

SCOTTISH CROWN ESTATE ACT 2019

EXPLANATORY NOTES

THE ACT

Part 2 – Management of Scottish Crown Estate assets

7. [Section 2](#) sets out the definitions of “Scottish Crown Estate”, “asset” and “manager” for the purposes of the Act. Definitions of some other terms used in the Act are set out in section 45.
8. [Section 3](#) confers on the Scottish Ministers the ability to transfer, by regulations, the function of managing a Scottish Crown Estate asset, and rights and liabilities in relation to the asset, to certain persons. The transfer will be effected by regulations, which will be subject to the negative procedure unless they add to, replace or omit any part of the text of an Act, in which case the regulations would be subject to the affirmative procedure. Transfers of the management of all or part of an asset, which is wholly or partly situated in, or relating to the Scottish marine area (apart from the foreshore) or the Scottish zone (as defined in section 42(3)) are also subject to the affirmative procedure. This means that there will be Parliamentary scrutiny in relation to any proposal to transfer the management of a Scottish Crown Estate asset.
9. The list of persons who are eligible to receive a transfer of the function of managing a Scottish Crown Estate asset (and thereby become a “manager”) are set out in section 3(2) (with section 6(2) defining “community organisation” and section 6(3) defining “Scottish harbour authority”).
10. As Crown Estate Scotland manages the whole Scottish Crown Estate at present, initial transfers will be from Crown Estate Scotland to other persons. However, in the future, transfers might be from other persons who have since become managers via prior transfers. This also means it will be possible for Crown Estate Scotland to receive a transfer in the future.
11. The list of eligible persons in section 3(2) includes both the Scottish Ministers and Crown Estate Scotland. This ensures that, in the event of poor performance by a transferee or a transferee ceasing to exist for whatever reason, the Scottish Ministers can transfer the management of the asset either to themselves or back to Crown Estate Scotland to ensure the continuing management of the asset.
12. [Section 3\(3\)](#) provides that transfer regulations made under subsection (1) may include provision restricting the exercise of the function by the new manager, for instance, restrictions on the transfer of ownership of an asset. It also provides that transfer regulations made under subsection (1) may make provision about the management of records relating to the exercise of the transferee’s functions as a manager. Such provision might be made if the transferee is not subject to the requirements of the Public Records (Scotland) Act 2011.
13. [Section 3\(4\)](#) makes provision for securing the management of an asset which has been transferred to or acquired by a community organisation and any rights or liabilities they may have in relation to a Scottish Crown Estate asset or a former Scottish Crown Estate

asset in the event that the organisation ceases to exist for any reason. The regulations may also require notification to the Scottish Ministers of any proposed change to the community organisation's constitution which would result in it no longer being a community organisation for the purposes of the Act. Section 3(4) also provides that regulations under subsection (1) may also require a court or a person specified in the regulations to notify the Scottish Ministers of any application which would result in the community organisation ceasing to exist or ceasing to be a community organisation (as defined in the Act – see section 6(1) and (2)). In addition, subsection (4) provides that regulations under subsection (1) may make other provision (as the Scottish Ministers consider appropriate) in connection with a community organisation ceasing to exist or ceasing to be a community organisation.

14. [Section 3\(5\)](#) makes similar provision in respect of Scottish harbour authorities but there is no equivalent of section 3(4)(b) providing that the regulations may require that notification be given to the Scottish Ministers in the event of a change in the constitution of the transferee as this is not necessary in the context of a Scottish harbour authority (because the authority's constitution is not relevant to whether it is a Scottish harbour authority).
15. The Scottish Ministers are required under section 3(6) to consult affected persons (and such other persons as they consider appropriate) before effecting transfers by making regulations under section 3(1).
16. [Section 3\(7\)](#) enables regulations under section 3(1) to include provision which modifies primary legislation. This may be necessary, for example, if other legislation requires a person to obtain consent to enter land forming part of the Scottish Crown Estate and it is necessary to modify an enactment to provide that a person other than the manager of a Scottish Crown Estate asset is to grant any necessary consent to access that Crown land.
17. [Section 4](#) provides an alternative means of changing the arrangements for management of a Scottish Crown Estate asset, whereby the Scottish Ministers may direct the existing manager to delegate management to another person mentioned in section 3(2)(c), (d), (e) or (f). This provides for a direction to be given to the following persons as a manager: Crown Estate Scotland, a local authority or another Scottish public authority with mixed functions or no reserved functions (see section 4(2)). Community organisations and Scottish harbour authorities are unable to delegate their functions as managers. The persons to whom a manager can be directed to delegate the function of managing Scottish Crown Estate assets are a local authority, another Scottish public authority with mixed functions or no reserved functions, a Scottish harbour authority or a community organisation.
18. The direction must be set out in writing as required by section 4(3)(a). Before giving a direction, the Scottish Ministers are required under section 4(4) to consult the existing manager, the proposed delegate and such other persons as they consider appropriate. Additionally the Scottish Ministers must have obtained the consent of the person to whom the function is to be delegated (section 4(5)(a)). Before revising or revoking a direction, section 4(6) requires the Scottish Ministers to consult the existing manager, the proposed delegate and such other persons as they consider appropriate and to obtain the consent of the person to whom the function is to be delegated.
19. As it is necessary that third parties know the status of the person managing the asset and the extent of their powers, section 4(7) requires the Scottish Ministers to publish any such direction or any revision as well as publish notice of any revocation of such direction. Section 4(8) provides that a direction or a revision may be published in whole or in part but specifies what information must not be withheld from publication. As explained below, the delegation itself is effected by a delegation agreement under section 5. Part of the process of agreeing a delegation agreement is that the Scottish Ministers must agree to the terms and conditions of that agreement (see section 5(6)(b)) before the agreement can take effect. Until that consent is given, the Scottish Ministers can revise or revoke a direction given under section 4(1) (section 4(5)(b)).

20. [Section 5\(1\)](#) provides that a manager of a Scottish Crown Estate asset (other than the Scottish Ministers) may delegate the function of managing an asset only if directed to do so under section 4(1). This means that delegations can only take place if the Scottish Ministers so direct and the process for a delegation must follow the process set out in the Act. Section 5(2) provides that, where the Scottish Ministers are the manager of a Scottish Crown Estate asset, they may delegate the function of managing the asset to Crown Estate Scotland, a local authority, another Scottish public authority with mixed functions or no reserved functions, a Scottish harbour authority or a community organisation. Section 5(3) provides that a delegation by a manager is to be given effect to by way of an agreement, which must set out the terms and conditions under which the delegate would manage the asset and the period for which the management function is to be delegated (see section 5(4)). Section 5(5) clarifies that a delegation agreement may provide for restrictions on the delegate's exercise of the management function and also specify the circumstances in which a delegation agreement may be terminated. Section 5(6)(b) makes it clear that a delegation cannot take effect unless the Scottish Ministers consent to the terms of the delegation agreement.
21. [Section 5\(7\)](#) provides that a delegate is to be treated as a manager of a Scottish Crown Estate asset for all purposes and have all the powers and duties applying to the manager of the asset unless the delegation agreement provides otherwise (subject to the exception mentioned below). This means that a reference to a manager in, for example, section 7 is taken to be a reference to the delegate where a delegate is in place, meaning that the duty under section 7 applies to the delegate. The exception to this is that a delegate is not treated as the manager for the purposes of Part 2 of the Act i.e. they are not the "manager" for the purposes of sections 2 to 6 and the function of managing the asset cannot be further transferred or delegated from the delegate to another person. Under section 5(7)(b) the function of managing the asset is not exercisable by the manager where a delegate is in place unless the delegation makes provision for that. In a particular case the delegation agreement may, for instance, set out that the manager can still exercise elements of the management function in certain instances or that the manager remains responsible for some aspects of the exercise of the function.
22. [Section 6\(1\)\(a\)](#) provides a definition of "community organisation". A "community organisation" is a body corporate (other than a Scottish public authority) which relates to a community and has a written constitution, which includes the matters mentioned in subsection (2), which relate to the membership of the body and its aims and purposes. A community organisation can also be a body which is designated as a community organisation for the purposes of this Act by the Scottish Ministers by regulations. The power in section 6(1)(b) to designate a body as a community organisation for the purposes of this Act can be used to designate a body corporate which would not meet the test set out in subsection (1)(a), as a "community organisation" for the purposes of the Act. Such regulations are subject to the negative procedure (see section 42(5)).
23. [Section 6\(3\)](#) provides a definition of "Scottish harbour authority" by reference to the related terms "harbour authority" and "harbour" as defined in section 57(1) of the Harbours Act 1964.