



The Scottish Parliament  
Pàrlamaid na h-Alba

## **RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**

Bruce Crawford MSP  
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Committee

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Dear Bruce

### **Re. Consideration of the Scotland Bill**

Many thanks for your letter of 4 September outlining the Devolution (Further Powers) Committee's consideration of the UK Government's Scotland Bill, which I understand will be subject to the legislative consent procedure and will require the agreement of the Scottish Parliament to a consent motion in due course.

I understand that your Committee has agreed to write to the Secretary of State for Scotland in advance of the Report Stage, setting out the committee's views on the current state of the Bill and suggesting improvements.

The Rural Affairs, Climate Change and Environment Committee took evidence on the devolution of the Crown Estate in Scotland from stakeholders and local authorities on 27 May<sup>1</sup> and from the Crown Estate and the Cabinet Secretary for Rural Affairs, Food and the Environment, on 17 June.<sup>2</sup> The Committee also considered clause 31 of the Scotland Bill. The Committee's views on the evidence received and on the Bill and the response of the Cabinet Secretary for Rural Affairs, Food and Environment are set out in an annexe to this letter.

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<sup>1</sup> Scottish Parliament. *Official Report*, 27 May 2015

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9979>

<sup>2</sup> Scottish Parliament. *Official Report*, 17 June 2015.

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10025>

The Committee requested that the Crown Estate provide additional information on its holding in the Gibraltar Limited Partnership to aid our understanding of the situation with regard to Fort Kinnaird and a link to the response received from the Crown Estate is provided below.<sup>3</sup>

The Committee also invited a Treasury Minister to appear before the Committee to give evidence on the Crown Estate and specifically on the Transfer Scheme, however that invitation was declined and we are awaiting a written response. Once we are in receipt of that response the Committee will consider what further action it wishes to take.

Yours sincerely



Rob Gibson MSP  
Convener

**CC** John Swinney MSP, Deputy First Minister and Cabinet Secretary for Finance, Constitution and the Economy  
Clerks to Devolution (Further Powers) Committee

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[http://www.scottish.parliament.uk/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/Inquiries/Fort\\_Kinnaird\\_Factsheet\\_20150817.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/Inquiries/Fort_Kinnaird_Factsheet_20150817.pdf)

## ANNEXE

### **RACCE Committee view on the Scotland Bill 2015-16 and response from the Cabinet Secretary for Rural Affairs, Food and the Environment**

#### **Complexity of Clause 31**

The Committee considers that clause 31 of the Bill is very complex in its structure, providing for a scheme made by the Treasury with transferees, setting out procedures for the operation of the scheme and its amendment and covering matters which Smith envisaged might be included in a Memorandum of Understanding. Having considered this, the Committee is of the view that this complexity appears to be at odds with other reservations in the Bill and in the Scotland Act 1998. **The Committee encouraged the Scottish Government to seek to achieve a simpler form of transfer of powers in relation to the Crown Estate in Scotland.**

In response the Cabinet Secretary stated that he agreed with the Committee's view that the UK government's approach under clause 31 is an unnecessarily complex process. *"The clause includes carve outs for reserved issues and scope for UK Ministers to restrict the devolution, and for those reasons and those which the Committee has outlined, we are continuing to press for the proposed approach to be changed. We recently published our own proposed clause to remove the reservation in the Scotland Act 1998 relating to the management of the Crown Estate. This is an approach that we prefer as it proposes clarity and simplicity, and would provide the Scottish Parliament with full legislative competence in relation to the management of Crown Estate assets in Scotland including the Scottish offshore zone."*

#### **Maintaining the Crown Estate**

The Committee understands that there will be a requirement on whoever manages the Crown Estate, whether in Scotland or elsewhere, to "maintain and enhance its value and the return obtained from it, with due regard to the requirements of good management".<sup>4</sup> **The Committee sought clarification from the Cabinet Secretary as to whether Scottish Ministers will be enabled to take into account other factors, such as social considerations, in the management of the Crown Estate in Scotland.**

In response the Cabinet Secretary stated *"Under both the UK Government's Crown Estate clause in the Scotland Bill and the Scottish Government's alternative clauses, the Crown Estate Act 1961 would operate in Scotland until such time as the Scottish Parliament legislates to amend it. In the case of the Scotland Bill clause this is subject to the restrictions set out in clause 31(10) relating to the function of maintaining the property, rights and interests as "an estate in land", which is an excerpt from the Crown Estate Act 1961. Under the proposed Scotland Bill clause the transfer arrangements do not permit the Scottish Parliament to amend this. However, it would appear the commercial requirement could be amended in favour of more social objectives, subject to other requirements of the legislation."*

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<sup>4</sup> Crown Estate Act 1961, Section 1(3)

The Committee is concerned that the related provision of the Bill (at clause 31(10)) stating that the estate must be “maintained” and sufficient funding made available to make sure that happens is drafted in a very complex way. The Committee understands that the intention of the Bill is that this cannot be changed by Scottish Ministers in an Order in Council or by an Act of the Scottish Parliament. The Committee also understands that any surplus arising from the management of the Scottish assets, having met the requirements of the Crown Estate Act 1961, will be remitted to the Scottish Consolidated Fund, but it is not clear how this will be accounted for in the overall Scottish budget. **The Committee sought clarity from the Cabinet Secretary in relation to these points.**

*In response the Cabinet Secretary replied “I agree that the drafting of the provisions in relation to funding is complex and the implications are difficult to predict. The Scotland Bill does not define the arrangements for use of the income once it has been paid into the Scottish Consolidated Fund. The Scottish Government will ensure that there is transparency on remittances to the Fund. The funding arrangements associated with the devolution of the Crown Estate will be considered in the course of the forthcoming negotiations on the overall fiscal framework. The Scotland Bill clause, unlike our alternative clause, fails to remove the reservation in the Scotland Act 1998 concerning the revenues of the Crown Estate. Despite the transfer of legislative competence by clause 31(2) the treatment of hereditary revenues of the Crown would remain a reserved matter.”*

#### **Limited Partnership – Fort Kinnaird**

The Committee is concerned that the land held under the Limited Partnership (Fort Kinnaird) is effectively excluded from the transfer by the Bill, as are the related revenues. It is clear that the UK Government’s position is that this will not form part of the transfer to Scottish Ministers but it is not clear to the Committee whether this is a policy or a legal position.

In evidence to the Committee Mr Booth of the Crown Estate stated that that he considered as Fort Kinnaird is not owned or directly managed by the Crown Estate then legally it does not fall into the definition of what is to be transferred under section 90B(2) presumably on the basis the word “land “ is not used in section 90B(3). However the general wording in both sections is very similar.

The Committee is of the view that there may be an argument that if it is not “property” Fort Kinnaird is at least an “interest” and, as an economic asset, it is being managed by the Commissioners. That being the case the Committee considers that it should be feasible to remit the surplus income generated from that asset to Scottish Ministers. **The Committee sought the Cabinet Secretary’s view on this and on whether the terms of the agreement in relation to Fort Kinnaird allow the governance to accommodate a legal successor to the Commissioners for the purpose of the transfer of the functions.**

*In response the Cabinet Secretary stated “Clause 31 provides that part of The Crown Estate consisting of property, rights or interests which are held by a limited liability partnership are not to be transferred across. Fort Kinnaird retail park is not wholly owned by the Crown Estate but the Scottish Government’s view is that Fort Kinnaird is an economic asset in Scotland, and we do not agree that technical aspects of the complicated structure of ownership of this asset are a defensible basis for exclusion*

*from the transfer to Scottish Ministers. Our position, given its value and prominence in the Crown Estate Commissioners Scottish portfolio, is that even if the asset is not wholly owned by the Crown Estate, the Crown Estate interest could be transferred to Scottish Ministers or the equivalent value of the economic asset could be transferred. Indeed, the drafting of the clause (new section 90B(3) of the Scotland Act 1998) makes it clear that the restriction on the transfer concerns "part of the Crown Estate" which defeats the argument made by the Crown Estate in defence of the position before the RACCE Committee on 17 June. We have previously asked the UK government to consider the justification for the exclusion and I will continue to consider this issue which will depend on a more detailed analysis of the arrangements in place in relation to Fort Kinnaird."*

### **The Transfer Scheme**

In evidence to the Committee the Cabinet Secretary described the powers of the proposed Transfer Scheme as restrictive. The Committee considered that there are constraints but the general powers appear to be widely drafted and it is difficult for the Committee to take a view at this stage on what the scheme will eventually look like after negotiation between the Governments. The Committee understands that the scheme will be passed by Westminster and the Scottish Parliament will have no legislative role in approving the scheme. **The Committee sought further information from the Cabinet Secretary on the scheme, what it will cover, and what involvement the Scottish Government has had in the development of the scheme. The Committee also sought a view on whether subsequent amendments to the scheme, after the initial transfer, could be applied retrospectively.**

**In terms of drafting, the Committee shares the view of the Devolution (Further Powers) Committee, as contained in their Interim Report,<sup>5</sup> that is, if the current drafting of the Bill remains and the transfer scheme is to be adopted then the word "may" in section 90(B)(1) should be replaced with "shall".**

The Cabinet Secretary responded stating *"The UK Government's draft clause is overly complex, and only allows for partial legislative devolution. It is on that basis that the Scottish government has been engaging with the UK government. We have had general discussions with staff from the Crown Estate Commissioners but have not yet had a specific input into the drafting of the transfer scheme or the outline of the transfer scheme which the UK Government placed in the House of Commons library recently. We anticipate that the draft transfer scheme will not be available until later this year. The Committee will be aware that the transfer scheme will be made by HM Treasury as a UK Statutory Instrument which must be agreed with the Scottish Ministers. The clause provides that amendments may be made to the Scheme which may have effect from the date of the transfer. The clause also includes provision for Scottish Ministers to make changes to the Crown Estate Act 1961 that are necessary for the transfer, either before or after the transfer takes place, which is exercisable through a Scottish Statutory Instrument. We anticipate that some measures will be required in advance of the transfer to provide for a workable organisation on Day 1 and in advance of the introduction of long term arrangements for the management of Crown Estate assets in Scotland. I confirm that I too share the view of the Committee and Devolution (Further*

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<sup>5</sup> Devolution (Further Powers) Committee – New Powers for Scotland: An Interim report on the Smith Commission and the UK Government's Proposals.

*Powers) Committee that if the current drafting of the Bill remains and the transfer scheme is to be adopted then the word "may" in section 90(8)(1) should be replaced with either "shall" or "must". This would have the effect of placing a duty on HM Treasury to make a scheme."*

### **Operation of the Crown Estate in Scotland**

Evidence heard by the Committee suggested that there may be a need to retain a degree of flexibility in the way in which the Crown Estate is managed in Scotland post devolution. The Committee considers that there are merits in exploring a hybrid approach to management which would provide a strategic perspective at a national level, for example on research and on the management of offshore assets, and would enable further devolution, not only to island and local authorities but directly to communities. The Committee understands that there will be significant challenges in this, not least in retaining the expertise of the Crown Estate staff in Scotland, and in ensuring the capacity to cross-subsidise and invest across the Crown Estate portfolio in Scotland is retained. **The Committee sought the views of the Cabinet Secretary on this and on the Scottish Government's plans for the management of the Crown Estate and for further devolution to local authorities and to communities.**

The Cabinet Secretary responded stating *"The Scottish Government's current focus is on ensuring the full devolution of powers concerning the management of the Crown Estate to the Scottish Parliament takes place in a workable way. Once we have achieved devolution, we will consult on how the assets should be managed for the long term in Scotland. I do not underestimate the challenges but I remain committed to ensuring that there is continuity and stability throughout the transition. This will be best achieved through the transfer of Crown Estate management as a single entity and as a going concern followed by consideration of the appropriate long term arrangement for management and control of these assets. A process of consultation will be taken forward on the arrangements for management of assets currently administered by the Crown Estate commissioners. As I noted in my verbal evidence, this will include a forum for stakeholder interests to inform the development of proposals. It is vital that we get effective devolution to enable a wider debate to take place on the future management of Crown Estate assets in Scotland. I welcome the Committee's views on the form which the future management arrangements might take and will take these into account as we develop our proposals. I remain committed to ensure that island and coastal local authorities receive net income from marine assets in Scottish territorial waters, and I am clear that we wish to see coastal and rural communities be involved and benefit from our marine resources."*