

Scottish Crown Estate Bill

[AS PASSED]

CONTENTS

Section

PART 1

CROWN ESTATE SCOTLAND

- 1 Crown Estate Scotland

PART 2

CHANGES IN MANAGEMENT OF SCOTTISH CROWN ESTATE ASSETS

- 2 Meaning of “Scottish Crown Estate”, “asset” and “manager”
3 Transfer of management function
4 Directions requiring delegation of management function
5 Delegation agreements
6 Meaning of “community organisation” and “Scottish harbour authority”

PART 3

MANAGEMENT OF SCOTTISH CROWN ESTATE ASSETS

Managers’ powers and duties

- 7 Duty to maintain and enhance value
8 Power to act as owner
9 Transactions on behalf of Her Majesty
10 Disposals requiring Ministerial consent
11 Duty to obtain market value
12 Meaning of “market value”
13 Directions about rent and other charges
14 Maximum period of leases etc.
14ZA Restriction on removal of wild kelp from seabed
14A Rights and liabilities
15 Prohibition on securities
16 Investment of money
17 Charitable donation
18 Transparency and accountability
19 Equalities

Planning and reporting

- 20 Strategic management plan
21 Review of strategic plan

- 22 Management plans
- 23 Preparation and revision of management plans
- 24 Annual report
- 25 Laying and publication of annual reports

Financial matters

- 26 Separation of income and capital
- 27 Transfer of sums between income and capital accounts
- 28 Treatment of certain sums
- 29 Transfer of funds between managers
- 30 Grants and loans to managers
- 31 Grants for preparation for management changes
- 32 Requirement to keep accounts and records
- 33 Audit

End of management

- 34 End of management

Ministerial directions etc.

- 35 Power of Ministerial direction
- 36 Ministerial guidance
- 37 Power to delegate functions to Crown Estate Scotland
- 38 Provision of information or advice to the Scottish Ministers
- 39 Research and other activities

PART 4

GENERAL

- 40 Regulations
- 41 Ancillary provision
- 42 Consequential and minor modifications
- 43 Interpretation
- 44 Commencement
- 45 Short title

Schedule 1—Crown Estate Scotland: modification of enactments
 Schedule 2—Consequential and minor modifications

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Scottish Crown Estate Bill

[AS PASSED]

An Act of the Scottish Parliament to rename Crown Estate Scotland (Interim Management); to make provision about the management of the Scottish Crown Estate; and for connected purposes.

PART 1

CROWN ESTATE SCOTLAND

- 5 **1 Crown Estate Scotland**
- (1) Crown Estate Scotland (Interim Management) (in Gaelic, Oighreachd a’ Chrùin Alba (Stiùireadh Eadar-amail)) is renamed and is to be known as Crown Estate Scotland (in Gaelic, Oighreachd a’ Chrùin Alba).
- 10 (2) Any reference in any enactment to Crown Estate Scotland (Interim Management) is, unless the contrary intention appears, to be construed as a reference to Crown Estate Scotland.
- (3) Schedule 1 makes further provision in consequence of this section.

PART 2

CHANGES IN MANAGEMENT OF SCOTTISH CROWN ESTATE ASSETS

15 **2 Meaning of “Scottish Crown Estate”, “asset” and “manager”**

In this Act—

“Scottish Crown Estate” means the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies,

20 “asset”, in relation to the Scottish Crown Estate, means any property, right or interest forming part of the Scottish Crown Estate, other than money or investments,

“manager” means a person who, for the time being, has the function of managing one or more Scottish Crown Estate assets on behalf of the Crown.

3 Transfer of management function

- (1) The Scottish Ministers may by regulations make provision for or in connection with the transfer of—
- 5 (a) the function of managing a Scottish Crown Estate asset from the manager of the asset to another person mentioned in subsection (2) (“the transferee”),
- (b) any right or liability the manager has in relation to the asset to—
- (i) the transferee,
- (ii) another person mentioned in subsection (2).
- (2) The persons referred to in subsection (1)(a) and (b)(ii) are—
- 10 (a) the Scottish Ministers,
- (b) Crown Estate Scotland,
- (c) a local authority,
- (d) another Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998),
- 15 (da) a Scottish harbour authority,
- (e) a community organisation.
- (3) Regulations under—
- (a) subsection (1)(a) may include provision—
- (i) restricting the exercise of the function by the transferee,
- 20 (ii) about the management of records relating to the exercise of the transferee’s functions as a manager,
- (b) subsection (1)(b) may transfer different rights or liabilities to different persons.
- (4) Where the transferee is a community organisation, regulations under subsection (1) may—
- 25 (a) provide that, if the transferee ceases to exist, the function of managing a Scottish Crown Estate asset, and any rights or liabilities the transferee has in relation to such an asset or former asset, are to transfer to another person mentioned in subsection (2),
- (b) require the transferee to notify the Scottish Ministers of any proposed change to its constitution which would result in the transferee ceasing to be a community organisation,
- 30 (c) require a court or a person specified in the regulations to notify the Scottish Ministers of any application made to the court or person which, if granted, would result in the transferee—
- 35 (i) ceasing to exist, or
- (ii) ceasing to be a community organisation,
- (d) make such other provision in connection with the transferee ceasing to exist or to be a community organisation as the Scottish Ministers consider appropriate.

- (4A) Where the transferee is a Scottish harbour authority, regulations under subsection (1) may—
- (a) provide that, if the transferee ceases to exist, the function of managing a Scottish Crown Estate asset, and any rights or liabilities the transferee has in relation to such an asset or former asset, are to transfer to another person mentioned in subsection (2),
 - (b) require a court or a person specified in the regulations to notify the Scottish Ministers of any application made to the court or person which, if granted, would result in the transferee ceasing to exist,
 - (c) make such other provision in connection with the transferee ceasing to exist as the Scottish Ministers consider appropriate.
- (5) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) each person from or to whom the regulations would (if made) transfer a function, right or liability,
 - (b) such other persons as the Scottish Ministers consider appropriate.
- (6) Regulations under subsection (1) may modify any enactment.
- (7) In subsection (3)(a)(ii), “management” includes keeping, storage, securing, archiving, preservation, destruction or other disposal.

4 Directions requiring delegation of management function

- (1) The Scottish Ministers may direct the manager of a Scottish Crown Estate asset to delegate the function of managing the asset to another person mentioned in section 3(2)(c), (d), (da) or (e).
- (2) Subsection (1) does not apply where the manager is—
- (a) the Scottish Ministers,
 - (aa) a Scottish harbour authority,
 - (b) a community organisation.
- (4) A direction under subsection (1) must—
- (a) be in writing,
 - (b) set out—
 - (i) the person to whom the function is to be delegated,
 - (ii) any terms and conditions on which the function must be delegated.
- (4A) Before giving a direction under subsection (1), the Scottish Ministers must consult—
- (a) the manager to whom the direction is to be given,
 - (b) the person to whom the function is to be delegated,
 - (c) such other persons as the Scottish Ministers consider appropriate.
- (5) A direction under subsection (1) may—
- (a) be given only with the consent of the person to whom the function is to be delegated,

(b) be revised or revoked by the Scottish Ministers at any time before they consent to the terms and conditions on which the function is to be delegated under section 5(6)(b).

5 (5A) Subsections (4A) and (5)(a) apply to the revision or revocation of a direction under subsection (1) as they apply to such a direction.

(6) The Scottish Ministers must publish, in such manner as they consider appropriate—

(a) any direction given under subsection (1), or revised under subsection (5)(b),

(b) notice of any revocation of such a direction under subsection (5)(b).

10 (7) A direction or revised direction may be published in whole or in part, but the following information must not be withheld from publication—

(b) the manager to whom it was given,

(c) the asset to which it relates,

(d) the person to whom the function is to be delegated.

5 Delegation agreements

15 (1) The manager of a Scottish Crown Estate asset (other than the Scottish Ministers) may delegate the function of managing the asset only if directed to do so by the Scottish Ministers under section 4(1).

(2) Where the Scottish Ministers are the manager of a Scottish Crown Estate asset, they may delegate the function of managing the asset to—

20 (a) Crown Estate Scotland,

(b) a local authority,

(c) another Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998),

(ca) a Scottish harbour authority,

25 (d) a community organisation.

(3) Delegation of the function of managing a Scottish Crown Estate asset is to be given effect to by an agreement in writing between the manager of the asset and the person to whom the function is to be delegated.

30 (4) That agreement must set out the period for which, and other terms and conditions on which, the function is delegated.

(5) The terms and conditions may, in particular, provide for—

(a) restrictions on the exercise of the function by the person to whom it is delegated,

(b) circumstances in which the agreement may, or is to, be terminated.

(6) Where the manager is not the Scottish Ministers—

35 (a) the terms and conditions of a delegation agreement must include any terms and conditions set out in the direction in pursuance of which the agreement is made,

(b) the Scottish Ministers must consent to the terms and conditions (and a purported delegation without that consent has no effect).

- (7) Except to the extent that the delegation agreement provides otherwise—
- (a) the person to whom the function of managing the asset is delegated is to be treated as, and has all of the powers and duties from time to time applying to, the manager of the asset for all purposes (other than those of this Part),
 - (b) the function is not exercisable by the manager of the asset (and the manager is not responsible for its exercise).

6 Meaning of “community organisation” and “Scottish harbour authority”

- (1) In this Part, a “community organisation” is—
- (a) a body corporate (other than a Scottish public authority) which—
 - (i) relates to a community, and
 - (ii) has a written constitution which includes the matters mentioned in subsection (2), or
 - (b) a body corporate designated as a community organisation, or falling within a class of bodies designated as community organisations, for the purposes of this Act by the Scottish Ministers by regulations.
- (2) The matters referred to in subsection (1)(a)(ii) are—
- (a) provision that the body must have no fewer than 20 members,
 - (b) a definition of the community to which the body relates,
 - (c) provision that the majority of the members of the body is to consist of members of that community,
 - (d) provision that the members of the body who consist of members of that community have control of the body,
 - (e) provision that membership of the body is open to any member of that community, and
 - (f) a statement of the body’s aims and purposes, including the promotion of a benefit for that community.
- (3) In this Part, “Scottish harbour authority” means a harbour authority in relation to a harbour in Scotland.
- (4) In subsection (3), “harbour authority” and “harbour” have the meanings given in section 57(1) of the Harbours Act 1964 (interpretation).

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—
- (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, or
 - (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
 - (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 35(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.

14ZA 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 (1A) or (1B) applies.

(1A) 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.

(1B) 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.

(2) A right granted by a manager in contravention of subsection (1) is void.

(3) 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*.

14A Rights and liabilities

(1) A manager is to meet its liabilities from the accounts it keeps under section 26.

(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.

15 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.

16 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 35(1),

(b) from the manager’s income account only if it is invested in the name of the manager in an interest-bearing account.

17 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.
- 5 (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.

18 Transparency and accountability

- (1) A manager must, so far as reasonably practicable, exercise its functions in a way which—
- 10 (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).

19 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.
- 20

Planning and reporting

20 Strategic management plan

- (1) The Scottish Ministers must prepare a plan for the management of the Scottish Crown Estate.
- 25 (2) The plan must set out the Scottish Ministers’—
- (a) objectives, priorities and policies in relation to the management of the Estate (including the acquisition of new assets), and
- (b) assessment of how those objectives, priorities and policies align with the Scottish Ministers’ other objectives, priorities and policies.
- 30 (3) The plan may contain such other information about the Estate and its management as the Scottish Ministers consider appropriate.
- (4) When preparing the plan, the Scottish Ministers must consult—
- (a) each manager,
- (b) such other persons as they consider appropriate.
- 35 (5) A manager must have regard to the plan when—
- (a) preparing a management plan,
- (b) exercising any of the manager’s other functions.

- (6) The Scottish Ministers must—
- (a) lay a copy of the plan before the Scottish Parliament, and
 - (b) publish the plan in such manner as they consider appropriate as soon as reasonably practicable after a copy of it is laid before the Parliament.

- 5 (7) In subsection (5)(a), “management plan” means—
- (a) where the manager is Crown Estate Scotland, a plan prepared under article 19(1) of the Crown Estate Scotland Order,
 - (b) otherwise, a plan prepared under section 22(1).

21 Review of strategic plan

- 10 (1) The Scottish Ministers must, not later than the end of each 5 year period, review the plan prepared under section 20(1).
- (2) Following such a review, the Scottish Ministers must either—
- (a) revise the plan, or
 - (b) lay a statement before the Scottish Parliament indicating that they consider that
- 15 the plan should not be revised.
- (3) Section 20(2) to (6) applies to a revised plan as it applies to the plan prepared under subsection (1) of that section.
- (4) In subsection (1), “5 year period” means—
- (a) the period of 5 years beginning with the day on which the plan prepared under
- 20 section 20(1) is laid before the Parliament, and
- (b) each subsequent period of 5 years beginning with the day on which—
 - (i) a copy of a revised plan is laid before the Scottish Parliament, or (as the case may be)
 - (ii) a statement is so laid under subsection (2)(b).

22 Management plans

- 25 (1) A manager of one or more Scottish Crown Estate assets must prepare plans for the management of the assets.
- (2) Each plan is to cover a period of 3 years.
- (3) Each plan must set out—
- 30 (a) the manager’s objectives for the period to which the plan relates,
 - (b) the activities that the manager proposes to undertake during that period in pursuit of the objectives,
 - (c) any risks associated with those activities,
 - (d) outcomes against which the achievement of the objectives may be assessed,
 - 35 (e) how the manager proposes to maintain, and seek to enhance the value of, Scottish Crown Estate assets and the income arising from them during that period, and

(f) whether the manager proposes to dispose of any Scottish Crown Estate assets during that period and, if so, how the manager proposes to use any proceeds of the disposal.

(4) This section and section 23 do not apply to Crown Estate Scotland (but see article 19 of the Crown Estate Scotland Order).

23 Preparation and revision of management plans

(1) A manager must—

(a) prepare a plan under section 22(1) as soon as reasonably practicable after becoming a manager,

(b) submit that plan to the Scottish Ministers as soon as reasonably practicable after it is prepared,

(c) submit each subsequent plan prepared under that section to the Scottish Ministers no later than 3 months before the start of the period to which the plan relates.

(2) The Scottish Ministers may—

(a) approve a plan without modification,

(b) approve a plan with modifications agreed with the manager, or

(c) reject a plan.

(3) If the Scottish Ministers reject a plan, the manager must submit a revised plan to the Scottish Ministers within such period as the Scottish Ministers direct.

(4) When the Scottish Ministers approve a plan under subsection (2)(a) or (b), the manager must publish it as approved in such manner as the manager considers appropriate as soon as reasonably practicable after it is approved.

(5) The manager—

(a) may revise a plan from time to time,

(b) must do so if—

(i) the function of managing a Scottish Crown Estate asset is transferred to or from the manager in regulations made under section 3(1),

(ii) such a function is delegated to or by the manager under section 5, or

(iii) the delegation of such a function to or by the manager under that section ceases to have effect,

(c) must submit any revised plan to the Scottish Ministers.

(6) Subsections (2) to (4) apply to a revised plan submitted under subsection (3) or (5)(c) as they apply to a plan submitted under subsection (1).

(7) Where the Scottish Ministers are the manager—

(a) subsections (1)(b) and (c), (2), (3), (4), (5)(c) and (6) do not apply,

(b) the Scottish Ministers must publish a plan (including a revised plan) in such manner as they consider appropriate as soon as reasonably practicable after the plan is prepared.

24 Annual report

- (1) A manager of one or more Scottish Crown Estate assets must prepare in respect of each financial year a report on its management of the assets during that year.
- (2) The report must, in particular, include an assessment of how the manager's activities during the financial year have contributed to the meeting of its objectives for that year.
- (3) For the purposes of subsection (2), a manager's objectives for the financial year are its objectives as set out in a plan prepared under section 22(1) for a period which includes all or part of that year.
- (4) The report must include a list of any directions given to the manager, or revised or revoked, during the financial year by—
- (a) the Scottish Ministers under section 35(1),
 - (b) the Secretary of State under the Crown Estate Transfer Scheme.
- (5) But a direction given, revised or revoked by the Secretary of State is not to be included in the list, or otherwise mentioned in the report, if the Secretary of State so notifies the manager.
- (6) Otherwise, it is for the manager to determine the form and content of the report.
- (7) A manager (other than the Scottish Ministers) must send a copy of its report to the Scottish Ministers no later than 3 months after the end of the financial year to which the report relates.
- (8) This section does not apply to Crown Estate Scotland (but see article 18 of the Crown Estate Scotland Order).

25 Laying and publication of annual reports

- (1) The Scottish Ministers must lay a copy of each annual report before the Scottish Parliament.
- (2) They may do so by laying before the Parliament a copy of—
- (a) a consolidated report comprising two or more annual reports, or
 - (b) an individual annual report.
- (3) The Scottish Ministers must publish each consolidated or annual report in such manner as they consider appropriate as soon as reasonably practicable after a copy of it is laid before the Parliament.
- (4) A manager must not publish its report prepared under section 24(1) until a copy of it has been laid before the Parliament.
- (5) In this section, “annual report” means a report prepared under—
- (a) section 24(1), or
 - (b) article 18(1)(a) of the Crown Estate Scotland Order.

Financial matters

26 Separation of income and capital

- (1) A manager must—
- (a) keep any money held by the manager which forms part of the Scottish Crown Estate in an income account and a capital account,
 - (b) apportion that money as appropriate between those accounts, and
 - (c) keep those accounts separate from any other accounts kept by the manager.
- (2) In this Act, references to—
- (a) an income account are references to an income account kept under subsection (1),
 - (b) a capital account are references to a capital account kept under that subsection.

27 Transfer of sums between income and capital accounts

- (1) Subsections (2) to (5) apply to managers other than the Scottish Ministers.
- (2) A manager may, if the Scottish Ministers so direct under section 35(1), transfer a sum of money from the manager's income account to the manager's capital account.
- (3) The Scottish Ministers must specify in the direction—
- (a) the maximum sum that may be so transferred, or
 - (b) how that sum is to be calculated.
- (4) A manager may transfer any other sum of money (“the transferred sum”) from the manager's income account to the manager's capital account subject to the repayment rule.
- (5) The repayment rule is that—
- (a) the manager must, in the same financial year as the transferred sum was transferred to the manager's capital account, transfer one or more sums of money (“repayment sums”) from the manager's capital account to the manager's income account, and
 - (b) the total amount of the repayment sums must be equal to the amount of the transferred sum.
- (6) Where the Scottish Ministers are a manager, they may transfer such sums as they consider appropriate—
- (a) from their income account to their capital account,
 - (b) from their capital account to their income account.

28 Treatment of certain sums

- (1) The manager of a Scottish Crown Estate asset must carry any sum of money received by the manager by way of a premium on the grant of a lease of the asset—
- (a) to the manager's income account, if the lease is granted for a period of 20 years or less,
 - (b) to the manager's capital account, if the lease is granted for a period of over 20 years.

- (2) Subsections (3) and (4) apply in relation to—
- (a) any gross annual income received in relation to a Scottish Crown Estate asset by the manager of the asset from or in connection with a mining lease or the working of mines or minerals,
 - 5 (b) any expenses incurred in relation to the asset by the manager in connection with such a lease or working.
- (3) The manager must carry that income, and charge those expenses, to the manager's income account and capital account in such proportions as the Scottish Ministers specify in a direction under section 35(1).
- 10 (4) But where the Scottish Ministers are the manager, they must carry that income, and charge those expenses, to their income account and capital account in such proportions as they may determine.
- (5) Where the Scottish Ministers make a loan to a manager, the manager must make any repayments of the loan, and any payments of interest on the loan, from the account to which the manager carries the sum of money received under the loan.
- 15

29 Transfer of funds between managers

- (1) A manager may transfer a sum of money—
- (a) from the manager's income account to the income account of another manager,
 - (b) from the manager's capital account to the capital account of another manager.
- 20 (2) A manager (other than the Scottish Ministers) may make a transfer under subsection (1) only if directed to do so by the Scottish Ministers in a direction under section 35(1).
- (3) The direction must specify—
- (a) the sum to be transferred, or
 - (b) how that sum is to be calculated.

30 Grants and loans to managers

- (1) The Scottish Ministers may make grants and loans to a manager in connection with the exercise of the manager's functions.
- (2) The manager may not otherwise borrow money in connection with the manager's functions.
- 30 (3) A grant or loan under subsection (1) is subject to such conditions (including conditions as to repayment) as the Scottish Ministers may determine.
- (4) The Scottish Ministers may, from time to time after the grant or loan is made, vary the conditions on which it was made.
- (5) This section does not apply where the manager is—
- 35 (a) Crown Estate Scotland (but see article 17 of the Crown Estate Scotland Order),
 - (b) the Scottish Ministers.

31 Grants for preparation for management changes

- (1) The Scottish Ministers may make such grants to such persons as the Scottish Ministers consider appropriate for the purpose of making preparations for—
- 5 (a) the transfer of the function of managing a Scottish Crown Estate asset in regulations under section 3,
- (b) the delegation of such a function under section 5.
- (2) A manager may, with the consent of the Scottish Ministers, make such grants to such persons as the manager considers appropriate for the purpose mentioned in subsection (1).
- 10 (3) A grant under subsection (1) or (2) is subject to such conditions (including conditions as to repayment) as the Scottish Ministers or (as the case may be) manager may determine.

32 Requirement to keep accounts and records

- (1) Crown Estate Scotland must—
- 15 (a) keep proper accounts and accounting records, and
- (b) prepare in respect of each financial year a statement of accounts.
- (2) A manager of one or more Scottish Crown Estate assets (other than Crown Estate Scotland) must, in relation to those assets, and any money or investments held by the manager which form part of the Scottish Crown Estate—
- 20 (a) keep proper accounts and accounting records, and
- (b) prepare in respect of each financial year a statement of accounts.
- (3) A statement of accounts prepared under subsection (1)(b) or (2)(b) (other than by the Scottish Ministers) must be in such form, contain such information and be prepared in accordance with such methods or principles, as the Scottish Ministers may direct under section 35(1).
- 25 (4) A manager (other than the Scottish Ministers) must send a copy of its statement of accounts prepared under subsection (1)(b) or (2)(b) to the Scottish Ministers no later than 3 months after the end of the financial year to which the statement relates.
- (5) Accounts and records kept, and statements prepared, under subsection (2) must be kept or prepared separately from any other accounts and records kept, and statements prepared, by the manager.
- 30

33 Audit

- (1) The Scottish Ministers must prepare in respect of each financial year a consolidated statement of accounts comprising—
- 35 (a) the statement of accounts prepared by Crown Estate Scotland for the year under section 32(1)(b), and
- (b) each statement of accounts prepared for the year under section 32(2)(b).
- (2) The Scottish Ministers must submit a copy of the consolidated statement of accounts to the Auditor General for Scotland for auditing.

End of management

34 End of management

- (1) Where a person ceases to be a manager during a financial year, the person must, no later than 3 months after the day on which the person ceases to be a manager—
- 5 (a) prepare its report under section 24(1) and its statement of accounts under section 32 for that year, and
- (b) (other than where the person is the Scottish Ministers) send a copy of the report and of the statement to the Scottish Ministers (and sections 24(7) and 32(4) do not apply).
- 10 (2) Subsection (3) applies where—
- (a) a person who is the manager of a Scottish Crown Estate asset transfers ownership of the asset, and
- (b) as a result, the person no longer manages any Scottish Crown Estate assets.
- (3) The person—
- 15 (a) is to be treated for the purposes of this Part as if the person were a manager, and has all of the powers and duties applying to a manager under this Part, for so long as the person holds any money or investments forming part of the Scottish Crown Estate,
- (b) is to be treated as ceasing to be a manager when the person no longer holds any
- 20 such money or investments.

Ministerial directions etc.

35 Power of Ministerial direction

- (1) The Scottish Ministers may direct managers (other than the Scottish Ministers) as to the exercise of their functions.
- 25 (2) A direction under subsection (1)—
- (a) may be general or relate to a particular function or matter,
- (b) may be given to—
- (i) each manager,
- (ii) a particular manager, or
- 30 (iii) managers of a particular description,
- (c) must—
- (i) be in writing, and
- (ii) be published in such manner as the Scottish Ministers consider appropriate as soon as reasonably practicable after it is given.
- 35 (3) The Scottish Ministers may revise or revoke a direction under subsection (1).
- (4) Subsection (2)(c) applies to the revision or revocation of a direction under subsection (1) as it applies to such a direction.

36 Ministerial guidance

- (1) A manager must have regard to any written guidance given by the Scottish Ministers about the exercise of managers' functions.
- (2) The Scottish Ministers must publish any such guidance in such manner as they consider appropriate as soon as reasonably practicable after it is given.

37 Power to delegate functions to Crown Estate Scotland

- (1) The Scottish Ministers may, subject to such conditions as they consider appropriate, delegate to Crown Estate Scotland some or all of their functions under—
- (a) sections 20 and 21,
 - (b) section 25,
 - (c) section 33.
- (2) A delegation under subsection (1)—
- (a) must be in writing,
 - (b) may be varied or revoked at any time,
 - (c) does not affect—
 - (i) the ability of the Scottish Ministers to exercise the functions delegated,
 - (ii) their responsibility for the exercise of those functions.
- (3) Where the Scottish Ministers' function under section 25(1) is delegated to Crown Estate Scotland—
- (a) section 24(7) applies as if it required managers (including the Scottish Ministers) to send copies of their reports prepared under section 24(1) to Crown Estate Scotland (rather than to the Scottish Ministers),
 - (b) article 18(1)(b) of the Crown Estate Scotland Order does not apply.
- (4) Where the Scottish Ministers' function under section 33(1) is delegated to Crown Estate Scotland, section 32(4)—
- (a) applies as if it required managers (including the Scottish Ministers) to send copies of their statements of accounts prepared under section 32(2)(b) to Crown Estate Scotland (rather than to the Scottish Ministers),
 - (b) does not apply to Crown Estate Scotland.

38 Provision of information or advice to the Scottish Ministers

- (1) A manager of one or more Scottish Crown Estate assets must provide the Scottish Ministers with such information or advice as the Scottish Ministers may require in relation to—
- (a) the assets,
 - (b) the exercise of the manager's functions.
- (2) The information or advice must be provided in such form as the Scottish Ministers may require.

39 Research and other activities

The Scottish Ministers may—

- (a) conduct research into any matter relating to the Scottish Crown Estate,
- (b) provide resources for the use of managers in the exercise of their functions,
- (c) take such other steps as they consider appropriate for the proper exercise of the Scottish Ministers’ functions, and those of managers, under this Act.

PART 4

GENERAL

40 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
- (b) different provision for different purposes.

(1A) Regulations under section 3(1)—

- (a) are subject to the affirmative procedure if they—
 - (i) relate to an asset all or part of which is situated in, or relates to, the Scottish marine area or the Scottish zone, or
 - (ii) add to, replace or omit any part of the text of an Act,
- (b) otherwise, are subject to the negative procedure.

(1B) In subsection (1A)(a)(i)—

“the Scottish marine area” is to be construed in accordance with section 1 of the Marine (Scotland) Act 2010, but does not include land which lies between the high and low water marks of ordinary spring tides,

“the Scottish zone” is to be construed in accordance with section 126(1) and (2) of the Scotland Act 1998.

- (2) Regulations under section 12(4) are subject to the affirmative procedure.
- (3) Regulations under section 6(1)(b) or 9(4) are subject to the negative procedure.
- (4) Regulations under section 14A(2) or 41(1)—
 - (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.
- (5) This section does not apply to regulations under section 44(2).

41 Ancillary provision

- 5 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

42 Consequential and minor modifications

Schedule 2 makes minor modifications of enactments and modifications consequential on the provisions of this Act.

10 43 Interpretation

- (1) In this Act—
- “asset”, in relation to the Scottish Crown Estate, has the meaning given in section 2,
 - “capital account” is to be construed in accordance with section 26(2)(b),
 - 15 “community organisation” is to be construed in accordance with section 6(1),
 - “Crown Estate Scotland Order” means the Crown Estate Scotland Order 2017 (S.S.I. 2017/36),
 - “Crown Estate Transfer Scheme” means the Crown Estate Transfer Scheme 2017 (S.I. 2017/524),
 - 20 “heritable security” has the meaning given in section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970,
 - “income account” is to be construed in accordance with section 26(2)(a),
 - “manager” has the meaning given in section 2,
 - “Scottish Crown Estate” has the meaning given in section 2,
 - 25 “Scottish harbour authority” has the meaning given in section 6(3).
- (2) In this Act—
- (a) unless the context requires otherwise, a reference to a Scottish Crown Estate asset includes a reference to part of the asset,
 - (b) a reference to managers’ functions is a reference to functions conferred on persons as managers of Scottish Crown Estate assets, and does not include a reference to 30 any other function of a person who is a manager.

44 Commencement

- (1) This Part, other than section 42, comes into force on the day after Royal Assent.
- 35 (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

45 Short title

The short title of this Act is the Scottish Crown Estate Act 2018.

SCHEDULE 1
(introduced by section 1)

CROWN ESTATE SCOTLAND: MODIFICATION OF ENACTMENTS

Crown Suits (Scotland) Act 1857

- 5 1 In the Crown Suits (Scotland) Act 1857, in section 4(2), for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”.

Ethical Standards in Public Life etc. (Scotland) Act 2000

- 2 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3, for “Crown Estate Scotland (Interim Management).” substitute “Crown Estate Scotland”.

10 *Scottish Public Services Ombudsman Act 2002*

- 3 In the Scottish Public Services Ombudsman Act 2002, in Part 1 of schedule 2, in paragraph 17B, for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”.

Freedom of Information (Scotland) Act 2002

- 15 4 In the Freedom of Information (Scotland) Act 2002, in Part 7 of schedule 1, in paragraph 63A, for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

- 20 5 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2, under the heading “Other Public Bodies”, for “Crown Estate Scotland (Interim Management).” substitute “Crown Estate Scotland”.

Public Services Reform (Scotland) Act 2010

- 6 In the Public Services Reform (Scotland) Act 2010, in schedule 8, for “Crown Estate Scotland (Interim Management).” substitute “Crown Estate Scotland”.

25 *Public Records (Scotland) Act 2011*

- 7 In the Public Records (Scotland) Act 2011, in the schedule, under the heading “Others”, for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”.

Gender Representation on Public Boards (Scotland) Act 2018

- 30 7A In the Gender Representation on Public Boards (Scotland) Act 2018, in schedule 1, for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”.

Islands (Scotland) Act 2018

- 7B In the Islands (Scotland) Act 2018, in the schedule, in paragraph 12, for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”.

The Scottish Parliament (Disqualification) Order 2015

8 In the Scottish Parliament (Disqualification) Order 2015 (S.S.I. 2015/350), in Part 1 of the schedule—

- 5 (a) in the entry relating to any member of Crown Estate Scotland (Interim Management), for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”,
- (b) in the entry relating to a member of the staff of Crown Estate Scotland (Interim Management), for “Crown Estate Scotland (Interim Management)” substitute “Crown Estate Scotland”.

10 *The Crown Estate Scotland (Interim Management) Order 2017*

9 (1) In the Crown Estate Scotland (Interim Management) Order 2017 (S.S.I. 2017/36)—

- (a) in article 1(1), for “Crown Estate Scotland (Interim Management) Order 2017” substitute “Crown Estate Scotland Order 2017”,
- 15 (b) for “Crown Estate Scotland (Interim Management)” in each place where it occurs in articles 3 to 19, substitute “Crown Estate Scotland”,
- (c) in article 3, for “Oighreachd a’ Chrùin Alba (Stiùireadh Eadar-amail)” substitute “Oighreachd a’ Chrùin Alba”,
- (d) for “Crown Estate Scotland (Interim Management)’s” in each place where it occurs in articles 12(3)(a) and 19(1)(b), substitute “Crown Estate Scotland’s”.

20 (2) The title of that Order becomes the Crown Estate Scotland Order 2017.

SCHEDULE 2
(introduced by section 42)

CONSEQUENTIAL AND MINOR MODIFICATIONS

Scotland Act 2016

25 1 Section 36(7) of the Scotland Act 2016 is repealed.

The Crown Estate Scotland Order 2017

2 (1) The Crown Estate Scotland Order is amended as follows.

- (2) In article 8 (early termination of membership), in paragraph (3)(b), for “order” substitute “or arrangement”.
- 30 (3) In article 12 (authority to perform functions), in paragraph (2)(b), for the words from “2(5)” to the end substitute “32(1)(b) of the Scottish Crown Estate Act 2018”.
- (4) In article 17 (grants and loans to Crown Estate Scotland), after paragraph (1) insert—
“ (1A) Crown Estate Scotland may not otherwise borrow money.”
- (5) In article 18 (annual report)—
- 35 (a) in paragraph (1), for “as soon as practicable” substitute “no later than 3 months”,

(b) after paragraph (1) insert—

“(1A)The report must, in particular, include an assessment of how Crown Estate Scotland’s activities during that year have contributed to the meeting of its objectives for that year.”,

5

(c) paragraph (2) is revoked,

(d) in paragraph (3), for the words from “publish” to the end substitute “not publish the report until a copy of it has been laid before the Scottish Parliament under section 25(1) of the Scottish Crown Estate Act 2018”,

10

(e) in paragraph (4)(a), after “article 15” insert “or section 35(1) of the Scottish Crown Estate Act 2018”,

(f) after paragraph (7) insert—

“(8) For the purposes of paragraph (1A), Crown Estate Scotland’s objectives for a financial year are its objectives as set out in a plan prepared under article 19(1) for a period which includes all or part of that financial year.”.

15

(6) Article 20 is revoked.

Scottish Crown Estate Bill

[AS PASSED]

An Act of the Scottish Parliament to rename Crown Estate Scotland (Interim Management); to make provision about the management of the Scottish Crown Estate; and for connected purposes.

Introduced by: Roseanna Cunningham

Supported by: Humza Yousaf

On: 24 January 2018

Bill type: Government Bill

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: www.parliament.scot/documents