



The Scottish Parliament  
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee  
Room T1.01  
Scottish Parliament  
0131 348 5212  
[DPLR.Committee@scottish.parliament.uk](mailto:DPLR.Committee@scottish.parliament.uk)

James Hynd  
Head of Cabinet, Parliament and Governance Division  
Scottish Government

20 February 2018

### **Scottish Crown Estate Bill at Stage 1**

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 20 February and seeks an explanation of the following matters:

#### **Section 3 – Transfer of management function**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative if textually amending primary legislation, otherwise negative**

1. The Delegated Powers Memorandum (DPM) explains that “the policy is not to take decisions on who will manage assets, but to provide a mechanism by which decisions can be taken on who would be the most appropriate manager, on a case by case basis”.

**Please explain why the Scottish Government has considered that it is not appropriate to specify on the face of the Bill at least the proposed managers of those assets which are of national economic and environmental significance (including the rights of ownership in, and to exploit, the seabed and foreshore), possibly supplemented by a power to amend who the managers would be in future?**

2. Given the obvious significance of some of the assets within the Scottish Crown Estate:

**(a) please explain why it has been considered that in respect of all the assets the power to make regulations in section 3 should be subject to**

**scrutiny by the Parliament by the negative rather than the affirmative procedure (unless the regulations modify an enactment)?**

**(b) Has the Scottish Government considered whether the regulations in respect of those assets which are of national economic or environmental significance should be subject to scrutiny and approval by the Parliament by the affirmative procedure, whereas the regulations in respect of the commercial and rural estate assets of lesser value could be subject to scrutiny by the negative procedure?**

3. Section 3(1) allows the regulations to make provision “for or in connection with” the transfer of the management functions as further set out in the subsection. The ancillary powers in section 41 would also allow supplementary provisions by regulations, for the purposes of the Act and the regulations under section 3.

**(a) Please explain how it is envisaged that the power to make provision “in connection with” the transfer of management functions could be exercised?**

**(b) Why is it appropriate both to confer that power, and the power to make provision supplemental to it? How is it envisaged that this supplemental power could be exercised?**

#### **Section 4 – Directions requiring delegation of management function**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: direction**

**Parliamentary procedure: none**

4. Section 4(1) enables the Scottish Ministers to direct the manager of an asset to delegate the management function to ‘another person’ as mentioned in subsection (3). This includes delegation to “another Scottish public authority”.

**(a) Is it intended that ‘another Scottish public authority’ in section 4(3)(b) includes the Scottish Ministers themselves, or not? Accordingly is the meaning of that paragraph (b) sufficiently clear, given that “Scottish public authority” is not defined in the Bill?**

**(b) Is it intended that “Scottish public authority” wherever used in the Bill has the meaning specified in section 126(1) of the Scotland Act 1998?**

5. Some of the assets within the Scottish Crown Estate have obvious national significance. A direction under section 4(1) would have legislative effects, to delegate to a person the function of managing an asset. The delegate may have all the powers and duties of the manager, in terms of section 5(7).

**(a) Has the Scottish Government considered whether it may be appropriate that a direction under section 4(1) could be subject to a form of parliamentary procedure, to provide scrutiny of the exercise of the power, and if so what form of procedure could be suitable?**

**(b) In that respect, has the Scottish Government considered whether it could be appropriate that directions in respect of those assets which are of national economic or environmental significance could be subject to scrutiny and approval by the Parliament by means of the affirmative procedure, whereas directions in respect of the commercial and rural estate assets of lesser value could be subject to lesser procedure (such as a requirement only to lay the directions before Parliament)?**

**(c) If it is considered that the directions could be subject to parliamentary procedure, why is the form of instrument properly directions, rather than regulations?**

**(d) Otherwise, please fully explain why it is considered that directions under section 4(1) should not be subject to any form of parliamentary procedure, nor requirements to report to the Parliament on the use of the direction-making power?**

6. Section 4(6) and (7) require the Scottish Ministers to publish a notice of a direction, which must set out the matters stated in subsection (7).

**Why does this not extend to publishing the whole direction, including the terms and conditions of the required delegation of the management function?**

**Section 6(1)(b) – Meaning of “community organisation”**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

7. In relation to the power in section 6(1)(b), the DPM explains that this power “enables a degree of flexibility to enable a body to be eligible to become a manager where it is appropriate”.

**(a) How is it envisaged that this power could be used? Which bodies relating to a community might be designated as a “community organisation”?**

**(b) Could the power be more narrowly drawn, in respect that it enables *any* body (or class of body) to be designated in regulations as a “community organisation”, without any criteria being specified in the section as to how a body may relate to a community, before it can be designated?**

**Section 35 – Power of Ministerial direction**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Direction**

**Parliamentary procedure: None**

8. The Committee seeks an explanation of the following in relation to the powers of Ministerial direction in sections 13 and 35:

**The use of the power in section 13(1) will in effect regulate the amounts that managers may charge by way of rent for the lease of the assets, or in connection with any other agreement for the use of the assets. Please explain why directions are the appropriate form of instrument for the use of this power, rather than regulations made by Scottish statutory instrument?**

### **Section 36 – Ministerial guidance**

9. The Committee noted that, in relation to the power to issue guidance in section 36, an explanation of this power should have been included in the DPM.

**The Committee now asks for an explanation of this power.**

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Thursday 1 March.

Thank you.

Euan Donald

**Clerk to the Delegated Powers and Law Reform Committee**