

Scottish Crown Estate Bill

Screening Report

January 2018



Scottish Government
Riaghaltas na h-Alba
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STEP 1 – DETAILS OF THE PLAN

Responsible Authority:

Scottish Government

Title of the plan:

Scottish Crown Estate Bill

What prompted the plan:

(e.g. a legislative, regulatory or administrative provision)

In 2014, the Smith Commission recommended that the management of Crown Estate assets and their revenues should be devolved to the Scottish Parliament. This was enabled through provisions in The Scotland Act 2016, and on 1 April 2017, powers over the revenue and management of Crown Estate resources in Scotland were formally transferred.

In parallel, Scottish Ministers committed to a two phase approach for devolving the management of Crown Estate assets:

- the establishment of an interim body, 'Crown Estate Scotland (Interim Management)', and
- the development and implementation of proposals to change the long-term management of the Crown Estate in Scotland.

Plan subject:

(e.g. transport)

The Scottish Crown Estate Bill considers the long-term management of Crown Estate assets in Scotland which extend across a broad range of sectors.

Screening is required by the Environmental Assessment (Scotland) Act 2005.

Based on Boxes 3 and 4, our view is that:

An SEA is required, as the environmental effects are likely to be significant: Please indicate below what Section of the 2005 Act this plan falls within

Section 5(3)

Section 5(4)

An SEA is not required, as the environmental effects are unlikely to be significant: Please indicate below what Section of the 2005 Act this plan falls within

Section 5(3)



Section 5(4)

STEP 2 – CONTEXT AND DESCRIPTION OF THE PLAN

Context of the Plan:

Proposals to change the long-term management of the Crown Estate in Scotland are being progressed through the Scottish Crown Estate Bill (“the Bill”). The Bill, once introduced, will establish a framework for the management of Crown Estate assets to ensure Scotland’s local communities, authorities and industry can benefit from this change. It is proposed that the Bill will reform the duties on managers, mainly by expressing them more explicitly than at present, which form the basis for decisions on the leasing and proposed sale of assets. The Bill is also likely to include powers for Ministers to make arrangements for further devolution opportunities, and these powers could be used in due course to specify functions that can potentially be devolved to councils or communities. Management of assets will remain at national level in advance of such decisions and it is also likely that some assets will continue to be managed at a national level under the long term framework.

The sale of assets is governed by general property law while a lease from the Crown Estate sits within the general framework for management of activities and is normally only one of the permissions required for a development or economic activity to take place. The Bill will not remove or amend existing requirements to obtain development consent which have long been in place under a variety of consenting regimes. Rather, the Bill is concerned with the long term framework for managing the Crown Estate’s diverse portfolio of property, rights and interests in Scotland. Within this framework, it is likely that decisions will be made on a case-by-case basis and within the overall context of a broad range of plans, programmes and strategies (PPSs) that collectively set out a framework for good decision making in Scotland, such as the National Planning Framework, National Marine Plan and Land Use Strategy. The decision making process for Crown Estate assets will pay due regard to these existing PPSs.

It is proposed that the Bill will be laid in Parliament by late December 2017, with Royal Assent expected to be granted, at the earliest, by Spring 2019.

Description of the Plan:

The provisions in the Bill will apply to the whole of Scotland. The Crown Estate in Scotland includes a diverse portfolio of property, rights and interests, and historically these have been managed by the Crown Estate Commissioners, under The Crown Estate Act 1961, on a UK-wide basis. The UK-wide basis for management was recently changed and Crown Estate Scotland (Interim Management) is a new public body charged with managing Crown Estate assets in Scotland.

Currently, the manager of the Crown Estate in Scotland has a legal duty to maintain the value and obtain the best consideration, or

return, from the Crown Estate. Within this duty, there is currently some discretion to take account of the requirements of 'good management' when seeking to obtain the best consideration. There is also some discretion to waive the best consideration for a sale or lease in specific circumstances. The Bill will not change the way in which decisions are made, rather it will provide an opportunity to make explicit on the face of the legislation that 'good management' can include consideration of wider socioeconomic, environmental, or sustainability benefits.

The overall aim of the Bill is to ensure that decisions on Crown Estate assets in Scotland are taken in Scotland based on Scottish priorities, in a transparent and inclusive way, to maximise the benefits to the nation and communities.

What are the key components of the plan?

Key components of the Bill will include the potential for further devolution of decision making to local and community level; a national Governance framework, including financial, reporting and accounting arrangements; and, new express provisions concerning the duties for managers of Crown Estate Assets. In early 2017, a consultation¹ was undertaken seeking views on how the Crown Estate in Scotland should be managed in the longer term and what reforms would be needed. The consultation paper was set out over four chapters and the responses received to the consultation and the topics covered will be taken forward in the development of the Bill. These four chapters are summarised below:

Chapter 1: "Vision" . This section covered a potential departure from the framework of the Crown Estate Act 1961, including whether to retain or modify the commercial duty; and alignment with wider Scottish Government policies. The intention is for the Bill to maintain the commercial duty but re-express the discretion that exists on good management as outlined in the previous section.

Chapter 2: "Managing Crown Estate Assets for Scotland and Communities" set out three possible management options regarding the future management of assets. These were: retaining the management of all assets at the national level; devolve the management of all assets to local authorities or communities; and, a third option of considering the appropriate governance arrangements for each asset of the Crown Estate in Scotland on a case-by-case basis. The intention is for the Bill to enable the third approach to be achieved through the creation of new powers in the Bill that will make it possible for Ministers in due course to devolve the management of an asset on a case-by-case basis. Views were also sought in the consultation paper on whether local authorities

¹ The Scottish Government (2017) Crown Estate: A Consultation on the Long Term Management of the Crown Estate in Scotland [online] Available at: <http://www.gov.scot/Resource/0051/00512706.pdf> (accessed 31/08/2017)

or communities should make the business case for further devolution under certain options, as well as on the development of a national framework to govern further devolution. These proposals received support and it is the intention for the Bill to include provision for the above powers to be used for further devolution to a local authority or a community organisation on a case-by-case basis and for any future devolved management to be undertaken in the context of a national framework of governance.

Chapter 3: “Securing the Benefits for Scotland and Communities” discussed the operational, governance and revenue implications, as well as, other financial issues of the management proposals. The consultation paper sought views on whether future managers would be required to seek the Scottish Ministers’ approval for the disposal of sizeable assets, proposals to govern the reinvestment of capital from asset sales and cross-subsidy between assets, and the management of liabilities. Views were also invited on the continuation of funding for strategic activities from the gross revenue, and for these to be managed at national level. The development of a national shared service to support the administration of the estate, while providing for local control of decision making on the use of assets, was also considered. The national framework mentioned above will make provision for these elements where required

Chapter 4: “Assessing Impact” sought views on the possible business, environment, equality and privacy impacts that may arise from the topics being considered in the consultation. The next section outlines the environmental assessment work undertaken to date. It was also noted that a Business and Regulatory Impact Assessment (BRIA) had been published separately and that this had been carried out to analyse whether any of the proposed policies would be likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations. It was also proposed that Equality Impact and Privacy Impact Assessments would also be conducted and that the likely environmental effects that could arise from the package of proposals would be explored.

Have any of the components of the plan been considered in previous SEA work?

The package of proposals that are likely to be contained within the Bill will operate within the context of current PPS’s such as the National Planning Framework, National Marine Plan, Land Use Strategy and wider policy objectives, many of which have been subject to SEA under the requirements of the Environmental Assessment (Scotland) Act 2005 (the “2005 Act”).

The public consultation on proposals for establishing the interim body, Crown Estate Scotland (Interim Management), in 2016 was subject to Pre-Screening in accordance with the 2005 Act.

In terms of your response to Boxes 7 and 8 above, set out those components of the plan that are likely to require screening:

This Screening Report sets out the consideration of the likely environmental effects that could arise from proposals to create a long-term management framework for the Crown Estate in Scotland. The assessment largely focuses on the proposals set out in Chapters 1 and 2 of the 2017 consultation document that are currently planned for inclusion in the Bill (summarised above). It is these aspects of the Bill that are considered likely to shape the proposed management framework of assets, including any changes to the overall vision and exploring opportunities for further devolution of the management of assets, and as such, are considered likely to have potential for environmental effects. Provisions set out in the remaining chapters of the consultation document, 3 and 4, are viewed as largely administrative, focusing on financial frameworks and compliance with legislative and policy requirements associated with the Bill process.

STEP 4 – STATEMENT OF THE FINDINGS OF THE SCREENING

Summary of interactions with the environment and statement of the findings of the Screening:

(Including an outline of the likely significance of any interactions, positive or negative, and explanation of conclusion of the screening exercise.)

It is intended that the Bill will introduce legislation which will put in place a new framework for managing Crown Estate assets. This will, however, sit within the overall context of, and will seek to better align the long-term management of assets with, the existing range of Scottish Government policies and strategies, including in related areas such as community empowerment, land reform and marine planning. Additionally, the legislation is being developed in keeping with the five guiding principles set out in the UK's shared framework for sustainable development.

It is proposed that changes to the overall vision and duties placed on managers will be made to facilitate greater consideration to the wider environmental or sustainability benefit when undertaking decisions on the management of assets.

The management of Crown Estate assets is however already subject to a duty to give "due regard to the requirements of good management". As such, potential provisions in the Bill are likely to be focused on re-expressing the importance of "good management" in order to build on current practice and highlight the importance of environmental implications, as opposed to introducing a shift in the management of assets. A significant majority of those that responded to the consultation were of the view that the requirement of "good management" should be retained. Additionally, taking into account "good management" will likely be at the discretion of the manager so outcomes would be on a case-by-case basis. Any such decision would also have to pay due regard to the wider policy context in which the long-term framework will sit, for example, the National Planning Framework, National Marine Plan and Land Use Strategy in Scotland, which have already been subject to SEA.

Devolution of the management of the Crown Estate assets in Scotland to the local level in due course should help to increase alignment with wider Scottish Government policy on community empowerment, land reform and marine planning. It can also help to remove barriers to community involvement and ensure decisions on the use of assets in Scotland are more transparent and take account of the priorities of local communities. Aligning the management of assets with wider Scottish Government policy can also lead to better management of assets and improve the environmental outcomes of these management decisions. Equally however, fragmentation, or local competition between different parts of Scotland through the further devolution of assets management, could have negative environmental impacts. As noted above, however, the long-term framework will operate within the context of a wide range of PPSs that set out the context for good decision making in Scotland and which are themselves subject to SEA. Other relevant mitigation mechanisms will apply where management is linked to development proposals, where development consent (for example a grant of planning permission) may apply. In such cases an Environmental Impact

Assessment (EIA) or Habitat Regulations Appraisal (HRA) may be required.

Provisions in the Bill will also set out a national or strategic framework to define powers, duties and responsibilities and set the context for local decision-making where further devolution of management is possible. This is considered likely to reduce potential fragmentation and was supported by a significant majority of respondents to the consultation. A national framework could also include procedures to ensure the management of potential conflicts of interest between a manager's duties for Crown Estate assets and their wider duties and responsibilities, in addition to further emphasising the link with the management of assets with key national outcomes and other related national policies. It is considered that the development of a national or strategic framework will facilitate for the strategic planning of assets. For example, were decision making to be devolved to multiple local managers, the national or strategic framework would provide an overarching framework to ensure the management of individual assets did not undermine the strategic objectives of Crown Estate asset management in Scotland.

Finally, it is proposed that the process to consider and implement the potential devolution of the management of assets will take the form of a phased approach. This in itself could be implemented in two ways. Firstly this may involve the development of Secondary Legislation over the medium to long term, with the transference of powers to be completed through an initial phase in the first few years following the Bill and possibly another phase to be completed by 2030. The development of Secondary Legislation to deliver the phased approach will itself be subject to consideration under the 2005 Act. Another approach that may be considered is a case-by-case basis whereby applications can be submitted to the Crown Estate Scotland (Interim Management) or Scottish Ministers for consideration. The process of considering such applications would be set out in Statutory Guidance, which itself would be subject to consideration to the requirements of the 2005 Act. As a Public Body, the Crown Estate Scotland (Interim Management) is also a 'Responsible Authority' for the purposes of the 2005 Act and the broad range of PPSs that may be brought forward by the organisation, including those that set the policy direction for the management of assets, will be subject to the requirements of the 2005 Act.

It is also noted that Crown Estate Scotland (Interim Management) undertakes important strategic research, in particular, on issues such as climate change. The commitment to strategic planning in the current and future Crown Estate management framework is likely to prevent fragmentation and sustain research on important topics pertinent to Scotland's future.

Summary/conclusions

It is anticipated that the Bill will act as a framework at the national level to govern the management of Crown Estate assets. The Bill will outline procedures to be taken in the management of Crown Estate assets rather than prescribe the content of any new policy that may be brought forward by those managing the assets. Proposed changes to the overall vision and duty placed on managers of assets are considered to be a re-emphasis of current practice. Additionally, the long-term management framework will sit within the context of a broad range of PPSs to which those making decisions on the management of assets will be required to pay due regard. Any further devolution of assets will be based on sound evidence and will require the development of Secondary Legislation or on a case-by-case application process guided by Statutory Guidance, which alongside the development of any PPS by the Crown Estate Scotland (Interim Management) will be subject to the requirements of the 2005 Act.

Overall it is considered that the Bill is not likely to have significant environmental impact.



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