



Scottish Crown Estate Act 2019

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PART 3

MANAGEMENT OF SCOTTISH CROWN ESTATE ASSETS

Managers' powers and duties

7 Duty to maintain and enhance value

- (1) The manager of one or more Scottish Crown Estate assets must maintain and seek to enhance—
 - (a) the value of the assets, and
 - (b) the income arising from them.
- (2) In complying with the duty under subsection (1), the manager must—
 - (a) act in the way best calculated to further the achievement of sustainable development in Scotland, and
 - (b) seek to manage the assets in a way that is likely to contribute to the promotion or the improvement in Scotland of—
 - (i) economic development,
 - (ii) regeneration,
 - (iii) social wellbeing,
 - (iv) environmental wellbeing.

8 Power to act as owner

- (1) The manager of a Scottish Crown Estate asset may do anything on behalf of the Crown in respect of the asset that the Crown could do as owner of the asset.
- (2) The manager may hold the asset on behalf of the Crown if—
 - (a) the asset cannot vest in the Crown, or
 - (b) the manager is satisfied that it is more convenient for the asset to vest in the manager than to vest in the Crown.
- (3) The manager may—

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- (a) transfer ownership of the asset,
 - (b) acquire land on behalf of the Crown.
- (4) When the manager acquires land on behalf of the Crown, the land becomes a Scottish Crown Estate asset which is managed by that manager.
- (5) This section—
- (a) is subject to any restriction placed on the powers of the manager by this Act or any provision made under it, or any other enactment relating to Scottish Crown Estate assets, but
 - (b) is not subject to any other restriction on the powers of the person who is the manager which would not also apply to the powers of the Crown as owner of the asset.
- (6) Where the consent of the Scottish Ministers is required by this Act, or any provision made under it, for the transfer of ownership, or acquisition, of a Scottish Crown Estate asset, any such transfer or acquisition made without that consent is void.
- (7) In subsections (3) and (4), “land” includes buildings and other structures, land covered with water, and any right or interest in or over land.

9 Transactions on behalf of Her Majesty

- (1) The manager of a Scottish Crown Estate asset may enter into a transaction in relation to the asset in the same manner, and with the same formalities, as if the manager were acting on behalf of a person other than Her Majesty.
- (2) A document relating to the asset which is executed by the manager in the name of Her Majesty is to be construed, and may be registered, as if the manager were acting on behalf of a person other than Her Majesty.
- (3) In subsection (2), “registered” means—
- (a) recorded in the Register of Sasines,
 - (b) registered in the Land Register of Scotland, or
 - (c) registered for execution or preservation in the Books of Council and Session or in sheriff court books.
- (4) The Scottish Ministers may by regulations modify the definition of “registered” in subsection (3).

10 Disposals requiring Ministerial consent

- (1) Where subsection (2) or (3) applies, the manager of a Scottish Crown Estate asset (other than the Scottish Ministers) may transfer ownership of the asset only with the consent of the Scottish Ministers.
- (2) This subsection applies where, as a result of the transfer, the manager would no longer manage any Scottish Crown Estate assets.
- (3) This subsection applies where the asset is or includes a portion of the seabed (that is, the bed and subsoil of the sea within the Scottish marine area).
- (4) In subsection (3)—

“Scottish marine area” is to be construed in accordance with section 1 of the Marine (Scotland) Act 2010,

“sea” is to be construed in accordance with section 2 of that Act.

11 Duty to obtain market value

- (1) The manager of a Scottish Crown Estate asset must not make any of the following transactions (“a relevant transaction”) for consideration of less than market value—
 - (a) a transfer of ownership of the asset,
 - (b) a grant of a lease of the asset,
 - (c) a grant of any other right in or over the asset.
- (2) Despite subsection (1), the manager may make a relevant transaction for consideration of less than market value (including for no consideration) if the manager is satisfied that the relevant transaction is likely to contribute to the promotion or the improvement in Scotland of—
 - (a) economic development,
 - (b) regeneration,
 - (c) social wellbeing,
 - (d) environmental wellbeing, or
 - (e) sustainable development.
- (3) In deciding whether to make a relevant transaction for consideration of less than market value, the manager must have regard to the likely effect of the transaction on the value of the Scottish Crown Estate as a whole.
- (4) Subsection (1) does not apply where the manager makes a relevant transaction—
 - (a) for the purpose of complying with an obligation enforceable against the Crown or against the manager,
 - (b) in pursuance of paragraph 3(2) or 4(2) of Part 1 of schedule 4 of the Crown Estate Transfer Scheme.

12 Meaning of “market value”

- (1) In section 11, “market value” means the estimated amount which it would be reasonable to pay in respect of a relevant transaction based on the assumption that the transaction is agreed to—
 - (a) on the day on which the determination of the estimated amount is made,
 - (b) on an arm’s-length basis,
 - (c) after proper marketing,
 - (d) between parties each of whom has acted knowledgeably, prudently and willingly,
 - (e) on a day on which a person other than a manager is offering to make a transaction equivalent to the relevant transaction in relation to an asset which is similar to the asset to which the relevant transaction relates, and
 - (f) where the relevant transaction is a grant of a lease, on appropriate terms of lease.
- (2) But where a manager enters into an agreement under which a relevant transaction may or is to occur more than 10 years after the day on which the agreement is entered into—
 - (a) subsection (1)(a) does not apply, and

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- (b) the estimated amount is to be determined on the day on which the relevant transaction may or is to occur.
- (3) In the application of section 11 to a relevant transaction made in pursuance of—
 - (a) an agreement within the meaning of paragraph 15 of Part 3 of schedule 4 of the Crown Estate Transfer Scheme, “market value” has the meaning given in that paragraph,
 - (b) an agreement within the meaning of paragraph 25(1) of Part 4 of that schedule, “market value” has the meaning given in that paragraph.
- (4) The Scottish Ministers may by regulations modify—
 - (a) the definition of “market value” in subsection (1),
 - (b) the application of that definition in subsection (2).
- (5) In this section, “relevant transaction” is to be construed in accordance with section 11(1).

13 Directions about rent and other charges

- (1) The Scottish Ministers may, in a direction under section 37(1), specify—
 - (a) the amounts that managers may charge—
 - (i) by way of rent for the lease of Scottish Crown Estate assets,
 - (ii) in connection with any other agreement for the use of the assets, or
 - (b) how those amounts are to be calculated.
- (2) In particular, the Scottish Ministers may specify—
 - (a) minimum and maximum amounts that may be charged,
 - (b) different amounts, or methods of calculating them, for assets of different descriptions.
- (3) Where a direction made in pursuance of subsection (1) applies to the lease of, or (as the case may be) other agreement for the use of, an asset—
 - (a) section 11 does not apply in relation to the lease or agreement, and
 - (b) the manager of the asset may charge an amount other than an amount specified in, or calculated in accordance with, the direction only with the consent of the Scottish Ministers, and the lease or other agreement is void if entered into without that consent.
- (4) The Scottish Ministers may not make a direction in pursuance of subsection (1) in relation to—
 - (a) an agreement within the meaning of—
 - (i) paragraph 15 of Part 3 of schedule 4 of the Crown Estate Transfer Scheme,
 - (ii) paragraph 25(1) of Part 4 of that schedule,
 - (b) an agreement under paragraph 64(1) of schedule 3A of the Communications Act 2003.

14 Maximum period of leases etc.

- (1) The manager of a Scottish Crown Estate asset may not grant a lease or other right in or over the asset for a period of more than 150 years, and any such lease or other right granted by the manager is void.

- (2) Subsection (1) does not apply where the manager grants the lease or other right for the purpose of complying with an obligation enforceable against the Crown or against the manager.

15 Restriction on removal of wild kelp from seabed

- (1) The manager of a Scottish Crown Estate asset must not grant a right to remove wild kelp from the seabed (that is, the bed and subsoil of the sea within the Scottish marine area) if either subsection (2) or (3) applies.
- (2) This subsection applies if—
- (a) removal of the kelp would inhibit the regrowth of the individual plant, and
 - (b) the kelp removed is intended for commercial use.
- (3) This subsection applies if—
- (a) removal of the wild kelp is a licensable marine activity, and
 - (b) the Scottish Ministers have not granted a marine licence for that removal.
- (4) A right granted by a manager in contravention of subsection (1) is void.
- (5) In this section—
- “licensable marine activity” is to be construed in accordance with section 21 of the Marine (Scotland) Act 2010,
 - “marine licence” means a licence granted under Part 4 of that Act,
 - “Scottish marine area” is to be construed in accordance with section 1 of that Act,
 - “sea” is to be construed in accordance with section 2 of that Act,
 - “wild kelp” means any of the following—
- (a) *Laminaria hyperborea*,
 - (b) *Laminaria digitata*,
 - (c) *Saccharina latissima*,
 - (d) *Saccorhiza polyschides*,
 - (e) *Alaria esculenta*.

16 Rights and liabilities

- (1) A manager is to meet its liabilities from the accounts it keeps under section 28.
- (2) The Scottish Ministers may by regulations make provision for the transfer of a right or liability from a manager to another manager.
- (3) Regulations under subsection (2) may modify any enactment.
- (4) In this section, references to rights and liabilities are to rights and liabilities in relation to—
- (a) a Scottish Crown Estate asset,
 - (b) a former Scottish Crown Estate asset,
 - (c) a historic Scottish asset, within the meaning of paragraph 1 of schedule 2 of the Crown Estate Transfer Scheme.

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17 Prohibition on securities

The manager of a Scottish Crown Estate asset may not grant a heritable security over the asset, and any such security granted by the manager is void.

18 Investment of money

A manager may invest a sum of money—

- (a) from the manager’s capital account only if it is invested—
 - (i) in the name of the manager, in a heritable security in Scotland or in a security over land in the rest of the United Kingdom,
 - (ii) in the name of the manager, in an interest-bearing account,
 - (iii) in an investment of such other description as the Scottish Ministers may specify in a direction under section 37(1),
- (b) from the manager’s income account only if it is invested in the name of the manager in an interest-bearing account.

19 Charitable donation

- (1) A manager may make charitable donations from the manager’s income account.
- (2) A “charitable donation” is a payment of a sum of money to such person as the manager considers appropriate for a charitable purpose which provides public benefit in Scotland.
- (3) In subsection (2), “charitable purpose” is to be construed in accordance with section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005.

20 Transparency and accountability

- (1) A manager must, so far as reasonably practicable, exercise its functions in a way which—
 - (a) is transparent and accountable, and
 - (b) is consistent with any other principle of good governance which appears to the manager to constitute best practice.
- (2) Subsection (1) does not apply to Crown Estate Scotland (but see article 4 of the Crown Estate Scotland Order).

21 Equalities

- (1) A manager must exercise its functions in a way which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.
- (2) In subsection (1), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of schedule 5 of the Scotland Act 1998.