

# SCOTTISH CROWN ESTATE ACT 2019

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## EXPLANATORY NOTES

### THE ACT

#### Part 3 – Management of Scottish Crown Estate assets

##### Financial matters

46. As Her Majesty retains ownership of the Scottish Crown Estate in right of the Crown (and the manager does not own the assets), but the revenue from the Scottish Crown Estate is to be paid into the Scottish Consolidated Fund (see section 1(2) of the Civil List Act 1952), section 28 requires separate accounts to be kept for income and capital. These accounts must also be kept separate from any other accounts kept by the manager, in any other capacity. In the context of managing the Scottish Crown Estate, the capital account represents those items transferred to the manager at the outset plus any amounts added in subsequent years; it is this amount that is preserved and ownership of which rests with the Crown. The income account represents the revenue that is generated by Scottish Crown Estate assets. The net revenue is paid into the Scottish Consolidated Fund. Keeping the separate accounts enables the manager of a Scottish Crown Estate asset to maintain appropriate segregation between income and capital and readily identify the value of those accounts at any given time.
47. [Section 29](#) provides the Scottish Ministers with the power to direct other managers to carry money from the income account to the capital account, to be retained in the capital account. At present, the maximum sum that Crown Estate Scotland can carry is 9% of the gross revenue, and that sum is specified in an existing framework agreement between Crown Estate Scotland and the Scottish Ministers. Effectively, it enables the manager to invest in the asset(s) – for example, capital works which maintain and enhance the value of the asset, which is the duty of the manager under section 7 – or to acquire new assets, which become part of the Scottish Crown Estate. Subsections (4) and (5) allow managers other than the Scottish Ministers to make other transfers during the financial year. This is expected to be of most use early in a manager’s management to smooth cash flow in-year. Transfers under subsection (4) must be repaid in full to the income account during the same financial year in which the sum was transferred from the manager’s capital account(see subsection (5)). Subsection (6) permits the Scottish Ministers to transfer sums between their income and capital accounts as they consider appropriate.
48. [Section 30](#) makes provision for the treatment of various sums, setting out whether the sum is to be carried to income or capital account. Subsection (1) recognises that some tenants pay a significant sum initially in exchange for an annual peppercorn rent and provides for different accounting for that sum, depending on the length of the underlying lease. Subsections (2) and (3) make provision for the allocation of income from mining interests (reflecting that mining works reduce the value of the mine, which is a capital asset) in accordance with any direction given by the Scottish Ministers about the allocation. Subsection (4) provides that, where the Scottish Ministers are themselves the manager, they can determine the proportions which apply to the allocation under subsections (3) and (4). Subsection (5) requires a manager to make repayments of any

loan made by the Scottish Ministers from the account to which the manager carries the sums received under the loan i.e. loans carried to capital account are repaid from the capital account and loans carried to income account are repaid from the income account. The loans referred to here are loans made to managers by the Scottish Ministers under section 32 (see below), or to Crown Estate Scotland under article 17 of the Crown Estate Scotland Order.

49. [Section 31](#) enables the existing ability of Crown Estate Scotland in the course of its management to cross-subsidise the Scottish Crown Estate to be extended to all managers. This is achieved by enabling a manager to transfer a sum from their income account to the income account of another manager, and likewise for the capital account. Managers may only make such transfers if directed to do so by the Scottish Ministers. This recognises that not all Scottish Crown Estate assets are capable of generating sufficient revenue to cover the costs of, for example, maintenance. The Scottish Ministers can, therefore, direct a manager with sufficient revenue or capital to transfer sums to another manager where there is a shortfall.
50. [Section 32\(1\)](#) enables the Scottish Ministers to make grants and loans to a manager in connection with the exercise of the manager's functions. Subsections 3 and 4 make provision for the Scottish Ministers to impose conditions (including as to repayment) and to vary the conditions. Managers are not otherwise able to borrow in connection with their functions (subsection (2)), nor can they grant heritable securities (see section 17)). Section 32 does not apply to Crown Estate Scotland because article 17 of the Crown Estate Scotland Order makes equivalent provision.
51. [Section 33](#) provides that the Scottish Ministers or, with the consent of the Scottish Ministers, another manager may make grants to such persons as the person making the grant considers appropriate for the purpose of covering outlays incurred in making preparations for a transfer or delegation of management of a Scottish Crown Estate asset. The Scottish Ministers or, as the case may be, another manager may impose conditions relating to the grant (or its repayment).
52. [Section 34](#) requires managers to keep proper accounts and records and prepare a statement of accounts in relation to any Scottish Crown Estate asset(s) managed by them, and any money and investments forming part of the Scottish Crown Estate which the manager is holding, in respect of each financial year. Subsection (3) requires managers to prepare a statement of accounts in such form, to include such information, and to be prepared in accordance with such methods or principles as the Scottish Ministers may direct. Subsection (4) requires managers (other than the Scottish Ministers) to send their statements of accounts in respect of each financial year to the Scottish Ministers within 3 months of the end of the financial year to which their statement relates. As with the income and capital accounts (see section 28), subsection (5) requires such accounts and records to be kept and statements prepared separately from any other accounts and records of the manager.
53. [Section 35](#) provides that the Scottish Ministers must prepare a consolidated statement of accounts prepared by each manager of one or more Crown Estate Scotland asset to submit to the Auditor General for Scotland. This function of the Scottish Ministers can be delegated to Crown Estate Scotland by virtue of section 39. This common approach takes account of local authorities' own accounts being audited by the Accounts Commission.