

Context and overview

All of Scotland's sea bed, most of Scotland's foreshore and some other public assets are managed by a body that is not accountable to the Scottish Parliament: the Crown Estate Commissioners (CEC). The revenues from their management flow out of Scotland to HM Treasury. This is an anachronistic arrangement out of step with devolution and it is preventing the optimal management of Scotland's marine assets.

Scotland is a maritime nation. It has almost 500,000 square kilometres of sea, six times its land area.¹ It has 118 inhabited islands. The Scottish sea area is over 60% of the UK sea area. The maritime economy is relatively much more important than in other parts of the UK and offers some of Scotland's best opportunities for growth.

With as much as a quarter of Europe's offshore wind and tidal energy potential and an estimated 10% of its capacity for wave power, Scotland can become a green energy powerhouse. Scotland has 206 GW of practical offshore renewable energy resource, almost 40% of the total resource for the UK. Harnessing just a third of this potential could meet Scotland's electricity needs seven times over by 2050, with a net value, in terms of sales, of £14 billion. Furthermore, the North Sea offshore of Scotland has the largest offshore CO2 storage capacity in the EU.

The current arrangements for managing Scotland's natural marine assets have resonances of feudal times. Through leases, dues and fees set remotely, the CEC tax development of the seabed and pass the profit to HM Treasury. The CEC also has the right to sell parts of the Crown Estate, including the seabed, without reference to the views of the Scottish Parliament, the Scottish Government or the Scottish people.

There is a better way to manage Scotland's natural assets in the public interest, a modern approach that brings decision-making closer to the people and would be of benefit to the nation, especially to the many remote and island communities in Scotland whose livelihood and future depends on the sea.

This briefing note sets out the composition of the Crown Estate in Scotland and the case for reform. It explains how the Crown Estate should be better managed and sets out proposals for change. This would be hugely significant for Scotland, as we work to make the most of our vast offshore energy potential and bring new jobs and opportunities across our nation, as part of a renewables re-industrialisation of Scotland, and democratise the management of the seabed.

The Crown Estate in Scotland

The property, rights and interests of the Crown managed by the CEC are known collectively as the Crown Estate. The property, rights and interests that make up the Crown Estate in Scotland are legally distinct from those in the rest of the UK, and the ancient possessions came separately from the Scottish Crown.

Contrary to popular belief the Crown Estate is not the Sovereign's private estate, and nor do the Crown Estate Commissioners own it. CEC administers the rights of ownership under the Crown Estate Act 1961. Other arrangements for administering the Crown Estate have existed in the past and are perfectly possible today.

The Crown Estate Commissioners was first constituted by the Crown Estate Act in 1956. The origin was the transfer by legislation in the 1830s of the administration and revenues of some of Scotland's Crown property rights to the CECs' predecessors, the Commissioners of Crown Lands. The Secretary of State for Scotland was, prior to 1956, the Commissioner for Scotland.

The CEC is a UK public body responsible to HM Treasury. It is required to administer the UK-wide Crown Estate on a commercial basis and has no broader remit in relation to delivery of wider public

¹ Fully devolved competence beyond 12 miles is limited to fishing

policy. The CECs' responsibilities in Scotland are set out in detail in Annex A and include: Scotland's territorial seabed out to 12 nautical miles; almost half of the foreshore; and assets unique to Scotland such as rights to salmon fishing, wild oysters and mussels and culturally important sites including the King's Park at Stirling and part of Princes Street Gardens in Edinburgh. CEC also has responsibility for leasing the seabed for renewable energy and carbon storage out to 200 nautical miles.

The CECs' UK wide surplus revenues are transferred to the UK Treasury on an annual basis (£210m in 2009/10). The Crown Estate in Scotland accounts for less than c.5% of both the CECs' annual revenue and the capital value of the Crown Estate. This relatively low Scottish percentage is because the greater part of the value and revenue of the Crown Estate is commercial property in England.

Table 1: Current Revenue Position of the Crown Estate in Scotland

2009/10	UK (£ million)	Scotland (£ million)
Value of holdings	5989	183.5 (3.1%)
Revenue generated	299.7	13.1 (4.4%)
Gross surplus	246.8	9.1 (3.7%)
Surplus returned to Treasury	210	Est 4% (exact figures not available)

The administration and revenues of the Crown Estate in Scotland are reserved (although the Scottish Parliament can legislate over the extent and nature of Crown property rights). The CEC is not accountable to Scottish Ministers nor the Scottish Parliament; this is a particular anomaly as the CECs' activities relate to devolved responsibilities notably marine planning and management, economic development, renewable energy policy and ports and harbours. A unique feature of the administration of the Scottish Crown Estate is that the Secretary of State for Scotland has a specific power of direction. This was intended to safeguard public interest considerations in Scotland but has never been used.

Since devolution, the CEC has acted to reduce its accountability in Scotland. In 2002 it stopped treating Scotland as a separate management unit and keeping Scottish accounts. Now all of the CECs' policies and programmes are developed and delivered on a UK basis. There is therefore very limited scope for consideration of whether a different approach within Scotland is desirable or necessary.

The CEC approach to awarding leases is based on a narrow remit of maximising economic return. It is a product of their constitutional position, more appropriate for conventional commercial property and clearly inappropriate for the management of Scotland's marine natural assets. Significantly the CEC do not have an economic development remit. It is a matter of wider community interest that things should be done differently.

Support for reform

There is longstanding concern about the current arrangements and a groundswell of opinion across Scotland for change. There is cross party support in the Scottish Parliament for reform and on 2 June 2011 the Parliament passed a motion supporting devolution of the Crown Estate to the Scottish Parliament to ensure that Scotland's natural assets are managed in Scotland for the benefit of all of Scotland's people.

A number of high-profile and authoritative reports published in recent years have criticised CECs' management of the Crown Estate in Scotland. These include the Crown Estate Review Working Group's report in 2007, the Calman Commission report in 2009 and the Treasury Select Committee's inquiry in 2010.

Earlier this year a wide range of individuals and organisations provided a considerable volume of evidence to the Scottish Parliament's Scotland Bill Committee and Westminster's Scottish Affairs Committee calling for the Scotland Bill to be used to bring about devolution. The Scottish Government's recent public consultation on maximising community benefit from renewable energy projects sought views on this key issue: the majority of respondents answering the questions on the Crown Estate agreed that the revenues should stay in Scotland and supported reform to improve transparency and accountability to the people of Scotland.

Proposal

Devolved control over the management and revenues of the Crown Estate in Scotland is essential to maximise the benefit from our significant marine resources. Devolution would allow us to realise the seabed's full economic potential, helping create thousands of additional jobs across Scotland and supporting the transition to a low carbon economy.

Delivering Devolution of the Crown Estate

The Scottish Crown Estate can be brought within the remit of the Scottish Parliament by amending the Scotland Bill that is currently being considered by the UK Parliament. This can be achieved by removing the current Scotland Act reservations on its management and revenues:

"in Part 1 of Schedule 5 to the Scotland Act 1998 (c.46), omit paragraphs 2(3) and 3(3)(a)."

In addition the definition of Scotland in the Act should be amended to fully devolve all competence for devolved matters out to 200 nautical miles. Devolving full legislative competence to the Scottish Parliament would allow for streamlined management of Scotland's marine area and proper accountability. (Crown Estate devolution would also allow modernisation of the management of the disparate Scottish assets which include parts of Princes Street Gardens in Edinburgh and several large rural estates.)

Making better use of Crown Estate Revenues

The revenues arising from the management of the Crown Estate in Scotland would be transparently reinvested in promoting sustainable development and supporting relevant rural and island and coastal communities. The details of the arrangements would be the subject of further consultation and Parliamentary approval, but the Scottish Government's view is that it would be appropriate for a proportion of the surplus revenues to be invested in the development of Scotland's offshore renewables sector and a proportion to be used for community benefit around Scotland's shores.

We would seek to take forward proposals to deliver community benefit through the creation of a Fund for Future Generations, allowing a proportion of the substantial anticipated future revenues from offshore energy to be invested for the long-term providing both financial security and economic opportunity. Income from this fund would support a range of projects designed to deliver flourishing communities around Scotland's shores and would ensure the people of Scotland directly benefit from our natural resources. Potential mechanisms for community benefit could include promotion of local asset ownership options or community funds and investment in education and training, particularly for young people.

We would seek to link together investment from Crown Estate revenues with released Fossil Fuel levy monies which currently sit at nearly £200m. In the short term the Scottish Government would ensure that investment in Scotland's renewables sector by the CEC was matched under new arrangements. The release of funds from the Fossil Fuel Levy would allow us to increase the level of investment. These revenues would be used for a range of purpose to help expand Scotland's low energy sector, such as

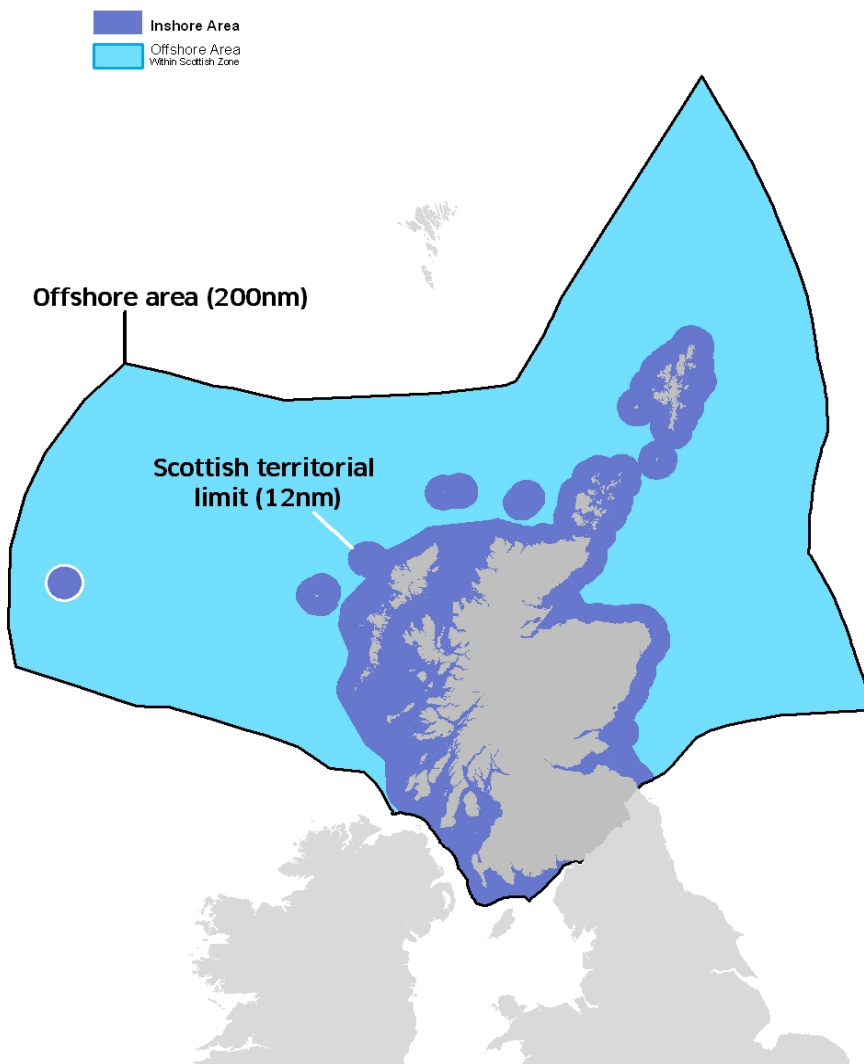
- Investment in skills development for the renewables sector
- Investing in the supply chain base

- Providing capital loans for community renewable projects

In addition to ensuring investment is maintained, the work undertaken by the CEC to support renewables development, for example the work undertaken in conjunction with Marine Scotland on bird surveys, would be continued and where possible accelerated.

More efficient and effective management of our natural resources

The Scottish Government would deliver streamlined, transparent and accountable arrangements for the management of the Crown Estate in Scotland. The detailed arrangements would be subject to public consultation and discussion.



Marine Scotland is already the licensing body for many marine developments and is well-placed to manage the marine estate. This would mean a streamlined approach to the development of renewables. A single body would be involved in the development of, and planning for, marine renewables, rather the current situation with two bodies in two different jurisdictions, operating under different policies. This would give greater certainty to investors.

Leasing responsibilities would give Marine Scotland an enhanced range of levers to deliver both upstream and downstream benefits from renewables projects in terms of manufacturing and maintenance investment and jobs. Leasing is a key lever for mitigation of social and economic impacts, a vital tool in encouraging public acceptance of individual projects and the industry as a whole.

There would also be benefits to the management of the aquaculture industry, with further potential for streamlining bureaucracy and more sustainable management, similar to arrangements in Norway - our closest competitor.

The processes by which the CEC sets port rents and re-charges legal fees to them as lessees would benefit from reform, with the focus on accountability and alignment of policies and operations in line with maximising Scotland's ports potential.

Given the relatively small sums of money involved, the variability of revenues, past sales of assets and future investment plans, the Scottish Government believes that this should be taken forward on a no detriment basis and will negotiate on a block grant adjustment.

There would be no impact on oil and gas leases or revenues while those matters remain reserved. A separate provision of the Scotland Act 1998 reserves oil and gas exploration and production, both onshore and offshore.

Changing the administration of the Crown Estate in Scotland

Following agreement that the CEC will devolve its responsibilities and powers in Scotland, the changes to the administration of the Crown Estate in Scotland would be introduced in phases as follows:

Phase 1 Pending implementation of the legislation to devolve the CEC's responsibilities and powers in Scotland, a range of interim changes to the CEC's operations will be introduced to improve accountability, transparency and policy alignment, including a separate Scottish operating division.

Phase 2 When the Scottish Government becomes responsible for the Crown property rights currently managed by the CEC (and following a wide public and stakeholder consultation during the transition period) the Government will bring forward proposals to involve local authorities and communities in decisions about marine resources.

In determining the most appropriate arrangements, the focus would be on ensuring optimal management of public assets, with a far broader remit and purpose than is currently achieved. Management arrangements would be tailored to meet specific Scottish needs and aspirations, including:

- Alignment with and directly contributing to Scottish Government purpose and objectives;
- A broad, inclusive focus which reaches beyond revenue maximisation to wider economic development and promotion of public interest;
- Use of revenues to deliver direct benefits to Scotland at a national and local level;
- Contribution to Scotland's unique climate change targets;
- Responsive to Scottish Parliament, Scottish Government and public expectations of transparency, accountability and participation;
- Reduction of bureaucracy and duplication of public resources.

Conclusion

Scotland's seabed and marine natural resources are a vital part of its economy and its greatest opportunity for growth. It is right that Scotland should be able to manage these assets both as a

matter of natural justice and to have the best opportunity of delivering the growth in off-shore renewable energy sought by both the UK Government and the Scottish Government. Present arrangements, with decisions being taken by a remote unaccountable body are clearly unacceptable and have been a source of friction in Scotland for decades. If not resolved this issue will hamper future growth and alienate affected communities.

This paper has proposed how change could be made and set out the intermediate steps which would be taken. This is a matter of great importance in Scotland, which has very little implication for the UK Government.

Annex A – Crown Property, Rights and Interests in Scotland managed by the Crown Estate Commissioners

Ancient possessions

- Ownership of the seabed (excluding hydrocarbons) within Scotland's territorial seas out to the 12 nautical mile limit, where this has not been granted out
- Rights over the continental shelf to minerals (excluding hydrocarbons) and sedentary species from Scotland's territorial seas to 200 nautical mile limit including recent claims of rights on renewables and carbon sequestration.
- Ownership of Scotland's foreshore where this has not been granted out and excluding areas under udal tenure.
- The right to all naturally occurring mussels in Scotland's territorial seas where this has not been granted out.
- The right to all naturally occurring oysters in Scotland's territorial seas where this has not been granted out.
- The right to all coastal salmon fishing within Scotland's territorial seas where this has not been granted out.
- The right to all salmon fishing in rivers and lochs in Scotland where this has not been granted out and excluding areas under udal tenure.
- The right to mine naturally occurring gold and silver in Scotland
- Ownership of 5 ha of West Princes Street Gardens, Edinburgh, including the Castlebanks.
- Ownership of Kings Park, Stirling

Modern Acquisitions

- ownership of five rural properties:
 - Glenlivet (Moray)
 - Fochabers (Moray)
 - Applegirth (Dumfries and Galloway)
 - Whitehill (Midlothian)
 - Old Mills Farm (Stirling)
- ownership of one urban property in Edinburgh (39/41 George Street)
- involvement in joint property partnerships (50% ownership of Fort Kinnaird Retail Park in Edinburgh through Gibraltar Ltd Partnership)
- ownership of coastal properties (excluding harbour and related property) (Rhu Marina, Firth of Clyde)

Other Rights & Dues

- title reservations: minerals rights and other rights reserved by the Crown over former Crown lands, including Edinburgh Castle and other prominent sites.
- heritable revenues: feu duties & surplus teinds still due to Crown over former Crown lands.
- other income: The right of the Crown to income if the one site in Scotland transferred to government ownership under the Forestry (Transfer of Woods) Act 1923, is sold.