



## DEVOLUTION (FURTHER POWERS) COMMITTEE

### AGENDA

7th Meeting, 2015 (Session 4)

Thursday 5 March 2015

The Committee will meet at 9.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Evidence on the Crown Estate provisions** The Committee will take evidence from—

Andy Wightman, Independent Writer and Researcher on Land Rights;

Dan Finch, Chief Executive, Moray Offshore Renewables;

Walter Speirs, Director, Muckairn Mussels Ltd and former Director at Scottish Aquaculture Innovation Centre;

Angus Campbell, Leader, Comhairle nan Eilean Siar;

Steve Barron, Chief Executive, Highland Council;

and then from—

Gareth Baird, Scottish Commissioner, Vivienne King, Director of Business Operations and General Counsel, Ronnie Quinn, Head of Ocean Energy and Energy & Infrastructure Lead (Scotland), and Alan Laidlaw, Rural and Coastal Portfolio Manager (Scotland), The Crown Estate.

3. **Review of evidence heard (in private):** The Committee will review the evidence heard on the Crown Estate during today's meeting.
4. **Working with other committees on the proposals for further devolution:** The Committee will discuss a note from the clerk.

**DFP/S4/15/7/A**

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Clerk to the Devolution (Further Powers) Committee  
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# Scottish Parliament Devolution (Further Powers) Committee

## Implementing the Smith Agreement

Written Evidence from Andy Wightman

26 February 2015

### INTRODUCTION

I am writer and researcher on land rights and governance in Scotland and have written extensively on the topic of land governance. I am currently a Specialist Adviser to the House of Commons Scottish Affairs Committee and a member of the Commission on Local Tax Reform. Previously I submitted evidence to the Treasury Committee, the Scottish Affairs Committee and the Scotland Bill Committee about the Crown Estate.

Debate over the the administration and management of the Crown Estate in Scotland has been underway for around three decades and a succession of reports and inquiries (Crown Estate Review Working Group, Treasury Select Committee & Scottish Affairs Select Committee) have all highlighted the need for change in the governance of the Crown Estate in Scotland.

### PROPOSALS

I welcome the Smith Commission's recommendation in paragraph 32.

*"Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from those assets will be transferred to the Scottish Parliament."*

I welcome too, the response of the Crown Estate Commissioners in a press statement on 27 November 2014 in which they noted the Smith Commission recommendations including the above.

Many people and organisations have been arguing for the repatriation to Scotland of the administration and revenues of the Crown property, rights and interests that currently make up the Crown Estate in Scotland. Scotland's crown property rights are distinct from those of the rest of the UK since they are governed by Scots law. The administration of these rights and their revenues was conducted in Scotland until the 1830s and returning the administration of this portfolio of public property to Scotland thus makes eminent sense. Scotland already administers some Scottish Crown property rights that do not form part of the Crown Estate (e.g. bona vacantia, ultimus haeres and treasure trove).

### TERMINOLOGY

Discussions around the Crown Estate are sometimes confused by the lack of clarity over the terms used. The Crown Estate is defined in section 1(1) of the Crown Estate Act 1961 as 'the property, rights and interests' managed by the Crown Estate Commissioners (CEC) on behalf of the Crown. In other words the Crown Estate consists of land and property interests (seabed, foreshore etc.). The property which makes up the Crown Estate is owned by the Crown (the landowner) and is administered and managed by the Crown Estate Commissioners (a statutory corporation).

Following devolution, the Crown will remain the owner of the Crown property, rights and interests that currently make up the Crown Estate in Scotland (though it will of course be competent for whoever administers these rights following devolution to lease or transfer any land or property to third parties), but the Scottish Parliament will be responsible for

their administration and the revenues. The key change is that there will (or should) be no role for the CEC in administering these Crown property, rights and interests and thus there **will no longer be** a Crown Estate in Scotland - that being the name given in the Crown Estates Act 1961 to the property, rights and interests managed by the CEC - an act that will, after devolution, have no force in Scotland.

### **COMMAND PAPER**

The recommendations of the Smith Commission are clearly laid out in paragraphs 32-35 of the Smith Commission report.

The Command Paper of January 2015, however, does not implement these recommendations in three important areas.

### **Legislative Proposal**

The proposal in the Command Paper is for a “scheme” of devolution. This is justified in paragraph 5.5.4 of the Command Paper, none of whose reasoning I agree with.

The devolution of responsibility for the administration and management of the Crown Estate “will be transferred to the Scottish Parliament” says the Smith Commission paragraph 32. Yet the proposed means by which this is to be done is opaque, complex and unnecessary. In order to implement the Smith recommendations, all that is required are a few straightforward legislative amendments as follows.

1. Repeal of section 2(3) and 3(3)(a) of Schedule 5 of the Scotland Act 1998
2. Repeal of section 18 of the Scotland Act 2012
3. Repeal of section 1(4) of the Crown Estate Act 1961 (the power of direction by the Secretary of State for Scotland).
4. Amendment of the Crown Estate Act 1961 to the effect that the Act does not apply to Scotland.
5. Provision in the new Scotland Act that all statutory responsibilities previously exercised by the CEC in the past are henceforth to be exercised by Scottish Ministers.

There may be a few more consequential amendments but the above provides the key legislative reforms necessary to end the role of the CEC in Scotland and implement paragraph 32 of the Smith Commission.

I see no merit in the proposed “scheme” which seems to me to be a wholly unnecessary device that has the potential to confuse matters and contradict the core Smith recommendation.

Furthermore, the thinking in the Command paper is unclear and potentially muddled. Paragraph 5.5.8 implies that legislative competence will be transferred by the “scheme” but paragraph 5.5.11 talks about an intent to transfer competence before the “scheme”.

I confess I do not understand what is meant by 5.5.11. I presume it means that an appropriate legal framework for administering and managing the Crown property, rights and interests that make up the Crown Estate needs to be in place in Scotland before the role of the CEC ends. It is not clear to me why this should be the case. Adequate

preparations within the Scottish Government (and, for example, Marine Scotland), can be made prior to devolution but these are essentially of an administrative nature. Legislative proposal 5. above makes clear who is responsible for the immediate exercise of the statutory responsibilities previously carried out by the CEC.

As matters stand in the Command Paper, this is a recipe for confusion, conflict and chaos.

### **Crown Estate Commissioners in Scotland**

The Command Paper makes clear that the CEC will continue to be able to invest in Scotland and acquire land and property (Part 4, section 90B (2) in the Command Paper legislative clauses). These investments would be administered and managed by the CEC.

This contradicts the Smith proposal which is to devolve the administration and management of the Crown property rights currently managed by the CEC. Any future property acquisition by the CEC in Scotland would be owned by the Crown in Scots law in a situation where the responsibility for the administration and revenues of these property rights has been devolved.

We could then find ourselves in a situation where there would appear to be, in effect, two "Crown Estates" in Scotland - one administered by the CEC in London and one administered under whatever arrangements are enacted by the Scottish Parliament.

This is unworkable. One cannot devolve authority over the Crown property, rights and interests that make up the Crown Estate in Scotland and then, in the same breath, provide for the conditions in which a new "Crown Estate" in Scotland can be built up by the CEC, administered under the arrangements that prevailed prior to the devolution of that selfsame Crown Estate. This would make bad law and is unnecessary.

### **Devolution v. decentralisation**

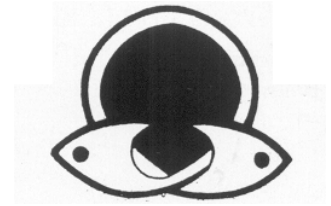
There is no disagreement among any of the political parties in Scotland that, following devolution of the administration and management of the Crown property, rights and interests that currently make up the Crown Estate in Scotland, there should be developed a framework for decentralisation. This is evident in paragraph 33 of the Smith Commission report. This might involve, for example, local authorities being given the responsibility for managing foreshore owned by the Crown or port authorities being granted, under specified conditions, outright ownership of the seabed within and surrounding the port or harbour.

Such decisions are properly decisions for the Scottish Parliament following due debate and consideration of the options. Thus, the role of the CEC in Scotland should be ended by means of the straightforward legislative amendments outlined previously. Then, following the assumption of legislative competence, the Scottish Parliament be free to make such provisions as it deems appropriate and necessary for the ongoing administration and management of the Crown property, rights and interests that currently make up the Crown Estate in Scotland.

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Heather Galway  
Committee Assistant  
c/o Clerk to the Committee  
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Edinburgh  
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25<sup>th</sup> February 2015

Dear Heather

## **Crown Estate/Other Provisions**

Thank you for giving me the opportunity to comment on the Draft Clauses relating to the future of the Crown Estate in Scotland.

I have been a tenant of The Crown Estate for thirty years, with several mussel farming sites on the West Coast of Scotland. I have always found them to be good landlords, and very supportive of the shellfish sector. Whilst I was Chair of the Association of Scottish Shellfish Growers (ASSG) I was part of the Crown Estate Scottish Liaison Group.

I understand the political desire to have control of the Scottish assets of the Crown Estate managed in and by Scotland. My concern would be that some of the good work done by the present management may be lost.

During my term with ASSG the Crown Estate agreed to reduce rents for some shellfish farms in order to give the industry some time to develop. In the recent review they have agreed to leave rents as they are for another five years. They also contribute financially to the Scottish Aquaculture Research Forum, funding much needed research. In addition they are the main sponsor of the ASSG annual conference, which would really be under threat should this funding disappear.

They have been very supportive of the emerging seaweed cultivation and harvesting sector, funding workshops and research. I know of no other body that would have provided this support.

Cont'd.....

Directors: Walter Speirs and Janice McGhee

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The Coastal Communities Fund has provided money for many projects in Scotland, and would be sorely missed should it no longer be available. Partnership working with local communities has helped to finance improvements to harbour and marina facilities for visitors and locals alike.

Should the existing powers of The Crown Estate be handed over to Local Authorities there would be a conflict of interests. The Local Authority would benefit financially by granting planning permission to aquaculture or other developments. The Crown Estate was in a similar position until they agreed to hand over planning consenting powers to Local Authorities. It took ten years for this handover to be completed, during which time the aquaculture industry stagnated.

My suggestion would be that in future the Scottish assets of the Crown Estate should be managed by the existing staff, on a similar basis as is currently in operation, the only difference being that revenue would flow to Scottish Government rather than Westminster. A Scottish Board of Directors could oversee the function and processes. An agreed percentage of revenue could be committed to research and community projects, helping to develop much needed infrastructure around the Scottish coastline.

I hope you find these points useful, and look forward to discussing further on Thursday 5<sup>th</sup> March.

Yours sincerely,

**Walter Speirs**

The Scottish Parliament Devolution (Further Powers) Committee

## THE SMITH COMMISSION AND THE CROWN ESTATE

Written Submission by Comhairle nan Eilean Siar, Shetlands Islands Council and Orkney Islands Council on behalf of *Our Islands: Our Future "the Campaign"*

26 February 2015

### THE SMITH COMMISSION AND 'SCOTLAND IN THE UNITED KINGDOM'

- 1.1 The following table provides extracts of the findings of the Smith Commission report (November 2014) in relation to The Crown Estate in Scotland against the Crown Estate specific content of 'Scotland in the United Kingdom – an Enduring Settlement' (2015):

The Smith Commission Report	Scotland in the United Kingdom
32 <i>Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament.</i>	<p>5.5.2 <i>New powers will be given to the Scottish Government by a transfer scheme, transferring in a single transfer the Crown Estate Commissioners' functions of managing wholly owned Scottish property assets currently forming part of the Crown Estate.</i></p> <p>5.5.3 <i>The transfer of responsibility for the management of the Scottish assets will include control of any revenues arising from these assets.</i></p> <p>5.5.7 <i>Once the transfer scheme takes effect, the revenue from the Scottish assets will be paid into the Scottish Consolidated Fund.</i></p> <p>5.5.11 <i>The intention is to transfer to the Scottish Parliament competence to legislate about the management of the Scottish assets before the transfer scheme.</i></p>
33 <i>Following this transfer, responsibility for the management of those assets will be further devolved to Local Authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities.</i>	5.5.8 <i>The scheme will also transfer to the Scottish Parliament competence to legislate about the management of the Scottish assets.</i>
34 <i>The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK wide critical national infrastructure.</i>	5.5.9 <i>The Scottish and UK Governments will draw up a Memorandum of Understanding.</i>
35 <i>Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.</i>	

- 1.2 Paragraph 33 of the Smith Commission report states, "Following this transfer, responsibility for the management of those [Crown Estate in Scotland] assets will be



further devolved to Local Authority areas. **The Scottish Island Authorities would like to know why this key provision of the Smith Commission report has not been explicitly reflected in the 'Scotland in the United Kingdom' paper.**

## **BACKGROUND**

- 2.1 For many years, the Scottish islands have been home to the bulk of Scotland's aquaculture industry and, although Crown Estate lease revenues from these developments have leaked out of the island economies back to HM Treasury, aquaculture has demonstrated the potential for Marine Estate activity to sustain and grow fragile island economies.
- 2.2 Now, the Scottish Islands stand on the brink of the Renewable Energy revolution. Home to the best Renewable Energy resource in Europe (wind, wave and tidal), Shetland, Orkney and the Outer Hebrides are well placed to capitalise on billions of pounds of private investment in this industry. The potential for the extraction of Gigawatts of clean electricity from the seas around the Scottish Islands has been well proven and simply awaits the connection of these islands to the National Grid electricity network.
- 2.3 The Renewable Energy installations around the Scottish Islands will generate unprecedented levels of revenue income and there is a fundamental inequity in the leakage of this income from host communities which happen to be among the most fragile communities in the United Kingdom. The Scottish Islands face structural economic problems in terms of insularity, peripherality and a higher cost of living (up to 25% higher than the UK mainland average in some remote island locations). High travel costs, high fuel prices and Fuel Poverty levels of up to 71% place the Scottish Islands at a significant disadvantage and natural justice demands that revenues generated from island assets should remain in island communities.

## **SCOTTISH AFFAIRS COMMITTEE – 'THE CROWN ESTATE IN SCOTLAND'**

- 3.1 The Scottish Islands gave extensive evidence to the Scottish Affairs Committee's report on The Crown Estate in Scotland, pointing out the fundamental injustice of economic leakage out of some of the UK's most fragile communities. This evidence made clear that responsibility for Crown Estate assets in Scotland should be devolved to the Scottish Parliament but, crucially, that administration of Crown Estate revenues should be further devolved to the Local Authorities of the host communities.
- 3.2 The Scottish Islands recognised the need for strategic infrastructure to be managed in the national interest and proposed the administration of national interest marine estate developments (interconnectors etc) by Scottish Ministers.
- 3.3 However, the Scottish Islands were very clear that revenues generated by local Marine Estate developments (aquaculture, wave and tidal Renewable Energy installations etc) should be administered by the Local Authority for the area.

## **CURRENT POSITION**

- 4.1 The position of the Campaign is that management of local assets revenues by Local Authorities makes sense because only these Local Authorities truly represent the communities hosting Marine Estate developments and only these Local Authorities have a detailed knowledge of their own economic situation with the insight to provide targeted economic interventions where they are needed. Only these Local Authorities can effectively support their local supply chains and ensure that development is managed for the benefit of the communities served and that revenues received from Marine Estate developments are directly invested back into local research and development, local fabrication and the wider local supply chain.
- 4.2 The position of the Campaign has also been consistent in seeking the devolution of management and control to the islands councils of the foreshore and seabed surrounding their respective islands.

A summary of the Campaign's position is as follows:

- 1 In regard to the 12 mile nautical limit, ownership of the sea, seabed and

- foreshore will be transferred to each local authority.
- 2 In regard to the 12 mile nautical limit, decision making powers will be devolved to each local authority, which will include powers to lease and procure community benefit.
  - 3 In regard to the sea and seabed beyond the 12 mile nautical limit, being an area of community interest, appropriate decision making powers will be devolved to each local authority, which will include powers to procure community benefit.
  - 4 In regard to the 12 mile nautical limit and in regard to the sea and seabed beyond the 12 mile nautical limit, being an area of community interest, that generation of shared income through royalty, community benefit or other charging routes will be devolved to each Council.
  - 5 In regard to shared income through royalty, community benefit or other charging routes,
    - a) there will be a 80:20 local/national split for income generated within the 12 mile limit as recommended by the Scottish Affairs Committee and
    - b) there will be a 20:80 local/national split as appropriate for income generated beyond the 12 mile nautical limit, also as recommended by SAC.
  - 6 In regard to shared income through royalty, community benefit or other charging routes, each local authority will
    - a) Administer such funds;
    - b) Determine how such funds are spent;
    - c) Determine the model (or models) for their delivery;
    - d) Determine who will benefit; and
    - e) Determine the level of benefit.
  - 7 Primary legislation will be enacted to give legislative effect to these proposals.

It has been recognised by the campaign that “ownership” of the sea, seabed and foreshore may not be possible. However, this in no way diminishes the ambition of the Campaign to secure as much effective control and management of the waters surrounding the islands, as well as the revenues generated.

For example, we believe that we are well placed to administer the leasing of developments within 12 nautical miles.

- This is nothing new to us; we have the requisite experience . We have a track record of existing, established and effective locally based management structures. The islands councils of Orkney and Shetland both managed aquaculture and other marine developments for almost 30 years, initially under their respective works licence regimes, and latterly under planning legislation.
- Local authority management of seabed and foreshore would enhance the work of Marine Planning Partnerships and provide a more joined-up approach.
- Allowing us to lease seabed sites etc would enhance democratic and local accountability and help streamline the marine licence process

The Scottish government's 'Empowering Scotland's Island Communities' recognised some of our aspirations. In respect of revenues, it stated:

"The marine assets of island communities are key to their future and the wealth that is generated should be reinvested to safeguard that future. **The Scottish Government will therefore ensure that 100 per cent of the net income from the islands seabed is passed to island communities.**

The income from leasing and other legal agreements in the islands associated with the Crown Estate Commissioners' current responsibilities will include, but will not be restricted to, income from leasing and other legal agreements for cables, pipelines, aquaculture, wave, wind and tidal devices, piers, local authority harbours and moorings in territorial waters.

The Scottish Government acknowledges each Council's Community Planning and leadership role for their islands. Net income from activities within 12 nautical miles would be passed to individual Councils and each will be responsible for administering their own fund, including determining how funds are spent, who will benefit and the level of benefit. There is potential for each Council to administer their own fund jointly with development trusts and other types of funds in order to maximise opportunities for pump priming projects that can deliver social and economic benefits and empower local communities".

In respect of control, The Scottish government's 'Empowering Scotland's Island Communities' stated:

"The Scottish Government and the Islands Councils recognise that the status quo on the Crown Estate is not tenable and supports reform. The Scottish Government will propose a framework to provide the Islands Councils greater involvement in the management of the Crown Estate marine resources.

This framework will involve local authorities and communities by:

- ensuring that decision making on the Crown Estate is subject to broader objectives including community benefit and community development as well as revenue raising;
- guaranteeing that Councils can influence and plan for how Crown assets in the waters around each group of islands are used through the Councils' lead role on regional marine planning;
- transferring from the Crown Estate Commissioners to the Islands Councils control of the management of the foreshore and the limits of jurisdiction of local authority harbours and marinas, subject to measures to ensure that community aspirations are met. Appropriate arrangements would be developed separately for independent trust ports, community interest company owned/operated harbours and those owned by Caledonian Maritime Assets Ltd (CMAL) servicing the lifeline ferry network;
- ensuring that Councils and communities are consulted on the strategy for leases and other legal agreements including pricing;

- ensuring the Councils and communities are consulted on novel proposals for leases and other legal agreements; and
- ensuring that the islands can benefit from use of assets currently administered by the Crown Estate Commissioners through the income distribution arrangements outlined above.

4.3 The Campaign was therefore pleased to read in the Smith Commission that, *“Following this transfer [of management of the Crown Estate’s economic assets in Scotland to the Scottish Parliament], responsibility for the management of these assets will be further devolved to Local Authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibility”*

#### **SCOTLAND IN THE UNITED KINGDOM – AN ENDURING SETTLEMENT**

- 5.1 Having lobbied hard over a number of years for devolution of Crown Estate revenues and management, the Campaign was pleased to note the contents of the Smith Commission report in this regard. The campaign and the three islands councils are disappointed that the specific provisions of paragraph 33 of Smith have not been reflected in ‘*Scotland in the United Kingdom – an Enduring Settlement*’ which refers to “*competence to legislate about the management of the Scottish assets*” being transferred to the Scottish Parliament (paragraph 5.5.8).
- 5.2 The Scottish Islands Councils would wish to understand the rationale for the draft clauses being framed in this way given the all party commitment to the Smith Commission Report.. The Parliament’s Devolution (Further Powers) Committee is urged to consider how legislation could be enacted which respects the Smith Commission report and makes explicit provision for further devolution of management of Crown Estate assets and revenues to host Local Authorities. The three islands councils would suggest a provision similar to that quoted in paragraph 5.5.3 above with appropriate amendments to make reference to islands councils and other areas seeking such responsibilities.
- 5.3 The principle that the benefits of Marine Estate developments should not be dislocated from the communities who host these developments should be acknowledged. Revenues should not leak out of some of the most fragile economies in the United Kingdom to the Scottish Consolidated Fund.

**The Highland Council**

**Written Evidence to the Scottish Parliament's Devolution (Further Powers) Committee**

**Devolution of the Crown Estate in Scotland**

27 February, 2015

**Introduction**

The Highland Council welcomes the opportunity to contribute to the Committee's consideration of the UK Government's Draft Legislative Clauses in response to the Smith Commission as it relates to the Crown Estate in Scotland

The Committee may be aware that the Highland Council has campaigned for major reform of the Crown Estate in Scotland for many years and has sought a strategic shift in the ownership of marine resources by working with the Scottish Government and pressing the UK Government to conduct a full review of the Crown Estates.

In February 2007 Highland Council (with its Highland and Island local authority partners and Highlands and Islands Enterprise published the report titled "The Crown Estate in Scotland – New Opportunities for Public Benefits". The report did much to clarify the position of the Crown Estate in Scotland and to identify alternative management options that would deliver additional public benefit. The report recommended that:

*'the secretary of state for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and assets which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and well-being of the people of Scotland'*

Since the publication of that report the Highland Council has contributed to a number of consultations and parliamentary evidence gathering opportunities at both a Scottish and UK level.

**Background to the Crown Estate**

The Crown Estate consists of the Crown property, rights and interests managed by the Crown Estate Commission. The Crown Estate Commission manages the Crown Estate on behalf of the nation and all net surplus revenue from the Estate goes to the Treasury for general government expenditure.

The Crown Estate in Scotland consists of ancient possessions of the Crown in Scotland and some properties bought on its behalf during the 20th century:-

1. main ancient ownership of Scotland's seabed out to the 12 nautical mile limit, property rights over the continental seabed out to the 200 mile limit (excluding oil, gas and coal) and ownership of around half the length of Scotland's foreshore.
2. Other ancient rights to salmon fishing, natural occurring oysters and mussels and to mine gold and silver and ownership of two small areas of urban land.
3. Modern: ownership of four rural estates and three urban commercial properties.

The most significant ancient possession of the Crown in Scotland is its ownership of Scotland's territorial seabed, as extended from 3 to 12 nautical miles by legislation in 1987. Scotland's seabed accounts for just over half of its total territorial area.

### **Smith Commission**

Lord Smith published his report on further devolution of powers to the Scottish Parliament on 27 November, 2014, with one of the recommendations being the devolution of the Crown Estate in Scotland

The Smith Commission agreement on the Crown Estate states that:

*'Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.*

*Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.*

*The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate's foreshore and seabed assets to the UK as a whole.*

*Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate'*

On 22 January, 2015 the UK Government published draft legislative clauses which would give effect to the recommendation to devolve the Crown Estate.

### **Issues to Consider**

There are a number of areas that the Council would wish to have clarification over, these include

1. What assets and revenues will be devolved and who will have responsibility for those assets and revenues
2. Clarification over para 5.5.9 of the draft legislative clauses

*"The Scottish and UK Governments will draw up a MoU. The MoU will include further detail on the legal protections for defence or national security as well as providing that the transfer of management responsibility for the Crown Estate is not detrimental to UK-wide critical national infrastructure in relation to matters such as oil and gas, telecommunications and energy, thereby safeguarding the importance of the Crown Estate's foreshore and seabed assets to the UK as a whole. The MoU will establish a framework of co-operation between its signatories, delivering the Smith Commission Agreement's recommendations whilst securing UK-wide provisions".*

3. What will this legal protection for defence or national security entail

4. *How will the protection of critical national infrastructure in relation to matters such as oil and gas, telecommunications and energy be delivered and how will that impact on a devolved Crown Estate*
5. *Clarify the meaning of the statement "...thereby safeguarding the importance of the Crown Estate's foreshore and seabed assets to the UK as a whole".*
6. Clarification from the Scottish Government as to how they will further devolve the Crown Estate to local authorities and how the assets and revenues will be devolved.

### **Highland Council's Position**

The Highland Council has long pressed for the devolution of the Crown Estate in Scotland and this is one of the commitments within the current Administration's Programme for the Council which states that *"the Council wishes to see Crown Estate revenues directed to local coastal communities and management of the Crown Estate transferred from Crown Estate Commissioners to the Scottish Parliament and local communities as appropriate."*

The Highland Council is keen to engage with the Crown Estate and the Scottish Government to develop a new framework for managing the assets and revenue of the Crown Estate in a way that benefits the community in Highland.

### **Conclusion**

The Council welcomes the proposal contained in the Smith Commission for the devolution of the Crown Estate and hopes that the Devolution (Further Powers) Committee will be able to obtain clarification on the points that are raised in this submission.

Stuart Black  
Director of Development and Infrastructure  
27 February, 2015

27 February 2015

Dear Convener

Thank you for the invitation to submit written evidence to the Devolution (Further Powers) Committee on the draft Scotland Bill clauses regarding The Crown Estate. As you are aware, Crown Estate colleagues are also appearing before the Committee on Thursday 5 March to give oral evidence.

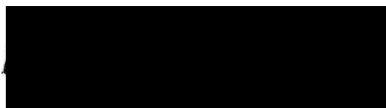
We are pleased to engage with the Scottish Parliament and Scottish Ministers to assist in finding a pragmatic and workable way of implementing the provisions of the draft legislation relating to The Crown Estate in Scotland.

The expertise and the investment we bring to Scotland have been recognised and welcomed by many of the people with which we work. Nevertheless, there was clearly an issue of principle about the management of Scotland's natural resources and a strong desire for direct control of both the activities and indeed the revenues. We are now acting upon the Smith Commission's recommendations, reinforced by the Command Paper and draft clauses and are focussed on delivering a prompt and efficient handover of those functions to Scotland.

We appreciate that a number of the Committee members are already familiar with us. Nevertheless, we thought it would be helpful to supply you with some background information on our activities together with some practical suggestions on issues which we believe ought to be considered as part of arriving at any new arrangement. The enclosed submission seeks to capture key issues and considerations. I very much hope that it is helpful in informing your deliberations and that it provides a helpful framework for discussion on 5 March.

If you would like any further information please feel free to contact me.

Yours sincerely



**Gareth Baird**  
**Scottish Commissioner, The Crown Estate**



## **Background**

The Crown Estate is an independent commercial business, created by an Act of Parliament. We operate under the Crown Estate Act 1961, which requires us to maintain and enhance the value and return from the land and property we manage, “with due regard to the requirements of good management”.

Ownership of assets managed by The Crown Estate lies with the Sovereign (not with any individual, but with Her Majesty in right of the Crown as an institution). The Smith Commission recommendations and subsequent draft clauses do not alter this and devolution relates solely to The Crown Estate’s management functions in Scotland.

In discharging our management role we are a values-driven organisation. Commercialism, stewardship and integrity underpin how we deliver value from sustainable management in a way that reflects the historic and strategic importance of the assets. Our approach is one of active management – developing, investing, enabling, facilitating and unlocking potential to enhance value, helping drive sustainable commercial returns.

We return 100% of our profit (net revenue surplus) to the UK Treasury every year. Over the last 10 years this has totalled over £2bn. We manage assets of almost £10bn together with around £1.3bn of third party funds through joint venture partnerships with major international and UK investors.

In Scotland, we are active in offshore renewables, aquaculture, agriculture and tourism - all of which play a key role in the Scottish economy. We manage thousands of interests in Scotland including leases, moorings agreements and licenses for numerous different activities. Our 2013/14 gross revenue in Scotland was £13.6m, approximately 4% of our UK total.

## **Engagement**

At the heart of our approach is collaboration to maximise benefit for all – a principle we apply across the board. We will continue to work with partners to create value – including value for the communities with which we work.

Along with our normal engagement as part of our portfolio related business activity, we have also been working closely with the UK Government, Scottish Government and Local Authorities to inform initiatives such as the Islands’ Framework and deliberations on the devolution of our assets. We are planning for the implementation of the transfer of the management of our assets in Scotland as soon as possible after the necessary legislation takes effect.

We will continue to help inform debate on The Crown Estate, enhance knowledge of its work and to ensure the business is well-placed to inform thinking about its role and remit.

## **Core issues**

The following are what we would identify as core issues to be addressed in arriving at a new devolved arrangement that is workable and sustains value for the benefit of Scotland and the wider UK.

- We have a dedicated and skilled team in Scotland with substantial knowledge and expertise who deliver real benefit to Scotland. Their interests and employment rights need to be carefully handled when the management functions are transferred, as on-going uncertainty presents a real risk of losing business critical expertise. An approach based on a single,

efficient and comprehensive transfer of management has the advantages of retaining a skilled team, maintaining market confidence and helping effect a smooth transition.

- Transfer of management should be implemented through a statutory transfer scheme which is the logical vehicle for the purposes of incorporating the level of detail needed to transfer a complex on-going enterprise in a single step; thereby providing for the protection of staff, customers and strategic UK assets, whilst also protecting the interests of multiple Government stakeholders.
- Smith envisaged that management of The Crown Estate assets in Scotland would be devolved initially to the Scottish Parliament and this is reflected in the draft legislation. Smith went on to say that subsequently the responsibility for the management of those assets will be further devolved to local authorities who seek such responsibilities. It will be for the Scottish Government to set out how this devolution to local authorities will be delivered. It would not be appropriate for us to seek to influence the political decision making process on this matter, but we will of course play a full role in helping deliver whatever arrangements are agreed upon.
- It will be necessary for the transfer scheme to transfer all associated rights, liabilities and commitments, in order to effect the transfer of all The Crown Estate's existing Scottish functions as the draft clauses envisage and provides the necessary continuity and clarity for customers.
- Following devolution of its existing management functions, The Crown Estate should retain an ability to invest in Scotland's commercial real estate markets, as if it were for any other commercial investor.

Below we outline issues related specifically to The Crown Estate's main portfolios and areas of business. We conclude the paper with a section on the legal and financial implications.

## **Rural & Coastal**

### **The assets**

The Rural & Coastal portfolio in Scotland comprises the following.

- c37,000 hectares of rural land with nearly 700 leases covering agricultural tenancies, residential and commercial properties, forestry and salmon fishing, plus the rights to silver and gold.
- Approximately half the foreshore, 650 outfalls, over 200 port/harbour agreements, 5,000 licensed moorings and 850 aquaculture sites.

### **Interdependencies**

The main policy areas and sectors/industries that our rural & coastal work impacts upon include: agriculture and tenant farming; forestry; aquaculture; fishing and navigation; defence, and tourism (e.g. marine leisure). It also overlaps with the infrastructure of offshore renewables, carbon capture & storage (CCS) and wave & tidal activity. Currently, The Crown Estate manages this whole estate on a consistent and integrated basis working with the relevant international, national and local bodies to ensure co-ordinated and sustainable development.

### **Issues to consider in devolving powers**

There can be significant benefits to be gained from community management of coastal assets and foreshore, and we have been building a cohesive programme of activity and initiatives to support

this. For example, our Local Management Agreements (LMAs) empower communities to manage areas of the coast while we continue to provide support and expertise and, in some cases, investment. More recently we have also offered community organisations the opportunity to buy coastal/foreshore assets.

In addition to the core issues outlined above, any change to asset management arrangements in Rural & Coastal assets should address the following.

- Where operational day-to-day management and accountability lies.
- Allocating the expertise, resources and capacity to manage and invest in these assets over the long term. There is a requirement for on-going capital investment and other expenditure if the assets are to be optimised. Rural & Coastal assets are currently managed by a team based across Scotland and the rest of the UK, with access to UK-wide expertise, technology and GIS systems.
- Some assets carry significant (seven-figure) liabilities in return for what can be relatively modest revenues.<sup>1</sup> The recent example of Portgordon Harbour in Moray highlights the risk of extreme weather events causing extensive damage to infrastructure, and the associated insurance and repair costs. These risks are inherent to a property portfolio.
- Responsibility for strategic oversight, investment, and growth in assets e.g. aquaculture to ensure sustainable growth and investor confidence.
- The views of those who use the foreshore and seabed e.g. the aquaculture industry, local authorities and users of moorings, piers and pontoons.
- The need for clear definition of interests and management of conflicts and interactions and avoiding “ransom strips” e.g. electricity transmission and CCS, strategic cables, navigation, defence and local fishing. Each set of activities needs to be able to coexist safely and harmoniously.

## **Energy & infrastructure**

### **The assets**

- Management of the seabed out to 12 nautical miles including cables and pipelines.
- The rights to renewable energy, aggregate extraction, and gas & carbon dioxide storage beyond 12 nautical miles over the Continental Shelf.

### **Interdependencies**

The policy areas and markets in which The Crown Estate’s energy & infrastructure activities directly engages include telecommunications; oil & gas transportation; electricity interconnectors; offshore renewable energy generation; natural gas storage; carbon dioxide storage, and mineral extraction. Indirectly our activities impact aquaculture; oil & gas production; navigation; defence; and fishing.

### **Issues to consider in devolving powers**

The UK’s seabed assets are of vital, strategic importance given the country’s critical dependence on highly integrated energy and communication systems. These interests rely on access to the seabed, an asset which benefits from management as an integrated whole, with a UK-wide perspective. This includes working with international, national and local bodies to ensure co-ordinated, sustainable and safe development.

In offshore renewable energy specifically, our role is an enabling one - sharing information, knowledge and expertise - so that developments are undertaken with greater certainty and

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<sup>1</sup> Gross coastal revenue in Scotland including aquaculture was £6.3m in 2013/14.

streamlined decision-making for all parties involved, helping the sector attract inward investment. This enabling role is complemented by our direct investment.

The offshore renewables industry has come through a period of significant uncertainty. In our view, there is evidence of confidence re-emerging but challenges remain. Issues for consideration would therefore include the following.

- The need to maintain offshore renewables investor and developer confidence during this critical period.<sup>2</sup>
- The need for a long-term strategic approach to managing the seabed, ensuring a high degree of collaboration between local, national and international stakeholders.
- The impact on the sharing of information, research and expertise/collaboration across the UK (e.g. The Crown Estate's MARS spatial planning tool, the SPARTA joint project with the Offshore Renewable Energy Catapult).
- The need to avoid stifling sustainable development of Scotland's and the UK's valuable offshore assets by, for example, the unintended sterilisation of strategic or significant parts of the seabed.
- The desirability – and workability – of the “landlord” role being separate from consenting and regulating functions.
- Consideration of guarantees and in particular, on-going risks and decommissioning liabilities.

## **Urban**

### **The assets**

- 39 - 41 George Street, Edinburgh (retail premises).
- Investment in an English Limited Partnership (ELP) as a joint venture with a unit trust managed and majority owned by British Land plc, known as the Gibraltar Limited Partnership. This includes retail assets in Scotland – Fort Kinnaird – and in England.

### **Issues to consider in devolving powers**

- The George Street asset is managed by a team that works across the UK, who benefit from that breadth of retail expertise.
- Any changes to the ELP would require the contractual consent of our joint venture partners. Joint ventures are central to the TCE business model and consequently any interference with their commercial integrity would go to the heart of the commercial independence of our business.

## **Practical, legal and financial implications**

### **Practical**

The paragraphs below summarise some of the core financial and legal issues, including those raised by our stakeholders, customers and tenants.

### **Financial**

- The Crown Estate is currently a net investor in Scotland. Net capital investment in the four years to 2013/14 was £16.3m. Consideration needs to be given to the status of existing financial commitments, liabilities and immediate operational issues.

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<sup>2</sup> EY's global investment tracker consistently states that the UK is the most attractive country to invest in for offshore wind <http://www.ey.com/UK/en/Industries/Cleantech/Renewable-Energy-Country-Attractiveness-Index>

**Legal**

- The Crown Estate in its current form was created for a specific purpose under the Crown Estate Act 1961. Devolution involving the break-up of current functions requires a new clear legal framework to accommodate interdependencies between activities, industries and different geographies, which continue to provide confidence to the market and staff.