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# Crown Estate

A Consultation on the Long Term  
Management of the Crown Estate  
in Scotland

marinescotland

# **Consultation Paper on the Long Term Management of the Crown Estate in Scotland**

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## Ministerial Foreword



Devolution of the management of the Crown Estate in Scotland is a historic event that represents a genuine opportunity to change the fabric of Scottish society.

The Crown Estate in Scotland includes a diverse portfolio of property, rights and interests that influence many aspects of rural and coastal life in Scotland. The new functions being devolved include rights to the seabed and management rights over around half the foreshore around Scotland. Taking on the Crown Estate's role in the management of seabed rights out to 200 nautical miles around Scotland is also vitally important to being able to sustain the competitiveness of our marine industries and to continue to derive wealth from our marine environment.

The devolution creates significant opportunities for Scotland, local communities and industry and we need to take advantage of this major change. There can be a new focus on how we manage Crown Estate assets in Scotland and there will no longer be leakage of revenue from Scotland. We need to focus on delivering a new system that works for Scotland's future while also ensuring a smooth and ordered transition.

Opportunities include enhancing the financial and social benefits that we can obtain from the assets, ensuring decisions are taken in Scotland, based on Scottish priorities in a transparent and inclusive way.

There are opportunities for democratic renewal, further devolution of decision-making to the local level and for communities to benefit from the net revenue. The devolution also enhances our ability to align future management of the Crown Estate with other reforms by Scottish Ministers such as community land reform. We also want to ensure that the views of tenants are listened to carefully.

There are challenges as well as opportunities. The way in which the functions are being devolved creates practical and financial challenges. The choices we make over future management will have impacts on the amount of revenue that will be available. Key questions for the future arrangements include who should manage the assets, what should be the approach to charging for leases and how can communities benefit from the assets? Tailored solutions may be needed for different parts of Scotland or for individual Crown Estate property, rights and interests.

This consultation is a once in a lifetime opportunity to help shape the future management of The Crown Estate in Scotland and how the revenue can be used to benefit Scotland and communities. It is vital that all interests respect other views on the options for change and grasp the opportunities by working together to agree practical solutions.

A handwritten signature in black ink, appearing to read 'R. Cunningham', with a stylized, cursive script.

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

## **Responding to this Consultation**

We are inviting responses to this consultation by 29 March 2017.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.scotland.gov.uk/crown-estate-strategy-unit/long-term-management-of-the-crown-estate>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 29 March 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:  
[CrownEstate.Consultation@gov.scot](mailto:CrownEstate.Consultation@gov.scot).

You can respond online on the Scottish Government website. Alternatively, you can respond by email by sending your response to:  
[CrownEstate.Consultation@gov.scot](mailto:CrownEstate.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 in Annex C.

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

If you have any enquiries please send them to:  
[CrownEstate.Consultation@gov.scot](mailto:CrownEstate.Consultation@gov.scot) or contact Kevin Farquharson on 0131 244 7854. We would be grateful if you would use the consultation questions (Annex B) 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.

## **Handling your response**

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would, therefore, have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online at: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision-making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise, the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals;
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## **Introduction**

This consultation is an opportunity to help shape the long term framework for the devolved management of the Crown Estate in Scotland and how the revenue should be used to benefit Scotland and communities. A new framework will require legislation at the Scottish Parliament and this consultation focuses on the future purpose of the Crown Estate in Scotland and what changes are needed to the existing legislation to deliver that purpose.

Interim arrangements are being put in place to ensure a smooth transition, from the point of devolution, until the Scottish Parliament has legislated on the long-term framework for management of the assets.

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. Devolution of the management of the Crown Estate assets in Scotland provides an opportunity to increase the benefits to Scotland and local communities, to enhance local control and to ensure decisions on the use of assets in Scotland are more transparent and take account of the priorities of Scotland and the Scottish people and local communities.

The devolution of the management and revenue of the Crown Estate in Scotland also provides an opportunity to use the capital assets, and the net revenue generated, in a way that contributes to achieving 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.

## **Background**

Crown property rights are a major component of land ownership in Scotland. The ownership of Scotland's seabed, and much of its foreshore, are ancient possessions of the Crown. There is a legal presumption that an area of seabed or foreshore is owned by the Crown, unless there is evidence that it has been acquired by someone else. Ownership of Scotland's territorial seabed, which is the area of seabed from high watermark out to 12 nautical miles, is currently vested in the Crown, except for some small areas where the Crown has granted, or sold, ownership to a third party. The rights from 12 nautical miles out to 200 nautical miles (known as the Exclusive Economic Zone) are also vested in the Crown.

The Crown also owns around 50 percent of the 18,000 km length of Scotland's foreshore, with exceptions relating to land owned by a third party under udal tenure in the Northern Isles or acquired from the Crown over time by other landowners.

The Crown is also a significant land owner in Scotland and land in rural estates owned on behalf of the Crown currently totals 37,000 hectares. Glenlivet and

Fochabers in Moray were purchased in the 1930s, and Applegirth in Dumfries & Galloway and Whitehill in Midlothian were purchased in the 1960s.

The Crown's ownership of these rural estates, Scotland's seabed, much of its foreshore and a range of other properties, rights and interests, are currently managed by the Crown Estate Commissioners. These include salmon fishing rights, shooting rights and mineral rights (to quarry, mine or otherwise extract sub-surface materials) relating to the rural estates and rights to naturally occurring gold and silver in Scotland.

The Crown Estate Commissioners' role in managing the foreshore and seabed rights also means that they are responsible for leasing the seabed for a range of activities including wind, wave and tidal renewable energy developments, telecommunications cables, oil and gas pipelines, 5,800 licensed moorings and 750 aquaculture sites.

Urban property in Scotland owned by the Crown, principally at George Street in Edinburgh, are also currently managed by the Crown Estate Commissioners. The Crown also has joint venture interests in Fort Kinnaird shopping centre on the outskirts of Edinburgh.

Figure 1 illustrates how many sectors are impacted by Crown Estate management and how the Crown Estate is important to a lot of activities:



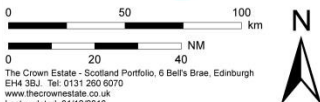
**Figure 1: Impact of Crown Estate on other Sectors and Activities**



**The following map illustrates the location of key activities in Scotland:**

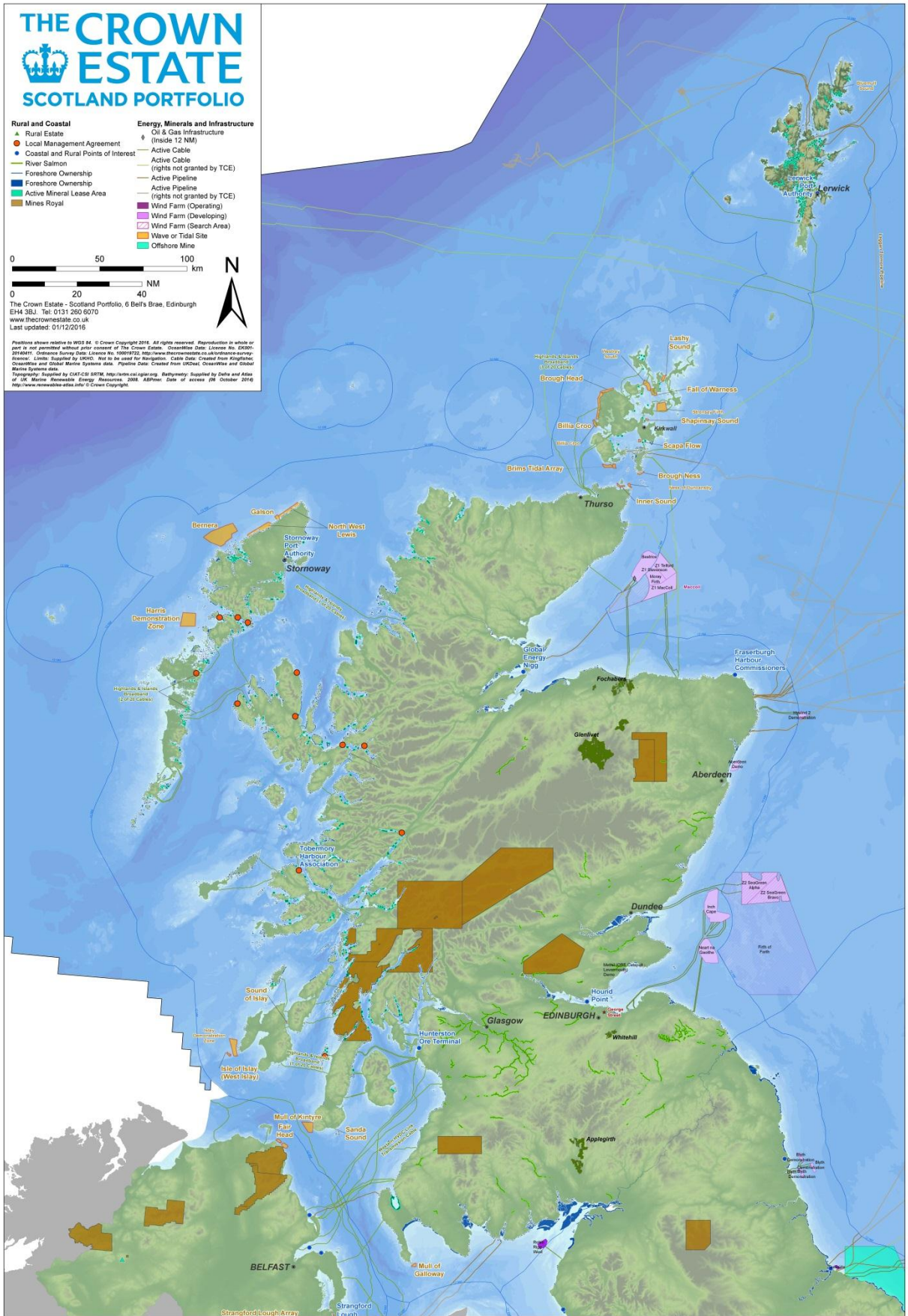
# THE CROWN ESTATE SCOTLAND PORTFOLIO

- |  |   |
|--|---|
| <b>Rural and Coastal</b>               | <b>Energy, Minerals and Infrastructure</b>    |
| ▲ Rural Estate                         | ◆ Oil & Gas Infrastructure (inside 12 NM)     |
| ● Local Management Agreement           | — Active Cable                                |
| ● Coastal and Rural Points of Interest | — Active Cable (rights not granted by TCE)    |
| — River Salmon                         | — Active Pipeline                             |
| — Foreshore Ownership                  | — Active Pipeline (rights not granted by TCE) |
| — Foreshore Ownership                  | ■ Wind Farm (Operating)                       |
| ■ Active Mineral Lease Area            | ■ Wind Farm (Developing)                      |
| ■ Mines Royal                          | ■ Wind Farm (Search Area)                     |
|  | ■ Wave or Tidal Site                          |
|  | ■ Offshore Mine                               |



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www.thecrownestate.co.uk

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### **Box 1: Gold and Silver**

*The Land Reform Review Group*

<http://www.gov.scot/Resource/0045/00451597.pdf> noted in 2014 that:

“The right to gold and silver in all land in Scotland was reserved by the Crown early in the country’s history and this continues to be the case. The current legislation, the Royal Mines Act 1424, is the oldest Act still in force from Scottish Parliaments before 1707. The other current legislation related to the right is an Act of 1592 and thus also amongst the oldest Acts.

The Crown in Scotland still owns the right to gold and silver throughout Scotland, except for over a few areas where the ownership was conveyed to others in ancient grants. Scotland’s Crown right to gold and silver is currently administered by the Crown Estate Commissioners as part of the UK wide Crown Estate.”

The Crown Estate Commissioners is a unique body which administers these property, rights and interests on a UK-basis.

The Scotland Act 1998 reserved the Crown Estate Commissioners’ management of the Crown Estate to Westminster and the Crown Estate Commissioners are currently accountable to the UK Government. The UK Chancellor of the Exchequer and the Secretary of State for Scotland also have powers of direction over the Commissioners. The Secretary of State for Scotland has responsibility for matters relating only to Scotland. The Crown Estate Commissioners currently transfer surplus revenues to the UK Government.

The Crown Estate Commissioners exercise powers under The Crown Estate Act 1961. The Crown Estate Commissioners have a legal duty to maintain the value and the return obtained from the Crown Estate while having due regard to the requirements of good management. In 2015/16, the gross revenue from the Crown Estate assets in Scotland that will be transferred was £14m and the property value was £271.8m

Further information on The Crown Estate is contained in **Annex A**.

### **The Case for Reform**

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

The Crown Estate Commissioners’ operations in Scotland have been considered in recent years by a number of Parliamentary Committees and inquiries. These include 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 (LRRG) also include sections on The Crown Estate. In particular, the LRRG made the following recommendations for the Crown Estate in Scotland:

- “The Review Group considers that ending the Crown Estate Commissioners’ involvement in Scotland would deliver wide ranging and important benefits to Scotland. The Group recommends that the Crown Estate Commissioners’ statutory responsibilities in Scotland, under the Crown Estate Act 1961, should be devolved to the Scottish Parliament.
- The Review Group considers that, following the abolition of feudal tenure, there should be further significant reductions in types of Crown property rights in Scotland. The Group recommends that the Scottish Government reviews the current Crown property rights in Scots law and brings forward proposals for the abolition of these rights or their replacement statutory provisions, as appropriate in the public interest.”<sup>1</sup>

Most recently, the Smith Commission<sup>2</sup> 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 UK-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.”*

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<sup>1</sup> p.64 and p.66 see <http://www.gov.scot/Resource/0045/00451597.pdf>

<sup>2</sup> (November 2014) see: [http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The\\_Smith\\_Commission\\_Report-1.pdf](http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf)

## **Way forward**

The Scottish Ministers intend to introduce legislation which puts in place a new legislative framework for management of Crown Estate assets in Scotland that ensures accountability to the Scottish Parliament and alignment with Scottish policy objectives. The long term framework can only be delivered once the transfer of functions has taken place and legislative competence has been devolved to the Scottish Parliament.

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.

The Transfer Scheme has not yet been made by Treasury and will require agreement from Scottish Ministers as well as the approval of the UK Parliament. The Scotland Act 2016 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.

After the transfer, the Scottish Parliament will have the power to legislate on the new framework for managing Crown Estate assets in Scotland. This will include the ability to depart from the Crown Estate Act 1961 which has to date been the legislative framework governing the management and revenue of the Crown Estate.

We are anticipating that the UK Government will complete the transfer scheme through the UK Parliament so that the Scottish Parliament has legislative competence by April 2017. Based on this timescale, and subject to the legislative programme, the Scottish Parliament could potentially complete consideration of a Scottish Bill on the Crown Estate during 2019 and the provisions could then potentially be commenced from 2019/2020.

## **Box 2: Interim Arrangements**

Under the interim arrangements, the Crown Estate assets in Scotland and the revenues generated from these assets, will be managed as a single entity, commencing from the point of transfer of the existing Scottish functions.

Section 36 of the Scotland Act 2016 inserts new provisions to the Scotland Act 1998 which enables the Treasury to make a transfer scheme to transfer the management functions and revenues of the Crown Estate Commissioners in Scotland to Scottish Ministers or another body nominated by Scottish Ministers. The 2016 Act also provides for establishing a body for the purposes of receiving the functions transferred by the transfer scheme, by Order in Council. In addition, the revenues from the Scottish assets must be paid into the Scottish Consolidated Fund. Under new provision inserted into the 1998 Act, the property, rights and interests to which the existing Scottish functions relate must be maintained as an estate in land, or as estate in land managed separately.

The name of the interim body will be **Crown Estate Scotland (Interim Management)**. There will be members, rather than Commissioners - consisting of a Chairperson and up to 8 other board members and staff – including a Chief Executive. Both members of the body and staff will be able to participate in committees and sub-committees of the body. The body is to regulate its own procedures. There will be reporting arrangements that are usual for a public body, and regulations the body will be subject to. Scottish Ministers may provide guidance to the body which it must have regard to.

Scottish Ministers commenced the Order in Council process by laying an SSI (the Crown Estate Scotland (Interim Management) Order 2017) in the Scottish Parliament on 21 October 2016 to put in place the legislative framework for the interim management of the assets from the point of the transfer. The Order was approved by the Scottish Parliament on 30 November 2016. It is expected to go to Privy Council for decision in early 2017.

This consultation seeks your views on how the Crown Estate in Scotland should be managed in future and what reforms are needed. The results of the consultation will shape the legal framework for implementing these long term arrangements.

The paper is divided into four chapters:

Chapter 1: 'Vision'. This section covers potential departures from the framework of the Crown Estate Act 1961 including whether to retain or modify the commercial duty; and alignment with SG policies.

Chapter 2: 'Managing Crown Estate Assets for Scotland and Communities' sets out three management options, a national, local and hybrid option.

Chapter 3: 'Securing the Benefits for Scotland and Communities' discusses the operational and governance implications as well as revenue implications and other financial issues of the management proposals.

Chapter 4: 'Assessing Impact'. This chapter asks you for comment on what the impacts on business, environment, equality groups and privacy may be. The Business and Regulatory Impact Assessment (BRIA) is published separately.

## **Chapter 1: Vision**

The devolution of the management of the Crown Estate in Scotland creates an opportunity to manage the assets differently, to maximise the benefits to the nation and communities. The Scottish Parliament will have the competence to legislate on the management of the Crown Estate in Scotland but it cannot amend the reservations in the Scotland Act 1998.<sup>3</sup> In this section, we would like your views on what the vision for the Crown Estate in Scotland should be.

### **1.1 Current Arrangements**

To date, the property, rights and interests of the Crown Estate have been managed mainly on a commercial basis through the buying and selling of land and property. The aim has been to maintain the value of the estate and lease the estate to secure the best consideration. This is normally equated to the best revenue stream that can be secured from the lease without extracting a monopoly value. These commercial aims stem from the duties on the Crown Estate Commissioners contained in the Crown Estate Act 1961:

- “Managing and **turning to account** land and other property, rights and interests and of holding such of the property rights and interests under their management.
- It shall be the general duty of the Commissioners, while maintaining the Crown Estate as an estate in land (with such proportion of cash or investments as seems to them to be required for the discharge of their functions), to **maintain its value and the return obtained from it**, but with due regard to the requirements of **good management**.
- Subject to some specified exceptions in the Act, the Commissioners **shall not sell, lease or otherwise dispose** of any land of the Crown Estate, or any right or privilege over or in relation to any such land, **except for the best consideration in money or money’s worth** which in their opinion can reasonably be obtained, having regard to all the circumstances of the case but excluding any element of monopoly value attributable to the extent of the Crown’s ownership of comparable land.”

The ‘specified exceptions’ to the requirement to obtain the best consideration discussed above mainly relate to: disposing of land; a right or privilege over, or in relation to, land; the development, improvement or general benefit of any land; or of a right, or privilege over, or in relation to, land for certain purposes. Currently, the Crown Estate Commissioners may dispose of land, or of a right or privilege over or in relation to land, without consideration, or for such consideration as they think fit, where the land is to be used and occupied, or the right or privilege is to be enjoyed:

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<sup>3</sup> See Part 1 of schedule 5 of the Scotland Act 1998 (as amended by section 36 of the 2016 Act) and the new section 90B(5) to (8) of the 1998 Act (inserted by section 36 of the 2016 Act). See section 36 of the Scotland 2016 at <http://www.legislation.gov.uk/ukpga/2016/11/section/36>



“(a) for the purpose of any public or local authority, or for the supply of water; or  
(b) for the construction, enlargement, improvement or maintenance of any road, dock, sea-wall, embankment, drain, water-course or reservoir; or  
(c) for providing, enlarging or improving a place of religious worship, residence for a minister of religion, school, library, reading room or literary or scientific institution, or any communal facilities for recreation, or the amenities of or means of access to any land or building falling within this paragraph; or  
(d) for any other public or charitable purpose in connection with any land of the Crown Estate, or tending to the welfare of persons residing or employed on any such land.”

The Scottish Parliament will be able to depart from these duties to provide a new or revised purpose for the Crown Estate in Scotland but the Parliament’s legislative competence is restricted by the Scotland Acts 1998 and 2016 and the draft Transfer Scheme which is currently being finalised via negotiations between the Scottish Government and the UK Government.

A new provision inserted into the Scotland Act 1998 by the Scotland Act 2016 requires all capital receipts from sale of assets to be reinvested into the estate. There is also a duty to manage property, rights and interests as an estate in land, or as estates in land managed separately. The draft Transfer Scheme includes provisions to restrict charges for leases for the estate in Scotland for electricity infrastructure, telecommunication cables and pipelines. These restrictions provide for independent review and ensure that monopoly value is excluded. The Transfer Scheme also specifies the basis for essential use of the estate for defence purposes.

As well as the core activity of acting as a landlord by buying and selling and leasing land and property, the Crown Estate Commissioners in Scotland also undertake strategic planning and develop investment strategies on a national or industry sector basis with the aim of enhancing the value of the estate in future. This activity has involved investment in strategic research and initiatives to enable new industries to develop, grow and mature to a stage where they become new sources of revenue for the UK-wide estate through new leasing activity. This work has also sometimes involved leading, or contributing to, initiatives to co-ordinate research or strategic initiatives. We would like your views on whether these activities should continue in future.

## **1.2 Overall Vision for the Future**

The manager of the Crown Estate has some discretion to take account of the requirements of good management when seeking to maintain the value of the estate and/or the return from the estate. There is also some discretion to waive the best consideration for a sale or lease in specific circumstances. The development of the long term framework provides an opportunity to review what can be included under ‘good management’ and the circumstances when the best consideration is not required.

More fundamentally, there is a basic question about whether the estate should continue being managed on a primarily commercial basis, or whether there is a case for a wider set of considerations to be taken into account. There have been suggestions from stakeholders for wider socioeconomic benefits, including community benefits, to be taken into account when managing the estate's assets. For example, a decision could be favoured even if a development project did not generate a sufficient commercially return because the estimated employment, wider socioeconomic and well-being benefits for a community would be significantly larger than the commercial return to the estate. Currently, there is some discretion to waive the best consideration for a sale or lease in 'specific exceptions' but there is an opportunity to review what can be included under 'specific exceptions'.

The new provisions inserted into the Scotland Act 1998 require the manager of the estate to maintain the estate in future and we need to ensure that such discretion does not compromise compliance with that duty. In addition, the net revenue from the estate available to communities will be lower where such discretion is exercised. We need to ensure that we do not reach a tipping point where the future revenue from the estate is only a small proportion of the revenue potential. This is important as this would reduce revenue for communities and create financial pressures on the Scottish block<sup>4</sup> as the UK Government will apply a block grant reduction to the Scottish block equivalent to the net revenue of the Crown Estate in 2016/17.

Scottish Ministers consider there to be merit in reforming the duties for management of the Crown Estate. This could involve continuing to normally require assets to be managed on a commercial basis but to provide discretion for the manager of a Crown Estate asset to take account of wider socioeconomic or environmental benefits when charging for a lease or sale of land. For example, existing legal duties such as the duty on local authorities to secure best value, the duties for Highland and Islands Enterprise and sustainable development could be adapted for this purpose.

### **Box 3: Best Value**

Under the Local Government in Scotland Act 2003, local authorities in Scotland are under a statutory duty of Best Value. This is defined as being to make arrangements to secure continuous improvement in performance while maintaining an appropriate balance between quality and cost; and in making those arrangements and securing that balance, to have regard to economy, efficiency, effectiveness, the equal opportunities requirements and to contribute to the achievement of sustainable development.

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<sup>4</sup> The amount of public expenditure the UK Government allocates to Scotland and which amounts to a large proportion of the Scottish Parliament's budget

#### **Box 4: Recognising Community Benefits**

Highlands and Islands Enterprise (HIE) takes a distinctive approach to regional development – supporting the growth of communities as well as businesses and economic sectors.

Operating across a largely rural region that covers half of Scotland, the agency has its origins in the Highlands and Islands Development Board, which was set up in 1965 to combat chronic depopulation. Fifty-one years on, HIE's integration of economic and social powers is widely regarded as having been a key component in a remarkable turnaround of the region's fortunes.

Since the 1960s, Highlands and Islands population has risen by 22% - more than seven times the rate of Scotland as a whole. Unemployment levels, which used to be among the highest in the country, dropped below both the Scottish and UK averages a decade ago, and have remained there ever since.

The business base, once dominated by primary industries such as farming, fishing and forestry, now encompasses thriving energy, life sciences and creative industries sectors, universities and business services, as well as tourism and food and drink.

HIE's broad remit recognises that strong and sustainable communities are essential pillars that support economic growth across the region, particularly in remote mainland and island areas. Increasingly, this has meant empowering communities to acquire and manage key assets for themselves, including land, property and infrastructure.

With HIE support, Highlands and Islands communities have pioneered a huge variety of innovative community projects, from renewable energy schemes to social enterprises providing vital services, and most recently delivering broadband. Time has proved the HIE model so successful that plans are now being considered to introduce a similar approach to support rural development in the south of Scotland.

#### **Box 5: Sustainable Development**

“The Scottish Government's commitment to sustainable development is reflected in its Purpose. It is also reflected in the continuing support for the five guiding principles set out in the UK's shared framework for sustainable development: Achieving a sustainable economy, promoting good governance and using sound science responsibly are essential to the creation and maintenance of a strong, healthy and just society capable of living within environmental limits.”

*Scotland's National Marine Plan (March 2015)*

This discretion to take account of wider benefits will impact on the gross revenue of the Crown Estate and, in turn, this will impact on the net revenue that is available for communities or any other purpose. In order to ensure that this discretion does not

risk breaching the duty to maintain the estate as an estate in land, or as estates in land managed separately – which will continue in perpetuity - Scottish Ministers propose that this new discretion is accompanied by a duty to have regard to the implications for the estate as a whole. When this involves disposal of land, it is also proposed there would be a requirement to have regard to the implications for the overall value of the estate. When this involves leasing an asset, there would be a requirement to have regard to the overall implications for the revenue of the estate.

This could enable the manager to charge a lower amount for social or other purposes with reassurance that this will not significantly risk the overall position of the estate. Likewise, it would enable the manager to charge a lower amount to enable an economic development project to be pursued, on the basis that the likely wider benefits of the project outweigh the potential loss of revenue to the estate and this approach will not risk the overall position of the estate.

We would, therefore, like your views on the following:

**Q1: Should the future approach be changed from the duty to manage the assets on a commercial basis?**

**YES**

**NO**

**Don't know**

**Q2: If YES, should there be a power to take account of wider socioeconomic or other benefits?**

**YES**

**NO**

**Don't know**

**Q3: If YES, which assets should be managed on a commercial basis and which should be managed differently? (Please provide details in the space below)**

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### **1.3 Good Management for the Future**

As discussed in the background section, Crown Estate managers already have some discretion to take account of 'good management' (section 1(3) of the Crown Estate Act 1961) when seeking to maintain the value of the estate. We now have an opportunity to review 'good management' to ensure it fits Scotland.

There have also been calls for an explicit duty to take account of the environmental implications of decisions on use of the estate. Legislation on the environment

normally makes clear whether or not it applies to the Crown and the Crown Estate Commissioners.

We would like your views on the following:

**Q4: Should the requirement on ‘good management’ be retained?**

**YES**

**NO**

**Don’t know**

**Q5: Should the requirement on ‘good management’ be amended to take account of environmental implications in relation to the management functions?**

**YES**

**NO**

**Don’t know**

#### **1.4 Sale of Assets**

The Scotland Act 2016 inserts new provision to the Scotland Act 1998 which does not prevent disposal of assets by the manager for the purpose of that management, so there is no requirement to preserve the existing assets in the Crown Estate portfolio. The current portfolio has been accumulated over time and has been managed as a UK-wide portfolio, so there may be a need to rebalance the estate on a Scottish basis. In addition, preserving the portfolio may lead to opportunities being missed, which could lead to substantial losses for Scotland and communities.

Scottish Ministers consider that there are strong grounds to enable assets to be sold, recognising that there is a legal duty to re-invest the proceeds in the estate.

Historically, there has been a general presumption against selling the seabed so that this national strategic asset does not become fragmented and Scottish Ministers plan to maintain this policy. There may be a need for manager(s) of Crown Estate assets to seek the approval of Scottish Ministers for sizeable sales and Scottish Ministers propose to introduce this policy.

**Q6: Should the existing Crown Estate portfolio in Scotland be preserved in its current form?**

**YES**

**NO**

**Don’t know**

**Q7: Should Scottish Ministers’ approval be required for sizeable sales?**

**YES**

**NO**

Don't know

**Q8: Should the existing policy - the general presumption against selling the seabed - be maintained?**

YES

NO

Don't know

**Q9: Do you have any other views on how the management of the Crown Estate in Scotland can ensure delivery of the duties in the Scotland Acts 1998 and 2016? (Please provide details in the space below)**

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## **1.5 Transparency**

Devolving the management of Crown estate assets to the Scottish Parliament provides new opportunities to enhance the accountability and transparency of how the assets in Scotland are managed. As with any commercial activity, there will always be constraints on full disclosure of all activities due to data protection requirements and the commercial nature of some activities.

### **Box 6: Transparency**

Scottish Ministers expect all public bodies to communicate clearly with their stakeholders, make information widely available, consult thoroughly and imaginatively and seek feedback on performance.

Some public bodies in Scotland have a policy of publishing board papers on their website and enable members of the public to attend all or part of board meetings as observers. For example, Health Board meetings are open to members of the public and all relevant papers are available online.

There are many examples of public bodies promoting opportunities for local communities to comment and influence decisions. Public bodies in Scotland are encouraged to undertake reviews of performance and some enable communities to contribute to performance reviews. For example, Health Board Annual Reviews provide for scrutiny of the Boards' performance whilst encouraging dialogue and accountability between local communities and NHS Boards. The review process includes:

- advertising the Review, elements of which are open to trade unions, staff, user groups, patients and members of the public to attend;
- publication of information prior to the Review online;
- opportunities for the public to attend a Q&A session;
- the results of the review are made available on the Board's website.

We therefore seek your views on:

**Q10: How can transparency on the sale and management of the Crown Estate assets be enhanced?** *(Please provide details in the space below)*

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### **1.6 Greater Alignment with Scottish Government Policies**

As outlined in the Introduction, Scottish Ministers see this as an opportunity to use the Crown Estate assets and revenues in a way that contributes towards achieving 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.

This requires better alignment between policies for managing the Crown Estate in Scotland and other key policies of Scottish Ministers in related areas such as community empowerment, access, land reform and marine planning. Scottish Ministers envision that the manager(s) of the Crown Estate, going forward, will continue to be involved in implementation of these wider policies. For example, the national marine plan and regional marine planning will set an important context for the management of marine assets.

**Box 7: Community Empowerment**

We want communities across Scotland to have a stronger voice in the decisions that matter to them. The Community Empowerment Act 2015 will provide new rights for communities, place new duties on public sector bodies and reform community planning. Where communities are empowered, we expect to see a range of benefits: local democratic participation boosted; increased confidence and skills among local people; higher numbers of people volunteering; and more satisfaction with their quality of life. Better community engagement and participation can lead to the delivery of better, more responsive services and better outcomes for communities.

We want to push the boundaries of community empowerment and community-led innovation. We are determined to see a Scotland where community-led action is celebrated and community ownership is both desirable and viable. Scotland's communities are a rich source of energy, creativity and talent. They are made up of people with rich and diverse backgrounds who each have something to contribute to making Scotland flourish. Government needs to help communities to work together and release that potential to create a more prosperous and fairer Scotland.

**Q11: How can the devolution of the management of the Crown Estate contribute to community empowerment?** *(Please provide details in the space below)*

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**Q12: How can the devolution of the management of the Crown Estate contribute to land reform?** *(Please provide details in the space below)*



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**Q13: How can we further improve alignment with Scottish Ministers' objectives to deliver on the national outcomes?** *(Please provide details in the space below)*

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## **Chapter 2: Managing Crown Estate Assets for Scotland and Communities**

Devolution of the management of the Crown Estate assets in Scotland will end the management of the assets being controlled from outside Scotland and it will be possible, for the first time, to retain the surplus revenue in Scotland, rather than the surpluses going to the UK Treasury.

*Ownership* of the Crown Estate will remain vested in the Crown, or in other words, the reigning Monarch will continue to own the assets. Only the management and the revenue generated from these will transfer. New provision inserted into the Scotland Act 1998 imposes certain requirements (see Box 8 below) which includes the concept of a single Crown Estate in Scotland (even though the estate may, in fact, be managed by more than one manager) to ensure the potential capital value of the estate for investment opportunities is maximised. The Act requires the estate to be managed as an 'estate in land' (or as estates in land managed separately) and capital receipts need to be reinvested into the estate.

### **Box 8: 'Estate in Land' Duties**

The Crown Estate Commissioners currently have a function of maintaining the Crown Estate as an 'estate in land' with such proportion of cash or investments as they consider necessary under section 1(3) of the Crown Estate Act 1961. By means of this function the Crown Estate is (in effect) held in trust for the Sovereign.

The Scotland Act 2016 ensures that the Scottish assets will be protected as an estate in land in perpetuity:

- Section 36(1) inserts a new section 90B (the Crown Estate) into the Scotland Act 1998.
- Section 90B(5) requires post-transfer management to be on behalf of the Crown.
- Subsections (6) and (7) of section 90B allow the disposal and acquisition of property post-transfer and all acquired property (excluding hereditary revenues) must also be managed on behalf of the Crown.
- Post-transfer, new section 90B(8) requires the property, rights and interests to be maintained as an estate in land (or as estates in land separately managed).

As discussed in the introduction, interim arrangements for the management of the assets, from the point of transfer, are designed to ensure that devolution to Scotland can be completed at the earliest opportunity and to ensure a smooth transfer for staff, tenants and other customers. Decisions need to be made on what should be the long term framework for management Scotland's Crown Estate assets.

### **2.1 Principles**

Ministers have set out the following general three principles to explore opportunities for democratic renewal and decentralisation:

1. People should be able to influence decisions that affect them and their families, and trust the decisions made on their behalf by those they elect.
2. Arrangements should be appropriate and tailored towards the needs and aspirations of people and places, to support the delivery of shared national outcomes.
3. Arrangements should be effective, efficient and represent value for money for Scotland as a whole.

Ministers will use these principles as a guide when exploring opportunities for democratic renewal and decentralisation in the long term framework for management of the Crown Estate in Scotland.

**Q14: Do you have any views on the proposed application of the above principles to guide the long term framework for managing Crown Estate assets?**

**YES**

**NO**

**Don't know**

**Comment:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **2.2 Design Options for the Crown Estate in Scotland**

In this consultation, we present the three options for designing the long term framework which were identified through stakeholder engagement:

**Option 1: Retain management of all assets at the national level.**

**Option 2: Devolve management of all assets to local authorities or communities.**

**Option 3: Consider on a case-by-case basis the appropriate governance arrangements for each asset of the Crown Estate in Scotland.**

**Option 1:** This is likely to have the lowest cost and would minimise disruption, retain economies of scale and be the simplest approach for marine industries as it would enable them to deal with one manager in Scotland. This option would also enable the continuation of the approach where the capital value of the land and property can provide collateral for investment in new opportunities elsewhere in the estate.

However, it could potentially limit community empowerment and it would not implement the Smith Commission's recommendation of further devolution. In addition, the diversity of the portfolio does not necessarily mean its long term management is best suited to the assets being managed by one manager.

**Option 2:** This option would provide for local control and would deliver the Smith recommendation of further devolution for the islands or other local areas who wish to take responsibility for the management of Crown Estate assets. It has also been argued that some of the assets may be better managed at the local level because of synergies with other local responsibilities.

However, at this time it is not clear that all local authorities or communities would prefer to manage the assets in their area and whether the skills and expertise are currently available at a local level or whether they can be developed in a timely and efficient manner. This option could also lead to fragmentation, or local competition, between different parts of Scotland. However, a national framework to define the roles and responsibilities of local managers within a framework of national oversight could help address these risks (see section 2.6). Not all assets may be sustainable in their own right which could result in financial burdens being placed on councils or communities. The interim arrangements will provide vital information on whether some assets are likely to require cross-subsidy. It may also not be possible for individual local authorities to take on the liabilities associated with every asset in their area due to the potential scale of the liabilities.

#### **Box 9: Community Opportunities**

Scottish Government policy supports communities taking more control of their local assets, including land purchases and leasing arrangements.

Local communities which have taken control of local assets are showing real initiative and progress in improving their place, their communities. Those communities harness the land resources at their disposal and manage those assets to support economic, social, environmental and cultural development, seeking to enrich the life of their community and the people who live there, making the community more sustainable and resilient.

Crown Estate assets associated with the foreshore that adjoin land in community ownership, and the seabed reaching out from the foreshore, are potentially valuable assets for a community to manage in association with their land assets, or independently.

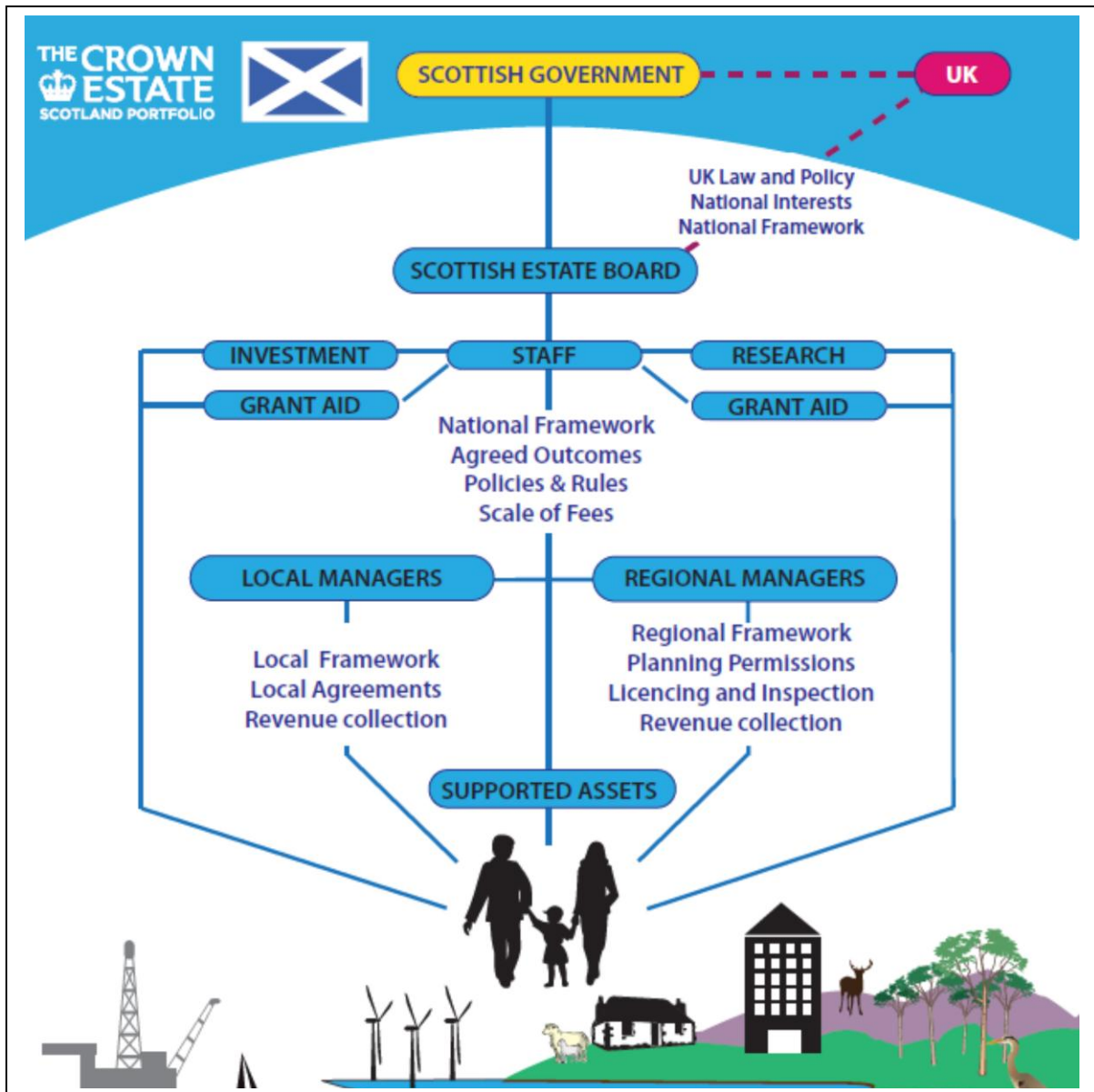
There are already many examples of local communities managing piers and jetties, moorings and anchorages. Inshore shellfish assets can also be harnessed, and there are aspirations to exploit potential renewables opportunities. Being in control of decisions over these assets, and potentially other assets in the control of the Crown Estate, can create income streams that can help strengthen local economic performance and contribute to more empowered, sustainable and resilient communities.

**Option 3:** This option would involve a case-by-case assessment and enable a geographic or functional approach to be followed. This would enable the principles of the Smith Commission to be delivered, while recognising that the Crown Estate in Scotland is a diverse portfolio ranging from management of small jetties, ancient rights to the foreshore, salmon fishing rights, rural estates, urban property and the management of the seabed as a national strategic asset.

This option would enable a tailored approach to be put in place for the management of each asset (functional or geographic approach) based on the Smith Commission's principles and allow local authorities, local tenants, local communities and others who have an interest in, or depend on, the use of Crown Estate assets to be directly involved in their management. This option could be designed to increase local control over decision-making with shared supporting arrangements to reduce duplication and fragmentation.

The following diagram has been produced by a stakeholder as a potential way of delivering option 3:

**Figure 1: Stakeholder Model**



**Scottish Ministers have not ruled out any option and are inviting views on all options so they can take a decision on the future framework for management of the assets.**

In summary, option 1 would be the most streamlined approach but would not fully implement the Smith Commission’s recommendation of further devolution. Option 2 would deliver on the Smith Commission recommendation of further devolution. However, concerns have been expressed about the availability of local skills and expertise to deliver this option, as well as fragmentation and financial burden. Option 3 would avoid the imposition of a ‘one size fits all’ approach across Scotland and provide scope for further devolution opportunities to be tailored to the aspirations of communities and provide space for alternative solutions if some assets, or interactions with industry, cannot sensibly be run on a fragmented basis. On this basis, **Scottish Ministers currently see merit in option 3**, subject to views received through this consultation.

**Q15: Which of the three proposed options for managing Crown Estate assets in Scotland do you prefer?**

**Option 1 (national)**

**Option 2 (local)**

**Option 3 (hybrid)**

**Don't know**

**OTHER**

**Q16: If OTHER, what approach to management do you propose?**

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Management of the Crown Estate could either be kept in one organisation or be reformed on a functional basis or a geographic basis. Particular types of assets could be managed by one type of organisation under a functional approach, or assets in particular areas could be managed by one type of organisation under a geographic approach. The Smith Commission's recommendations envisaged further devolution of management of the land, property and rights being pursued on a geographic basis, with particular reference to the Orkney Islands, Shetland Islands and Western Isles and a process for other local areas to express interest in local management.

**Q17: Should a geographic or a functional approach guide the reform of the management of the Crown Estate in Scotland?**

**Geographic**

**Functional**

**Don't know**

**Other**  *Please Specify:* \_\_\_\_\_

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**Q18: Do you have a preference for management on a geographic basis being led by either local authorities or communities?**

**Local authorities**

**Communities**

**Don't know**

The issues outlined above are explored further in the remainder of this chapter. Some of them apply to all options while the detailed consideration of the

opportunities for local decision-making and management are focused on option 3 but the issues are also relevant to option 2.

### **2.3 Enabling Ministers to Reform the Management of the Crown Estate**

To recognise the diversity of the estate and the scope for different solutions over time, Scottish Ministers are considering whether the new legal framework could include a power for Ministers to transfer the responsibility for management of the estate, or parts of the estate, to a particular person or persons. This could include Scottish Ministers, a local authority, a public body or another person including a community organisation. Scottish Ministers believe that they should be able to use this power to vary who manages the estate, or parts of the estate, in future. This would enable Ministers to either reform the management of the Crown Estate across Scotland immediately or undertake a phased approach to reform.

Scottish Ministers are also considering whether they should have the power to extinguish rights currently held in the Crown Estate where management of the asset can be adequately covered by other legislation. This would provide for simplification of the legal framework for managing activities, where appropriate.

**Q19: Should Scottish Ministers have the power to hand responsibility for management of the estate, or parts of it, to a particular person or persons?**

**YES**

**NO**

**Don't know**

**Q20: Should Scottish Ministers have a power to vary management arrangements held by other parties over time?**

**YES**

**NO**

**Don't know**

**Q21: Should Scottish Ministers have the power to extinguish rights currently held in the Crown Estate where management of the asset can be adequately covered by other legislation?**

**YES**

**NO**

**Don't know**

### **2.4 Delivering More Control for Communities**

In light of the Smith Commission's recommendations and Scottish Ministers' policies on community empowerment, Scottish Ministers wish to consider opportunities for



enhancing the local control of property, rights and interests currently managed by the Crown Estate.

Scottish Ministers consider that management of the foreshore and management of harbour areas operated by a local authority or trust port are examples of functions that could be successfully devolved further to communities.

Scottish Ministers consider there to be a case for the management of the seabed, particularly the rights to the 12-200nm zone, and leasing for strategic national infrastructure such as telecommunication cables, pipelines and offshore wind farms to be undertaken at the national level.

Scottish Ministers will consider the potential to retain management of the rural estates at national level, subject to the views of the tenants of the rural estates, including whether they would like to be responsible for management.

There may also be a need for management of some assets at the national level because individual local authorities may not be best placed, or interested in, taking on the management of some Crown Estate property, rights and interests. A breakdown on the assets and proposed potential level of management are detailed in the Box below.

#### **Box 10: Further Devolution Opportunities**

##### Functions that could potentially be further devolved to councils or communities

- Foreshore rights
- Leasing for wave and tidal energy out to 1nm, 3nm or 12nm
- Land in local authority operated ports
- Non-operational ports and jetties

##### Functions that may be better managed at the national level

- Offshore renewable leasing (12-200nm zone)
- Rights over cables and pipelines (which can transcend national borders within the UK)
- Other seabed rights (12-200nm zone) - gas storage rights, mineral rights (not hydrocarbons)
- Rights to naturally occurring gold and silver
- Reserved mining rights

##### Functions that need more consideration

- The rural estates – Applegirth, Fochabers, Glenlivet and Whitehill estates
- Urban property – principally at George St, Edinburgh
- Offshore wind leasing in the 0-12nm zone
- Aquaculture (may need mechanisms for management of conflicts of interest)
- Salmon fishing rights, possibly retained as part of the rural estate or aligned more closely with wider reform of wild fisheries)
- Land in other ports

### **Box 11: Ports and Harbours**

There are four main types of ports in Scotland:

1. Trust ports are independent statutory bodies managed by a board;
2. Ports that are privately owned;
3. Ports that are owned by a local authority;
4. Ports owned by Caledonian Maritime Assets Limited used in the provision of lifeline ferry services.

Many ports currently lease areas of seabed from The Crown Estate within their port limits. In some cases, for the construction of harbour infrastructure such as piers or jetties, and in others where seabed has been reclaimed for quayside or laydown areas.

Smaller harbours or marinas may lease areas for boat moorings which may then be leased out to local boat owners or visitors. In some cases, moorings associations will already have arrangements in place to manage a moorings area on behalf of The Crown Estate.

If the management is to be devolved to bodies other than ports themselves, then it will be important to ensure there is a mechanism to ensure consistency in relation to procedures and charges across different areas to ensure that existing operations and future port development are not impacted (in terms of overall costs of development or timing of approvals).

The following text box lists the key Scottish Crown Estate assets:

### **Box 12: Crown Estate Assets in Scotland**

The land forming the seabed of Scottish coastal waters i.e. inside 12nm

Seabed rights within 200nm:

- (gas) storage rights
- energy rights (offshore renewables)
- mineral rights (not hydrocarbons)
- powers to lay cables and pipelines
- other leasing rights

Foreshore rights

Rural estates:

- The Whitehill estate in Midlothian
- The Glenlivet estate in Moray
- The Applegirth estate in Dumfries and Galloway
- The Fochabers estate in Moray
- 1 and 2 Kings Park Cottages, Stirling
- 10 the Homesteads, Stirling

Commercial estates:

<ul style="list-style-type: none"> <li>• 39 to 41 George Street, Edinburgh</li> <li>• the lock-up garage at 3 and 5 West Thistle Street Lane, Edinburgh</li> <li>• the car parking spaces to the rear of 37, 39 and 41 Frederick Street, Edinburgh</li> <li>• the land at Rhu Marina on the Firth of Clyde</li> </ul>
Salmon fishing rights (rivers and coastal waters)
Rights to naturally occurring gold and silver
Reserved mining rights
Any other property, rights and interests held by Commissioners on behalf of the Crown – including internal waters, the land owned by Her Majesty in Scotland

Source: Provided by The Crown Estate

**Q22: Do you have any views on which assets should be managed at the (i) national level (ii) by local authorities or (iii) by communities? (Please provide details in the space below)**

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## 2.5 Delivering Further Devolution of Crown Estate Assets

### Local ambitions for management of assets

Under both options 2 and 3 (Q15), Scottish Ministers would expect local authorities or communities to make a business case for the devolution to the local level of the decision-making of particular property, rights and interests of the Crown Estate and to demonstrate that they have the capability to take on the management of these assets, to maintain service delivery to customers and deliver increased benefits.

**Q23: Should local authorities or communities be expected to make a case for further devolution?**

YES

NO

Don't know

**Q24: If YES, should they demonstrate the capability to ensure appropriate management, to maintain service delivery and to deliver increased benefits?**

YES

NO

Don't know

### How to deliver enhanced local control

Local management would enhance local accountability but there are different options on how this could be achieved. The existing functions of the Crown Estate Commissioners could, in theory, be replicated in each area that has local assets. Each area could also have the ability to set local charges for leasing for the same type of activity and each area could be responsible for research funding and planning. This approach to local management is more likely to lead to fragmentation, competition between different parts of Scotland and reduced net revenue for communities due to loss of economies of scale and duplication of administration costs. Fragmentation of the estate could pose significant risk to realisation of net revenue in future.

**Q25: Replicating functions in each area is likely to lead to fragmentation of the estate which would pose significant risk to realisation of new revenue – how can these risks be avoided?** *(Please provide details in the space below)*

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An alternative model could be to encourage a ‘shared services’ approach for assets managed at the local level. This could involve either a national administration to support local decision-making or a similar administration at a wider regional level to provide support services for clusters of council areas or communities. This would enable individual councils or communities to take decisions on the use of some, or all, assets in their area, based on reports on options and assessments prepared by a central or regional administration. The central or regional administration could also undertake day to day management of, and planning for, the assets under local control.

This approach would enable local areas to take democratic decisions on the use of an asset, even if the council or community has no, or limited, experience in managing similar assets. Scottish Ministers’ current view is that further devolution of decision-making should be based on a shared services approach to support decision-making being organised at the national level or in a small number of clusters.

**Q26: Should shared services be a requirement of devolution to the local level of decision-making on property, rights and interests of the Crown Estate?** *(Please provide details in the space below)*

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**Q27: What are the opportunities, if any, of further devolution?** *(Please provide details in the space below)*

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**Q28: What are the challenges, if any, of further devolution?** *(Please provide details in the space below)*

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## **2.6 Strategic Planning Role**

Leaving aside the options for who manages the assets, Scottish Ministers consider that there will be a continuing need to provide for strategic planning and investment strategy development on a national basis or for industry sectors, in order to co-ordinate work to enhance the value of the estate, in future.

Strategic planning will ensure continuity of investment in strategic research and initiatives, including activity to enable new industries to develop, grow and mature to a stage where they become new sources of revenue for the estate.

**Q29: Is there a need for strategic planning and a long term investment strategy, in order to co-ordinate work to enhance the value of the estate?**

**YES**

**NO**

**Don't know**

### A National Framework

Scottish Ministers believe it would be appropriate to put in place a national framework to govern further devolution opportunities. A national framework could define powers, duties and responsibilities and would set the context for local decision-making where further devolution of management is possible. The framework could include:

- Definition of the extent of local management or decision-making responsibilities.
- A power for Ministers to develop policy guidance and procedures for co-ordination between managers or to ensure consistency of service.
- A power for Ministers to set bands for charging for leases by sector.
- A power for Ministers to require independent reviews for charging for leases.

- Arrangements to ensure that charging does not exert monopoly power or that managers are not at risk of claims for collusion.
- A power for Ministers to set scales of charging for local managers.
- The circumstances where there should be a role for Scottish Ministers in local decision-making.
- A power for Ministers to set targets for managers.
- A possible duty for managers to obtain Ministers' approval for sale of an asset and planned use of the capital proceeds.

The national framework could include rights as well as duties, making clear what other legislation needs to be followed.

The national framework could also include procedures for managing potential conflicts of interest between a manager's duties for Crown Estate assets and their wider set of duties and responsibilities.

The national framework could also include procedures to ensure that assets are returned, and they are not put to the intended purpose within a reasonable timescale.

The framework would also include national reporting and accounting arrangements, for example, an annual report by managers on the performance and activities, submitted to Ministers, which sets out the main objectives, outcomes, activities including targets.

**Q30: Do you have any views on the value of a national framework to guide local decision-making?** *(Please provide details in the space below)*

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**Q31: Should there be consistent charging approaches between areas to avoid competition between different parts of Scotland?**

YES

NO

Don't know

**Q32: Are there any other issues that should be covered by a national framework for management of Crown Estate assets in Scotland?** *(Please provide details in the space below)*

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## **2.7 Implementing Devolution at the Scottish Level: A phased Approach**

Where further devolution is considered appropriate, the transfer is likely to take place at different times in different parts of Scotland to give councils and/or communities the time to prepare for taking on the new responsibilities.

Scottish Ministers consider there to be a strong case to reach a decision on which property, rights and interests of the Crown Estate should be managed at a local level in Orkney, Shetland and the Western Isles as a first priority and, indeed, the local councils have made clear their ambitions for further devolution.

Scottish Ministers promote taking a phased approach before reaching a decision on how best to devolve in other areas, as it will take time to complete discussions with other councils and interested communities. Ministers are, therefore, interested in your views on the phased approach, which will help inform the process of devolution to the local level and shape the further opportunities for different groups.

Pilots may help shape the further devolution opportunities but the purpose and potential value of any pilots needs further discussion. The next text box summarises the current position on pilots:

### **Box 13: Island Authorities' Pilot Scheme Proposals**

As part of the Our Islands : Our Future (OIOF) campaign's engagement with Scottish Government the Islands Councils - Comhairle nan Eilean Siar, Orkney Islands Council and Shetland Islands Council - have outlined proposals for a single pilot scheme, applying to all three island areas, involving a body empowered to sign leases.

Political commitment to explore a pilot scheme was given by the then Transport and Islands Minister, Derek Mackay, at the 12<sup>th</sup> **Island Areas Ministerial Working Group** on 22 February 2016. This has since been reaffirmed by Mr Yousaf, the new Transport and Islands Minister.

Marine Scotland and OIOF have had various meetings to explore a pilot scheme.

The following criteria have been developed by OIOF with input from stakeholders:

- An agency agreement on an administrative basis, a one-stop-shop, which would involve local decision-making and would not require legislation. The islands councils would act as agents with Crown Estate Scotland (Interim Management), as principal, giving authority for leases to be signed.
- One single pilot applying to all three island areas.
- Aim is to streamline the consenting process, enable local and/or community input at the earliest opportunity, provide transparency and maintain developer certainty for developments between MHWS and 12nm (territorial limit of waters).
- The pilot scheme would focus on decision-making.

It has been highlighted that Scottish Ministers could not require any pilot arrangements in the Islands to be implemented until the UK Government had completed the Transfer Scheme, currently scheduled for April 2017. OIOF's preference is to have details worked up, agreed and ready to run for a pilot arrangement to take place as soon as possible after the point of devolution.

Progress is being made and discussions are ongoing over what a pilot could look like, how it can be delivered and the timing of when a pilot could start. This will enable Scottish Ministers to take a decision on whether it will be possible to pilot arrangements for enhanced local management ahead of further devolution opportunities being legislated for by the Scottish Parliament.

We would like your views on:

**Q33: Should the future arrangements in Orkney, Shetland and the Western Isles be considered first?**

**YES**

**NO**

**Don't know**



**Q34: Is a phased approach needed to introduce reforms to the management of Crown Estate assets across Scotland?**

**YES**

**NO**

**Don't know**

**Q35: Is there value in a pilot scheme prior to implementing reforms?**

**YES**

**NO**

**Don't know**

## **2.8 Other Issues**

We have attempted to set out the full range of issues for managing the Crown Estate assets for Scotland and communities in this chapter. There may be areas of governance or local management which can be developed that we have not covered and, therefore, we would like to hear your views on any other matters on governance or local management.

**Q36: How can people influence decisions in relation to the management of the Crown Estate assets? *(Please provide details in the space below)***

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**Q37: How should the long term governance arrangements differ from the interim arrangements? *(Please provide details in the space below)***

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## **Chapter 3: Securing the benefits for Scotland and communities**

### **3.1 Current Arrangements for Revenue**

The gross revenue from the Crown Estate assets in Scotland that will be transferred was £14m in 2015/16. The estimated annual net revenue from these assets in the year prior to transfer is estimated to total £6.6m, although no audited accounts are currently produced for Scotland and the allocation of costs borne on a UK-wide basis need to be estimated.

A joint venture that includes an interest in Fort Kinnaird shopping centre near Edinburgh provides around £4m of revenue per year to the Crown Estate Commissioners but this interest will not transfer, as the Scotland Act 2016 excludes non-wholly owned assets from the transfer.

Under the Civil List Act 1952, the Crown Estate Commissioners are required to pay net surplus revenue to the UK Treasury. The Crown Estate Act 1961 requires the Crown Estate Commissioners to distinguish between capital and income in their accounts and that revenue is to be apportioned between capital and income accounts in the following manner:

“(a) any sum received by way of premium on the grant of a lease shall be carried to income account if the lease is for a term of thirty years or less, and to capital account, if the lease is for a term exceeding thirty years; and

(b) the gross annual income received, and the expenses incurred, from or in connection with mining leases or the working of mines or minerals shall be carried or charged as to one half to capital account and as to one half to income account.”

A separate agreement with the Treasury currently enables the Crown Estate Commissioners to retain 9% of the gross revenue (excluding service charges).<sup>5</sup>

#### **Gross and net revenue across Scotland**

There are currently no audited figures produced detailing Crown Estate revenue and costs by local authority area for the Scottish assets. The portfolio is not managed or reported on this basis. Any analysis of revenue by local authority will be subjective. Offshore renewable energy projects and cables & pipelines are difficult to allocate - there are no local authority boundaries out to 12 nautical miles and therefore no reliable and recognised way to assign offshore projects / assets / leases to a council area.

To use gross revenue by local authority in isolation as a measure of performance could be misleading - Crown Estate assets in an area with a high revenue may have a high operational cost and therefore contribute a lower net revenue than assets in an area that have a modest revenue but very little direct cost. The apportionment of

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<sup>5</sup> <https://www.thecrownestate.co.uk/media/5375/hm-treasury-and-the-crown-estate.pdf>

some costs to local areas is also difficult. Further, The Crown Estate cannot provide figures on net capital investment by local authority nor meaningful detail or apportionment of liabilities.

The financial and management systems being set up for the new interim body, expected to be operational from April 2017, will be able to provide revenue figures broken down by local authority in due course.

### **3.2 Future Arrangements for Revenue**

The Scotland Act 2016 amends the Civil List Act 1952 to require that net revenue from the Scottish assets is to be paid into the Scottish Consolidated Fund after devolution. The Scottish Consolidated Fund is the main fund for the administration of devolved functions in Scotland and includes the block grant from the UK Consolidated Fund and operational receipts of the Scottish Government. Scottish Ministers have powers to pay revenue from the Scottish Consolidated Fund.

The proposed legal framework to govern the interim management of the assets includes provisions for the interim management body to retain a proportion of the revenue and a proportion of mining income. There will be flexibility for Scottish Ministers to vary these amounts under the interim arrangements. These interim arrangements are intended to apply in Scotland from the point of transfer until a new long term framework is introduced.

Scottish Ministers propose that the long term arrangements should include similar flexibility for Ministers to vary the proportion of net revenue that may be retained by the manager of an asset.

#### **Box 14: Current Arrangements**

At present, by agreement with the Treasury, the revenue account is charged an amount equivalent to 9% of the previous year's gross revenue after taking into account depreciation of plant and equipment. This is specifically for the purpose of recouping capital expenditure out of revenue. It therefore assists in funding net capital investment and provides a reliable and predictable source of capital.

The Crown Estate Act 1961 provides that net earnings from mineral workings be split equally between the revenue account and the capital account. The Order in Council provisions modify this to enable the Scottish Ministers to direct the apportionment of the net income.

**Q38: Should the future framework include flexibility for Scottish Ministers to vary the proportion of revenue retained by the manager?**

**YES**

**NO**

**Don't know**

### **3.3 Fiscal Framework Agreement**

The new requirement for the net revenue to be paid to the Scottish Consolidated Fund instead of the UK Treasury will not result in any net increase to the Scottish Consolidated Fund, due to the operation of the Fiscal Framework Agreement<sup>6</sup>. The Fiscal Framework Agreement between the UK Government and the Scottish Government included an agreement on the financial arrangements for the Crown Estate transfer. This includes a reduction to the Scottish Consolidated Fund equivalent to the net revenue of the Crown Estate in Scotland in the year prior to the transfer.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/503481/fiscal\\_framework\\_agreement\\_25\\_feb\\_16\\_2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503481/fiscal_framework_agreement_25_feb_16_2.pdf)

**Box 15: The Agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's Fiscal Framework (Feb 2016)**

**“Crown Estate**

91. The Governments have agreed that the Scottish Government will take on responsibility for managing the Crown Estate assets in Scotland.

92. The managers of Crown Estate assets in Scotland will continue to receive the same benefits as the Crown Estate Commissioners in terms of exemption from corporation tax, income tax, capital gains tax and other HMT finance rules.

93. Responsibility for the Coastal Communities Fund will be devolved to the Scottish Government.

94. The Governments have agreed that a baseline deduction to the Scottish Government's block grant will be equal to the net revenues<sup>4</sup> generated by the Crown Estate assets in Scotland in the year immediately prior to the transfer. A baseline addition will be made for the funding of the Coastal Communities Fund equal to the UK government spending in the year immediately prior to devolution. Neither baseline adjustment will be subject to indexation.

95. The Scottish Government will also assume full responsibility for all associated liabilities relating to the Crown Estate assets in Scotland.

96. The JEC will agree a date for the transfer of the Scottish Crown Estate assets and devolution of the Coastal Communities Fund.

<sup>4</sup> Gross revenues generated by the Scottish Crown Estate assets in Scotland, net of the costs of managing these assets.”

If the net revenue from the Crown Estate reduces in future years, compared with the year prior to the transfer, it will create pressure on the Scottish Consolidated Fund due to the impact of the Fiscal Framework Agreement. If net revenue increases, it will result in less pressure on the Scottish Consolidated Fund, although the revenue from the Crown Estate is very small in comparison with the Scottish Consolidated Fund as a whole.

Unless there is a significant increase in the net revenue from the Crown Estate in Scotland, any distribution of the net revenue to communities, or for any other purpose, will have to be funded from other parts of the Scottish Consolidated Fund, due to the mechanics of the Fiscal Framework Agreement.

There is no guarantee that the net revenue of the Crown Estate in Scotland will grow in future and, indeed, there have been fluctuations in revenue in previous years, based on market conditions and the timing of particular activities.

Any changes to the basis for charges for leasing in future will have an impact on the gross revenue and changes to the management arrangements may increase the costs. Both these factors could have a negative impact on net revenue.

There is some potential for future increases in gross revenue, particularly from renewables developments and sustainable growth of aquaculture but these increases are not certain.

#### **Box 16: Renewable Energy**

Renewable energy development outside of 12 nautical miles will almost certainly be in the form of wind farm development. These developments can be expected to be large scale, and would have the potential to generate significant leasing revenue. Being more than 12 nautical miles from shore means that their environmental impact on communities is limited, and impacts on other sea users are more likely to be a concern.

It is important to recognise that these developments would be huge capital projects, investing £millions into the UK and Scottish economy via employment and supply chain opportunities during the construction phase and their operational life. Local economic benefits from this work will be very significant, including from employment.

It will be important to strike a balance between supporting deployment of these developments against the good use that revenue generated from leasing could be put to. Placing too great a financial burden on proposed development through leasing would undermine its chances of being competitive against offshore wind development elsewhere in the UK and therefore could mean it does not actually happen. Alternatively, revenue from leasing could be used to support work to tackle barriers to deployment and therefore improve the competitiveness of Scottish offshore wind developments.

### **3.4 Maximising Economic Opportunities in our Coastal Communities**

Scottish Ministers would like coastal and island communities to benefit from the Crown Estate. Scottish Ministers have committed to giving coastal and island councils the net revenue from the marine estate out to 12 nautical miles, the most significant part of the estate, in terms of revenue. The mechanisms for distributing this revenue will need to be developed. As outlined above, this commitment will create a pressure on the Scottish Consolidated Fund, due to the mechanics of the Fiscal Framework Agreement.

### **3.5 Net Revenue from Other Assets**

The Crown Estate receives revenue from other parts of the estate including from the offshore zone seabed rights (12-200 nautical miles) urban property, rural property interests, minerals, mines Royal, salmon fishing rights (Table 1). Some of these

amounts are very small, such as those from salmon fishing rights. Some activities are concentrated in particular parts of Scotland, such as urban property in Edinburgh, while the revenue from the offshore zone is not easily attributed to local communities. In addition, the rural estates require significant maintenance expenditure and it is not clear that these produce a net revenue surplus and may in fact need financial injections from other parts of the estate in future to ensure the manager can comply with the duties under the Scotland Act 1998 relating to maintenance of the estate. For these reasons Scottish Ministers do not consider it efficient to distribute this revenue to individual councils.

**Table 1: Crown Estate Gross Revenue and Property Value in Scotland (£ million)**

Activity	Gross revenue (£m)		Property value (£m)	
	2015/16	2014/15	2015/16	2014/15
Coastal	3.1	3.5	25.9	24.4
Dredging	0.1	0.1	0.7	0.8
Agriculture	2.3	2.3	96.3	98.7
Aquaculture	3.5	3.4	19.5	18.0
Minerals	0.3	0.4	3.4	4.1
Forestry	0.2	0.3	13.5	12.1
Residential (Rural & Coastal)	0.5	0.5	10.8	12.9
<b>Rural &amp; Coastal Total</b>	<b>10.0</b>	<b>10.5</b>	<b>170.1</b>	<b>171.0</b>
Cables/pipelines	2.5	2.5	21.5	21.3
Renewables	0.7	0.7	65.2	54.4
<b>Energy &amp; Infrastructure Total</b>	<b>3.2</b>	<b>3.2</b>	<b>86.7</b>	<b>75.7</b>
<b>Urban retail</b>	<b>0.8</b>	<b>0.9</b>	<b>15.0</b>	<b>14.8</b>
<b>Total</b>	<b>14.0</b>	<b>14.6</b>	<b>271.8</b>	<b>261.5</b>

### 3.6 How to Invest Capital Proceeds in Future

The Scotland Act 2016 does not prevent the assets being sold but requires – through insertion of section 90B(8) of the 1998 Act – that all capital receipts from the sale of assets to be reinvested into the estate. This reflects the way in which the estate has been managed to date. The management of the assets as a single entity has also enabled the capital value of one part of the estate to be used to enhance opportunities elsewhere in the estate. A decision needs to be taken on whether to continue this arrangement in the future.

The proposals for a national framework in chapter 2 include a duty for managers to obtain Ministers' approval for sale of a significant asset and planned use of the capital proceeds. A decision needs to be made on whether to set out principles to

govern the reinvestment of capital in the estate or provide discretion to local managers to put forward proposals, on a case by case basis.

There could be an expectation that the proceeds from a sale of an asset in a particular area are reinvested in that area. The property included in the estate has, however, tended to be accumulated over time based on opportunities for investment at any one time and there is no particular reason why the capital must be reinvested in the same area. This may also not represent the best commercial or social opportunity and this question needs to be considered in the wider context of what duties should, in future, govern decisions on management of the estate. For example, the current duty of maintaining the value of the estate, and the return obtained from it, could be compromised by restricting re-investment to one particular area.

**Q39: Should the arrangement where the capital value of one part of the estate can be used to enhance opportunities elsewhere in the estate be continued?**

**YES**

**NO**

**Don't know**

**Q40: Should the current duty of maintaining the value of the estate and the return obtained from it be continued or amended for the investment of capital proceeds?**

**Continue**

**Amend**

**Don't know**

**Q41: Should capital proceeds from a sale in one area be invested in the same area, or should there be discretion to invest anywhere in Scotland?**

**Invest in same area**

**Discretion to invest anywhere**

**Don't know**

### **3.7 Maintaining the Estate and Future Investment to Secure the Future Benefits**

The administration and capital costs of maintaining the estate and planning to secure future benefits are currently funded from the gross revenue budget or the capital budget (depending on the type of expenditure), including any receipts from the sale of capital assets. The Scotland Act 2016 inserts section 90B(8) of the 1998 Act which requires any capital proceeds from sales of assets in the future to be reinvested in the Crown Estate.



These maintenance and investment costs can include the need to maintain property on the estate and new capital investment. This can be either to ensure that the assets are run as a going concern or to enhance their value or to ensure that the assets do not present a safety hazard, including maintenance and investment of jetties and harbours. Other costs include staff costs and overheads, including administrative support for the delivery of the services that are currently out-sourced, such as legal advice and managing agents. The costs associated with management of liabilities also need to be paid from the gross revenue.

The intention is to continue funding these costs from gross revenue or the capital budget (depending on the type of expenditure). However, where management of assets is further devolved, we cannot guarantee that those individual assets will generate sufficient revenue to cover the costs, or that the capital base associated with those assets will be sufficient for future investment requirements. A potential solution would be a national shared service to support the administration of the estate, while providing for local control of decision-making on the use of assets. Alternative arrangements to ensure access to revenue and capital funding from other parts of the estate may be needed, if a shared service model at the national level is not followed.

**Q42: Should it be possible for the capital or maintenance requirements for an individual asset to be funded from another part of the estate, even if management of the assets are devolved to the local level?**

**YES**

**NO**

**Don't know**

### **3.8 Funding for Strategic Initiatives and Other Uses**

The current manager has operated grant schemes and also provided funding for strategic initiatives such as the Scottish Aquaculture Research Forum and funding of strategic research to accelerate commercial-scale development of offshore wind, wave and tidal renewable energy. Scottish Ministers see value in enabling these types of expenditure to continue to be funded from the gross revenue, and consider that some, or all, of these activities may need to be managed at the national level.

**Q43: Should funding of strategic activities from Crown Estate resources continue?**

**YES**

**NO**

**Don't know**

**Q44: If YES, should these strategic activities be managed at the national level?**

**YES**

**NO**

**Don't know**

### **3.9 Management of Liabilities**

The devolution of the management of the property, rights and interests of the Crown Estate in Scotland will be accompanied by the devolution of the liabilities. This is prescribed in the Fiscal Framework Agreement and the Scotland Act 2016. These potential liabilities include those associated with maintenance of the estate, including maintaining property and ensuring health and safety regulations are met, as described above. There are also other potential liabilities.

These other potential liabilities include responsibilities for remedial work such as restoration of land leased for mineral extraction or residual liabilities after decommissioning of marine infrastructure on parts of the seabed leased for telecommunications cables, oil and gas pipelines and offshore wind development. The policy of the current manager is to normally place obligations on the lease to complete such work either through the lease agreement or a separate process, such as the requirement under the Electricity Act for renewable energy developments to agree a decommissioning plan with the Government Department that acts as the consenting authority for the licence, under the Electricity Act.

However, this can create contingent liabilities for the manager of the Crown Estate. If, for some reason, a leasee cannot complete the remedial work on land forming part of the estate, this may fall to the manager of the Crown Estate. Also, if marine infrastructure is left on the seabed after decommissioning work is complete there can be a residual liability for the manager of the Crown Estate from claims of damage to third parties.

The intention is to continue the current policy of requiring the leasee to put in place appropriate arrangements for management of these liabilities but the residual liabilities would still rest with the manager.

There is good reason for the manager of the asset to be normally responsible for the lease agreement to cover the management of liabilities i.e. the person taking on the responsibility for management of an asset, or for controlling use of the estate, should take on the responsibility for managing the associated liabilities. However, this may result in local managers taking on significant liabilities and it is not possible in advance to be sure that the revenue from individual assets or groups of assets at the local level will be able to cover these liabilities.

There may, therefore, be merit in consideration of either those assets with significant liabilities being managed at the national level or for pooling the liabilities at the national level. Any liabilities sitting at the national level could potentially be managed in closer alignment with other liabilities of Scottish Ministers to insulate against risks.

Scottish Ministers consider there to be a strong case to cover the costs of management of liabilities from the gross revenue, irrespective of whether these responsibilities sit at the local or national level.

**Q45: Should the person taking on the responsibility for management of an asset normally take on the responsibility for managing the associated liabilities?**

**YES**

**NO**

**Don't know**

**Q46: Should the liabilities for land restoration and residual liabilities after decommissioning of marine infrastructure be managed:**

**Locally**

**Nationally**

**Don't know**

**Q47: Should the costs associated with management of liabilities be included in the overheads for estate management?**

**YES**

**NO**

**Don't know**

**Q48: Do you have any other views on the devolution of the management or revenue of the Crown Estate? *(Please provide details in the space below)***

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## **Chapter 4: Assessing Impact**

We are committed to assessing the impact of our proposals. This consultation marks the start of processes to assess the business and regulatory, environmental, equality and privacy impacts of our plans in compliance with legislative requirements and to inform the policy development process.

### **A: Business and Regulation**

A partial Business and Regulatory Impact Assessment has been 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. This has been published alongside this consultation paper.

**Q49: Please tell us about any potential costs or savings that may occur as a result of the proposals, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible. (Please provide details in the space below)**

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### **B: 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 stage during the policy development process 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.

**Q50: 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. (Please provide details in the space below)**

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## C: 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
- sexual orientation.

We will develop an Equality Impact Assessment to consider if there are any impacts on equality arising from the proposals on the long management of Crown Estate assets in Scotland post devolution, following this consultation.

Depending on the consultation outcome, there could be a change of manager of Crown Estate functions (e.g. issuing leases / licences / permits), with local authorities or community bodies taking on functions. Where functions are transferred to local authorities, existing equality duties will apply. Where functions are transferred to a community body, it is likely that a national framework approach (see chapter 2) would govern such arrangements and any obligations with regards to equality groups would be considered as part of that framework. Any changes in employment for staff will comply with employment legislation.

**Q51: Are there any likely impacts the proposals contained in this consultation may have on particular groups of people, with reference to the ‘protected characteristics’ listed above? Please be as specific as possible. (Please provide details in the space below)**

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**D: 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.

**Q52: 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. (Please provide details in the space below)**

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**Conclusion**

The focus of this consultation is to invite views on the long term arrangements for the management of Crown Estate assets in Scotland. Consultation responses will inform our policy on how this can best be achieved, including legislative changes which we intend to present for consideration by the Scottish Parliament.

The questions throughout the consultation are repeated in Annex B. In responding to this consultation, please do not feel constrained by the questions set. We appreciate some people will have a particular interest in certain areas. We encourage you to respond to any or all of those areas where you feel you have a contribution to make.

We value your opinions and welcome your views on our proposals identified in this consultation document.

## Glossary of Terms

Capital account	Expenditure and financing on non-current assets used in providing services beyond the current accounting period.
Community empowerment	The Scottish Government is committed to our communities being supported to do things for themselves – community empowerment – and to people having their voices heard in the planning and delivery of services – community engagement and participation.
Crown Estate Commissioners	Body which administers certain property, rights and interests which historically belong to the Crown.
Crown Estate assets	Crown property, rights and interests in Scotland that are currently managed by the Crown Estate Commissioners.
Exclusive Economic Zone	A sea zone, prescribed by the United Nations Convention on the Law of the Sea, over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind.
Estate in land	Where used in reference to the duty in section 90B(8) of the Scotland Act 1998 that the assets must be maintained as an estate in land, this means that the manager has a duty to maintain the value of the Scottish assets, with re-investment back into the estate, with due regard to the requirements of good

	management.
Fiscal Framework Agreement	An agreement between the UK and Scottish Governments that governs the funding of the Scottish budget and underpins the further powers devolved through the Scotland Act (2016).
Crown Foreshore	Land owned by Her Majesty which in Scotland lies between the high and low water marks of ordinary spring tides.
Income account	Statement showing day to day revenue and expenses over an annual period.
Land reform	The Scottish Government's aim is to modernise the nation's relationship with our land, and we continue to prioritise transparency, accountability and community ownership.
Legislative competence	Those areas in which the Scottish Parliament can make valid legislation.
Mines Royal	The Crown holds virtually all of the rights to naturally occurring gold and silver across the UK. This is known as 'Mines Royal'.
National Outcomes	Sixteen National Outcomes describe what the Scottish Government wants to achieve and help to sharpen the focus of government, enable priorities to be clearly understood and provide a clear structure for delivery.
Order in Council	A form of subordinate legislation made by the sovereign through the Privy Council, rather than



directly by a Minister.

Privy Council	A body which, in the past, exercised much of the executive power of the sovereign, and which nowadays has a number of residual functions. These include the making of orders in council.
Scottish Aquaculture Research Forum	The Scottish Aquaculture Research Forum was formed in 2004 as an independent company limited by guarantee with charitable status to promote, encourage and support research and development in aquaculture and related areas.
Scottish Consolidated Fund	The fund created by the Scotland Act 1998 into which payments are made by the Secretary of State or sums received by the Scottish Administration, and out of which the spending of the Scottish Administration and other statutorily defined bodies comes.
Shared services	A service delivery model where transactional, operational, professional or supporting functions are delivered collaboratively on behalf of more than one body. Shared services can include joint-ventures between the public sector and private sector.
Transfer scheme	The secondary legislation which enables HM Treasury to transfer the existing Scottish functions of the Crown Estate Commissioners to either Scottish Ministers or another body nominated by Scottish Ministers.

Single entity	The Scotland Act 1998 (as amended by the Scotland Act 2016) stipulates that the existing Scottish functions of the Crown Estate Commissioners are to be transferred to a single transferee. The Scottish Government plans to establish a single body on an interim basis through an Order in Council.
Turning to account	To get use, or profit, from.
Udal tenure	A form of land tenure found in the Northern Isles. It sources from a time when the Northern Isles formed part of Norway.

THE CROWN ESTATE ASSETS<sup>7</sup>

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)	The rights of: (1) unloading gas to installations and pipelines; (2) storing gas for any purpose and recovering stored gas; and (3) exploration with a view to use for (1) and (2)
Energy rights (Seabed)	The rights of exploitation, exploration and connected purposes for the production of energy from wind or water
Mineral Rights (Seabed)	The right to exploit the Seabed and its subsoil other than for hydrocarbons
Cables (including interconnectors)	The right to install all or part of a distribution or transmission system on or under the Seabed
Pipelines	The right to install pipelines
Whitehill Estate	The Whitehill estate in the County of Midlothian owned by Her Majesty;
Glenlivet Estate	The Glenlivet estate in the County of Moray owned by Her Majesty
Applegirth Estate	The Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty
Fochabers Estate	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. The Crown's statutory ownership of the right to gold and silver mining in Scotland stems from legislation in the 15th and 16th centuries
Reserved Minerals	All the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed
Rights beyond 12 nautical miles	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

<sup>7</sup> Source: Provided by The Crown Estate

	the transportation and storage of natural gas and carbon dioxide on the continental shelf under the Energy Act 2008.
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## Consultation Questions

**Q1: Should the future approach be changed from the duty to manage the assets on a commercial basis?**

YES

NO

Don't know

**Q2: If YES, should there be a power to take account of wider socioeconomic or other benefits?**

YES

NO

Don't know

**Q3: If YES, which assets should be managed on a commercial basis and which should be managed differently? (Please provide details in the space below)**

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**Q4: Should the requirement on 'good management' be retained?**

YES

NO

Don't know

**Q5: Should the requirement on 'good management' be amended to take account of environmental implications in relation to the management functions?**

YES

NO

Don't know

**Q6: Should the existing Crown Estate portfolio in Scotland be preserved in its current form?**

YES

NO

Don't know

**Q7: Should Scottish Ministers' approval be required for sizeable sales?**

YES

NO

Don't know

**Q8: Should the existing policy - the general presumption against selling the seabed - be maintained?**

YES

NO

Don't know

**Q9: Do you have any other views on how the management of the Crown Estate in Scotland can ensure delivery of the duties in the Scotland Acts 1998 and 2016? (Please provide details in the space below)**

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**Q10: How can transparency on the sale and management of the Crown Estate assets be enhanced? (Please provide details in the space below)**

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**Q11: How can the devolution of the management of the Crown Estate contribute to community empowerment? (Please provide details in the space below)**

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**Q12: How can the devolution of the management of the Crown Estate contribute to land reform? (Please provide details in the space below)**

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**Q13: How can we further improve alignment with Scottish Ministers' objectives to deliver on the national outcomes? (Please provide details in the space below)**

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**Q14: Do you have any views on the proposed application of the above principles to guide the long term framework for managing Crown Estate assets?**

- YES
- NO
- Don't know

**Comment:** \_\_\_\_\_

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**Q15: Which of the three proposed options for managing Crown Estate assets in Scotland do you prefer?**

- Option 1 (national)
- Option 2 (local)
- Option 3 (hybrid)
- Don't know
- OTHER

**Q16: If OTHER, what approach to management do you propose?**

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**Q17: Should a geographic or a functional approach guide the reform of the management of the Crown Estate in Scotland?**

**Geographic**

**Functional**

**Don't know**

**Other**  *Please Specify:* \_\_\_\_\_

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**Q18: Do you have a preference for management on a geographic basis being led by either local authorities or communities?**

**Local authorities**

**Communities**

**Don't know**

**Q19: Should Scottish Ministers have the power to hand responsibility for management of the estate, or parts of it, to a particular person or persons?**

**YES**

**NO**

**Don't know**

**Q20: Should Scottish Ministers have a power to vary management arrangements held by other parties over time?**

**YES**

**NO**

**Don't know**

**Q21: Should Scottish Ministers have the power to extinguish rights currently held in the Crown Estate where management of the asset can be adequately covered by other legislation?**

**YES**

**NO**



**Q22: Do you have any views on which assets should be managed at the (i) national level (ii) by local authorities or (iii) by communities? (Please provide details in the space below)**

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**Q23: Should local authorities or communities be expected to make a case for further devolution?**

YES

NO

Don't know

**Q24: If YES, should they demonstrate the capability to ensure appropriate management, to maintain service delivery and to deliver increased benefits?**

YES

NO

Don't know

**Q25: Replicating functions in each area is likely to lead to fragmentation of the estate which would pose significant risk to realisation of new revenue – how can these risks be avoided? (Please provide details in the space below)**

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**Q26: Should shared services be a requirement of devolution to the local level of decision-making on property, rights and interests of the Crown Estate? (Please provide details in the space below)**

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**Q27: What are the opportunities, if any, of further devolution? (Please provide details in the space below)**

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**Q28: What are the challenges, if any, of further devolution? (Please provide details in the space below)**

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**Q29: Is there a need for strategic planning and a long term investment strategy, in order to co-ordinate work to enhance the value of the estate?**

**YES**

**NO**

**Don't know**

**Q30: Do you have any views on the value of a national framework to guide local decision-making? (Please provide details in the space below)**

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**Q31: Should there be consistent charging approaches between areas to avoid competition between different parts of Scotland?**

**YES**

**NO**

**Don't know**

**Q32: Are there any other issues that should be covered by a national framework for management of Crown Estate assets in Scotland? (Please provide details in the space below)**

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**Q33: Should the future arrangements in Orkney, Shetland and the Western Isles be considered first?**

**YES**

**NO**

**Don't know**

**Q34: Is a phased approach needed to introduce reforms to the management of Crown Estate assets across Scotland?**

**YES**

**NO**

**Don't know**

**Q35: Is there value in a pilot scheme prior to implementing reforms?**

**YES**

**NO**

**Don't know**

**Q36: How can people influence decisions in relation to the management of the Crown Estate assets?** *(Please provide details in the space below)*

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**Q37: How should the long term governance arrangements differ from the interim arrangements?** *(Please provide details in the space below)*

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**Q38: Should the future framework include flexibility for Scottish Ministers to vary the proportion of revenue retained by the manager?**

**YES**

**NO**

**Don't know**

**Q39: Should the arrangement where the capital value of one part of the estate can be used to enhance opportunities elsewhere in the estate be continued?**

**YES**

**NO**

**Don't know**

**Q40: Should the current duty of maintaining the value of the estate and the return obtained from it be continued or amended for the investment of capital proceeds?**

**Continue**

**Amend**

**Don't know**

**Q41: Should capital proceeds from a sale in one area be invested in the same area, or should there be discretion to invest anywhere in Scotland?**

- Invest in same area
- Discretion to invest anywhere
- Don't know

**Q42: Should it be possible for the capital or maintenance requirements for an individual asset to be funded from another part of the estate, even if management of the assets are devolved to the local level?**

- YES
- NO
- Don't know

**Q43: Should funding of strategic activities from Crown Estate resources continue?**

- YES
- NO
- Don't know

**Q44: If YES, should these strategic activities be managed at the national level?**

- YES
- NO
- Don't know

**Q45: Should the person taking on the responsibility for management of an asset normally take on the responsibility for managing the associated liabilities?**

- YES
- NO
- Don't know

**Q46: Should the liabilities for land restoration and residual liabilities after decommissioning of marine infrastructure be managed:**

- Locally
- Nationally
- Don't know

**Q47: Should the costs associated with management of liabilities be included in the overheads for estate management?**

- YES
- NO

Don't know

**Q48: Do you have any other views on the devolution of the management or revenue of the Crown Estate?** *(Please provide details in the space below)*

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**Q49: Please tell us about any potential costs or savings that may occur as a result of the proposals, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.** *(Please provide details in the space below)*

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**Q50: 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.** *(Please provide details in the space below)*

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**Q51: Are there any likely impacts the proposals contained in this consultation may have on particular groups of people, with reference to the 'protected**

**characteristics' listed above? Please be as specific as possible. (Please provide details in the space below)**

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**Q52: 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. (Please provide details in the space below)**

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## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and 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 (without name)  
 Do not publish response

### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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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