



The Scottish Parliament
Pàrlamaid na h-Alba

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By email only

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Dear Linda,

Devolution of the Crown Estate

I am writing on behalf of the Environment, Climate Change and Land Reform (ECCLR) Committee to thank both you and David Mallon for appearing before the Committee, to provide an update on the issues surrounding the transfer of the Crown Estate. We anticipate a continuing dialogue with the Scottish Government on the future of the Crown Estate in Scotland.

The ECCLR Committee is at the early stages of its consideration of the devolution of the Crown Estate to Scotland but our initial discussion has raised a number of issues and outstanding questions on which we would welcome a response.

The Rural Affairs, Climate Change and Environment (RACCE) Committee considered the devolution of the Crown Estate in Scotland in the previous session of Parliament. The RACCE Committee wrote to the then Cabinet Secretary for Rural Affairs, Food and the Environment expressing a number of concerns with respect to the drafting of the Scotland Bill, the treatment of Scottish assets, and the draft Transfer Scheme and MoU.

We understand that our predecessor committee expressed deep concerns that the Transfer Scheme and MoU were prepared without consultation or input from Scottish Government officials. Given our recent discussion on the finalisation of these documents we are concerned to hear that it appears that there is a continuing issue and a failure, on behalf of the Treasury, to ensure a collaborative approach with the Scottish Government to determine the content, detail and balance of these documents.

We have a number of concerns in relation to the process and outcomes of this and these are outlined below:

Transfer Scheme and MoU

The Committee shares the previously expressed concerns that, as drafted, the Transfer Scheme and MoU include carve outs for reserved issues and scope for UK Ministers to restrict devolution of the Crown Estate assets. We consider that this will result in a constraining framework in a devolved area, limiting the way in which the Scottish Parliament will be able to exercise legislative competence with regard to altering the manner in which the Crown Estate assets are managed or by whom they are managed. The Committee is also concerned about the balance between the statutory Transfer Scheme and the MoU and our strong preference is to see more of the substance in the MoU. We would welcome clarity as to how the Scottish Government sees the operation of the various rights conferred on the Secretary of State for Defence and the Treasury under the Scheme affecting the practical management of the assets in Scotland.

Treatment of Crown Estate Revenues

Paragraph 3(3)(a) of Schedule 5 reserves the revenues from the Scottish Crown Estate assets as hereditary revenues of the Crown. We understand that when further devolving management of these assets the Scottish Parliament cannot alter their status as Crown revenues or alter the requirement that these are to be paid into the Scottish Consolidated Fund (SCF). The Committee considers that it may be the case that the competence of the Parliament to make provision for the treatment of monies in the SCF through the Budget Act may permit the Scottish Parliament to agree to such monies being rerouted directly to alternative recipients, again subject to any limitation on the Parliament's competence.

The Committee considers it is vital that the Scottish Parliament has the power to legislate on revenue arrangements in relation to the Scottish Crown Estate assets. We understand that the Scotland Act does not provide the Scottish Parliament with the power to alter their status as Crown revenues or alter the requirement that these are paid into the SCF. The Committee asks you to confirm whether the Scottish Government is content that there are practical arrangements which may be made through budget provision or an alternative route with regard to the revenues from the Scottish Crown Estate assets which will not impede the further devolution of management of the Scottish Crown Estate assets.

Application of rights where there may be disagreement

We understand that the rights of the Secretary of State under the Transfer Scheme apply where he or she cannot reach agreement with the Scottish Ministers/manager. At present the respective interests of the Scottish Ministers and the Secretary of State for Defence in discharging his or her role in relation to national security operate against the background of a concordat. This concordat provides a framework for joint working and the resolution of disputes. It appears to the Committee that the MoU which accompanies the

Transfer Scheme is intended to fulfil a similar function with regard to the relative interests of the manager of the Scottish Crown Estate assets and the Secretary of State. The Committee presumes that the intention is that issues arising with regard to matters of national security or defence will normally be resolved through mutual agreement as at present under the concordat.

However, the Transfer Scheme goes further in creating legal mechanisms for giving effect to rights in the event that these cannot be resolved through the MoU and by mutual agreement. The Scheme confers rights on the Secretary of State which are enforceable against the Scottish Ministers/manager and third parties but does not appear to confer any rights on the Scottish Ministers/manager through which they can ensure that their interests are given full consideration. As currently drafted there is no opportunity for reference to a referee or arbiter in the event of a dispute, save with regard to the determination of fair market value – which the Secretary of State must pay for the grant of any rights. No compensation appears to be payable where the Secretary of State prevents the grant of rights to a third party.

The Committee asks the Scottish Government to confirm if it is content with the inclusion of legal mechanisms in the Transfer Scheme giving effect to rights where there is no resolution and whether there is a need for reference to a referee or arbiter in the event of a dispute. The Committee also asks the Government to clarify that the rights conferred on the Secretary of State under Schedule 4 of the Transfer Scheme can only be claimed against rights in property which are part of the Scottish Crown Estate assets.

Treatment of and Reference to Assets and Liabilities and Treatment of the Tax Status of the New Manager.

The Committee is concerned that the land held under the Limited Partnership (Fort Kinnaird) is effectively excluded from the transfer, as it appears, are the related revenues. Our view is that even if the asset is not wholly owned by the Crown Estate, the Crown Estate interest could be transferred to Scottish Ministers or the equivalent value of the economic asset could be transferred. The Committee asks you to provide an update on the position with respect to the treatment of revenues from Fort Kinnaird.

The Committee considers that there is a requirement to be explicit that there would be no detriment to the tax status of the new manager following the transfer, as presently the Crown Estate does not pay corporation or capital gains tax. The Committee asks that the Scottish Government confirm its understanding of this and sets out its view on this issue.

Timing of Finalising the Transfer Scheme

The Committee understands that the Scottish Government anticipates that the draft Transfer Scheme will be finalised by the end of September and following that we should expect to see an Order establishing the interim management body laid in Parliament. The Committee would welcome the Scottish Government's view on the outstanding issues that require resolution, prior to the scheme being finalised and the potential for delay in concluding a finalised scheme.

Purpose of the Crown Estate

The Crown Estate Act 1961 (modified by section 36(7) of the Scotland Act 2016) contains various restrictions on how Crown Estate assets are managed, including the duty to maintain and enhance the value of the assets and the return obtained from them “but with due regard to the requirements of good management”. We understand that the 1961 Act is not expressly protected from modification by Schedule 4 of the Scotland Act 1998. The Committee understands that the Scottish Parliament can modify the current requirements of the 1961 Act in the course of further devolution of the Scottish Crown Estate assets provided that in doing so it does not otherwise modify reserved matters.

We consider that there is a need to explore the impact of these constraints in practical terms, and facilitate a public discussion around the wider purpose of the Crown Estate in relation to sustainable development, environmental stewardship and community involvement in the management of the Estate. The Committee is of the view that there could be considerable benefits to Scotland as a result of pursuing a more flexible approach. We would be interested in the view of the Scottish Government as to how best to fulfil the duties of the Scotland Act, and the opportunities provided by further devolution of the Estate, to maximise the benefits for communities across Scotland. We would expect the outcome of discussions on the duties of the Crown Estate to subsequently be reflected in the mission statement for the Crown Estate in Scotland. The Committee asks the Scottish Government to confirm its understanding of this and whether it considers it has sufficient discretion in its management of the Scottish Crown Estate assets.

Due Diligence – Assessment of Assets and Liabilities

In providing evidence to the Committee you touched on the issue of valuation of the Crown Estate assets and the current valuation exercise. The Committee considers that a clear and detailed understanding of the full list of assets and liabilities of the Crown Estate will be crucial in advance of the transfer to the Scottish Government. Transparency in relation to this is vital. The Committee would welcome further detail on the Scottish Government’s approach to due diligence – specifically:

- Is valuation being undertaken independently and who is conducting it?
- Does the current exercise include a full valuation of assets and liabilities?
- When did the valuation commence and when is it anticipated to conclude and report to Government?
- When will this the outcome be published and at what level of detail?
- Will the Committee have sight of a full schedule of assets and liabilities on conclusion of the exercise?

On conclusion of the valuation the Committee would welcome the Scottish Government’s view on the best approach to manage the assets for the benefit of the people of Scotland and how best to manage the liabilities to minimise the associated risks.

In the interim, the Committee would welcome further detail on the current valuation of the Crown Estate assets and revenues and we include a schedule for completion as an annexe to this letter. We also request a breakdown of the capital receipts in the Scotland portfolio (£5.1m in 2015/16 and £7.7m in 2014/15) along with capital receipts so far in 2016/17.

Order Establishing the Interim Body

We understand that the Scottish Government has consulted on the draft Order to establish an interim body to manage the Crown Estate in Scotland and intends to lay this in the Scottish Parliament in October. The Committee would welcome further detail from the Scottish Government on the issues to be taken account of in the consultation process and the consultation responses to this Order, including specific issues or concerns raised by respondents. The Committee is interested to understand the role and functions of the interim body and the likely basis of investment decisions e.g. will it extend its approach to management of the Estate beyond the focus on maximising income and how investment decisions likely to be impacted in the period before plans for further devolution are implemented. We understand that the Crown Estate agrees targets and an investment strategy with the Treasury. The Committee would welcome clarification on the approach to investment and performance management for the Crown Estate in Scotland, specifically, are there separate KPIs for the Scottish portfolio and, if so, what these are and how they are agreed.

Managing the performance of the Crown Estate

The Committee considers that it is important to ensure accountability and transparency of approach in the operation of the Crown Estate. Devolution of the Crown Estate offers an excellent opportunity to establish a performance framework for the Crown Estate aligned to the requirements placed upon other public sector bodies to ensure that performance can be monitored and assessed over time and compared with other parts of the public service. The Committee would welcome the view of the Scottish Government on this.

Relationship with the Crown Estate in England, Wales and Northern Ireland

We discussed the opportunities for a newly devolved Scottish Crown Estate, but the Committee is also interested to understand the Scottish Government's view on potential areas of continued collaboration with the UK organisation. We would welcome your view on this.

Islands Authorities

In the context of devolution and further devolution the Committee would welcome the Scottish Government's view on issues of concern to the islands authorities, particularly in relation to rights to and management of the sea-bed. The Committee is aware of plans to introduce an Islands Bill and we would also welcome further explanation of how the plans for devolution relate to this and whether action is planned in advance of the introduction of the Bill.

Offshore renewables

When we met with you there was some discussion in relation to the offshore renewables sector. The Committee would find it helpful to receive further

information on the issues for the sector in the interim period and beyond. We also seek clarity on the anticipated financial returns from the sector – the likely levels of funding, when these are anticipated and how they will be treated in terms of receipts to the Scottish Government.

We look forward to receiving your response and welcome being kept regularly updated on the progress in relation to the interim arrangements and the Government's thinking on further devolution. Within this process we expect that the experience, expertise and views of the Crown Estate staff will be actively sought and taken account of.

1. Schedule of assets

Asset	Definition	Valuation of asset (£m) and date of valuation	Gross revenue 2015/16 (£m)
George Street	the land owned by Her Majesty ^[1] known as 39 to 41 George Street, Edinburgh		
Seabed	the land owned by Her Majesty forming the seabed of Scottish Territorial Waters		
Storage Rights (Seabed)	the rights of: (1) Unloading gas to installations and pipelines; (2) Storing gas for any purpose and recovering stored gas; and (3) Exploration with a view to use for (1) and (2)		
Energy rights (Seabed)	the rights of exploitation, exploration and connected purposes for the production of energy from wind or water		
Mineral Rights (Seabed)	the right to exploit the Seabed and its subsoil other than for hydrocarbons		
Cables (including interconnectors)	the right to install all or part of a distribution or transmission system on or under the Seabed		
Pipelines	the right to install pipelines		
Whitehill	the Whitehill estate in the County of Midlothian owned by Her Majesty;		
Glenlivet	the Glenlivet estate in the County of Moray owned by Her Majesty		
Applegirth	the Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty		
Fochabers	the Fochabers estate in the County of Moray owned by Her Majesty		
Aquaculture Rights (Seabed)	the right to farm aquatic organisms;		

Mooring Rights (Seabed)	the right to lay and use permanent moorings		
Foreshore	the land that is owned by Her Majesty: (1) In Orkney and Shetland, lying between mean high water springs and		

[1]

See note above which explains that assets are owned by the monarch for the duration of their reign, but are not their private property

	lowest ebb tide; and (2) In the rest of Scotland, lying between mean high and low water springs		
Internal Waters	the land owned by Her Majesty forming the internal waters of Scotland		
Salmon Fishing	the right to fish for salmon in rivers and coastal waters where the right belongs to Her Majesty		
Gold and Silver (onshore minerals)	the right to all naturally occurring gold and silver except where the right is vested in some person other than Her Majesty		
Reserved Minerals	all the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed		
TOTAL		271.8	14

Yours sincerely,



Graeme Dey MSP

Convener

Environment, Climate Change and Land Reform Committee