

**Final Business and Regulatory
Impact Assessment**

**Proposals for the Long Term
Management of the Scottish
Crown Estate Assets**

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Title of Proposal

PROPOSALS FOR THE LONG TERM MANAGEMENT OF THE SCOTTISH CROWN ESTATE ASSETS

Purpose and intended effect

- **Background**

Crown Estate Scotland (Interim Management) administers certain property, rights and interests which historically belong to the Crown, managing leasing of: the seabed out to 12 nautical miles and rights to renewable energy, cables and pipelines on the Continental Shelf; 37,000 hectares of rural land; rights to naturally-occurring gold and silver across most of Scotland; and approximately half of Scotland's foreshore including 5,800 licensed moorings, 750 aquaculture sites, and salmon fishing rights.¹

Crown Estate Scotland (Interim Management) exercise powers under The Crown Estate Act 1961 (as amended by the Scotland Act 2016) in managing the Scottish Crown Estate assets.

There is an overriding duty placed on Crown Estate Scotland (Interim Management) to maintain and enhance the value and the return obtained from the Crown Estate while having due regard to the requirements of good management when selling or leasing an asset.

The Scotland Act 1998 reserved the Crown Estate Commissioners' management of the Crown Estate in Scotland to Westminster. It has been a longstanding policy of the Scottish Government to bring about fundamental reform of the administration of the Crown Estate in Scotland so that it is more accountable to the views and wishes of the Scottish people, and also to ensure that Crown Estate assets in Scotland are managed for Scotland and its communities.

In November 2014, the Smith Commission recommended:

“32. Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate's seabed, urban assets, rural Estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

33. Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.

34. The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not

¹ <https://www.thecrownestate.co.uk/media/761962/scotland-portfolio-update-2016.pdf>

detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate's foreshore and seabed assets to the UK as a whole.

35. Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.”

The Scotland Act 2016 provided for the transfer of management of Crown Estate assets in Scotland (excluding non-wholly owned assets from the transfer) and payment of revenue into the Scottish Consolidated Fund. To achieve devolution, the Scotland Act required a UK Government Transfer Scheme to transfer responsibility for management to the interim manager, which came into force on 1 April 2017, and an Order in Council, to establish the interim body, Crown Estate Scotland (Interim Management).

Crown Estate Scotland (Interim Management) took on the management of the Crown Estate assets in Scotland on the transfer date of 1 April 2017, as planned. The Scotland Act required the responsibility for management to be transferred to a single body.

The Scottish Parliament now has the power to legislate on a new framework for managing Crown Estate assets in Scotland, subject to restrictions in the Scotland Act 1998, i.e. Scottish assets must continue to be managed on behalf of the Crown; assets must be maintained as an estate in land or estates in land; and revenue from the management of the assets of the Crown Estate in Scotland will be paid to the Scottish Consolidated Fund.

The Fiscal Framework agreement (<http://www.gov.scot/fiscalframework>) sets out the agreement between the Scottish and UK Governments on the financial arrangements to underpin the Scotland Act 2016, including the arrangements for devolution of the management and revenue of the Crown Estate.

Description of Crown Estate assets in Scotland

Scottish Crown Estate assets include four rural Estates, mineral and salmon fishing rights, about half of the coastal foreshore and almost all of the seabed. The portfolio also includes 39-41 George Street in Edinburgh. The Crown Estate has also provided financial support or assistance to aquaculture, marine leisure, ports and harbours and offshore renewable energy sectors.

The tables below provide an overview of some of the key Crown Estate assets in Scotland and a sectoral breakdown of revenues and total value.

Asset	Definition
George Street	Commercial real estate at 39 to 41 George Street, Edinburgh
Seabed	The land owned by Her Majesty forming the seabed of Scottish Territorial Waters, out to 12 nautical miles
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)	Administering the rights 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 lowest ebb tide; and (2) In the rest of Scotland, lying between mean high and low water
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
Rights beyond 12 nautical miles	<ul style="list-style-type: none"> • Rights to natural resources on the continental shelf (excluding fossil fuels) under the Continental Shelf Act 1964; • Rights to generate electricity from wind, waves and the tides on the continental shelf under the Energy Act 2004; and rights to the transportation and storage of natural gas and carbon dioxide on the continental shelf under the Energy Act 2008.

Source: Provided by The Crown Estate Commissioners

Revenue and Property Value by activity for year ended 31 March 2017

The property value of Crown Estate assets in Scotland as at 31 March 2017, assessed by independent valuers, was £275.7m (Coastal £28.5m, Dredging £0.9m, Agriculture £94.8m, Aquaculture £23.7m, Urban £15.0m, Minerals £2.0m, Forestry £14.8m, Residential £11.2m, Cables/pipelines £23.7m, Renewables £61.1m)

Overall 2016/17 gross revenue for Scotland was £14.9m.

Value of Scottish Crown Estate assets as at 31 March 2017

Asset	Capital value as of 31 March 2017 (£m)	Gross revenue 2016-2017 (£m)
Coastal	28.5	3.2
Dredging	0.9	0.1
Agriculture	94.8	2.4
Aquaculture	23.7	3.5
Urban	15.0	0.8
Minerals	2.0	0.3
Forestry	14.8	0.2
Residential	11.2	0.5
Cables/pipelines	23.7	3.1
Renewables	61.1	0.8
Total	275.7	14.9

- **Objective**

Devolution of the management of, and revenues from, Crown Estate assets in Scotland provides an opportunity to enhance the financial and social benefits of these assets, ensuring decisions are taken in Scotland based on Scottish priorities in a transparent and inclusive way.

A new long-term framework will require legislation at the Scottish Parliament. Interim

arrangements have been put in place to ensure a smooth transition from the point of devolution until the Scottish Parliament has legislated on the long-term framework for management of the assets.

This document sets out and assesses the potential impacts of options for the long-term management of the Scottish Crown Estate assets. It considers whether the overall aims are in need of realignment moving forward, as well as the functional approach to further devolution over a twenty year time horizon to provide appropriate consideration of the medium and long-term costs and benefits.

- **Rationale for Government intervention**

Good management of Scotland's land, marine environment and other natural resources is of key importance to the Scottish Government and is essential for Scotland's future prosperity. The devolution of the management of Scottish Crown Estate assets represents an opportunity to enhance local control and transparency in decision-making, as well as to maximise benefits to Scotland and to individual communities.

The devolution of the management and revenue of the Scottish Crown Estate assets also provides an opportunity to use capital assets in a way that enhances their contribution to the achievement of the following National Outcomes:

- *We live in a Scotland that is the most attractive place for doing business in Europe.*
- *We realise our full economic potential with more and better employment opportunities for our people.*
- *We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.*
- *Our public services are high quality, continually improving, efficient and responsive to local people's needs.*
- *We value and enjoy our built and natural environment and protect it and enhance it for future generations.*

Several of the assets within the portfolio, such as parts of the rural estate (e.g. forests) and the seabed have public good characteristics. These are goods that individuals cannot be excluded from and where use should not reduce the availability for others. Government intervention is required as without appropriate management of the use of these assets negative consequences can occur whereby users only act in their own self-interest and do not consider the wider costs to society of their activities. For example, the provision of seabed leases with clearly stipulated rules and regulations for aquaculture and renewables development ensures that negative side effects such as pollution are minimised (or are paid for by the developer rather than wider society). The implementation of rules and regulations can also ensure that the seabed is not abused or overly depleted, allowing a range of users across different sectors to make use of the resource. Being able to plan strategically for seabed leasing (for example the appropriate location of development sites or cable routes) can ensure a more efficient allocation of resources as the needs and requirements of potential users can be considered. In addition, management of the Estate allows for important non market benefits, such as the cultural heritage of

certain assets to be protected and maintained, although it has not been possible to quantify these for the purposes of this Business and Regulatory Impact Assessment.

Current arrangements

To date, the property, rights and interests of the Crown Estate have been managed mainly on a commercial basis, with land and property being bought, sold and leased with the aim of maintaining or enhancing the value of the Estate. This has been carried out so as to ensure the best consideration has been secured – that is, the best revenue stream that can be secured from the lease without extracting a monopoly value (the manager should not abuse their position as sole right holder). These aims were laid out in the Crown Estate Act 1961, which charges the Crown Estate Commissioners and Crown Estate Scotland (Interim Management) with maintaining and enhancing the Estate's value and the return obtained from it, but with due regard to the requirements of good management.

The long-term arrangements for devolution, however, will provide an opportunity for the Scottish Parliament to provide a new or amended purpose for the Scottish Crown Estate – one which might take into account wider considerations, including socio-economic, community or environmental benefits. It will remain that all capital receipts from the sale of assets must be reinvested in the Scottish Crown Estate, as required by the Scotland Act 2016.

The Crown Estate Transfer Scheme 2017 includes provisions to restrict charges for leases for the Estate in Scotland for electricity infrastructure, telecommunication cables and pipelines. These restrictions provide for independent review and ensure that monopoly value is excluded. The Transfer Scheme also specifies the basis for essential use of the Estate for defence purposes.

As well as the core activity of acting as a landlord by buying and selling and leasing land and property, the current manager of the Scottish Crown Estate also undertakes strategic planning and develops investment strategies on a national or industry sector basis with the aim of enhancing the value of the Estate for the future.

Administrative and capital costs

The administration and capital costs of maintaining the Estate are currently funded from the gross revenue or the capital budget, including from sales of capital assets where necessary. These costs include administrative overheads, staff costs and property maintenance, as well as new capital investment to ensure future viability of assets (for example, jetties and harbours). The intention is to continue funding these costs from gross revenue or the capital budget, while ensuring they are kept in line with efficient operations.

Future arrangements for revenue

The Scotland Act 2016 requires the revenue from the Scottish assets to be paid into the Scottish Consolidated Fund following devolution. There will be a reduction to the Scottish Consolidated Fund equivalent to the net revenue of the Crown Estate in Scotland in the year prior to the transfer. Scottish Ministers are now responsible for

decisions on use of net revenue paid into the Scottish Consolidated Fund.

In June 2014 on conclusion of the first round of the Island Areas Ministerial Working Group's discussions on 'Our Islands, Our Future', the Scottish Government published the '*Empowering Scotland's Island Communities*'² prospectus. Scottish Ministers gave a commitment to provide the net revenue from Crown Estate marine assets out to 12 nautical miles to coastal and island councils to ensure that local communities are able to benefit. The commitment was intended to enable local communities to benefit from the marine income from the Crown Estate. All the commitments in the prospectus were based on a 'yes' vote in the referendum on Scotland's future.

We are currently considering how best to design the arrangements for distribution of the net revenue from marine assets out to 12 nautical miles.

Management of liabilities

The devolution of the management of the property, rights and interests of the Crown Estate in Scotland was accompanied by the devolution of the liabilities of the Crown Estate, as specified in the Fiscal Framework Agreement and the Scotland Act 2016. These potential liabilities primarily relate to maintenance of the Estate. There are also other potential liabilities, including responsibilities for remedial work such as restoration of land leased for mineral extraction or residual liabilities for marine infrastructure on parts of the seabed remaining after a decommissioning scheme has been completed for offshore wind development. The current policy is to ensure that liabilities associated with use of the Estate rest with the lessee, where practical. On this basis our current understanding is that the historic liabilities of the Crown Estate are limited to residual liabilities associated with lease arrangements and specific liabilities associated with maintenance of property and land.

Approach to further devolution

Following devolution, the management of Scottish Crown Estate assets are controlled from within Scotland and it is possible for the first time to retain the surplus revenue raised in Scotland rather than pay surpluses to the UK Treasury.

Ownership of the Estate will remain vested in the Crown and the Scotland Act 1998 requires the estate to be managed as an estate in land and for capital receipts to be reinvested into the estate.

Interim arrangements for management from the point of transfer are designed to ensure that further devolution can be completed at the earliest opportunity and to ensure a smooth transfer for staff, tenants and other customers. Decisions need to be made on what should be the long-term framework for management of the assets following the initial period of managing the Estate through the interim arrangements.

Ministers plan to put in place the long-term framework through legislation at the Scottish Parliament and will wish to contribute to the following principles for

² <http://www.gov.scot/Resource/0045/00452796.pdf>

democratic renewal and decentralisation:

- People should be able to influence decisions that affect them and their families, and trust the decisions made on their behalf by those they elect.
- Arrangements should be appropriate and tailored towards the needs and aspirations of people and places, to support the delivery of shared national outcomes.
- Arrangements should be effective, efficient and represent value for money for Scotland as a whole.

Management of the Scottish Crown Estate could either be kept in one organisation or be reformed on a functional basis or a geographic basis, with a particular type of asset being managed by one type of organisation under a functional approach or some or all assets in particular areas being managed locally under a geographic approach. The Smith Commission's recommendations envisaged opportunities for further devolution of management of the land, property and rights below the national level being pursued on a geographic basis, with particular reference to the Orkney Islands, Shetland Islands and Western Isles and a process for other local authorities to express interest in local management.

Following a consultation on the long-term management of the Estate the Scottish Crown Estate Bill brought forward by the Government seeks to enable a case-by-case functional approach to further devolution of individual assets or parts of assets.

Consultation

- **Within Government**

The proposals have been developed in a collaborative way, with extensive involvement from relevant officials across the Scottish Government, including:

Directorate for Marine Scotland
Directorate for Environment and Forestry
Directorate for Finance
Transport Scotland
Directorate for Local Government and Communities
Directorate for Agriculture, Food and Rural Communities
Directorate for Energy and Climate Change
Directorate for Legal Services

- **Public Consultation**

The Scottish Government carried out a public consultation on the long term arrangements for the Crown Estate in Scotland. The consultation was published on 4 January 2017 with views invited by 29 March 2017. 212 responses to the consultation were received in time for the analysis, 115 from organisations and 97 from individuals.

- **Business**

The Stakeholder Advisory Group on the Crown Estate (SAGCE), established in September 2015³, provides a forum to identify and explore proposals for consultation. The diverse membership of the Group brings together the perspectives of numerous Crown Estate portfolio interests (e.g. marine industries and rural tenants). The Group has met seven times to date.

Three SAGCE subgroup workshops were held in late September 2016, continuing engagement on potential issues for inclusion in the longer term consultation on the management of Crown Estate assets in Scotland. The workshops focused on Land, Coastal and Marine issues, with an overview of the assets under consideration, in three separate sessions in Perth, Edinburgh and Glasgow. The aim of the subgroup workshops was to seek views and feedback on the following issues:

- The basis for decisions on management of these assets;
- Further devolution opportunities;
- Use of the revenue;
- Other practical arrangements; and
- Other questions that should be included in the consultation.

Scottish Government officials have also carried out informal face-to-face meetings with a variety of stakeholders who are members of the Stakeholder Advisory Group on the Crown Estate.

Options

Options for overall vision for the Scottish Crown Estate assets

Good management

Before outlining the various options for the functional approach to management of the assets, it is necessary to consider the future purpose of the Scottish Crown Estate. To date, the Crown Estate has been run as an independent commercial business, prioritising commercial aims, although with some ability to exercise discretion in the interests of achieving good management of the Estate. Devolution provides an opportunity to review and expand the role of these 'good management' considerations. There is, however, considerable scope for retaining the existing discretionary approach to management and investment decisions in the interests of ensuring structural flexibility and efficiency.

Current approach: prioritising commercial considerations

To date, the property, rights and interests of the Crown Estate have been managed mainly on a commercial basis through buying and selling land and property, with the aim of maintaining or enhancing the value of the Estate. These aims were laid out in the Crown Estate Act 1961, which requires the best consideration (price) to be achieved when selling or letting Crown Estate assets, discounting any monopoly value.

³ <http://www.gov.scot/Topics/marine/seamanagement/TCE/AdvisoryGroup>

If long-term devolution arrangements were to be continued in this way, revenue for the Crown Estate would be maximised. However, there could be wider socio-economic and environmental costs associated with missed opportunities – for example, some projects that could generate wider economic or environmental benefits to Scotland or the local economy than the revenue from leasing could be put at risk. This may, in turn, reduce the resilience of local economies, leading to future unemployment and migration effects resulting from lack of local investment in human or physical capital in parts of Scotland.

Socio-economic and environmental considerations

Scottish Ministers consider there to be merit in continuing to manage assets on a largely commercial basis, but to introduce reforms to provide scope to take into account wider environmental or socio-economic benefits when charging for a lease or sale of land. For example, this would enable the manager to charge a lower amount to support economic development projects where the manager is satisfied that this could lead to broader socio-economic or environmental benefits for Scotland.

The Scotland Act 2016 requires the management of the Estate as an estate in land, i.e. to maintain the estate and reinvest proceeds in land or property. A proposed discretionary approach to consider socio-economic or environmental factors must not compromise compliance with that duty. In addition, the exercise of this approach could decrease overall revenue from the Estate, reducing net revenue for communities, and potentially creating financial pressures on the Scottish Consolidated Fund.

Expanding the purpose of the Scottish Crown Estate to include socio-economic and/or environmental considerations could yield significant benefits. The management of the estate on this basis could lead to indirect income and employment benefits to local economies. There have also been requests for Scottish Crown Estate asset managers to take account of community benefits – examples of this include investment in community centres on Crown Estate rural estates which, while not commercially lucrative, foster community cohesion and wellbeing.

It is worth noting that the geographical spread of Scottish Crown Estate assets means that these benefits would largely be conferred on relatively fragile rural and coastal communities. It is important to consider that wider socio-economic benefits such as community cohesion and wellbeing do not have an easily measurable value. Such non-market benefits are nonetheless important and accounting for them and considering them alongside other socio-economic and environmental costs and benefits and the overall impact on net revenue would provide a fuller picture of the costs and benefits of pricing and investment decisions. There have also been calls for an explicit duty to take account of the environmental implications of decisions on management of the Estate.

Additional considerations

Devolution provides an opportunity to align management of Scottish Crown Estate assets more closely with wider Scottish Government priorities, especially those

relating to community empowerment, access and land reform. Furthermore, accountability to the Scottish Parliament provides new opportunities to enhance the transparency of how the Scottish Crown Estate is managed. There are likely to be constraints on full disclosure of some activities, however, as a result of data protection or commercial sensitivity considerations.

Finally, there needs to be some consideration of the temporal priorities in future decision-making. The current approach prioritises long-term goals over short-term gains. This approach allows for continuity and provides for contingency, and should be incorporated into the vision of the future Scottish Crown Estate.

Recommendation

Whilst the requirement to maintain and enhance the value of the Estate through prioritisation of commercial considerations must remain, there is an opportunity to take a more balanced approach that takes into account wider socio-economic, community and environmental considerations. In addition, there is an opportunity to enhance transparency in decision-making and alignment with Scottish Government policies (including environmental issues).

Option 1: Retain management of all assets at the national level (“do nothing”).

Sectors and groups affected

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other customers of the Crown Estate.

Benefits

Option 1 is the “do nothing” approach. It most closely follows the interim model arrangements which aim to minimise disruption to the administration and management of the Estate. As a result it is likely to be the option with the lowest associated financial costs, but may not deliver some of the additional socio-economic or environmental benefits to Scotland that could be derived from local management of assets. Minimising change would also reduce disruption for staff employed by the interim manager of the Scottish Crown Estate.

This option would retain economies of scale relating to managing assets at a national level and ensure the most cost efficient allocation of staff and resource costs. For example, retaining a central body would avoid situations under a less centralised system where similar, duplicate roles could be required across several local communities. It would also ensure a consolidated approach to the management of liabilities. In addition, decision making would be supported by staff who currently have the most experience in dealing with issues across the Estate.

This is likely to be the simplest approach for marine industries such as renewables and other marine industries that rely on Crown Estate leases or services as it would enable them to continue to deal with one manager and a consistency in approach across Scotland.

Scottish Ministers consider there will be a continuing need to provide for strategic planning and investment strategy development for the Estate on a national basis or for industry sectors in order to co-ordinate work to enhance the value of the Estate in future. A central body would allow for continuity of investment in strategic research and initiatives including activity to enable new industries to develop, grow and mature to a stage where they become new sources of revenue for the Estate. Examples include the provision of funds to support research projects through the Scottish Aquaculture Research Forum and funding of strategic research to accelerate commercial-scale development of offshore wind, wave and tidal renewable energy. Option 1 would enable the continuation of this approach where the capital value of the land and property can readily provide collateral for investment in new opportunities elsewhere in the Estate.

There is a clear benefit in retaining a strategic planning or investment strategy role at the national level involving discussion and co-ordination with managers of individual assets at the local level. There may also be a need for management of some assets at the national level because individual local authorities or community organisations may not be interested in taking on the management of some Crown Estate property, rights and interests or because the functions are better managed at the national level. Examples of functions best retained at a national level include offshore renewable leasing (12-200nm zone), rights over cables and pipelines, and other seabed rights (12-200nm zone) such as gas storage rights and mineral rights (not hydrocarbons). There has also historically been a general presumption against selling the seabed so that this national strategic asset does not become fragmented. This presumption could be retained under both this option and the other options.

Crown Estate Scotland (Interim Management) leases land and property to 2,000 individuals and businesses. Not all assets may generate sufficient revenue for maintenance, investment and development. In addition, there are potential liabilities across the Estate which will need to be managed. Therefore, provision for the transfer of funds is required in order to ensure that legal duties can be delivered to maintain all parts of the Estate. This could be achieved under all three options but retaining all assets at a national level is likely to be the most efficient approach.

Costs

Option 1 would limit community empowerment and control and it would not follow the principles of the Smith Commission's recommendations. There are dangers in adopting a one size fits all approach which doesn't allow any opportunity to tailor the approach to the aspirations of communities. This could forego potential devolution opportunities where there are synergies with local community responsibilities, limiting local accountability and scope for community empowerment. Furthermore, a centralised approach could stifle creativity and innovation in the way that assets are managed, thereby limiting the benefits which might accrue to Scotland.

Option 2: Devolve management of all assets to local authorities or communities.

Sectors and groups affected

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other customers of the Crown

Estate.

Description

This option would devolve management of all assets and liabilities to local authorities or community organisations. The existing functions of Crown Estate Scotland (Interim Management) could in theory be replicated in each local area. A national framework could set lease prices at a strategic level for consistency across Scotland. Without such a framework additional costs are likely (such as the additional expertise required to manage lease pricing in each local community and the additional bureaucracy applied to lessee leasing from different local managers).

There are a range of different sub-options plausible within this option such as the potential for some administrative activity to be managed through a shared services model at the national level with decisions taken locally (the degree of which having corresponding implications on the estimated costs and benefits). On timing, a phased approach is possible under option 2. However, in order to draw out an indicative cost and benefit assessment the example of full further devolution of management has been chosen.

Benefits

Option 2 would provide for local control and it would deliver the Smith Commission's recommendations for the islands areas and other local areas that wish to take on responsibility for the management of Scottish Crown Estate assets in their area. It would allow for potential synergies with local authority community planning functions and their environmental responsibilities for the foreshore, and provide greater community empowerment. Local management would also enhance local accountability in decision making, and would offer the flexibility for local managers to tailor the management of assets in ways which best serve their local communities.

Costs

Not all local authorities or communities may have the desire to manage the assets in their area. The skills and expertise may not be available locally to manage assets and these may take time to be developed to ensure efficient management in the near future. It is also not clear that all the individual assets will be self-funding in future so there may be costs for local authorities or community organisations. Further devolution to local authorities or community organisations of increased responsibilities may result in an expectation of additional Scottish Government funding for new responsibilities.

Large scale further devolution would have significant administrative as well as public sector costs. The current national manager has 35 staff working on management of Scottish Crown Estate assets. It is reasonable to expect that the number of people needed to manage the assets would have to increase should existing functions of Crown Estate Scotland (Interim Management) require replicating in each local area. Thus there are likely to be diseconomies of scale when compared with option 1, the costs of which - such as replicating the expertise of the existing manager in each local area - would also impact on the net revenue available for local communities.

Fragmentation of the Estate due to loss of economies of scale and duplication of administration costs could risk the realisation of net revenue in the future.

Not all the assets may be sustainable in their own right in future which could result in financial burdens being placed on councils or communities and there is uncertainty surrounding the value of each standalone asset.

There is good reason for the manager of the asset to be normally responsible for the lease agreement to cover the management of liabilities, i.e. the person taking on the responsibility for management of an asset or for controlling use of the Estate should take on the responsibility for managing the associated liabilities. However, this may result in local managers taking on significant contingent liabilities and it is not possible in advance to be sure that the revenue from individual assets or groups of assets at the local level will be able to cover their contingent liabilities. Under this option the future viability of parts of the Estate could thus be endangered if they failed to be maintained.

There is uncertainty surrounding how certain assets would be apportioned to local authorities or communities – for example how best to divide up a pipeline that runs between two local authorities areas or how to apportion marine areas. For example, there is a risk that increased complexity affecting “cross border” transport of carbon dioxide (CO₂) by pipeline, or of CO₂ storage across a number of areas of local responsibility, could discourage carbon capture and storage (CCS) developers in England, such as at Teesside, from considering CO₂ storage in the Scottish offshore area.

There may be other potential institutional issues that require management such as potential conflicts of interest between leasing decisions for the Estate and planning or licensing applications at a local authority level.

In the absence of a national framework this approach to local management is more likely to lead to fragmentation, competition between different parts of Scotland and reduced net revenue for communities. Whilst there is the opportunity for competition between local authorities or communities to spur investment in the Estate by making sites more marketable, competition between local authorities or communities that results in lower lease prices would result in less net revenue across the board for no wider economic benefit. It would also result in inconsistency across Scotland which may result in higher transaction costs for industry sectors having to deal with a number of different areas, which may in turn limit external investment. A shared services model, should it be introduced, could reduce administration costs compared with regional or local management, but it could still result in higher administration costs than the national level approach outlined in option 1.

Option 3 (preferred option): Consider on a case by case basis the appropriate governance arrangements for each asset or function of the Scottish Crown Estate.

Sectors and groups affected

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other customers of the Crown Estate.

Description

This would involve a national framework to govern further devolution opportunities, which could take place on a phased basis. Functions that could potentially be further devolved to councils or communities include: foreshore rights; leasing for wave and tidal energy out to 1nm, 3nm or 12nm; and land in local authority operated ports. In contrast Scottish Ministers consider there to be a strong case for the management of the seabed, particularly the rights to the 12-200nm zone, and leasing for strategic national infrastructure such as telecommunication cables, pipelines and offshore wind farms to be undertaken at the national level. Other functions would require more consideration on a case by case basis.

Under this option Scottish Ministers would expect local managers to make a case for further devolution to the local level of the decision-making of particular property, rights and interests of the Scottish Crown Estate and to demonstrate that they have the capability to take on the management of these assets or parts of assets to maintain service delivery to customers and deliver increased benefits.

A 'shared services' approach for assets managed at the local level could be adopted, involving either a national administration to support local decision-making or a similar administration at a wider regional level to provide support services for clusters of council areas or communities. This approach would enable local areas to take democratic decisions on the use of an asset even if the council or community has no or limited experience in managing similar assets.

The national framework could include:

- Definition of the extent of local management or decision-making responsibilities.
- A power for Ministers to develop policy guidance and procedures for co-ordination between managers or to ensure consistency of service.
- A power for Ministers to set bands for charging for leases by sector, where appropriate.
- A power for Ministers to require independent reviews for charging for leases.
- Arrangements to ensure that charging does not exert monopoly power or that managers are not at risk of claims for collusion.
- The circumstances where there should be a role for Scottish Ministers in local decision-making.
- A power for Ministers to set targets for managers.
- A duty for managers to obtain Ministers' approval for sale of an asset and planned use of the capital proceeds.

The national framework could include rights as well as duties, making clear what other legislation needs to be followed.

It could also include procedures for managing potential conflicts of interest between a manager's duties for Scottish Crown Estate assets and their wider set of duties and responsibilities. It could also include procedures to ensure that assets are returned if they are leased or sold at less than market value and they are not put to the intended purpose within a reasonable timescale.

Benefits

Option 3 would involve a case by case assessment and enable a geographic or functional approach to be followed. This would enable the principles of the Smith Commission to be delivered while recognising the diversity of the Scottish Crown Estate portfolio.

This option would enable the most appropriate and efficient arrangements to be put in place for the management of each asset based on the Smith Commission principles and an understanding of the ambitions of local authorities, local tenants, local communities and others who have an interest in or depend on the use of Scottish Crown Estate assets. The option could be designed to increase local control over decision-making with support arrangements for decision-making which reduce duplication and fragmentation, with efficiencies emerging as local management structures develop according to good governance procedures, and expertise is gained. It provides the opportunity to seek the views of tenants of the rural estates on whether they would like to be responsible for management, before any changing of the management arrangements for these estates. Under the appropriate framework it would also ensure stability and continuity for some customers that rely on Crown Estate leases or services by enabling them to continue dealing with one manager in Scotland for some activities.

This option would avoid the imposition of a 'one size fits all' approach across Scotland, provide scope for further devolution opportunities to be tailored to the aspirations of communities and provide space for alternative solutions if some assets or interactions with industry are challenging to run appropriately on a fragmented basis. There is the potential for local employment and enterprise opportunities to reduce costs, and for improved infrastructure supported by re-investment of revenue into local areas.

The requirement for revenue to be paid into the Scottish Consolidated Fund provides a basis for the transfer of funds between managers to ensure that no local managers are made significantly worse off by devolution and to better manage risk across the asset base. A national manager for some assets would also enable a lead organisation to be identified to ensure continuity of investment in strategic research and initiatives including activity to enable new industries to develop, grow and mature to a stage where they become new sources of revenue for the Estate.

There is a degree of uncertainty surrounding the net revenue of Scottish Crown Estate assets. The interim period prior to the start of the long-term arrangements provides an opportunity for improving knowledge and understanding of the management of each individual asset to maximise the benefits for Scotland. A phased approach under option 3 would allow Ministers to make better informed decisions on the future of the Estate based on the greater understanding of the individual assets and liabilities as they are managed in Scotland. In addition, a more considered approach to devolution of assets spread over a longer time horizon will help reduce administration and public sector costs. A phased approach is also possible under option 2.

Costs

Devolving to local communities on a case-by-case basis where there is a strong rationale to do so and when the appropriate desire, knowledge and expertise is in place will help minimise the potential costs that are outlined in option 2. There would be the opportunity to build up local institutional capacity before appropriately apportioning assets and liabilities to communities that wanted them. This would help limit diseconomies of scale and duplication of effort, and ensure that the skills and expertise of transferring staff currently employed by Crown Estate Scotland (Interim Management) could still be employed to its fullest. In the short run there may be transitional costs in establishing management at a local community level. Whilst a shared services model could reduce administration costs compared with regional or local management, the introduction of such a model would still result in higher administration costs than the national level approach in option 1.

Further information is contained in the Financial Memorandum which sets out the costs associated with the measures introduced by the Scottish Crown Estate Bill.

Scottish Firms Impact Test

The Stakeholder Advisory Group on the Crown Estate, established in September 2015, provides a forum to identify and explore proposals for consultation. The diverse membership of the Group brings together the perspectives of numerous Crown Estate portfolio interests (e.g. marine industries, local authorities and rural tenants). This includes representatives of relevant small businesses. The group has met seven times to date.

Three SAGCE subgroup workshops were held in late September 2016, continuing engagement on potential issues for inclusion in the long-term consultation on the management of Crown Estate assets in Scotland. The workshops focused on Land, Coastal and Marine issues, with an overview of the assets under consideration, in three separate sessions in Perth, Edinburgh and Glasgow. The aims of the subgroup workshops were to seek views and feedback on the following issues:

- The basis for decisions on management of these assets;
- Further devolution opportunities;
- Use of the revenue;
- Other practical arrangements; and
- Other questions that should be included in the consultation.

Scottish Government officials have also carried out informal face-to-face meetings with a variety of stakeholders who are members of the Stakeholder Advisory Group on the Crown Estate. These stakeholder groups were also invited to feed back as part of the public consultation process.

Under option 1 the likely impacts will be neutral on small businesses that are customers of the Crown Estate. There is a possibility under Options 2 and 3 that devolution could impact on continuity of service to customers of the Crown Estate if the changes are not managed smoothly as well as a potential reduction in external investment. Lease charges under all three options may vary. Should these decrease

local firms may benefit, although a resulting fall in net revenue could negatively affect local communities' businesses.

Further information is contained in the Financial Memorandum which sets out the costs associated with the measures introduced by the Scottish Crown Estate Bill.

Competition Assessment

- Will the measure directly or indirectly limit the number or range of suppliers?
- Will the measure limit the ability of suppliers to compete?
- Will the measure limit suppliers' incentives to compete vigorously?
- Will the measure limit the choices and information available to consumers?

Under options 1 and 3 there is a degree of consistency of approach with interim arrangements in place that is likely to ensure that the long-term framework for the management of the Scottish Crown Estate assets will not have any distortionary impact on competition for most if not all sectors. However, should devolution to the local level occur without an accompanying national framework as set out in option 2 to set leasing charges then there could be the potential for competition between local authorities. Whilst there is the opportunity for competition between local communities to spur investment in the Estate by making sites more marketable, competition between local authorities which results in lower lease prices would result in less net revenue across the board. It could also result in inconsistency across Scotland which may result in higher transaction costs for industry dealing with different areas, which may limit external investment.

Test run of business forms

No new forms are proposed at this stage.

Legal Aid Impact Test

It is not expected that the proposals will have any impact on the current level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund.

Enforcement, sanctions and monitoring

Section 36 of the Scotland Act 2016 provides the legislative framework for management of the Scottish Crown Estate and is supplemented by the Crown Estate Transfer Scheme 2017. This framework includes a requirement to continue to manage the property, rights and interests on behalf of the Crown, the need to maintain the Scottish assets as an estate in land or estates in land managed separately (with any proportion of cash or investments that seems to the person managing the Estate to be required for the discharge of functions relating to its management) and controls for the protection of national strategic infrastructure. The estate in land duty and the requirement for payment of net revenue to the Scottish Consolidated Fund require a national accounting and governance framework. Management of property, rights and interests will be accountable to the Scottish Parliament under all the options included in this paper and a national framework to accompany further devolution opportunities will clarify local and national responsibilities.

Implementation and delivery plan

The nature and timescale for actual implementation of any arrangements for further devolution is to be determined by legislation agreed by the Scottish Parliament. As outlined above there may be a phased approach to implementation of further devolution opportunities once the legislation on the long-term framework has been established.

Summary and recommendation

Options	Relative Cost Impacts
1. Retain at national level	Low
2. Full devolution	High
3. Case by case	Medium

Vision	Future TCE revenue impact*	Wider benefits
1. Commercial	Neutral	None
2. Community	Negative (significant)	Yes (significant)
3. Balanced	Negative (small)	Yes

*This summary table estimates the impact against the current baseline scenario in which TCE operates a commercial approach. Wider benefits include social benefits that are difficult to quantify and assign a monetary value to such as community cohesion and wellbeing.

Option recommendation

Option 3 - Consider on a case by case basis the appropriate governance arrangements for each asset of the Crown Estate in Scotland.

This option would enable the principles of the Smith Commission to be delivered where there the appetite and resources are in place to devolve assets under a national framework. It would also ensure that strategic investment at a national or sector level can continue, whilst maintaining stability and continuity for customers of the Scottish Crown Estate.

Vision recommendation

A balanced approach which takes into account wider socio-economic, community and environmental considerations whilst ensuring that commercial considerations are adopted to ensure the maintenance and enhancements of the value of the Estate.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

A handwritten signature in black ink, appearing to read 'R. Cunningham', written in a cursive style.

Date: 7 December 2017

**Roseanna Cunningham MSP
Cabinet Secretary for the Environment, Climate Change and Land Reform**

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Scottish Government
Riaghaltas na h-Alba
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