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Convener
Devolution (Further Powers) Committee
The Scottish Parliament
Edinburgh
EH99 1SP

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Dear Convener

Devolution (Further Powers) Committee – evidence from The Crown Estate

Thank you for the opportunity to provide evidence to the Committee with regard to the draft legislation relating to The Crown Estate in Scotland, and to follow up with clarification on the points you raise in your follow-up letter of 13th March.

I hope that the Committee found the session on 5th March informative and useful. Throughout the discussions regarding devolution of activity we have sought to inform deliberations in an open, transparent and constructive manner and to assist in effective implementation of the Smith Commission's recommendations.

In addition to the written and oral evidence which we have presented to the Committee, we are pleased to provide further clarification as requested. Before going into specifics I would like to make absolutely clear that The Crown Estate respects the recommendations of the Smith Commission and is working to help implement these by sharing our knowledge and expertise with Scottish Government. By way of example, earlier this month we held a full day workshop with senior Scottish Government civil servants to go through the detail of the complexities of our business in Scotland. This is the first in a series of meetings planned through which the detail of a transfer plan can be discussed.

We are committed to making this happen as swiftly and smoothly as possible for the sake of continuity for our staff and our customers, and to that very end have already met with Treasury officials and others to support preparation of the Statutory Transfer Scheme (STS) that will transparently set out the detailed Crown Estate functions being transferred.

One of the key questions for the Scottish Government to consider is where management responsibility will sit within the Scottish Government, along with establishing a target transfer date, to ensure the business continues to deliver for customers, commercial stakeholders, communities and those staff who will move to the new organisation. We hope the working arrangements with Scottish Government officials described above will assist a robust resolution of those questions. It is not our intention to set up a parallel Crown Estate in Scotland.

In response to your specific questions:

Q. Whether any revenues from future investments in Scotland by the continuing Crown Estate body after the date of devolution would be payable to HM Treasury only?

A. The net revenue (profit) generated by the Crown Estate Commissioners in managing The Crown Estate is paid to Treasury and forms part of the UK Consolidated Fund. This arrangement would remain in place for revenues from any future investments, for the benefit of the UK as a whole, and would include any revenues from future investments in Scotland if they were made by the current Crown Estate.

Q. Whether there is any scope for joint investments to be made by this body and what would become the devolved corporate entity in Scotland after devolution, and thereby providing the latter with a share of the revenues generated?

A. The Crown Estate's future investments would continue to be made in accordance with its commercially independent investment strategy which reflects the requirements of the Crown Estate Act 1961. The Act requires a commercial return to be secured from investments, but does not preclude joint investment with any fully compatible party or class of party.

Q. Whether there are any classes of investment in Scotland that this body would not be permitted to invest in (for example, ports, harbours, land, estates, property, assets utilising the sea bed or coastal areas etc.) or would it be free to invest in any asset depending on its own investment strategy?

A. The Crown Estate Act limits investments to land or other property rights and interests. The Crown Estate implements the requirements of the Act through its commercially independent investment strategy, which focusses on its core sectors: West End London, prime retail schemes around the UK, rural and offshore energy.

We would not envisage making any future investment in coastal assets, rural assets, or the seabed, in or around Scotland. As with other parts of the UK the focus for our investment activity would be prime retail schemes, for example shopping centres or retail parks, where we can deploy in excess of £80-100m per asset. We often do this in partnership with major international investors, including some of the world's largest sovereign wealth funds; investment which is generally welcomed locally. We do not see this as building up a "new Crown Estate" in Scotland, which is clearly of concern to the Committee.

Q. Whether there would be any legal impediment for the devolved corporate entity in Scotland after devolution to invest in other parts of the UK out-with Scotland?

A. This question is, respectfully, a matter for Scottish Ministers to consider, in their approach to legislating for the ongoing management of Crown assets in Scotland.

Q. Whether it was The Crown Estate or HM Treasury that highlighted that this body would be able to continue to make investments in Scotland after the devolution of the management and revenues of certain economic assets to the Scotland?

A. The concept of ongoing investment was a product of discussions informing the draft legislation, that there was benefit in The Crown Estate being able to invest in commercial property in Scotland post devolution. This would keep The Crown Estate on a level playing field with other institutional investors in being able to invest in proven established capital markets, wherever the opportunity may arise in the UK.

English Limited Partnerships/Fort Kinnaird:

Q. Can you clarify, on a year-by-year basis, the net revenues to The Crown Estate that have been generated from this mixed-property English limited partnership since you first held an interest in this development?

A. The Crown Estate's year-by-year net revenue (this covers all revenue generated in the English limited partnership (net of borrowing) from all its interest) in the Gibraltar Partnership is as follows:

2007/08	£8.4m	2011/12	£2.7m
2008/09	£6.2m	2012/13	£6.3m
2009/10	£4.5m	2013/14	£5.7m
2010/11	£5.0m		

Q. Can you provide further detail of the breakdown of the investors that have made investments in the Fort Kinnaird project and investment shares? Furthermore, please provide information on apportioning of revenue.

A. The Crown Estate is a 50:50 joint venture partner with the Hercules Unit Trust – which owns the other limited partnership interest. Hercules Unit Trust is a property unit trust, managed by Schroders, which holds investments worth around £1.7 billion in retail property across the United Kingdom. Hercules Unit Trust is circa 67 per cent owned by FTSE100 listed property company British Land, the balance being owned by a range of pension funds and other institutional investors.

The Crown Estate's revenues from the Gibraltar Partnership (which holds assets in England and Scotland) are split 50:50 with the Hercules Unit Trust.

Q. What was the rationale for adopting this form of separate structure for this particular investment, which is not the norm for other investments made by The Crown Estate in Scotland?

A. English limited partnerships (ELPs) such as the Gibraltar Partnership are a market standard investment vehicle, being widely used to support multi-property joint ventures like that between The Crown Estate and the other limited partner in this ELP.

ELPs are used for a variety of reasons and are often used (as in this case) to allow access to property interests that are too large for a single investor to own 100%.

In this instance, Fort Kinnaird was brought to the partnership by our partner (Hercules Unit Trust) and the asset is managed by British Land on behalf of the ELP. The other property asset in the Gibraltar Partnership, in Cheltenham, was brought to the partnership by The Crown Estate.

ELPs have been used by The Crown Estate for a number of other joint ventures including Fosse Retail Park in Leicester, the Gateway and St James's Market schemes in central London and the Westgate Centre in Oxford. The use of an ELP is a deal structure decision made between The Crown Estate and its respective joint venture partners, which has no connection to the location of the properties involved.

Q. Whether you have any intention of making future investments in Scotland through this type of investment structure prior to devolution taking place? Furthermore, whether there would be anything that would legally prevent you from doing so?

A. We have no intention of making such investments prior to devolution, but would not want to be barred from making such investments. Legally, we do not believe that we are prevented from doing so.

Other Matters:

Q. What is the geographic extent of Crown Estate devolution?

A. Scottish Territorial Waters:

The existing definition of "Scotland" in section 126(1) the Scotland Act 1998 provides that it *"includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland"*.

Given the express reference to Scotland in the draft bill - new section 90B(2)(a) – we are clear that Crown assets managed by The Crown Estate in Scottish territorial waters will devolve to Scottish Ministers.

The "Scottish zone": The "Scottish zone", which is referenced in new section 90B(2)(b) of the draft bill is already defined in section 126(1) of the Scotland Act 1998 as being *"the sea within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976) which is adjacent to Scotland"*

The referenced fishery area includes the whole of those areas on the continental shelf where The Crown Estate manages sovereign rights to minerals, offshore renewables and gas storage (under the Continental Shelf Act 1964, the Energy Act 2004 and the Energy Act 2008 respectively) to a maximum of 200nm from shore.

Those boundaries were later formalised under the Scottish Adjacent Waters Boundaries Order 1999 (setting the limits as against the rest of the UK) and we are therefore clear that Crown assets managed by The Crown Estate on the continental shelf adjacent to Scotland (to a maximum of 200nm) will devolve to Scottish Ministers.

There was some discussion on the differing contractual terms for Round Three and Scottish Territorial Waters (STW) Offshore Wind Rounds. These differences reflect the upfront investments The Crown Estate made to developers during the development phase. This direct investment took the form of payments by The Crown Estate to developers as a contribution towards survey work and meteorological mast costs.

We referred in our evidence to documents we have shared with the Scottish Government. Though not requested in your letter, we will forward copies of these to the Committee under separate cover.

I hope that this information is helpful to members. If we can be of further assistance please do not hesitate to ask.

Yours sincerely

Gareth Baird
Scottish Commissioner