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14 June 2018

Dear Graeme,

Thank you for the constructive and positive Environment, Climate Change and Land Reform Committee report on the Scottish Crown Estate Bill at Stage 1, published on 29 May 2018. Ahead of the plenary debate on Tuesday 19 June, I enclose the Scottish Government's response to the recommendations in the report.

My response also covers the recommendations made at Stage 1 by the Delegated Powers and Law Reform Committee in their report published on 21 March 2018. I extend my thanks for their consideration of the Bill at Stage 1 to the Delegated Powers and Law Reform Committee and to the Finance and Constitution Committee. I am copying this letter to their Conveners.

Yours

Roseanna

Roseanna Cunningham

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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE – SCOTTISH CROWN ESTATE BILL – STAGE 1 REPORT RESPONSE

	Recommendation	Scottish Government response
323	The Committee is generally content with the information provided in the Policy Memorandum and Financial Memorandum, with the exception of the consideration given to the retention of revenues.	The Scottish Government notes the Committee's comments about the consideration given to the retention of revenues in the Policy and Financial Memoranda.
324	The Environment, Climate Change and Land Reform Committee agrees with the findings and recommendations of the DPLR Committee. The Committee shares the concern of the DPLR Committee that Scottish Ministers anticipate dealing with most regulations arising from the Bill via a negative Parliamentary procedure. The Committee similarly considers to do so would restrict the ability of the Scottish Parliament to scrutinise the content of these regulations.	The Scottish Government recognises the Committee's concern that regulations should be adequately scrutinised. Our responses to recommendations 327, 328, 329 and 330 provide further information.
325	The Committee is conscious, however, of the need to strike an appropriate balance between matters that are operational decisions for Crown Estate Scotland and those that require further Parliamentary scrutiny.	
326	Taking account of the DPLR Committee recommendations, the ECCLR Committee recommends the affirmative procedure should apply where the regulations textually amend primary legislation.	The Scottish Government confirms that section 40(4)(a) in the Bill as introduced provides for affirmative procedure where regulations textually amend primary legislation.
327	The ECCLR Committee recommends regulations under section 3, in relation to all assets within the Estate, should be subject to the affirmative procedure.	The Scottish Government notes this recommendation, and we will consider this further in the context of the recommendations 329 and 330 below (para 97 of the report)
328	The Committee is of the view that the Scottish Government and Crown Estate Scotland (Interim Management) should clearly set out a definition of what would constitute 'significance' or 'significant value' in relation to an asset, on	The Scottish Government notes this recommendation and will consider it carefully.

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	the face of the Bill and the affirmative procedure should apply to regulations which would transfer the management of assets which are of significance or of significant value.	
329	This definition should encompass factors such as the size of the asset; the value of the asset (including any cross-subsidy it might provide to other assets); the transfer of neighbouring assets and any environmental significance the asset may have. The Committee recommends the Scottish Government brings forward amendments to address this at Stage 2 and gives consideration to the need to provide detailed accompanying guidance.	
330	The Committee recommends regulations to transfer the management of separate assets of relatively low value should be subject to the negative procedure.	The Scottish Government welcomes the Committee's recommendation and the further clarification this provides on recommendation 326 above.
331	The Committee welcomes the Scottish Government commitment to consider whether section 4(3) is sufficiently clear and, if required, bring forward related amendments at Stage 2.	The Scottish Government welcomes the Committee's recommendation and is considering the terms of an appropriate amendment.
332	The Committee agrees with the DPLR Committee that the terms of directions issued by the Scottish Ministers under Section 4 should be laid before the Parliament and published, although commercially sensitive or commercially confidential information may be withheld;	The Scottish Government notes the Committee's recommendation. The directions are not legislative in nature and it is not therefore appropriate for them to be laid before the Parliament. The giving of a direction is an executive function and any direction will be published in accordance with section 4(6)
333	Given no further criteria are specified as to how a body might relate to a community before it can be designated, the Committee agrees with the recommendation of the DPLR Committee that regulations mentioned in Section 6(1)(b) should be subject to the affirmative procedure.	The Scottish Government notes the Committee's recommendation, whilst also noting the provisions of Part 5 of the Community Empowerment (Scotland) Act 2015 (which relate to asset transfer requests). Section 77(2) of that Act the power to designate as a community transfer body for the purposes of, amongst others, managing land (section 79(2)(b)(ii)) - is subject to negative procedure. The Scottish Government considers that these powers are more broadly

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		similar to the power in section 6(1)(b) than sections 34(A1)(b) or 97D(1)(b) of the Land Reform (Scotland) Act 2003, and so the choice of procedure taken in the Bill is appropriate.
334	The Committee recognises that in any scenario such as this, change and uncertainty will have an unsettling impact on staff. The Committee considers existing Crown Estate Scotland (Interim Management) staff should be provided with a realistic indication of how their role might change, or not, as a result of the Bill.	The Scottish Government recognises the uncertainty and is working with CES(IM) to provide information to staff as part of CES(IM)'s rolling programme of engagement and communications with staff about the Bill and potential impacts. Their understanding was measured in CES(IM)'s first annual staff survey and CES(IM) is now in the process of introducing further measures to ensure it is meeting the need for information, updates and discussion.
335	The Committee recommends Crown Estate Scotland (Interim Management) consider how existing staff could be meaningfully consulted and engaged in planning processes both now and following the passage of the Scottish Crown Estate Bill.	We welcome this recommendation. CES(IM) advises that it would expect such consultation to be undertaken internally through its established engagement arrangements.
336	The Committee considers there should be a definition of good management that takes the wider public objectives, including socio-economic, environmental and sustainable development considerations into account.	We are not minded to include a definition of good management on the face of the Bill but we will consider if this can be included in guidance. The Scottish Government notes these recommendations, which it is considering. The term
337	The Committee recommends the Scottish Government provide further information on the definition of good management and further information on the process that will be used assess the suitability of potential managers of assets, in advance of consideration of the Bill at Stage 2.	“good management” (which is used in section 1(3) of the Crown Estate Act 1961) is not used in the Bill. Instead, the Bill takes the approach of allowing managers to maintain and seek to enhance the value of Scottish Crown Estate assets and the income arising from them under section 7(1) of the Bill in a way that is likely to contribute to the promotion or improvement of socio-economic and environmental matters specified in section 7(2) of the Bill. Furthermore, section 11 of the Bill allows managers to transfer ownership of an asset or grant a lease of, or other right in or over, an asset for less than market value if the manager is satisfied that the transaction is likely to contribute to the promotion or
338	The Committee recommends the Scottish Government give consideration to whether a definition of good management should appear on the face of the Bill or in guidance and, if necessary, bring forward relevant amendments at Stage 2. If this is to be included in guidance, this should be available when the Bill, if passed, comes into force.	

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		improvement of those socio-economic and environmental matters. We will consider if further information on the process to assess suitability of managers can be provided in advance of stage 2
339	The Committee recognises and welcomes the improvements in communication since the establishment of the Crown Estate Scotland (Interim Management) and encourages further development of the emerging collaborative approach to working with stakeholders.	The Scottish Government is advised that CES(IM) welcomes this feedback and has an active programme of ongoing stakeholder engagement with tenants, organisations interested in management pilots and a range of sectoral stakeholders.
340	The Committee recommends that the Scottish Government and Crown Estate Scotland (Interim Management) should consider what additional support might be required for existing Crown Estate Scotland (Interim Management) staff at this time of transition and take active steps to provide this.	CES(IM) advise that this is already in process. For example it is increasing its capacity to manage the Pilots Scheme, HR and communications and engagement. Additional asset management capacity is also being considered.
341	The Committee recommends the Scottish Government provide clear information about what will happen to existing Crown Estate Staff in the event of an asset being managed by another body, before consideration of the Bill at Stage 2.	This will depend on the scale and nature of transfer, and the ambitions of local authorities and communities to take on management responsibilities, as well as the breadth of the national role envisaged for CES(IM). The Pilots Scheme – to be launched late June – will give an indication of possible impacts on staff. The Scottish Government and CES(IM) will continue discussions on this important issue. (see recommendation 355)
342	The Committee was surprised to hear there is no current up-to-date assessment of the condition of Crown Estate assets in Scotland. Understanding the current state of assets and the cost involved in addressing any issues is vital to determining the value of the assets, associated liabilities and is a necessary starting point for identifying a future programme of work.	CES(IM) advises that this work is underway. The previous approach has been reliant on bilateral dialogue with tenants. In its role as landlord for agricultural tenancies CES(IM) has advised that it has obligations for the provision and replacement of fixed equipment but not for repairs which are the responsibility of the tenant.
343	The Committee recommends the Scottish Crown Estate Bill	The Scottish Government is considering this

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	<p>makes specific provision for the creation of a 'record of condition' of Scottish Crown estate assets that identifies the cost to address issues and places a requirement on the Scottish Crown Estate to ensure that Scottish Crown Estate assets are properly maintained. Tenants and other stakeholders should be involved in the design of any audit which will inform this. The Committee recommends the Scottish Government brings forward amendments to address this at Stage 2.</p>	<p>recommendation, but would note that a 'record of condition' is a technical term under section 8 of the Agricultural Holdings (Scotland) Act 1991, and can be required at any time by either the landlord (in this case CES(IM)) or the tenant. There is no need, therefore, to make provision for this in the Bill for agricultural tenants.</p> <p>We would not wish to replicate these provisions in the Bill for leases of other Scottish Crown Estate assets, such as salmon fishings, aquaculture leases, or foreshore leases. We consider that existing landlord and tenant agreements can make provision for assessments of the condition of the property – see the response to 345 below. We would ensure through guidance that such matters are given due consideration.</p>
344	<p>The Committee also recommends the 'record of condition' should be reviewed on a regular basis and aligned to the requirement in Section 24 of the Bill for managers to produce an annual report on its management of the assets during that year.</p>	<p>We agree that proportionate and 'fit for purpose' regular review is sensible and should be aligned to section 24. We propose to achieve this objective through guidance.</p>
345	<p>The Committee recommends tenants must be involved in agreeing a schedule of works for repairs. Priority should be given to repairs to accommodation for tenant farmers and their families and agreed repairs should be carried out without unreasonable delay.</p>	<p>We will give consideration to this in consultation with CES(IM).</p> <p>Although we understand, from the evidence sessions, that this issue applies to the rural estates, any transfer or delegation can include provision that tenants should be involved in developing a schedule of works for the maintenance of assets in accordance with tenancy agreements.</p>
346	<p>The Committee welcomes the provisions within the Bill to ensure transparency and accountability. The Committee considers there is greater scope to enhance those provisions.</p>	<p>The Scottish Government notes the Committee's comments on transparency and openness and we will take that into account in terms of how we intend to progress consideration of recommendation 332 and increased scrutiny of</p>

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		management transfers by Parliament. We consider that the requirements in section 23 to publish management plans, in section 24 to lay in Parliament and publish annual reports and in section 33 to prepare a consolidated statement of accounts which is submitted to the Auditor General for Scotland are sufficient, when it is considered that the Scottish Ministers, Crown Estate Scotland (Interim Management), a local authority and other Scottish public authorities are all subject to Freedom of Information legislation.
347	The Committee considers details of the process and criteria the Scottish Government will use to decide the suitability of a potential manager to manage an asset should be set out in guidance. This guidance should be available when the Bill, if passed, comes into force.	The Scottish Government notes this recommendation by the Committee and confirms that it is the intention for guidance on the process and criteria to be available by the time the sections on transfer and delegation come into force. The process and criteria will be informed by the Asset Management Pilot Scheme to allow local authorities, development trusts and other bodies to manage land and property.
348	The Committee considers potential managers should be required to produce a forward plan as part of the application process to manage an asset.	The Scottish Government welcomes these recommendations and plans to make this a requirement, though not on the face of the Bill.
349	The Committee considers the requirement to produce a forward plan at the point of application should be included on the face of the Bill and recommends the Scottish Government bring forward amendments at Stage 2 to address this.	<p>Not all transfers will be made as a result of an application so no process for this is set out in the Bill. A transfer could be made of the Scottish Ministers' own volition (with the agreement of the transferee who is to take on the management duties – see section 3(5)(a)) (and see section 4(5)(a) of the Bill in the case of delegation which requires the consent of the person to whom a management function is to be delegated).</p> <p>The draft Asset Management Pilot Scheme – criteria and process, which CES(IM) consulted on in the spring, requires</p>

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		<p>applicants at Stage 1 to provide a brief outline of the type of management approach, the assets to be involved and the scale of the project, in addition to a statement of what the project hopes to achieve and what the existing barriers to achieving these outcomes are. At Stage 2 of the process, applicants are required to submit a business plan for the project.</p> <p>Once the pilot scheme is in operation, we will be able to assess the requirements of such a business (or forward) plan. We do not consider it necessary that such a requirement should be on the face of the Bill, but guidance for potential managers will include this requirement.</p>
350	The Committee considers the Bill should clearly set out requirements for Parliamentary scrutiny in relation to the Strategic Management Plan and Annual Reports by individual managers (except where this would be commercially sensitive).	Provision is made for Parliamentary scrutiny in section 20(6), which requires the Strategic Management Plan to be laid in Parliament, and in section 25(2) which requires Annual Reports to be laid in Parliament.
351	The Committee welcomes the policy intention of the Bill to ensure broader factors are taken into account when a manager decides how an asset might best be managed. However, the Committee remains unconvinced the current wording in Section 7(2) is sufficient to ensure the desired intention is achieved.	The Scottish Government recognises the concerns of the Committee and of some of the witnesses and will consider this recommendation carefully.
352	The Committee recommends that the Scottish Government considers rewording Section 7(2) to make it clear that all managers are required to operate in a way that is likely to contribute to sustainable development and are also required to take account of economic development, regeneration, social wellbeing and environmental wellbeing, as well as profitability, when deciding how an asset should be	

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	managed. The Committee believes that this should be the case even if such consideration leads to the conclusion that a factor may not be relevant.	
353	The Committee recommends the Scottish Government give consideration as to how managers should demonstrate these wider factors have been taken into account, possibly via the production of an impact assessment. This process should be set out in guidance which should be available when the Bill, if passed, comes into force.	We will give consideration to the provision of guidance on how to demonstrate those factors, through, for example, an impact assessment and ongoing monitoring of management activities.
354	The Committee is of the view that the duty in section 11(2) of the Bill does not require to be amended, in the event of the duty in section 7(2) being strengthened.	The Scottish Government agrees with the Committee's view but will keep under review s we progress consideration of section 7(2).
355	The Committee recommends the Scottish Government and Crown Estate Scotland (Interim Management) consider how they will plan for different eventualities (e.g. low/high interest in managing Crown Estate Scotland assets) and how they will factor this into their strategic planning processes.	<p>We intend to discuss this further with CES(IM) and the response to CES(IM)'s invitation for pilot proposals will assist with consideration of these issues.</p> <p>In our discussions with CES(IM), they have highlighted that proactive communication will be key to ensuring that eligible bodies are aware of the opportunities. They would want to build capacity to engage with and advise potential managers to help them develop their proposals. They would want to respond to community aspirations and offer a flexible range of options for future management of the asset.</p>
356	The Committee is broadly persuaded of the merits of continued national management of Crown Estate Scotland's four rural estates, but recognises that circumstances may change and it may be desirable to retain the flexibility to have some local management in future.	The Scottish Government notes the Committee's views on the merits of continued national management of the rural estates, and also agrees that the flexibility to have local management in future must be retained. The transfer and delegation powers contained in the Bill provide for that in future if required.
357	The Committee is of the view that not all assets may be suitable for management at a local level. Having considered the evidence the Committee is of the view that leasing for	The Scottish Government thanks the Committee for its consideration of these points and is minded to accept their recommendation, subject to the wider views of Parliament

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	wave and tidal energy and offshore wind energy in the 0-12nm and 12-200nm zone should be managed at a national level in order to provide a coordinated approach.	and, of course, changing circumstances over the longer term.
358	The Committee is of the view that other offshore energy and energy related assets and investments, including Co2 storage rights and leasing rights for cables and pipelines, including oil and gas cables and pipelines, should be managed at a national level.	
359	The Committee recommends that a national body, with a Scotland wide overview, is responsible for the management of offshore renewables, energy related assets and other cables and pipelines.	We note the Committee's views that the management of the assets for these activities should be the responsibility of a national body. Currently, Crown Estate Scotland (Interim Management) is tasked with managing the assets across Scotland for these activities which we consider deliver the Committee's recommendation. Scottish Ministers have no plans to introduce another Agency to undertake a similar role.
360	The Committee is aware of the desire of some Local Authorities to manage smaller-scale tidal and wind projects within 12 nm of shore. The Committee is of the view that the Bill should retain provision for this to occur where a Local Authority can demonstrate appropriate expertise and it is considered beneficial from a socio-economic, environmental or sustainable development perspective.	The Scottish Government notes the Committee's views. The transfer and delegation powers contained in the Bill provide for such a change.
361	The Committee recognises the desire of many coastal communities to manage the foreshore at a local level. However, the Committee has some concerns that this may lead to the fragmentation of ownership of the foreshore. The Committee considers there a need for national oversight, but is supportive of the provisions which may allow for local management of the foreshore on a case by case basis.	The Scottish Government notes the concerns of the Committee regarding the possible fragmentation of ownership of the foreshore. While the Bill provides for the transfer or delegation of the management of Scottish Crown Estate assets, including the foreshore, the Scottish Ministers will determine whether it is appropriate to transfer or delegate the management of the foreshore from CES(IM) to another manager in individual cases. Further the bill provides for national oversight through the strategic management plan

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		and the requirement for managers to have regard to the strategic management plan when preparing their own management plans.
362	The Committee is of the view that the seabed is a national asset and should be managed nationally. The Bill should be amended to ensure the seabed cannot be sold. The Committee recommends the Scottish Government bring forward amendments to this effect at Stage 2.	Section 10 of the Bill as introduced requires a manager to obtain the consent of Scottish Ministers before transferring ownership of the seabed. No Ministerial consent is required for such sales at present, so the bill as introduced is stronger than the existing legislation. In light of this, the Scottish Government notes this recommendation and will consider it carefully.
363	The Committee is aware of the concern expressed in relation to Local Authorities and potential conflicts of interest but is of the view that with adequate separation of decision making within councils, addressing these concerns is not insurmountable.	The Scottish Government welcomes the Committee's recognition that potential conflicts of interests in relation to local authorities can be managed and we would intend to achieve that via implementation of the Bill and discussions with prospective managers.
364	The Committee agrees that Local Authorities, including the Island Councils, can be well placed to take on the management of assets. Further devolution to Local Authorities and communities is a significant recommendation of the Smith Commission and providing for this, as appropriate, within the Scottish Crown Estate Bill is important.	The Scottish Government welcomes the Committee's recognition that the Bill provides a mechanism for further devolution to local authorities.
365	The Committee believes the provision of ongoing support will be vital in ensuring smaller community groups are able to successfully manage assets. In order to encourage community organisations to take on the management of certain Crown Estate Scotland assets the Committee recommends the Scottish Government considers if and when the provision of ongoing advice and guidance to smaller community groups may be necessary and what form that might take.	The Scottish Government notes the Committee's recommendation and considers that the provisions of section 39 of the Bill address this point and any requirement for ongoing support to community groups can be provided if appropriate e.g. via shared service models or through support from CES(IM) in the case of delegations.
366	The Committee understands there can be local benefit from	The Scottish Government notes the Committee's concern

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	local control and management of ports and harbours and is supportive of the provisions of the Bill that allow this flexibility, but is mindful of the potential for conflicts of interest to arise, particularly where there might be a lack of public accountability within existing management structures.	about potential conflicts of interest and these can be considered when deciding on such transfers or delegations of management with appropriate provisions included in the relevant SSI, direction to delegate or delegation agreement. There are also provisions in the Bill requiring transparency and accountability (section 18) and provisions in respect of management plans (sections 22 and 23), annual reports (sections 24 and 25) and accounts and audit (sections 32 and 33) which we consider provide adequate protections. In addition, the power of Ministerial direction (section 35) and the requirement to have regard to Ministerial guidance (section 36) potentially can add to these protections.
367	The Committee understands the provisions of the Bill allow both for the transfer of management and the sale of assets by managers. The Committee recognises the concerns in relation to possible fragmentation of the Crown Estate in Scotland.	The Scottish Government notes the Committee's concerns and the Bill seeks to introduce additional controls on sales by a manager compared with the discretion afforded under current arrangements. The risks of fragmentation of the Scottish Crown Estate would be part of the consideration to be undertaken prior to any changes in management responsibilities, not least in the restrictions imposed on the transfer of assets in individual transfers and delegations – see sections 3(3)(a) and 5(5)(a) of the Bill which allow for the imposition of restrictions in the exercise of functions by managers to which functions are transferred and delegates.
368	The Committee's view on the transfer of assets concurs with that of the DPLR Committee and is set out in paragraphs 262-264 of this report.	See the response to 328 and 329 above.

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369	Ahead of consideration of the Bill at Stage 2 the Committee recommends the Scottish Government clarify how it intends to maintain strategic oversight of all Crown Estate Scotland assets, after the management of some assets are transferred to Local Authorities and community organisations.	The Scottish Government notes this recommendation and confirms that the Strategic Management Plan and its regular review (sections 20 and 21 of the Bill as introduced) will be one aspect of the strategic oversight of the Scottish Crown Estate. The expertise of CES(IM) will also be utilised, and Scottish Ministers also see the possibility of the existing Stakeholder Advisory Group having a role in the strategic oversight of the Scottish Crown Estate.
370	The Committee recommends the Scottish Government set out, either on the face of the Bill or in guidance, the process for deciding which assets should be managed on a national basis and which can be devolved to a local level.	The Scottish Government notes this recommendation but regards this as a strategic matter which could evolve over time and is dependent on the level of interest expressed by persons wishing to manage an asset. As such, it is not a matter for the Bill.
371	The Committee is of the view that potential managers should know the criteria against which their suitability is likely to be assessed. The Committee recommends the criteria for assessment are included in guidance and this should be available when the Bill, if passed, comes into force.	The Scottish Government notes the Committee's recommendation and confirms that it is the intention to provide guidance on this issue. The guidance will be informed by CES(IM)'s pilot scheme criteria.
372	The Committee is concerned that the evidence and discussion around revenues was, at times, unclear and inconsistent.	The Scottish Government notes the Committee's concerns and has provided an explanation in response to recommendations 373-375 below.
373	The Committee remains unclear as to the rationale for maintaining the current level of 9% gross revenue that can be retained by managers for re-investment in an asset, other than this being the historic figure inherited from the UK Crown Estate.	We note the Committee's concerns about retention of revenues and the desire for more information and clarity on this point.
374	The Committee notes that the Bill currently makes provision for this figure to be varied, but the Financial Memorandum accompanying the Bill states there are no plans to do so (i.e. the 9% figure will continue to apply).	The current framework document between the Crown Estate and the Treasury includes provision that: 'The Crown Estate operates within specific agreements made with the Treasury from time to time, including: 'transfers from revenue to capital limited to 9% of the previous year's gross revenue (excluding service charges)'
375	The Committee seeks further clarification from the Scottish Government as to the rationale for setting the figure for	

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retention at 9% and why there are no plans to alter this figure at present. The Committee also seeks further information from the Scottish Government about the circumstances under which it believes it may be appropriate to vary this figure. The Committee would welcome this information ahead of consideration of the Bill at Stage 2.

Under the Crown Estate Act 1961, Crown Estate assets must be maintained and managed as an estate in land. That requirement is replicated for Scottish Crown Estate assets under the Scotland Act 2016.

As the assets consist of an estate in land rather than, for example, a portfolio of securities, there will always be a requirement for a level of revenue to be retained by managers in their capital account in any given year to fund expenditure on, and investment in land. On the basis of experience, the Treasury, in consultation with the Crown Estate Commissioners, determined that 9% was an appropriate maximum retention rate.

Following conclusion of negotiations during 2016 with the UK Government, Scottish Ministers agreed that 9% of the total revenues generated from any particular asset or assets managed by a manager should be retained in that manager's capital account. Once the 9% has been deducted, the remainder of the revenues generated from that asset or assets will be surrendered to the Scottish Consolidated Fund. However, section 27(2) of the Bill, once enacted, will allow Scottish Ministers to direct managers to transfer a different percentage of revenue from their income account to their capital account.

Currently, in the absence of any evidence that particular differences apply to the Scottish Crown Estate assets, maintaining that 9% maximum retention rate for every manager is the most appropriate course of action. Should particular managers suggest that a different maximum rate might be appropriate for their particular purposes, then that

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		<p>percentage could be altered to address those purposes. There are no present plans to vary the maximum rate under current arrangements, and that is the basis on which the policy and financial memoranda were drafted. However, as mentioned above, the Bill allows for the 9% maximum retention rate to be varied if this is deemed appropriate. Any decision to increase or decrease the level of retention by a manager would impact on the net surplus transferred to the Scottish Consolidated Fund.</p> <p>We will consider whether a 9% maximum rate is correct as a guide across different managers in the future or whether there are occasions where managers might need to retain more or less than this depending on the investment required for individual assets. This could include, for example, funding infrastructure on the rural estates. The flexibility to vary the rate could be applied to one or more managers and in future this may need to be considered if the asset being managed has particularly high or low maintenance requirements.</p>
376	<p>The Committee seeks clarification from the Scottish Government on the arrangements it intends to put in place to ensure 100% of net revenues generated out to 12 nautical miles will be used for the betterment of coastal communities and whether it intends to produce guidance to that effect. The Committee also seeks an update from the Scottish Government on recent discussions held with COSLA on this issue. The Committee asks that the Scottish Government provide this information ahead of consideration of the Bill at Stage 2.</p>	<p>The Scottish Government is committed to ensuring that the net revenue from Scottish Crown Estate marine assets out to 12 nautical miles provides benefit to coastal communities. Constructive discussions have taken place with COSLA and we have agreed an interim formula-based approach to distribute a share of total net revenue from Scottish Crown Estate assets out to 12 nautical miles to island and coastal local authorities. This interim arrangement will be reviewed in due course and discussions will continue between the Scottish Government and COSLA on the detail of that process, including the policy intent of delivering benefit to coastal communities.</p>
377	<p>The Committee considers there are significant potential</p>	<p>We will consider this further, however it should be noted that</p>

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	<p>benefits in Crown Estate Scotland having the ability to hold capital reserves for strategic investment and management of the Estate and having the ability to retain revenue to service capital expenditure. The Committee notes the suggestion that Crown Estate Scotland should be able to trade and appreciates there may be benefits to this. The Committee asks the Scottish Government to reflect on the benefits, or otherwise, of Crown Estate Scotland having the ability to trade, in advance of consideration of the Bill at Stage 2.</p>	<p>the legislative competence of the Scottish Parliament to legislate in relation to the management of the Scottish Crown Estate is subject to sections 90B(5)-(8) of the Scotland Act 1998.</p> <p>Section 90B(8) provides that the property, rights and interests to which section 90B(5) applies must be maintained as an estate in land. While there is scope for a proportion of cash and investments to be maintained by the person managing the estate, this is for the purposes of discharging functions relating to the management of the estate. So any proposals which could change the nature of the activities undertaken by the Scottish Crown Estate would need to be considered in light of these provisions.</p>
378	<p>The Committee recommends that prior to Stage 2 the Scottish Government should set out how it might achieve these objectives via existing legislation, and whether any amendments to the Bill, within the constraints of the Civil List Act 1952, would offer greater flexibility for managers.</p>	<p>We will consider this further, subject to the comments made about legislative competence above.</p>
379 - 382	<p>In order for the process of cross-subsidisation to continue, the Committee recommends Crown Estate Scotland establish and maintain a list of Crown Estate Scotland assets and the liabilities that attach to these. This should outline which assets are profit-making or loss-making, and clarify the extent to which profit-making assets currently subsidise loss-making or profit-neutral assets.</p> <p>Sitting alongside this should be an assessment of the value of the Scottish Crown Estate natural capital assets and the benefits they are delivering.</p> <p>Consideration should also be given to including this wider valuation as part of managers' accounting processes to provide a more complete view of assets and liabilities.</p>	<p>We will discuss further with CES(IM) but consider this is not a matter to be included on the face of the Bill. This concerns proper accounting by managers which is required under section 32(1) and (2) of the Bill.</p>

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	The Committee recommends these requirements should be included on the face of the Bill and the Scottish Government should bring forward amendments to address these at Stage 2.	
383	The Committee considers Scottish Ministers should clearly set out their proposals to maintain the cross-subsidisation of assets in any Strategic Management Plan they produce in accordance with Section 20 of the Bill, recognising this need to cross-subsidise may vary from year to year and sector to sector.	We will give consideration to this in discussion with CES(IM). CES(IM) advises that its annual budgets set out how revenue and capital are expected to be raised and allocated across the business. These are prepared in-line with the business plan and draft investment strategy.
384	The Committee agrees there should be a presumption that those managing an asset should be responsible for the liabilities associated with it, but the Bill as currently drafted does not make this presumption sufficiently clear. The Committee recommends the Scottish Government give further consideration to the need to provide greater clarity on the responsibility for liabilities ahead of Stage 2 and bring forward amendments to address this.	We agree that the position about liabilities needs to be clear to prospective managers. We will reflect on this in advance of Stage 2 to consider whether anything is necessary to make the Bill clearer or whether that could be potentially done in guidance.
385	The Committee is also aware that for some community groups the requirement to take responsibility for liabilities, including unexpected liabilities, might act as a deterrent to applying to manage an asset. The Committee welcomes provision in the Scottish Crown Estate Bill for the Scottish Government to assume responsibility for asset-related liabilities in limited circumstances.	We welcome these comments on the provisions in the Bill.
386	Ahead of Stage 2 the Committee recommends the Scottish Government give consideration to the potential of an insurance or bond service to protect community groups from unexpected liabilities. The Committee would welcome further information on how the Scottish Government intends to prevent community groups from having to bear liabilities disproportionate to their size.	We will give consideration to this recommendation in discussion with CES(IM).

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387	<p>The Committee shares the concern expressed by some stakeholders over the variety of definitions of community, community organisation and community benefit. The Committee considers the definition of 'community' should be aligned with that in the Land Reform and Community Empowerment legislation and the Bill should either reference this legislation or clearly state the aligned definition of Community on the face of the Bill to ensure the definitions are consistent.</p>	<p>The Scottish Government recognises the concern of the Committee in this regard. We note that the definition of "community" is not uniform across the statute book. "Community" is not defined in the Bill and so will take its ordinary meaning – this is not necessarily limited to geography only. We will reflect in advance of Stage 2 whether this is clear enough.</p>
388	<p>The Committee recommends the Scottish Government gives consideration to this and brings forward amendments at Stage 2 to clarify how community, community organisation and community benefit are to be defined.</p>	<p>We will give consideration to this issue in advance of stage 2. The Scottish Government has noted the various comments about community and community benefit in the evidence to the Committee. We are concerned that there may be some misunderstanding about what is entailed when a community takes over the management of a Scottish Crown Estate asset. In the first place, the community is not getting ownership, only control of decision-making, within the context of the national Strategic Management Plan for the Scottish Crown Estate as a whole. Further, the community does not get to keep any of the revenue for its own wider purposes; any revenue retained under section 27(2) can only be used for capital investment in the asset. The net revenue (after deduction of revenue retained) is paid into the Scottish Consolidated Fund as required under the Scotland Act.</p> <p>The difference between the definition of 'community organisation' in the Bill as introduced and the other legislation referred to is that the Bill does not specify any particular organisational structures as being suitable for a manager of a Scottish Crown Estate asset. This is because there needs to be a case by case consideration of the relevant community organisation and whether management of a Scottish Crown</p>

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		Estate asset is compatible with the furtherance of the organisation's purpose and its statutory duties.
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