

Final Business and Regulatory Impact Assessment

Title of Proposal

PROPOSALS TO ESTABLISH THE INTERIM BODY TO MANAGE THE CROWN ESTATE ASSETS IN SCOTLAND POST-DEVOLUTION

Purpose and Intended Effect

- **Background**

The Crown Estate is the property of the Monarch 'in right of the Crown' and is currently administered by the Crown Estate Commissioners under the Crown Estate Act 1961. In Scotland it includes four rural estates, mineral and salmon fishing rights, around 50% of the foreshore, almost all of the seabed out to 12 nautical miles and associated rights on the Continental Shelf beyond 12 nautical miles (including leasing for renewable energy, pipelines and cables).

The Scotland Act 1998 reserved the Crown Estate Commissioner's management of the Crown estate in Scotland to Westminster. It has been a longstanding policy of the Scottish Government to bring about fundamental reform of the administration of the Crown Estate in Scotland so that it is more accountable to the views and wishes of Scottish people but also to ensure that Crown Estate assets in Scotland are managed for Scotland and its communities. The public accountability of Crown Estate Commissioners operations in Scotland has been the subject of a number of Parliamentary Committees and inquiries over the past few years.

In November 2014, the Smith Commission recommended:

“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.”

The Scotland Act 2016 includes provisions (clause 36) for the transfer of management of Crown Estate assets in Scotland (excluding non-wholly

owned assets from the transfer) and payment of revenue into the Scottish Consolidated Fund. HM Treasury have a power to create a Transfer Scheme to devolve management of Crown Estate property, rights and interests in Scotland to the Scottish Ministers or to another body nominated by the Scottish Ministers. The Treasury transfer scheme to be made through a Statutory Instrument at Westminster needs to be completed to transfer the assets to Scotland and provide legislative competence for the Scottish Parliament to legislate on the Crown Estate subject to the reservations in the Scotland Act 2016.

The Act also provides for making arrangements to set up an interim body through a Scottish Statutory Instrument to be completed as an Order in Council.

The Fiscal Framework agreement (<http://www.gov.scot/fiscalframework>) sets out the agreement between the Scottish and UK Governments on the financial arrangements to underpin the Scotland Act 2016 including the arrangements for devolution of the management and revenue of the Crown Estate.

Description of Crown Estate assets in Scotland

Scottish Crown Estate assets include four rural estates, mineral and salmon fishing rights, about half of the coastal foreshore and almost all of the seabed. It has a significant role in supporting aquaculture, marine leisure, ports and harbours and offshore renewable energy. The Scottish portfolio also includes 39-41 George Street Edinburgh. It is responsible for leasing of the seabed out to 12 nautical miles, as well as rights to renewable energy, pipelines and cables on the continental shelf. Rural interests extend to 37,000 hectares of rural land, which include agricultural tenancies, residential and commercial properties and forestry. Coastal activity, including salmon fishing rights and approximately half the foreshore, encompasses managing the licensing for 5,000 moorings and 750 aquaculture sites.

The tables below provide an overview of some of the key Crown Estate assets in Scotland and a sectoral breakdown of revenues and total value.

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 (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	The right to install all or part of a distribution or transmission

interconnectors)	system on or under the Seabed
Pipelines	The right to install pipelines
Whitehill	The Whitehill estate in the County of Midlothian owned by Her Majesty
Glenlivet	The Glenlivet estate in the County of Moray owned by Her Majesty
Applegirth	The Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty
Fochabers	The Fochabers estate in the County of Moray owned by Her Majesty
Aquaculture Rights (Seabed)	The right to farm aquatic organisms
Mooring Rights (Seabed)	The right to lay and use permanent moorings
Foreshore	The land that is owned by Her Majesty: (1) In Orkney and Shetland, lying between mean high water springs and lowest ebb tide (2) In the rest of Scotland, lying between mean high and low water
Internal Waters	The land owned by Her Majesty forming the internal waters of Scotland
Salmon Fishing	The right to fish for salmon in rivers and coastal waters where the right belongs to Her Majesty
Gold and Silver (onshore minerals)	The right to all naturally occurring gold and silver except where the right is vested in some person other than Her Majesty
Reserved Minerals	All the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed
Rights beyond 12 nautical miles	Rights to natural resources on the continental shelf (excluding fossil fuels) under the Continental Shelf Act 1964 Rights to generate electricity from wind, waves and the tides on the continental shelf under the Energy Act 2004; and rights to the transportation and storage of natural gas and carbon dioxide on the continental shelf under the Energy Act 2008

Revenue and Property Value by activity for year ended 31 March 2016

Revenue by Activity	Revenue (£m)	Property Value (£m)
Coastal	3.1	25.9
Dredging	0.1	0.7
Agriculture	2.3	96.3
Aquaculture	3.5	19.5
Minerals	0.3	3.4
Forestry	0.2	13.5
Residential	0.5	10.8
Rural and Coastal Total	10.0	170.1
Cables/pipelines	2.5	21.5
Renewables	0.7	65.2
Energy and infrastructure Total	3.2	86.7
Urban retail	0.8	15.0
Total	14.0	271.8

Overall revenue in Scotland for 2015-16 was £14.0m, which was 3.5% of the

UK total. The total value of the estate was £271.8m, around 2.3% of the UK total value of the Crown Estate. Capital investment was £5.2million, of which £1.8million was for the MeyGen Ltd tidal power development project, as well as £0.6 million in rural estate buildings. At present all annual revenue profit across the Crown Estate managed portfolio is paid to the UK Government.

- **Objective**

The establishment of the interim arrangements will enable the transfer to Scotland to take place and for the Scottish Parliament to be given legislative competence to legislate on the management of the Crown Estate.

Devolution of the management of, and revenues from, Crown Estate assets in Scotland will enable decisions to be taken in Scotland and revenue to be retained in Scotland for community and wider benefit.

- **Rationale for Government intervention**

These proposals are being implemented as a consequence of the Scotland Act 2016 which received Royal Assent in March 2016. The provisions on the Crown Estate enable a new body to be established to manage functions in relation to the Crown Estate in Scotland.

Provision will be made by Order in Council via an affirmative Scottish Statutory Instrument to establish interim management arrangements, including how the transferee exercises the transferred functions.

The UK legislation requires the transfer to a single body at the point of devolution. Transferring management functions as a 'single entity' in the first instance means minimum disruption and ensures a smooth transition for Crown Estate staff and customers. It enables the devolution to Scotland to be completed, and help ensure the best decisions about the long term arrangements can be made by the Scottish Parliament.

We have committed to full public consultation before final decisions are made on the long term arrangements. We wish to ensure that communities will enjoy greater benefits from local assets following the transfer. but there will be consultation on opportunities for greater local control through a new long term framework in due course.

There is an opportunity to ensure that decisions on use of Crown Estate assets in Scotland are more transparent, and new processes for decision-making are put in place that take account of the priorities of Scotland and meet the needs of the Scottish people. The devolution of the management and revenue of Crown Estate assets gives us an ability to use capital assets in a way that enhances their contribution to the achievement of the following National Outcomes:

- We value and enjoy our built and natural environment and protect it and enhance it for future generations.
- We realise our full economic potential with more and better employment opportunities for our people.
- We have strong, resilient and supportive communities where people take

responsibility for their own actions and how they affect others.

Scottish Ministers' proposed model for the interim arrangements for management of the assets has been selected using the following criteria which have been developed with input from stakeholders' representatives to ensure the business is operational on day one and continues to be until decisions are reached and implemented on the long term future. These are:

1. Ministerial oversight at an appropriate level.
2. Potential to take long term decisions without requirement for Ministers to take day to day decisions on assets.
3. Scope to maintain commercial approach where necessary.
4. Continuity of business delivery.
5. Opportunity for community input at an appropriate stage of decision-making.
6. HR implications in terms of pay, staff morale.
7. Potential to maintain existing fiscal and tax benefits available to the Crown Estate Commissioners (CEC). These include exemption from Corporation, Income and capital gains tax.
8. Ability to establish robust governance, risk management structures and processes in time for the transfer.

Consultation

- **Within Government**

The proposals for the interim body to manage Crown Estate assets in Scotland have been developed in a collaborative way, with extensive involvement from relevant officials across the Scottish Government, including:

- Directorate for Marine Scotland
- Directorate for Environment and Forestry
- Directorate for Finance
- Transport Scotland
- Directorate for Local Government and Communities
- Directorate for Agriculture, Food and Rural Communities
- Directorate for Energy and Climate Change
- Directorate for Legal Services

- **Public Consultation**

The formal consultation process on the interim body to manage Crown Estate assets in Scotland took place during summer 2016. The consultation sought views on potential impacts. The only response was that: 'the detail in the partial BRIA does not allow for easy identification of potential additional costs or savings'. The BRIA for the interim arrangements has been conducted with the information available at the time. There will be a full BRIA for the long-term arrangements.

- **Business**

Scottish Government officials carried out informal face-to-face meetings with a

variety of stakeholders who are members of the Stakeholder Advisory Group on the Crown Estate, established in September 2015.¹

Options

Option A: Do Nothing – Crown Estate property, rights and interests in Scotland would continue to be managed by the Crown Estate Commissioners as part of the UK-wide Crown Estate.

Sectors and groups affected

The Crown Estate is a diverse portfolio and stakeholders are the Crown Estate Commissioners, local authorities, tenant farmers, marine industries and other customers of the Crown Estate.

Benefits

There are no quantifiable benefits to Scotland from option A and this option would not implement the Smith Commission's recommendations on the Crown Estate.

Costs

No additional costs associated with this option.

Option B: Establish a public corporation on an interim basis to manage Crown Estate assets and revenues in Scotland.

Subject to Ministerial approval, the interim measure would operate up until at least the establishment by the Scottish Parliament of a new legal framework for management of Crown Estate assets in Scotland.

Sectors and groups affected

The Crown Estate is a diverse portfolio and stakeholders are the Crown Estate Commissioners, local authorities, tenant farmers, marine industries and other customers of the Crown Estate.

Benefits

This option would enable the transfer of the management of the assets to Scotland and devolution of legislative competence to the Scottish Parliament to be completed.

Having responsibility and control of Scotland's Crown Estate assets means that management of existing assets and future leasing as well other strategic and investment decisions can be focussed on maximising benefits to Scotland.

A key consideration for putting in place interim arrangements for the management of Crown Estate assets is minimising disruption and maintaining

¹ <http://www.gov.scot/Topics/marine/seamanagement/TCE/AdvisoryGroup>

service delivery. This phased approach would ensure a smooth transfer of functions under the provisions in the Scotland Act 2016 and provide continuity of service to those customers that rely on Crown Estate leases or services.

This interim measure would provide appropriate time to work through the complexities of devolution to better understand the assets and their potential.

This option will enable the above benefits to be achieved, providing for adequate stakeholder consultation prior to final decisions being taken on the long term framework. Opportunities for further devolution of management would be considered as part of future public consultation on the long term framework.

Final decisions on the long term framework will be informed by having the time to understand the respective benefits and costs of the Scottish Crown Estate assets. The interim period will therefore provide time to develop an understanding of each individual asset and determine the optimal long term approach to its management. The Crown Estate in Scotland has around 3,000 individual assets, not all of which may generate sufficient revenue for maintenance, investment and development. In addition there are potential liabilities across the estate that are not recorded on the Crown Estate asset register which will need to be managed. Therefore, provision for cross-subsidisation is required in order to ensure that legal duties can be delivered to maintain all parts of the estate, and balance risk across the portfolio. Retaining all assets under one public corporation at this stage ensures that this cross-subsidisation can continue.

In addition, a statutory public corporation successfully meets the key criteria for an interim body as outlined below:

- Ministerial oversight at an appropriate level and no requirement for Ministers to take day to day decisions on the long term use of assets.
- The model is appropriate for industrial or commercial enterprises, so a commercial approach can be maintained (CEC currently have a duty under the Crown Estate Act 1961 to manage the Crown Estate on a commercial basis).
- This delivery model is the nearest equivalent to the CEC of all the potential models and therefore could assist with continuity of delivery and staff retention. There would be no potential issues such as integration of systems with a merger body for example.
- Continuity of business delivery would be assisted by current work by CEC to establish a Scottish business unit from April 2016, with systems being put in place to enable that unit to operate relatively autonomously under the existing legislation ahead of the transfer.
- The HR implications would be minimised as staff wouldn't need to become civil servants and the organisation would be outwith the Scottish Administration so not strictly covered by Ministers' Public Sector Pay Policy. Staff would not come under the SG head count and direct staff costs (including pension liabilities) and the capital and revenue would not appear in SG accounts. This means that there would not be a material change in employment status or terms and conditions for existing staff, with changes in

terms and conditions leading to significant financial costs for buying out these benefits. This would provide certainty to staff and customers in short to medium term and ensure morale remains high.

- Scope to establish robust governance and for the body to be set up quickly without statute in the first instance if necessary.
- The design and composition of the Board and other governance arrangements would provide an opportunity for community and local input at an appropriate point in decision making.
- It would enable the protection of existing fiscal and tax benefits of the CEC.

The governance arrangements for the public corporation model could incorporate opportunities for community representatives to be involved in management or provide views on management. This could assist in demonstrating the change resulting from devolution ahead of final decisions on the long term framework.

Costs

There will be short term administrative costs to set up a new body in Scotland e.g. to adapt existing IT systems or establish new systems. Administration costs of the new body are expected to be broadly cost neutral compared with the existing arrangements. The Crown Estate currently has a Scottish office which accommodates approximately 35 staff (of the 458 across the UK) and it is anticipated that a similar number of staff will be needed for the interim arrangements. There may be some costs for retraining or recruitment to fill gaps.

There may be some diseconomies of scale when compared with the “do nothing” approach. For example there currently may be staff with certain responsibilities at a UK-wide level that will now need to focus on management of assets in Scotland or assets in the rest of the UK.

There are a range of potential liabilities associated with Crown Estate assets that need to be carefully managed to prevent additional costs being incurred by the manager of the assets.

Scottish Firms Impact Test

Scottish Government officials carried out informal face-to-face meetings with a variety of stakeholders who are members of the Stakeholder Advisory Group on the Crown Estate, established in September 2015.²

The limitations in the UK legislation preclude the Scottish Parliament from changing the duties in the Crown Estate Act 1961 in advance of a Scottish Bill. The likely impacts will be neutral on businesses that are customers of the Crown Estate.

² <http://www.gov.scot/Topics/marine/seamanagement/TCE/AdvisoryGroup>

Competition Assessment

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers' incentives to compete vigorously?
- Will the measure limit the choices and information available to consumers?

Interim measures for the devolution of the Crown Estate in Scotland are not expected to have any distortionary impact on competition.

Test run of business forms

No new forms are proposed at this stage.

Legal Aid Impact Test

It is not expected that the proposals will have any impact on the current level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund.

Enforcement, sanctions and monitoring

A public corporation would enable robust governance to be established through legislation. This would be headed by a decision making statutory board appointed by Ministers. The interim arrangements include proposals for appointments to be made in an open and transparent manner and opportunities for reporting performance to the Scottish Parliament.

We have committed to full public consultation before final decisions are made on the long term framework and wish to ensure that communities will enjoy greater benefits from local assets at the earliest opportunity.

Implementation and delivery plan

Subject to legislative processes, the interim body would be established in 2017.

Summary and recommendation

Option B is the recommended option for the interim measure. This would ensure early devolution and access to benefits. It would leave Scotland with time and capacity to better understand the complexities and options for future management, including stakeholder consultation ahead of final decisions on the preferred approach for the long term arrangement, while ensuring a smooth transition and delivery in the interim. It is important to note that this decision does not rule out any options for the long term approach.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: October 2016

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