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Committee
Scottish Parliament

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3 November 2016

Dear Graeme

Devolution of the management of the Crown Estate assets

Thank you for your letter dated 21 September 2016 on behalf of the Environment, Climate Change and Land Reform Committee about the devolution of the management of the Crown Estate assets. The Committee has raised a number of issues and questions and I respond to those below.

The draft Transfer Scheme and MoU

Timing and Finalising the Transfer Scheme

The Treasury have said they hope to share a new draft version of the transfer scheme (TS) and MoU with us very soon. They expect to lay the TS SI in time to ensure that the transfer is completed in 1 April 2017. In the meantime, we continue to work closely with HMT officials to resolve outstanding issues and they have indicated areas where they are willing to make changes. With a couple of notable exceptions these are mainly technical amendments. I reference these changes where relevant in my response below.

Disputes with developers over electricity infrastructure, telecommunications cables, pipelines

We continue to have concerns about the balance between the statutory TS and the MoU and while Treasury are unlikely to move away from their overall approach, we expect a change in relation to parts 2, 3 and 4 of schedule 4 ('*Consideration payable under the Electronics Communications Code*', '*Pipeline payments*' and '*Electricity Infrastructure Payments*'), and the respective Annexes of the MoU. The current version of the TS proposes that the UK Government remains the ultimate arbiter in circumstances where a third party considers that a price is set too high. We have said we would prefer that instead there should be an independent and robust dispute resolution mechanism and Treasury have recently written to us to say they agree to an independent party in the event of dispute, the choice of which should be agreed between the UK government and Scottish Ministers.

Secretary of State powers to control use of the estate for defence purposes

You requested clarity about how we see the operation of rights conferred on the Secretary of State (SoS) for Defence, under Schedule 4 Part 1, '*Protections for defence and national security*', to require any part of the estate to be used for defence purposes, including those parts already used for other purposes. We have concerns with regards to inclusion in the statutory TS of the proposed role of the SoS for Defence, specifically the potential to cause uncertainty over applications; unquantified delays; and the resulting unfairness because non-Scottish UK projects would not be subject to the same procedures. In addition, we expressed concern about provisions covering third parties and are seeking further assurances about responsibility for liabilities in relation to MOD activities. While we are led to believe the UK Government is not planning any changes to the draft TS with regards to these concerns, we understand that the revised MoU will clarify that these will be 'last resort' powers.

Treatment of Crown Estate revenues

While the Scotland Act includes reservations on the revenue of the Crown Estate we consider that there are adequate provisions available through the budget process which will allow for the net revenues of the Crown Estate in Scotland to be redistributed from the Scottish Consolidated Fund as Parliament sees fit. We do not consider that the reservations will impede further devolution of management of Crown Estate assets in Scotland.

On the no detriment to the tax status, the Fiscal Framework Agreement (<http://www.gov.scot/Resource/0049/00494765.pdf>) states that the managers of Crown Estate assets in Scotland will continue to receive the same benefits as the Crown Estate Commissioners in terms of exemption from corporation tax, income tax and capital gains tax.

Assets and Liabilities

The Crown Estate advise that valuations at asset level are periodic and, in the case of specific parts of the Estate, on a rolling basis - these are often undertaken by independent valuers. The valuations of the assets are subject to certain assumptions (existing use, location, market conditions, future net income streams, for example) rather than based on a one-off market valuation. The Crown Estate recommend using the aggregate breakdowns in pp 4-5 of their Scotland Update publication (see: <https://www.thecrownestate.co.uk/media/761962/scotland-portfolio-update-2016.pdf>). For a breakdown of the capital receipts in the Scotland Portfolio, please contact The Crown Estate.

Scottish Government officials have been working with the Crown Estate and UK Government officials to understand the liabilities. The Crown Estate has a general policy of ensuring that liabilities associated with use of the estate rest with the leasee, where practical. On this basis our current understanding is that the historic liabilities of the Crown Estate are limited to contingent liabilities associated with lease arrangements and specific liabilities associated with maintenance of property and land. On the contingent liabilities we have made clear to the UK Government that any liabilities associated with the use of the estate for defence activities are liabilities that should be met by the UK Government. Scottish Government officials have also been in discussion with UK Government officials about the management of liabilities associated with decommissioning of renewable energy installations as part of the work to implement section 62 of the Scotland Act 2016.

The intention is that any future liabilities associated with devolved management will in future be managed as part of decisions on leasing of Crown Estate assets in Scotland. We are also

in discussion with the UK Government about the future arrangements for managing any contingent liabilities associated with Carbon Capture and Storage.

In addition, in preparation for the transfer we commissioned legal consultants MacRoberts to conduct a sample based prioritised review of standard and non-standard commercial agreements, leases and licences. The purpose was not for commercial due diligence exercise since the transfer of the assets is a matter of further devolution under the Scotland Act 2016. We have no current plans to publish a report given the commercial nature of the agreements.

Once the interim body has been established, we expect more detailed financial information on Crown Estate assets in Scotland to be made available.

The UK Government excluded Fort Kinnaird from the transfer under the Scotland Act but we continue to seek an adequate resolution of this issue.

Order establishing the interim body

You requested further detail on the consultation on the draft Order and I am pleased to attach a copy of the consultation report. The report is also available online: <http://www.gov.scot/Publications/2016/10/7117/0>. The approach to investment and performance management for the Crown Estate in Scotland (Interim Management) will be considered as part of the development of the corporate planning arrangements for the new interim body.

Long-term arrangements and further devolution

Purpose of the Crown Estate

Opportunities provided by further devolution will be considered as part of the work on the proposed long term framework for management of Crown Estate assets which will provide an opportunity to review the purpose of the Crown Estate.

Other

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

In terms of potential areas of continued collaboration with the Crown Estate in England, Wales and Northern Ireland, we recognise the need in going forward to speak with The Crown Estate in respect of transition transfers of rental income, for example, as well as ongoing management of assets where there is some shared responsibility. There will also be a need to liaise on historical matters particularly around procurement and competition activity, although it will be necessary to do this within a framework that respects the fact that the interim manager of the Scottish assets and The Crown Estate will in some instances be exercising monopoly powers.

Island Authorities

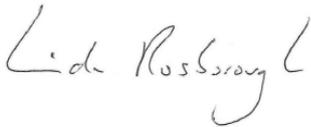
Scottish Ministers have committed to giving coastal and island councils the net revenue from the marine estate out to 12 nautical miles. We are having on-going positive discussions with the three island authorities on the possibility of pilot arrangements for enhancing local management of Crown Estate assets.

Offshore renewables

In terms of anticipated financial returns from the sector, again, after the interim body has been established, we expect more detailed financial information at Scotland level to be available. In the meantime, the General Manager of The Crown Estate Scotland Portfolio gave evidence to you on 6 September, quoting for wave and tidal sites the numbers in the region of around £30,000 per annum for a 10MW site (see col 22 of the Official Report: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10499&mode=pdf>). For offshore wind, The Scotland Portfolio added that revenue from commercial-scale projects is generally between £4.3 million and £7.6 million per gigawatt (there is currently one commercial project in Scottish waters).

I hope that my response is helpful and I will endeavour to keep in touch with the Committee through regular updates.

Yours sincerely



LINDA ROSBOROUGH
Director, Marine Scotland

cc Convener of the Delegated Powers and Law Reform Committee