

Treasury Committee Inquiry into Management of the Crown Estate.

Response by Andy Wightman.
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Executive Summary

I welcome the inquiry into the management of the Crown Estate. In Scotland, the CEC administers the property, rights and interests of the Crown which are defined by Scots law and thus devolved to the Scottish Parliament. The Crown Estate Commission itself, however, is reserved. This has led to tensions and to a level of unaccountability both locally and nationally which threatens to undermine democracy and the appropriate strategic management of these rights. I suggest that the Committee consider full devolution of the CEC's powers to the Scottish Ministers so that the administration and the rights are held together allowing for their more efficient management and accountability.

Memorandum

1. My name is Andy Wightman. I am a freelance writer and researcher on land issues in Scotland and the author of *Who Owns Scotland* (1996) and other publications. I am an adviser, consultant and researcher to and on behalf a number of public and private clients and also undertake a range of freelance writing and research on land related issues. Most recently I have undertaken research on Common Good land in Scotland and other forms of commons.
2. I welcome the inquiry announced by the Treasury Committee into the administration and expenditure of the Crown Estate which I believe may be the first such inquiry into the Crown Estate since the Crown Estate Act of 1961. I am submitting this memorandum as a contribution to this inquiry. In it I focus on issues relating to the Crown Estate in Scotland, specifically the administration of the property rights of the Crown Estate in Scotland
3. The Crown Estate is an oft misunderstood term and first of all I would like to clarify what I mean by it. As defined by the Crown Estate Act 1961, the "Crown Estate Commissioners" (CEC) are a body corporate whilst the "Crown Estate" is the term used for the "property, rights and interests" under the management of the CEC. In recent years the CEC has taken upon itself to brand itself as the Crown Estate when, in fact, the Crown Estate is as defined above.
4. I would also like to clarify the relevant provisions regarding the reserved and devolved powers relating to the CEC and the Crown Estate. Under the terms of the Scotland Act, the management of the Crown Estate and the hereditary revenues are reserved together with the CEC themselves as a body corporate.
5. However, the property, rights and interests that the CEC administer are devolved since they are defined by Scots law. Thus Crown land in Scotland, though administered by the CEC in accordance with the 1961 Act, can be the subject of legislation in the Scottish Parliament. Such legislation can cover both general matters (such as access) which apply to all land or can cover specifically Crown land by amending the nature and character of the rights that comprise it.

6. Historically, there has been much controversy and dispute about the nature of the Crown's property rights in Scotland and the legitimacy of the CEC and its predecessors to take positions (including through the courts) which have been designed to assert and promote the power of the CEC. Examples range from debates about the foreshore in the 19th century to contemporary debates about rights in, for example, Selkirk (over salmon fishing rights), Rothesay (over rights to moorings) and Stirling (ownership and control of the King's Park). I can provide further details of these controversies if required.
7. It is noteworthy that the three contemporary examples I have cited have pitted ordinary local people against the legal might of the CEC. In Selkirk, a determined campaign waged by local people succeeded (after 12 years of wrangling) in returning control of the fishings to the Common Good of the Burgh as an ancient part of the Burgh commons. But this campaign took 12 years of local voluntary effort to achieve a position where the historical truth was finally admitted by the CEC. One person close to the campaign characterised the CEC approach as including "*delay, attempts to split us up, simple denial of incontrovertible evidence, superciliousness, distortion, taking things out of context, abrogation of previous agreements and simple fraudulent misrepresentation*".
8. In Rothesay, local people have been forced to the Court of Session to defend ancient burgh rights which the CEC have denied exist. Local people should not be faced with such draconian action to assert their ancient rights and privileges.
9. In Stirling, the local Community Council fought in vain to overturn an agreement struck between Stirling Council and the CEC whereby CEC are being paid to transfer ancient possession of the Crown to a new public trust. This was in contrast to when 26 other ancient possessions of the Crown in Scotland had been conveyed by the CEC to Scottish Ministers (actually to the Secretary of State for Scotland) in 1999, immediately prior to the establishment of the Scottish Parliament for no consideration, including part of the ancient possessions of the Crown in Stirling (King's Knot). The central issue here was that the CEC insisted on treating the King's Park as a "rural estate" rather than as an ancient possession of the Crown (which it clearly is having been a Royal hunting forest since medieval times).
10. In addition to specific cases where the CEC has been an obstacle to local common rights, the CEC is obviously playing a significant role in the development of marine renewable energy through its exercise of the property rights of the seabed. In this role it is playing a key role in the development of this new industry but has no accountability either to the Scottish Parliament, Scottish Ministers or local government in whose area the seabed is located.
11. I suggest that it is inappropriate for such a remote and unaccountable body to be exercising such powers and that they would be more appropriately exercised by Scottish Ministers accountable to the Scottish Parliament and by local authorities. In this way, the marine estate could be managed in such a way so as to more closely match local and national strategic policy in Scotland.
12. It is interesting that a similar such approach was taken with land managed by the Forestry Commission (FC) in recent years. Just as the CEC is reserved but the property rights it administers are not, so the FC is reserved but forestry is not. As a consequence of the forestry devolution review, new arrangements are now in place

which, through Forestry Commission Scotland, in effect, provide full devolution over forestry which better reflects the role of the Scottish Parliament and its accountability to the Scottish people.

13. It is worth stressing that title to all the property that the FC manages in Scotland is, in fact held not by FC, but by Scottish Ministers and thus it was appropriate that eventually arrangements were reached that better reflected that reality.
14. I would argue should the administration of Crown property rights in Scotland be devolved. These are defined by Scots law, are devolved to the Scottish Parliament, and yet their administration remains with a body corporate in London. Full devolution of the CEC's powers to the Scottish Ministers would enable the administration and the rights to be held together allowing for their more efficient management and accountability.
15. If this proves politically difficult, then the same outcome could be achieved by the Scottish Parliament legislating to transfer title to these rights to Scottish Ministers, leaving the CEC alone (it is reserved) but with nothing to administer.
16. Finally, I commend to the Committee, the report of the Crown Estate Review Working Group - *The Crown Estate in Scotland - New Opportunities for Public Benefits*. The Group comprises eight organisations being six local authorities in Scotland together with Highlands and Islands Enterprise and the Convention of Scottish Local Authorities. Copies are available at

<http://www.highland.gov.uk/yourenvironment/landandwater/crownestatereviewwg.htm>

The report is an excellent and in-depth analysis of the status of the Crown Estate in Scotland and the opportunities that exist for improving the way in which Crown rights are administered.

17. I wish you the best with your inquiry and look forward to following its progress. I hope it can provide the opportunity to deliver a better future for the property, rights and interests of the Crown in Scotland.