ <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

16. The following draft principles and criteria which have been developed with input from stakeholders have guided our proposals for the most appropriate delivery model for the interim body:

- Continuity of business delivery
- Opportunity for community input at an appropriate stage of decision-making
- Ability to maintain a commercial approach
- Human resource implications in terms pay and staff morale
- Ministerial oversight at an appropriate level with potential to take long-term decisions without requirement to take day-to-day decisions on assets
- Ability to maintain existing fiscal and tax benefits available to the Crown Estate Commissioners
- Ability to establish robust governance, risk management structures and processes in time for the transfer.

Proposals

17. The following sections set out the proposals in relation to the establishment of the interim body for managing The Crown Estate assets in Scotland. Respondents are invited to give their views (**Annex B**) and use the response form (**Annex C**).

Establishing the interim body – Type, name and status

18. We propose that the interim body will be a body corporate and a separate body from Scottish Ministers. The reason for proposing this is that this model provides the best fit according to the criteria set out in paragraph 15 above. The organisation currently administering The Crown Estate is a body corporate.

19. We intend for the interim body to be in place until permanent arrangements will be made in due course through a Scottish Parliament Bill, following legislative devolution on the transfer date. It is possible that the interim body will be retained on a more long-term basis for certain specified functions.

20. The name we have proposed for the interim body is Crown Estate Scotland (Interim Management).

21. The interim body is to have Crown status and enjoy the fiscal, tax and other benefits normally available to the Crown.

Membership of the interim body

22. We propose that instead of 'Commissioners' there will be board members who will manage and lead the interim Crown Estate body in Scotland. It is proposed that we make provisions for the Board to be of an appropriate size, probably no fewer than two and no more than ten members (including the Chair and Deputy Chair), appointed by Scottish Ministers. One member is to be appointed as the Chair, and there will also be a Deputy Chair. The period of appointment is to remain unspecified to allow for flexibility for different phases during the set-up of the interim body. Members are to be eligible for re-appointment.

23. The following eligibility criteria are suggested for members:

- a. relevant skills, expertise and experience.
- b. no financial or other conflict of interest that is capable of giving rise to a conflict of interest with the interim body.
- c. exclusion of MSPs, MPs, members of the House of Lords and MEPs.

24. The appointment of the board provides new opportunities for community interests to be represented.

Members' terms of appointment, resignation and cessation

25. We envisage that Scottish Ministers determine the terms of appointment of members. Members may resign by writing to Scottish Ministers.

Removal of members

26. We propose that a member may be removed from office by Scottish Ministers under the following circumstances:

- a. Insolvency.
- b. absenteeism from meetings for more than 6 months without permission from the Chair.
- c. and/or being unable or unfit to exercise the functions of a member or being unsuitable to continue as a member.

Chief Executive and employees

27. The interim body is to have a Chief Executive, and the first Chief Executive is to be appointed by Scottish Ministers, and subsequent ones appointed by the interim body, with the approval of Scottish Ministers. The interim body may employ and appoint such employees as it considers appropriate.

Committees and meetings

28. We envisage that the interim body should have committees, one of which must be an audit committee. There may be sub-committees.

29. To provide flexibility we propose that the quorum for meetings of members, including committees, is not specified, and that the interim body is to regulate its own procedure.

30. We envisage that proceedings are not to be invalid by any vacancy of membership or defect in the appointment of the Board. The appointment of any member is invalid if there is a defect in the appointment process.

Functions

31. The functions of the interim body are all those functions which are currently exercisable by the Commissioners under the 1961 Crown Estate Act relating to the management of The Crown Estate in Scotland which will transfer to the interim body under the Transfer Scheme.

Grants and loans

32. A loan making power for Scottish Ministers is proposed.

Ministerial direction making power

33. We suggest that Scottish Ministers shall have a direction-making power whereby they can direct the interim body in writing with regards to the exercise of its functions, such as in relation to the number of board appointments and the terms and conditions of employment. The proposal is that Ministers must publish the directions.

Annual report and corporate plan

34. The proposal is that the interim body shall report on its performance and activities annually, submit this report to Ministers, who will lay the report before Parliament.

35. In addition, there shall be a corporate plan, to be updated annually. This plan is to set out the main objectives, outcomes, activities and risks for the planning period. We suggest that the plan will be sent to Ministers for approval ahead of publication.

Regulation

36. We propose that the interim body will normally follow the standard procedures (unless Scottish Ministers determine otherwise or specific procedures for the Crown apply) and is to be subject to the standard requirements intended to cover all relevant public bodies in Scotland, including coverage under Freedom of Information and public appointments (subject to oversight of the Commissioners for Ethical Standards in Public Life).

General powers and Ministerial guidance

37. We propose to give the interim body general powers to do things which are necessary or expedient for the purposes of its main functions or otherwise conducive to the performance of its functions.

38. We propose to require the interim body to have regard to guidance issued by Scottish Ministers.

Scope of consultation

39. This consultation document is about establishing the interim arrangements, relating only to the Order in Council.

40. There will be full public consultation on options for the long-term framework and further devolution in due course, ahead of a Scottish Parliament Bill.

Your views

We would welcome your views on the proposals.

Please note that the closing date for this consultation is Friday 26 August 2016.

Crown Estate Strategy Unit

THE CROWN ESTATE ASSETS

Asset	Definition
George Street	the land owned by Her Majesty known as 39 to 41 George Street, Edinburgh
Seabed	the land owned by Her Majesty forming the seabed of Scottish Territorial Waters
Storage Rights (Seabed)	<i>the rights of:</i> <i>(1) Unloading gas to installations and pipelines;</i> <i>(2) Storing gas for any purpose and recovering stored gas; and</i> <i>(3) Exploration with a view to use for (1) and (2)</i>
Energy rights (Seabed)	<i>the rights of exploitation, exploration and connected purposes for the production of energy from wind or water</i>
Mineral Rights (Seabed)	<i>the right to exploit the Seabed and its subsoil other than for hydrocarbons</i>
Cables (including interconnectors)	<i>the right to install all or part of a distribution or transmission system on or under the Seabed</i>
Pipelines	<i>the right to install pipelines</i>
Whitehill	the Whitehill estate in the County of Midlothian owned by Her Majesty;
Glenlivet	the Glenlivet estate in the County of Moray owned by Her Majesty
Applegirth	the Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty
Fochabers	the Fochabers estate in the County of Moray owned by Her Majesty
Aquaculture Rights (Seabed)	the right to farm aquatic organisms;
Mooring Rights (Seabed)	the right to lay and use permanent moorings
Foreshore	the land that is owned by Her Majesty: (1) In Orkney and Shetland, lying between mean high water springs and lowest ebb tide; and (2) In the rest of Scotland, lying between mean high and low water
Internal Waters	the land owned by Her Majesty forming the internal waters of Scotland
Salmon Fishing	the right to fish for salmon in rivers and coastal waters where the right belongs to Her Majesty
Gold and Silver (onshore minerals)	the right to all naturally occurring gold and silver except where the right is vested in some person other than Her Majesty
Reserved Minerals	all the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed
Rights beyond 12 nautical miles	<ul style="list-style-type: none"> • rights to natural resources on the continental shelf (excluding fossil fuels) under the Continental Shelf Act 1964; • rights to generate electricity from wind, waves and the tides on the continental shelf under the Energy Act 2004; and rights to the transportation and storage of natural gas and carbon dioxide on the continental shelf under the Energy Act 2008

HOW TO RESPOND

Responding to this consultation

We would like to hear your views on the above proposals on establishing interim arrangements for managing Crown Estate assets in Scotland.

We also welcome your views on the potential impacts of these proposals. We will carry out a full Equality Impact Assessment, Business Regulatory Impact Assessment and Privacy Impact Assessment, if appropriate, on the proposed interim arrangements for managing Crown Estate assets in Scotland and on the proposals to be contained in a draft Order in Council. We will also consider the potential environmental impacts of any proposals, and if a Strategic Environmental Assessment will be required.

Equality

The Scottish Government is committed to promoting equality and removing or minimising disadvantage which may be experienced by different groups of people. We have a legal duty to consider the impact of policies on people who may be differently affected in relation to the “protected characteristics” under the Equality Act 2010 of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

We also want to consider issues relating to poverty and social justice, to ensure that all individuals and communities are able to access the benefits that the Order in Council will deliver.

Please tell us about any potential impacts, either positive or negative, you feel the draft proposals to establish the interim body may have on particular groups of people, with reference to the “protected characteristics” listed above. Please be as specific as possible.

What differences might there be in the impact of the Bill on individuals and communities with different levels of advantage or deprivation? How can we make sure that all individuals and communities can access the benefits of the proposals?

Business and Regulation

A full Business and Regulatory Impact Assessment will be carried out to analyse whether any of the proposed policies are likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations.

Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

Privacy

A Privacy Impact Assessment will be conducted to ascertain whether any of the proposed policies will have an impact on the privacy of individuals

Please tell us about any potential impacts upon the privacy of individuals that may arise as a result of any of the proposals contained in this consultation. Please be as specific as possible.

We welcome your thoughts on the potential impacts, both positive and potentially negative, of any of the proposals in this paper.

The consultation runs until Friday 26 August 2016. An 8-week consultation will allow us to ensure your views are taken into account and will enable us to introduce the Order within Parliamentary timescales.

Environmental

The Environmental Assessment (Scotland) Act 2005 ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse effects are sought, where possible, prior to the main consultation and implementation of the proposal.

At this early stage in the devolution it has not yet been determined whether significant environmental effects are likely to arise and the aim is to use this consultation process as a means to fully explore the likely environmental effects. Once completed it is our intention to determine, using the consultation process, what our statutory obligations under the 2005 Act are and how these can best be met.

Please tell us about any potential impacts, either positive or negative, you feel any of the proposals contained in this consultation may have on the environment. Please be as specific as possible.

There are a number of ways that you can respond:-

You can respond online on the [Scottish Government website](#).

You can respond by email by sending your response to:
interimcrownestate.consultation@gov.scot

You can also respond in writing, by sending your responses to the address below. Please do not forget to include your Respondent Information Form, your response cannot be accepted without it. The Respondent Information Form is set out below.

Scottish Government
Crown Estate Strategy Unit
Area 1-A South
Victoria Quay
Edinburgh
EH6 6QQ

If you have any enquiries please send them to:
interimcrownestate.consultation@gov.scot or contact Nikki Milne on 0131 244 3671.

We would be grateful if you would use the consultation questionnaire provided or would clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.

Other formats of this consultation can be made available on request, please contact the Crown Estate Strategy Unit.

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



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