

The Government response to the seventh report from the Scottish Affairs Committee session 2010-12, HC 1117

The Crown Estate in Scotland



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The Crown Estate in Scotland

Presented to Parliament by
the Economic Secretary to the Treasury
by Command of Her Majesty

July 2012

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1

Introduction

1.1 The Scottish Affairs Committee reported on 19 March 2012 after an extensive examination of the role and functions of the Crown Estate in Scotland. The Government is grateful for the Committee's report.

1.2 The Government recognises the strong concerns expressed by many of those the Committee consulted about the rights and responsibilities of the Crown Estate in Scotland. The Government and the Crown Estate are determined to respond positively, where it is possible, to meet the points raised by the Committee, and by communities in Scotland.

1.3 In general terms, the primary criticisms of the Crown Estate focus on its accountability and transparency in relation to communities in Scotland. There is also concern that the interpretation of the current legislation does not allow sufficient scope for the Crown Estate to operate in the public interest. On this basis, the Committee suggested measures for altering its governance structure and legislation to enable local communities greater involvement in decision-making.

1.4 The Government recognises the Committee's concerns, but is not persuaded that the proposals for devolution would offer the best solution to these problems. After careful consideration, the Government has concluded that there are strengths in the existing arrangements which should be retained as a matter of public interest. For instance the Crown Estate's unified management framework provides an incentive to investment in offshore renewable energy. However the Government proposes to take concrete steps towards addressing the Committee's concerns.

1.5 Within that framework, and in the context of the steps the Government and Crown Estate have already taken to improve its local relationships, such as the Government's introduction of the Coastal Communities Fund, the Crown Estate now proposes additional measures to deepen its commitment to manage its Scottish properties to meet the legitimate concerns and aspirations of local people. These steps include planning to transfer responsibility for some of the ancient assets it manages to local interests; and the introduction of Local Management Agreements at coastal locations where it is advantageous for local people to have a greater say in management of local sites. In addition to these steps, the Government also makes further commitments outlined below.

2

Accountability

We welcome the creation of the Scottish leadership team and the industry liaison group.....these steps do not go far enough in remedying the situation which currently exists in terms of the lack of formal arrangements for the accountability of the CEC in Scotland. (Paragraphs 31 and 32).

2.1 On the central question of relationships in Scotland, the Government welcomes the Committee's acknowledgement of the Crown Estate's efforts to meet local concerns in Scotland. They demonstrate a positive direction of travel, with the Crown Estate making clear effort to work with the grain of Government policy, including in its interactions with the Scottish Government, for example, through direct engagement and specific projects such as on-going planning development of wave power in the Pentland Firth.

2.2 Formally, the Crown Estate is accountable to the Treasury and to the Scotland Office. This means that the Crown Estate operates with ministerial oversight where appropriate, but without hindering the Crown Estate's ability to manage its assets with the necessary statutory independence required to protect it from political interference, in line with recommendations of the Eve report¹. The Crown Estate also seeks to be responsive to the interests of its wider stakeholder group. It frequently engages with the Scottish Government, the Scottish Parliament and a number of its Committees. It also publishes an annual Scotland Report on its activities in Scotland.

2.3 In taking this action the Crown Estate must operate within the law. The Crown Estate Act 1961 requires the Crown Estate to manage The Queen's hereditary property assets professionally for the benefit of the UK as a whole. The Government's relationship with the Crown Estate is designed to help it operate in the way envisaged in the law. Essentially, the Crown Estate has considerable discretion in its commercial management of its assets because this promotes successful and sustainable results.

2.4 The Government has considered very carefully the strong concerns raised by Scottish local authorities and others about the Crown Estate's accountability to communities. So the Government has examined what further practical steps the Crown Estate can take to encourage greater accountability to local stakeholders in Scotland.

2.5 The Government endorses the Crown Estate's commitment to improving its accountability through Local Management Agreements and wider public engagement including appearances before the Scottish Parliament. The Government also welcomes the Crown Estate's effort to engage with the Scottish Government and with local communities (see paragraphs 5.2 – 5.4).

2.6 The Government now proposes a further step which will offer the Scottish Government and local authorities in Scotland stronger insight into the Crown Estate's strategy and operations in Scotland. The Government plans to establish an Inter-Ministerial Strategic Group, chaired by a Treasury minister, with membership including the Crown Estate, the Scotland Office, the

¹ Report of the Parliamentary Committee on Crown Lands, chaired by Malcolm Trustram Eve, 1955 (Cmnd 9483)

Scottish Government and with appropriate representation from local authorities in Scotland, for example through COSLA or a nominee local authority.

2.7 This high-level group will meet annually to consider the activities of the Crown Estate, and to review the Crown Estate's strategy for the year ahead. The group will consider how the Crown Estate could work effectively with local authorities where there are common interests so that it can improve engagement with communities and with the investor community.

2.8 The Government proposes that this group should be supported by an official group whose members will include representatives of the Treasury, the Crown Estate, Scotland Office, the Scottish Government and COSLA. It would meet more frequently and will consider reports on the formal and informal liaison arrangements involving the Crown Estate and its Scottish stakeholders over a range of areas of common interest in support of the Crown Estate's strategic objectives. In turn the official group, will report to the Inter-Ministerial group.

2.9 At local level, the Crown Estate is already working toward establishment of Local Management Agreements to enable local community bodies to take the initiative in managing their coastlines, and enable the Crown Estate to respond more flexibly to the concerns of local communities. Any such arrangements must be subject to consultation and will work within the Crown Estate's statutory responsibilities, including its duty to deliver a financial return for the benefit of the UK as a whole.

2.10 A specific Agreement will be required in each location, designed to meet local priorities and local circumstances and needs. Partners could include harbour trusts, local authorities, appropriate charities or other responsible local organisations. Working within its established legal limitations, the Crown Estate is open to reasonable proposals for these agreements.

2.11 On 11 May, since publication of the Committee's report, the Crown Estate announced that it is working toward the first two such Agreements. The Local Management Agreement with Portree Moorings Association on the Isle of Skye is aimed at development of the harbour, potentially including improvements to a recently purchased slipway. The parallel Agreement with Comann na Mara at Lochmaddy on North Uist (the Society of the Sea: North Uist) aims to continue to improve the harbour, building on the existing pontoon. These relationships promise to benefit local communities by using the Crown Estate's knowledge and expertise in the maritime environment while helping local marine interests make better use of the shoreline.

2.12 The Government believes that these arrangements, and others of a similar kind, will benefit those using and working in and near shorelines and should more readily allow local concerns to be engaged and considered constructively. The Government believes that, with the Crown Estate's existing efforts to work with the Scottish Government and Scottish local interests, these additional steps should go a long way toward meeting the concerns which the Committee has identified.

3

Finance

Despite the fact that the CEC has introduced ...a Scotland annual report which includes some basic financial information, ...[there is] a lack of transparency in terms of revenues raised and spent in Scotland, and in particular of the decisions made in shifting revenue from one part of the business to another...we conclude this is an inappropriate way for the CEC to manage public assets in Scotland. (Paragraph 41).

3.1 The Committee raised specific points in relation to the transparency of the revenues of the Crown Estate, querying the decision-making process for allocation across the unitary framework. Within its remit as a UK property investor, the Crown Estate currently provides a good deal of financial information about its activities in Scotland. The Government supports disclosure of as much meaningful information as can reasonably be made available.

3.2 The Committee proposes that the Crown Estate's annual report on Scotland should include net surplus figures for Scotland as well as gross. The Committee's intention appears to be that the revenues the Crown Estate produces in Scotland could thus be more readily identified, and perhaps stay in Scotland.

3.3 The Government has examined whether net surplus figures for Scotland could be generated. This is primarily a practical problem. Because the Crown Estate is run as a single organisation, generating an estimated Scottish surplus would be a matter of apportioning many different components of the Crown Estate's costs and income. So many of these apportionments would be arbitrary that the resultant surplus figure could be no more than a rough indication of the profitability of the Crown Estate in Scotland. The Government has therefore concluded that publishing such figures would be misleading, since estimated allocations could not be used either to generate reliable conclusions or make decisions.

4

Marine resources

....the question must be raised whether the CEC is the most appropriate organisation to harness the likely benefits from marine renewables for local communities. (Paragraph 48).

4.1 The Government has considered the points raised by the Committee and by witnesses to the inquiry on the appropriateness of the Crown Estate's role in relation to marine renewables. The Government believes there are considerable strengths in the current arrangement to enable a consistent, stable framework which is attractive to investors. The UK offshore renewables industry is of strategic importance and operates in the highly competitive global energy market. It must command the confidence of its international investors so that the UK's resources can be exploited efficiently and successfully in the interests of the UK as a whole. Given the vast scale of investment required in a field using emerging technologies and coping with internationally driven uncertainties, it is a priority to provide as much certainty and stability as possible to investors.

4.2 If management of the UK marine offshore estate were split up, it would present additional institutional and practical obstacles, making it more difficult to attract global offshore renewables companies to invest in the UK. The transfers proposed by the Committee could mean many different UK landowners of the seabed, with up to 25 different local authorities around the coastline of Scotland alone. Investors and developers currently engage through a single, uniform delivery framework consistently applied throughout the UK. This unitary management framework of the Crown Estate encourages investors to plan ahead confidently, and the current mix of advantages has enabled the UK to occupy the number one position as the most attractive country to offshore renewable energy investors¹.

4.3 If there were several authorities as the Committee suggests, divergence in policies and procedures could mean that international investors in renewable technology would lose existing economies of scale which mean they can be employed across the entirety of the UK. They could therefore find it more difficult to justify the level of investment needed in these projects. Moreover, the uncertainty involved in the transition process recommended by the Committee would itself create serious uncertainty and loss of confidence which could threaten the continued development of the offshore renewables industry in the whole of the UK. Large international energy enterprises value managing their UK investments in offshore energy as a single block with a single expert regime to understand and work with. At the moment they perceive the UK as a welcoming place to invest and it is important that they can continue with their development plans in the public interest.

4.4 Transfer of management of the seabed, continental shelf and foreshore in Scotland to a multiplicity of local interests would thus pose serious problems and could handicap the UK's offshore renewable energy industry by deterring investment. Any loss to investment would have a direct impact on jobs within this growing sector, with a consequential loss to the wider supply chain within the manufacturing and construction industry, and to local economies. It would also

¹ Ernst & Young, Renewable Energy Country Attractiveness Indices, November 2010

present increased difficulty for the UK in meeting its commitment to reduce carbon emissions by 15 per cent by 2015; and it would diminish the UK's security of supply in meeting demand for energy.

4.5 Given the scale and strategic importance of potential investment in renewables in Scotland, the Government does not wish to add institutional barriers or inconsistencies in approach which could undermine efforts to secure this investment. After careful consideration of the points raised by the Committee, set against the wider public interest in maintaining a consistent, stable framework for investors, the Government is therefore not persuaded that it would make sense to devolve the Crown Estate's interest in the foreshore, seabed and continental shelf assets.

4.6 It is also important to preserve the substantial body of specialised expertise in offshore renewables which the Crown Estate has accumulated. Were this fragmented and diluted, investors would lose this well-developed expertise to assist planning investment and development in UK waters. The Crown Estate has established and developed an offshore energy team with considerable expertise, including its innovative marine spatial planning tool, which keeps track of simultaneous and overlapping strands of offshore activity and so helps manage risk. Without this bespoke support there is a real danger that less investment would take place, or that it would take place slower than would be desirable. For all of the reasons laid out above, the Government is not persuaded that devolution of the seabed continental shelf and foreshore would be beneficial to Scotland, or to the rest of the UK.

4.7 Among concerns expressed to the Committee are worries about the parallel responsibilities exercised by Marine Scotland and the Crown Estate. While energy policy is a reserved matter, many of the economic development and environmental policy levers affecting the renewable energy industry fall within the remit of the Scottish Government. So cooperation is important. Good working relationships are already in place to help align policies and procedures at various levels across government.

4.8 To guard against misunderstandings and conflicts, the Crown Estate already works closely with the Scottish Government. The Government supports efforts underway to prepare a protocol between the Crown Estate and Marine Scotland so that they can work together more effectively on offshore renewable energy. It is clearly important that this cooperation should foster the common interests of these two organisations, while maintaining the distinct identity of each. The Inter-Ministerial Strategic Group will follow the development of this relationship.

5

Communications

....the general pattern demonstratedwas one of a lack of engagement and communication between the CEC, key stakeholders and local communities....the organisation has a fundamental misunderstanding of the needs and interests of local communities and indigenous industries on the Scottish coast. (Paragraphs 64 and 65).

5.1 The section on accountability above touches on many of the issues raised in relation to communications and engagement. It is worth adding that the legislation under which the Crown Estate operates defines a minimum level of public accountability through the annual reports laid before Parliament. Over time the Crown Estate has expanded its public accountability in a variety of ways and now publishes a great deal of information about its activities. Current publications now include annual financial reviews for Northern Ireland, Scotland and Wales.

5.2 The Crown Estate already has a Board member dedicated to all its Scottish interests, and has recently designated working level leads in Scotland specialising in energy and infrastructure, and in rural and coastal business.

5.3 In order to focus its engagement in Scotland, the Crown Estate operates a dedicated Scottish stakeholder consultative committee which meets several times a year. The Scottish Government and Scottish Parliament have a clear interest in the Crown Estate's activities, so the Crown Estate meets Ministers and officials from the Scottish Government frequently to help understand, and where possible respond constructively to, their respective interests in its business. The Crown Estate is also working towards an energy protocol with the Scottish Government and stands ready to work with others who may find it helpful to develop memoranda of understanding. Within the Scottish Parliament, the Crown Estate meets MSPs and has appeared before various Committees.

5.4 At local authority level, the Crown Estate is also seeking to improve communications. Over the past two years, the Crown Estate has worked in partnership with the relevant local authorities and others to coordinate wave and tidal operations in the Pentland Firth and Orkney waters. The Crown Estate is currently seeking to agree a Memorandum of Understanding with Orkney Islands Council to improve relations with coastal communities, which would be a helpful model to build on.

5.5 These concerted efforts show a positive direction of travel. The Government welcomes the Crown Estate's increasing efforts to meet the expectations of its Scottish stakeholders. The Government is keen to ensure real progress is made on communications and engagement, as this offers valuable understanding of the needs of local communities.

6

The public interest

We ...agree with the Treasury Committee which suggested ...that the remit of the CEC could be interpreted more broadly to include wider public policy objectives. (Paragraph 74).

6.1 In response to the Committee's concern, the Government has considered whether the Crown Estate's remit could be interpreted to give greater weight to wider public interests for the general good. In taking action it is clear that the Crown Estate must operate within the law in the discharge of its functions. The Crown Estate Act 1961 requires the Crown Estate to manage The Queen's hereditary property assets professionally for the benefit of the UK as a whole. As outlined above, the Government's relationship with the Crown Estate is designed to help it operate in the way envisaged in the law. Essentially, the Crown Estate has considerable discretion in commercial management of its assets because this promotes successful and sustainable results. Paragraph 2.3 above sets out further detail on the 1961 Act and the implications for the Crown Estate's remit.

6.2 The Crown Estate undertakes activity which is consistent with provisions of the 1961 Act. The legislation limits the Crown Estate's ability to take account of broader issues beyond its own portfolio in its use of resources. These provisions enable the Crown Estate to contribute to issues which further the welfare of those who live or work on its land or in its properties, i.e. where there is an indirect link to its local communities.

6.3 The Crown Estate currently undertakes activity with demonstrable benefits to local communities, for example through its Marine Stewardship Fund. Some recent examples of the Crown Estate's support for local communities across Scotland include:

- its £50,000 contribution to the St Abbs and Eyemouth Voluntary Marine Reserve in Berwickshire. This Reserve aims to conserve the biodiversity of the coastal waters and raise awareness of the marine environment;
- its support for the Tall Ships Event hosted by Lerwick Port Authority In Shetland;
- its work with the Skeld Pier Trust, also in Shetland, where a £19,000 contribution helped repair this important facility to ensure its long term future at heart of the community;
- its £15,000 contribution to a new pontoon to be installed by Shildaig Sports Association in the North West Highlands; and
- its £14,000 contribution to provide five additional visitor moorings at Plockton in the North West Highlands and so to foster better business opportunities for the tourist industry.

6.4 The Crown Estate has also made investments into marinas which will directly assist the tourism industry in coastal communities. Recent examples include:

- at Rhu Marina, the Crown Estate has invested over £1.5m in a new sanitary block, and in upgrading floating breakwaters. This will help secure the facility's position as a premier marine visitor hub for the West Highlands coast;

- at Lochboisdale in South Uist the Crown Estate has worked with Comhairle nan Eilean Siar, Highlands & Islands Enterprise, and European Regional Development Fund in a regeneration programme including investment of £1½m in the community marina facilities;
- in Oban, the Crown Estate continues to work with the Marina and hopes to invest up to £0.8m in a planned 70 berth overnight transit marina; and
- at Tobermory harbour, the Crown Estate is investing in an extension of an existing pontoon.

6.5 Working with Marine Scotland, Highlands & Islands Enterprise and Argyll & Bute Council, the Crown Estate has engaged with the community of Tiree in a nine month scenario mapping exercise to study the Argyll Array offshore wind farm, to increase public understanding of the impact of offshore renewable development. Community feedback then shaped design of the development. This innovative approach may be used in future to assess the impact of large scale marine energy projects on fragile and remote communities.

6.6 The Crown Estate is currently working with the Argyll & Bute Renewables Alliance, East Coast Renewables, Inverclyde Renewables Alliance Group and Ayrshire Renewables Alliance, all of which are cross industry public and private sector alliances focussing on the economic opportunities arising from renewable energy in Scotland. This engagement includes some port and harbour authorities so that they can benefit from the economic activity generated by the offshore renewables industry.

6.7 Looking to the future of the offshore renewables industry in Scotland, the Crown Estate published an offshore wind careers guide, aimed at encouraging high school pupils to pursue a career in the sector. This is intended to help local people develop relevant skills to support the renewables industry and ensure Scotland benefits from this growth industry.

6.8 The Crown Estate is also investing on its Rural Estate to the benefit of local Scottish communities. In conjunction with the European Regional Development Fund, Cairngorms National Park Authority and Moray Council, it is funding a £1½m project to build a new mountain bike centre and new cross country bike trails in the Carn Daimh Forest, near Tomintoul. This will include car parking and other support facilities, providing a direct opportunity for a new business with considerable potential.

6.9 In all of these areas, the activity is geared towards the grain of wider public policy objectives but within the scope of the Crown Estate's *vires*.

6.10 The Crown Estate hopes that in time a number of other coastal areas of the UK will come forward with similar proposals in the public interest. The Crown Estate is willing to help suitable local groups put together robust proposals to meet local concerns. The Crown Estate will also continue to work closely in partnership with Marine Scotland. It is discussing with Marine Scotland how it can best support the work of local marine planning partnerships around the Scottish coast.

6.11 The Government believes that these on-going initiatives will go a long way toward reassuring local communities that the Crown Estate is willing to cooperate for the benefit of all. They should allow local organisations a strong voice in the use of its coastal properties. Local Management Agreements should help to generate further suitable proposals. The Crown Estate remains very open to consideration of specific proposals and any such items should be submitted to the Crown Estate.

7

Decentralisation, historic sites and ancient rights

We recommend that the responsibilities of the CEC for administration and revenues of the ancient Crown property, rights and interests in Scotland, which are currently managed as part of the Crown Estate, should be decentralised.We recommend that the Secretary of State for Scotland should enter into discussion with the Scottish Government to ensure that any devolution of the CEC's responsibilities be conditional on a clear commitment and a detailed agreement based on the principle of subsidiarity, to the further decentralisation to the maximum extent possible of the CEC's responsibilities to local authority and local community levels. (Paragraphs 86 and 88).

We recommend that the Secretary of State for Scotland directs the CEC to enter into discussions with the Scottish Government and Edinburgh City Council, with a view to the CE transferring the ownership of the Crown land in West Princes Street Gardens to the City Council. (Paragraph 156).

We recommend that the Secretary of State for Scotland directs the CEC to enter into discussions with the Scottish Government, with a view to the CEC transferring the ownership of all of the King's Park still held by the Crown to the Scottish Government. (Paragraph 159).

We recommend that the CEC's responsibilities for the administration and revenues of the ancient Crown property rights in Scotland to naturally occurring oysters and mussels, to coastal and freshwater salmon and to gold and silver, should be devolved to the Scottish Parliament. (Paragraph 165).

7.1 The Government has considered options for decentralisation as set out by the Committee. It is noted that the Crown Estate has already taken a number of steps to recognise the changing landscape following devolution and is ready to take more.

7.2 In 1999, the Crown Estate transferred 25 of its historic assets to Historic Scotland, recognising the powerful associations attached to these ancient assets, which include a number of castles and cathedrals. It is exploring how it can transfer further ancient sites and interests in Scotland to Scottish organisations, working within the constraints of the law. Among these are some assets mentioned in the committee's report, such as West Princes Street Gardens in Edinburgh. Any such future transfers must of course be subject to the approval of Her Majesty The Queen.

7.3 As detailed above under the section on marine renewables, the Government is not persuaded of the case for the Crown Estate to cease its management of the foreshore or seabed. However, Local Management Agreements should offer potential for more local and appropriate management of the Crown Estate's assets at those parts of the coastline where local groups are able to come forward with constructive proposals. So Local Management Agreements should address the Committee's desire to give a strong voice to marine management where this is possible.

7.4 The Government and the Crown Estate have examined the scope for the Crown Estate to transfer ownership of a range of further assets, within the constraints of the governing legislation which requires it to manage these assets to generate a commercial return in the public interest. With that caveat, the Crown Estate is willing in principle to transfer the assets which do not have commercial values to suitable local interests.

7.5 With that in mind, the Crown Estate is now exploring the scope for transferring part of West Princes St Gardens in Edinburgh to an appropriate authority. It would also be prepared to consider similar transfers of its other ancient assets where this is compatible with its statutory duties.

7.6 The King's Park, Stirling cannot, however, be among these. After lengthy negotiations, the Crown Estate recently agreed a market price for its sale to Stirling Council, so transfer at nil cost would be incompatible with the Crown Estate's statutory responsibilities. Similarly, the rights to gold and silver and many salmon and other fishery rights have commercial values on the property market which the Crown Estate cannot disregard.

7.7 However, the Crown Estate has indicated that it is willing in principle to transfer rights to fish wild oyster and mussels if suitable stakeholders are able to come forward with proposals in the public interest. In the meantime, the Crown Estate will not enforce its rights to charge for exploitation of these resources.

8

Coastal Communities Fund

We welcome the new Coastal Communities Fundwe share the concerns that the Big Lottery is not the most appropriate mechanism for the distribution of these funds and recommend that the UK Government give further consideration to the selection of a more appropriate body, example the Highlands and Islands Enterprise, for the distribution of these funds in Scotland.....(Paragraph 152).

8.1 In 2011, the Government established the Coastal Communities Fund for projects which support economic development in coastal communities around the UK. The Coastal Communities Fund will be equal to 50 per cent of the revenues generated by the Crown Estate's marine assets in each country, and is intended to complement, rather than replace, existing Crown Estate activity. This further supports the links between the Crown Estate revenues and local communities, and offers a new mechanism to support wider public interest objectives.

8.2 The Government and the Devolved Administrations have now agreed the overarching framework of the Fund, including choosing the BIG Fund to distribute the Coastal Communities Fund because it has well-established skills and a wealth of relevant experience in this kind of work. Within this broad UK framework, it is for each country to decide what their specific priorities are, and local authorities and other interested parties are encouraged to work closely with the BIG Fund to ensure the Coastal Communities Fund best reflects local needs. The Government is keen to ensure that this Fund operates as effectively as possible, and both the Government and the BIG Fund will reflect on lessons learned from the experience of the first year (2012-13) to identify future improvements to the system of distribution of grants.



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