

“THE CROWN ESTATE IN SCOTLAND”

- NEW OPPORTUNITIES FOR PUBLIC BENEFITS -

**THE REPORT
OF THE
CROWN ESTATE REVIEW
WORKING GROUP**

December 2006

FOREWORD

There are eight organisations represented on the Crown Estate Review Working Group (CERWG):- the six local authorities listed below that cover the Highlands and Islands of Scotland, Highlands and Islands Enterprise (HIE) and the Convention of Scottish Local Authorities (COSLA). These organisations:

- a) have long had concerns over the ways in which the property rights which make up the Crown Estate in Scotland, in particular the ownership of Scotland's seabed and public foreshore, are managed;
- b) now consider that the changed circumstances of devolution have created opportunities to increase substantially both the public benefits in Scotland from the management of these property rights and the level of democratic accountability in Scotland over their management; and
- c) therefore strongly recommend that without undue delay:-

the Secretary of State for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and the well being of the people of Scotland.

The organisations recognise that, while most people have heard of the Crown Estate, many are uncertain about what it is or how it is managed. They therefore established the CERWG as a temporary working group to produce a report that:

- describes the property rights which make up the Crown Estate in Scotland, including their nature, ownership, use and management; and
- suggests ways in which these property rights could be managed to deliver greater public benefits and accountability in Scotland.

The purpose of the CERWG's report is to help inform and stimulate debate about the important opportunities which now exist for the property rights of the Crown in Scotland currently managed by the Crown Estate Commission, to contribute significantly more benefits to the people of Scotland.

The organisations represented on the CERWG have all endorsed this report and are submitting the report to the Secretary of State for Scotland and Scottish Ministers in support of their recommendation above for a review. They hope others will join them in calling for the review.

*Highland Council
Orkney Islands Council
Comhairle nan Eilean Siar
Moray Council*

*Highlands & Islands Enterprise
Shetland Islands Council
Argyll & Bute Council
Convention of Scottish Local Authorities*

December 2006

PREFACE

The Crown Estate Review Working Group (CERWG) was set up to produce a report by December 2006 which:

- describes the property rights which make up the Crown Estate in Scotland, including their nature, ownership, use and management; and
- suggests ways in which these property rights could be managed to deliver greater public benefits and accountability in Scotland.

The membership of the CERWG consists of the six local authorities covering the Highlands and Islands¹ and Highlands and Islands Enterprise, with the Convention of Scottish Local Authorities (COSLA) participating as an observer. The officials representing the members on the CERWG are listed overleaf. The CERWG reports directly to the Highlands and Islands Conveners Group. Highland Council provides the secretariat for the CERWG. .

The CERWG consulted during 2006 on a Preliminary Draft Report (August), First Draft Report (September) and Second Draft Report (October) and is grateful for the helpful comments which it received. The CERWG is also grateful for the other assistance that it received from a number of individuals and organisations during its investigations into the Crown Estate in Scotland².

If you have comments on the CERWG's Report or related matters, please send them to:-

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¹ Highland Council, Moray Council, Argyll & Bute Council, Shetland Islands Council, Orkney Islands Council and Comhairle nan Eilean Siar (Western Isles Council).

² The CERWG acknowledges the permission of the Scottish Executive to reproduce Maps 1 and 2 and of the Crown Estate Commission to use Map 3.

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THE CROWN ESTATE IN SCOTLAND New Opportunities for Public benefits

SUMMARY

1. The Report considers the new opportunities which exist following devolution for the Crown Estate in Scotland to produce greater public benefits in Scotland.
2. The Crown Estate is a form of public land managed by a public body for public benefit.
3. The Crown Estate consists of the Crown property, rights and interests managed by the Crown Estate Commission (CEC), which also calls itself The Crown Estate (TCE).
4. The property rights belonging to the Crown in the UK are a distinct form of public land from property belonging to government departments, and are either managed by the CEC as part of the Crown Estate or by government departments.
5. The CEC is a public body first constituted by Parliament in 1956 to succeed the Commissioners of Crown Lands and now operates under the Crown Estate Act 1961.
6. The CEC manages the Crown Estate on behalf of the nation and all net surplus revenue from the Estate goes to the Treasury for general government expenditure.
7. The CEC has a duty to maintain and enhance the value of the Crown Estate and the return obtained from it, but with due regard to the requirements of good management.
8. The Crown Estate in Scotland consists of ancient possessions of the Crown in Scotland and some properties bought on its behalf during the 20th century:-
 - *main ancient*: ownership of Scotland's seabed out to the 12 nautical mile limit, property rights over the continental seabed out to the 200 mile limit (excluding oil, gas and coal) and ownership of around half the length of Scotland's foreshore.
 - *other ancient*: rights to salmon fishing, natural occurring oysters and mussels and to mine gold and silver and ownership of two small areas of urban land.
 - *modern*: ownership of four rural estates and three urban commercial properties.
9. While these Crown properties and property rights in Scotland are managed by the CEC as part of the UK wide Crown Estate, they are a distinct legal component of it because they are owned by the Crown in Scotland under Scots law.
10. The most significant ancient possession of the Crown in Scotland is its ownership of Scotland's territorial seabed, as extended from 3 to 12 nautical miles by legislation in 1987. Scotland's seabed accounts for just over half of its total territorial area.
11. The ancient possessions of the Crown in Scotland date from when Scotland was an independent kingdom and continued to be managed in Scotland until the 19th century.
12. In 1832, the administration of these Scottish Crown property rights and their revenues was transferred to the Commission in London which already managed property rights of the Crown under English law in the rest of the UK.

13. The CEC is the most recent successor to that 19th century Commission and prior to the creation of the Crown Estate in name in the Crown Estate Act 1956, the Crown properties and rights in Scotland were known as the Crown Lands of Scotland.
14. While Scotland is a very distinctive part of the Crown Estate, it is also a very small part financially. The Crown Estate in Scotland produces only around 5% of the CEC's overall annual income from the UK wide estate.
15. Most of the CEC's revenue comes from urban property in England where, compared to three in Scotland, the CEC manages over 3,000 commercial properties mainly in London. The CEC promotes itself as one of the UK's leading property companies.
16. The CEC's revenue from Scotland in 2005-06 was £14 million. Each year over 80% of the CEC's revenue from Scotland is net surplus revenue that goes to the Treasury.
17. Under the Scotland Act 1998, the CEC's administration of the property rights of the Crown in Scotland which form part of the Crown Estate and their revenues, were reserved to the UK Parliament.
18. There are other property rights of the Crown in Scotland which are not part of the Crown Estate and the administration and revenues of which are already devolved with the revenues from these rights contributing to the Scottish Consolidated Fund.
19. As the CEC is reserved, Ministerial responsibility for the CEC in Scotland is still a function of the Secretary of State for Scotland accountable to Westminster. Scottish Ministers therefore have no direct say over the operations of the CEC in Scotland
20. Devolution has, however, created three main ways by which the Scottish government can influence the management of property rights which make up the Crown Estate in Scotland:-
 - '*ownership*': the powers of the Scottish Parliament to legislate over the property rights of the Crown in Scotland, as the Crown's prerogative functions are not reserved nor is property belonging to the Crown, including Scotland's seabed.
 - '*regulation*': the powers of the Scottish Parliament to regulate the use of land and property rights including those which make up the Crown Estate in Scotland, except for general reservations over some uses of all land to the UK Parliament.
 - '*guidance*': the role of the new public policy context in Scotland as set by the Scottish Executive in informing 'the requirements of good management' within the terms of the Crown Estate Act 1961, for the property rights which make up the Crown Estate in Scotland.
21. Scotland can now legislate again over the '*ownership*' and '*use*' of the Crown's property rights in Scotland, but the '*administration and revenues*' of the Crown rights which form part of the Crown Estate are still reserved as a legacy of the 19th century.
22. While all the Crown property rights in Scotland are different from those in the rest of the UK, some of the rights which the CEC still administers from London are distinctive Scottish Crown rights as there are no equivalent Crown rights in the rest of the UK.
23. The response of the CEC to devolution has also been markedly different to that of the Forestry Commission (FC), which has strong historical links with the CEC and was in a similar position to it at devolution. Both have re-structured their operations in Scotland:
 - the FC has created Forestry Commission Scotland accountable to the Scottish Parliament and acting as a department of the Scottish Executive to help deliver the Executive's policies in Scotland

- the CEC has ended its management of the Crown Estate in Scotland as a distinct unit of the Crown Estate (the Scottish Estate), closed its Scottish HQ and integrated the management of the property rights of the Crown in Scotland sector by sector with those in the rest of the UK.
24. The CEC's recent re-structuring away from devolution has increased existing issues about the lack of accountability in Scotland over the CEC's operations in Scotland and the limited benefits in Scotland from its management of the Scottish resources which form the Crown Estate in Scotland.
 25. However, the UK government remains committed to the devolution process and the CEC could respond to the new influences of devolution in Scotland at three main levels to improve accountability and benefits in Scotland:-
 - *within existing structures*: for example, by establishing a Scottish Advisory Committee, reporting to the Scottish Parliament and developing Scottish policies tailored to Scottish circumstances for each of the different components of the Estate;
 - *partial devolution*: for example, by re-structuring along similar lines to the FC so that the CEC in Scotland is a distinct operation which acts as part of the Scottish Executive and manages the Crown Estate in Scotland to help deliver Scottish Executive priorities;
 - *full devolution*: by UK legislation returning to Scotland the administration and revenues of some or all of the different types of property, rights and interests of the Crown in Scotland which are currently managed as part of the Crown Estate.
 26. The most prominent issues over the Crown Estate in Scotland are with the CEC's approach to managing Scotland's seabed and Crown foreshore, including the narrowness of the CEC's focus on securing revenue from developments involving these resources and its limited re-investment of those revenues in Scotland.
 27. There is particular potential for the management of the seabed and Crown foreshore to contribute far greater benefits in the Highlands and Islands with its many island and remote rural communities. The region has half the entire length of Britain's coastline and around half the total number of ports and harbours in Britain.
 28. In the changed circumstances of devolution, Scotland's seabed and foreshore could be managed as a national marine estate like Scotland's national forest estate, to help deliver Scottish Executive policies that support the future well being of Scotland's coastal communities and benefit the people of Scotland more generally.
 29. There are immediate opportunities within existing arrangements over the Crown Estate in Scotland to improve, for example, the position of the 80% of Scotland's harbours managed by the Scottish Executive, local authorities and trust ports in the public interest and which play such important roles locally and in the wider infrastructure.
 30. The scope for a difference of approach is also illustrated by the difference between the CEC's use of mooring associations as a more economic way to collect many small rents and the ways in which they could be used to help build local capacity and give communities a greater stake in their local environment.
 31. A wider issue is the substantial potential for renewable marine energy generation in Scotland with billions of pounds of investment anticipated, and the reservation to the CEC of control over the use of Scotland's seabed for this and the revenues that will come from it, with all of this dealt with by the CEC centrally in London as at present.

32. The Scottish Executive's involvement with Scotland's marine environment continues to increase rapidly and the Executive has a Partnership Agreement commitment to consider the current management and rental arrangements for Scotland's seabed.
33. Many factors point to a strong case that the Scottish Executive should become directly responsible for the administration and revenues of Scotland's own territorial seabed and associated property rights.
34. The UK Marine Bill planned for 2007 could provide an opportunity through UK legislation for the CEC's responsibilities for Scotland's seabed and foreshore to be devolved to the Scottish Executive
35. The integration of control over the property rights in Scotland's seabed with the Scottish Executive's existing marine responsibilities offers considerable scope for improvements in policy delivery and consequent benefits.
36. Greater public benefits and accountability would also come from the transfer of responsibility for Crown foreshore to the respective local authorities in each area. This role could be integrated with their many existing responsibilities over the foreshore and a statutory responsibility for the existing public rights over the foreshore.
37. With the two small urban ancient possessions in Scotland which are still part of the Crown Estate, part of West Princes Street Gardens, Edinburgh, and the King's Park, Stirling, clear local benefits would come from their ownership being transferred to the local authorities.
38. Examination of the other ancient rights of the Crown in Scotland suggests that they are largely archaic or no longer appropriate for Crown ownership and should be abolished, with public law provisions and property transfers to Scottish Ministers as necessary.
39. The Scottish Parliament has already abolished the property rights of the Crown as paramount feudal superior as part of Scots property law reform and many of these other ancient Crown property rights are also of feudal origin.
40. The other component of the Crown Estate in Scotland is the seven modern acquisitions. It might be considered in the new public policy context in Scotland that there should be no further purchases of rural or urban investment properties by the Crown in Scotland and that the existing properties could be sold in due course.
41. While commercial property is by far the most important part of the 95% of the CEC's business which is outwith Scotland, there is no tradition in Scotland of such properties forming part of the possessions of the Crown in Scotland.
42. In considering each of the different types of property rights of the Crown in Scotland which make up the Crown Estate in Scotland, there appear many opportunities following devolution to improve accountability and benefits in Scotland within existing arrangements and further opportunities from reforming those arrangements.
43. The overall considerations set out in the Report support a recommendation that:
 - *the Secretary of State for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and well being of the people of Scotland.*

“THE CROWN ESTATE IN SCOTLAND”

- NEW OPPORTUNITIES FOR PUBLIC BENEFITS -

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INTRODUCTION

1. The purpose of this Report is to promote and inform debate about the recommendation that:-
the Secretary of State for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and the well being of the people of Scotland.
2. The Report recognises that, while most people have heard of the Crown Estate, many are uncertain about what it is or how it is managed. In the Report:-
 - The Crown Estate is a form of public land consisting of the 'property, rights and interests' managed by the Crown Estate Commission (Crown Estate Act 1961).
 - The Crown Estate Commission (CEC)¹ is a public body constituted by the Crown Estate Act 1961 to administer the Crown Estate and its revenues on behalf of the Crown under the terms set out in the 1961 Act as amended.
 - The Crown Estate in Scotland is a non-statutory label for the property, rights and interests in Scotland currently managed by the CEC and which, while forming part of the UK wide Crown Estate, are distinct from those elsewhere in the UK as they are defined in Scots Law.
3. There is a clear and important distinction in these definitions between the Crown Estate (as the asset) and the CEC (as the administration). In this report, the CEC is consistently referred to as the CEC to avoid the confusion which can occur now that the CEC has made itself widely known as 'The Crown Estate'.²
4. The focus of this Report is on the 'property, rights and interests' which make up the Crown Estate in Scotland and the most obvious indication of their importance is that they include Scotland's seabed, or 53% of Scotland's total territorial area.
6. The Report has three main parts. The first provides a background description of the Crown Estate in Scotland including the origins and history of the Estate and its management, the status of the Estate as a form of public land and the ways in which the Scotland Act 1998 and devolution have affected the position of the Crown Estate in Scotland. Main points include:-
 - that the ownership of the property rights which make up the Crown Estate in Scotland, is vested in the Crown in Scotland under Scots law;
 - that control over the nature of the Crown's property rights in Scotland is devolved to the Scottish Parliament³, together with the power to regulate the use of these rights⁴.

¹ The CEC is often referred to as the Crown Estate Commissioners rather than Commission. In this report, the Commission is used to refer to the statutory body, as opposed to the Board of Commissioners who manage it – as with Forestry Commission and Forestry Commissioners.

² The promotion of the CEC as The Crown Estate or TCE has been a successful branding exercise. However, the label has no legal status and, for example, legal documents still have to be signed in the name of the Crown Estate Commissioners. The CEC considers that "As a brand, *The Crown Estate would confer a wealth of positive values: quality, consistency, durability, the very highest of standards*" (CEC Rural Bulletin, Spring 2006)

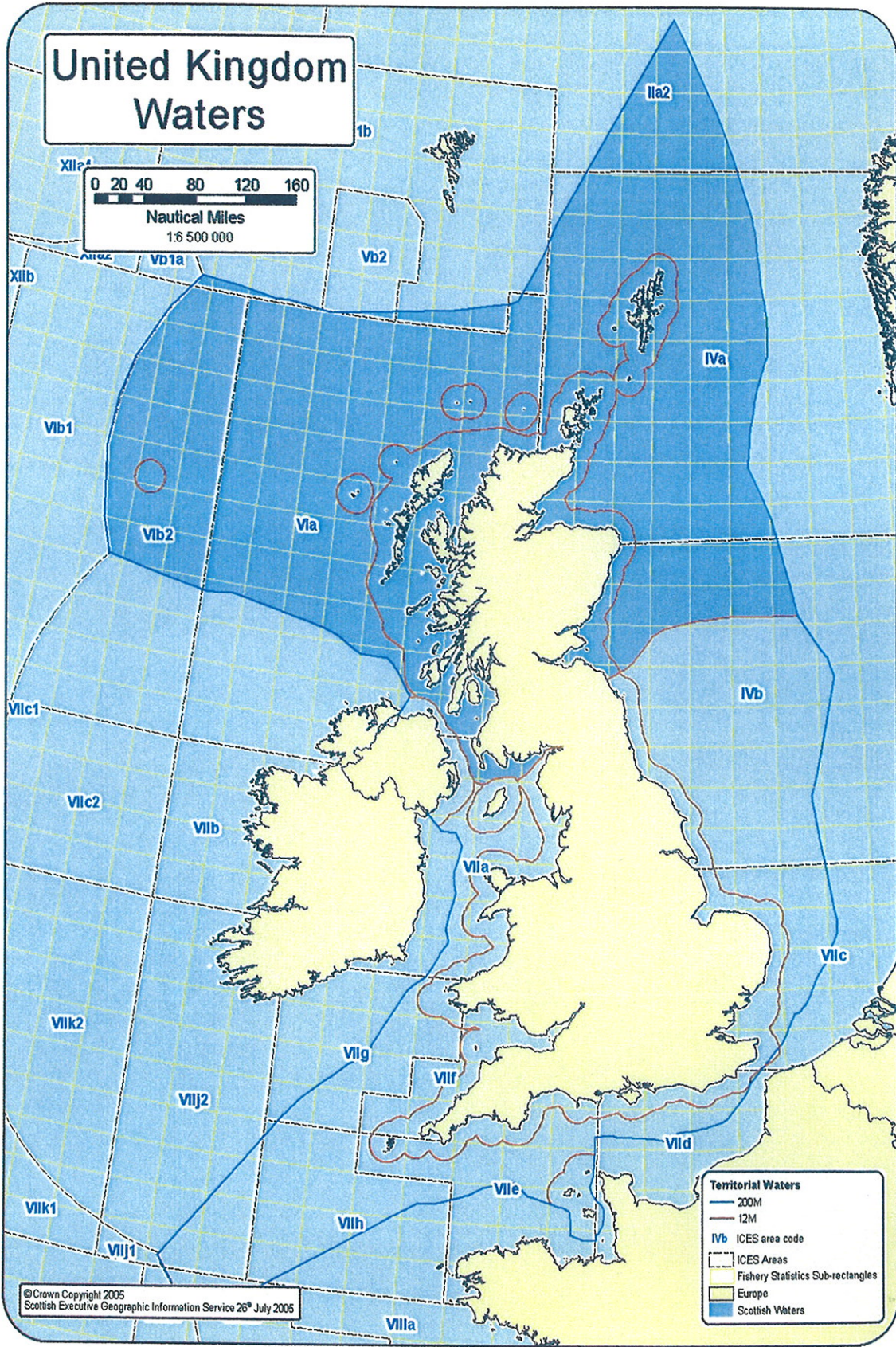
³ As the Scottish Law Commission has observed: '*The Crown's prerogative functions are not reserved, nor is property belonging to the Crown. The Crown's interest as proprietor of the foreshore and seabed and the public rights held by the Crown in trust for the public are therefore not reserved.*' (Law of the Foreshore and Seabed, 2003)

⁴ excepting matters reserved over all land in Scotland.

- that, in contrast, control over the administration and revenues of these property rights in Scotland by the CEC remains a reserved matter with the UK Parliament, having been transferred from Edinburgh to Whitehall in the 19th century.
7. The second part of the Report reviews each of the different types of property, rights and interests which make up the Crown Estate in Scotland. This includes the nature, use and administration of each and ways in which each might produce greater public benefits in Scotland given the changed circumstances of devolution.
 8. The third part then considers the opportunities which now exist for a review to ensure that these property rights and interests, known as the Crown Lands of Scotland until fifty years ago¹, contribute more fully to the delivery of Scottish Executive policies and the well-being of the people of Scotland.
 9. The main text of the Report is supplemented by additional papers attached as Annexes to provide further information about the property rights which make up the Crown Estate in Scotland and other related topics.
 10. The Report is not a policy document, but a wide ranging account of the Crown Estate in Scotland to help people understand it better. The Report therefore incorporates a significant amount of background information to clarify what the Crown Estate is and how it is managed and to illustrate the scope for reforms to provide greater benefits and accountability in Scotland.
 11. The role of the Report is to provide a resource that is 'put on the table' for others to draw on as part of encouraging debate about the recommendation in paragraph 1 above, that there should be a government review of the Crown Estate in Scotland. The Report is not that review, but a 'starter pack' from a temporary working group to show that there are issues which should be tackled. It is for others to make what they will of the information which the Report makes available.
 12. The Report covers many different subjects, including legal matters and other technical topics on which the CERWG does not have specific expertise. The CERWG has aimed within the constraints of its work to ensure that all matters are covered accurately. However, the CERWG will be very grateful to receive any corrections of fact or interpretation, as well as other comments and suggestions².

¹ The Crown Estate was first constituted in name by the Crown Estate Act 1956, which was then replaced by the current Crown Estate Act 1961

² contact details are given on the Preface page at start of the Report.



Part One

THE LANDS AND THEIR ADMINISTRATION

(i) Background

1. COMPOSITION AND EXTENT

1. The Crown Estate is defined in the Crown Estate Act 1961 as 'the property, rights and interests' managed by the Crown Estate Commissioners (CEC) on behalf of the Crown¹.
2. The Crown Estate in Scotland consists of the property, rights and interests in Scotland managed by the CEC. These Crown rights are managed by the CEC as part of the UK wide Crown Estate. However, they remain a distinct component of that wider Estate as the nature of the ownership of the Crown's property rights in Scotland is different from that in the rest of the UK. This is because the ownership is vested in the Crown in Scotland in Scots law and the property rights held are also defined in Scots law.
3. The Crown's property rights in Scotland date from when Scotland was a separate kingdom and they continued to be managed in Edinburgh until responsibility for their administration was transferred to Whitehall in the 19th century², to be managed with the equivalent Crown property rights elsewhere in the UK by the predecessors of the CEC.
4. There is no full list available from the CEC or other official sources of the Crown property rights which currently make up the Crown Estate in Scotland and the list given in Table 1 has been compiled for this Report in consultation with the CEC.
5. The classification in the Table also follows the CEC's traditional approach of dividing the property rights into ancient possessions, modern acquisitions and other minor interests³. The three categories in the Table can be described as:-
 - Ancient Possessions: Mainly parts of Scotland's *regalia* or ancient Crown property rights. They vary greatly in significance, ranging from the ownership of Scotland's seabed to archaic rights of limited contemporary value.
 - Modern Acquisitions: Rural and urban properties bought on behalf of the Crown during the 20th century by the CEC and their predecessors, the Commissioners of Crown Lands. These properties are each valuable investments worth millions of pounds, with the Princes Exchange far more valuable than any of the others.
 - Other Rights & Dues: Rights and payments that have been reserved by the Crown over lands which have been sold or transferred from the Crown's ownership into other ownership. They are of little material significance.
6. The property rights as they are listed in the Table have been numbered 1-14 for ease of reference in the rest of the report and each of them is considered in detail in later sections. It was established during the investigations for this Report that number 4 in the Table 1 list,

¹ 1961 Act, section 1(1)

² see this report section 2

³ for example, in the property schedules included in CEC Annual Reports.

while a property right of the Crown in Scotland and claimed by the CEC as part of the Crown Estate, does not form part of the Crown Estate.¹

7. The two main components in the list in terms of their economic value to the Crown Estate in Scotland are the investment properties (Nos. 11 a & b) and the Crown's main marine rights, those over the seabed, continental shelf and foreshore (Nos. 1, 2 & 3).
8. The Crown's seabed and continental shelf rights have the added significance of their connection to the definition of Scotland as sovereign territory within the UK. Map 1, which is from the Scottish Executive's Marine Strategy², shows:-
 - o the 12 nautical mile limit which forms Scotland's territorial boundary and within which the ownership of the seabed or just over half of Scotland's territorial area³, is vested in the Crown in Scotland (as described in Table 1);
 - o the 200 nautical mile boundary that forms the limit to Scotland's territorial property rights over the continental shelf and with ownership of these rights vested in the Crown in Scotland (as described in Table 1).
9. The Map shows the geographic scale of Scottish Waters and correspondingly, of the area over which the CEC administers these Crown rights as part of the Crown Estate in Scotland.
10. The red circle far to the west in Scottish Waters on Map 1 is around the Island of Rockall, which is a relatively recent addition to the territory of Scotland⁴. The Island of Rockall Act 1972 states that:

*"the Island of Rockall (of which possession was formally taken in the name of Her Majesty on 18th September 1955...) shall be incorporated into that part of the United Kingdom known as Scotland ...and the law of Scotland shall apply accordingly"*⁵
11. The financial value of the Crown's main marine rights as a component of the Crown Estate in Scotland, has grown substantially within the last forty years. This has been due to:
 - o the expansion of the area covered by the rights resulting from changes to Scotland's territorial boundaries under international conventions⁶; and
 - o the sequence of new commercial activities making use of the foreshore and seabed (for example, developments related to the oil industry, fish farming and renewable energy) and generating income for the CEC through rent and other charges.
12. The overall Crown Estate in Scotland is very small in financial terms when compared to the Crown Estate in the rest of the UK. Scotland accounts for only around 5% of the CEC's UK wide annual revenue and a similar share of the capital value attributed to the Estate⁷.
13. Urban property is the main source of the CEC's UK revenue (over 75%) and the Crown Estate's capital value (nearly 80%). Most of that property is in London. The Crown Estate in England includes over 3,000 urban properties compared to three in Scotland (Table 1, 11b).

¹ see Annex 9; for examples of other Crown property rights in Scotland not forming part of the Crown Estate, see Annex 4

² "Seas the Opportunity" August 2005

³ "Seas the Opportunity" August 2005 p.14

⁴ It is not identified by the CEC as part of their responsibilities in Scotland. For more on the background to the Island of Rockall Act, see Scottish Law Times 1968 page 125, 1976 pages 257-262 and 1985 pages 321-325.

⁵ Section 1 of the Rockall Act

⁶ this is covered more fully in section 16 of the Report.

⁷ CEC Annual Reports 2005 and earlier. A capital value is only attributed to a marine asset when 'a letting is in place' (CEC Annual Report 1990). A letting is a lease or equivalent commercial arrangement. The CEC uses formulas for capitalising rents for different types of leases into capital values.

**Table 1: THE CROWN ESTATE IN SCOTLAND:
List of the Current Property, Rights and Interests**

Ancient Possessions

1. Ownership of the seabed within Scotland's territorial seas (excluding hydrocarbons) where this has not been granted out (boundary extended from 3 to 12 nautical mile limit by legislation in 1987).
2. Rights over the continental shelf to minerals (excluding hydrocarbons) and sedentary species from Scotland's territorial seas to 200 nautical mile limit (from legislation in 1964).
3. Ownership of Scotland's foreshore where this has not been granted out and excluding areas under udal tenure.
4. (A right to some whales in Scotland's territorial seas where this has not been granted out)
- *This Crown right is not part of the Crown Estate despite claims by the CEC— see text para.6*
5. The right to all naturally occurring mussels in Scotland's territorial seas where this has not been granted out.
6. The right to all naturally occurring oysters in Scotland's territorial seas where this has not been granted out.
7. (a) The right to all coastal salmon fishing within Scotland's territorial seas where this has not been granted out.

(b) 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.
8. The right to mine naturally occurring gold and silver in Scotland (known as 'royal mines').
9. Ownership of 5 ha of West Princes Street Gardens, Edinburgh, including the Castlebanks.
10. Ownership of the Kings Park, Stirling (183 ha including additional land purchased in 1972)

Modern Acquisitions

11. (a) ownership of four rural estates:-

Glenlivet (Banff)	24280 ha	(purchased by Commissioners of Crown Lands in 1937)
Fochabers (Moray)	4674 ha	(purchased by Commissioners of Crown Lands in 1937)
Applegirth (Dumfries)	6886 ha	(purchased by CEC in 1963 & subsequent years)
Whitehill (Midlothian)	1366 ha	(purchased by CEC in 1969 & subsequent years)
- (b) ownership of three commercial urban properties in Edinburgh:-

127/8 Princes Street	2059 sq.ms.	retail	(purchased CEC 1995)
39/41 George Street	1929 + 222 sq.ms.	office/retail	(purchased CEC 1995)
Princes Exchange, Tollcross	14,800 sq.ms.	office/retail	(purchased CEC 1999)

Other Rights & Dues

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

2. ORIGINS AND HISTORY

1. Some historical background is an essential part of understanding the property rights that make up the Crown Estate in Scotland, because of their separate origin, different history and distinct legal character compared to the Crown Estate in the rest of the UK.
2. There is, however, limited published information available about the history of the Crown Estate and the main source is very largely about the Crown Estate in England¹. Therefore, an account of the origins and history of the Crown Estate in Scotland from medieval times until the present day, has been drafted for this report (*Annex 1*). The account is divided into six chronological sections and points to note from these include:-

(i) Medieval Period

3. The lands and land revenues of Scotland's kings and queens were greatly depleted from the late 13th century during the Wars of Independence and remained in a poor state for the rest of Scotland's history as an independent country. The difference in scale of the current values of the Crown Estate in Scotland and in England, was already well established by the end of the 16th century.
4. The ancient Crown rights that still form part of the Crown Estate in Scotland all date from when Scotland was an independent country. The separate origin of these rights means that, while the Crown Estate also includes ancient Crown rights in England, the scope and nature of the rights are different even when the same types of rights are involved².

(ii) The 17th and 18th Centuries

5. The lands and land revenues of the Crown in Scotland were not directly affected by the Union of Crowns as Scotland remained an independent country. Scotland's system for administering the Crown's hereditary land revenues through the Baron Court of the Exchequer in Edinburgh, also continued after the Union of 1707.
6. The separate administration in Scotland of the Crown's hereditary land revenues continued into the 19th century. This meant that, while the first Civil List legislation over the Crown's lands and land revenues in England and Wales was in the 17th century, Scotland's Crown lands and revenues were also not part of the Civil List Act 1760³.

(iii) The 19th Century

7. An Act in 1810 created the Commissioners of Woods, Forests and Land Revenues to manage the Crown's hereditary land revenues in England and Wales. This government department then expanded its territorial responsibilities taking over the administration of the land revenues of the Isle of Man in 1826, those of Ireland in 1828, those of Aldernery⁴ in 1829 and lastly those of Scotland through the Crown Lands (Scotland) Acts in 1832, 1833 and 1835.
8. Scotland's Crown lands and land revenues have continued to be administered from London by the Commissioners and their direct successors ever since. However, with the exception

¹ "The Crown Estate – An Historical Essay" R.B.Pugh (HMSO 1960)

² For example, numbers 1,3, 4 and 8 in Table 1.

³ For more about the Civil List, see Annex 3.

⁴ One of the Channel Islands or, as they are correctly known, the States of Alderney

of Northern Ireland, Scotland is the only territory taken over by the Commissioners in the period 1826-32 where this remains the case¹.

9. The Crown lands and land revenues of Scotland at the time when their administration was transferred south, mainly involved two elements:
 - firstly, over 10,000 acres in Caithness which had passed to the Crown in 1689 and which produced little rent;
 - secondly, over 20,000 feu duties, surplus teinds and other charges due to the Crown in Scotland, nearly all of which were for relatively small amounts.
10. When the Commissioners took over the Crown's lands and land revenues in Scotland, they appointed legal agents in Scotland to investigate whether other lands and revenues might still be claimed for the Crown in Scotland. During the second half of the 19th century, the Commissioners pursued many court cases in Scotland, particularly over foreshore and salmon fishing rights².

The 20th Century

11. Changes affecting the composition of the Crown's lands and revenues in Scotland during the 20th century, have included:
 - the introduction of a new policy by the Commissioners of adding to the Crown Estate in Scotland by buying rural estates (from 1909) and urban properties (from 1960s) as investments which might subsequently be retained or re-sold.
 - the addition by legislation of the rights over the continental shelf as an extension of the Crown's seabed rights and the expansion of the seabed rights out to the 12 n.mile limit.
 - the sale of some ancient possessions, including the lands in Caithness and some stretches of coastal salmon fishing, and the ending of most of the small payments due to the Crown.
12. Another change happened at the very end of the 20th century at the time of devolution. In 1998/9, the CEC conveyed individually on behalf of the Crown to the Secretary of State for Scotland, the ownership of Edinburgh and Stirling Castles, Linlithgow Palace, Glasgow Cathedral, Arbroath Abbey and over 20 of Scotland's other most historic buildings.
13. The ownership of all these iconic properties was then, as a result of devolution, transferred from the Secretary of State to Scottish Ministers. More details about the nature of this apparently historic transfer, including the reasons behind it and some un-intended consequences, are given in Annex 6.

¹ The others were transferred respectively to the Irish Free State in 1921, the Isle of Man government in 1947 and the States of Alderney in 1950.

² National Archives of Scotland: papers reference CR4

3. ADMINISTRATION AND REVENUES

Commissions since 1832

1. The sequence of Commissions responsible for the administration and revenues of the Crown's lands of Scotland since 1832, when the responsibility was transferred south, is shown in Table 2.
2. The changes during the 19th century were only that the Commissioners of Woods, Forests and Land Revenues as a distinct department of government, was combined with the Department of Public Works in 1832 and then separated out again in 1851 as the Commissioners of Woods and Forests. Similarly, the change in 1924 was simply one of name by Order in Parliament, following the formation of the Forestry Commission in 1919.
3. During the amalgamation, separation and re-naming of the Commission in the first 100 years, there were also changes in the resources placed under the Commissioners control with, for example, various buildings remaining with Public Works after 1851¹, the foreshore going to the Board of Trade in 1866² and 120,000 acres transferred to the Forestry Commission in the 1920s³.
4. The final change to the Commission to date was when, following a Parliamentary Report⁴, the Crown Estate Acts of 1956 and 1961 re-constituted the Commissioners of Crown Lands as the Crown Estate Commissioners (CEC). This replaced the direct control of Ministers with an appointed board of management, while Ministers retained (and still retain) a power of direction over the CEC under section 1(4) of the 1961 Act.
5. The Secretary of State for Scotland was one of the three Commissioners of Crown Lands replaced and is still the Minister responsible for Scottish interests under the 1961 Act. The Act did not provide for any specific representation of Scotland's interests amongst the Commissioners. There has so far, however, always been a Commissioner from Scotland who has been given responsibility by the CEC for taking a particular interest in their affairs in Scotland⁵ (see Annex 2).
6. Under the Crown Estate Act 1961, the Commissioners are:
*"charged on behalf of the Crown with the function of managing and turning to account ... the Crown Estate"*⁶ with a general duty *"while maintaining the Crown Estate as an estate in land...to maintain and enhance its value and the return obtained from it, but with due regard to the requirements of good management."*⁷

Presence in Scotland

7. When the Commissioners took over responsibility for Scotland from 1832, they appointed legal agents in Edinburgh to represent their interests. The senior agent responsible for

¹ The only such building in Scotland appears to have been Holyrood Palace

² Responsibility for the foreshore was returned to the Commissioners of Crown Lands in 1949.

³ The only instance in Scotland was 11,500 acres at Inverliever on Lochaweside in Argyllshire – see Annex 5.

⁴ Report of the Parliamentary Committee on Crown Lands (1955 Cmnd.9483). Chaired by Sir Malcolm Trustam Eve

⁵ There have been four covering the last 50 years: Cameron of Lochiel 1956-70, Captain Sir Iain Tennant 1970-90, Angus MacDonald 1990-96 and Ian Grant 1996-present.

⁶ Crown estate Act 1961 section 1(1)

⁷ Crown Estate Act 1961 section 1(3)

Table 2:
**Commissions responsible for administering
the lands and land revenues of the Crown in Scotland
from 1832 to present,
showing the number and type of their Commissioners**

- 1810 Commissioners of Woods, Forests & Land Revenues
Government Minister + two permanent officials
- 1832 Commissioners of Woods, Forests, Land Revenues & Public Works
Two Government Ministers + two permanent officials
- 1851 Commissioners of Woods and Forests
Two permanent officials until 1912,
then + Government Minister (Agriculture)
- 1924 Commissioners of Crown Lands
Government Minister (Agriculture) + two permanent officials until 1943,
then two Government Ministers (Agriculture. & Secretary of State
for Scotland) + one permanent official
- 1956 Crown Estate Commissioners
Up to 7 appointed Commissioners + one permanent official.

(Source:- 'The Crown Estate' by R.B.Pugh (HMSO 1960))

collecting the land revenues due to the Crown was designated the 'Crown Receiver for Scotland'¹. There was also a solicitor in Wick appointed to oversee the Caithness lands.

8. This position continued until the 1950s with two changes: firstly the Crown Receiver had become a salaried post with a small staff and office in St. Andrews Square, Edinburgh; and secondly, the purchase of rural properties meant that additional local agents were appointed and in the case of Glenlivet and Fochabers, a salaried factor.
9. All these agents and factors continued to report directly to London. The issue of transferring more management responsibilities to staff in Scotland had been raised for sometime, but the Commissioners continued to consider that this would be un-economic due to the small scale of the revenues from the Estate in Scotland².
10. The newly constituted CEC started 50 years ago by reviewing its position in Scotland and in 1959, transferred the administration of its Scottish operations to Edinburgh³. Then, in 1977, with an expanding work load and increasing incomes in Scotland, the CEC created a Scottish Headquarters in Charlotte Square. The CEC noted that "*Because of the differences between Scottish and English law, amongst other things, it is convenient to have a small headquarters in Edinburgh from which the whole of the Scottish enterprise is managed*"⁴.
11. The CEC continued to carry out its work by appointing private companies to manage its rural and urban properties and from the mid 1980s, also its foreshore and seabed interests.
12. In 2002, in contrast to the build up of its presence in Scotland over the previous 40 years, the CEC:
 - discontinued its Scottish Headquarters and the post of Head of the Scottish Estate;
 - amalgamated the Scottish Estate's operations by sector with those in the rest of the UK;
 - sold its Charlotte Square property and moved to smaller rented premises in Edinburgh.
 - ended the CEC's practice since it was created in 1956 of reporting separately in its Annual Reports on its operations and accounts in Scotland⁵.
13. These changes were introduced as part of a UK wide efficiency review. They also included a reduction in the CEC's staff in Scotland from 29 to 17⁶ and the contracting out of some more of the CEC's work to private management companies⁷. The CEC's new office in Edinburgh is referred to just as the CEC's Edinburgh office and not its Scottish office.

Revenues from Scotland

14. No research appears available on the economics of the first 100 years of the Commissioners' management in Scotland up to the 1930s. Over the period 1933-52, 75% of the total income from all Scottish sources was net surplus revenue. However, the purchase

¹ The term Crown Receiver was of longstanding use in England, but new to Scotland. The senior representative of the CEC in Scotland continued to be called the Crown Receiver for Scotland until 1998, when the title was changed to Head of the Scottish Estate.

² Royal Commission on Scottish Affairs: Minutes of Evidence taking in London 28th April 1953

³ CEC Annual Report 1980. - except responsibility for matters to do with the foreshore which followed in 1969.

⁴ CEC Annual Report 1980.

⁵ In 2005 and 2006, the CEC has produce a two sided one page report about the Crown Estate in Scotland at the same time as their Annual Report.

⁶ CEC / CERWG Minutes of Meeting 20th May 2005

⁷ These include, for example, Smiths Gore (rural), Hiller Parker and King Sturge (urban), Bell Ingram and Bidwells (marine). The retained lawyers are Anderson Strathearn WS, while several public affairs and public relations companies are also retained (Pagoda, Platform PR, Stan Blackley Associates)

of additional properties in Scotland during this period meant that total income and total expenditure in Scotland were close at £741K and £731K respectively¹.

15. Immediately before the CEC took over in 1956, the ten year average net revenue surplus from Scotland of c.£63K was around 5% of the total Crown Estate UK wide revenue and the Crown Estate in Scotland has remained at around this percentage contribution since².
16. Revenues of the Crown Estate in Scotland increased significantly in the 1970s with the growth of oil related developments and fish farming. On the basis of this revenue, the CEC started to invest in urban property in Scotland³. These purchases improved income during the 1980s and further changes to create a more focused investment portfolio in the mid 1990s, meant that urban property accounted for a third of total income by 1996 (Table 3).
17. Over the last ten years, urban property has increased to 40% of total annual revenue in Scotland with the proportion contributed by the rural estates and fish farming dropping. Table 3 also shows that, for the years for which figures are available (four out of last six), over 80% of the CEC's income in Scotland has been net surplus revenue.
18. The CEC's UK wide net surplus revenue each year is paid into the Treasury's Consolidated Fund for general government revenues and used for government expenditure.⁴
19. While the CEC describes itself as a company, it is a statutory corporation and not a company in terms of the Companies Acts. Parliament provides funds towards the costs of the Commissioners salaries and the expense of their office (£2.1 million in 2005-06) and each year, the CEC's financial statements are audited by the National Audit Office for Parliament.⁵
20. The Commissioners have to follow directions given to them by the Chancellor of the Exchequer and the Secretary of State for Scotland⁶ and the CEC's annual accounts are prepared in the form and on the basis determined by the Treasury. The CEC also submits annually to the Treasury a forecast of its activities in a corporate plan covering the following three years.
21. The amount of net surplus revenue to be paid each year by the CEC to the Consolidated Fund is also agreed with the Treasury. This takes into account the CEC's short-term funding requirements as the CEC has no power to borrow money. The CEC can also not invest in equities or outside the UK. The CEC has to maintain the Crown Estate as an estate in land with such cash and gilts⁷ as required for its operation.

¹ Royal Commission on Scottish Affairs op.cit.

² Committee on Crown Lands and subsequent CEC Annual Reports.

³ CEC Annual Report 1979

⁴ The payment is made under section 1 of the Civil List Act 1952

⁵ see accounting sections in CEC Annual Reports.

⁶ Section 1(4) of the Crown estate Act 1961

⁷ Gilts are government bonds (their name comes from being gilt-edged in the past) and thus the most secure form of investment.

Table 3

The Crown Estate in Scotland
Annual Revenue 1996 - 2005

<u>Year</u> __	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05
<u>Gross Revenue</u>										
<u>Percentage</u>	%	%	%	%	%	%	%	%	%	%
Urban_	33	30	32	26	34	40	41	-	-	40
Agriculture / Forestry	23	23	25	23	19	19	17	-	-	19
Fish farming	22	25	18	25	25	22	19	-	-	19
Marine / minerals	22	22	25	26	22	19	23	-	-	22
<u>££s millions</u>	££	££	££	££	££	££	££	££	££	££
Urban_	3.2				4.0					5.6
Agriculture / Forestry	2.2				2.3					2.6
Fish farming	2.2				2.9					2.7
Marine / minerals	2.1				2.6					3.1
<u>Total Gross Revenue</u>	9.7	9.2	9.1	9.9	11.8	13.6	13.2	-	12.4	14.0
<u>Total Net Revenue</u>	-	-	-	-	9.9	12.1	-	-	10.0	11.8
<u>Total Capital Value</u>	104	104	108	105	137	166	166	-	177.1	182.9

(Source: CEC Annual Reports)

Notes

1. There is no breakdown of the four sectors by either % or ££s for 2002-03 or 2003-04, as these are the years where the CEC stopped reporting figures for Scotland. These were re-introduced at the request of the Scottish Executive for 2004-05 and included the Total Revenue and Value figures from the previous year 2003-04 for comparison.
2. While the CEC reported figures for Scotland for every year up to and including 2001-02, percentage figures were more consistently given during the last ten years than actual amounts of money. Financial figures are only therefore given for the starting, mid and final years.
3. The net revenue (the surplus income after expenditure) is over 80% of total revenue in each of the four years where figures were given and similar levels of surplus revenue can be anticipated in the other years.

(ii) Current Status

4. PUBLIC LAND

1. The property, rights and interests which make up the Crown Estate in Scotland are a form of public land managed by a public body (CEC) to produce public benefits (principally in the form of income to the UK Exchequer).
2. People are often unclear about the ownership of the property which makes up the Crown Estate. The CEC have traditionally described the property as belonging to the Sovereign in right of the Crown and more recently, as owned by the Sovereign¹. As the UK is a constitutional monarchy, sovereignty is vested in the Crown and the Crown is represented by the monarch (king or queen) who is the Sovereign for the time being. The property is thus held by the Crown or Her Majesty the Queen in a representative or public capacity².
3. The two main distinctions used by the CEC to explain the ownership of the Crown Estate as a form of public land, are that it is neither 'royal property' nor government property.
4. The Crown Estate is entirely separate and different from the 'royal property' which is either held by the Queen and Prince Charles as monarch and heir to the throne respectively, such as the Duchies of Lancaster and Cornwall, or which they own in their private capacities, such as Sandringham and Balmoral.
5. The nature of those royal properties and the constitutional convention of the Civil List are described in Annex 3, together with the greater contact between the CEC and royal interests in England compared to Scotland. This contact in England is due to the size and nature of the two Duchies, the position of the Windsor Estate as part of the Crown Estate and the extent of Crown Estate property in central London.
6. The distinction between the royal property and Crown property as public land was well established by the 19th century and clear boundaries have existed ever since. The settlement meant that the Crown property managed by Parliament and the government consisted of two types:-
 - o the property, rights and interests acquired by the government to be managed for the purposes of government and held in the name of government ministers;
 - o the property, rights and interests now held directly in the name of the Crown and to be managed for the purpose of contributing revenue for the purposes of government.
7. An analogous situation to these two types of public land at a national level, is the distinction between property owned by the local authorities as part of carrying out their functions and property owned by them as part of their inherited common good fund³.
8. The 'common good' nature of the property, rights and interests which make up the Crown Estate in Scotland is reflected in statements by the CEC, such as that in their booklet on Scotland published at the time of devolution, that the "*estate is in effect held in trust by the*

¹ CEC Annual Reports; CEC website

² For a fuller explanation, see Callander "How Scotland is Owned" (Canongate 1998)(for example, p.41)

³ for recent reports, see Andy Wightman and James Perman "Common Good Land in Scotland" (Caledonian Centre for Social Development, 2005) and Andrew Ferguson "Common Good Law" (Avizandum Publishing, 2006)

*Commissioners for the benefit of the people*¹ or current newsletters, that it is the CEC's role to manage the estate on behalf of the nation².

9. The clear legal distinction between the nature of this Crown ownership and government property does not limit the scope for particular property, rights or interests to move between the two ownerships and the boundaries have always been flexible.
10. Some examples of changes, such as the transfer of the ownership of land under the Commissioners of Crown Lands to Ministers to help establish the Forestry Commission (3.3 above), are instances where Parliament has decided that the public interest is best served by moving the management of those lands elsewhere in government to be managed directly for government purposes. The conveying of historic buildings in Scotland from the Crown to the Secretary of State for Scotland in 1999 (1.13 above) might be seen as achieving the same purpose by another means. In some instances, as with foreshore between 1866-1949, the administration and revenues are transferred to another part of government without a change in ownership from Crown to Ministers.
11. These different forms of Crown land are defined in Section 242 of the Town and Country Planning (Scotland) Act 1997. Section 242 (1) states in part that:

“Crown land” means land in which there is a Crown interest;
“Crown interest” means an interest belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department.
12. Section 242 (2) also distinguishes the land *“belonging to Her Majesty in right of the Crown”* into the two types: that forming part of the Crown Estate managed by the Crown Estate Commissioners and that managed by government departments.
13. Section 242 of the Town and Country Planning (Scotland) Act 1997 is the definition of ‘Crown land’ cited in Section 122 of the Scotland Act 1998.

¹ “Promoting Development in Scotland” CEC 1998

² “Highlands and Islands Update” CEC Spring 2006

5. CHANGES AT DEVOLUTION

1. The devolution settlement under the Scotland Act 1998 means that the property rights which make up the Crown Estate in Scotland, are controlled by a mix of reserved and devolved matters.
2. The position is summarised in the Explanatory Notes to the 1998 Act:-

*“the Scottish Parliament cannot legislate about the Crown Estate Commissioners or their functions of managing the Crown property, rights and interests known as the Crown Estate under the Crown Estate Act 1961. The Scottish Parliament will, however, be able to legislate to affect the Crown Estate”*¹.

Administration and Revenues

3. Schedule 5 of the 1998 Act, in sections 2(3) and 3(3)(a) respectively, reserves:-
 - *“the management (in accordance with any enactment regulating the use of land) of the Crown Estate”*
 - *“the hereditary revenues of the Crown, other than revenues from bona vacantia, ultimus haeres and treasure trove”*
4. As a result, the administration² and revenues of the Crown Estate in Scotland and the terms of the Crown Estate Act 1961 are reserved to Westminster and the Secretary of State for Scotland continues to be the Minister responsible in the 1961 Act for Scottish interests. This includes the power of direction over the Commissioners under section 1(4) of the 1961 Act.
5. This reservation of the 1961 Act means that the Scottish Parliament and the Scottish Executive have no direct authority over the CEC and its operations in Scotland.
6. The three hereditary revenues excepted from the reservation come from the three forms of ‘ownerless property’ in Scots law: *bona vacantia (no heir)*, *ultimus haeres (no owner)* and treasure trove. The administration and revenues of the Crown’s property right in Scotland to ‘ownerless property’ were not transferred to London in the 19th century with that of the other Crown property rights that now make up the Crown Estate in Scotland. The Crown’s right of ‘ownerless property’ has always continued to be administered in Scotland and is devolved to the Scottish Parliament, with the revenues contributing to the Scottish Consolidated Fund (see [Annex 4](#)).

Ownership and Use

7. While the administration and revenues of the property rights which make up the Crown Estate in Scotland are reserved to Westminster, control over the Crown’s ownership of these property rights and the regulation of their use are devolved to Holyrood.
8. Schedule 5 of the Scotland Act 1998, section 3(1), states that *“property belonging to Her Majesty in right of the Crown”* is not reserved. As the Scottish Law Commission observed in their 2003 report on ‘The Law of the Foreshore and Seabed’ in Scotland:

¹ <http://www.opsi.gov.uk/acts/en1998/98en46-u.htm#sch5ptu>

² The terms ‘administration’ and ‘management’ are often used inter-changeably in this context. The CEC’s responsibility has traditionally been described as being to administer the Crown’s rights and revenues and this use is generally followed in this report. The CEC then manage land and property as a result of the rights they administer.

“The Crown’s prerogative functions are not reserved, nor is property belonging to the Crown. The Crown’s interest as proprietor of the foreshore and seabed and the public rights held by the Crown in trust for the public are therefore not reserved.” (para. 1.14)

9. The authority of the Scottish Parliament in such respects is illustrated by one of the Parliament’s earliest Acts which abolished the Crown’s property right as paramount or ultimate superior of all feudal land in Scotland¹. The reason that the ultimate superiority is covered separately from 3(1) in 3(2) of the 1998 Act as not reserved, was simply to ensure that the right could be abolished *“because it is not clear whether such property can be said to belong to the Crown “in right of the Crown” “²*.
10. In addition to this control over the Crown’s property rights in Scotland, the Scottish Parliament has the authority to regulate the use of these property rights. As the CEC noted on the eve of devolution:
“all land in Scotland will come under the jurisdiction of the Scottish Parliament. Crown Estate land is no exception and will be subject to new laws and regulations in the same way as that of all other land owners”³
11. There are no specific reservations affecting the lands, buildings or other property rights which make up the Crown Estate in Scotland. This includes the seabed and other marine rights where most types of activities are also regulated by the Scottish Parliament⁴.
12. While the property rights managed by the CEC are covered by the general legislation of the Scottish Parliament regulating the use of land, the Parliament can also pass legislation that relates only to particular components of the Crown Estate.
13. In the debates on the Scotland Bill in 1998, there was specific discussion of land reform and the Crown Estate in Scotland. The government set out its view that the *“functions of the Commissioners in managing the Crown Estate”* would be reserved, while *“the property and interests that form the Crown Estate”* would not be reserved and therefore subject to land reform legislation by the Scottish Parliament⁵. The CEC wrote at the time in the context of the Parliament’s power to legislate over land and property, that *“In this way, we are not an obstacle to land reform”⁶*.

Policy Context

14. In addition to powers over the ownership and use of the property rights making up the Crown Estate in Scotland, devolution has also created a third non-legislative level at which the Scottish Parliament and Scottish Executive can *“affect the Crown Estate”⁷*.
15. The existence of the Parliament and Executive creates a new public policy context in Scotland and as recognised by the CEC⁸, it is bound to conform to and support the Scottish Executive policies subject only to the constraints of its own legislation, the Crown Estate Act

¹ Abolition of Feudal Tenure etc. (Scotland) Act 2000

² Explanatory Notes to the Scotland Act 1998 <http://www.opsi.gov.uk/acts/en1998/98en46-u.htm#sch5ptu>

³ “Scotland: Promoting Development” CEC booklet 1998

⁴ This is described in detail in Annex 14

⁵ Hansard 19th May 1998 Cols.806-813

⁶ ‘Scotland: Promoting Development’ CEC 1998

⁷ phrase from Explanatory Note to 1998 Act – see para 5.2 above.

⁸ for example, CEC / CERWG Minutes of Meeting 20th May 2005; statement by CEC Chairman at CEC/CERWG Meeting 12th June 2006

1961. This is because the CEC is a public body operating in Scotland and also has its own statutory duty always to have “*due regard to the requirements of good management*”¹.

16. Significant aspects of “good management” are and can be defined in Scotland by Scottish Executive policies. An early example of significance later in this report², was the CEC drawing up and adopting its own set of community involvement guidelines at the request of the Scottish Executive³.
17. In 1998, in anticipation of this new policy context, the CEC indicated in a submission to the Scottish Office that the CEC would be willing to submit reports annually to the Scottish Parliament on the CEC’s activities and finances in Scotland if requested by the Parliament⁴. Whilst the offer has not been taken up and the CEC makes no reports to the Scottish Parliament, the CEC’s offer still stands.⁵

¹ Crown Estate Act 1961 section 1(3)

² While the CEC produced these guidelines, they were never followed up and neither CEC staff or agents seem familiar of them. The Forestry Commission in Scotland has, by comparison for example, developed their community guidelines into fuller publications and implemented policies to deliver the intended community benefits. The lack of a constructive approach to local community interests by the CEC is reflected in accounts of their management in subsequent sections of this report (e.g. 15 and 16).

³ “The Crown Estate and the Community” (CEC 1999) – <http://www.caledonian.org.uk/land/community.htm>

⁴ In the CEC’s response to the Scottish Office’s report “Identifying the Solutions” (Land Reform Policy Group Sept.1998). Also CEC letter from Head of Scottish Estate 19th November 1998.

⁵ Chairman of CEC at meeting with CERWG 12th June 2006

6. RESPONSE TO DEVOLUTION

1. Devolution introduced profound changes to the governance of Scotland with the creation of the new Scottish Parliament and Scottish Executive. This has greatly increased the accountability of government in Scotland to the electorate in Scotland.
2. While the Scotland Act reserved the CEC and its operations in Scotland to Westminster, devolution has changed the circumstances of the property rights which make up the Crown Estate in Scotland with:
 - the Scottish Parliament able to legislate over the nature of the Crown's property rights in Scotland and to regulate most uses of these rights; and
 - the Scottish Executive able to set the policy context for property rights which make up the Crown Estate in Scotland within the overall terms of the Crown Estate Act 1961.
3. Despite that degree of devolution and the UK Government's continuing commitment to the devolution process and further devolution where appropriate¹, the CEC has re-structured its operations in Scotland so that the CEC has since 2002:
 - ended the management of the Crown Estate in Scotland as a distinct unit within the CEC's UK wide operations; and
 - absorbed the management of the property rights which make up the Crown Estate in Scotland into its operations in the rest of the UK on a sector by sector basis².
4. Under this arrangement, there is no longer a CEC Head of Estates in Scotland with responsibility for CEC policies in Scotland across different sectors and the CEC's contact for cross-sector policy considerations in Scotland, is the part-time Commissioner designated by the CEC as having special responsibility for Scottish Affairs³. At present, the 'Scottish Commissioner' role is also combined with the duties of being CEC Chairman.
5. The end of the Crown Estate in Scotland as a distinct unit of the Crown Estate is explained by the CEC as part of an organisation wide review to improve co-ordination and efficiency.⁴ However, the change was also apparently intended to safeguard the future of the Crown Estate in its current form in the changed circumstances of devolution.
6. This response by the CEC to devolution, whatever its aims, can be set in context by comparing it with that of the Forestry Commission. These two Commissions are similar as public bodies and there are strong historical links between them as organisations (*Annex 5*). The CEC and FC were also in very similar positions at devolution - both reserved Westminster public bodies; both subject to a power of direction by the Secretary of State for Scotland⁵ and managing respectively Scotland's two most extensive public estates⁶.
7. The FC has, like the CEC, re-structured its operations in Scotland since devolution. However, the results have been very different. The FC has re-structured to create Forestry Commission Scotland reporting to and funded through the Scottish Parliament, acting as a department of the Scottish Executive and implementing the Scottish Forestry Strategy with its focus on the delivery of public benefits in Scotland and widespread stakeholder involvement.

¹ for relevant example, see statements in DEFRA Consultation Paper on the Proposed Marine Bill (March 2006)

² see section 2 and Annex 1 for more details.

³ currently, Ian Grant. See Annex 2 for more about the 'Scottish Commissioner'.

⁴ for example, minutes of CEC / CERWG meeting 29th November 2005

⁵ section 1(4) in the Crown Estate Act 1961 and Forestry Act 1967

⁶ see section 4 for distinction between property vested in the Crown and in the government as forms of public land.

8. There is thus a marked contrast between the changes adopted by the FC since devolution of greater accountability and responsiveness to the new devolved context in Scotland and the CEC's absorption of its Scottish operations into those for the rest of the UK.
9. There appears to have been little response to this contrast by either the Secretary of State for Scotland or the Scottish Executive.
10. Within the reduced role of the Secretary of State for Scotland following devolution, the continuing lead responsibility for the CEC appears to be of a different nature to the other matters now dealt with by that role. The responsibility is described as a "remnant function" post devolution¹ and is seen as involving the Secretary of State being consulted by the CEC simply on formal matters, such as the appointment of Commissioners. The Secretary of State is, however, still responsible for the Ministerial power of direction over the CEC in Scotland in the Crown Estate Act 1961 and, as the CEC has commented:
*"the power of direction is a very wide one, covering all matters within the Commissioners legal competence, and subject only to prior consultation"*²
12. Within the Scottish Executive, no Minister has official responsibility for the CEC because it is a reserved matter and no member of staff appears to have had the CEC's operations in Scotland as part of their remit. While the CEC's involvements in Scotland relate to the responsibilities of several Scottish Ministers³, most contact between the Scottish Executive and CEC appears to be with the new Head of the Executive's Environment and Rural Affairs Department⁴.
13. However, the longstanding lack of responsibility within the Scottish Executive for CEC related matters, has contributed to a lack of awareness amongst Scottish Executive officials of the CEC and how the changed circumstances of devolution have created opportunities to affect the management of the land and other property rights which make up the Crown Estate in Scotland.

¹ Department of Constitutional Affairs: Devolution Guide No.3 (current)

² CEC Annual Report 1959

³ including, for example, the Minister for Rural Affairs, Minister for Transport, the Lord Advocate...

⁴ In January 2005, as noted in the CEC's Board Minutes (Annex 18), the Minister for the Scottish Executive Environment and Rural Affairs Department (SEERAD) proposed that the CEC should establish contact with Richard Wakeford as SEERAD's new Head of Department following his previous post as Chief Executive of the Countryside Agency in England from 1999-2004 (Scottish Executive website).

Part Two

COMPONENT PROPERTY, RIGHTS AND INTERESTS

(i) Lesser Interests

7. CONTEXT

1. The first part of this Report identified the property rights which make up the Crown Estate in Scotland (Table 1), outlined the origins and development of the Estate and described how, as a result of devolution:
 - powers to legislate over the Crown's property rights in Scotland and to regulate most uses of these rights, are devolved to the Scottish Parliament;
 - powers to legislate over the administration and revenues of the Crown property rights forming the Crown Estate in Scotland, are reserved to the UK Parliament.
2. The first part also noted that, following devolution:-
 - the Crown Estate Commission (CEC) has re-structured its operations in Scotland and now no longer manages the Crown Estate in Scotland as a distinct unit of the UK wide Crown Estate;
 - the Secretary of State for Scotland still has a statutory power of direction over the CEC's operations in Scotland and the Scottish Executive now has scope to exert wide ranging influence over the CEC's operation through the new public policy context in Scotland.
3. This second part of the Report now considers the case that:-

the Secretary of State for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and the well being of the people of Scotland.
4. Scottish Ministers have already implemented such a review with Scotland's other main public estate, the National Forest Estate. They also initiated this in response to 'the changed circumstances of devolution' and carried out the review in 2003-04. Taking that review's remit and terms of reference and substituting the words 'Crown' for 'Forest' and 'marine' for 'forestry', illustrates their applicability in this context:
 - The purpose of this review is to take stock of our National Forest (/ Crown) Estate and to ask whether its current size, nature and geographic distribution are appropriate for the 21st century
 - To review the long term role of Scotland's National Forest (/ Crown) Estate, making recommendations to Ministers about changes that can improve its abilities to deliver the priorities set out in the Scottish Forestry (/ Marine) Strategy, together with other Scottish Executive policies¹

¹ both bullet points from Ministerial Foreword in "Review of Land Managed by Forestry Commission Scotland" FCS Consultation Paper, 2003

5. The Review of Scotland's National Forest Estate took place after issues of alignment and accountability had been sorted out¹. The Secretary of State for Scotland's power of direction over the FC had been transferred to Scottish Ministers and FC Scotland created. The review was about implementing change to capitalise on the new opportunities.
6. The FC and Scottish Office had agreed those changes during the lead up to devolution. At that time, there were also "*numerous discussions between the CEC and Scottish Office officials about the devolution of the Crown Estate*"². In these, the CEC went "*to some lengths to clarify the fact that the land and property of the Crown Estate in Scotland will be subject to the laws and regulations of the Scottish Parliament*"³.
7. The other outcome of the 'devolution settlement' between the CEC and the Scottish Office was agreement that the CEC would convey the ownership of Edinburgh Castle and other historic buildings from the Crown to the Secretary of State for Scotland for transfer to Scottish Ministers. The transfer of 26 properties took place in 1999⁴.
8. This part of the Report reviews the position of the Crown Estate in Scotland now. The Report describes the results of the CERWG's investigations by examining:
 - *firstly*, the nature, use and management of each of the different types of property, rights and interests listed 1-14 in Table 1 as components of the Crown Estate in Scotland;
 - *secondly*, the combination of these property rights and interests as an 'estate in land'⁵.
9. The fourteen components are divided in the Report into two groups:

Main Interests: the properties and rights that are actively managed as economic resources - the urban and rural properties (Table 1: No.11), salmon fishing (No.7) and principal marine rights (foreshore, seabed, continental shelf)(Nos. 1-3).

Lesser Interests: the ancient possessions and other minor rights which are of limited economic and social significance (Nos. 4-6, 8-10 and 12-14).
10. The 'Lesser Interests' account for two thirds of properties and rights in Table 1 (9 out of 14). They are dealt with first in the following sections to 'clear the ground', because it appears to be the case from the CERWG's investigations that each of the 'Lesser Interests' should, like Edinburgh Castle, no longer form part of the Estate, given the changed circumstances of devolution and independent of any wider considerations about the future of the Crown Estate in Scotland.
11. The subsequent sections on the 'Main Interests' do each involve a range of wider issues and lead to the consideration of the overall Crown Estate in Scotland in the final sections of the Report, including:
 - the responsiveness and accountability of the management of the Estate to the new policy context in Scotland following devolution, and
 - the extent to which opportunities now exist for key components of the Estate to produce greater economic and social benefits in Scotland.

¹ Annex 5 for more detail

² Hansard 19th May 1998 col.812

³ Letter of 18th November 1998 from Michael Cunliffe, Head of Scottish Estates, Crown Estate Commission

⁴ Annex 6

⁵ The CEC has to maintain the Crown Estate as "an estate in land" (Crown Estate Act 1961 s.1(3))

8. CASTLES AND OTHER HISTORIC SITES

(Table 1: Nos.9 and 10)

1. During 1999, the Crown's ownership of Edinburgh Castle, Stirling Castle, Linlithgow Palace, Arbroath Abbey and over twenty more of Scotland's historic sites, was conveyed by the Crown Estate Commissioners (CEC) on behalf of the Crown to the Secretary of State for Scotland for transfer to Scottish Ministers.
2. An account of the transfer is given in Annex 6 and from which it might be noted that:-
 - Despite the apparent significance of this transfer, particularly when the new Scottish Parliament was starting up, the transfer was not reported in the CEC Annual Reports and there seems to be a wider lack of published information available about the purpose and full extent of the transfer.
 - None of the properties which were transferred by the CEC is identified in the CEC's lists of properties making up the Crown Estate in Scotland, as published in its annual reports since it was formed in 1956.
 - The transfer was intended to be a 'tidying up' exercise to clarify that all these properties were managed by the government and not by the CEC and included properties where at most, the CEC "*may have had a nominal historic interest*"¹.
 - While the aim was to ensure any Crown Estate rights were removed from these properties and the CEC has claimed that this was done², the CEC reserved the mineral rights over all the properties conveyed together with another reservation considered not competent in Scots law³.
 - The CEC has recently acknowledged that the reservations were made⁴, but the CEC has yet to indicate whether it intends to correct the situation by conveying the reserved Crown rights for each of the 26 properties to Scottish Ministers.
3. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
 - o *the Crown rights reserved as part of the Crown Estate in Scotland over Edinburgh Castle and each of the 25 other properties transferred in 1999, should now be conveyed to Scottish Ministers.*
4. The removal of the reservations has an important symbolic value, given the iconic nature of the buildings involved. The 1999 transfer did not, however, involve the ownership of these buildings being conveyed "to Scotland". The transfer was between the Crown in Scotland and the government in Scotland and thus between forms of public land⁵. The matter being settled was the management of the properties.
5. The 1999 transfer reflected the conclusion that, to the extent that the Scottish Executive was not already responsible for managing these important Scottish properties, then they should be. The transfer recognised that the Scottish Executive has Historic Scotland to manage

¹ CEC letter 13th March 2006

² for example, CEC Statement of Interests 19th October 2005; CEC Chairman at CEC / CERWG meeting 12th June 2006

³ see Annex 6

⁴ CEC letter 6th July 2006

⁵ see Section 4

such properties and that it is not a role of the CEC in Scotland to be the custodian of these types of nationally important historic buildings and sites¹.

6. The Crown Estate in Scotland now includes no such historic buildings (see Table 1). However, there are two small areas of Crown land which had always been associated with Edinburgh and Stirling Castles respectively, which still form part of the Crown Estate in Scotland:
 - 5 hectares of West Princess Street Gardens, in Edinburgh; (Table 1: No. 9)
 - the King's Park holding in Stirling, (Table 1: No.10)
7. The histories and current positions of these two sites are described in Annexes 7 and 8. In each case, there seems no clear public benefit in these small and isolated sites continuing to form part of the Crown Estate. It also appears that conveying them from the Estate to the respective local authorities would produce important local benefits.
8. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
 - o *the small part of Princes Street Gardens within the Crown Estate should be conveyed to Edinburgh City Council, so that the area can be fully integrated into the Council's ownership and management of the rest of Princess Street Gardens.*
 - o *the lands of the King's Park and associated areas in Stirling which form part of the Crown Estate should be conveyed to Stirling Council as currently under negotiation (see Annex 7).*
9. The remaining buildings and lands forming part of the Crown Estate in both urban and rural Scotland, are all parts of the investment properties managed by the CEC in Scotland as described in sections 12 and 13.

¹ The absence of such properties is a distinctive feature of the Crown Estate of Scotland compared to that in England, where the CEC manages many historic properties, including 1,000 listed buildings (CEC website). These include the Windsor Estate which is the only part of the UK wide Crown Estate which the CEC can not sell under the 1961 Act. (section 5 of Act)

9. WHALES AND OTHER MARINE SPECIES

(Table 1: Nos.4, 5, and 6)

1. The ancient Crown right in Scotland to certain larger whales (Table 1, No.4) is of medieval origin and might sound archaic. However, the right has continued to be of relevance because of stranded whales and has become of greater significance due to the increasing number of stranded whales on Scotland's coastline.
2. An account of this Crown right is given in Annex 9 and from which it might be noted that:
 - the number of whales stranded on the Scottish coast has more or less doubled in the last five years;
 - some stranded whales have to be removed on grounds of public and environmental health and removing a large whale can cost up to £15K or more to clear, depending on circumstances;
 - the Crown's right is taken to apply to whales of 25 feet or more in length and local authorities can potentially receive a 100% refund from the Scottish Executive for the cost of clearing whales of this size where their removal is necessary.
3. The account in Annex 9 also highlights the anomaly that:-
 - the CEC claims that the right of the Crown in Scotland to certain larger whales is a part of the Crown Estate in Scotland¹;
 - the Crown Estate is defined as the property, rights and interests managed by the CEC²;
 - the CEC acknowledges that it takes no part in administering the right or contributing to the cost of removing stranded whales³;
 - the Crown's right was devolved under the terms of the Scotland Act 1998 and is administered and funded by the Scottish Executive through its Environment and Rural Affairs Department.
4. While the CEC's mistake in claiming this Crown right as part of the Crown Estate should be corrected, there are also other issues with this archaic Crown right. These include the historic legacy of 'the 25 feet rule' and constraints affecting the involvement of Scottish Natural Heritage (SNH) with stranded whales⁴.
5. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
 - *the devolution of the administration of the ancient Crown right in Scotland to certain whales provides the opportunity for the various confusions and constraints associated with it, to be sorted out;*
 - *the Crown's property right should be replaced as part of that modernisation by a contemporary measure to deal with the increasing number of stranded whales as part of Scotland's wildlife legislation.*
6. There would be significant public benefits from reform of this Crown right as it would enable the Scottish Executive:

¹ CEC Statement of Interests 19th October 2005

² Crown Estate Act 1961

³ CEC letter 6th July 2006

⁴ as described in Annex 9

- to integrate all aspects of dealing with stranded whales within SNH's existing responsibilities for the protection and conservation of all whales in Scotland's territorial waters;
 - to include as part of this, a more appropriate scheme in partnership with local authorities for the removal of stranded whales where necessary
7. However, in the context of this report, the main point is that the right of the Crown in Scotland to certain whales is an example of a Crown property right which is already devolved and managed by the Scottish Executive. There are other Crown property rights where this is also already the case¹. There are other rights where it should be the case.
8. There are two examples of other medieval Crown property rights over marine species which do currently form part of the Crown Estate in Scotland and where the public interest in Scotland should be represented and managed by the Scottish Executive rather than involve the CEC.
9. The two property rights are the Crown's rights in Scotland to naturally occurring native oysters and mussels respectively (Table 1: Nos. 5 and 6). The Crown has no equivalent rights in the rest of the UK. These Scottish rights are described in Annex 10 and from which it might be noted that:-
- While these species do have some economic significance, their financial value to the CEC is through foreshore and seabed charges from those managing the species commercially and not directly from the Crown's ancient rights to the species.
 - Measures to conserve these species and regulate their exploitation are all matters dealt with by the Scottish Executive and removing the separate Crown property right to the species would improve integration and clarify roles.
 - The removal of the ancient right to take these native species would enable them to be managed like other, similar marine species (e.g. scallops), through Scotland's wildlife and fisheries legislation.
 - this modernisation would also enable native oysters and mussels to be included in the public rights over foreshore, as proposed by the Scottish Law Commission (SLC)² while still safeguarding the need of commercial users for exclusive rights.
10. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
- o *the management of the ancient Crown rights to native oysters and mussels currently administered by the CEC, should be devolved to the Scottish Executive; and that*
 - o *the conservation and management of these species should all be dealt with by the Scottish Executive through SNH and appropriate Scottish wildlife and fisheries legislation.*
11. There are parallels between these proposals for the Crown rights to oysters and mussels, and the transfer of historic buildings in 1999³. The difference is that in that later case, the Scottish Executive's agency for managing such matters in Scotland is Historic Scotland, and in the case of the whales, oysters and mussels, it is SNH.

¹ for example, the Crown's rights to ownerless property (Annex 4), right of public navigation (see next footnote)

² SLC Report on the Law of the Foreshore and Seabed 2003 paragraph 3.14 – The public right proposed by the SLC's involves another 'set' of Crown property rights, other than the Crown property rights which form part of the Crown Estate in Scotland. These are the public rights held by the Crown in trust for the public. The management of these Crown rights is already devolved to the Scottish administration (see sections 15 and 16)

³ previous section and Annex 6

10. GOLD and SILVER

(Table 1: No.8.)

Background

1. The oldest Act still in force from the Scottish Parliaments before the Union of 1707, is the Royal Mines Act 1424. The Act confirmed the reservation of the mining of gold and silver in Scotland to the Scottish Crown.
2. Another related Act, the Mines and Metals Act 1592, is also still current. These two Acts are amongst 94 Acts from the former Scottish Parliaments that were still current in 1995¹.
3. The ancient Crown right to gold and silver is part of the *regalia minora* in Scots law and thus can be alienated or disposed of by the Crown to others.
4. The administration and revenues of the right of the Crown in Scotland to mine gold and silver was transferred from Edinburgh to Whitehall in the 1830s² and the right now forms part of the Crown Estate in Scotland managed by the Crown Estate Commission (CEC).
5. While there was mining for gold and silver in Scotland historically, there appears to have been none during the 20th century. However, in 1996, the CEC granted the first lease '*in modern times*' for a commercial gold mine in Scotland³. The 21 year lease is for a mine at Cononish just south of Tyndrum in Perthshire, but the mine has not been developed to date as the international price of gold has not been considered high enough⁴.
6. The CEC is also responsible for issuing licences to prospect for gold and silver in Scotland, Recent examples include licences to prospect at Aberfeldy and the Ochil Hills in Perthshire, Kilmelford in Argyll and Arthrath in Aberdeenshire.⁵
7. The Crown Estate also includes the separate Crown right to gold and silver in English law, which is also of medieval origin and known as "mines royal"⁶.

Significance

8. Gold and silver have been of great cultural significance to societies for thousands of years and the right to these metals was claimed by monarchs throughout the kingdoms of medieval Europe
9. The long associations of gold and silver with sovereignty and nationhood have always meant that the Crown right to these metals has a particular significance compared to other Crown property rights.
10. The Crown of Scotland is itself made out of Scottish gold⁷. The Crown has been kept with the other Honours of Scotland in Edinburgh Castle since the Union of Crowns: "*They are the oldest Crown jewels in the UK and amongst the oldest in Christendom*"⁸.

¹ Hansard 4th December 1995 Col.65

² see Annex 1 for general history

³ CEC Annual Report 1996

⁴ During 2006, the price of gold has reached a 25 year high. Sunday Herald 16th April 2006

⁵ Herald, 4th January 2007 "Golden Opportunity: mine firm gets go-ahead at four sites".

⁶ This English right appears to generate a commercial revenue –CEC Annual Report 2005, page 6

⁷ Burnett, C and Tabraham, C 'The Honours of Scotland' (Historic Scotland 2003) page 25. The gold for the current, 16th century, Crown of Scotland was from Crawford Moor in Upper Clydesdale.

⁸ op cit. Historic Scotland 2003 (quote from back cover)

11. The right to mine gold and silver in Scotland has always remained owned by the Crown in Scotland in Scots law and now there is also a Scottish Parliament again with the power to legislate over the right. However, control over the administration of the right is not in Scotland, but still managed by “*a leading property company*” based in London¹.
12. Given the changed circumstances of devolution, it appears a particular anomaly that the administration of such a nationally significant Scottish right is not under the authority of the Scottish Parliament.
13. The transfer of this function to the Scottish administration would not be financially significant to the CEC given the lack of commercial mining at present. The transfer would, however, be significant to Scotland as the return of a symbol of nationhood, as has happened over recent years with examples such as the Stone of Destiny.
14. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
 - *the administration of the ancient right of the Crown in Scotland to gold and silver which is currently handled by the CEC, should be transferred to the Scottish Executive.*
15. The terms of the ancient Scots laws governing the Crown’s right to mine gold and silver and their interpretation through the courts over recent centuries, also offers plenty of opportunity for rationalisation and clarification into a straightforward modern statement of law through the new Parliament.
16. The right to mine gold and silver might, like the ownership of Edinburgh Castle and other such symbolic properties, be more appropriately held following devolution by Scottish Ministers rather than the Crown.

¹ the CEC; property company quote from CEC Annual Report

11. OTHER RIGHTS AND DUES*(Table 1: Nos. 12, 13 and 14)*

1. The Crown Estate in Scotland includes rights and payments which have been reserved by the Crown over lands which have been sold or transferred from the Crown's ownership into other ownership. They are described here under the three sub-headings below.

(i) Heritable Revenues

2. Heritable revenues consisting of feu duties and other related charges were the main source of the "royal revenues" in Scotland, when the revenues and their administration were transferred from Edinburgh to London in the 1830s.
3. There were thousands of these dues and charges to be collected each year and a high proportion of them were for very small amounts. This made their collection un-economic and the successive Commissioners responsible for these revenues have tried since then to reduce the number of these dues and charges.
4. When the CEC was established fifty years ago in 1956, there were still over 2000 of these annual dues producing nearly £20K per annum, with over 75% of the amount from feu duties¹. In 1960, some 448 of the annual dues were redeemed under an offer from the CEC and similarly, another 364 in 1967. By the time of the Land Tenure Reform (Scotland) Act 1974, around 1300 dues remained and 711 were redeemed that year, to leave c.600².
5. In 2005, thirty years later, 95 of these annual dues were still part of the Crown Estate in Scotland³. The Feudal Reform Scotland Act 2003, while abolishing feudal charges, provided for compensation payments to be applied for by Notice by the Superior up until 28th November 2006⁴.
6. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might want to:-
 - o *ensure that all the feu duties, surplus teinds and other archaic charges due to the Crown in Scotland and forming part of the Crown Estate in Scotland, have been ended.*

(ii) Other Income Right

7. The Crown Estate in Scotland includes a contingent liability over an area of forest at Inverliever in Argyll which is owned by Scottish Ministers and managed on their behalf by Forestry Commission Scotland (FCS).
8. The liability is a legacy of the Forestry (Transfer of Woods) Act 1923, which enabled land to be transferred from the Commissioners of Crown Lands to the relevant government Minister for management by the recently established Forestry Commission (est.1919).
9. In total, over 120,000 acres were transferred under the Act. All the land was conveyed to Ministers at no cost on the basis that if any of the land involved was sold, the FC would then compensate the Crown for the rights and interests transferred on the terms set out in the 1923 Act. The continuing 'contingent liability' over these lands is set out in Section 43 of the current forestry legislation, the Forestry Act 1967.

¹ feu duties £14.9K, surplus teinds £4.3K CEC Annual Report 1958

² figures from CEC Annual Report

³ CEC November 2005

⁴ CEC November 2005

11. The only site in Scotland transferred under the 1923 Act was 12,300 acres of woodlands at Inverliever, Argyllshire, in 1924/6 to the Secretary of State for Scotland for management by the FC for the notional consideration of £29,000¹.
12. The power to make such transfers was repealed by section 8 of the Crown Estate Act 1961. However, the contingent liability continues over Inverliever Forest and, after 80 years and following devolution, appears something of an anomaly.
13. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
 - o *the nature and extent of any contingent liability over Inverliever Forest as a legacy of the Forestry (Transfer of Woods) Act 1923 should be established and an opportunity secured to end any continuing liability.*²

(iii) Title Reservations

14. When the CEC has conveyed properties on behalf of the Crown from the Crown Estate into the ownership of other parties, the title deeds will have normally contained reservations in favour of the Crown. This was also the case with the Commissions which have preceded the CEC and when Scotland's Lord Advocate represented the Crown's interests in land in Scotland pre-1832.
15. It appears that the most frequent reservation has been, as with sales from private estates, the mineral rights. They are a separate right of property in their own right and thus, by virtue of the reservation, still part of the Crown Estate. The full extent to which the CEC still holds mineral rights over other properties has not been investigated.
16. The reservation by the CEC in 1999 of the mineral rights over Edinburgh and Stirling Castles and over two dozen other prominent historic buildings, is described in Annex 6 and discussed in Section 8 above, including the proposal that
 - o *the Crown rights reserved as part of the Crown Estate in Scotland over Edinburgh Castle and each of the 25 other properties transferred in 1999, should now be conveyed to Scottish Ministers.*
17. Titles from the CEC and its predecessors, have also included other reservations and burdens. While most types of old fashioned burdens should have disappeared following Scotland's recent feudal reform and title conditions legislation³, some will remain. There will also still be reservations of mineral rights and potentially other rights which were made when Scotland's Lord Advocate represented the Crown's interests in land in Scotland.
19. The Lord Advocate is one of Scotland's 'great officers of state'⁴, who represents the Crown in Scotland in various capacities and whose duties include maintaining and protecting Scotland's regalia ('The Honours of Scotland'⁵).
21. The position of the Lord Advocate in relation to the Crown's property rights in Scotland over land, compared to the Crown Estate Commissioners, is considered later in this Report⁶.

¹ see Annex 5 for more details

² Neither the FC or CEC were aware of this apparent liability when asked by the CERWG.

³ Abolition of Feudal Tenure etc (Scotland) Act 2000, Title Conditions (Scotland) Act 2003

⁴ for role and history of Scotland's Lord Advocate, see <http://www.thecrownoffice.gov.uk>

⁵ see section 10 Gold and Silver above

⁶ see section 19

(ii) Main Interests

12. URBAN PROPERTIES

(Table 1: No.11(b))

1. The Crown Estate in Scotland includes three urban properties¹. They are all commercial properties in Edinburgh purchased during the last 12 years by the CEC as investments:- The Princes Exchange (Tollcross), 127/8 Princes Street and 39/41 George Street.²
2. These three properties make urban property the most important component of the Crown Estate in Scotland in terms of both capital value (over 50% of Estate total) and revenue generation (40% of total annual revenue)³.
3. Commercial urban property is a relatively new component of the Crown Estate in Scotland which has been developed by the CEC's over the last thirty years. The history of that development is described in *Annex 11* and from which it might be noted that:-
 - no commercial property formed part of the Crown Estate in Scotland when the CEC became responsible for its management in 1956;
 - the CEC's first investments in urban property in the 1960s and 1970s were based on both commercial and public interest aims (e.g. architectural conservation, urban regeneration).
 - with purchases and disposals during the 1980s and 1990s, the CEC's policy became increasingly focused on commercial returns and the purchase of each of the current three properties was based on anticipated investment performance.
4. The impetus to develop urban property as part of the Crown Estate in Scotland came from the nature of the Crown Estate in England, where urban property has always been the main component and the core business of successive Commissions. When the CEC was set up in the 1950s, two thirds of the total revenue of the UK wide Crown Estate was from London properties⁴.
5. The CEC regarded the fact that the Crown Estate in Scotland included no commercial properties as an "*accident of history*" and that they should acquire commercial properties there so that the Crown Estate in Scotland was a "*microcosm*" of the wider Crown Estate⁵.
6. The high degree of focus of the CEC on its portfolio of urban properties is reflected by the fact that they contribute over 75% of the UK wide Crown Estate's annual revenue and account for nearly 80% of the £5 billion capital value attributed to the Estate⁶.
7. The urban properties forming part of the Crown Estate in Scotland are three (or 0.1%) out of over 3000 urban properties managed by the CEC⁷. The Scottish properties account for c.2% of the urban capital because of the Princes Exchange which, at £60m to acquire the site and forward fund the development, was the CEC's largest ever single urban property investment in the UK⁸. It was selected because it was seen as a good investment opportunity at that UK level. It just happened to be in Scotland.

¹ excluding West Princes Street Gardens, Edinburgh

² The CEC has added details of these properties to its website (September 2006) www.thecrownestate.co.uk

³ CEC Annual Report 2005: Scotland supplement.

⁴ Report of the Committee on Crown Lands (HMSO 1955)

⁵ CEC Annual Reports 1977 and 1979

⁶ CEC Annual Report 2005 (marine 15% of total revenue, rural estates 8% and Windsor a loss-making 2%)

⁷ CEC Annual Report 2005 (over 600 commercial and over 2,600 residential properties)

⁸ CEC Annual report 2000

8. Thus, while urban property has become the most important financial component of the Crown Estate in Scotland, the three properties involved are a very small part of the CEC's UK urban property portfolio.
9. The overall influence on the Crown Estate in Scotland of the fact that urban property is the 'main driver' of the CEC as an organisation, is considered later in this report¹. Urban property is considered here as a component of the Estate in Scotland.
10. In comparison to some of the 'lesser interests' making up the Crown Estate in Scotland, there appear no legal or other technical issues associated with the CEC's involvement with commercial investment property and the CEC's policy continues to be to acquire further urban properties in Scotland should good investment opportunities arise².
11. The question which arises is, given the changed circumstances of devolution, to what extent does the CEC's commitment to further speculative investment in commercial property in urban Scotland, match the new public policy context in Scotland?
12. Devolution has not affected the CEC directly. It is a reserved UK body under UK legislation "*charged on behalf of the Crown with the function of managing and turning to account ... the Crown Estate*"³ with a general duty "*while maintaining the Crown Estate as an estate in land...to maintain and enhance its value and the return obtained from it, but with due regard to the requirements of good management.*"⁴
13. The change with devolution has been in the factors affecting "*the requirements of good management*". Post devolution, the CEC should be operating in Scotland in line with Scottish Executive policy where there is no conflict between this and the Crown Estate Act 1961. In addition, as the CEC recognises, the CEC will also follow guidance from the Scottish Executive where there is no conflict with the 1961 Act⁵.
14. This does not mean that the Scottish Executive can direct the CEC to buy or sell particular properties. However, devolution does mean that the Scottish Executive can set a policy framework that influences the CEC's operations in Scotland.
15. The Executive could, for example, express a view about the CEC buying and selling urban properties in urban Scotland simply on the basis of financial performance. There is clearly scope for purchases to include other objectives in addition to financial performance so that there were some benefits in Scotland. Previous purchases included social value. Appropriate guidance from the Executive could be accommodated as part of the 'requirements of good management'.
16. However, the question might be posed, for example, whether it is at odds with the 'ethos' of the Scottish Administration to have a public sector body making speculative commercial property investments in Scotland, based on narrow financial objectives with no apparent direct public benefits in Scotland.
17. There is no requirement for the CEC to have any urban investment properties in Scotland. There were none as part of the Crown Lands of Scotland. The CEC introduced the

¹ section 18

² CEC / CERWG Meeting 20th May 2006

³ Crown Estate Act 1961 section 1(1)

⁴ Crown Estate Act 1961 section 1(3)

⁵ for example, confirmed by CEC Chairman at CEC / CERWG meeting 12th June 2006

approach of acquiring such properties into Scotland with the explicit aim of building up an urban investment portfolio to make the Crown Estate in Scotland a microcosm of the Crown Estate south of the border, where commercial urban property is the CEC's core business.

18. However, the CEC's current portfolio of commercial urban property in Scotland is 3 out of over 3,000 urban properties in the UK. These three properties, acquired in the period 1995-1999, could now appear to be an "*accident of history*" rather than the absence of such properties in Scotland (see para.5 above).
19. The CEC is not just another commercial property company. The three existing urban properties are held by the Crown in Scotland and yet, with the four rural estates bought in the 20th century as additions to the Crown Estate in Scotland, follow the model of the Crown Estate in England. These commercial properties contrast markedly with the conspicuous ancient possessions of the Crown in Scotland, including the seabed and foreshore.
20. The CEC could decide as a matter of policy with or without encouragement, that it is no longer appropriate to buy further commercial properties in Scotland. They might recognise in the changed circumstances of devolution, that such acquisitions are not part of the tradition of the Crown in Scotland and do not fit the new devolved policy context in Scotland.
21. The proposition that the CEC could have a different policy in Scotland towards urban property is straightforward in that the rights and traditions of the Crown in Scots law and English law are distinct. Down south, the Duchies of Lancaster and Cornwall also invest in commercial urban and rural properties. However, they are precluded by law from purchasing property in Scotland¹.
22. The CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
 - o *there should be no further acquisitions of urban properties by the Crown in Scotland and the existing urban properties held by the Crown in Scotland should be sold sooner or later.*

¹ see Annex 3

13. RURAL ESTATES*(Table 1: No.11(b))*

1. The Crown Estate in Scotland includes four rural estates which, like the urban properties, are held as investments by the CEC.¹ Two of the estates date from the 1930s, Glenlivet and Fochabers, and two from the 1960s, Applegirth and Whitehill (Table 1, 11(b)).²
2. The value of this rural component has declined as a percentage of both the capital value and annual revenue of the Crown Estate in Scotland over recent decades³. The rural component has also traditionally been the least profitable of the CEC's main interests in Scotland in terms of the net surplus revenue⁴.
3. Details of each of the four rural properties are given in Annex 12, which includes an account of the history and development of the rural component of the Crown Estate in Scotland and from which it might be noted that:
 - the first purchase of a rural estate in Scotland by the Commissioners was in 1909;
 - Glenlivet and Fochabers were acquired in 1937 when the Secretary of State for Scotland was the Commissioner of Crown Lands responsible for Scotland and like the Secretary of State's acquisition of the Cairngorms Estate for management by the FC, the acquisition was a response to the break up of the Duke of Richmond and Gordon's 250,000 acre estate during the depressed times of the 1920s and 30s.
 - Applegirth and Whitehill were each built up by the CEC as agricultural investment estates during the period in the 1960s and 1970s, when commercial institutional investors were acquiring good quality agricultural land and when public concern over the extent of this pattern led to the government's Northfield Committee Report⁵.
 - no new rural properties have been acquired in over 35 years since Applegirth and Whitehill were purchased in the 1960s⁶ and the last of the other rural holdings apart from Glenlivet and Fochabers were sold in the 1980s.
4. Glenlivet and the three agricultural estates are all parts of the Crown Estate in Scotland as legacies of past circumstances decades ago. Amongst the four, however, it is least clear why Glenlivet has continued to be retained as part of the Crown Estate under the CEC's own standards. It does not appear, for example, that the retention can be explained against the CEC's normal investment criteria.
5. The CEC only just decided on balance to retain Glenlivet when the CEC took over in the 1950s and its future continued to be questioned over successive decades⁷. A hint to its retention is perhaps given in a CEC report on the Glenlivet Development Project in 1991: *"it is probably fair to say (Glenlivet) is held in rather special regard by the Commissioners on account of its scenic value, remoteness and the range of enterprises found within it"*⁸.

¹ The CEC count the King's Park, Stirling, as a rural estate. However, this distinctive ancient possession of the Crown within the bounds of Stirling is covered separately in this Report – see Annex 7.

² The CEC has added details of these properties to its website (September 2006) www.thecrownestate.co.uk
³ see Table 3

⁴ CEC Annual Reports

⁵ Report of the Committee of Enquiry into the Acquisition and Occupancy of Agricultural Land" Chairman Lord Northfield. Cmnd. 7599 (HMSO 1979)

⁶ There have been significant additions to the existing holdings – see Annex 12

⁷ see Annex 12

⁸ "Putting Glenlivet on the Map" (CEC 1991). It might also be noted that the CEC reported in its 1968 Annual Report that Commissioners had retained the last Crown Estate farm in Caithness for "sentimental reasons".

6. It is nearly twenty years since the start of the Glenlivet Development Project in 1988 to improve the management of the Estate and the secondment of a member of the Highlands and Islands Development Board staff to manage the Project. The project has had a lasting impact on the management of the Estate, which is frequently featured in CEC publications and other promotional material as the CEC's Highland estate.¹
7. The CEC say now that Glenlivet is retained by the CEC as a model for private estates of its kind, although there seems a lack of clarity about this apparent role². The perception that the estate is managed as a large private estate is re-enforced by Glenlivet being factored by Smiths Gore for over 30 years, when they also factor other large private estates in the same area.
8. The CEC appears to manage all the rural estates that are part of the Crown Estate in Scotland as if the CEC is a private sector institutional landlord. While the CEC aims to match high standards of practical land management for that commercial sector, questions arise following devolution over the extent of public benefits which these estates deliver in Scotland over and above those that a private landlord might produce.
9. These rural estates are public land in Scotland held in right of the Crown in Scotland and the CEC is a public body operating within the new devolved Scottish policy context.
10. An early example of the influence of Scottish Executive policies on the CEC's management was soon after devolution, when Scottish Ministers requested the CEC to produce its own set of community involvement guidelines as other public bodies were doing in Scotland. In 1999, the CEC produced "The Crown Estate and the Community: Working Partnership"³.
11. While the CEC's 1999 community guidelines were of limited scope, there has also been no update or development of the guidelines since and there appears little awareness of the existence of the guidelines within the CEC.⁴ More generally, there seems a lack of engagement by the CEC over other ways in which the rural estates could contribute more directly to support the delivery of Scottish Executive policies.⁵
12. In addition to the management of the current estates, questions also arise over how the CEC's policies for the acquisition of further rural estates in Scotland or the sale of existing ones fit in with the new devolved public policy context in Scotland.
13. The CEC remains committed to buying additional rural estates in Scotland if there are suitable investment opportunities. In considering whether the Scottish Executive would support this, it can be noted for example:-
 - (a) When Applegirth and Whitehill were acquired, they were cited by the CEC as examples of their "*success in spotting opportunities...to build up new estates which offered a good return for the money spent*"⁶. This approach of aggregating a number of separate holdings into a single big estate on financial grounds would now appear no longer

¹ Glenlivet is around four times larger than any other of the rural estates managed in the UK by the CEC (see schedule in CEC Annual Report, 2000). Applegirth appears to be the second biggest.

² CEC / CERWG Meeting 29th November 2005

³ launched by the CEC at a reception in Edinburgh on 8th September 1999 and available on <http://www.caledonia.org.uk/land/communit.htm>

⁴ This conclusion is based on the CERWG's experience at the start of its investigations.

⁵ For example, within the Cairngorms National Park or through the Scottish Executive's 'On the Ground' programme (see section 17)

⁶ CEC Annual Report 1977

appropriate for a public body in Scotland, given the Scottish Executive's policies for the pattern of land ownership in rural Scotland¹.

- (b) Considering Glenlivet, it might also be doubted whether the acquisition of another Highland estate as an investment by the CEC would now be seen as fitting in with the Scottish Executive's land reform policies.
 - (c) Correspondingly, the Scottish Executive would appear unlikely to want to encourage the CEC to buy a particular estate to resolve a particular issue. The CEC was not, for example, identified as an option in the HIE Cairngorms Estate despite the proximity of Glenlivet.²
14. Against this background, the Scottish Executive might consider that the acquisition of additional rural estates in Scotland by the CEC would not be appropriate. If this was the Scottish Executive's view and it was made known to the CEC, the Scottish Executive could reasonably expect there would be no new acquisitions. This would be due to the influence of the new Scottish policy context on the CEC in Scotland as explained in the previous section.³
 15. The acquisition and management of rural estates as investments by the CEC is, as with the urban properties, something which is part of the traditions of the Crown in England rather than Scotland. In comparison to the four rural estates in Scotland, the CEC manages over forty rural estates in England spread across over two dozen counties.
 16. The CEC has not purchased a new rural estate in Scotland for over 35 years and the CEC could now decide, as proposed with the urban properties which the CEC manages in Scotland⁴, that it is no longer appropriate for the CEC to acquire further rural properties in Scotland given the changed circumstances of devolution.
 17. The existing rural estates managed by the CEC in Scotland are a legacy, like the urban properties, of the new approach introduced during the 20th century of buying properties as investments to add to the ancient possessions of the Crown in Scotland. In the long history of the Crown Lands of Scotland, these acquisitions can be seen as a particular episode that has added another component to the fairly *ad hoc* collection of property, rights and interests which make up the Crown Estate in Scotland.
 18. The future ownership of the existing rural estates might be considered uncertain. Any of them might be sold by the CEC. The CEC both buys *and* sells rural properties each year when suitable opportunities arise.⁵ While the CEC has stated its commitment to the estates in Scotland, the CEC manages its rural estates on a UK wide basis and has no separate policy against sales in Scotland.
 19. If the CEC was considering the possible disposal of any of the rural estates in Scotland, the Scottish Executive might expect that the CEC as a public body would 'liaise' with the Executive to ensure local community interests are properly taken into account.
 20. The three largest estates managed by the CEC each have significant numbers of both agricultural and residential tenancies.⁶ The Scottish Executive's existing policies reflect that

¹ e.g. Land Reform Policy Group's reports

² HIE Cairngorms Estate Options Appraisal (Bidwell Dec.2005).

³ Section 12 paras. 12 et seq.

⁴ see the end of Section 12

⁵ see CEC Annual Reports

⁶ For the numbers, see Table 9(b) in Annex 12

it might be anticipated that the Executive would pay particular attention to making sure that the tenants interests were appropriately safeguarded in any sale.

21. In the past, the CEC has sold to the sitting tenants when disposing of rural estates and questions over sales in whole or in part would appear pertinent rural policy considerations as part of the 'requirements of good management'¹ in a Scottish context.
22. The CEC Chairman appeared recently to confirm that selling to the sitting tenants would still be CEC policy if the CEC was to sell any of the rural estates in Scotland.²
23. The rural estates managed by the CEC in Scotland are also subject to Scotland's community and agricultural tenant right to buy legislation. This could be a significant factor in any sale by the CEC. While half a dozen agricultural tenants across the estates had registered their interest by early 2006, the number has been increasing.³
24. The CEC has made clear that it has no plans to sell any of the rural estates which the CEC manage in Scotland.⁴ Any review of the Crown properties and rights which make up the Crown Estate in Scotland, would need to examine the circumstances of each rural estate very carefully to give due regard to local land use and community interests.
25. Within current circumstances, there are opportunities now for the Scottish Executive to improve both the public benefits in Scotland from these rural estates and the accountability of the CEC's management of them.
26. An early example of Scottish Executive influence might again be, as at devolution, the community guidelines. The Scottish Executive could request the CEC to review and significantly develop their 1999 guidelines, so that they are updated and fully reflect developments in Scottish Executive policies for rural community interests since 1999.
27. Within Scotland's new public policy context more generally, there is scope for the Scottish Executive to define the requirements of good management to which the CEC must have regard. The Executive could clarify the overall position by establishing with the CEC that the rural estates of the Crown in Scotland should deliver greater public benefits than privately owned land managed to high standards.
28. the CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:-
 - o *there should be no further acquisitions of rural land holdings by the Crown in Scotland other than around its existing properties;*
 - o *the most appropriate future for the existing rural estates held by the Crown in Scotland should be determined as part of wider considerations of the Crown property rights which currently make up the Crown Estate in Scotland.*

¹ Crown Estate Act 1961 1(3)

² Ian Grant in CEC Press Statement of 14th December 2006 in which he expressed concern that "it is unlikely that all the tenants would be in a position to buy" if estates were sold off.

³ Scottish Executive's Register of Interests in Land <http://rcil.ros.gov.uk/RCIL>

⁴ As noted at paragraph 1 above, the CEC count the King's Park, Stirling, as a rural estate. The CEC are currently negotiating to sell the King's Park (see Annex 7)

14 . SALMON FISHING*(Table 1: No.7)*

1. The right to take wild salmon in Scotland has been reserved to the Crown in Scotland since medieval times as part of the Crown's ancient property rights, the *regalia minora*.
2. The presumption in Scots law continues to be that the right remains in the ownership of the Crown except where the right has been granted out by the Crown or acquired by prescription. The right also does not apply in the Northern Isles because it was a feudal right that never applied in these areas under udal tenure.
3. The administration of the Crown's right, which applies to wild salmon in both freshwater and the sea, was transferred from Edinburgh to the CEC's predecessors in London in 1832 and where the right is still held by the Crown, the salmon fishing is managed as part of the Crown Estate in Scotland by the CEC.
4. Salmon fishings were one of the most valuable components of the Crown lands of Scotland by the end of the 19th century and were still a significant source of income when the CEC took over in the 1950s, accounting for c.20% of all revenue in Scotland¹.
5. However, the development since 1950s of rural and urban properties and marine charges as components of the Crown Estate in Scotland, together with the decline in salmon numbers, mean that the salmon fishings of the Crown Estate in Scotland are now only a small part of the CEC Scottish income.
6. An account of the salmon fishings rights of the Crown in Scotland is given in Annex 13 and from which it might be noted that:-
 - the Crown Estate reviewed the freshwater and coastal salmon fishings of the Crown in Scotland in the second half of the 1980s due to the decline in salmon numbers;
 - while the Crown had an overall total of 350 freshwater and coastal salmon fishings lets in Scotland in 1979, sales of these Crown fishings by the CEC since then mean that the number is now 186 with 138 of these freshwater beats and 48 coastal stretches².
 - the total number of the freshwater salmon fishing beats is still potentially expanding because the CEC's legal agents have continued since the 19th century to investigate rivers in Scotland where the Crown may hold salmon rights and where they judge it appropriate, to challenge those using the fishings to produce their title or accept a lease from the CEC.
 - 53 (or 38%) of the current 138 freshwater salmon fishing beats are let to angling associations and often cover greater lengths than other lets; a further 20 (or 14%) of the other beats are unlet.
 - 45 of the 48 coastal salmon fishings are unlet and none of the three which are let are used as a fishery.
7. The 186 salmon fishings owned by the Crown in Scotland represent a significant resource in Scotland in economic, environmental and social terms and as with the other components of the Crown Estate in Scotland, questions arise over how their ownership and management matches the new public policy context in Scotland.

¹ CEC Annual Report 1958 et seq.; "Report of the Committee on Crown Lands" (HMSO 1955)

² excludes salmon fishings forming part of the Crown Estate in Scotland as a result of the purchases of Glenlivet, Fochabers and Applegirth Estates.

8. The power to legislate over the nature of this right is already devolved to the Scottish Parliament with the power to regulate the management of salmon in Scotland. The Parliament has also already passed legislation to consolidate the many Acts relating to the management of salmon in Scotland¹.
9. The apparent anomaly that salmon rights of the Crown in Scotland are still managed by the CEC operating as a London based property investment company, is re-inforced by the fact that Crown salmon rights are a component of the Crown Estate only in Scotland. There are no equivalent Crown rights as part of the Crown Estate in the rest of the UK.

(i) Coastal Fishings

10. The Crown's coastal salmon fishings in Scotland are a distinctive Scottish public interest asset which is now more important for salmon conservation than economic reasons. At present, the CEC can dispose of these Crown salmon fishings if and when it chooses.
11. The Scottish Executive might reasonably expect to be consulted for Scottish interests over disposals by the CEC in future. However, there is scope for the CEC to pass the administration of the 48 coastal salmon fishings which it still manages to the Scottish Executive. This would enable the management of these fishings, all vacant apart from three non-commercial lets, to be integrated into the Scottish Executive's overall responsibilities for all aspects of the conservation and management of wild salmon in Scotland.²
12. The ownership of the 48 individual salmon fishings could be conveyed by the CEC on behalf of the Crown to Scottish Ministers, as was done with Edinburgh and Stirling Castles and two dozen other historic Scottish properties in 1999³. This would safeguard the future of the public interest in these resources⁴. However, it would still leave the wider Crown right to salmon in Scotland's sea. Devolution of the administration of the right of the Crown in Scotland's territorial sea from the CEC to Scottish Ministers through the proposed UK Marine Bill, would address this⁵.
13. While there should be greater public benefits in Scotland from Scottish Ministers having control of the 48 remaining Crown coastal salmon fishings⁶, the Scottish Parliament might consider that the Crown's medieval right to salmon in Scottish seas should now also be abolished.
14. The abolition of this feudal right would be in line both with the Parliament's existing abolition of the Crown's rights as Paramount Superior in Scotland, and with other proposals from the Scottish Law Commission to replace Crown property rights with other public law legislation⁷.

¹ The Salmon and Freshwater Fisheries (Consolidation)(Scotland Act 2003. As a consolidating Act, it did not make reforms as such. This piece of law reform implemented 29 recommendations from the Scottish Law Commission.

² The Scottish Executive already owns a coastal salmon netting station and there are issues over the continued use of this station. See note 6 below.

³ see Annex 6

⁴ at present, the CEC can sell these rights at its own discretion to a purchaser of its choice.

⁵ For information about the Bill, see Annex 15

⁶ For example, by these fishing being held in long term public ownership for conservation purposes. The netting station at Strathy Point on the north coast in Sutherland, which is already owned by the Scottish Executive, is still used for commercial fishing. It is a mixed stock fishery (one that takes fish from more than one river of origin). The Scottish Executive made a commitment in 2003 to end the netting operation and has confirmed that this will happen when the tenant's lease expires in 2007 (SCENES Issues 227 & 229).

⁷ "Report on the Law of Foreshore and Seabed" SLC (2003).

(ii) Freshwater Fishings

15. In considering the scope for the freshwater salmon fishing rights of the Crown to contribute greater public benefits in Scotland, there are again the two aspects of the fishings themselves and the Crown right as a component of Scottish property law.
16. Nearly 40% of the 138 freshwater salmon beats owned by the Crown in Scotland and managed by the CEC, are let to local angling associations or clubs which have normally held them for many years. There may or may not be a difference between the levels of rent charged to the angling associations and other private tenants.
17. The experience of Selkirk suggests there are no concessions to communities in most respects¹ and that there could be scope for reviewing the relationships between the CEC and these associations in the light of the community guidelines which the CEC adopted at the Scottish Executive's request at the time of devolution².
18. Freshwater salmon fishing rights are covered by Scotland's community right to buy legislation, including the fishings forming part of the Crown Estate in Scotland³. However, it is unlikely that a local angling association could register an interest.
19. In this situation and given that these beats belong to the Crown in Scotland, the Scottish Executive could encourage the CEC to offer the chance to appropriately constituted local angling associations⁴ to take over the ownership of their beats on a similar basis to the community right to buy provisions.⁵ As a non-statutory scheme, this would be a CEC equivalent to Forestry Commission Scotland's National Forest Land Scheme (NFLS). While there could be opportunities under such a scheme for associations to acquire their beats at little or no cost, any valuations by the District Valuer should take full account of existing leases.
20. Such a scheme would, as with the NFLS and the Scottish Executive's other right to buy measures, bring local community benefits. The absence of rent would make more money available for local investment in improving the fishings and there would also be greater incentive to invest without the prospect that improvements resulting in higher CEC rents.
21. Given a relative lack of publicly accessible salmon fishing opportunities in Scotland and the ownership by the Crown in Scotland of another 85 salmon fishing beats, there would appear to be an opportunity to explore the scope to create more local controlled public fishing beats. This could start with the twenty vacant lets and others if suitable, as and when they came up for re-let.
22. As with the coastal salmon fishing interests held by the Crown in Scotland, there could be significantly greater public benefits in Scotland if this distinctive Scottish public interest asset was administered by the Scottish Executive. These benefits should include arrangements for more stretches to be transferred to local community control and for greater public access to fishing.

¹ see Annex 13 for details. Papers supplied by Dr Lindsay Neil: drlneil@tesco.net

² see section 13 paragraph 5

³ Land Reform Act 2003

⁴ This could be specified as with the National Forest Land Scheme and others, so that local community control and wider public interests are both appropriately safeguarded.

⁵ There are already some salmon fishing beats owned by local angling associations. The Spey at Grantown is apparently an example of this.

23. While the CEC could convey each of the salmon fishing beats owned by the Crown in Scotland to Scottish Ministers, there would remain the issue of the presumption in Scots law that the Crown owns the salmon fishing rights where these have not been granted out.

(iii) Crown Right in Freshwater

24. The continuing investigation of rivers in Scotland by the Crown's legal agents looking for opportunities to assert rights of the Crown in Scotland would seem to have no public benefit in Scotland. Where they are successful, the outcome is only that more revenue leaves Scotland for the Treasury.
25. Over and above the assertive approach adopted by the legal agents in the pursuit of beats where the Crown might still hold rights, a claim by the Crown through them seems an unnecessary penalty for the return of salmon to some Scottish rivers and an investment to achieve that.
26. After 150 years of searching for Crown salmon fishing rights in Scotland, the Parliament might consider that the time has come to end the presumption of this feudal right. While ending this presumption would not affect existing ownerships, it could be linked to removing the scope from all land owners to create any more salmon fishings as 'separate tenements'¹. Further instances of the separation of this right from the ownership of land, rather than 'running with the land', would seem to have little to commend it from the point of view of local benefits and sustainable use.

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27. While there is scope with these Crown rights for greater public benefits and accountability in Scotland within existing arrangements, the CERWG considers that a public interest review in Scotland of the property rights which make up the Crown Estate in Scotland, might conclude that:
- *the administration and revenues of the distinctive right of the Crown in Scotland to take wild salmon and the salmon fishings held under that right, should be devolved to the Scottish Executive and integrated with the Executive's wider responsibilities for the conservation and management of wild salmon in Scotland.*
 - *the ownership of the salmon fishings held as ancient possessions of the Crown in Scotland should be transferred to Scottish Ministers and a scheme introduced for appropriately constituted local angling associations to acquire the beats they currently tenant.*
 - *the right of the Crown in Scotland (except in the Northern Isles under udal tenure) to continue to claim the right to take wild salmon wherever the right has not been granted out or acquired by prescription, should be abolished by the Scottish Parliament.*

¹ As a result of the alienable Crown right to salmon fishing, the right is treated as a distinct property right or 'separate tenement' in Scots law which can be owned separately from the ownership of the land.

15. FORESHORE*(Table 1: No.3)***(i) Ownership**

1. The legal definition of the foreshore in Scotland is the area of shore between the high and low water marks of ordinary spring tides¹. This definition in Scots law is different from the definition of the foreshore in the rest of the UK under English law².
2. The majority of the UK foreshore is in Scotland and more than half the length of Britain's entire coastline is in the Highlands and Islands (Table 11 at end of section).
3. All the foreshore in Scotland is covered by public rights held inalienably by the Crown in Scotland in trust for the public. These rights in Scotland over the foreshore include a wide range of recreational and use activities and are more extensive than equivalent rights elsewhere in the UK. Responsibility for these public rights is vested in Scots law in Scotland's Lord Advocate and the Scotland Act 1998 devolved both the power to legislate over them and their administration to Scotland. The Scottish Law Commission has since produced proposals to abolish the Crown's involvement with these rights³.
4. There is also a presumption in Scots law that, in addition to the above Crown rights, the Crown in Scotland owns the foreshore except in areas under udal tenure in the Northern Isles⁴ or where the ownership has been granted out by the Crown at some time or the ownership has been acquired by prescription.
5. The foreshore still held by the Crown in Scotland, which is approximately 50% of the total length of Scotland's foreshore, is managed as part of the Crown Estate in Scotland by the CEC⁵. As around 10% of Scotland's foreshore is in the Northern Isles, approximately 60% of the rest of Scotland's foreshore forms part of the Crown Estate..
6. The Crown's property right in the 'ownership' of the foreshore in Scotland was traditionally taken in Scots law to be, like the other Crown rights over the foreshore, an inalienable right held in trust for the public⁶. However, when the Commissioners in London took over responsibility for Scotland's Crown lands in 1832, they were active in both asserting the Crown's ownership of particular areas of foreshore and in establishing through the courts, that the Crown's right was a 'patrimonial right' as in England (i.e. a right for the Crown's own direct benefit rather than one held in trust for the public)⁷.
7. The Commissioners approach caused considerable controversy in Scotland amongst legal authorities and landowning interests:-

¹ "Report on the Law of Foreshore and Seabed" Scottish Law Commission (2003)

² In England and Wales, the foreshore is between the mean low water and high water marks.

³ SLC (2003) above. Under the SLC proposals the rights would be clarified and strengthened as statutory rights by the Scottish Parliament and administered by local authorities with their other statutory responsibilities for public access under the Land Reform (Scotland) Act 2003

⁴ The Crown's right is of feudal origin and under udal tenure, the ownership of land adjoining the foreshore includes the foreshore.

⁵ CEC Statement of Crown Estate Interests in Scotland (19th October 2005). The CEC report that c.55% of the UK foreshore forms part of the Crown Estate

⁶ SLC Discussion Paper on Law of the Foreshore and Seabed (2001)

⁷ The different constitutional and legal traditions associated with the Crown in Scots law and English law are reflected in Scotland's monarchs having been the King / Queen of Scots (i.e. of the people) compared to England's monarchs who were the King / Queen of England (i.e. of the place). For more on this distinction, see R.Callander "How Scotland is Owned" (Canongate, 1998)

“Recently, however, the Commissioners of Woods and Forests have asserted a claim to the Scottish shore as the patrimonial estate of the Crown and have attempted to introduce into Scotland the rule of the Law of England, and to disregard or deny the plain distinction between the laws of the respective Countries”¹

8. There were many court cases over the foreshore in Scotland during the 19th century and when a number of decisions in the House of Lords supported the claim of a patrimonial Crown right in Scotland’s foreshore, there was concern that no individual would risk litigation and that this position would *“become the law of Scotland unless the legislature interferes to rectify this anomalous state of affairs”²*.
9. By the 20th century, it was taken as established that the Crown had a patrimonial right in the foreshore and this position, described by the Scottish Law Commission as *“the predominant modern theory”*, remains the case³. The main change in circumstances has been that, with devolution, the power to legislate over the Crown’s property rights in the foreshore in Scotland has passed to the Scottish Parliament.

(ii) Administration

10. The Crown’s ownership of the foreshore was administered by the Board of Trade and its successors from 1866 until 1949, when the responsibility returned to the Commissioners of Crown Lands shortly before they were re-constituted as the CEC in 1956⁴.
11. In 1959, the CEC moved the management of its interests in Scotland from London to its Edinburgh office, except for the management of the foreshore. That responsibility followed in 1969 in anticipation of the growth of the oil industry and fish farming in Scotland⁵.
12. The CEC maintained a policy from the start *“not to sell the foreshore except where special circumstances make a lease inappropriate, for example where permanent reclamation occurs”⁶*. This is still the case:-
“current policy is generally to lease rather than sell areas of foreshore and or seabed for development. Exceptions to this policy would include some projects involving permanent reclamation, and inter tidal land or seabed required for bridge supports or road improvements”⁷
13. The foreshore has always been affected by many different developments each year including port facilities, marinas, jetties, slipways, bridges, outfalls, pipes, cables and other activities. The CEC agreed with the government in 1961 that the price or rent charged for the more substantial of these would be independently determined by the District Valuer⁸.
14. The CEC also recognised when it first took over responsibility for the foreshore, that a wide range of activities were involved in managing the foreshore other than agreements over developments. The CEC was therefore:-

¹ National Archives of Scotland: Commissioners records: CR4/28 Statement Relative to the Proprietorship of the Foreshore of Scotland; see also, for example, hostile comments against Commissioners in Rankine’s “The Law of Land-Ownership in Scotland” (4th Edition, Green 1909)

² as note 1

³ SLC Discussion Paper (2001) op cit

⁴ R.B. Pugh ‘The Crown Estate: An historical essay’ (HMSO, 1960)

⁵ CEC Annual Report 1980

⁶ CEC Annual Report 1961

⁷ CEC Letter 13th March 2006

⁸ CEC Annual Report 1961

“anxious that local authorities should exercise local supervision and control of Crown foreshore where appropriate. It is therefore Commissioners policy to encourage local authorities to take regulating leases of the foreshore adjacent to their areas. Such leases enable the local authority to regulate the use of the foreshore, to control the removal of materials and generally regulate the activities of the public on the foreshore and to preserve the amenities. The leases are granted at suitable rents and normally provide for any revenues derived from the foreshore to be shared between the Crown and local authority. Considerable areas of Crown foreshore are held on such leases at the present time...”¹

15. Regulating leases were granted over many lengths of foreshore in England and Wales where there was limited development and, for example, much of the Welsh coastline is still covered by such leases. Limited use was made of regulating leases in Scotland, particularly in the Highlands and Islands as these leases were being used less by the time the CEC's activities spread into the region from the late 1960s. However, there continue to be some regulating leases in Scotland and new regulating leases are also issued in some circumstances over limited areas².
16. During the 1970s, foreshore activity in Scotland increased significantly with developments related to the growth of the oil industry and fish farming. By the 1980s, the CEC were also taking a more assertive approach to challenging existing developments involving the foreshore in the Highlands and Islands. This resulted from the CEC's concern that the short period of prescription was eroding Crown Estate interests³ and from the CEC's increased activity in the region to impose charges on moorings following its success with the Fairlie Yatch Club court decision in 1979⁴.
17. In 1986, the CEC gave an initial one year contract to a property management company (Smiths Gore) to act as the CEC's agent for its foreshore and seabed interests along a length of Scotland's coast (Fort George to Fifeness)⁵. This approach has since been developed and consolidated, so that two companies now cover Scotland as the CEC's managing agents for these marine interests:-
 - Bidwells along the west coast, including the Western and Northern Isles;
 - Bell Ingram along the east and north coasts;
18. These five year contracts were awarded through a competitive bidding process in 2002/03. This was when the CEC discontinued managing Scotland as a distinct unit of the Crown Estate and the west coast contract awarded to Bidwells includes Cumbria, despite the many different legal and other factors involved compared to Scotland.
19. The appointment of these two companies, each operating from three offices in Scotland, meant that when the CEC centralised the management of Scotland's foreshore to London with that in the rest of the UK, the CEC could point to an increased presence on the ground around Scotland's coast. These agents also act more generally as the 'face' of the CEC, following the reduction in the traditional approach of Commissioners regularly visiting many of the CEC's tenants and other clients.⁶

¹ CEC Annual Report 1961.

² There are 10 held by local authorities, 4 by Scottish Natural Heritage and five by the RSPB. The local authorities are Aberdeen City, Angus, Argyll & Bute, East Lothian, Edinburgh City, Dundee City and Dumfries and Galloway Councils. (Information supplied by CEC 6th October 2006) The total extent of these leases is 13,000 hectares (“You'll be surprised what The Crown Estate does for Scotland” CEC, December 2006)

³ CEC Annual Report 1979

⁴ see SLC Discussion Paper 2001

⁵ CEC Annual Report 1986

⁶ This change affecting the CEC's rural estates is described in the “Rural Bulletin” (CEC, Spring 2006)

20. The contracts for the CEC's marine agents have two main elements, a fixed base management fee from the agent's bid for the contract and a revenue incentive scheme where the agents receive a proportion of increases in rents or other charges achieved by them. The agents have a high degree of delegated authority over leases and other arrangements¹. They also provide the valuations for most sales and leases². Any letting arrangement both contributes revenue and increases the capital value of the Crown Estate, as a capital value is attributed to any letting on the basis of formulas which are used to capitalise the rents³.
21. The principal role of the agents is to look for development opportunities, including existing uses of the foreshore which it appears should have a Crown lease. In these cases, where the agents judge it appropriate, they will require the party responsible for the use to produce title to the foreshore or accept a Crown lease. In these and similar matters, letters from the CEC's solicitors⁴ play a significant role in the management of the Crown Estate in Scotland.
22. The agents also have other responsibilities including the identification of potential stewardship projects which the CEC might fund⁵ and liaison with community interests. However, it appears these matters are not specifically funded through the agents' contracts. The contracts also encourage the agents to spend minimum time on the base management fee activities and concentrate on increasing income under the revenue incentive component.
23. This revenue focus also means that the agents have very limited involvement with the wider lengths of foreshore for which they are responsible, other than general liaison with other bodies as part of representing the CEC's interests. As a result, the costs of any management involved with these wider areas of foreshore tend to fall mainly on local authorities.
24. No separate figures are published by the CEC for its annual income from the foreshore which it manages in Scotland⁶. However, the foreshore continues to be a valuable part of the CEC's operations in Scotland and developments related to renewable energy are expected to become a major new strand of foreshore income for the CEC in Scotland.

(iii) Changed Circumstances

25. The CEC is reserved under the Scotland Act 1998. However, the power to legislate over the Crown's foreshore property rights in Scotland and to regulate the use of the foreshore, are devolved to the Scottish Parliament. There is also scope for the Scottish Executive to influence the CEC's foreshore management through the new public policy context in Scotland.⁷
26. An issue to be addressed is the claim by the CEC to own the foreshore which it manages in Scotland.⁸ This claim is not correct. The CEC is simply acting as a management agent on

¹ CEC / CERWG meeting November 2005.

² The independent valuations of District Valuers (part of the public sector Valuation Office Agency) are seldom used by the CEC and more often used by those contesting CEC charges.

³ CEC accounting policies (Annual Reports 1990 and others)

⁴ See also the CEC's approach to establishing Crown rights against what the CEC considers "adverse claims" to salmon fishing beats and areas of seabed. Anderson Strathearn WS in Edinburgh are retained by the CEC's as their legal agents in Scotland.

⁵ see section 16 for more information on the CEC's Marine Stewardship Fund; see also the CEC's website.

⁶ The CEC's marine/foreshore income in Scotland was £3.4 million in 2006, but no information is publicly available on the amount of that income from the foreshore.

⁷ see section 5

⁸ for example, in the CEC's newsletter "Highlands and Islands Update" Spring 2006

behalf of the Crown in Scotland. The fact that the CEC does not appear to recognise the significance of the difference between ownership and management¹, indicates a lack of understanding by the CEC of the implications of devolution for the CEC's operations in Scotland.

27. The CEC's position over the sale of Crown foreshore in Scotland could also be clarified. The CEC's current policy is "*generally to lease rather than sell*"², but the CEC could change that policy at will. The CEC could decide, for example, that it is more profitable to sell rather than lease foreshore in an increasing number of situations to capitalise the rents as a better financial return. While such sales could be to existing tenants, there are also commercial interests which would like to see the development of a wider property market in the foreshore and seabed managed by the CEC.³
28. The Scottish Executive could seek assurances from the CEC that it would be consulted by the CEC before any change in policy over the sale of Crown foreshore in Scotland. The Scottish Executive could also identify types of foreshore in Scotland where disposals would support the deliver of public policy in Scotland. An example could be Crown foreshore within the public interest harbours in Scotland owned by Scottish Ministers, local authorities and local trust ports.⁴
29. The Crown foreshore managed by the CEC is already covered by the Scottish Parliament's community right to buy legislation.⁵ However, while Crown foreshore has been subject to registration, the lack of CEC sales means that the option has limited applicability. Instead, the Scottish Executive could encourage an equivalent version of their National Forest Land scheme to enable public interest harbours to become owners of Crown foreshore within their statutorily defined harbour areas.
30. The great majority of these harbours are in the Highlands and Islands where they play a vital role in the region's infra-structure. Most are supported by local authority and Scottish Executive funds, yet they are subject at the same time to CEC foreshore and seabed charges. This illustrates a wider issue between the Scottish Executive's policies to support the region and the CEC's focus on capturing the development value of the Crown foreshore and transferring most of the revenue generated out of the area.⁶
31. The Scottish Executive highlights the importance to Scotland of its extensive coastline for many different economic, social and environmental reasons.⁷ This is most especially the case in the Highlands and Islands with over 80% of Scotland's foreshore and the region's many remoter coastal and island communities. While the CEC used to acknowledge that their management "*of property in Scotland brings with it special responsibilities, particularly remoter rural areas*"⁸, the CEC's current approach to the foreshore through its marine agents results in little else than economic leakage from the Highlands and Islands.
32. The anomaly of this situation is emphasised by the absence of Crown foreshore rights over the 10% of the Scottish coastline under udal tenure in the Northern Isles. The lack of CEC

¹ for example, the CEC describes the difference as 'immaterial' and 'insignificant' in its context (CEC / CERWG meetings May 2005 and June 2006).

² CEC Letter 13th March 2006

³ for examples of the push in this direction, see the Institute of Economic Affairs website (<http://www.iea.org.uk>) and the writings of John Blundell (e.g. Scotsman 20th July 2004 and 26th January 2006)

⁴ see Annex 16

⁵ Land reform (Scotland) Act 2003

⁶ see section 16 for details of the CEC's limited re-investment related to the foreshore, including their support for some community projects.

⁷ for example, see Scottish Executive 'Seas the Opportunity' (2005) paragraph 2.1

⁸ CEC Annual Report 1998

charges there means that income from the local foreshore is more likely to stay locally and contribute wider benefits in the economy of the Northern Isles.

33. Elsewhere in Scotland, the existence of publicly owned foreshore should not be a disadvantage. The foreshore can be an important local resource, particularly in remoter areas, and the Scottish Executive could seek to ensure that the Crown foreshore in Scotland is managed like Scotland's national forest estate to help deliver Scottish Executive policies, including social and economic community development.
34. The Scottish Executive could pursue this approach with the CEC as a result of devolution. However, devolution itself highlights the wider question of why the Crown foreshore as a Scottish property resource of particular significance throughout the Highlands and Islands, should still be managed by a London based body characterising itself as a leading property investment company and operating around the Scottish coast through private sector management companies.
35. The Scottish Executive could be seeking the devolution of the administration of Scotland's Crown foreshore under the proposed UK Marine Bill due to be published in 2007¹.
36. If Scotland's remaining Crown foreshore was administered in Scotland, there are several reasons why it might become a local authority responsibility, for example:-
 - local authorities already have responsibility for the statutory planning system over the foreshore and the power to make bye-laws over it;
 - local authorities have other wide ranging statutory responsibilities for the foreshore² and extensive non-statutory on-the-ground involvements with it³;
 - the SLC has already recommended that the Crown's other property rights over the foreshore should become public rights managed by local authorities⁴.
37. The CEC has itself acknowledged in the past the logic of local authority responsibility for the foreshore (paragraph 14 above) and could have decided to use local authorities rather than commercial property companies to manage the Crown foreshore in Scotland, whether on contract or through a revised form of regulating lease.⁵
38. Local authorities have the skills to manage the foreshore and giving them the responsibility would secure the delivery of local benefits and democratic accountability. This change would also address the current separation between the revenues from the foreshore and the costs of managing the wider Crown foreshore, which mainly fall on local authorities.
39. If the administration of the Crown foreshore in Scotland was devolved, the ownership of this public resource in each local authority area could be transferred to that local authority and managed as a common good resource for the benefit of that area.⁶ While this raises the issue of potential conflicts of interest between the local authorities roles as owner and as the planning authority, such issues are already addressed by local authorities in relation to other property resources.

¹ see Annex 15

² e.g. coastal protection measures, access legislation

³ e.g. recreation management (rangers) to infrastructure requirements (roads...)

⁴ see paragraph 4 above;

⁵ the Scottish Parliament could define the nature of foreshore leases in Scotland in the same way that the Parliament regulates other types of leases in Scots law.

⁶ 22 out of Scotland's 32 local authority areas include coastline.

40. Other options could be considered.¹ In any event and independent of the devolution of the CEC's responsibilities for the foreshore, the Scottish Parliament could decide to legislate over the Crown property right itself. The right might be considered out of date as a feudal right and patrimonial interest, and could be reformed by the Scottish Parliament in the way that it has already abolished the Crown's feudal property rights as paramount superior².

Table 11 Coastline Lengths: Highlands & Islands, Scotland, Britain

	kilometres	% of GB		kilometres	% of Scotland	% of GB
Scotland	19,509	61%	Highland	4944	25.3	15.3
England	10,092	31%	Shetland	2308	11.8	7.2
Wales	2,625	8%	Orkney	1205	6.2	3.7
Total	32,226		Western Isles	3967	20.3	12.3
			Argyll & Bute	3809	9.5	11.8
			Moray	141	0.7	0.4
			Total	16374	83.9	50.8

Notes to Table

1. Figures from Ordnance Survey GIS boundary data. based on High Water Mark
2. The length of the foreshore varies with the scale at which it is measured. These figures are based on 1:1250. However, the proportions remain the same, whatever the measurement scale. These figures have been confirmed by the Ordnance Survey (Highland Council, June 2006).
3. The CEC started digitising the lengths of foreshore under its management on a GIS system in 1992 to become operational in 1994. The CEC has recently supplied their GIS data to local authorities in Scotland in anticipation of the introduction of planning controls over fish farms. However, no figures or maps are readily available on the extent of Crown foreshore in different local authority areas.

¹ for example, ownership and management by a new Scottish marine agency – see section 16.

² Abolition of Feudal tenure etc (Scotland) Act 2000

16. SEABED AND CONTINENTAL SHELF *(Table 1: Nos. 1 & 2)*

(i) Ownership

1. Scotland has held sovereign rights over the seas around its coasts since medieval times and the property rights in Scotland's territorial seas have been vested in the Crown in Scotland since Scotland was an independent kingdom.
2. The traditional position in Scots law was that these ancient property rights of the Crown in Scotland, part of the *regalia*, were held inalienably in trust by the Crown for the common good¹. Some of these Crown rights, such as the public rights of navigation and fishing, are still defined in Scots law as being held by the Crown on this basis.
3. However, the position is different with the Crown's right of ownership over Scotland's seabed. During the 19th century, following the transfer of the administration of this right to London, there was a shift in judicial opinion as a result of cases brought by the CEC's predecessors. By the beginning of the 20th century, it had been established through the courts that the Crown's ownership of the seabed in Scots law was a patrimonial interest and thus for the benefit of the Crown itself².
4. Fifty years ago, when the Crown Estate Commission (CEC) was first constituted in 1956 to replace the Commissioners of Crown Lands, Scotland's seabed only extended out to the 3 mile territorial limit established in the 19th century. However, since then, Scotland's territorial seabed has expanded to the 12 nautical mile limit and the Crown in Scotland also owns property rights over Scotland's continental shelf area out to the 200 nautical mile limit³.
5. As a result, the property rights which make up the Crown Estate in Scotland as managed by the CEC include:
 - the ownership by the Crown in Scotland of the seabed (excluding the right to hydrocarbons) within Scotland's territorial seas out to Scotland's 12 nautical mile territorial limit, where this right has not been granted out;
 - the property rights held by the Crown in Scotland over the continental shelf from Scotland's territorial seas to the 200 nautical mile limit, to the minerals (excluding hydrocarbons) and other non-living natural resources of the seabed together with sedentary species.
6. These two boundaries, determined by international conventions enacted into UK law, are shown on Map 1⁴. The seabed out to the 12 nautical mile limit is part of the sovereign territory of Scotland⁵ and covers over 90,000 square kilometres or c.53% of Scotland's total territorial seabed⁶.

¹ As first set out in modern terms in the 17th century by legal authorities such as the First Earl of Stair (James Dalrymple 1648-1707)

² see Scottish Law Commission's discussion paper and report on the "Law of the Foreshore and Seabed" (2001, 2003)

³ Territorial Seas Act 1987 and Continental Shelf Act respectively.

⁴ it appears that Scottish Waters as defined for fishery purposes can differ slightly from Scotland's continental shelf area (e.g. 'Extraction of Minerals by Marine Dredging' Scottish Executive July 2006).

⁵ The Crown's ownership includes the seabed around the Northern Isles with their udal tenure, because the ownership derives from the Crown's prerogative rights and is not a feudal right.

⁶ Figures from Scottish Executive. See "How Scotland is Owned" (Callander, 1987) for further figures

7. The area of continental shelf between the 12 and 200 mile limits is not a part of the sovereign territory of Scotland, but an area over which Scotland holds sovereign rights as an extension of its territory under UK legislation as a result of international agreements. The whole marine area from Scotland's coast out to the 200 mile limit is covered by Scots law and the legislative competence of the Scottish Parliament¹.
8. Scotland's territorial seabed and associated continental shelf rights as owned by the Crown in Scotland in Scots law, represent a substantial national marine estate. However, there seems a lack of recognition within Scotland that these property rights belong to Scotland and that the CEC is only responsible for administering these Scottish Crown property rights.
9. This is illustrated in current documents from the Scottish Executive, Scottish NGOs and others, which describe Scotland's seabed as belonging to The Crown Estate². The CEC has even described itself in recent documents as owning Crown property rights which it manages³, although the CEC has since acknowledged that it is not correct for the CEC to claim this⁴.
10. While the CEC manages the Crown's ownership of Scotland's seabed and continental shelf rights as part of the UK wide Crown Estate, these property rights remain a legally distinct part of the UK wide Crown Estate because they are vested in the Crown in Scotland as determined by Scots law.
11. This different position of these Crown rights in Scotland has also increased as a result of devolution as, while the functions of the CEC are reserved by the Scotland Act 1998, the property rights of the Crown in Scotland are not. To quote the Scottish Law Commission (SLC):-
*"The Crown's prerogative functions are not reserved, nor is property belonging to the Crown. The Crown's interest as proprietor of the foreshore and seabed and the public rights held by the Crown in trust for the public are therefore not reserved."*⁵
12. The Scottish Parliament can therefore legislate over the ownership of Scotland's seabed. The SLC has noted, for example, that there is no statutory authority for the Crown's ownership of Scotland's seabed and the Scottish Parliament could legislate to clarify or reform this Crown property right⁶.

¹ while also subject to UK and European law.

² for example, "Extraction of Minerals by Marine Dredging" (Scottish Executive consultation paper, July 2006); "The Tangle of the Forth" (WWF Scotland report, September 2006)

³ for example, see para. 15, section 15;

⁴ the CEC Chairman at CEC / CERWG meeting, 12th June 2006.

⁵ SLC Report (2003) para. 1.14

⁶ SLC (2003) op.cit.; This could replace what the SLC describes as the 'predominant modern theory' of the basis of the Crown's ownership of Scotland's seabed, the patrimonial interest established through the courts in the 19th century, with the traditional position in Scots law that the Crown holds the ownership of the Scotland's seabed for the benefit of the common good.

(ii) Administration

13. When the CEC took over responsibility for Scotland's seabed in 1956, the main revenue was from dredging in the Tay estuary. At that time, dredging was the largest source of seabed revenue for the CEC on a UK basis and the Tay was one of the three main UK sites¹.
14. The CEC's involvement with Scotland's seabed then increased rapidly from the 1970s onwards with the growth of oil related developments and fish farming. With this activity occurring along east and west coasts and around the Northern Isles, the CEC also extended the scope of its charges for seabed use to new areas.
15. By the 1980s, the CEC reported that "*Attention is rightly becoming focused on the potential of our offshore interests*"². This included in Scotland, following successes in the courts³, the CEC actively pursuing the issuing of licences for existing moorings and granting of leases to existing seabed users in exchange for rent payments, as well as similar charges for new moorings and uses. While court cases continued⁴, others decided they could not afford the risk of challenging the CEC with its considerable legal and financial resources⁵.
16. Any development which directly involves the seabed (for example, by attaching to it, building on it, excavating out of it, drilling into it or placing or dumping on it) requires the CEC's permission by virtue of the Crown's ownership of the seabed and the CEC charges for this.
17. The CEC are therefore involved with the full range of activities that in some way use the seabed, including harbour developments, slipways, piers, jetties, moorings, marinas, fish and shellfish farming operations, oyster and mussel harvesting, coastal salmon fishings, cables (electricity and telecommunications), oil related developments including pipelines, renewable energy related installations and aggregate dredging.
18. The CEC's income from the Crown's marine interests in Scotland has continued to grow. The CEC's total marine revenue from Scotland in 2005/06 was:

Marine/foreshore	£3.4 million	
Fish Farming	£2.1 m	
Minerals*	£0.6 m	
Total	£6.1 m	* taken to be all dredging

19. The CEC does not provide a more detailed breakdown of these figures at a Scottish level⁶. More information is available for the UK wide marine estate managed by the CEC. Total revenue of £36.9 million in 2005/6 was made up of:-

outfalls and intakes	£ 1.1m	development (private)	£ 0.2m
cables and pipelines	£ 8.9m	development (commercial)	£ 4.8m
regulating lease (commercial)	£ 0.3m	bridges and tunnels	£ 0.2m
regulating leases (statutory)	£ 0.4m	fish farms	£ 2.2m
marinas	£ 1.6m	dredging	£15.5m
moorings (leisure)	£ 1.0m	wind farms	£ 0.4m
moorings (commercial)	£ 0.3m		

20. The CEC's marine and foreshore revenue in Scotland of £6.1m in 2005-06 was 43% of the total revenue from the Crown Estate in Scotland. The remaining £8.1m was from the urban

¹ CEC Annual Report 1960

² CEC Annual Report 1984

³ e.g. case involving the Fairlie Yatch Club, Ayrshire (1979)

⁴ e.g. the Shetland Salmon Farmers Association dropped its case over seabed ownership in 1991.

⁵ for examples, see section 16 (paragraph 38) and Annex 16

⁶ CEC statement November 2005

and rural interests. In the years 1996 – 2006 for which figures are available¹, the marine interests have varied between 40% and 49% of total revenue in Scotland. Over 80% of the revenue raised by the CEC in Scotland each year, is net surplus revenue or ‘profit’ which goes to the UK Treasury.

21. The CEC’s revenue from the marine interests of the Crown in Scotland in 2006 was 17% of the CEC’s UK wide marine revenue and 2% of the CEC’s total annual revenue.
22. Since the CEC’s re-structuring in 2002, which ended the management of the Crown Estate in Scotland as a distinct unit, the management of the Crown’s ownership of Scotland’s seabed and continental shelf rights has been integrated with its management of the equivalent Crown rights in the rest of UK waters.
23. The CEC anticipates that several factors will help further improve its operating environment and revenue potential in Scottish Waters as part of its UK wide operations, for example:-
 - the legislation of the Scottish Parliament to bring marine aquaculture under local authority planning control, which will remove that current regulatory role of the CEC so that its position is more straightforwardly issuing leases and collecting revenues;
 - the proposed UK Marine Bill which will co-ordinate and streamline the public sector regulation of marine activities in UK waters and provide a clearer and more straightforward operating environment within which the CEC can issue leases and licences and raise revenue;²
 - the growing development of the marine renewable energy sector involving wind, wave and tide as a major new revenue source for the CEC, with £10 billion expected to be invested by developers in offshore wind projects around the UK coast in the next decade.³
24. While there are no offshore wind farms in Scotland yet⁴, the first came on stream in the seas around England and Wales in 2003, at which time the CEC also licensed a second round of sites there⁵. The major potential for marine renewable energy is in Scottish waters and the CEC anticipates managing its role in this at a UK level within the reforms of the UK Marine Bill⁶. The CEC’s two marine agents in Scotland have very limited involvement with offshore renewable energy developments. While the agents may deal initially with inquiries, these developments are then dealt with centrally in London and the agents will subsequently receive a copy of any lease. This centralised management of marine renewables at a UK level, including negotiations with the industry and the setting of charges, is similar to the CEC’s arrangements with pipelines and cables.
25. Dredging for aggregates is another sector that may develop in Scottish waters. This large scale industrial dredging for the construction industry contributed over 40% of the CEC’s total marine revenue in 2005/6. This was almost entirely from waters around England and

¹ Six of the years; see Table 3, Section 3.

² The CEC believes “*it to be an important principle that marine legislation should be consistent across the whole of the British Isles and that action should be taken towards conformity rather than divergence*” CEC letter 24th January 2006 responding to consultation on Defining Marine Boundaries for Fish Farming

³ CEC “Highlands and Islands Update” (Summer 2006)

⁴ The Department of Trade and Industry has approved the Talisman wind farm 15 miles off the Moray coast beside Talisman’s existing Beatrice oilfield (SCENES 223 News in July 2006)

⁵ Details of the sites and their progress are given on the CEC’s website; see ‘estate maps: offshore windfarm table’

⁶ for example, “The Crown Estate and Seabed Rights for Marine Renewables” presentation by Dr Carolyn Heeps, Head of Environment and Research, CEC; Edinburgh December 2005

Wales. More developments might occur in Scotland due to continuing demand and increasing constraints on sites down south.¹

(iii) Changed Circumstances

27. The CEC's administration of the Crown property rights which make up the Crown Estate in Scotland, together with the revenues derived from them, are reserved to the UK Parliament under the Scotland Act 1998.
28. However, as noted above², devolution means that the Scottish Parliament can legislate over the property rights of the Crown in Scotland, including the Crown's ownership of the seabed and rights over the continental shelf. The Scottish Parliament can also legislate to regulate the use of these property rights.
29. The current pattern of public sector regulation of seabed developments is a complex mix of matters devolved to the Scottish Parliament and others reserved to the UK Parliament (see Annex 15). Overall, the majority of this regulation within Scotland's 12 mile territorial limit is already devolved, while the majority over Scotland's continental shelf area are reserved³.
30. The degree to which the uses of these two seabed areas are regulated by the Scottish administration also looks likely to increase through the planned UK Marine Bill (see Annex 16). The Scottish Executive is already discussing the devolution of some further powers to Scotland under the Bill⁴.
31. The fact that Scotland does not administer its ownership of its own seabed despite devolution and the powers of the Scottish Parliament, raises an inherent question of alignment between the Scottish and UK Parliaments.
32. This divide between devolved ownership and regulation and reserved administration and revenues is similar to the position that existed with Scotland's national forest estate at devolution. While that case resulted in the creation of Forestry Commission Scotland, the CEC has moved in the other direction by amalgamating its operations in Scotland with those in the rest of the UK.
33. This response by the CEC to devolution raises issues of accountability. At present, very limited information is made available by the CEC about its management of property rights of the Crown in Scotland over Scotland's seabed and continental shelf area⁵.
34. The fact that the CEC still produces any financial information about its operations in Scotland, is only the result of a request from the Scottish Executive in 2005⁶. However, it appears that the Scottish Executive has taken little interest in the management of Scotland's seabed interests by the CEC. In the Executive's Marine Strategy, for example, the Crown Estate is only mentioned once in the passing⁷.

¹ The two current sites in Scotland are in the Tay Estuary and Firth of Forth. "Extraction of Minerals by Marine Dredging" Scottish Executive consultation paper (July 2006)

² paragraph 12

³ "UK Marine Bill Update" Scottish Executive (September 2006)(ref. AGMACS(06)25)

⁴ for example, reference in footnote 2 and Sunday Herald 16th July "Holyrood gears up for the devolution of the Seas"

⁵ for example, the figures given in paragraph 18 above from the CEC's one page annual report on The Crown Estate in Scotland, plus items in CEC newsletters and press releases.

⁶ See Annex 19 for CEC Board Minutes January 2005

⁷ "Seas the Opportunity" (2005) box on page 16; That reference is also inaccurate, suggesting in September 2005 that the European Marine Energy Test Centre in Orkney operates under a seabed lease from the CEC. In fact, six months later in March 2006, a lease had still not been agreed with the CEC. This was apparently due to the difficulty for the public sector partners funding the project, of reaching a satisfactory agreement with the CEC.

35. The CEC has confirmed that it will report annually to the Scottish Parliament if requested¹ and there is considerable scope for the Scottish Executive to request much fuller information on the CEC's activities and finances in Scottish waters.²
36. The CEC has also confirmed that, while it is pursuing its operations on a UK basis, it will respond positively to guidance from the Scottish Executive where this is possible within the terms of the Crown Estate Act³. In this situation, the Scottish Executive could seek to improve accountability through, for example, the appointment of a Scottish Advisory Committee on the CEC's marine operations or operations generally in Scotland.
37. The new public policy context in Scotland as a result of devolution provides the Scottish Executive with the opportunity to review the different sectors of the CEC's policies and operations in Scotland, to ensure that they are each contributing as fully as possible to the delivery of relevant Scottish Executive policies. There would appear to be particular scope for clarification and improvements in the management of the seabed rights of the Crown in Scotland.

(iv) Disposals

38. The disposal of areas of Scotland's seabed out of Crown ownership is an example of a topic that might be clarified with the CEC.
39. Historically, the Crown of Scotland does not appear to have made any large scale grants of seabed equivalent to those of the English Crown, such as to the Duchy of Cornwall. Therefore, at present, the Crown's ownership of Scotland's seabed covers nearly all the seabed as only very limited areas have ever been granted into other ownership⁴.
40. However, as the Crown's proprietary right in the seabed is interpreted as amounting to full ownership of the property, the ownership of areas of Scotland's seabed can be sold or in other ways given to others. The decision of whether or not to sell or dispose of areas of Scotland's seabed on behalf of the Crown rests entirely with the CEC, subject only to the requirements of the Crown Estate Act 1961 over price and related matters⁵.
41. Since the CEC became responsible for the Crown's ownership of Scotland's seabed, it has maintained a policy of only making small scale disposals of areas of seabed in limited circumstances. This has recently been confirmed:

“current policy is generally to lease rather than sell areas of foreshore and or seabed for development. Exceptions to this policy would include some projects involving permanent reclamation, and inter tidal land or seabed required for bridge supports or road improvements.”⁶

¹ CEC Chairman at CEC / CERWG meeting 12th June 2006.

² for example, starting with an equivalent to the financial breakdown of activities as currently available at a UK level (para 19 above) with an account of each activity.

³ CEC Chairman at CEC / CERWG meeting 12th June 2006; see also section -

⁴ There are, however, a number of claims to seabed ownership where the claims have not been followed through as the claimants did not want to take the risk of challenging the CEC in the courts. These claims are typically for very limited areas, such as within a harbour (see Annex 16). An example of a slightly more extensive claim was by Argyll and Bute Council to the seabed around Bute, based on a 16th century Royal Charter and which the Council had inherited as part of its common good lands. However, the Council decided in 2005 that, despite having the basis of a claim, they could not afford to contest the CEC's claim to the seabed there (Argyll & Bute Council, June 2006).

⁵ a capital value is already attributed by the CEC to all developments with which it is involved over the seabed.

⁶ CEC Letter 13th March 2006

42. This position is, however, just internal CEC policy and not a requirement of any legislation. The CEC could therefore decide to relax its current policy, for example, to improve its financial performance with increased sales¹. There are already interests who lobby for the CEC to open up a property market in the seabed², while the increasing number of installations involving the seabed for renewable energy generation and other developments might increase pressures for the sale of sites.
43. Within the new public policy context in Scotland, the Scottish Executive could seek confirmation of the CEC's current disposals policy and ensure that the Executive would be consulted by the CEC if any change in policy was anticipated and if any significant potential sales of Scottish seabed are planned.
44. The Scottish Executive might also want to clarify the CEC's current policy further, for example, with respect to coastal renewable energy installations and for any distinctions of terms that might apply more generally for developments by the Scottish Executive and other Scottish public bodies.
45. While the Scottish Executive might be content with the CEC's overall approach of minimum disposals, the Executive could also provide guidance to the CEC on specific situations where the Executive considers greater flexibility on seabed disposals would support public policy delivery in Scotland.
46. The most conspicuous situation where the Scottish Executive might investigate the case for disposals at present, appears to be the ownership by the Crown of the seabed within the statutory harbours owned by Scottish Ministers, local authorities and trust ports and regulated by the Scottish Executive (see Annex 16).

(v) Regulation, Development and Income

47. The management of the Crown's ownership of Scotland's seabed has always incorporated a regulatory role, as all uses of the seabed by others require the Crown's permission.
48. The longstanding trend, however, has been for the range of different seabed uses which are regulated by specific public sector mechanisms to increase. With many uses, an initial non-statutory arrangement has subsequently been replaced by a statutory provision³.
49. The CEC suggests that the impending introduction of statutory planning controls over marine aquaculture in Scotland, will end the CEC's regulatory role over developments involving Scotland's seabed. The CEC's view appears to be that all developments will then be subject to public sector controls and their role will only be to issue leases and licences for developments which have already received approval under those controls.
50. This might be considered the case around the Shetland Islands given the Works Licence system operated by Shetland Islands Council.⁴ However, as explained in Annex 14, the CEC will continue to have a significant *de facto* role in regulating the uses that can be made of Scotland's seabed elsewhere by virtue of its responsibility for the ownership of the seabed.

¹ A possible example might be the sale of the seabed in harbours to the owners, if the CEC judged that it was better for the CEC's finances to convert the future rent potential into a current capital price.

² see the Institute of Economic Affairs website (<http://www.iea.org.uk>) and the writings of John Blundell (e.g. Scotsman 20th July 2004 and 26th January 2006)

³ see Annex 15 for account

⁴ See section on regulatory role of CEC at end of Annex 5. The position in Orkney is also described there

51. The establishment of statutory planning controls over marine fish farms can be seen as part of the on-going evolution of the relationship between statutory controls and the management of property rights by the CEC. However, the Shetland works licence scheme continues to highlight the current lack of accountability at a local authority scale elsewhere in Scotland.
52. With all developments on any seabed owned by the Crown including the areas covered by the works licence system, the CEC also continues to be in a regulatory position with the terms and conditions which it sets in leases and licences granted for developments. The CEC can determine whether or not to include conditions that might or might not benefit some public interest.. The CEC is also under no obligation to issue a lease or licence to a developer who has secured a public consent, although it is CEC policy to do so.
53. It is clear that the CEC can also use the terms and conditions of these leases and licences, including the rents and other charges, to encourage uses of the seabed. A prominent instance of this developmental role has been the CEC's investment in assisting the fish farming sector. In its early days, for example, the CEC charged what it considered modest rents and set them for a number of years. The CEC also supported the sector by investing in aquaculture research (for example, £1 million in 1987-98).
54. While opposition to the CEC's seabed charges continued in the courts into the 1990s¹, the pattern of rent negotiations and CEC investment in aquaculture is now an established relationship. The current review of aquaculture rents by an independent expert panel appointed by the CEC and the negotiations between the CEC and industry representatives over the panel's recommendations reflect the CEC's continuing support for the sector.
55. The CEC has, as another example of support, instigated the Scottish Salmon Farmers Awards Scheme in 2006 to promote salmon farming. This component of marine aquaculture has grown hugely over the last twenty years with production increasing from 10,000 tonnes in 1986 to 158,000 tonnes in 2004 and an ex-farm production value of over £300 million a year (see [Annex 17](#)). The consolidation of the industry is also reflected in over 80% of production now being owned by twelve companies and 85% of production being owned by Norwegian and Dutch companies with multinational interests.
56. The CEC is also pursuing a similar developmental approach with the emerging renewable energy sector. Low rents are charged, for example, for some facilities to encourage the development of the sector.
57. The CEC's re-investment from its marine revenue in Scotland was £0.5 million in 2004-05 on "*marine research and development and coastal community projects*"² and nearly the same again in 2005-06.³ The amount in 2005-06 included £0.1 million to the Scottish Aquaculture Research Forum⁴, £0.1 million on other aquaculture related research, £0.2 million on salmon industry development measures and £75,000 on community based projects.
58. The c.£0.5 million re-invested in both 2004-05 and 2005-06 was under 10% of the CEC's marine income from Scotland in each year. In both years, 80% or more of the re-investment went on aquaculture. Over the two years, this sector produced revenue of £4.8 million for the CEC. This is similar to the level of income from the rural estates managed by the CEC

¹ The Shetland Salmon Farmers Association dropped their challenge over the ownership of the seabed in 1991 (CEC Annual Report 1991)

² Scottish Marine Newsletter (CEC, Winter 2004)

³ CEC website: Scottish FAQs (frequently asked questions) September 2006

⁴ This amount is reportedly due to reduce over the coming three years 2007/8 – 2009/10 to 70%, 50% and 30% of the current total (information from Highland Council, October 2006)

in Scotland (£4.4 million), but no information is available on the CEC's level of re-investment in those estates.

59. Community based projects in Scotland used to be funded through a Scottish Coastal Communities scheme. However, since the CEC re-structured in 2002-03, community based projects have been supported under the CEC's UK wide Marine Stewardship Fund. In 2005-06, Scotland accounted for 45% of the number of projects supported. This support in Scotland has included core funding certain groups¹ and an increasingly wide range of other initiatives². The projects do not necessarily involve community groups as such³ and the criteria for the projects to be supported are clearly focused on the benefits to the Crown Estate and CEC⁴. Positive public relations are one of the main benefits. The CEC's "Highlands and Islands Update Summer 2006", for example, includes fifteen articles, of which 11 were about projects supported by the CEC. Six of these were funded through the CEC's Marine Stewardship Fund.
60. The CEC provides its funding to aquaculture and community based projects through the UK wide Marine Stewardship Programme which the CEC has created. This has four elements⁵:
 - *Marine Stewardship Fund*: community based initiatives that further the good management of the Crown Estate.
 - *Aquaculture Research*: science projects to investigate environmental and technological aspects of the aquaculture industry.
 - *Offshore Research*: projects to underpin the CEC's knowledge of the offshore resources and activities managed by the CEC.
 - *Communities and Renewables Funds*: projects to raise awareness of, and support community involvement with renewable energy offshore.⁶
61. The CEC is thus performing a significant development role with the marine property rights of the Crown in Scotland, with its range of approaches including foregoing income in some situations, investing in research and selectively providing funds to projects and groups. The CEC's capacity to forego rent now as an investment in improved income later as part of its role of generating revenue for the UK Treasury from the Crown Estate, the level of its revenue surplus and its duty also to have due regard to the requirements of good management, all provide the CEC with considerable flexibility within its overall financial performance.
62. There is currently no published account of the overall investments which the CEC chooses to make year to year in Scotland, or of the extent to which there is an overall strategy for these investments. However, while devolution has not affected the CEC directly as its operation is reserved, the requirements of good management now also include the public policy context in Scotland as set by the Scottish Executive⁷.
63. This situation creates considerable scope for contact between the Scottish Executive and the CEC over the ways in which the CEC's management of the marine estate of the Crown in Scotland, can contribute to the delivery of Scottish Executive policies. However, the

¹ for example, Association of West Coast Fisheries Trusts and Moray Firth Partnership.

² see CEC's "Highlands and Islands Update" Summer 2006

³ In 2005-06, for example, the specifically Scottish projects included slipways, a SAC management plan, environmental education programmes and coastal zone management initiatives (CEC, 6th October 2006)

⁴ see CEC website for application details.

⁵ see CEC website for more details

⁶ The one Scottish project funded under this fund to date, has been £15K to the Scottish Seabird Centre's marine renewable energy touch screen displays (CEC, 6th October 2006)

⁷ see Section 12 paragraph 12 et seq.

relatively limited contact at present is very largely focused on aquaculture¹ and there remains important potential for the Executive to secure greater benefits and accountability in Scotland.

64. A conspicuous topic for the Executive to consider is the nature and level of the charges raised by the CEC from the 80% of Scotland's statutory harbours which are public interest harbours by virtue of their ownership by Scottish Ministers, local authorities and Trust Port Harbour Boards (see Annex 16). The CEC's current levels of charges on public sector harbours (for example, 6% of seabed related turn-over) seems at odds with Scottish Executive policies, when most of these harbours are subsidised by public funds to serve remote coastal and island communities in the Highlands and Islands. With the Trust Ports, while the CEC has long claimed that it is not an obstacle to development², the charges limit local development by removing funds from the Harbour Board in exchange for no investment when the Harbour Boards are required by law to re-invest any funds they have in their harbour³.
65. The CEC's management of moorings is another example that could offer scope for greater public benefits in coastal areas. Part of the CEC's approach is, for example, to promote the establishment of local mooring associations as a more economic way to collect relatively small individual rental charges. An alternative approach in line with Executive policies could be to use the promotion of mooring associations to build local capacity and increase the stake of communities in their local environment.
66. The Scottish Executive already has a Partnership Agreement commitment to consider "*current management and rental arrangements for the sea-bed*"⁴ and while it is not clear to what extent this has been followed up at all so far, it provides a basis for considering the opportunities for the management of Scotland's seabed to support Executive policies
67. The importance of pursuing this matter to the well-being of the Highlands and Islands is illustrated by the concentration of Scotland's marine resources around the region (see Map 1) and by many other statistics (for example, half of Britain's coastline, half of Britain's ports and harbours, over a hundred inhabited islands and many remote coastal communities).
68. There are considerable opportunities for the marine resources in Scotland to be managed to provide greater support for the Scottish Executive's social and community policies in the way that Executive policies are now applied by FCS in the management of Scotland's national forest estate⁵.
69. The fact that over 80% of the CEC's marine revenue in Scotland is surplus income each year suggests flexibility to remove or reduce charges in appropriate situations or to increase the relatively low percentage of that marine revenue which is re-invested in supporting socio-economic development in the area, rather than being transferred out of the area to the UK Treasury⁶.
70. The potential sums involved could have a major impact in Scotland's remoter regions, but are small within the context of the CEC's overall financial targets. The CEC's total revenues

¹ see for example, the committees listed under para.75 later in section.

² For example, "Promoting Development in Scotland" (CEC 1998)

³ see Annex 16

⁴ <http://www.scotland.gov.uk/library5/government/pfbs-02.asp> The particular commitment cite in para.66 is one that has apparently been allocated to SEERAD (Scottish Executive Environment and Rural Affairs Department)

⁵ see Annex 5

⁶ Re-vestment appeared to be c.10% in 2004 (£0.5m out of c.£5m – Scottish Marine Newsletter (CEC, Winter 2004) and The Crown Estate in Scotland report (CEC, July 2005).

from all developments in Scotland's marine environment, for example, amount to c.17% of the CEC's total UK wide marine revenue and c.2% of the CEC's overall annual UK revenue.¹

(vi) Further Devolution

71. Twenty years ago, when the CEC first fully recognised the valuable potential of the marine resources which the CEC managed around Scotland², the CEC Chairman was "*convinced that the proper use of the area around our coasts can play a considerable part in the economic preservation and indeed regeneration of some of our most fragile rural areas*".³
72. The current new opportunity is the development of renewable marine energy generation (offshore wind, wave and tide) and yet it is not clear how the growth of this sector will contribute directly to development in the communities closest to where it is taking place. At present, if a wind farm is developed at the top of a beach (on land), the local community can expect to negotiate some direct financial benefits for the community from the developer. However, if the wind farm is at the bottom of the beach (offshore), the community currently appears unlikely to benefit directly as the revenue will go to the CEC and the UK exchequer.
73. At a wider scale, the use of Scotland's seabed as part of distinctive Scottish Executive policies and incentives in Scotland to encourage the increased generation of marine energy in Scottish waters, such as those currently proposed by Scottish Ministers to develop Scotland's "enormous" potential for wave and tidal energy⁴, will generate seabed revenues for the CEC with no necessary direct benefits in Scotland from that seabed use.
74. In Scotland, the ownership of the seabed and shelf property rights as public assets by the Crown in Scotland is only an issue in very restricted circumstances⁵. Devolution and the continued growth in the use of these assets increasingly highlights that the issues are over the reserved status of the administration and revenues of these Scottish property rights.
75. There is considerable scope for greater accountability and benefits to be achieved within Scotland by the Scottish Executive through dialogue with the CEC in the new public policy context in Scotland, as indicated above. However, the more that the Scottish Parliament and Executive become involved in managing Scotland's marine environment, the more that the reserved administration of the seabed rights appears an alignment issue.
76. Many different factors point to a continued rapid growth in the Scottish Executive's involvement with Scotland's marine resources. These include the existing powers of the Scottish Parliament over the ownership and use of seabed rights, the increasing regulation of the uses of these rights by the Parliament and further measures potentially devolved under the planned Marine Bill, the implementation of the existing Marine Strategy, the development of marine spatial planning and many other topics, including the increasingly important development of renewable marine energy generation.
77. One such topic is the establishment of Scotland's first marine national park. SNH's Advice to Ministers is unclear about the relationship that a Park Authority's might have with the CEC over the management of Crown seabed and foreshore in a marine national park.⁶ The advice suggested that "*The voluntary delegation of the leasing arrangements or the*

¹ £6.1 m in 2005-6 – see paragraph 18 above

² CEC Annual Report 1984

³ CEC Annual Report 1986

⁴ "Supporting wave and tidal energy in Scotland – a consultation on amending the Renewables Obligations (Scotland) Order 2006" (Scottish Executive, May 2006)

⁵ such as within statutory harbour areas – see Annex 16

⁶ Advice to Ministers on Marine National Parks (SNH, August 2006). Quote from section 3 paragraph 12.

management of parts of the foreshore by The Crown Estate to the Park Authority could also be envisaged". This could be in the form of a regulating lease over the foreshore¹, as already used in at least one national park down south.² A similar arrangement could also be used over the seabed, though it appears the CEC has not granted a regulating lease over seabed before. However, the fact that the Scottish Executive will need to negotiate and potentially rent part of Scotland's territorial seabed from a London based body as part of establishing the national park, illustrates the wider issue of the reserved administration of Scotland's seabed.

78. Marine national parks, renewable energy and all the other developments and initiatives involving Scotland's seabed will require a closer and closer working relationship between the CEC and Scottish Executive and point to the case for devolving the administration and revenues of Scotland's seabed property rights to the Scottish Executive.
79. The expanding working relationship between the CEC and Scottish Executive is reflected in the presence of the CEC on an increasing number of Scottish Executive committees and related initiatives dealing with marine topics in Scotland.³ There are also now staff seconded in both directions between the CEC and Executive⁴. The increasing number and diversity of marine related projects in Scotland which the CEC funds or part funds through its Marine Stewardship Programme⁵, also demonstrate a continuing growth in the CEC's involvements with the management in Scotland of Scotland's marine environment. However, the CEC's participation in all these matters for the interests which it represents, re-enforces rather than diminishes the case for devolving the administration of Scotland's property rights over its territorial seabed back to Scotland.
80. The financial implications to the UK government and Scottish Executive of such a change appear very limited in the first instance, both because of the relatively small amount of revenue involved⁶ and because the change appears likely to be more or less financially neutral under the Barnett Formula⁷. However, the change would open up major opportunities for Scotland's marine resources to be managed to support the delivery of Scottish Executive policies.
81. There would be nothing 'constitutional' about devolving the CEC's responsibilities over Scotland's seabed to the Scottish Administration, as transfers of responsibility for properties and rights from the CEC and its predecessors to other parts of government illustrate⁸. The Scottish Executive is also already managing other Crown property rights over Scotland's seabed, such as the public rights of navigation and fishing.
82. A devolved situation, which could result from the partial devolution followed by the Forestry Commission or full devolution through legislation such as the UK Marine Bill, would provide

¹ section 15, paragraph 14 *et seq.*

² Pembrokeshire National Park in Wales

³ Main ones as at September 2006 are the Advisory Group on Marine and Coastal Strategy, Ministerial Working Group on Aquaculture, Scottish Sustainable Marine Environment Initiative, Tripartite Working Group (wild salmon and aquaculture interests with Scottish Executive), Scottish Coastal Forum, and SEERAD's 'On the Ground' group. (CEC, September 2006)

⁴ a member of the Executive's staff to the CEC on a part time basis in connection with the Tripartite Work Group and a member of CEC staff to the Executive as Marine Officer for the Scottish Coastal Forum. (CEC, September 2006)

⁵ Particularly through the Marine Stewardship component of that Programme, See for example, "Highlands and Islands Update" (CEC Summer 2006) and CEC website 'Marine'.

⁶ currently c.£6 million

⁷ See section 19 para.14 for more about the Barnett formula. It might also be noted that at present, as the Scottish Executive is responsible for the majority of the measures involved in regulation of the use of Scotland's seabed, it bears the costs of regulation while the charges for using the seabed go to the UK government through the CEC.

⁸ see Annexes 1 and 5

an opportunity to consider how best to integrate the CEC responsibilities into the Scottish Executive's administration.

83. The marine responsibilities in Scotland currently managed by the CEC would seem, for example, a natural component of the responsibilities of a Scottish marine agency, as currently being considered in the context of the Marine Bill consultations. This approach would combine the system of public regulation approvals with the authority of the property rights through leases and licences.
84. The CEC's current roles with Scotland's marine estate include regulation, income generation and development. These are the same roles as are performed by Forestry Commission Scotland in its management of Scotland's national forest estate and forestry policy in Scotland. A Scottish marine agency could have a similar remit for Scotland's national marine estate.

Part Three

REVIEW OF THE CROWN LANDS OF SCOTLAND

(i) ISSUES

17. ACCOUNTABILITY¹

1. This report is about the property, rights and interests which make up the Crown Estate in Scotland. They are owned by the Crown in Scotland and before the Crown Estate was first constituted in name 50 years ago, they were known as the Crowns Lands of Scotland².
2. These Crown lands and other property rights and interests, while managed as part of the UK wide Crown Estate, are Scotland's main national estate because they include ownership of Scotland's seabed (c.53% of its territorial area) and around half of Scotland's foreshore³.
3. Scotland's Crown lands and their revenues have been administered by London based Commissions since this function was transferred south in the 19th century, but devolution has now:
 - returned to Scotland the power to legislate over the nature of the ownership and use of these Crown lands;
 - created the scope to influence their management through the new public policy context in Scotland
4. This divide between ownership and use (devolved) and administration and revenues (reserved) under the Scotland Act 1998, creates an inherent 'alignment issue' post devolution between the UK and Scottish governments with their respective responsibilities for reserved and devolved matters.
5. In the lead-up to devolution, the CEC recognised the need for greater accountability in Scotland when it offered to report annually on its operations and finances in Scotland to the Scottish Parliament⁴. However, since devolution, there have been:
 - no reports by the CEC to the Scottish Parliament on their management of the Crown Estate in Scotland;
 - no Concordat with the Scottish Executive and no regular contact with Scottish Ministers⁵.
6. The CEC's re-structuring of its operations in Scotland from 2002 also compounded the inherent alignment issue over the Crown Estate in Scotland, as it further reduced the very limited existing accountability in Scotland. The CEC:-

¹ section 1(5) of the Crown Estate Act 1961 has given rise to a wider issue about the accountability of Crown Estate Commissioners – see Annex 19

² The CEC now calls them "Scottish Crown lands" (CEC website September 2006)

³ Scotland's national forest estate has a larger financial turn-over and substantially greater estate on land.

⁴ see section 5 paragraph 16

⁵ for contact in 2005-06 see paragraph 13 below

- discontinued the management of Scotland as a distinct unit of the Crown Estate and ended the CEC's post of Head of the Scottish Estates
 - ended annual reports on the CEC's activities and finances in Scotland and integrated the CEC's operations in Scotland sector by sector with those in the rest of the UK¹.
7. There is now no member of CEC staff in Scotland with responsibility for CEC policy in Scotland on cross sector matters in Scotland and any such matters are dealt with directly by the 'Scottish Commissioner'². This role is currently held by Ian Grant, who combines it with the duties of CEC Chairman³.
 8. The position with a Scottish Commissioner has echoes of the 1940s/50s when the Secretary of State for Scotland was the sole Commissioner responsible for the Crown Lands of Scotland, and suggestions for an advisory committee were dismissed⁴. It is also currently not clear whether even the role of Scottish Commissioner will be continued by the CEC⁵.
 9. There is now an almost complete lack of accountability in Scotland over the CEC's management of the diverse and extensive Scottish resources which it administers, from the national level down to their local operations through private sector management companies.
 10. The present situation is also at odds with wider public policy towards devolution. The UK government remains committed to the devolution process including further devolution where appropriate,⁶ yet the CEC as a public body has moved away from devolution.
 11. The CEC justify this re-structuring as part of its UK wide moves to improve efficiency in generating public funds and dealing with clients⁷. The CEC's treatment of Scotland appears to be based only on the CEC's reserved status under the Scotland Act 1998. This, however, neglects the ways in which devolution has changed the circumstances of the property, rights and interests which the CEC manages in Scotland (see para.3 above).
 12. The CEC's position reflects in part at least, a lack of recognition by the CEC of the importance of the differences between management and ownership. The CEC considers the distinction to be immaterial and not significant in this context⁸ and increasingly even claims that the CEC owns the property which it only manages in Scotland⁹.
 13. However, as explained in this Report, the distinction between the property, rights and interests which make up the Crown Estate in Scotland and their administration, is fundamental to understanding the ways in which devolution affects the Crown Estate in Scotland.
 14. A recent change in the limited contact in Scotland over the management of the Crown Estate in Scotland, has been meetings between the Chairman of the CEC and the Scottish Executive Minister of Rural Affairs. There was one to discuss this subject at the CEC's

¹ see paragraphs 15-16 below for re-introduction of an annual supplementary page in 2005

² see Annex 2

³ CEC / CERWG Meeting 12th June 2006

⁴ Royal Commission on Scottish Affairs 1953

⁵ see Annex 2

⁶ for example, statements in DEFRA's Marine Bill Consultation Paper – see Annex 16 paragraphs 32 et seq.

⁷ CEC / CERWG meeting 20th May 2005. The re-structuring was also apparently intended to ensure that the CEC continued in its current form despite devolution.

⁸ CEC / CERWG meetings 29th November 2005 and 12th June 2006

⁹ for example, in the CEC's newsletter "Highlands and Islands Update" Spring 2006 (see also here section also 15 paragraph 15)

request in January 2005 and again in 2006. The two main outcomes of these meetings were that the Minister suggested that the CEC¹:

- re-introduce the publication of annual figures for the CEC's finances in Scotland,
- explain better the benefits in Scotland of their operations in Scotland,
- establish contact with the new Head of the Minister's Department.

15. The CEC has followed up these matters by:-

- producing a two sided report on 'The Crown Estate in Scotland' at the time of their Annual Report, to give financial information relating to its operations in Scotland²;
- placing a specific emphasis at a UK level on extending its public affairs programme in Scotland³;
- increased contact with SEERAD, including the participation of the CEC Chairman in SEERAD's 'On the Ground' Programme managed by the Head of Department.⁴

16. The financial information provided is what the CEC describe as a "breakdown" as since the CEC re-structured "*There is no separate accounting for the income generated by The Crown Estate in Scotland*"⁵. The value of another CEC PR campaign in Scotland might also be questioned⁶. However, the responses reflect the commitment of the CEC to respond where possible to requests from the Scottish Executive and Scottish Parliament⁷.

17. The CEC does participate in an increasing number of Scottish Executive committees and working groups dealing with marine matters.⁸ However, this is simply to represent the CEC's interests. Similarly, the involvement of the CEC Chairman in the On the Ground Programme as an external Board member "*to ensure the Programme Board follows best practice... and to challenge the Board to be ambitious in the delivery of the programme*"⁹. The CEC itself is not involved with the programme.

18. The overall lack of accountability of the CEC's management in Scotland before devolution remains and has been compounded by the CEC's recent re-structuring. The CEC's responsiveness to Scottish circumstances has been reduced by the fact that the CEC no longer treats Scotland as a level of policy, because the CEC's operations in Scotland are now integrated into those in the rest of the UK.¹⁰

19. The emerging dialogue between the Scottish Executive and CEC could start to address these issues more fully, given the legal status of the property rights which make up the Crown Estate in Scotland and the importance to Scotland of its territorial seabed, continental shelf rights and the 50% of foreshore still held by the Crown.

¹ see CEC Board Minutes in Annex 18

² CEC Board Minutes 25th January 2005 (see Annex 18) + sheets published in July 2005 and July 2006

³ CEC Board Minutes 31st January 2006 – see Annex 18

⁴ "*The On the Ground programme provides the mechanism within which the ERAD Family comes together to identify opportunities to enhance individual contributions by working more effectively together and releasing efficiencies through co-location and shared services*" (SEERAD webpage). Forestry Commission Scotland is fully involved with the programme and SEERAD bodies, but the CEC is not involved at all.

⁵ statement on CEC's website, section The Crown Estate and the Scottish Parliament.

⁶ see section 18, paragraph 11

⁷ i.e. where possible within the terms of the Crown Estate Act 1961

⁸ see end of section 16 for list of committees.

⁹ see footnote 4 above; quote from "On the Ground News" Issue 1 (February 2006)

¹⁰ e.g. CEC / CERWG meeting 29th November 2005

20. There are three main levels at which the CEC could respond to improve accountability and the delivery of public benefits in Scotland in the changed circumstances of devolution, with or without encouragement from others¹:
- *within existing structures*: for example, by establishing a Scottish Advisory Committee, reporting to the Scottish Parliament, have a head of operations in Scotland, developing Scottish policies tailored to Scottish circumstances for different estate components, promoting the distinct nature of the Crown Estate in Scotland ...
 - *partial devolution*: by re-structuring, for example, following the FC type of route² so that ‘Crown Estate Scotland’ acts as part of the Scottish Executive and manages the Crown Estate in Scotland to help deliver Scottish Executive priorities;
 - *full devolution*: by legislation re-patriating the administration and revenues of some or all of property, rights and interests forming part of the Crown Estate in Scotland.

¹ for example, Secretary of State for Scotland, Scottish Minister or the Scottish Parliament for their respective interests in this topic.

² see Annex 5

18. APPROACH

1. There is a long history of public controversies in Scotland over the operations of the CEC and its predecessors. These can be traced up to recent times from 19th century disputes about salmon fishing and foreshore rights, to issues in the 1940s and '50s associated with their purchase of Glenlivet and concerns at the rent reviews instigated on the agricultural holdings in Scotland when the CEC took over in the 1960s.
2. Since then, the most conspicuous issues over the CEC's management in Scotland have resulted from the CEC's introduction of charges for seabed moorings in the 1970s and the expansion of this through the Highlands and Islands with the growth of the oil industry and fish-farming at the time.
3. The CEC's assertive legal approach to securing payments for use of Crown foreshore and seabed, even with local social and community interests, has been described earlier together with the narrowness of the CEC's focus on securing revenue with very limited policies to support local development in coastal and island communities¹. There is more than a symbolic difference, for example, between the CEC's approach of forming mooring associations as a more economic way to collect rents and the ways mooring associations could be used to build local community capacity and give communities a greater stake in their local environment.
4. The issues involved due to the CEC's approach range widely as described in previous sections. Some of the foreshore and seabed issues include, for example:
 - the ways in which the levels of the CEC's charges inhibit local development, particularly in the Highlands and Islands with its many scattered and remote coastal communities.
 - the adverse impact of the CEC's charges on local authority and trust port harbours when they play such an important role in local economies and wider infrastructure.
 - the negative affect on the economy of the Highlands and Islands and elsewhere of the economic leakage that results from the CEC's transfer of most of the revenue which it raises out of the areas where it is generated.
 - the narrow focus of the CEC's limited re-investment very largely into either activities that will promote its future rental revenues or else generate favourable public relations.
 - the overall separation of the income from the use of Scotland's seabed from the island and mainland areas closest to where that income is generated.
 - the lack of joined up government between the CEC's approach and the Scottish Executive's measures to support local communities and economic development.
 - the more or less complete lack of a say within Scotland at national and more local levels over how the CEC manages the Scottish marine resources for which it is responsible.
 - the separation between the costs to local authorities and the Scottish Executive in regulating and managing the public interest in Scotland's foreshore and seabed and the revenues obtained from them by the CEC.
5. There is immediate scope, however, to start to address these types of issues. The CEC's approach is a result of its own policies, rather than any inherent constraints in its statutory remit. While the CEC is largely financially driven by the requirements in its Act to 'turn to account' the property which it manages and to 'maintain and enhance' the value of the

¹ see sections 15 and 16

Estate as an estate in land¹, the CEC always has to have '*due regard to requirements of good management*' and this gives the CEC substantial scope to deliver other public benefits.

6. In addition, while the CEC is required to obtain "*the best consideration in money or money's worth*" if it sells, leases or otherwise disposes of any land of the Crown Estate, the CEC has to have "*regard to all the circumstances of the case*" in considering what might reasonably be obtained and also has other scope under the Crown Estate Act to be flexible over price.²
7. This flexibility to promote social and community development and other benefits in line with public policy in Scotland, is also increased by the fact that it is only the value of the estate in land as a whole that has to be maintained and enhanced, not each component of it. The scale of the flexibility available to the CEC is also illustrated by the fact that over 80% of the CEC's income in Scotland each year, is surplus revenue.³
8. The issue is not that the CEC charges for the use of the seabed and other resources, but that the way in which the CEC applies its charges cuts across the systems of public policy, support and services administered by the Scottish Executive and local authorities.
9. While the CEC agrees forecasts of its activities annually with the Treasury, even the whole of the CEC's annual revenue surplus in Scotland is a very small percentage of total CEC income and overall financial performance. The CEC's overall net surplus revenue has, for example, been increasing every two years by an amount that is equal to or greater than the CEC's total annual revenue from Scotland.⁴
10. The reason that the CEC does not deliver more public benefits in Scotland is that the CEC does not recognise a need to do so and the Scottish Executive has not provided the guidance to the CEC needed to secure greater benefits.
11. While the CEC traditionally recognised that it is "*concerned not simply with maximising profits*"⁵, the CEC has become ever more focused on achieving better financial returns year on year since the 1980s. At the time, for example, the then Chairman wrote that "*...we must be released from the shackles of civil service grading and structures in a way which our standing as one of the biggest property companies merits.*"⁶
12. The CEC has a strong institutional culture to improve financial performance as a property investment company⁷ and it appears that questions of the need for distinctiveness and accountability in Scotland have been over-ridden by the interests of UK performance, when 95% of the CEC's turn-over in the rest of the UK⁸.
13. This report is not considering the overall approach of the CEC as reflected in the overwhelming percentage of the CEC's business which is outwith Scotland. The focus here is on the property rights which make up the Crown Estate in Scotland and the many factors which show that the approach which the CEC pursues overall is a model that does not fit

¹ 1961 Act section 1

² See Section 3 of the Crown Estate Act 1961. Section 4 of the Act also provides opportunities for the CEC to contribute to public and community purposes in specific circumstances.

³ see Table 3, section 3

⁴ see recent CEC Annual Reports

⁵ CEC Annual Report 1977

⁶ CEC Annual Report 1989

⁷ and in its relationship with the UK Treasury

⁸ The anonymity of Scotland within the Crown Estate was reflected in the search facility on the CEC's very extensive website, producing no entries for "Scotland" (Nov.2005). However, the CEC has now (September 2006) added several dozen pages of background information about their main interests in Scotland.

well in Scotland – a very distinctive environment which accounts for only c.5% of the CEC's revenue

14. The mis-match between the approach of the CEC and circumstances in Scotland is at its greatest in the Highlands and Islands. The narrowness of the CEC's property company approach to this part of what it describes as its 'marine portfolio', seems poorly suited to delivering the types of benefits which the marine environment could be making to the future well-being of the region's hundreds of scattered coastal and rural communities.
15. The CEC's recent re-structuring suggests that a focus on these benefits by the CEC is less likely as Scotland is no longer a distinct management unit of the Crown Estate and separate policy setting for the CEC.
16. The CEC's recent Board minutes reflect, however, that Scotland is still a special case for public relations.¹ This has been the CEC's traditional approach to concerns in Scotland over its management. Scotland has long been an awkward and troublesome 5% of its business for the CEC as it considers its position is frequently misrepresented. The CEC has complained, for example, that "*In Scotland, it is often portrayed – quite wrongly – as being anachronistic, out of date, secretive and an obstacle to development*"². However, despite all the CEC's PR, there still seems to be widespread antipathy towards the CEC in Scotland.
17. There are no simple measures of this antipathy, although there are indicators. These include, for example, the results of Highland Council's questionnaire in 2002 about the CEC in the Highlands³. While not an objective survey, the overall negative attitude towards the CEC from many different interests is clear. There are also other indicators such as the "*hostility*" towards the CEC reported by the Scottish Law Commission⁴.
18. Criticisms of the CEC in Scotland appear to come from a wide range of interests including communities, local authorities, public agencies, politicians and other interest groups⁵. The CEC for its part retains two or more public affairs / public relations consultancies in Scotland with additional support from the CEC's main communication team in London^{6, 7}.
19. The issues involved with the CEC's approach in Scotland are not, however, ones which are addressed by public relations. They are issues of substance as illustrated in paragraph 4 above and ones which require changes in approach if there are to be greater accountability and benefits in Scotland from the management of the Scottish resources involved. The three main options for improvements are, as identified in the previous section:
 - within existing structures
 - by partial devolution
 - by full devolution

¹ see Annex 18

² "Promoting Development in Scotland" CEC 1998

³ Results held by Highland Council. The questionnaire was a pre-cursor to Highland Council's initiative in establishing the CERWG.

⁴ SLC Report on Law of Foreshore and Seabed (2003)

⁵ The CERWG heard many negative comments about the CEC during the course of its investigations, including criticisms from senior members of public bodies in Scotland.

⁶ the current firms are Platform PR and Pagoda. Stan Blackley Associates were also employed until recently.

⁷ notwithstanding these retained pr consultancies and the scale of its annual surplus revenue, the CEC was the first body to apply for a new local communication grant introduced by the Cairngorms National Park Authorities in 2006. The CEC successfully applied for £1475 as 50% of costs (CNPA, March 2006)

(ii) Opportunities

19. OPTIONS

1. This report has described:
 - the property, rights and interests which make up the Crown Estate in Scotland, including their ownership, nature, use and administration;
 - the current divide between control over the nature of ownership and use of these rights (devolved) and their administration and revenues (reserved);
 - the lack of benefits in Scotland from the current management of these property rights by the CEC and the lack of accountability in Scotland of this management.
2. The report has highlighted:-
 - that the greatest anomaly in this situation is that Scotland, as a sovereign territory with a re-established parliament, does not administer Scotland's Crown rights over Scotland's own seabed, continental shelf and public foreshore.
 - that there is now the opportunity to review this situation and ensure that this national marine estate is managed in line with Scottish Executive policies, as illustrated by the policies for Scotland's national forest estate, and brings major new benefits to Scotland's coastal and island communities and the population of Scotland generally.
3. The chance to be able to determine in Scotland how these important seabed, continental shelf and foreshore property rights might best be used to deliver social, economic and environmental benefits in Scotland, seems an historic opportunity.
4. There is also a positive context for taking this forward now. At a general level, progress is important before the marine renewable energy generation starts to develop more fully in Scottish Waters. The positive support of Scottish Ministers for this sector should be linked to recognition that, at present, Scotland will not secure the revenue from the use of Scotland's seabed by the sector and that the CEC agrees the terms of such use centrally in London with no formal requirement to take account of Scottish interests.
5. There is also the more immediate impetus for the Scottish Executive to take matters forward from the schedules of the planned UK Marine Bill that is being consulted on for 2007¹ and the Scottish Executive's existing Partnership Agreement pledge to consider the "*current management and rental arrangements for the seabed*"².
6. The Partnership commitment also fits into a wider Scottish Executive policy context, including the links to current initiatives such as the Executive's Marine Strategy³, the Scottish Law Commission's report on the Law of the Foreshore and Seabed as part of the Executive's Land Reform Programme and the existing reforms of the Crown's property rights in Scotland with the abolition of feudal tenure.⁴

¹ see Annex 15

² see section 16

³ '*Seas the Opportunity*' (Scottish Executive, 2005)

⁴ Many of the property rights of the Crown in Scots law which are currently managed as part of the Crown Estate, are of feudal origin. Many of these rights could be abolished by the Scottish Parliament, as proposed in earlier sections of the report (e.g. 9-11), as part of further Scots property law reform to follow on from the abolition of the Crown's feudal rights as paramount superior.

6. The topic might also be seen as one which has, like feudal reform, a certain resonance with the Scottish Parliament, which is founded on land (its physical jurisdiction) and land was at the start of its business with its abolition of feudal tenure. That reform, ending the Crown's rights as paramount superior, did not affect the 53% of Scotland's territory that is seabed, nor other ancient property rights of the Crown in Scots law of feudal origin which are managed as part of the Crown Estate.
7. In considering reform, there appears clear scope for three main parties involved with the Crown Estate in Scotland (the Secretary of State for Scotland, the CEC and Scottish Executive) to work constructively together given the Secretary of State for Scotland's power of direction under the Crown Estate Act 1961, the CEC's commitment to respond as fully as possible on Scottish matters within the scope of the 1961 Act and the necessary involvement of Scottish Ministers for the public policy context in Scotland.
8. The Secretary of State, Scottish Ministers and Commissioners are a similar grouping to that which carried out the Forestry Devolution Review. A Crown Estate Review would just be another set of Commissioners, this time within the context of the Crown Estate Act 1961 rather than the Forestry Act 1967, and involving the other main form of public land in Scotland.
9. The result in that case (Forestry Commission Scotland and the new identity of the holdings as Scotland's National Forest Estate), is one of the conspicuous success stories in Scotland of devolution. In this case, while "Crown Estate Scotland" managing Scotland's National Marine Estate would seem an option, there are other options. However, there are also other potential parallels with the position over the forest estate.
10. For decades, particularly through the 1960s-1990s, forestry in Britain was completely dominated by a narrow agenda driven from Scotland and an HQ in Edinburgh that was based almost entirely on the commercial use of non-native conifers. The devolution of forestry has not only resulted in great benefits in Scotland, but also in England and Wales, which have at last been able to pursue policies that suit the very different nature of their woodlands and the benefits they can deliver.
11. The position with the Crown Estate is the reverse, with Scotland completely dominated by a narrow agenda driven from England and an HQ in London. In this case, it is Scotland that is the '5%' that should be able to pursue appropriate policies for its different circumstances and needs.
12. The positive outcomes for the national forest estates would also potentially apply in this instance. The CEC's 95% agenda outwith Scotland, would be clearer at 100%. Scotland has long been an 'awkward' 5% for the CEC, but the dissatisfaction with the CEC in Scotland¹ has yet to show up in the CEC's new 'corporate responsibility' reports or be picked up by the auditors for those reports².
13. The CEC's corporate finances would hardly register the change even if the Crown Estate in Scotland no longer contributed to its figures. In 2004-05, the annual increment in the capital value of the UK Crown Estate was nearly three times the amount of the total capital value of the Crown Estate in Scotland. Similarly, the increment in UK revenues over a two year period exceeds total Scottish revenues³.

¹ see, for example, section 18 paragraphs 16 and following.

² these reports are now (2005) published annually at same time as the CEC's Annual Report.

³ see table 3 in section 3 and CEC Annual Reports

14. The relatively small size of the contribution from Scotland to the CEC's total annual revenue appears to mean that if the administration of the Crown property rights which make up the Crown Estate in Scotland were transferred back to Scotland, this would in fact benefit the rest of the UK financially under the Barnett formula.¹ The CEC have stated in defense of their management in Scotland that:

*"It is important to recognise that the revenue which comes into The Crown Estate from Scotland is almost entirely passed on to the Chancellor and then through the Barnett formula, there is a return to Scotland at a level which exceeds, in percentage terms, the money coming from Scotland"*²
15. In considering options for the Crown Estate in Scotland which would deliver both greater benefits and more accountability in Scotland³, there are other similarities and differences with the forestry example. There appears the same option to transfer ministerial responsibility from the Secretary of State to Scottish Ministers⁴, while the nature of the Crown Estate means it would not require the UK joint working structures involved in forestry⁵.
16. While the options open to the Forestry Devolution Review were constrained because of the unlikely prospect of legislative time at Westminster to deal with forestry matters, there would appear opportunities to devolve fully the administration and revenues of some of the property rights making up the Crown Estate in Scotland through the planned UK Marine Bill.
17. This illustrates how, in comparison to the national forest estate, there can be different options for achieving greater benefits and accountability with the various different components amongst property rights which make up the Crown Estate in Scotland.

¹ The Head of Department at SEERAD (Richard Wakeford) has stated that the current arrangements for the management of the Crown Estate in Scotland benefit Scotland because Scotland receives back more than it contributes under the Barnett formula. (SEERAD / CERWG meeting, 9th November 2006)

² Ian Pritchard, CEC Head of the Scottish Marine Estate, quoted in "What lies beneath" Holyrood Magazine, December 2006

³ see section 17, paragraph 18: 'greater Scottish-ness' within existing arrangements, the FCS route or full devolution

⁴ or the same effect achieved through the wide ranging power of direction – see quote section 6, paragraph 11

⁵ for example, for international responsibilities and research.

20. WAY FORWARD

1. At present, the CERWG's contact with the CEC and with the Scottish Executive¹ indicate that neither consider that there is a problem with the lack of benefits in Scotland from the management of the property and rights which make up the Crown Estate in Scotland, nor with the lack of accountability in Scotland of this management.
2. Against that background, this Report provides information and suggests proposals to support the recommendation quoted in the Foreword to this Report, that:

the Secretary of State for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and the well being of the people of Scotland.
3. If a need is recognised for the CEC to be more responsive in Scotland given the changed circumstances of devolution, this Report has suggested three potential levels of response by the CEC to deliver greater benefits and accountability in Scotland:-
 - *within existing structures*: for example, by establishing a Scottish Advisory Committee, reporting to the Scottish Parliament, have a head of operations in Scotland, developing Scottish policies tailored to Scottish circumstances for different estate components, ...;
 - *partial devolution*: by re-structuring, for example, following the FC type of route² so that 'Crown Estate Scotland' acts as part of the Scottish Executive and manages the Crown Estate in Scotland to help deliver Scottish Executive priorities;
 - *full devolution*: by legislation re-patriating the administration and revenues of some or all of property, rights and interests forming part of the Crown Estate in Scotland.
5. There are immediate and significant improvements which could be made within the existing arrangements. However, once the need to respond is recognised, the continuing commitment of the UK government to the devolution process suggests that the CEC should respond as fully as possible and progress as far as practical through the three levels³.
6. This logic might suggest on the basis of the Forestry Commission's response to devolution, the possibility of creating "Crown Estate Scotland" by a similar parliamentary route to that used to create Forestry Commission Scotland. This could potentially enable the delivery of significantly greater benefits and accountability than could be achieved within reformed existing arrangements.
7. However, the position with the Crown Estate is also different from that with the national forest estate, because of the range of different types of properties rights and interests which make up the Crown Estate in Scotland (Nos.1-14 in Table 1), compared to the 'conventional' ownership by Ministers of the lands making up the national forest estate.
8. This means that the position with each of the types of property, rights and interests which make up the Crown Estate in Scotland has to be considered individually and the most appropriate way forward determined in each case.

¹ see Annex 21 for an account of the CERWG's contact with the CEC and Executive during its work.

² see Annex 5

³ see Annex 15 for statements about the government's continuing commitment to the devolution process.

9. In sections 7-16 and associated annexes, this Report has provided information about each of the rights numbered 1-14 and showed that there is scope with each property right for the three levels of response by the CEC to more devolved administration and that this could start immediately to deliver greater benefits and accountability.
10. Questions also arise over which Crown rights should be abolished as archaic, which should be transferred out of Crown ownership and how those retained as owned by the Crown in Scotland could be best administered. Considering that “horizon”, the suggestions in this Report might be seen as adding up to:-
 - the devolution of the administration and revenues of the ownership by the Crown in Scotland of Scotland’s territorial seabed and continental shelf property rights back to Scotland to be managed by the Scottish Executive and integrated with the Executive’s existing responsibilities for Scotland’s marine environment.
 - the transfer of responsibility for the Crown foreshore to respective local authorities in Scotland, linked to a statutory responsibility for the existing public rights over the foreshore and integrated with the many existing responsibilities of local authorities for the foreshore and coast.
 - the abolition of the lesser and largely archaic ancient property rights of the Crown in Scotland, with the replacement of necessary components by public law and property transfers to Scottish Ministers, with the disposal of the small urban areas of land to more appropriate local ownership.
 - the disposal of the four rural estates and three urban investment properties over time.
11. These suggestions might be characterised as dismantling the ad hoc collection of property, rights and interests which currently make up the Crown Estate in Scotland¹, with Crown ownership only retained for Scotland’s seabed and continental shelf rights. People tend to view the sea as a natural common good resource².
12. There would seem an important opportunity for these rights, Scotland’s national marine estate, to be managed in Scotland to deliver major public benefits for Scotland.

¹ The group of seven properties in the Estate which were purchased by the CEC in the 1960s and 1990s can be seen as just another component of the ad hoc collection as legacies from various different times and interests.

² The CERWG’s experience is that people are not surprised to learn that Scotland owns its own territorial seabed, but are bemused that its seabed is administered by a London based organisation operating as one of the UK’s leading property investment companies.

CONCLUSIONS

1. This report has considered the property, rights and interests which are owned by the Crown in Scotland and managed by the CEC as part of the UK wide Crown Estate.
2. There are relatively few public benefits in Scotland from the way these Scottish resources are managed at present, most notably the CEC's management of Scotland's territorial seabed and continental shelf rights and approximately half of Scotland's foreshore. The very limited accountability in Scotland over the management of these Scottish resources has also become worse since devolution.
3. The reason why these ancient possessions of the Crown in Scotland are still managed by the CEC as a public body based in London and with 95% of its business outside Scotland, seems simply to be a legacy of the transfer of the administration and revenues of Scotland's Crown lands to London in the 1830s¹.
4. There have long been criticisms in Scotland of the approach of the CEC to managing the Crown Estate in Scotland. The most prominent issue is the adverse impact of the seabed and foreshore charges introduced by the CEC in the last 40 years on public sector and community interests in the Highlands and Islands. There seems a stark contrast between:-
 - the CEC approach of acting as a leading property investment company and operating through private sector property companies to generate revenue from these resource; and
 - the ways in which the public interest in the Crown's ownership of the seabed and public foreshore could be managed to complement Scottish Executive's policies designed to support rural, coastal and island communities and the public interest more generally.
5. While the CEC's management of the Crown Estate in Scotland and its revenues are both reserved under the Scotland Act 1998, devolution has also created new types of influence in Scotland over the ways in which these property rights of the Crown in Scotland are managed. These include:-
 - Ownership: the scope for the Scottish Parliament to legislate over the nature of the Crown's ownership of property, rights and interests in Scots law;
 - Regulation: the scope for the Scottish Parliament to regulate the use of these Crown property rights;
 - Guidance: the scope for the Scottish Executive to provide guidance to the CEC, as part of the public policy context in Scotland, related to the management of these property rights within the overall terms of the Crown Estate Act 1961.
6. In addition, there is the Secretary of State for Scotland's comprehensive power of direction over the CEC². The range of different types of Crown property rights involved in the Crown Estate in Scotland also means that there may be opportunities for the administration and revenues of some particular rights to be devolved in relevant UK legislation under the UK government's continuing commitment to the devolution process³.

¹ It might be noted that if the devolution of the administration and revenues of the properties and right which make up the Crown Estate in Scotland was to take place under the CEC's current and Scottish Chairman, that it was a Scottish administrator (John Fordyce) in London who was the architect of the original Commission and responsible for the incorporation of Scottish interests into it in the first place. (The Crown Estate. R.Pugh (HMSO, 1960))

² with 'comprehensive' meaning all actions within the CEC's legal competence;

³ for example, the planned UK Marine Bill (Annex 15)

7. Most criticisms of the CEC's management in Scotland have understandably been directed at the CEC, but devolution means that the Scottish Executive now have a role and responsibility in determining that management¹. The issues and opportunities raised in this report therefore pose questions about why the Scottish Executive as represented by SEERAD, is so apparently content with the current management of the property rights which make up the Crown Estate in Scotland².
8. More generally, there appear several other factors which seem to have been obstacles to the reform of the Crown Estate in Scotland since devolution. These include:-
 - a widespread lack of understanding about what the Crown Estate in Scotland is and how it is managed, linked to confusion as to whether the Estate is something "royal" or 'constitutional' and therefore in some way beyond reform;
 - the lack of accountability of the CEC in Scotland and the ways in which the CEC, as a very large and powerful organisation, deploys its influence to maintain its interests as it sees them;
 - the disjointed nature of the opposition to the CEC's approach in Scotland, because concerns are usually based on particular sites or issues and because of the general lack of the types of information which would enable a more strategic approach;
 - the tendency of many critics of the CEC to see the Crown Estate as an issue of resource ownership, when the resources are already publicly owned in Scotland and it is essentially a matter of the administration of these Scottish resources.
9. The information in this Report about each of the different types of property rights which make up the Crown Estate in Scotland and the suggestions made about ways their management could deliver greater benefits and accountability in Scotland, indicate the potential that:-

the Secretary of State for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and the well being of the people of Scotland.
10. This Report is a contribution to such a review. It is for the devolved government in Scotland, whether directly or through a committee, to conduct such a review. As a first step, the Scottish Executive might produce an official list of the property rights and interests of the Crown in Scotland forming part of the Crown Estate and use the expertise available within its departments to provide an analysis of each component listed.
11. The composition of these Crown rights and the nature of their administration has evolved over time. Fifty years ago, the Crown Estate Act 1961 created the Crown Estate in name for the first time and constituted the Crown Estate Commissioners (CEC) to replace the Commissioners of Crown Lands. The changes resulted from the recommendations of the review carried out by the Committee on Crown Lands.
12. The impetus for those changes was to replace government ministers (the Minister of Agriculture and Secretary of State for Scotland) with an appointed management board similar to that of the Forestry Commission (FC). Now, circumstances have changed with

¹ The CEC Chairman has confirmed to the CERWG that the CEC will respond to guidance from the Scottish Executive within the terms of the Crown Estate Act 1961 (12th June 2006)

² While the interests of the Crown Estate in Scotland relate to several Scottish Executive Departments, SEERAD appears to have taken a lead on the Crown Estate.

devolution and the need for a review is to improve the accountability over and benefits from the Crown Lands of Scotland in Scotland, compared to the CEC's operations in the rest of the UK. The FC might again provide a model as in the 1950s, this time in the FC's response to devolution compared to that of the CEC.

13. The administration and revenues of some of the property rights of the Crown in Scotland are already devolved to the Scottish Executive. Others which are still managed by the CEC as part of the Crown Estate in Scotland could follow, for example, through the planned UK Marine Bill.
 14. In considering the case for a review, some of the lesser property rights of the Crown in Scotland might be seen as historical anachronisms where reform will bring only modest benefits. However, reforming the management of Scotland's seabed and public foreshore offers an opportunity to secure benefits on what might be considered an historic scale to Scotland's coastal and island communities and the nation as a whole.
 15. The reform of these property rights of the Crown in Scotland could be as symbolic for Scotland as the Scottish Parliament's abolition of other property rights of the Crown in Scotland with feudal reform. The potential benefits for Scotland in this case, however, would be much more tangible and substantial.
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Annex 1

THE CROWN LANDS OF SCOTLAND

A History of the Crown Estate in Scotland

Introduction

This paper has been produced as a supplement to the main report on 'The Crown Estate in Scotland'. The purpose of the paper is to provide a brief account of the origins and development of the lands and other property rights and interests which make up the Crown Estate in Scotland and which were known as the Crown Lands of Scotland until fifty years ago.

When the Crown Estate Commission's publications provide any historical background, it is the history of the Crown Estate in England. However, sufficient historical background is an essential part of considering the role of the Crown Estate in Scotland today. The central theme in this paper is therefore the separate origins, distinct identity and different history of the Crown Estate in Scotland compared to the Crown Estate in the rest of the UK.

The paper has six parts:-

1. The Medieval Period
2. The 17th & 18th Centuries
3. The 19th Century
4. The First Half of the 20th Century
5. The Second Half of the 20th Century
6. Post Devolution

The aim of the paper is to provide a summary account and therefore references are not included. The references used are described in Annex 20 "Sources of Background Information", while particular pieces of information used in the main report are given detailed references there.

1. The Medieval Period

- 1.1 The history of the Crown Lands of Scotland dates from the estates of Scotland's first Kings when mainland Scotland became a unified kingdom in the 9th century.
(NB. the Western Isles were added in 1266 and the Northern Isles in 1472)
- 1.2 By the time feudalism was introduced from the 11th century, there was a distinction between lands that passed from King to King as Crown lands and the personal estates held by those who became King.
- 1.3 Under feudalism, the Crown became the Paramount Superior of all Scotland's land and the lands retained by the Crown rather than granted out, were known as the royal demesne.
- 1.4 The demesne was of two types, the general demesne which came from the Crown's overall position as lord of any land not held by another through a grant, and the specific demesne, which were the lands held directly by the Crown and from which it derived revenues and services.
- 1.5 In the 12th and 13th centuries, the Crown held land in almost every county of Scotland including a system of over 100 Royal Hunting Forests.
- 1.6 A gradual decline in the extent of the royal demesne during the 13th century, became a severe reduction in the 14th century due to the Wars of Independence against England.
- 1.7 Robert Bruce made particularly extensive use of land grants, granting land to supporters from the Crown's lands and the lands forfeited by owners on the losing side in the ebb and flow of the times.
- 1.8 The Scots Parliament maintained that 'the King can and ought to live from the revenues of the Crown' (e.g. 1367) and also tried to prohibit the granting out of Crown lands by the monarchs (e.g. 1467).
- 1.9 Major estates continued to be forfeited to the Crown in the 15th and 16th centuries, but they were also usually then granted out again by the Kings so that the Crown Lands never recovered from the losses in the 14th century.
- 1.10 The very limited extent of Scotland's Crown lands and other land revenues by the end of the 16th century, was in stark contrast to the position in England and the scale of that difference has continued up to the present day.
- 1.11 After some ups and downs, the early 16th century was part of a "golden age" for the Crown Lands of the Kings and Queens of England and they continued to be a major resource during the century as England's power and influence grew.

2. The 17th and 18th Centuries

- 2.1 At the Union of Crowns in 1603, James VI, King of Scots, also became James Ist, King of England, so that Scotland and England shared the same monarch.
- 2.2 Scotland and England still remained separate, independent countries and the Crown Lands of Scotland continued as an entirely Scottish affair, defined and administered in Scotland.
- 2.3 The revenue of the Crown Lands in Scotland was administered by the Baron Court of the Exchequer in Edinburgh and as a result of previous losses, they came very largely from hereditary charges on land rather than from land management.
- 2.4 One consequence of the turbulent times in the 17th century was that, with the end of episcopacy in Scotland in 1689, the Bishops lands passed to the Crown, including lands in Caithness and the revenues of the Bishopric of Aberdeen.
- 2.5 During the 17th century, the revenues of the Crown Lands of Scotland made an ever decreasing contribution to the governance of Scotland which relied very largely on custom and excise dues, land tax and other ways of raising revenue.
- 2.6 The Treaty of Union between Scotland and England in 1707 did not directly affect the position of the Crown Lands of Scotland, which continued to be administered by the Baron Court of the Exchequer as re-constituted by the Act of Union.
- 2.7 The independence of the Crown Lands of Scotland continued throughout the 18th century into the 19th century, during which their extent and revenues fell further due to the declining value of feus, the reduction in other feudal incomes and losses from the lands and revenues during the major re-concentration of land ownership in Scotland into a pattern of large private estates.
- 2.8 The surviving income from the Crown Lands, such as agricultural rents, feu duties and surplus teinds, involved many small amounts from different sources, making the expense of their collection relatively high in proportion to their value.
- 2.9 This position in Scotland at the end of the 18th century was a very different world from the major developments in the value and organisation of the Crown Lands in England and Wales and the changes in their constitutional status by that time.
- 2.10 England's Parliament had first introduced the civil list in 1698 under which the monarch received a fixed income and the Parliament received all the Crown's hereditary revenues, including those of the Crown Lands.
- 2.11 This arrangement was consolidated in the Civil List Act of 1760, but the revenues of the Crown Lands of Scotland did not form part of that settlement.
- 2.12 In England from 1760, the revenue of the Crown Lands was viewed as government income and changes were instigated to improve its administration and financial worth.

3. The 19th Century

- 3.1 An Act in 1810 created the Commissioners of Woods, Forests & Land Revenues to manage the Crown Lands of England and Wales, following a statutory commission from 1786 and the Surveyor General of Land Revenues from 1794.
- 3.2 This government department, known as the Office of Woods, continued the major developments of the Crown Lands in London that had started at the time and was, for example, responsible for the building of Regents Street between 1817-1823.
- 3.3 These urban developments increased the Office's revenues and it also sought to improve the Crown Lands and revenues in the rest of England and Wales.
- 3.4 The Office of Woods started to expand its territorial responsibilities from 1826, taking over the land revenues of the Isle of Man that year, those of Ireland in 1828, those of Alderney in 1829 and lastly, those of Scotland in 1832.
- 3.5 The revenues in Ireland were transferred to the Irish Free State in 1921, those of Man to the island government in 1947 and those of Alderney to the States of Alderney in 1950. As a result, other than a small interest in Northern Ireland, only the Crown Lands of Scotland still remain administered with those of England and Wales from the period of expansion in 1826-32.
- 3.6 Acts in 1832, 1833 and 1835 transferred the administration of the Crown Lands of Scotland and their revenues from the Baron Court of the Exchequer in Edinburgh to the Commissioners in London.
- 3.7 1832 was also the year the Office of Woods and Department of Public Works were amalgamated and the Board expanded from a government minister and two permanent officials to include the Surveyor General of Works and Public Buildings.
- 3.8 In 1851, the departments were split again to give the Department of Woods and Forests responsible for the Crown Lands and managed by two permanent officials, and the Department of Works, with their Minister representing both departments in Parliament. This arrangement continued for the rest of the 19th century
- 3.9 At the split in 1851, the management of all the royal palaces, public buildings and royal parks went with the Department of Works other than Windsor and Stirling. In 1866, the foreshore was transferred to the Board of Trade from the Department of Woods and Forests other than areas let or adjoining Crown land.
- 3.10 From the 1850s, having built up a valuable estate in London, the Department of Woods and Forests started to purchase agricultural land in different parts of England but no purchases were made in Scotland.
- 3.11 In Scotland, where the Department was represented by a law agent in Edinburgh, the work included trying to determine lands, interests and revenues still held by the Crown, court cases over some of these and disposals, and efforts to rationalise the many sources of small incomes.

4. The First Half of the 20th Century

- 4.1 The series of Acts known as the Crown Lands Acts 1829-1894 continued into the 20th century with further Crown Lands Acts in 1906, 1913, 1927, 1936 and 1943. Other legislation also influenced the composition of the Crown Lands north and south of the border and the title of the Commissioners.
- 4.2 In 1906, the Minister of Agriculture for England & Wales was appointed one of the Commissioners of the Department of Woods & Forests with the two permanent officials. In 1943, the Secretary of State for Scotland was made a Commissioner, replacing one of the official's posts which had been vacant since 1912.
- 4.3 The title of the Commissioners had been changed in 1924 to the Commissioners of Crown Lands under an Order in Parliament, following the formation of the Forestry Commissioners in 1919 and the Forestry (Transfer of Woods) Act 1923.
- 4.4 The 1923 Act resulted in the transfer of over 120,000 acres from the Commissioners of Crown Lands to the Forestry Commissioners. One site was involved in Scotland, 12,300 acres of woodlands at Inverliever in Argyll in 1924/6.
- 4.5 Two other legislative changes during the first half of the 20th century were the vesting of the management of the Crown's ownership of the seabed out to the 3 nautical mile limit in the Commissioners and then, in 1949, the transfer of responsibility for the foreshore to them from the Ministry of Transport.
- 4.6 The Commissioners of Woods & Forests and then of Crown Lands, also expanded their policy of buying rural estates into Scotland in the 20th century, starting with the purchase of the Scotsclader Estate in Caithness in 1909 which added over 13,500 acres to the c.8,000 acres still held there from the end of the episcopacy in 1689.
- 4.7 Their further purchases in Scotland during the first half of the 20th century were:-
 - Fintry (3,327 acres) in Stirlingshire in 1930, where the Commissioners already held the King's Park;
 - Glenlivet (56,148 acres) in Banffshire in 1937, when it was sold to pay death duties of the Duke of Richmond and Gordon;
 - Fochabers (20,508 acres) in Morayshire in 1937, as with Glenlivet;
 - Myreside (421 acres) in Perthshire in 1945.
 - Orlig (2,777 acres) in Caithness in 1946, where the Commissioners held land.
- 4.8 By the end of the 1940s, the Commissioners were managing a total of 106,100 acres in Scotland, including 73,700 acres of agricultural land, 26,000 acres of unenclosed 'wastes, commonities and moorland' and 4,000 acres of woodland.
- 4.9 The Commissioners spent a total of £731,000 in Scotland over the 20 years 1933-52. This was made up of £556,000 on purchases and £175,000 on improvements. While the agricultural land was managed at a significant loss with a rental income of around £27,000, the Commissioners total income over the same 20 year period from all Scottish sources had been £741,000

5. The Second Half of the 20th Century

- 5.1 By the 1950s, the Crown Lands of England, Wales and Scotland had a combined estimated capital value of at least £50m, an annual turn-over of around £2.5m and net revenue of £1m.
- 5.2 During the ten years 1945-54, the gross UK revenue per year increased from £1.9m to £2.7m and net revenue from £0.9m to £1.1m. Each year, two-thirds of the revenue was from London properties, with Scotland accounting for less than 5% of revenue at an average of c.£63,700 per year. Feu duties contributed around £12,000.
- 5.3 While the Secretary of State for Scotland was one of the three Commissioners with the Minister for Agriculture in England & Wales, the department of Crown Lands was entirely run by the permanent civil servant Commissioner in London.
- 5.4 The Commissioners had considered the devolution of more delegated authority to Scotland over the management of the Crown Lands in Scotland for over twenty years by the 1950s, but it was judged that this would be un-economic for the limited scale of the revenues.
- 5.5 While there was a member of staff in Edinburgh with clerical support acting as Crown Receiver collecting feu duties, teinds and other hereditary revenues, the Crown Lands were all managed by local factors or agents reporting to London.
- 5.6 The Commissioners of Crown Lands were also unusual in that they retained a private firm of Edinburgh solicitors as legal agent rather than use the Solicitor to the Secretary of State for Scotland and in that, unlike analogous public bodies, they had no advisory group of any kind in Scotland.
- 5.7 The management of the Crown Lands in the UK was reviewed by a Parliamentary Committee in 1954-55 and its recommendations implemented through the Crown Estate Act 1956 as an interim measure. It was followed by the Crown Estate Act 1961, which remains the statute in force at the present time.
- 5.8 The legislation replaced the three Commissioners of Crown Lands with an appointed Board of up to eight Crown Estate Commissioners, gave the Chancellor of the Exchequer and the Secretary of State for Scotland powers of direction over the Commissioners and renamed the land and other properties, rights and interests managed by them as “the Crown Estate”.
- 5.9 The legislation established that the function of the Crown Estate Commission is “to manage and turn to account” the Crown Estate and that the Commissioners have a general duty “to maintain and enhance its value and the return obtained from it, but with due regard to the requirements of good management”.
- 5.10 The new Commissioners bought two agricultural properties in Scotland in the 1960s as investments to which they subsequently added more land: Applegirth, Dumfriesshire (now 7018 ha.) and Whitehill, Midlothian (now 1419 ha).
- 5.11 In the 1970s, they also started to invest in commercial urban property in Scotland for the first time, buying properties in Edinburgh, while the new practice they had introduced to

Scotland of charging for moorings was successfully defended in 1979 in a case taken to the House of Lords.

- 5.12 From 1975, the Commissioners developed their Scottish office in Charlotte Square, Edinburgh, with the staff member appointed as Crown Receiver also acting as the Head of the Scottish Estate. A private firm of Edinburgh solicitors was still retained for legal work and much of the rest of the Estate continued to be managed by agents, usually property management companies.
- 5.13 In the 1980s and 1990s, the Commissioners made limited rural purchases, all of which were adjoining their existing properties. They did, however, continue to invest in urban properties with major acquisitions in Glasgow in 1986 and 1988 and in Princes and George Streets, Edinburgh in 1995.
- 5.14 Income also increased due to the growth of fish farming and other marine interests in the 1980s and 1990s, while the Commissioners disposed of assets which were judged not to be sufficiently economic, including many of the Crown's coastal salmon fishing rights.
- 5.15 By 1996, after 35 years of the new Commission, gross annual revenue from the Scottish Estate was £9.7m, of which urban property generated £3.2m or a third and agriculture/forestry, fish farming and marine/minerals each produced c.£2.2m.
- 5.16 While this overall pattern continued in the second half of the 1990s, a number of urban properties were sold before the Commissioners paid £60m in 1999/2000 to purchase and forward fund the development of the Princes Exchange on a 0.76 ha site at Tollcross in Edinburgh.
- 5.17 By 1999-2000, gross annual revenue on the Scottish Estate was up to £11.8, with the biggest increases in income since 1996 coming from urban property (+£0.8m) followed by fish farming (+£0.7m) and marine/mineral interests (+£0.5m), with agriculture and forestry remaining fairly level.
- 5.18 The Scottish Estate continued to be small compared to that in England, accounting for 4% of the overall Crown Estate capital value and 6% of gross revenue or turn-over.
- 5.19 The increased focus on urban property reflected the adoption by the Commissioners in the 1990s of a commitment to be one of the leaders in the commercial property investment sector.
- 5.20 There is no legislative requirement to have a Commissioner from Scotland, but this tradition has been maintained by the CEC and it happens that the Chairman of the Commissioners has been a Scot for the last forty years: Lord Perth, Lord Thompson, the Earl of Crawford & Balcarres, the Earl of Mansfield, then Sir Denys Henderson and now the current Chairman, Ian Grant.

6. Post Devolution

- 6.1 The Scotland Act 1998 established the Scottish Parliament and made other changes in the governance of Scotland.
- 6.2 The 1998 Act (Schedule 5) devolved the power to legislate over the nature of the ownership of the lands and other property rights and interests which make up the Crown Estate in Scotland to the Scottish Parliament together with the right to regulate the use of the Estate.
- 6.3 Schedule 5 of the Act also reserved to the UK Parliament, both the administration of the Crown Estate (i.e. the CEC as a corporate public body) and the revenues derived from it, with the CEC continuing to pay surplus revenue direct to the Treasury.
- 6.4 In 2002, the CEC reviewed its operations in Scotland and as a result, discontinued the post of Head of the Scottish Estate, amalgamated its operations by sector with those in the rest of the UK and ceased reporting separate accounts for the Scottish Estate in its Annual Reports.
- 6.5 The CEC also contracted more of its work in Scotland out to private sector management companies, sold its Charlotte Square Headquarters and moved its office to smaller rented premises in Edinburgh with staff levels reduced from 29 to 17.
- 6.6 The CEC produced a Scottish supplement to its 2004-05 Annual Report in response to a request from the Scottish Executive to provide some financial figures for the Crown Estate in Scotland.
- 6.7 The 2004-05 figures showed that gross revenue from Scottish sources was £14m and net revenue £11.8m, with urban properties accounting for 40% of the gross revenue with marine/mineral 20%, fish farming 19% and agriculture/forestry 17%.
- 6.8 While the three urban properties still managed by the CEC in Scotland made up over 50% of the capital value of the Estate in Scotland, the value of the Scottish Estate was down to 3.6% of the UK Estate. Gross revenue in Scotland was 6.4% of the UK total.

Annex 2

CROWN ESTATE COMMISSIONERS 1956 - 2006

Introduction

1. This paper lists the Crown Estate Commissioners (CEC) who have been appointed during the fifty years since the CEC was established by the Crown Estate Act 1956. The paper examines the representation of Scottish interests as part of those appointments and highlights issues about the future of this representation.

Background

2. Up to eight Crown Estate Commissioners could be appointed under the Crown Estate Act 1956 and this remains the case under the replacement legislation, the Crown Estate Act 1961. One is appointed as the First Crown Estate Commissioner to be Chairman. Another is appointed as the Second Commissioner to be the Deputy Chairman and chief executive officer of the Commissioners.
3. The Table below lists the Commissioners appointed between 1956 and 2006. There have been 37 appointments, excluding the Second Commissioners over the last 50 years. The seven Second Commissioners are shown separately as they have always been senior civil servants who have moved from elsewhere in government to manage the CEC. The current Chief Executive, Roger Bright, who was appointed in 2002, has had senior positions in the CEC since 1999.
4. The list of the other 37 Commissioners has similarities with other such lists for the period, with trends to fewer appointees with titles and to shorter periods in office¹. The appointment system is now “compliant” with the Nolan procedures as described in recent CEC annual reports². It is noted in those reports that the CEC considers there to be a small pool of potentially suitable candidates.

Chairmen

5. The list shows that there have been six Chairmen of the CEC over the last 50 years. The first Chairman in 1956, Sir Malcolm Trustam Eve (later Lord Silsoe), had been the Chairman of the House of Commons Committee on Crown Lands. It was that Committee’s report in 1955 which led to the replacement of the Commissioners of Crown Lands by the CEC in the Crown Estate Act 1956, followed by the Crown Estate Act 1961.
6. Each of the Chairmen of the Commissioners since the first retired in 1962, has been Scottish:- the Earl of Perth, Lord Thomson of Montifieth, the Earl of Crawford & Balcarres, the Earl of Mansfield, Sir Denys Henderson and the present Chairman, Ian Grant.
7. There has therefore been a Scottish Chairman for the last 44 years of the CEC’s 50 year history. There has been no link between the Chairman and the ‘Scottish Commissioner’ representing Scottish interests in the CEC, until the appointment of Ian Grant as Chairman in 2002.

¹ For example, Commissioners appointed to the Red Deer Commission from 1959 (table and analysis in Callander & MacKenzie “The Management of Wild Red Deer in Scotland” Rural Forum 1991)

² e.g. 2004, 2005

Table 4 Crown Estate Commissioners appointed 1956-2005
(Source: *The Crown Estate Annual Reports*)

	<i>period</i>	<i>& no. of years*</i>	
Sir Malcolm Trustam Eve	1956 – 62	6	<u>Chairman</u>
Michael Berry	1956 – 66	10	
Earl of Bradford	1956 – 68	12	
D.Cameron of Lochiel	1956 – 70	14	<i>Scottish Commissioner</i>
William Farnsworth	1956 – 64	8	
Sir Edward Gillett	1956 – 66	10	
Lord Williams	1956 – 66	10	
Earl of Perth	1962 – 77	15	<u>Chairman</u>
E.Parsons	1964 – 70	6	
E.Strathon	1966 – 69	3	
G.Denniss	1966 – 72	6	
Lord Allen	1966 – 84	18	
Lord Walston	1968 – 76	8	
Sir Oliver Chesterton	1969 – 83	13	
Capt.Sir Iain Tennant	1970 – 90	20	<i>Scottish Commissioner</i>
Lord Raglan	1970 – 74	4	
Richard Caws	1972 – 97	25	
George Lillingston	1974 – 94	20	
Oscar Colburn	1976 – 91	15	
Lord Thomson	1977 – 81	4	<u>Chairman</u>
Earl of Crawford & Balcarres	1981 – 86	5	<u>Chairman</u>
Phillip Sober	1983 – 95	12	
Sir John James	1984 – 00	16	
Earl of Mansfield	1985 – 95	10	
Angus Macdonald	1990 – 96	6	<i>Scottish Commissioner</i>
John Norris	1991 – 00	9	
Lord de Ramsay	1994 – 02	8	
Sir Denys Henderson	1995 – 02	7	<u>Chairman</u>
Ian Grant	1996 -		<i>Scottish Commissioner, <u>Chairman</u> from 2002</i>
Honor Chapman	1997 – 2004	7	
Sir Donald Curry	2000 –		
Ronald Spinney	2000 – 2006	7	
Hugh Duberly	2002 –		
Martin Moore	2002 –		
Dinah Nichols	2003 –		
Jennefer Greenwood	2004 –		
Chris Bartram	2006 –		

Second Commissioners

Ronald Harris	1956 - 60	4
Jack Sutherland Harris	1960 - 68	8
W. Wood	1968 – 78	10
J.M Moore	1978 – 84	6
Dr Keith Dexter	1984 – 90	6
Christopher Howe	1990 – 2002	12
Roger Bright	2002 -	

(* the years recorded are those of the annual report in which an appointment / retirement is reported)

The Scottish Commissioner

(i) The Tradition

8. The three Commissioners of Crown Lands who were replaced by the CEC, had consisted of two government Ministers and a permanent civil servant, who acted as the Chief Executive. Their legislation required one of the Ministers to be the Secretary of State for Scotland.
9. That background is reflected in the Chancellor of the Exchequer and Secretary of State for Scotland holding a power of direction over the CEC under the Crown Estate Act 1961 (S.1(4))
10. There is no requirement in the 1961 Act that the CEC has to include any Scottish representation amongst its Commissioners (nor indeed, Scottish properties in the Estate). However, since it started in 1956, the CEC has always had a "Scottish Commissioner" - a Commissioner from Scotland who is asked by the CEC to take a special interest in the CEC's Scottish affairs.
11. The first two Scottish Commissioners, Cameron of Lochiel and Captain Sir Iain Tennant, held this position for 34 years. There was then Sir Angus MacDonald from 1990-96 before the current Scottish Commissioner, Ian Grant, was appointed in 1996.

(ii) The Role

12. There have always been several aspects to the Scottish Commissioner's role. They can contribute their knowledge of Scotland and Scottish affairs to the CEC's deliberations. They can provide a figure-head in Scotland representing the CEC at a wide range of events, from ribbon cutting to discussions with Scottish government Ministers.
13. In the 26 years from 1956 to 1982, the Scottish Commissioner also participated in a CEC Scottish Sub-Committee with some other Commissioners. It was one of a number of specialist sub-committees reflecting the main interests of the CEC.
14. The Scottish Sub-Committee was discontinued sooner than some others. This reflected the build up of the CEC's management presence in Scotland. In 1977, staff had moved into their new Scottish HQ in Charlotte Square and in June that year, the CEC held their first ever Board meeting in Scotland.
15. In the last ten years, the role appears to have become more important in a number of respects. There is the new context of the Scottish Parliament and Executive to engage with. At the same time, the CEC has reduced its other senior management representation in Scotland by discontinuing the post of Head of the Scottish Estate.
16. These factors would seem to suggest increased responsibilities for the Scottish Commissioner. There appears no written guidance, however, that might have been given to the current Scottish Commissioner on that role¹. It is not clear, for example, to what extent there is any delegated authority on some Scottish matters of policy or business.
17. Ian Grant now combines the role of Scottish Commissioner with the authority (and time commitments) of being the CEC Chairman.

¹ None was supplied in response to a request to the CEC from the CERWG

(iii) The Future

18. There have long been questions about the accountability of the CEC and its predecessor bodies in Scotland. In the 1950s, for example, the Royal Commission on Scottish Affairs questioned representatives of the Commissioners of Crown Lands over the merits of having an advisory committee in Scotland¹.
19. However, the idea was rejected then and the CEC has never gone beyond having a Scottish Commissioner. It is also not clear whether it is CEC policy, as opposed to just tradition, to have a Scottish Commissioner². There is no requirement in the Crown Estate Act 1961 Act for the CEC to have Scottish representation and now that the CEC no longer treats Scotland as a distinct unit, the CEC might decide to discontinue the informal position of Scottish Commissioner.
20. The current Commissioner who acts as the Scottish Commissioner is Ian Grant. He was first appointed in 1996 and continued as a Commissioner until 2002. He was then appointed as Chairman of the CEC until September 2006, when he was re-appointed as Chairman for a further three years.
21. While the CEC did not issue a press release about Ian Grant's re-appointment as Chairman, it was reported in the official gazette in Warrants under the Royal Sign Manual:-

THE QUEEN HAS BEEN PLEASED BY ROYAL WARRANT BEARING THE DATE 11 SEPTEMBER 2006 TO REAPPOINT IAN GRANT CBE AS FIRST CROWN ESTATE COMMISSIONER AND CHAIRMAN OF THE CROWN ESTATE COMMISSION UNDER THE CROWN ESTATE ACT 1961 FOR A FURTHER PERIOD COMMENCING ON AND FROM 1 OCTOBER 2006 UNTIL AND CONCLUDING ON 31 DECEMBER 2009.
22. By the end of his current appointment, Ian Grant will have been a Commissioner for thirteen years. The maximum period allowed for individuals to be a Commissioner is ten years³. However, the appointment as Chairman of the Commissioners is considered a different appointment from that as an ordinary Commissioner. Therefore, for Ian Grant, the first existing Commissioner to be appointed Chairman, the year totals count separately.

¹ 1953 report

² no clear response was given by the CEC to CERWG questions about this.

³ CEC Annual Report 2005

Annex 3

THE CIVIL LIST, ROYAL ESTATES AND OTHER ASSOCIATIONS

Introduction

1. The purpose of this paper is to describe the following topics as part of the background to the Crown Estate in Scotland:-
 - (a) the relationship between the property that makes up the Crown Estate and the Civil List.
 - (b) the differences between the Crown Estate and the two types of Royal Estates that exist.
 - (c) the nature of the links between the Crown Estate and Royalty in different parts of the UK

(a) The Civil List

2. The 'Civil List' is the sum provided by Parliament to meet the official expenses of the Queen's Household, so that the Queen can fulfill her role as Head of State and Head of the Commonwealth. The amount of the Civil List is fixed at £7.9 million a year until the end of 2010¹.
3. The first Civil List legislation was in the English Parliament during the 17th century². The current system dates from the 1760 Civil List Act. At that time, an agreement was reached that the Crown lands and hereditary revenues in England and Wales would be managed by the government with the surplus revenue going to the Treasury. In return, the King would receive a fixed annual payment – known today as the Civil List³ - to perform his remaining official duties as the monarch.
4. Those 18th century Crown lands and revenues in England and Wales were the lands that came under the management of the Commissioners of Woods and Forests in 1810, and which, with the incorporation of the Crown lands and revenues of Scotland from 1832, are the origins of the current Crown Estate.
5. The original 1760 Civil List agreement was only for the duration of George the Third's reign and at the beginning of every reign since, the new Monarch has repeated the agreement and a new Civil List Act has been passed just for the duration of the reign and six months after the Monarch's death.
6. A new Civil List agreement at the start of each reign is a part of the UK's constitution and there is a six month period for the Monarch to surrender the Crown lands and revenues. However, this is a constitutional convention. While there is the notion of an exchange, there is not a constitutional option for a new monarch to decide not to surrender the lands and revenues⁴.

¹ <http://www.royal.gov.uk>

² See Annex 1 for more background. The lands of the Crown passed to each monarch in succession and the revenues from these lands were used by the kings and queens to govern. The emergence of the civil list represented the assertion of the role of parliament rather than the monarch in governing the country and thus the entitlement of parliament to the revenues of the Crown lands.

³ <http://www.thecrownestate.co.uk>

⁴ as acknowledged in "The Crown Estate: An Historical Essay" R.B.Pugh (HMSO 1961)

(b) Royal Estates

7. There are two different types of Royal Estates:-
 - i. The lands and property held by the Queen and Prince Charles as monarch and heir to the throne - the Duchies of Lancaster and Cornwall respectively.
 - ii. The lands and property owned by the Queen and Prince Charles in their private capacities – private estates including Sandringham and Balmoral.

(i) The Duchies

8. Duchy of Lancaster and Duchy of Cornwall both date from the 14th century. The former was created to provide each Monarch of England with an income and the later to provide an income for the heir apparent to the English throne.
9. The revenues from the Duchy estates were not surrendered as part of the Civil List ‘exchange’ and the Duchies provide an income to the Queen and Prince Charles. The Duchies are each major estates in land. The net annual revenue surplus from each of the Duchies is of a similar scale to that from the Crown Estate in Scotland and both Duchies have higher attributed capital values than it.

	<u>Duchy of Cornwall</u>	<u>Duchy of Lancaster</u>	<u>Crown Estate in Scotland</u>
<i>Area of Land</i>	56,229 ha	18,916 ha	37206ha
<i>Net Revenue Surplus</i>	£ 11.9 m	£ 8.3 m	£ 10.0 m
<i>Capital Value</i>	£463.1 m	£267.8 m	£177.1 m

(figures for 2003-04 from 19th Report of the House of Commons Public Accounts Committee 2005 and Crown Estate Commission Annual Report 2004)

(ii) Private Estates

10. The Civil List Act 1760 created a situation where the Monarch could not own land or buildings without them coming under the terms of the settlement. An Act of 1800 for England and Wales resolved the problem by enabling the Monarch to acquire and own property there as a private citizen.
11. The issue did not arise in Scotland and Scots law until later, when Balmoral had to be bought in Prince Albert’s name to avoid the problem. It was also considered necessary to have the Balmoral Estates Act in 1852 to confirm the legality of the purchase. Another Act was then passed in 1862 to enable Victoria to inherit Balmoral following Albert’s death.
12. The Scotland Act 1998 reserves the Crown Private Estates Acts 1800-1873 to the UK Parliament¹.

(c) Royal Associations

13. There are a number of reasons why there are greater links between the Crown Estate Commissioners (CEC) and Royalty in connection with the Crown Estate in England than in other parts of the UK. Prominent amongst these are that the Windsor Estate forms part of

¹ Schedule 5 Section 4 (2)

the Crown Estate and the Queen takes an interest in the Estate through her use of Windsor Castle.

14. Windsor Estate also includes some grace and favour housing for members of the Royal Household and is the only part of the UK wide Crown Estate which the CEC can not sell (although areas required for public purposes can be sold under specific conditions)¹.
15. In England, there are the strong historical associations between the Royalty and Crown Estate property in central London and elsewhere. There is also the continued existence of the Duchies of Lancaster and Cornwall as Royal Estates which, like the Crown Estate, have valuable urban investments, extensive rural lands and marine interests (for example, with the Duchy of Cornwall, foreshore and seabed rights in parts of south west of England).
16. While the CEC and Duchies are entirely separate and different organisations, individual Commissioners have on occasion also been on the management boards for the Duchies or had other appointments with close royal associations when Commissioners².
17. In Scotland, the Queen's official residence, Holyrood Palace, was taken out of the 'Crown Estate' in 1851 and there are no equivalents in Scotland to the Duchies. New prominence has been given in Scotland since devolution to Prince Charles's title as the Duke of Rothesay, as the heir to the throne's hereditary title in Scotland. However, there are no lands with the title.
18. The title was created in the 14th century for the heir to the Scottish Crown. The Duke of Cornwall was created in the same century for the heir to the English Crown. Since the Union of Crowns in 1603, the titles have descended alongside each other. The Duke of Cornwall as heir to the English Crown is banned by law from acquiring land in Scotland, as the Duchy of Cornwall (re-)discovered in 2000³.
19. One correlation between the CEC and Royalty in Scotland is the Order of the Thistle. This is Scotland's highest honour and entirely in the personal gift of the Queen⁴. The Order has up to 16 knights at any time. Four of the 16 were former Crown Estate Commissioners until Sir Donald Cameron of Lochiel's death in 2004. The other three still are Lord Thomson of Monifieth, Captain Sir Iain Tennant⁵ and the Earl of Balcarres and Crawford.

¹ Crown Estate Act 1961 Section 5

² e.g. in 1993, Commissioners John James and Christopher Howe were members of the Councils of the Duchies of Cornwall and Lancaster respectively, as well as both members of the Prince of Wales's Council (CEC Annual Report 1993)

³ When the Duchy was forced to sell the Southesk Estate near Montrose - Scotland on Sunday 12th March 2000,.

⁴ for more information on the Order see <http://www.royal.gov.uk>

⁵ Captain Sir Iain Tennant died in September 2006

Annex 4

SCOTLAND'S CROWN OFFICE

Introduction

1. The purpose of this paper is to explain the connection between:
 - the property rights of the Crown in Scotland that make up the Crown Estate in Scotland; &
 - the Crown Office as a department of the Scottish Executive.
2. The significance of the connection is that the Crown Office is devolved, already manages property rights of the Crown in Scotland and was the former home of the Crown's property rights as now managed by the Crown Estate Commissioners (CEC).

The Crown Office

3. The Crown Office is the Lord Advocate's Department in the Scottish Executive. The Lord Advocate has both ministerial and judicial functions and is a member of the Scottish Cabinet¹.
4. The Lord Advocate has been one of the great officers of state of Scotland for over 500 years. One of the post's responsibilities is maintaining and protecting Scotland's regalia².
5. The Lord Advocate represents the Crown in Scotland's court and legal systems and in other capacities which are reflected in the functions of the Crown Office, including the administration of certain property rights held by the Crown in Scotland.
6. In the 1830s, when the administration of the Crown's lands and land revenues was transferred south to the predecessors of the CEC, the Commissioners of Woods and Forests, the transfer was from the Lord Advocate's jurisdiction (the Baron Court of the Exchequer).
7. The Lord Advocate continued, however, to be responsible for part of the *regalia* or the ancient Crown property rights, the Crown's rights to "ownerless property". These consist of three broad categories: treasure trove, *ultimus haeres* (no heir) and *bona vacantia* (no owner).
8. In Scotland's Crown Office, "ownerless property" is still administered by the Queen and Lord Treasurer's Remembrancer (QLTR). This post was part of the former Baron Court of the Exchequer and is a continuation of the administration of Scotland's "royal revenues" in Scotland before most of this role was transferred to London in 1832.³

¹ and being a lawyer, the next best paid after the First Minister

² <http://www.crownoffice.gov.uk>

³ The post of QLTR was created in 1837 by the amalgamation of two posts (King's/Queen's Remembrancer and the Lord Treasurer's Remembrancer) which had been created in 1707 when the Baron Court of the Exchequer was re-constituted as part of the Treaty of Union that year.

9. The post of QLTR is devolved¹ and the funds raised from the Crown's right to ownerless property contribute to the Scottish Consolidated Fund:-
*"The realised value of such assets is paid by the QLTR into the Scottish Consolidated Fund for the use of the Scottish Executive on behalf of the people of Scotland"*²
10. The QLTR has made three payments totalling £11 million to the Fund in the period from devolution to June 2005³.
11. During the same six year period, the management of the property rights of the Crown in Scotland which form the Crown Estate in Scotland contributed net surplus revenue of c.£65 million to the UK Treasury's Consolidated Fund⁴.
12. When the CEC became involved in the questions raised over the ownership of the Cuillins on Skye in 1999/2000, the CEC recognised that if no-one had a title to the land, the land would pass to the QLTR and not into the Crown Estate⁵.

Place in Scotland's Government

13. If the legislation in the 1830s which transferred the administration of Scotland's other Crown lands and revenues to the CEC's predecessors was repealed (and no other provisions were made), responsibility for these Crown interests would return to the Crown Office in Scotland under the Lord Advocate.
14. The administration of "Scotland's Crown Estate" by the Crown Office under the Lord Advocate and contributing to the Scottish Consolidate Fund for the benefit of the people of Scotland, would be in the correct place constitutionally.
15. The location of responsibility for this national estate in the Lord Advocate's department, with its own constitutional standing compared to the Scottish Executive's other departments, would also reflect the longstanding distinction between Crown lands and government property as different forms of public land⁶.
16. This outcome to devolving some or all of the CEC's responsibilities in Scotland would thus be different from the position with the Forestry Commission, which has always managed government owned land (Secretary of State for Scotland / Scottish Ministers) and now reports in Scotland through Forestry Commission Scotland to the Scottish Parliament and acts as a department of the Scottish Executive.
17. The devolution of the CEC's responsibilities to Scotland's Crown Office would still leave considerable flexibility about how the different property rights were managed in practice to integrate them with the roles of the Scottish Executive's other departments and agencies.
18. The proposals in this report suggest that, in any event, many of the properties, rights and interests which currently make up the Crown Estate in Scotland, should no longer be held directly in right of the Crown⁷.

¹ The devolution of this post was noted as part of the discussion about the Crown Estate and Crown Estate Commissioners in the debates in Parliament about the Scotland Bill (Hansard, 19th May 1998 Cols 806 *et seq.*)

² QLTR's office December 2006

³ Figures from QLTR's office, 20th December 2005

⁴ thus, ownerless property generates an amount of net income which has been on average just under 20% of the average annual amount from the other property rights managed by the CEC.

⁵ CEC / CERWG meeting 20th May 2006

⁶ See section 4 of main report

⁷ see section 19 of main report

19. Under these proposals, the only Crown property rights and interests which would continue to be directly held in right of the Crown in Scotland would be the ownership of Scotland's seabed and continental shelf rights. These marine rights are the genuine "common good lands" of Scotland.
20. The Lord Advocate's responsibility could be to safeguard that national common interest, including contributions to the Scottish Consolidated Fund, while the practical management of the interests could be integrated with the Scottish Executive's other marine interests through Scottish Executive's Environment and Rural Affairs Department (for example, through a new Scottish Marine Agency)¹.

¹ see section 16 of main report

Annex 5

TWO RELATED COMMISSIONS

Forestry Commission (FC) and Crown Estate Commission (CEC)

Introduction

1. The purpose of the paper is to supplement the main report on the Crown Estate in Scotland by describing:-
 - connections which have existed between the FC and the CEC and the CEC's predecessors, the Commissioners of Woods and Forests (until 1924) and Commissioners of Crown Lands (until 1956).
 - similarities between the circumstances of the FC and CEC as public bodies at the time of devolution and differences in their responses to devolution.

The Creation of the FC

2. There were very strong connections between the FC and the CEC's predecessor at the time when the FC was set up.
3. The FC was established in 1919 as a result of the work of the Ackland Committee (1916-18). The Secretary of the Committee, Roy Robinson, was from the Office of the Commissioners of Woods and Forests. He was then appointed as one of the first Forestry Commissioners in 1919. He was subsequently Chairman of the Forestry Commissioners from 1932-52¹.
4. The FC was created to take over responsibility for Britain's forestry interests from the Commissioners of Woods and Forests.
5. The Forestry (Transfer of Woods) Act 1923 was passed to enable woodlands to be conveyed from the Commissioners of Woods and Forests to the FC. In total, over 120,000 acres were transferred, ranging from the Commissioners 'model' forestry in the Forest of Dean to their first experiments at upland afforestation in Scotland.
6. In 1924, as a result of the existence of the FC, the Commissioners of Woods and Forests were re-named by Order in Parliament as the Commissioners of Crown Lands.

Inverliever Forest

7. Inverliever Forest appears to be the only site in Scotland which was transferred to the FC by the Commissioners under the 1923 Act.
8. The Commissioners of Woods and Forests had purchased the Poltalloch Estate on Lochaweside in Argyll in 1909, to experiment with upland planting with conifers. The land

¹ The Forestry Commission: The First 75 Years D.Pringle (FC, 1994)

was transferred to the FC in 1926 as the 12,300 acre Inverliever Forest for the notional (i.e. not paid) consideration of £29,000 under the terms of the 1923 Act¹

9. The FC followed up its acquisition of Inverliever by purchasing additional land in the area during the 1930s and again post-war and these areas are still part of the extensive forest estate managed on Lochaweside by Forestry Commission Scotland.
10. It appears that the original Inverliever Forest within that estate is still subject to a contingent liability under the terms of the 1923 Act, as now covered by Section 43 of the Forestry Act 1967 (as amended). This implies that if Scottish Ministers sold the land, they would be liable to pay an amount based on the notional consideration to the CEC².

Division of Functions

11. The FC was created as a Commission to take over part of the role of an existing Commission and like the Commissioners of Woods and Forest, set up as a distinct department of government.
12. The role of each of these Commissions was to manage a major national estate with the FC's responsibility being to develop a national forest estate.
13. This clear division of functions lasted for over 60 years until the 1980s, with the Commissioners of Crown Lands continuing to hand forestry lands over to the FC until then. Thus, in Scotland, in the years after the Commissioners acquired Glenlivet and Fochabers in 1937, 22,000 acres of these estates went to the FC as forestry land³. Another example was the c.500 acre Slewdrum Forest in Aberdeenshire in 1953⁴.
14. While Slewdrum was conveyed to the Secretary of State for Scotland at no cost for use by the FC, the lands at Glenlivet and Fochabers was sold rather than transferred under the terms of the 1923 Act. Scope for transfers under the 1923 Act ended with the passing of the Crown Estate Act 1961 (section 8), at which time the CEC was still feuing land at Glenlivet to the FC⁵.

Creation of the CEC

15. While the nature of the FC when it was set up was influenced by the Commissioners of Woods and Forests, so the FC had a bearing on the nature of the CEC when the CEC was constituted in 1956 to succeed the Commissioners of Crown Lands.
16. The Commissioners of Crown Lands consisted of two government ministers (one being the Secretary of State for Scotland) and a permanent official. When a House of Commons committee was set up to review the management of Crown lands, the point of greatest unanimity was the need for the Commissioners to be replaced by a Board of Management and the first example of the benefits of this approach which was cited by the Committee of this in its report was the FC⁶.

¹ Royal Commission on Scottish Affairs (1953)

² Clarification of this has been sought unsuccessfully from both FCS and the CEC.

³ CEC Annual Report 1979

⁴ see Birse Community Trust application to buy Slewdrum under the National Forest Land Scheme, March 2006 (FCS website).

⁵ for example, 1,771 acres at Glenlivet in 1960 (CEC Annual Report 1960).

⁶ Report of the Committee on Crown Lands (Cmnd.9483)(HMSO 1955)

Glenlivet

17. The FC's Cairngorms Estate (Glenmore and the area sold to the Highlands and Islands Development Board in 1971) and the CEC's Glenlivet Estate both share the same historical background – the break-up of the Duke of Richmond and Gordon's vast estates (over ¼ million acres) in the Moray and Strathspey area at a time when there was government concern at the social impact of this during the depressed time of the 1920s and 1930s.
18. The Secretary of State for Scotland bought the Cairngorms Estate for use by the FC in 1927 and also, as the sole Commissioner of Crown Lands responsible for Scottish affairs, initiated the purchase of Glenlivet and Fochabers by the Commissioners in 1937.
19. The FC, in addition to the purchase of forest land at Glenlivet, contributed in other ways to the development of the Commissioners Glenlivet Estate including, for example, being part of the CEC's Working Party in 1972 to look at the future pattern of land use on Glenlivet.

Changes in 1980s

15. The division of functions between the CEC and FC ended in the 1980s, when the CEC decided that a UK estate with its extent of rural estates should have its own forestry component. In 1984/5, the CEC re-acquired over 10,000 acres of forestry within the Glenlivet Estate boundaries from the FC under the terms of the government's provisions at the time for the sale of FC land to previous owners¹.
16. Some small scale sales and purchase between the FC and CEC have continued over the years since around Glenlivet and Fochabers.
17. It might also be noted that the CEC had decided by the end of the 1970s to diversify its wider property portfolio by including industrial sites and recreational facilities. As its first UK initiative for the latter, the CEC entered an agreement with the FC in 1980 for the development of forest cabins at Lochaweside². The relationship between the FC and CEC over this site has apparently ended in recent years.

Devolution

18. In the lead up to the Scotland Act 1998, there were discussions between the Scottish Office (SO) and FC and the SO and CEC. The FC and CEC were in quite similar circumstances as public bodies, for example:
 - both were Commissions operating at a GB/UK level under 1960s legislation and both subject to a Power of Direction by the Secretary of State for Scotland over Scottish matters (section 1(4) in both 1961 and 1967 Acts respectively);
 - both were reserved Westminster bodies managing major public estates, with both estates owned separately in Scotland (Secretary of State for Scotland and the Crown in Scotland);
19. The outcomes of the discussions between the SO and FC and the SO and CEC were different at that time and developments since have also been very different.

¹ CEC Annual Report 1985

² CEC Annual Report 1980

20. Both have re-structured their operations in Scotland since 1999, but in apparently opposite directions:-
 - The FC re-structured its operations to create Forestry Commission Scotland, reporting to and funded through the Scottish Parliament, and acting as a department of the Scottish Executive to implement the Executive's Scottish Forestry Strategy.
 - The CEC re-structured its operations to discontinue their post of Head of the Scottish Estate and end the separate management of its operations in Scotland, integrating them sector by sector with the CEC's operations in the rest of the UK .

The FC Route

21. Statutory Orders in 1999 and 2000 as delegated legislation under the powers granted by the Scotland Act 1998, designated the FC as a Cross-Border Public Authority and transferred ministerial functions for forestry to Scotland¹.
22. During this period, the FC worked with the Scottish Executive to draw up the Executive's Scottish Forestry Strategy (published November 2000).
23. In 2002, the Forestry Devolution Review (FDR)² was carried out as a far reaching inter-departmental review of the arrangements for forestry post-devolution. The results of the FDR included the splitting of Forest Enterprise on a country basis and the further strengthening of national offices compared to FC HQ.
24. In 2003-04, Forestry Commission Scotland (FCS) carried out a review of Scotland's national forest estate for Scottish Ministers.
25. In August 2004, FCS and Scottish Executive also signed the Scottish Forestry Concordat setting out how the two bodies would work together over different matters with FCS effectively working as a department of the Scottish Executive.

Final Comments

21. The response by the FC might be viewed as one of the success stories of devolution and as setting a benchmark for public policy in Scotland³.
22. The FC has always been a UK/GB body⁴, so that this is now the first time that Scotland has managed its own national forest estate. By contrast, the Crown Lands of Scotland used to be managed in Scotland⁵ and yet have become less accountable in Scotland since devolution.
23. In 2006, following a review by the CEC of the 25,000 acres (10,000 hectares) of woodlands which it manages, the CEC has adopted a UK wide forestry strategy for the first time for what is now referred to as its Forestry Portfolio⁶.

¹ e.g. No.746 in 2000 in the lists at <http://www.oqps.gov.uk/scotlegislation/scotact1998.htm>

² [http://www.forestry.gov.uk/website/pdf.nsf/pdf/fdr~es~english~final.pdf/\\$FILE/fdr~es~english~final.pdf](http://www.forestry.gov.uk/website/pdf.nsf/pdf/fdr~es~english~final.pdf/$FILE/fdr~es~english~final.pdf)

³ It might be noted that the FC, like the CEC, has always used private sector lawyers in Scotland rather than those of the Scottish Office / Scottish Executive. FC's lawyers in Scotland are Tods Murray.

⁴ forestry in Northern Ireland was devolved to Northern Ireland in 1927.

⁵ pre-1832

⁶ There are also 10,000 acres (4,000 ha) leased to the FC. CEC Rural Bulletin Spring 2006.

Annex 6

SCOTLAND'S CASTLES, PALACES, ABBEYS & OTHER HISTORIC NATIONAL PROPERTIES

Introduction

1. This paper reports on a major transfer of property from the Crown Estate in Scotland to Scottish Ministers at the time of devolution. The paper examines two issues associated with the transfer:
 - the apparent lack of information available about the extent and purpose of the transfer;
 - the unusual nature of the reservations retained in favour of the Crown in the transfer;

Historic Transfer

2. The CERWG learnt during the course of its investigations that the Crown Estate Commission (CEC) had conveyed the ownership of Edinburgh and Stirling Castles and a number of Scotland's other castles, palaces, abbeys and other historic properties to the Secretary of State for Scotland at the time of devolution.
3. These properties were conveyed by the CEC on behalf of the Crown to the Secretary of State one by one during 1999¹. The ownership of the properties then passed from the Secretary of State to Scottish Ministers as a result of devolution and the terms of the Scotland Act 1998.
4. The CERWG was not aware of a publicly available list of all the properties involved in the transfer and enquiries to the CEC and Scottish Executive initially produced no results. A brief search of the Land Register and Register of Sasines showed that the properties involved in addition to Edinburgh and Stirling Castles, were in a number of different counties and also of considerable individual national significance (for example, Blackness Castle, Linlithgow Palace, Dunfermline Abbey).
5. The CEC has subsequently supplied a list of the properties involved (July 2006) and the full range of the twenty-six properties is shown in the attached table.
6. Holyrood Palace was not part of the 1999 transfer. It has been managed as government property since 1851 and its ownership and management became vested in Scottish Ministers under the Scotland Act 1998.
7. The CEC also supplied an explanation of the transfers registered in 1999:

"The purpose of the transfers that took place in or around 1998 was to remove any possible doubt surrounding the Secretary of State's title to ancient possession properties that had been administered by Historic Scotland for many years but in which The Crown Estate may have had a nominal historic interest." (13th March 2006)

¹ While some of the properties may have been conveyed in 1998, they were recorded in the Land Registers of Scotland during 1999.

8. It appears that the issue of Historic Scotland's responsibilities and those of the CEC had come into sharper focus earlier in the 1990s when Edinburgh and Stirling Castles ceased to be military garrisons and a body had to take over responsibility from the military authorities¹.
9. This reflects that the issue was not the ownership of the properties. They were ancient possessions of the Crown in Scotland and Scotland did not gain anything new from the 1999 transfers. The transfer was from property held by the Crown in Scotland to property held by the devolved government in Scotland. The significance was thus more about management than ownership.
10. The 1999 transfers may have been a "tidying up exercise", but the transfer to the new Scottish administration when the new Scottish Parliament was being established, also had a much wider national significance for Scotland. However, despite this, there was no mention of the transfer in the CEC's Annual Reports. Also, while the transfer was not secret, no other information appears to have been made public about it at the time.

Unusual Reservations

11. During the 1999 transfers, each conveyancing was entered in either the Land Register or Register of Sasines depending on its location. The transfer of Edinburgh Castle was unusual however, as the conveyancing (25th February 1999) was recorded in the Land Register for Midlothian two years before the Register became operational (1st April 2001). The Castle is thus registered as title number MID 1.
12. Since the transfers, the CEC has maintained on a number of occasions that:-
"The Crown Estate has no continuing property or other interest in Edinburgh Castle, Stirling Castle, Holyrood Palace or any other castles, palaces, abbeys cathedrals, gardens or parks (except where they are part of one of our five rural estates and within our direct and specific ownership)" (November 2005)²
13. However, the dispositions recorded in the Registers show that the CEC has reserved rights over the properties conveyed in 1999. The mineral rights are reserved by the CEC over all the properties and the most prominent properties at least, including Edinburgh and Stirling Castles, are also subject to a second very unusual reservation. The reservations are expressed in each title in the following terms:-
*under exception of and reserving to Her Majesty and her Successors
the whole mines, minerals and fossils insofar as belonging to Her and Them within or under
the subjects hereby disposed and
free right to exercise all rights to which She or They may be presently entitled and all
privileges which She or They may presently enjoy over the subjects hereby disposed;*
14. Mineral rights are a distinct property right in Scots law and the CEC therefore does, contrary to its statements, have a "continuing interest" in these properties. It is a profound anomaly that the CEC should retain the mineral rights over this iconic group of Scotland's national buildings.
15. The conveyancing is even more of an anomaly when it is not clear that the CEC was responsible for any property interest in all or most of the properties in the first place and therefore entitled to convey them. The conveyancing of these properties by the CEC reflects a judgement that they all formed part of the Crown Estate. The Crown Estate Act 1961

¹ Edinburgh and Stirling Castles briefly featured during the 1990s in CEC reports and public relations activities

² The CEC does not "own" any of the properties which it manages in Scotland on behalf of the Crown in Scotland

defines the Crown Estate as lands and other property rights and interests managed by the CEC, yet the CEC acknowledges that the properties “*had been administered by Historic Scotland for many years*” (para 7 above)¹.

16. Also, none of the properties are identified in the lists of properties making up the Crown Estate in Scotland produced by the CEC over the last 50 years, while there are specific references in the CEC’s Annual Reports to the fact that the CEC was not responsible for a number of the buildings subsequently conveyed in 1999².
17. The second reservation in the 1999 transfers after the mineral rights, is very curious and does not appear to be legally competent in Scots law. A reservation must be clearly specified and any right reserved must be of property or rights which are recognised in Scots law.
18. The fact that the same wording was used for a number of properties further undermines the notion that, for example, it was some rights that might form part of the regalia rights which were being reserved. Also, the lack of any part of the Crown Estate remaining as an adjoining property to most of the disposed properties, rules out the possibility that servitudes are being reserved. Before 2003, servitudes also had to be clearly specified from a restricted list of possibilities.
19. The CEC have recently acknowledged that these reservations exist (July 2006), but to date have given no indication whether it is the CEC’s intention to convey the mineral rights and second reservation to Scottish Ministers.
20. When the transfers of all these ancient possessions of Scotland were going through in 1999, the CEC was in the process of concluding a very major ‘landmark’ commercial property investment in Edinburgh. The CEC decided to name the development “The Prince’s Exchange”.

¹ It is also not clear how the “free gift” of these properties to the Secretary of State for Scotland fits with the requirement of the Crown Estate Act 1961 3(1) for the CEC to obtain “the best consideration in money or money’s worth which in their opinion can reasonably be obtained” or the limited circumstances to give away property under section 4 of the Act.

² for example, CEC Annual Report 1979

Table 5

**List of Twenty-Six Historic Properties in Scotland
conveyed by the Crown Estate Commissioners
on behalf of the Crown
to the Secretary of State for Scotland in 1998/9**

Edinburgh Castle

Stirling Castle

Blackness Castle

Dumbarton Castle

St. Andrews Castle

Broughty Castle

Fort Charlotte

Linlithgow Palace and Loch

Dunfermline Palace, Chapel and Grounds

Glasgow Cathedral

Elgin Cathedral and Burial Ground

Dunkeld Cathedral and Grounds

St Andrews Cathedral and Precincts

Dunblane Cathedral

Fortrose Cathedral and Precincts

St.Machars Cathedral, Aberdeen

Brechin Cathedral Round Tower

Arbroath Abbey and Precincts

Dundrennan Abbey

Beaulieu Priory

St.Mary's Kirk, St.Andrews

Blackfriars Chapel, St. Andrews

Brechin Maison Dieu Chapel

Holyrood Park

Kings Knott, Stirling

Argyll Lodging Stirling

Source: List supplied by CEC 6th July 2006

Annex 7

THE KING'S PARK, STIRLING

Introduction

1. The purpose of this paper is to describe that part of the Crown Estate in Scotland known as the King's Park, Stirling, which is one of the ancient possessions of the Crown of Scotland and an area of great historical significance.

Background

2. The King's Park is Scotland's earliest recorded Royal Park, dating from the 12th century or before and amongst its early history is reported to have been laid out by Alexander the Third, Kings of Scots, as a hunting ground in 1257.
3. The King's Park with Stirling Castle as a backdrop, is now Scotland's last former Royal Park still owned by the Crown. The Park still covers over 300 acres of open agricultural and recreational land on the west side of Stirling and with the Castle, is part of a landscape of major national importance.
4. The Crown Estate Commission (CEC) became responsible for the management of the King's Park from 1956. The extent of the ancient possession of Crown land at that time was 335 acres (136 ha). In 1972, the CEC bought the Old Mills Farm near the Park, re-sold the house and buildings and added the 115 acres of land to the King's Park Farm to make it more viable¹.
5. There were no further significant changes in ownership until 1999. The small part of the ancient possession known as the King's Knot and managed by Historic Scotland, was conveyed by the CEC on behalf of the Crown to the Secretary of State for Scotland in 1999 and thus to Scottish Ministers as part of the wider transfers at that time².
6. The current size of the Crown Estate holding of King's Park is 453 acres (183 ha). This consists of four main components³:
 - 233 acres (94 hectares) classed as agricultural land and subject to two small grazing tenancies. This land is divided between land within the historic Park area on either side of the main road west out of Stirling (A811) and a separate area of land at Kildean from the Old Mills purchase.
 - Nearly 150 acres (61 hectares) leased to Stirling Golf Club as the King's Park Golf Course and including additional parts of the historic Park that do not form part of the actual course.
 - Approximately 70 acres (28 hectares) leased to Stirling Council. This consists of the 23 acres (9 ha) King's Park public park beside the Golf Course and the Gowane Hills land adjoining Stirling Castle and including the South Brae under the Castle.

¹ CEC Annual Report 1975

² see Annex 6

³ Information from CEC (November 2005)

- Three residential tenancies in the Homesteads area within the historic Park. The CEC recently disposed of the prominently located King's Farm house and buildings in the centre of the Park in a private sale.
- 7. The Gowane Hills area was not originally Crown land, but was acquired as the result of an exchange in the early 15th century with the town for land formerly within the Park. This change allowed the Crown to control the lines of sight from the Castle to the bridge over the Forth.¹ The former Park land acquired by the town at that time to the east of the current Golf Course, was developed in the 19th century.
- 8. The public park and golf course both date from Victorian times, when the new railway made it possible for businessmen to commute to Glasgow from Stirling and the King's Park area of Stirling was a fashionable place to settle.
- 9. The association between the King's Park and golf does, however, go much further back. It is reported that the Accounts of Scotland's Lord Treasurer recorded James IV, Kings of Scots, played golf at the King's Park in 1506², while local Kirk Session Records give more specific references from 1603 onwards.³
- 10. Until recent decades, the Golf Club had to put electric fences around the greens to keep grazing cattle off. However, the Club subsequently bought out the grazing let and has since carried out tree planting and amenity work across the course.
- 11. In November 1992, the Golf Club negotiated a fresh 30 year lease with the CEC to 2022. The CEC included three yearly rent reviews in the lease and the two initial reviews seem to have been readily agreed. However, in 2001, the CEC substantially increased the rent. The Club was forced to go to arbitration because they considered the amount excessive and the arbiter found in the Club's favour at around half the amount being sought by the CEC.

Current Issues

- 12. In 2006, the CEC started to negotiate with Stirling Golf Club to sell the Club the lands and buildings currently leased by the Club, including the parts of the King's Park within their lease but not forming part of the course.
- 13. The CEC set 28th November 2006 as the deadline for the conclusion of missives (i.e. agreement of the sale), with the Club to make an offer significantly above market valuation and keep the negotiations confidential.
- 14. Rumours had existed locally since the early summer about plans to sell the Golf Course, but it only became clear to Stirling Council and local community groups in October that negotiations were underway. The proposed sale then quickly developed as an issue.
- 15. While the Council and community interests understood why the Golf Club would want to buy the course, the Club is a private company. There was a clear view that the golf course should not be sold to a private company, but remain in public ownership to safeguard its future as a major part of the historic and important King's Park.
- 16. Confronted by an escalating issue over the sale, the CEC first suspended negotiations with the Golf Club and then, on 16th November, issued a joint statement with Stirling Council:-

¹ John Harrison, Paper 7th November 2006

² "500 Years of Golf in Stirling 1506-2006" (Stirling Council 2006)

³ John Harrison, Paper 7th November 2006

“Stirling Council and The Crown Estate had a very productive meeting on 15th November to discuss the concerns of the local community regarding the possible sale of the King’s Park Golf Course.

In the light of these concerns, The Crown Estate is happy to give the Council its assurances that time will be given for alternative proposals to be considered.

Stirling Council will now progress these alternatives in consultation with the local community, other interested parties and The Crown Estate.”

17. Stirling Council and local community interests have proposed that the Council should acquire all the Crown land forming part of the historic King’s Park (i.e. Golf Course, areas leased by Council and agricultural land). A public trust would then be established to secure the long term ownership of the King’s Park and ensure that it is managed for the common good of the people of Stirling in ways that also reflect its national importance to Scotland.
18. While the Council has confirmed that the CEC appear willing for the Council to acquire all the historic King’s Park, negotiations are on-going between the CEC and Council at the time of writing (December 2006).
19. Community interests have said that the Crown’s ownership of the King’s Park land should be transferred to the Council at no cost, as with the transfer of the Crown’s ownership of Stirling Castle and the King’s Knot within the King’s Park to Scottish Ministers in 1999¹. The ownership of Holyrood Park, covering 650 acres or around twice the area of the King’s Park, was also transferred at no cost then.
20. The proposal that the Crown should gift the lands (or at least the Gowane Hill and public park areas leased by the Council) to the people of Stirling is based on the national importance of the King’s Park and the ancient association between the Crown in Scotland and Stirling.
21. Originally, the CEC had seen the sale of the golf course as a straightforward commercial transaction. The CEC do not appear to have recognised the importance of the King’s Park as part of Scotland’s national heritage.
22. The King’s Park is clearly the only ancient possession of its kind forming part of the Crown Estate in Scotland, while the only land within the rest of the UK wide Estate that appears to be of equivalent national status is the Great Park at Windsor Castle. That Park’s significance is recognised in it being the one part of the Crown Estate which the CEC can not sell.²
23. The CEC is required in disposing of other land from the Crown Estate to obtain ‘*the best consideration in money or money’s worth*’, but this is subject to ‘*having regard to all the circumstances of the case*’ as well as other opportunities for flexibility under their legislation.³
24. One part of the context to the discussions between the CEC and Council over the historic King’s Park land, is that these parties have been negotiating the purchase of the Kildean land by the Council for several years. This substantial financial deal would allow the Council to develop the land to improve the economy and infrastructure of Stirling.
25. If Stirling Council acquire the King’s Park and Kildean areas from the Crown, the CEC will no longer be responsible for managing any land at Stirling.

¹ The properties were conveyed to the Secretary of State for Scotland – see Annex 6

² Crown Estate Act 1961, section 5

³ Crown Estate Act 1961, section 3

Annex 8

WEST PRINCES STREET GARDENS, EDINBURGH

Introduction

1. This paper reports on the status of the 12 acres (5 hectares) of West Princes Street Gardens in Edinburgh which forms part of the Crown Estate in Scotland. The paper reviews the history of the area and raises questions about the continuing involvement of the Crown Estate Commission (CEC) in the area's management.
2. Princes Street Gardens became established in the early 19th century and during that century, the area was the subject of a number of Acts of Parliament and lengthy court cases¹. The Gardens are divided into East and West Princes Street Gardens and this paper is about part of the West Gardens.
3. Part of Princes Street Gardens was the subject of the first private members bill to be passed by the Scottish Parliament².

Background

4. Edinburgh Castle was always an ancient possession of the Scottish Crown and the slopes of the Castle rock were part of that Crown land. By the early 19th century, the Castle and slopes were managed by the government's Board of Ordnance.
5. On 28th December 1818, Articles of Agreement were signed between the Board and the Committee of Proprietors of Princes Street concerning the banks and grounds of Edinburgh Castle³. The Agreement or lease was for the purpose of draining and improving the piece of marshy ground known as the North Loch and was terminable by the landlord at will if the ground was needed for Public Service.
6. The Edinburgh Improvement Act 1876 allowed for the lease from the Crown of the 12 acres of West Princes Street Gardens to pass to the local authority and for the local authority also to acquire ownership of the other parts of Prince Street Gardens from the Committee of Proprietors.
7. There is no evidence of any new lease or agreement being entered into between the local authority and the Crown at that time or since. However, the management of the 12 acres was taken over by the local authority and still continues to be largely carried out by them.
8. The City Council manages the land for public amenity, while the CEC deals with property and development related matters, such as deeds of servitudes or wayleaves for utilities. The CEC has contracted out the work involved for its part to the property company CB Hiller Parker, within a wider portfolio of properties managed by them for the CEC⁴.

¹ "The Nor Loch. Scotland's Lost Loch" Malcolm Fife (Seaforth Books 2004)

² The National Galleries of Scotland Act 2003 to remove land from the Gardens and the restrictions over development in the Gardens, for the extension to the national gallery.

³ The Agreement is in the National Archives of Scotland (ref.CR4. Miscellaneous Papers No.382).

⁴ Papers supplied by CEC (November 2005)

9. The 12 acres is defined by boundary stones as shown on Map 3. It can be seen that the railway lines cut through the area, leaving a small strip of the Crown land on their north side.
10. The original rent for the area under the 1818 Agreement was £32, the same amount as the Board had been receiving for the pasturage rights. In the late 19th century the rent was reduced to £28 due to a small area being resumed from the Gardens. In 1959, when the CEC first recorded the area in its Annual Report property schedule, the rent was £26. It is quoted as £23 by the CEC in 2002.
11. However, while it is clear that the 12 acres form part of the Crown Estate managed by the CEC, the nature of the relationship between the CEC and the local authority over the land is far from clear.

“The Lease”

12. The CEC describes the land as leased to the Council. However, the CEC also reports that it can not find a copy of the lease and after searching, does not expect to be able to find one.¹ The Council appear to be in the same position.
13. It seems clear that the only ‘lease’ has been the 1818 Articles of Agreement (3 *above*). While it might be considered that this Agreement could still be in force as it was for an unlimited period, a finite duration is one of the defining characteristics of a lease in Scots law. In any event, the Agreement is also obsolete in other respects.
14. This apparent lack of clarity between the parties over West Princes Street Gardens seems far from satisfactory and particularly amiss between two public bodies over such a prominent public site in the centre of Edinburgh.
15. In 1995, the CEC approached the Council about installing an interpretive plaque about the 12 acres of West Princes Street and holding an event that “*re-dedicated them to continued public use*”². At the same time, the CEC also obtained a letter from the City of Edinburgh District Council which confirmed the then existing letting arrangement.
16. The CEC has recently cited the 1995 letter as evidence that “*The arrangements are well established and satisfactory to both the Council and The Crown Estate*”³.
17. However, this appears not to be the case as, in 1995, the City Council apparently wanted a new long term lease for the clarity of responsibilities which it would produce. It seems that the main reason that the Council did not follow this up with the CEC was the Council’s concern that, given the CEC’s reputation for seeking as much rent as possible out of situations, raising the issue of a new lease with the CEC could expose the Council to substantial increases in the rent from the existing nominal annual payments.

Current Issue

18. The apparently unsatisfactory nature of the current arrangements over this part of Princes Street Gardens poses the question:- what is the continuing purpose or public benefit in this area of the Gardens still remaining as part of the Crown Estate in Scotland?

¹ Papers supplied CEC (November 2005 - *check*)

² CEC Annual Report 1996

³ CEC letter 6th July 2006

19. Is there, for example, any advantage in having two public bodies, one elected and one appointed, directly involved in managing these 12 acres? The City Council is clearly able to manage the rest of Princes Street Gardens without a landlord¹, being a major property manager in its own right.
20. The CEC appears in a position to resume the land at will, although this would seem unlikely to open up any significant development opportunities for the CEC given the nature of the site.
21. The CEC's continuing involvement in this 'uneconomic' site seems only to be because the CEC inherited responsibility for the land as an ancient possession of the Crown. However, since the CEC conveyed Edinburgh Castle and other ancient Crown sites to Scottish Ministers in 1999 (see Annex 6), the 12 acres of the Gardens are now an isolated holding as the only ancient possession managed by the CEC in urban Scotland.
22. It appears that the land would have been conveyed from the Crown Estate in 1999 with Holyrood Park, the King's Knot at Stirling and others if it had been managed by Historic Scotland rather than the City Council. Those transfers also show that the CEC could convey West Princes Street Gardens to the City Council for no consideration.
23. Such a transfer would create the opportunity for the overall ownership and management of both parts of Princes Street Gardens to be integrated under the City Council for the common good of the citizens of Edinburgh and others.
24. The transfer from the Crown to the City Council would require the use of the "Royal Sign Manual". However, there should not be a problem getting a signature given the view expressed by the monarch each year at the historic Ceremony of the Keys.
25. This ceremony is at the start of the monarch's week long residence each July in Holyrood Palace. Soon after the monarch's arrival, in the forecourt of the Palace, the Queen (or King) is symbolically offered the keys to the City of Edinburgh by the Lord Provost. The monarch returns the keys, saying:
*"I return these keys, being perfectly convinced that they cannot be placed in better hands than those of the Lord Provost and Councillors of my good City of Edinburgh."*²

¹ there is an area on the Mound that the Council also tenants from a bank and manages as part of the Gardens

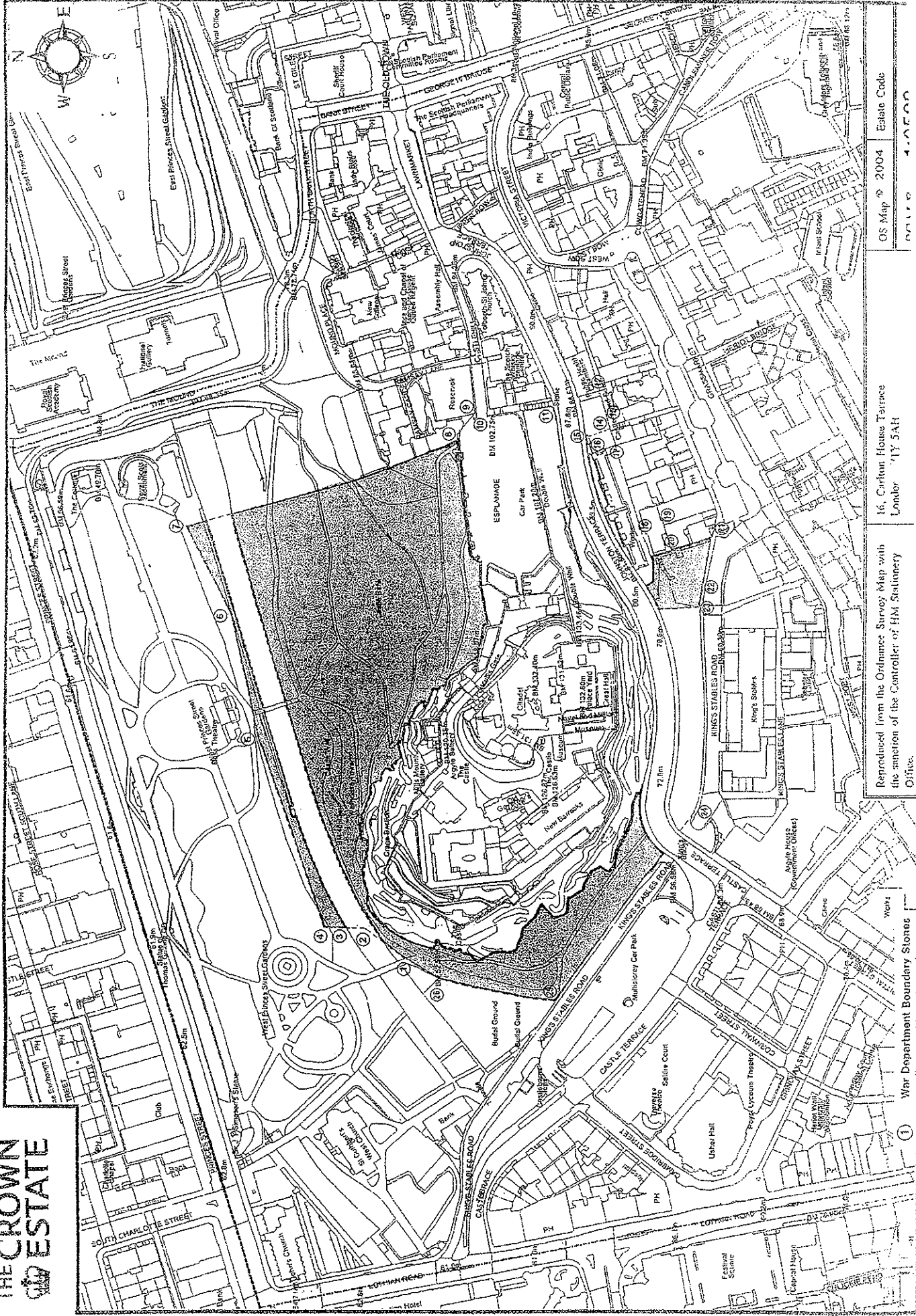
² http://en.wikipedia.org/wiki/Ceremony_of_the_Keys

NT 2570

Edinburgh Unitary Authority

EDINBURGH CASTLE

THE CROWN
ESTATE



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16, Carlton House Terrace
London W1Y 5AH

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1 War Department Boundary Stones

Annex 9

THE CROWN RIGHT TO WHALES

Introduction

1. The purpose of this paper is to provide background about the right of the Crown in Scotland to certain larger whales. The nature of this ancient Crown right in Scotland is archaic, but of continuing relevance due to the increasing number of whales stranded on the Scottish coast.
2. A statement by the CEC in 2005 listing its interests in Scotland included the Crown right to whales.¹ However, the Crown right which the CEC described in the statement was not the right of the Crown in Scotland, but a right of the Crown under English law in the rest of the UK. The CEC was also mistaken in claiming even the correct right as part of the Crown Estate in Scotland because, as explained in this paper, responsibility for the administration of the right of the Crown in Scotland to certain whales is devolved to the Scottish Executive.

Whales in Scottish Waters

3. There was commercial whaling in Scotland's territorial sea during the first half of the 20th century. A Norwegian owned whaling operation was established in 1903 at Loch Tarbert, Harris, and carried out whaling around the Western and Northern Isles during 1904-28 and then briefly in 1950-1.
4. During the first 25 year period, they caught over 8,000 large whales. They included (with average species length in brackets²) 395 blue whales (22-30 metres), over 6000 fin (18-25 m) and 2,000 sei (12-18m) whales with smaller numbers of sperm (15-18 m), humpback (11-16 m) and northern right (14-18 m) whales³.
5. There has been a statutory ban on whaling in Scotland's territorial sea for several decades⁴
6. The Natural History Museum, London, has been recording whales, dolphins and porpoises (i.e. cetaceans) stranded on the UK coastline for more than a hundred years. The number of strandings has increase significantly in recent years, more or less doubling in the period 1994-2004. The attached table shows the number of strandings on the Scottish coast in 2000-2005.
7. The table shows that there are now over 200 recorded strandings a year in Scotland. In a significant number of instances, the dead whales have to be cleared from the shore in the interests of public and environmental health. The normal option is to remove them to landfill. This can prove an expensive operation, depending on the size and location of the dead whale.
8. A recent example was a dead sperm whale on the west coast of Harris in the first week of March 2006. It was 48 foot long (14.5 m) and weighed 48 tonnes. It cost c.£14K to remove

¹ "Crown Estate Interests in Scotland" CEC, October 2005

² Average lengths from Field Guide to Mammals of Britain and Europe" F.H Van Den Brink (Collins 1967)

³ Catch data: "The Marine Environment: Cetaceans SNH Information Note 2004;

⁴ for example, the Wildlife and Countryside Act 1981 provides for the protection of all cetaceans found in UK territorial waters (section 9) and the Fisheries Act 1981.

to landfill, with the costs shared more or less equally between getting it to the landfill site and the landfill tax¹. In April, there was a 60 foot long, 60 tonnes Fin whale at Borgue in Kirkcudbrightshire².

9. 'Mass strandings' are likely to be more expensive, for example, the six sperm whales that stranded in Cruden Bay, Aberdeenshire, in January 1996 cost £30K to clear.

The Crown Right

10. One of the ancient rights of the Crown in Scotland, part of the *regalia minora*, is the right to large whales. This right has traditionally been described as the right to "great fish"³.
11. These whales are also often described as "royal fish". This is because the Crown's right is to the whales themselves and not as with other species (i.e. salmon, oysters, mussels), the right to take (i.e. hunt, collect, harvest,...) the species.
12. This right of the Crown in Scotland dates from medieval times and is thought to have originated with stranded whales, as reflected in the right to the whales themselves – a right of first claim.
13. This ancient right of the Crown in Scotland in Scots law is entirely separate from an equivalent held by the Crown in English law, where an Act in 1324 granted the Crown all rights to cetaceans stranded on or caught in the waters of England and Wales.
14. In England and Wales, the Crown gifted its right to others in specific areas including the Duchy of Cornwall and various Lords of the Manor. No incidences of this seem noted in Scotland.
15. The Crown's right in England and Wales is to all cetaceans (whales, dolphins and porpoises), while the right of the Crown in Scotland is only to larger whales:- "*according to the Law of Scotland: "whales, when large, belong to the Sovereign; when small, to the captors"*"⁴
16. The right is also traditionally described in Scotland as "*all large whales, other than the Bottle-nosed and caa'ing species*"⁵ However, it is not clear in other respects what species or size of whales are involved.
17. The suggestion is made that a whale counted as a large whale if it was "*too large to be drawn to land by a wain pulled by six oxen*"⁶. However, the origin of this is not known and it does not sound like a prescription in Scots law.
18. The question of which whales should or should not be claimed on behalf of the Crown became an issue in October 1927, when 168 false killer whales were stranded near Dornoch. As a result, it was decided that the exceptions to the category of whales belonging to the Crown in Scotland would:

¹ Information from Comhairle nan Eilean Siar

² Scottish Farmer 8th April 2006

³ Scottish Land Law Wm. Gordon (Green & Co, 1989)

⁴ Instruction to the Receivers of Wrecks "Fishes Royal" 1929 (supplied Maritime and Coastguard Agency April 2006)

⁵ as note 1: Presumed to be the North Atlantic Bottle-nosed whale (average length 7 – 9.5 metres) and the long finned Pilot Whale (4 – 8.5 m); "caa" means in Scots '*the driving of whales into shallow water; a drove of whales*' Chambers Scots Dictionary 1975.

⁶ e.g. Scottish Executive (Nov 1995) "Royal Fish: Guidance for dealing with stranded Royal Fish (e.g. whales over 25') in Scotland" <http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/19887/royalfishguidance>

“be more clearly expressed to include, in addition to Bottle-nosed and caa’ing species, any whale (whatever species) of a length of less than 25 feet. Measurements should be taken from the snout or beak to the middle of the tail”¹

19. The “25 feet rule” is still applied now. The question of whether the Crown’s right in Scotland also applies to whales taken by others in Scotland’s territorial seas², is potentially not relevant while whaling is banned in Scotland’s seas³.

Administration of the Right

20. There has been a long association between wrecks and stranded whales in public administration. The right to wrecks in Scotland’s territorial seas is also an ancient right of the Crown in Scotland and part of the *regalia minora*. However, the right has been administered on a UK wide basis with the equivalent Crown right in the rest of UK waters since at least the Merchant Shipping Act 1854, when wrecks became the responsibility of the Receiver of Wreck.
21. In England and Wales, the Crown’s right to wreck and royal fish seem to have always been managed together because they occur together in the statute of 1324 which states “...also, the King shall have (wreck of the sea) throughout the realm, whales and great sturgeons taken in the sea or elsewhere, except in certain places privileged by the Crown”⁴.
22. While whales are not mentioned in the Merchant Shipping legislation, Scotland’s Crown right to whales was also managed by the Receiver of Wreck from 1854. In 1993, the role of the Receiver of Wreck was centralised and moved from HM Custom and Excise to what is now the Maritime and Coastguard Agency (MCA).
23. At devolution, the administration of the Merchant Shipping Act 1995 was a reserved function under the Scotland Act 1998. The Receiver of Wreck is therefore still responsible for administering wreck matters in Scotland as well as the rest of the UK. However, the Merchant Shipping Act does not mention the administration of the Crown rights to royal fish⁵. As a result, the right of the Crown in Scotland to larger whales was not a reserved function and passed to the Scottish Executive and is now administered by their Environment and Rural Affairs Department (SEERAD) (Marine Management Division)⁶.

Crown Liability

24. The Receiver of Wreck has long recognised a liability to pay for the burial or other disposal of whales claimed by the Crown in certain circumstances where disposal is necessary⁷ and arrangements have been in place for the local authorities to be refunded for the costs of some disposals⁸.
25. During the pre-devolution period, 1993-1999, the Receiver of Wreck made 14 payments for the disposal of 29 stranded whales of 25’ or more in Scotland (see attached Table 7). The

¹ Decided by the Board of Trade who administered the right at the time and issued an instruction to this end on 5th March 1929. (MCA papers April 2006)

² Scottish Land Law op cit

³ the position regarding the Crown’s right with the whaling in Scottish waters during the 20th century has not been investigated.

⁴ MCA papers 10th April 2006

⁵ The Crown’s right is a prerogative right and not mentioned in any legislation

⁶ “Guidance...” op.cit

⁷ for example, in papers introducing the 25’ rule in 1929 (cited above)

⁸ The arrangements in England and Wales only apply to whales stranded on Crown or public foreshore and do not cover Council staff time, only the costs of equipment, contractors, landfill etc on proposals agreed in advance.

total amount of the payments was £121,128. While this gives an average of £8,650 per incident, half the overall total was paid for two incidents that involved more than one whale¹.

26. Since devolution, SEERAD provides financial assistance with disposals at its discretion². In the period 2000-06, the Scottish Executive made payments for the disposal of 36 whales of 25' or more totaling £110,000 (*Table 7*). The re-fund can be for 100% of the local authority's costs if the disposal proposal is agreed in advance³.

Recording Scheme

27. The Natural History Museum (NHM) in London started recording stranded whales in the late 19th century. In 1913, the NHM reached an Agreement with the Board of Trade over stranded whales. The Board of Trade was responsible for administering the Crown rights through the Receiver of Wreck.
28. The Receiver of Wreck does not now have a copy of the Agreement. However, the understanding is "*that this agreement simply allows that the NHM will be informed in the event of a stranding and will have right to first refusal for educational / scientific purposes*"⁴
29. In England, the nature of the Crown's right means the agreement applies to all cetaceans, while in Scotland it only covers whales larger than 25'. When that rule was introduced in 1929, the Board of Trade was concerned that the NHM's interest in any stranded whales less than 25' in Scotland, should not result in the Receiver of Wreck ending up liable for its disposal.
30. Following the international "Agreement on the Conservation of Small Cetaceans of the Baltic and North Sea" (ASCOBANS) in 1991, the monitoring and recording of stranded whales in the UK has been funded by the UK Department of Environment, Food and Rural Affairs (DEFRA) as the UK Cetaceans Strandings Investigation Project⁵. DEFRA contracts the Institute of Zoology (IOZ), the NHM and Scottish Agricultural College (SAC)⁶.
31. SAC's first contract was in 1992 and having a co-ordinator in Scotland produced an immediate and substantial increase in the records from Scotland, as previously all records had to be supplied to London. The project co-ordinator for Scottish strandings is based at the Scottish Agricultural College in Inverness. Virtually all Scottish records go through the SAC co-ordinator and there is a separate Scottish database and tissue store. The UK records are collated at the NHM and copied to the National Museums of Scotland. The results are also publicly available. Information is supplied to Scottish Natural Heritage (SNH) if requested.

Issues

(i) CEC Position

32. The CEC include in their list of Crown Estate Interests in Scotland "*the right to whales, porpoises, dolphins and sturgeon caught in territorial waters*"⁷. This appears wrong as:

¹ MCA papers April 2006

² See SEERAD guidance at <http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/19887/royalfishguidance>

³ see "Guidance..." (op.cit.)

⁴ MCA 10th April 2006

⁵ DEFRA was the Department of Environment when the funding first started.

⁶ Initially DEFRA funded each body separately. The last contract was to the NHM and SAC and the IOZ sub-contracted to them. The current contract is to IOZ which has separate sub-contracts with the NHM and SAC.

⁷ CEC 19th October 2005

- the right quoted is the right of the Crown in England and Wales and not the right of the Crown in Scotland;
 - the Crown right in Scotland, while an extant right, is not part of the Crown Estate in Scotland.
33. The CEC acknowledges that it has no part in managing the right¹. The right can not therefore be part of the Crown Estate, as that is defined simply as “*the property rights and interests under the management of the Commissioners*”²
34. As has been noted, if the CEC is claiming the right, the CEC might be expected to pay the Scottish Executive’s costs administering the right³.

(ii) Scottish Interest

34. The right of the Crown in Scotland to larger whales is interesting in this context because it is not part of the Crown Estate. The right has not only always belonged in Scotland, but since devolution it has also been administered in Scotland by the Scottish Executive.
35. This raises the question of why other such property rights of the Crown in Scotland that do still form part of the Crown Estate in Scotland, are not administered in Scotland? Obvious examples in this Report are the rights of the Crown in Scotland to naturally occurring oysters and mussels. These could also be managed in Scotland by SEERAD’s Marine Division as with the Crown right to whales.
36. At the same time, there is also the situation where:
- the Scottish Executive is administering one of the Crown in Scotland’s ancient marine right and the Executive’s costs of administering the right are only likely to get greater;
 - none of the substantial net income from other ancient marine rights of the Crown in Scotland contributes to these costs, as the rights are still administered by the CEC.

(iii) Scottish Administration

37. The Scottish Executive has been successfully managing the Crown right to whales for over six years and has published Guidance on dealing with stranded whales⁴
38. There is some scope for the Guidance to refine its representation of the nature of the Crown’s right in Scotland⁵ and it might be more helpful to refer to the Board of Trade’s 1929 25 feet rule than the suspect ‘wain and oxen’. The label ‘Royal Fish’ is also archaic.
39. The 25’ rule is also simply that - a rule. It is a pragmatic decision made by the Board of Trade nearly 80 years ago, not a law. It provides an arbitrary cut off for the local authorities between no re-fund at all and possibly a 100% re-fund. Table 6 suggests, for example, that a more rational cut off might be 10 or 20 feet.
40. Local authorities might consider that, while SEERAD claims that it “*has no legal obligation to assist with the costs of disposal of ‘Royal Fish’*”⁶, it is time to review the 25’ rule as the

¹ CEC 6th July 2006

² Crown Estate Act 1961 Section 1(1)

³ MCA April 2006

⁴ <http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/19887/royalfishguidance>

⁵ in considering whether dolphins are covered by the Crown right, the only members of the dolphin family (Delphinidae) likely to reach 25’ are both known as whales – killer and pilot.

⁶ Guidance op cit,

number of stranded cetaceans increases in absolute terms and the proportion requiring removal increases due to stricter public and environmental regulations. It might also be more appropriate to consider an arrangement where it was the cost of an agreed disposal that provided the threshold for Scottish Executive assistance rather than the length of the whale.

41. More generally, there seems scope for the Scottish Parliament to abolish the Crown in Scotland's archaic property right in certain whales in Scotland as part of land law reform and to deal with all such matters under the Parliament's wildlife legislation
42. There is also scope to bring the recording scheme more into line with devolution without undermining the role of the NHM in co-ordinated UK results. The 1913 Agreement between the Board of Trade and NHM might, for example, be replaced by a modern agreement between the Scottish Executive and SAC as the parties responsible for the right and the recording in Scotland.
43. The role of SAC in managing the system of recording in Scotland, including the Scottish database and tissue store, might also be expected to become managed by the Scottish Executive. Scotland is likely to continue to want to have such a scheme, but the funding by DEFRA through the Institute of Zoology might be considered insecure. The Scottish Executive Marine Management Division have already responded to a cut in DEFRA funding to SAC for necropsies, by providing some funding to maintain a higher level of these post-mortems.¹.
44. More generally, the Scottish Executive might integrate the monitoring and recording of stranded whales by SAC under SNH as the Executive's existing lead agency for other matters related to free-living whales. The recording scheme could have better coverage if SNH Area staff were more directly involved.

¹ Information from Scottish Co-ordinator, SAC (September 2006)

Table 6

**The Number of Stranded Cetaceans Record
for the Scottish Coast 2000-2005**

(i) Totals 2000-2005

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Overall Total</u>
<i>UK Strandings</i>	421	549	655	774	799	699	3897
<i>Scottish Strandings</i>	139	135	130	150	166	226	946
<i>Scottish as % of UK</i>	33%	25%	20%	19%	20%	32%	24%

Notes

- (a) The strandings are essentially of dead whales. Live strandings are “a tiny percentage of the annual total. The successful rescues are usually of the smaller cetaceans (dolphin, porpoise, etc).” (i.e. 2-3 metres in length)
- (b) The Museum’s “data show that most of the larger species of cetaceans are both sighted and stranded on the Scottish coast”. “The greater numbers of cetacean strandings in the rest of the UK are due to large numbers of common dolphins and porpoises, which make up the bulk of numbers recorded each year”
- (c) The Highlands and Islands account for half the total length of the UK’s coastline and strandings in the region are thought to be very significantly under-recorded due to remoteness and the limited number of observers.

(ii) Size Categories 2000-2005

<u>Range (feet)</u>	<u>Total</u>	<u>Species >25'</u>
0' to <5'	368	
>5' to <10'	219	
>10' to <15'	46	
>15' to <20'	37	
>20' to <25'	15	
>25' to <30'	13	11 Minke
>30' to <35'	3	2 Minke, 1 Sperm
>35' to <40'	4	4 Sperm
>40' to <45'	6	5 Sperm, 1 Humpback
>45' to <50'	3	3 Sperm
>50' to <55'	3	3 Sperm
>55' to <60'	<u>2</u>	2 Fin
<i>total</i>	719	
<i>no length reported</i>	<u>227</u>	
<i>overall total</i>	<u>946</u>	

(Source: Papers supplied by Natural History Museum UK Cetacean Strandings Investigation Project (April 2006))

Table 7

**Number of whales of 25 feet or more in length on which payments
were made for disposal by the
the Receiver of Wreck and Scottish Executive (SEERAD)**

<u>Receiver of Wreck</u>		<u>SEERAD</u>	
1993-95	14	2000-01	7
95-96	6	01-02	5
96-97	0	02-03	8
97-98	6	03-04	4
98-99	3	04-05	3
99-00	0	05-06	9
totals	29		36

Note

Not all whales over 25' need to be cleared away.

For the 5 year period 2000/01 to 04/05, Table 6 shows that the UK recording scheme recorded 34 whales of 25' or more stranded in Scotland, while Table 7 shows that payments were made to dispose of 27 whales.

(Sources: MCA & SEERAD, 2006)

Annex 10

Naturally Occurring Oysters & Mussels

Introduction

1. The purpose of this paper is to describe the rights of the Crown in Scotland to naturally occurring oysters and to naturally occurring mussels¹. These two rights are both part of the ancient property rights of the Crown in Scotland, the *regalia minora*. They are separate rights in law, although they share many characteristics and are often referred to together.
2. The rights are not in the oysters or mussels themselves. The rights are in the ownership of the scalps or beds and the right to take the oysters or mussels and in the past, the Crown granted out both these types of rights.
3. There are no equivalent Crown rights to these species in the rest of the UK.

Oysters

4. The right of the Crown in Scotland to oysters is to naturally occurring native oysters. The right forms part of the Crown Estate in Scotland as managed by the CEC and this means that, with limited exceptions, it is unlawful or 'poaching' to gather any native oyster without the CEC's permission.
5. The native oyster, known as the common oyster, has been fished and cultivated in Scotland for centuries. Oysters were once a thriving public fishery producing 30 million oysters a year. However, oysters declined in Scotland from the late 19th century due to factors such as poor water quality, disease and over-exploitation and the demise of the industry was in the 1920s². A fishery for native oysters still takes place in Loch Ryan in south west Scotland, but the species has an increasingly fragmented and fragile population and is now largely confined to shallow sea lochs off the west coast³.
6. The native oyster is a UK Biodiversity Species and SNH has started to implement a Species Action Plan. SNH has joined forces with a number of organisations, one of which is the CEC, to raise awareness of the plight of the native oyster and to try and reduce illegal fishing of the species⁴. The CEC proclaims itself "*the guardian of naturally occurring oysters and mussels in Scotland*"⁵ and prominently noted its "*support for the protection of Scottish native oysters*" in its 2006 Annual Report.
7. The first of two questions which arise in the context of this report is whether, given devolution, the distinctive ancient right of the Crown in Scotland to native oysters should still be administered by the London based CEC?

¹ This is the species *Mytilus edulis*. The freshwater pearl mussel, *Margaritifera margaritifera*, an endangered species for which Scotland is the 'global stronghold' (SNH footnote 3 below) is not subject to any Crown property rights.

² CEC website – Shellfish Farming

³ "Making a difference for Scotland's Species" SNH 2006

⁴ SCENES Issue 218 February 2006

⁵ CEC website – 'The Crown Estate in Scotland'

8. The administration of some property rights of the Crown in Scotland is already devolved to the Scottish Executive including, for example, the Crown's right to certain larger whales¹. The Scottish Executive is also already responsible for wildlife legislation and the statutory regulation of shellfish farming².
9. It might be considered, for example:
 - that the involvement of the CEC with wild oysters only adds extra complications to the Scottish Executive's responsibilities for the protection and conservation of this species for little or no apparent benefit;
 - that enabling the Scottish Executive to administer this ancient right would bring benefits in Scotland by allowing the management of the right to be fully integrated with SNH's existing responsibilities to protect and conserve Scotland's vulnerable native oysters populations.
10. It might also be expected, given the CEC's commitment to follow guidance from the Scottish Executive where possible within the terms of the Crown Estate Act 1961³, that the CEC would look for an opportunity to transfer the administration of this particular right to the Scottish Executive if asked. An obvious example might be the proposed UK Marine Bill.
11. The second question which arises in the context of this report is whether there is merit in retaining the Crown right itself. The power to legislate over the right as part of Scots property law is devolved to the Scottish Parliament and the Scottish Law Commission has already made some proposals relative to it⁴.
12. Are there benefits in retaining this medieval property right when the protection and conservation of the species should be a matter for the Scottish Parliament's wildlife legislation and as safeguarding the interests of shellfish farmers⁵ is also covered by the shellfish legislation devolved to the Parliament⁶.
13. Thus, while there seems no particular role for the CEC in administering this right rather than the Scottish Executive, the Parliament might decide that there is no particular merit in retaining this archaic Crown property right over a particular species of wildlife.
14. The removal of the property right over native oysters would not affect the CEC's involvement with shellfish farming through its current responsibility for administering the ownership of Scotland's seabed by the Crown in Scotland.

Mussels

15. There are still two fisheries based on native mussel beds: the Tain fishery within the Dornoch Firth and one in the Solway. The former was granted to the Burgh of Tain by James VI, King of Scots, in 1612 and has been managed ever since for the common good of the Burgh.

¹ see Annex 9

² e.g. Fish Health Regulations 1992, Diseases of Fish Act 1937, Business Registration Act 1985, Sea Fisheries (Shellfish) Act 1967 (all as amended). Siting is determined by the CEC and in the Northern Isles, Shetland and Orkney Councils

³ for example, CEC papers and statement by the CEC Chairman at CEC / CERWG meeting 12th June 2006

⁴ "Report on the Law of the Foreshore and Seabed" (SLC 2003). The SLC's brief for the report was simply to make proposals to clarify the law, not to reform it as such.

⁵ for example, exclusive use and safeguards if wild oysters should naturally join farmed stock

⁶ Despite the restricted remit of the SLC (note 4 above) it appears they consider that there is no particular role for the Crown right and that it restricts other public interests – see par 3.14 in their 2003 report.

16. Due to the local government re-organisations, the management of the Tain fishery passed from the Burgh Council to Ross and Cromarty District Council in 1973 and then to the Highland Council in 1994. The fishery is operated by an arms length company and payments are made each year to the common good fund. In the last five years, the average payment has been £41K per year¹.
17. It is clear that some other Scottish burghs also had mussel fisheries as part of their common good lands (for example, St. Andrews) but none survive as such². The Solway fishery is thought to be a commercial company leasing off the CEC and currently applying to the Scottish Executive for a 'several order' to safeguard their exclusive use of the site.³
18. The same considerations arise over the right of the Crown in Scotland to naturally occurring mussels as outlined above for native oysters:
 - that the administration of the Crown's distinctive right of property in Scotland over mussels might be transferred to the Scottish Executive;
 - that this archaic Crown right might itself be abolished and matters dealt with under the Scottish Parliament's wildlife and shellfish farming legislation.
19. The current situation over native oysters and mussels with, on one hand, the Scottish Executive and its nature conservation agency, SNH, and on the other, the CEC, appears reminiscent of the juxtapositioning of the Executive and its historic conservation agency, HS, and the CEC over Edinburgh and Stirling Castles in the 1990s. The solution would also appear the same – that given devolution, there is now no role for the CEC in Scotland in dealing with these matters, be it two national castles or two native species.

¹ Information from Highland Council, March 2006

² "Common Good Land in Scotland" Andy Wightman and James Perman (Caledonia Centre for Social Development, 2005)

³ see the end of Annex 17 for more information on Several Orders.

Annex 11

THE CROWN ESTATE IN SCOTLAND: URBAN PROPERTIES

Introduction

1. The purpose of this paper is to describe the history of urban property as part of the Crown Estate in Scotland over the last fifty years. There was no such property in the 1950s and the paper examines the sequence of urban properties purchased by the CEC in Scotland in the decades since (*see Table at end*) and the policies that have guided those acquisitions.

1950s

2. When the CEC was established in the 1950s, the Crown Estate in Scotland included no urban properties other than 12 acres of Princes Street Gardens¹.
3. There was also no tradition of commercial properties forming part of the Crown's land in Scotland and Scotland's historic properties, such as Edinburgh and Stirling Castles and Holyrood and its Parks, had long been in the care of other public bodies².

1960s

4. The CEC's first involvement with urban property in Scotland was in Fife. In 1966, they decided to restore a number of houses in Crail and Dysart under the National Trust for Scotland's Little Houses Improvement Scheme³.
5. This involved the CEC acquiring the old Custom House in Crail and five historic houses in Dysart to restore them with advice from the NTS. The CEC also built five new houses in Dysart in the same traditional style as the existing houses. All the buildings were then sold subject to preservation covenants.
6. The CEC expected from the start that this investment would only give a "*modest return*", but did not see this as an issue as it was "*coupled with the preservation or restoration of assets that are equally part of the national heritage*" as the funds they managed⁴.

1970s

7. The start of oil developments in Scotland in 1971/2 lead to a rapid increase in the CEC's workload in Scotland and in 1973, the CEC bought Nos.10 & 11 Charlotte Square in Edinburgh to provide a new CEC office in Scotland to replace the premises it rented in St Andrew's Square. Initially the staff were in No.11 while 10 was done up. When the staff moved into No.10 in 1976, work started on No.11 so it could then be rented out as offices.
8. The CEC considered that it was simply "*an accident of history*" that the Crown Estate in Scotland did not include urban properties and that their Scottish estate should be "a

¹ see Annex 8; The King's Park, while part of the edge of Stirling, is counted by the CEC as a rural property.

² CEC Annual Report 1977

³ see "Little Houses" by Watters & Glendinning for history of Scheme (National Trust for Scotland, 2006)

⁴ CEC Annual Report 1966

*microcosm of the wider Crown Estate*¹. They therefore decided to use the major revenues which the CEC was receiving from the oil developments in Scotland by the mid 1970s, to invest in urban property in Scotland.

9. The CEC looked for “*one or more projects which, while giving a worthwhile yield on our investment, would contribute to the public benefit in the fields of conservation or town improvement*”² and in 1977/8, the CEC bought two properties in Edinburgh:-
 - a block of listed buildings in Nicholson Street “*to make a manifest and lasting improvement to a run-down part of the city*”³; and
 - the John Watson School for conversion for Scotland’s National Gallery of Modern Art.
10. The Nicholson Street project produced a much lower return on investment than expected due to the conservation standards that had to be met⁴. The work was eventually completed in 1983 and the property sold in 1990 for over £4m.⁵ The John Watson School project also went through some difficulties and at one stage, nearly did not become the Gallery. However, it was opened in 1985 and the property sold to another part of the public sector in 2000.

1980s

11. There was a rapid and major expansion of the CEC’s portfolio of urban properties in Scotland during the second half of the 1980s, as part of wider growth within the Crown Estate UK wide.
12. In Edinburgh, the CEC bought three properties on the south side of Charlotte Square in 1985 and consolidated that holding in 1987 by buying the Post Office building in the same block, in Hope Street on the corner of Charlotte Square. The CEC also made major investments in office accommodation in a similarly listed Georgian Square in Glasgow, Blythswood Square, making purchases in 1987, 1988 and 1989.
13. By their 1988 Annual Report, the CEC had spent £2.5m on property acquisitions in Edinburgh and Glasgow. In contrast to the previous decades, there were no ‘social’ or ‘heritage’ aims. The criterion for selection was investment performance. The focus on this objective is reflected by the CEC Chairman’s comment in his Introduction to the 1989 Annual Report:-

“... *we must be released from the shackles of Civil Service grading and structures and operate in a way which our standing as one of the biggest property companies merits*”.

1990s

14. During the 1990s, the CEC made important purchases and a series of sales that re-focused the portfolio of urban investment properties forming part of the Crown Estate in Scotland.
15. In 1995, the CEC made substantial investments to buy properties in Princes Street and George Street. Then, in 1999-2000, they successfully concluded the purchase and forward funding of the development of the Princes Exchange on a 0.76 ha site at Tollcross in Edinburgh. This £60m project is described in their 2000 Annual report, as their biggest ever investment in the UK property market.

¹ CEC Annual Reports 1977 and 1979

² CEC Annual Report 1977

³ CEC Annual Report 1981

⁴ CEC Annual Report 1981

⁵ CEC Annual Report 1990

16. During the same period, the CEC was also selling some of its earlier purchases. While these were valuable properties, the prices put the Princes Exchange investment in context, for example, Hope Street was sold for £1.25m and part of the Blythswood holding for £7.4m.

2000-2005

17. There have been no purchases of urban properties by the CEC since the Princes Exchange. The sales during the period mean that there were now three urban properties in the Crown Estate in Scotland. They are the CEC’s only three urban acquisitions in Scotland during the last fifteen years.¹

18. It remains the CEC’s policy to buy further urban properties in Scotland as investments if suitable opportunities arise².

<u>Table 8</u> : The Crown Estate in Scotland			
Urban Properties Purchased			
<i>Location</i>	<i>Bought</i>	<i>Comment</i>	<i>Sold</i>
<u><i>Fife</i></u>			
Crail & Dysart	1964-66	Little Houses Improvement Scheme	1968
<u><i>Edinburgh</i></u>			
10 & 11 Charlotte Sq.	1975	on north side for CEC office and rent	2003
John Watson School	1977	for Scotland’s National Gallery of Modern Art	2000
Nicholson Street	1977	residential and retail re-development	1990
Charlotte Square	1985	three properties on south side (offices)	1996
7/9 Hope Street	1987	698 sq.ms (office use)	1997
127/8 Princes St.	1995	2059 sq. ms (retail)	-
39/41 George St.	1995	1929 + 222 sq.ms (office / retail) includes 26/28 Thistle Lane (garage/storeroom)	-
Princes Exchange	1999	14,800 sq.ms. office/retail development (Tollcross)	-
<u><i>Glasgow</i></u>			
Blythswood Sq.	1987/88/89	series of acquisitions 6400 sq.ms (offices)	1999 & 2002

¹ The CEC has recently (September 2006) put information about each of the three properties on its website www.thecrownestate.co.uk

² CEC / CERWG Meeting 20th May 2005

Annex 12

THE CROWN ESTATE IN SCOTLAND: RURAL ESTATES

Introduction

1. The purpose of this paper is to describe the rural estates which have formed part of the Crown lands in Scotland managed by the CEC and its predecessors.

1832 - 1956

2. In 1832, when the Commissioners of Woods & Forests in London took over the administration and revenues of the Crown lands and land revenues of Scotland, the only rural estate was 8,000 acres in Caithness. These were former lands of the Bishops of Caithness that had passed to the Crown with the end of episcopacy in Scotland in 1689. The lands were assessed as being of small value by the Commissioners¹.
3. The Caithness lands remained the Crown's only rural estate in Scotland throughout the 19th century, with much of the Commissioners activity in Scotland during that period focused on legal work to establish the Crown's interests in salmon fishings, the foreshore and other rights².
4. The Commissioners had started to buy agricultural land in England from the 1850s and this policy was expanded to Scotland at the start of the 20th century, when they added to the Crown's holding in Caithness by buying the 13,500 acre Scotscladder Estate in 1909.
5. In 1930, they purchased the 3,327 acre Fintry Estate in Stirlingshire, where the Commissioners (by then re-named as the Commissioners of Crown Lands) already managed c.335 acres of the Kings Park, an ancient possession near Stirling Castle³.
6. In 1937, the Commissioners bought the Glenlivet and Fochabers Estates, covering over 76,500 acres between them. They were being sold by the trustees of the Duke of Richmond and Gordon to pay death duties.
9. The purchase in the 1940s of a small area in Perthshire and another 2,777 acres in Caithness (Table 2a), meant that the Crown's rural lands in Scotland had expanded to over 96,500 acres in 5 counties by the Crown Estate Act 1956.
10. At that time, the Commissioners were managing over 180,000 acres of agricultural land in England in 25 counties. There was also a significant difference in the average rents obtained by the Commissioners. It was equivalent to £2.40 per acre in England compared to 0.42p per acre in Scotland.
11. The Commissioners had spent a total of £731,000 in Scotland over the 20 years 1933-52. This was made up of £556,000 on purchases and £175,000 on improvements. While the agricultural land was managed at a significant loss with an annual rental income of around

¹ main sources in this section are "The Crown Estate" by R B Pugh (HMSO 1961) and CEC Annual Reports

² see respective sections

³ see Annex 7

£27,000, the Commissioners total income over the same 20 year period from all Scottish sources had been £741,000.

1956 - 2005

12. The Crown Estate Commissioners took over in December 1956 and as part of a wider stock taking, reviewed the Crown Estate's rural estates in Scotland. They decided in 1957-59:
 - to sell Myreside in Perthshire as it was too small, isolated from other properties and land adjoining it was not available for sale.
 - to retain Glenlivet for a further period, despite the fact that the sporting revenues which the estate had largely depended on, had not recovered since the war.
 - to carry out a further review of the policy of retaining the lands in Caithness;
 - to appoint professional valuers to assess rent levels on the Caithness lands and on Glenlivet and Fochabers Estates.
13. During the 1960s, there were then four main changes affecting the rural estates in Scotland:-
 - the sale of the lands in Caithness; (*see Note (i) below*)
 - continuing questions about the future of Glenlivet Estate; (*see Note (ii) below*)
 - the build up of agricultural investment estates at Applegirth (Dumfries) and Whitehill (Midlothian); (*see Note 3 below*)
 - the acquisition of the small properties of Arngomery (Stirling) and Auchry (Aberdeenshire), the former on very favourable terms under a will.
14. During the 1970s and 1980s, the rural estate was consolidated around Applegirth and Whitehill and Glenlivet and Fochabers, with other properties being sold off (Table 9a).
15. In the mid 1980s, the extent of the rural estates in Scotland was almost exactly the same at c.96,000 acres as when the CEC had taken over 30 years before. During the period, their total annual income from agricultural rents in Scotland had grown more than twenty times to over £1 million. Inflation was a major factor in this and during the same period, the CEC's annual expenditure in Scotland on agricultural repairs and improvements was running at an average of over 93% of annual rent income.
16. During the last 20 years, the composition of the rural estates managed in Scotland by the CEC has remained the same, with sales and purchases from time to time around Applegirth, Whitehill, Glenlivet and Fochabers as part of managing these estates¹. The CEC's gross agricultural income in Scotland in 2004-5 was £2.2 million or 16% of the CEC's total Scottish income.

(see Notes after Table)

¹ The CEC has recently (September 2006) put information about each of these properties on its website www.thecrownestate.co.uk

Table 9(a) : THE CROWN ESTATE IN SCOTLAND
Main Rural Properties Purchased

1909	Scotscalder, Caithness	13,500 acres	sold	1964-68
1930	Fintry, Stirlingshire	3,327 acres	sold	1985
1937	<u>Glenlivet</u> , Banffshire	56,148 acres	<i>still held; see below</i>	
	<u>Fochabers</u> , Moray	20,508 acres	<i>still held; see below</i>	
1945	Myreside, Perthshire	421 acres	sold	1958
1946	Olrig, Caithness	2,777 acres	sold	1964-68
1963	Arngomery, Stirlingshire	247 acres	sold	1988
	<u>Applegirth</u> , Dumfriesshire	5,440 acres	<i>still held; see below</i>	
1969	<u>Whitehill</u> , Midlothian	2,540 acres	<i>still held; see below</i>	
1969	Auchry, Aberdeenshire	540 acres	sold	1979

Table 9(b) : THE CROWN ESTATE IN SCOTLAND
Rural Estates Currently Held

	Glenlivet	Fochabers	Applegirth	Whitehill
Area (hectares)	24,280	4,674	6,886	1,366
Agricultural land	5,345	4,581	6,153	1,102
Area of forestry	3,902	220	657	264
Area of moorland	14,000	-	-	-
Salmon fishings	✓	✓	✓	-
Agricultural tenancies	37	90	37	7
Residential tenants	14	38	39	3
Commercial Quarries	-	sand & gravel landfill	sandstone block sand & gravel	coal

NOTES

(i) Caithness Lands

17. The CEC sold the Caithness lands due to the difficulties of increasing the rents and the limited returns on investment in improvements. Most holdings were sold to the sitting tenants.
18. By 1968, Lythmore farm was the only property left in Caithness from the lands that passed to the Crown in 1689. The Annual Report for that year records that therefore “*Commissioners decided not to sell for sentimental reasons and it has been re-let*”.
19. Lythmore and another farm continued to be the only land managed by the CEC in Caithness until they were sold in 2000/01.

(ii) Glenlivet

20. When Glenlivet and Fochabers Estates were sold to the Commissioners of Crown Lands in 1937, it was part of the break-up of the Duke of Richmond and Gordon’s much larger estate which had covered over 250,000 acres.
21. The purchase of these two Estates by the Commissioners of Crown Lands¹, followed the purchase in the 1920s by the Secretary of State for Scotland of another substantial part of the wider estate – the Cairngorms Estate, which was bought for management by the Forestry Commission and included Glenmore and the land subsequently sold to the Highlands and Islands Development Board in 1971.
22. The FC and CEC’s involvements both appear to have been seen as public sector investment during a period of economic depression when a significant number of other estates were being sold. The respective roles of the FC and CEC were reflected by the CEC feuing 20,000 acres of Glenlivet to the Forestry Commission, while the CEC retained the agricultural and sporting interests.²
23. There seem to have been local issues over the Commissioners involvement at Glenlivet from the start and these still continued over fifteen years later³. In 1958, the CEC decided “*on balance*” to keep the estate for a further period and the next major review appears to have been in the early 1970s.
24. In 1971/2, a working group was set up by the CEC to look at the balance of land uses on the estate. It consisted of their “Scottish Commissioner”, Captain Sir Iain Tennant, the CEC factor, Seafield Estate factor, Laird of Ballindalloch Estate and an official from each of the FC and Department of Agriculture for Scotland.
25. In the 1980s, discussions about the future of the estate lead to the secondment of a member of the Highlands and Islands Development Board’s staff to the Estate for three years in 1988, to manage to the Glenlivet Development Project.

¹ The Secretary of State for Scotland being the Commissioner responsible for Scotland

² see Annex 5

³ Royal Commission on Scottish Affairs 1953

26. The purpose of the project was to increase income and employment opportunities on the estate¹ and the approaches adopted then appear to have continued to guide the management of the estate since, including supporting local tourism, improving the use of the estate for informal recreation and educational visits, and encouraging local business opportunities.
27. While the economics of the estate appear not to have matched the CEC's investment criteria over the years, the CEC seem to retain it on the basis of providing an example of good estate management for the private sector².
28. The estate has been managed for the CEC for over thirty years by the property agents, Smiths Gore, who took over the management of both Glenlivet and Fochabers in 1974 from salaried local factors. Smiths Gore appear not to have had to re-tender for the work over thirty years later, although it is now CEC policy to require re-tendering at least every ten years³

(iii) Applegirth

29. In the early 1960s, it was agreed between the Treasury and CEC that the CEC should reduce the amount of money it held as reserves for managing the Crown Estate. The CEC therefore sold some of its government bonds and Treasury bills and spent £2m on buying property in Soho, Westminster and the estate of Applegirth in Dumfriesshire.
30. The CEC bought 5440 acre Applegirth from the Church of England Commissioners in 1963 and retained the Church Commissioners' managers, Smiths Gore.⁴ A few years later, starting in 1969, the CEC were able to expand the estate by a series of purchases including Raehills Estate (3500 acres), Wamphrey Estate (5000 acres) and other lands.
31. By 1972, the Applegirth Estate was 17,500 acres and currently still covers 17,000 acres. In the 1970s, the CEC cited Applegirth and Whitehill (Midlothian) at a UK level as good examples of their "*success in spotting opportunities... to build up new estates which offered a good return for the money spent*"⁵.

¹ "Putting Glenlivet on the Map: Report of the Glenlivet Development Project" (CEC 1991)

² CEC / CERWG meeting 29th November 2005

³ CEC / CERWG meeting 29th November 2005

⁴ The Church of England Commissioners remain a major investor in urban and rural property like the CEC and have a property portfolio of broadly similar scale to the CEC (reported as c.£4.5 billion in "Who Owns Britain Anyway" BBC 10th January 2006)

⁵ CEC Annual Report 1977

Annex 13

THE CROWN ESTATE IN SCOTLAND - SALMON FISHERIES

Introduction

1. The purpose of this paper is to provide an account of the ancient right of the Crown in Scotland to take salmon and of the salmon fisheries still managed by the Crown Estate Commission (CEC) as part of the Crown Estate in Scotland.

Background

2. The right to take salmon in Scotland is reserved to the Crown in Scotland. The right dates from medieval times and forms part of the Crown's ancient property rights in Scots law, the *regalia minora*.
3. The presumption in Scots law is that the right remains in the ownership of the Crown, except where the right has been granted out by the Crown or acquired by prescription. This applies to all of Scotland's rivers and coastal waters except in the Northern Isles. They are excluded because the Crown's right was a feudal right that never applied to these areas where there is *udal* tenure.
4. Elsewhere in Scotland, the right to take salmon is a distinct property right that can be separated from the ownership of land¹. The right covers netting, rod and line and all other legitimate ways of taking salmon.
5. The Crown's right is *to take* salmon, not to the fish themselves. Wild salmon are *res nullius*, or property belonging to no-one until caught or rendered into possession. This is like all other wildlife in Scotland, except the whales still covered by the Crown's right of first claim².
6. The responsibility for administering the Crown's salmon fishing rights in Scotland was transferred to the CEC's predecessors in London in 1832 and the remaining Crown salmon fishing rights continue to be managed by the CEC as part of the Crown Estate in Scotland³.
7. When the CEC was formed in the 1950s, the salmon fisheries were an important source of income in Scotland. They contributed more than all the thousands of feudal dues and charges and accounted for c.20% of revenue from Scotland, with the Speymouth netting being particularly valuable as part of that⁴.
8. The Crown's right to salmon, while still a significant source of income in Scotland for the CEC, is now a much less valuable component of the Crown Estate in Scotland. Its relative economic importance has declined substantially due to the development of the other sectors of the Crown Estate in Scotland since the 1950s, from seabed charges to urban property. The salmon fishing sector has also had its own major difficulties with the decline in catches during the 1980s and 1990s.

¹ and thus is known in Scots law as a "separate tenement".

² see Annex 9

³ The Crown Estate in Scotland also includes salmon fishing rights acquired from former owners with three of the rural estates (Glenlivet, Fochabers, Applegirth (see Annex 12) after being obtained from the Crown at earlier dates.

⁴ CEC Annual Report 1958 and following years; 'Report of the Committee on Crown Lands' (HMSO 1955);

9. The following sub-sections describe the background and current position with the Crown's freshwater and coastal salmon rights. These two dimensions to the Crown's right mean that it is part of each of the CEC's other main interests in Scotland:- the river fishing is managed with the rural estates and thus linked to the property investment portfolio, while the coastal fishing links to the main marine interests.
10. The ancient right of the Crown in Scotland to take salmon in Scotland is a distinctive aspect of the UK wide Crown Estate in that, in comparison with some ancient rights, there is no equivalent Crown right as part of the Crown Estate under English law in the rest of the UK¹.

Freshwater Rights

11. Salmon fishings in Scotland started to become much more valuable during the second half of the 19th century and the Commissioners instructed their legal agents in Edinburgh to begin investigating rivers where the Crown might still hold salmon fishings². The Commissioners did not want to occupy the fishings, but secure revenue. They would therefore normally issue a lease where it was established that the Crown still had the salmon fishing.
12. Over a century and half later, these investigations are still on-going. It is very difficult to know in many situations whether the Crown granted salmon fishing out at some time over particular lengths of rivers, because of the centuries involved and the difficulty of identifying relevant titles. The CEC's legal agents do some title investigations along a particular river first to see where there might be Crown rights still. However, the legal agents use the presumption in favour of the Crown's right, to put the onus on other parties to prove that they hold the salmon fishing by right of a grant that originally stems from the Crown.
13. This can be time consuming and expensive for the 'owner' faced with the CEC's challenge. The determination of whether or not the owner holds the fishings could depend on the nature and nuances of their title. Where the CEC's legal agents are not satisfied that a Crown grant has been established and there is not ready agreement by the 'owner' to a Crown lease, the CEC's legal agents will serve notice that the CEC plans to settle the matter in the Court of Session.
14. The nature of the CEC's approach to this, even where local communities are involved, can be regarded as very 'assertive'. A recent well documented case which illustrates the tactics and approach used by the CEC, involved Philiphaugh Estates, the Selkirk and District Angling Association and the Burgh common good fishing rights³.
15. In that instance, the community successfully managed in 2006 after years of contesting the CEC's claims, to convince the CEC that its position was 'legally indefensible' and the CEC withdrew its claims. In other instances, it appears that for at least some parties, it has been more practical to come to a lease agreement than the expense and risk of contesting the matter with the CEC in the Courts.
16. The CEC also uses the same type of approach through its agents to claim other Crown rights over parts of the foreshore and seabed⁴ and the topic is discussed more fully later in Part Three dealing with the overall Crown Estate. The CEC's approach in these matters illustrates the wider importance of the role of the solicitor's letter in the management of the Crown Estate in Scotland.

¹ CEC Annual reports (e.g. 1996)

² National Archives of Scotland CR4

³ Papers supplied by Dr Lindsay Neil: drlneil@tesco.net

⁴ see Sections 15 and 16

17. While the CEC and its predecessors have been successfully establishing and leasing beats (lengths of river) since the 19th century where the Crown has the salmon fishing, they have also been selling them at times.
18. In 1986, as a result of the CEC's concern at declining salmon numbers, the CEC commissioned Smiths Gore to review all the salmon fishings in Scotland managed by the CEC and its management policies for them. Smiths Gore produced their report on the coastal fishings in 1988 and on the freshwater fishings a year later. These resulted in the sale of some of the less economic fishings by the CEC¹.
19. Thus, in 1979, the CEC managed 350 salmon fishing beats (river and coastal) on behalf of the Crown in Scotland². Currently it manages 186 beats or approximately half the number in 1979³. It appears at least 82 or 23% were coastal fishings in 1979 and currently 48 or 26% are coastal fishings.
20. At present, there are nearly 70 rivers where the Crown has the salmon fishing on one or more beats. The rivers are listed in Table 10. In total, the CEC currently manages 138 salmon lets on these rivers as part of the Crown Estate in Scotland.
21. However, the CEC's continuing investigations into beats where it might assert Crown rights are reflected in the statement that "*there will be other rights on many rivers in Scotland which are currently considered to be within Crown ownership but not included in these figures*"⁴.
22. At present, 53 (or 38%) of the 138 freshwater salmon lets are to angling associations and many of these stretches cover greater lengths than those let to individual private tenants⁵. There are also 20 vacant lets, so that 45% of the beats are either let to associations or vacant.

Coastal Rights

23. The economic importance of coastal salmon fishings in Scotland during the 19th century, means that the stretches still held by the Crown in Scotland have long been clear. While coastal salmon rights traditionally extended at least a mile out to sea, the Crown right to catch salmon would appear to apply throughout Scotland's territorial seas and salmon are the one species excluded from the public right of angling in Scotland's seas⁶
24. The Crown's coastal salmon fishing rights continued to be valuable up until the 1970s, with the Speymouth fishing being the most valuable⁷. In 1975 and 1976, the CEC were able to re-let 82 of the Crown's coastal fishings for much increased rents due to the level of interest. However, declining salmon numbers in the 1980s lead to the CEC review by Smiths Gore and, following their report in 1988, the sale of some of the less economic stretches.

¹ CEC Annual Reports

² CEC Annual Report 1979

³ CEC paper November 2005

⁴ CEC paper November 2005

⁵ CEC paper November 2005

⁶ "Scottish Land Law" Wm. Gordon (Green, 1989); "Report on the Law of the Foreshore and Seabed" Scottish Law Commission (2003)

⁷ CEC Annual Reports

25. The CEC still manages 48 coastal salmon beats, of which 45 are un-let. Of the three which are let, the one in Moray is let to the local District Salmon Fisheries Board for conservation purposes and neither of the other two are managed as a fishery.

Table 10: Salmon Fishing Rights Held by the Crown in Scotland

(i) The rivers in Scotland identified to date by the CEC where the Crown still holds the salmon fishing rights over one or more fishing beats on the river.

River Add (Upper)	Don	Loch Fitty
Allan	Doon	Loch Loskin & Milton Burn
Almond (Midlothian)	Duisk	Loch Venacher
Almond (Perth)	Eden (Roxburgh)	Lochar
Alness	Eden (Fife)	Lugar
Annan	Ericht	Lunan
Ardle	Esk (Angus)	Luther
Ardloch	Ettrick	Nith
Ardyne Burn	Eye	Noran
Avon (Lothian)	Findhorn	South Esk
Avon (Moray)	Forth	Spey
Ayr	Gala Water	St.Mary's Loch
Bervie	Garnock	Stinchar
Blackadder	Glaisart	Tarf Water (Dumfries & G.)
Blackwater	Irvine	Tarff Water
Borthwick Water	Isla	Teith
Breachie Water	Jed	Teviot
Cairn	Ken	Tig
Clyde	Kinnel	Tweed
Conon	Kirtle	Tweed headwaters
Cree	Leader	Urr
Dee (Kirkcudbright)	Leven	Whiteadder
Devon	Loch Avich	Ythan

(ii) Coastal Salmon Fishing Rights managed by the CEC as part of the Crown Estate in Scotland

Let (3)

Argyll	1	Moray	1	Wigtown	1
--------	---	-------	---	---------	---

Vacant (45)

Aberdeen	1	Dumfries	2	Moray	1
Argyll	13	Kincardine	2	Renfrew	1
Ayr	4	Kirkcudbright	6	Ross & Cromarty	5
Caithness	5	Midlothian	1	Wigtown	4

(Source: CEC November 2005)

Annex 14

DEVELOPMENTS INVOLVING THE SEABED IN SCOTTISH WATER

Introduction

1. The purpose of this paper is to give an outline account of how developments which use the seabed in Scottish Waters are regulated.
2. Any development which directly involves the seabed (for example, by attaching to it, building on it, excavating out of it, drilling into it or placing or dumping on it) requires the Crown Estate Commission's (CEC's) permission by virtue of the Crown's ownership of the seabed.
3. The types of developments with which the CEC is involved include harbour developments, slipways, piers, jetties, moorings, marinas, fish and shellfish farming operations, oyster and mussel harvesting, coastal salmon fishings, cables (electricity and telecommunications), oil related developments including pipelines, renewable energy related installations and aggregate dredging¹.
4. These uses and the other uses to which the CEC can put the seabed are limited by two overall legal constraints:-
 - the Crown's proprietary right in the seabed is subject to an inalienable duty of the Crown to protect the public's rights to use the sea and seabed²; and
 - the CEC's own constitution (Crown Estate Act 1961) including that the CEC's use of the seabed must always have due regard to the requirements of good management³.
5. Thereafter, the CEC's uses of Scotland's seabed are subject to the range of different statutory provisions and other non-statutory regulations and policies which are determined by Westminster and Holyrood over the mix of reserved and devolved matters involved.
6. The intention of this paper is only to try and give an indication of this pattern of public controls, as the various different sectors of activities involve a complex range of regulations⁴

Statutory Planning

7. The forms of development which the CEC can undertake or permit on the seabed in Scottish Waters are not regulated, limited or controlled by the statutory Town & Country Planning system that covers Scotland's land and inland water⁵, because that system's jurisdiction ends at the bottom of the foreshore where the seabed starts⁶.
8. The nearest in Scotland to a statutory planning system for the seabed is in the Shetland Islands where the Council has powers under the Zetland County Council Act 1974 to license

¹ While wrecks and treasure trove on the seabed do not form part of the Crown Estate, the CEC will seek to charge for any activity associated with either if the CEC considers such activity is likely to involve the seabed in some way.

² Scottish Law Commission Discussion Paper No.113 on the Law of Foreshore and Seabed (2001)

³ Crown Estate Act 1961 s.1(3)

⁴ see DEFRA's consultation paper of over 300 pages on the proposed Marine Bill (March 2006)

⁵ Scotland's 1997 Planning Act as amended.

⁶ Although the seabed can become involved with some developments that start on the foreshore

works in territorial waters (12 nautical mile limit) and operates these powers in conjunction with its powers as a statutory planning authority.

9. A similar situation exists in parts of Orkney where, under the Orkney County Council Act 1974, the Council has powers as a harbour authority in Scapa Flow and exercises works licensing powers within certain designated harbour areas.
10. Both these 1974 Acts were passed in anticipation of the arrival of the oil industry. In the areas covered, once a works licence is granted for a development, the licensee still has to seek a seabed lease or licence from the CEC for that development.
11. The Scottish Executive is committed to the extension of statutory planning controls to cover marine fish farming within Scotland's coastal and transitional waters out to the 3 nautical mile limit, and the legislative framework for this is provided by Section 24 of the Water Services and Water Environment (Scotland) Act 2003.
12. In preparation for the secondary legislation required to bring this measure into effect, the Scottish Executive consulted on proposed local authority boundaries out to the 3 mile limit¹. Map 2 shows the proposed boundaries for the 23 planning 'zones' for the 22 of Scotland's 32 local authorities with adjoining sea and for the Loch Lomond and Trossachs National Park.
13. The consultation paper stated that the Scottish Executive plans to introduce an amendment to the forthcoming² Planning Bill³ to enable the planning controls over fish farming to be extended to the 12 mile limit and "*replace three control systems (new statutory controls to 3 miles, and the Crown Estate development consents and Shetland works licenses to 12 miles) with a single regime based on the territorial planning system*"⁴.
14. This proposal is, however, only concerned with marine fish farming. The Shetland and Orkney works license systems will therefore continue to deal with other works. The "Crown Estate development consents" are the CEC's current authority over fish farms, as subject meantime to the non-statutory Interim Scheme. Fish farm developments will still require to secure a lease from the CEC under new statutory planning controls.
15. There would appear scope for the Scottish Executive to rationalise and extend the current and proposed arrangements, so that all coastal planning authorities have planning powers over developments within the 12 mile limit along the lines of the Shetland Islands works licence system⁵.

Coastal Protection

16. The consent required under Section 34 of the Coast Protection Act 1949 to protect public navigation rights, is the most all encompassing development control regulating the use of the seabed. It covers any of the following operations:
 - the construction, alteration or improvement of any works on, under or over the seabed;
 - the deposit of any object or materials on to the seabed; &
 - the removal of any object or materials from the seabed.

¹ "Defining Marine Boundaries for Fish Farming" Scottish Executive 2005

² now enacted; local authority planning controls over fish farms will come into effect on 1st April 2007.

³ based on "Modernising the Planning System" Scottish Executive 2005

⁴ para.28 of "Defining Marine Boundaries" as per note 1 above; consultation on boundaries to 12 miles is yet to be undertaken by the Scottish Executive.

⁵ with appropriate powers for the Scottish Executive to 'call-in' national interest projects.

Marine Planning Boundaries

Local Authority

- | | |
|-------------------------|-------------------------|
| 1, Aberdeen City | 21, North Ayrshire |
| 2, Aberdeenshire | 22, North Lanarkshire |
| 3, Angus | 23, Orkney Islands |
| 4, Argyll & Bute | 24, Perth & Kinross |
| 5, Edinburgh, City of | 25, Renfrewshire |
| 6, Clackmannanshire | 26, Scottish Borders |
| 7, Dumfries & Galloway | 27, Shetland Islands |
| 8, Dundee City | 28, South Ayrshire |
| 9, East Ayrshire | 29, South Lanarkshire |
| 10, East Dunbartonshire | 30, Stirling |
| 11, East Lothian | 31, West Dunbartonshire |
| 12, East Renfrewshire | 32, West Lothian |
| 13, Falkirk | |
| 14, Fife | |
| 15, Glasgow City | |
| 16, Highland | |
| 17, Inverclyde | |
| 18, Midlothian | |
| 19, Moray | |
| 20, Eilean Siar | |

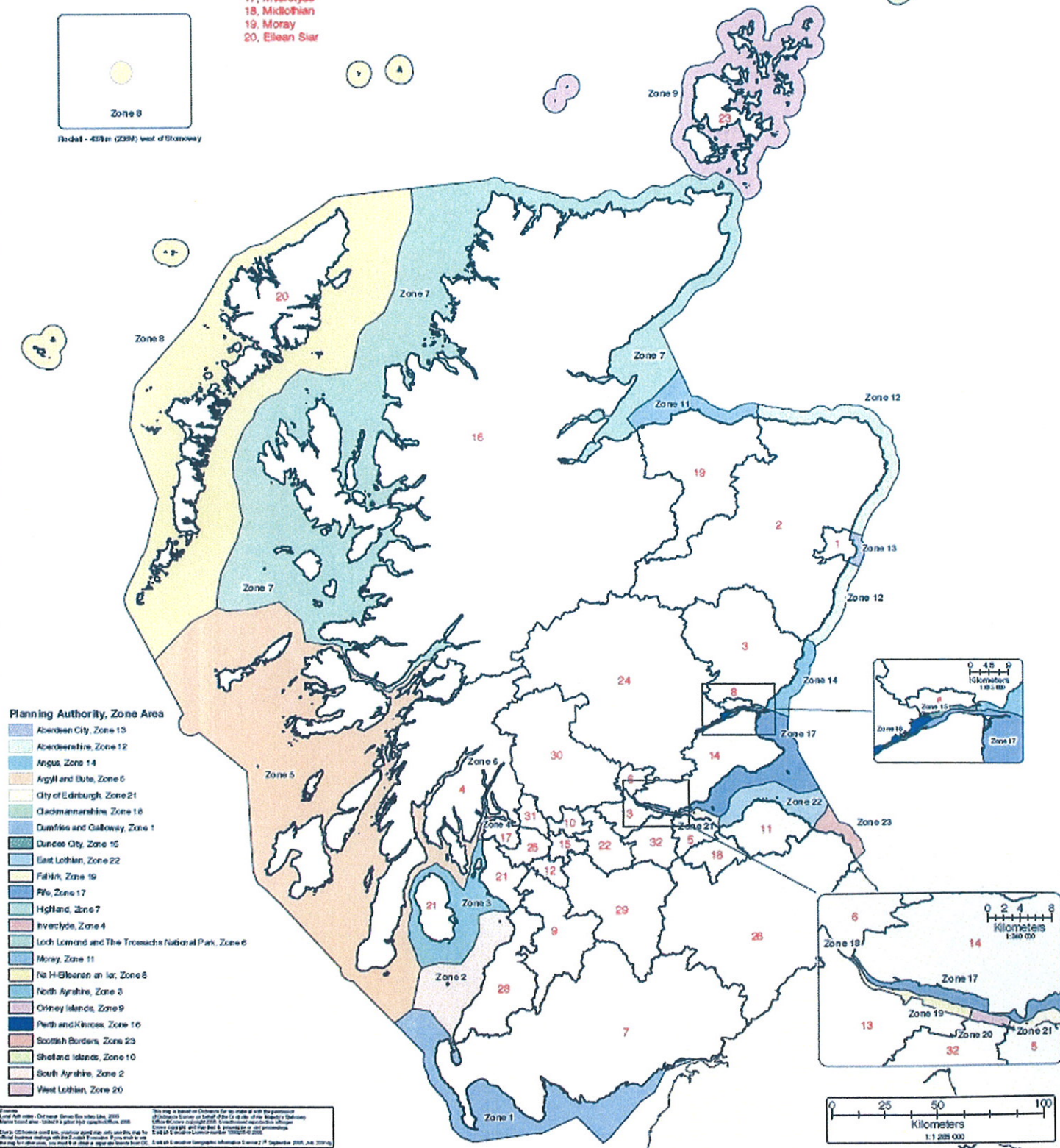


Zone 8
Radial - 457m (200) west of Stoway



Zone 10

Zone 10



17. Scottish Ministers have devolved responsibility for issuing these consents within Scotland's territorial waters (12 miles), but not out to the 200 mile limit as this is reserved. The reserved consents required are handled by the Department of Transport in London.
18. Oil and gas related developments are also excluded from the devolved responsibility and dealt with separately from the 1949 Act. With oil and gas developments, the other statutory permissions regulating these developments (e.g. Petroleum Act 1998) cover for a 1949 consent. This is also the case with some other developments, including certain offshore energy generating activities under the Energy Act 2004.
19. While, with such exceptions, all other operations as described above require a 1949 consent, "*the purpose of control under Section 34 is solely concerned with the safety of navigation*"¹.

Special Sectors

20. The offshore oil and gas sector is, as noted above, regulated by its own legislation and works authorisations, which cover pipelines as well as other installations and operations. The sector is not devolved at all. While oil and gas do not form part of the Crown Estate, leases are still required from the CEC for installations and pipelines within the territorial seas (12 m).
21. The offshore renewable energy sector is also regulated by specific legislation (Energy Act 2004). The consent required is devolved to Scottish Ministers in Scotland's territorial waters (12 m) and covers all offshore wind and water driven devices above 1 MW capacity.
22. Under the Energy Act 2004, the UK Waters outwith the territorial seas were designated a "Renewable Energy Zone" (REZ) and "*the right to licence the generation of renewable energy vested in The Crown Estate*"². Scottish Ministers were given the power under the 2004 Act to designate a REZ over Scottish Waters.
23. The installation of cables at sea (telecom and electricity) is also the subject to specific consents under respective legislation within territorial waters but, in the area out to the 200 mile limit, are only covered under a 1949 Act coastal protection consent. The powers within Scotland's territorial waters are devolved, as with those for 1949 consents.
24. With pipelines and cables at sea between the 12 m and 200 m limits, the CEC's consent is not required, nor any lease or licence, but the CEC consider they should be informed of them given that mineral rights and offshore windfarm developments may be affected.
25. Any deposits at sea require a consent under the Food and Environment Protection Act 1985. This consent is devolved to Scottish Ministers in Scottish Waters (12 m & 200 m), except those related to the oil and gas industry and certain merchant shipping provisions. Cables and pipelines, as well as other marine developments, can often require deposits for a base or protection. The permission of the CEC will be required for any deposits in territorial waters.
26. Dredging can be of several types, for example, 'maintenance dredging' to clear a channel, 'capital dredging' to prepare a site for construction or laying pipes and cables and 'marine aggregates dredging' for commercial supplies for use at sea or on land (c.20% of the UK's current sand and gravel needs come from the sea).

¹ Scottish Executive website

² CEC website

27. Any dredging is likely to require a consent for deposits under the Food and Environment Protection Act 1985, if only for the spoils from excavating the seabed. The CEC will issue a production licence for marine aggregates where the proposal has been through a Government View procedure and it is favourable. This procedure is devolved to Scottish Ministers in Scottish Waters¹.
28. *Moorings* of any form in Scottish waters require a consent from Scottish Ministers under the 1949 Coast Protection Act to safeguard navigation interests. The mooring will then require agreement with CEC and a licence from the CEC for which a rent will be charged.
29. A number of the above developments are handled differently when they are within a *port or harbour* authority area². This is because within statutory ports and harbours matters such as dredging and the laying of moorings are under the harbour authority's control.
30. Power to legislate on a range of port and harbour matters is devolved including responsibilities under the Harbours Act 1964. The seabed within a harbour remains part of the Crown Estate unless expressly conveyed and thus any development will require the consent of the CEC and be liable for their charges.
31. It can be noted that several of the above provisions, including the 1949 Act, may trigger environmental assessments of a proposed development.

The CEC's Regulatory Role

32. The range of different seabed uses which are regulated by specific public sector mechanisms has continued to increase over the years, including the conversion of non-statutory arrangements into statutory ones. However, the CEC continues to have a significant role in regulating the uses that can be made of Scotland's seabed by virtue of its responsibility for the ownership of the seabed.
33. The CEC's view is that, with the impending introduction of statutory planning controls over marine aquaculture, the CEC will no longer have any regulatory role over developments in Scottish Waters. The CEC has long supported the introduction of these controls, suggesting that their role will then only be to issue leases and licences for developments which have already received approval under the government's systems of public consents or permissions.
34. This will, however, only be the case in a very restricted sense. If, as seems reasonable, developments are defined in the broad terms of Section 34 of the Coast Protection Act 1949³, then every development requires a public authority consent⁴. However, with a 1949 consent, "*the purpose of control under Section 34 is solely concerned with the safety of navigation*"⁵
35. While many key types of development are also covered by other specific public consents as described above, there are types of developments which are only covered by the 1949 consents and therefore only assessed for navigational safety. These developments include moorings and can require to be assessed from points of view other than navigation. These

¹ "Extraction of Minerals by Marine Dredging" Scottish Executive Consultation Paper (July 2006)

² see Annex 18 for an account of ports and harbours

³ see Annex 16 paragraph 16

⁴ The Northern Lighthouses Board appears unique in neither requiring a Section 34 consent or the permission of the Crown through the CEC for its moorings and other navigational aids involving the seabed.

⁵ Scottish Executive website

include, for example, the purpose and appearance of the mooring and its use, moorings already at that site, possible influences on future developments and historic site features.

36. Responsibility for assessments of these '1949 only developments' for purposes other than navigation, falls to the CEC by virtue of its responsibility for the ownership of the seabed except in parts of the Northern Isles. The fact that the CEC does consult on occasions with SNH, Historic Scotland, local harbour authorities and others about some of these developments reflects this. The CEC also describes itself as being responsible for the regulation of moorings.¹
37. Around Shetland out to the 12 mile limit, the regulatory role of the Shetland works licence system brings all developments involving the seabed within a broader and fuller public interest assessment under the local democratic control of Shetland Islands Council².
38. Elsewhere in Scotland's territorial waters, the CEC is responsible *de facto* for the role performed by the Shetland Islands works licence system for developments which are either only assessed for navigation or some other limited purpose under the system of public sector consents.
39. The Scottish Executive has extended the planned controls for aquaculture from 3 to 12 miles and the introduction of a system of marine spatial planning has been proposed in the UK Marine Bill consultations. However, in the absence of the application of an equivalent to the Shetland Islands works licence system over all Scotland's seabed, the CEC will continue to have a regulatory role. Improvements could be sought in the accountability of this role in Scotland as well as the wider match of the CEC's information systems, strategies and policies to the Scottish public policy context.
40. While the CEC offers leases and licences to proposed developments which have the appropriate public sector consents, it is under no obligation to do so. However, the CEC is also in a regulatory position by virtue of the Crown's seabed ownership through the terms and conditions which it can set for leases and licences. The CEC can determine, for example, whether or not to include conditions that might or might not benefit some public interest.

¹ "Moorings in Scotland" CEC leaflet 2006

² see Annex 16, which also refers to the works licence system in some areas around Orkney

Annex 15

UK Marine Bill

1. The purpose of this paper is to provide some background on the proposed UK Marine Bill.
- 2.. In March 2006, the UK Government issued a consultation paper on a proposed UK Marine Bill to streamline regulation and create a new framework to co-ordinate activities on and in the seas around the UK¹. The consultation ended in June and the UK Government was expected to publish a draft UK Marine Bill before the end of November. However, further consultations will now take place in 2007.
3. The stated purpose of the Marine Bill is to streamline regulation and create a new framework to co-ordinate activities on and in the seas around the UK and the consultation paper described the scope of the measures proposed under five main themes:-
 - Managing marine fisheries
 - Planning in the Marine Area
 - Licensing marine activities
 - Improving marine nature conservation
 - Potential for a new marine management agency.
4. The treatment of each theme was set at a UK level, but the paper did take account of devolution and as outlined in *Annex 14*, the management of the majority of matters involved with the main themes for the Bill (fisheries, planning, licensing, nature conservation), is already largely devolved to Scotland under the Scotland Act 1998 and subsequent provisions.
5. The consultation paper also stated at an early stage (page 8) that the *“UK Government is committed to the devolution process and it will therefore be for the individual administrations to decide whether to consider or to take any of these ideas forward and the most appropriate way to do so within their respective areas and competence”*
6. In addition, the paper stated in para.5.6 that:
“Proposals developed for this document are generally only those functions which have not been devolved” and then continues in the same paragraph,
“The Marine Bill could offer UK Government the opportunity to devolve further or new powers to the devolved administrations, if felt appropriate as the policies are further developed”.
7. These statements suggest that the Marine Bill offers a very positive opportunity for the Scottish Executive to secure further devolution to produce a clearer and more co-ordinated framework of public regulation within Scottish waters.
8. At present, as indicated in the descriptions above, most matters within Scotland’s territorial sea to the 12 mile limit are devolved to Holyrood, while many matters in Scottish Waters beyond that to the 200 mile limit are reserved to Westminster.

¹ A Marine Bill A Consultation Document of the Department of Environment, Food and Rural Affairs (DEFRA)
315 pages <http://www.defra.gov.uk/environment/water/marine/uk/policy/marine-bill/index.htm>

9. There have been indications for some time that the Scottish Executive is seeking the devolution of some measures through the Bill both within 12 miles and out to 200 miles¹. However, it appears the Scottish Executive has surprisingly limited ambitions for the extra controls which it is seeking over Scotland's territorial seabed and continental shelf area².
 10. There are no indications that the Scottish Executive is considering using the potential of the Marine Bill to secure the devolution of the administration and revenues of any of the marine property, rights and interests of the Crown in Scotland which are currently reserved as managed by the CEC.
 11. These marine rights are listed in Table 1. These include the foreshore and seabed property rights of the Crown in Scotland (nos.1, 2 and 3). They also include the rights of the Crown in Scotland to take naturally occurring oysters and mussels and to coastal salmon fishing (nos. 5, 6 and 7(a)). There are no equivalent Crown rights to these last three in the rest of the UK.
 12. The UK government now plans to issue a White Paper on its proposals for the Marine Bill by March 2007 with a subsequent 12 week consultation period.³
-

¹ A Sunday Herald article "Holyrood gearing up for devolution of seas" (16th July 2006), for example, reported that the Scottish Executive are seeking powers over the planning system for oil rigs and the administration of UK environmental legislation within 12 miles and spatial planning to the 200 mile limit

² 'UK Marine Bill Update' Scottish Executive paper for Ministerial Working Group on Aquaculture, September 2006 (reference AGMACS(06)25)

³ Letter of 24th November 2006 to Marine Bill Stakeholders from Marine Legislation Division, Department of Environment, Food and Rural Affairs (DEFRA)

Annex 16

PORTS AND HARBOURS

Introduction

1. The purpose of this paper is to consider the status of the seabed and foreshore within ports and harbours¹, and the leasing of such areas by the CEC as part of the Crown Estate in Scotland.

Background

2. The right to establish ports and harbours in Scotland was one of the ancient property rights of the Crown in Scotland, part of the *regalia minora*. Many of Scotland's current ports and harbours were established originally with direct grants from the Crown.
3. There has been a large amount of related legislation (UK, Scottish and local Acts) over the last two centuries and the Crown property right of port and harbour in Scotland has been superseded by statute law.
4. Under the Scotland Act 1998, matters related to ports and harbours legislation are largely devolved to the Scottish Parliament and the Scottish Executive, whose responsibilities include administering the provisions of the Harbours Act 1964 and related legislation, designating Harbour authorities under the Pilotage Act, relevant powers in the Ports Act et al..²

Numbers and Types

5. There are over 800 ports, harbours, jetties and piers around the coastline of the UK, of which more than half are in Scotland³. The total given for Scotland is 426 and divided into the three main types: local authority and other public sector (248 or 58%); trust ports (46 or 11%) and commercial and other private (132 or 31%).
5. The current Scottish Executive list of ports and harbours gives the lower total of 375 as it does not include all the smaller private and non-statutory sites⁴. The Scottish Executive list, which is used in this paper, consists of local authority (241 or 64%), other public sector⁵ (24 or 7%), trust ports⁶ (33 or 9%) and commercial and other private (77 or 20%).

¹ The two terms 'ports and harbours' tend to be used together in this context as if they are forms of the same thing. In dictionary terms, a harbour is a place for ships while a port is a place that has a harbour.

² Scottish Executive website <http://www.scotland.gov.uk/Topics/Transport>

³ Ports and Harbours of the UK website <http://www.ports.org.uk/index.asp>

⁴ Information from Scottish Executive Department of Transport, Ports and Harbours Branch (March 2006).

⁵ These are nearly all Caledonian Macbrayne ports and harbours. Caledonian Macbrayne was a private limited company whose share capital was wholly owned by Scottish Ministers (source as note 4 above). The company was divided in 2006 into two companies to meet European requirements for tendering. The two companies, CalMac and Caledonian Maritime Assets, which manages the harbours, are still both wholly owned by Scottish Ministers.

⁶ Trust ports date from an original Crown grant and are managed by a local harbour board constituted in line with government standards and administered by the Scottish Executive. Most have been re-constituted since new guidelines were introduced in 2000. The Boards have a mix of local elected members and members who represent harbour users interests. They are required to re-invest any profit in their Harbour.

6. These figures show that 80% of the ports and harbours in Scotland are public interest harbours either owned by Scottish Ministers, local authorities or trust ports.
7. The vast majority of all traffic in and out of Scotland's 375 ports and harbours, be it goods or people, is handled by a dozen major ports¹. These include private sector ports (Cairnryan, Stranraer, Clyde, Forth, Dundee, Glensanda), trust ports (Aberdeen, Peterhead, Montrose, Cromarty Firth) and local authority ports (Sullom Voe, Kirkwall).

Seabed Charges

8. From the start of the 1970s, the CEC was charging for an expanding range of seabed uses with the rapid growth of the oil industry and start of fish farming. By the end of the decade, the CEC had succeeded through the courts in consolidating the claim that the Crown was entitled to charge for all moorings attached to Scotland's seabed².
9. The oil industry had spread from the east coast and Northern Isles to the west coast by the mid 1970s, so that the CEC was active all around Scotland's coasts and during the 1980s, many of Scotland's harbours found themselves facing charges for the first time ever for their use of the seabed within their statutory harbour areas³.
10. The CEC's success in establishing that it could charge for all moorings attached to the seabed, might be seen as the culmination of the court cases of the CEC's predecessors from the mid 19th century to establish that the ownership of Scotland's seabed by the Crown in Scotland was a patrimonial right like that of the Crown in England, for the benefit of the Crown itself.
11. The CEC has spread its approach throughout Scotland's ports and harbours, including the 80% owned by Scottish Ministers, local authorities and trust ports. The only exceptions are a very small number, for example, Aberdeen Harbour, which were able to establish to the CEC's satisfaction that the Harbour Board owned the seabed within the harbour.
12. These charges on public interest harbours by the CEC are seen very widely in Scotland as against the public interest in Scotland and there are also many criticisms of the CEC's approach to raising them⁴.

Trust Ports

(i) The Tarbert Story

13. The experience of East Loch Tarbert (Loch Fyne) Harbour seems to typify the experience of other trust ports in dealing with the CEC and also to illustrate how the CEC charges are counter to the Scottish Executive's policies to support Scotland's remoter coastal communities⁵.

¹ they handled 95% or more of volumes, tonnage and passengers (Scottish Executive Transport Statistics)

² notably the case won by the CEC against the Fairlie Yatch Club (Ayrshire) in 1979

³ based on the position established through the courts that in Scotland, the seabed in a harbour remains owned by the Crown unless it has been specifically granted out.

⁴ there is widespread evidence, for example, the Scottish Law Commission Report on the Law of the Foreshore and Seabed (2003) notes "*the considerable hostility towards the Crown Estate Commissioners and their management policy*"; responses to Highland Council's questionnaire 2002; information supplied to CERWG by individual trust ports; the local authorities represented on the CERWG also own between them own 90% of the 241 local authority harbours on the Scottish Executive's lists.

⁵ The former and present Chairmen of the Harbour Board have supplied the CERWG with detailed information about the history of the Harbour and the involvement of the CEC. It would make a compelling case study.

14. Tarbert has been a harbour from medieval times and has been managed since an Act of Queen Anne in 1708, on the basis that revenues raised can only be applied for the improvement and maintenance of the harbour. At that time, there was not the concept in Scots law that the Crown would charge for the seabed within the harbour, as the seabed was taken to be held inalienably in trust by the Crown for the common good¹.
15. The CEC first approached the Tarbert Harbour Board Trustees in 1983 to either produce title to an area of foreshore used for a car park or pay the CEC for a lease. The Trustees eventually convinced the CEC that they owned the foreshore involved. However, the CEC then posed the same challenge over the harbour's moorings and pontoons and did not accept the Trustees case that they also owned the seabed within the harbour. When the CEC threatened to take the Board to the Court of Session, the Trustees decided that they could not afford the risk of losing and agreed to a lease from the CEC.
16. In addition to the rent which the Harbour Board had to pay the CEC for the use of the seabed in the harbour, the CEC charged them for the agreement and continues to charge for all rent reviews. The rent which the CEC currently charges the Harbour Board is 4% of the Board's turn-over related to its moorings and pontoons. The CEC has also tried to earn money out of Tarbert Harbour by other ways²
17. The Board has paid tens of thousands of pounds to the CEC in fees, rent and other charges over the last twenty years. This money would otherwise have been available for re-investment in the harbour by the Board and for no other purpose under the Board's constitution. The CEC has contributed no investment to the harbour, while any development involving the seabed by the Trustees leads to more charges from the CEC. This includes developments supported by Scottish Executive grants and other public funds.
18. The CEC's charges appear to work against Scottish Executive policies to support communities such as Tarbert. The town is a relatively remote and vulnerable settlement, which has a population of 1200-1500 and supports its surrounding district. At the centre of the town and its local economy, is the harbour run by what the Scottish Executive would potentially count as a local social enterprise. The Executive itself ensures that Tarbert and other Trust ports have high standards of governance and re-invest all revenues in the harbour as they are required to do for the good of the local community.
19. The charges by the CEC remove a significant percentage of the funds which the Harbour Board has to invest each year, with a culminative affect on local development since the charges were first introduced by the CEC nearly twenty five years ago. The only apparent public benefit of these charges raised by the CEC as a public body, seems some remarkably notional contribution to government funds in London.³

(ii) Wider Issue

20. The Tarbert story is not an isolated instance of the negative impact of the CEC on trust ports, but illustrates wider issues. In Caithness, for example, the Scrabster Harbour Board has had a series of major issues with the CEC. These include the use of an area of land reclaimed from the sea, where the Harbour Board consider that the CEC's approach, including the type of lease it is prepared to offer, has seriously undermined local development opportunities and continues to do so.

¹ see Section 16.

² for example, charges on dredging, giving a mooring association authority to operate in the harbour.

³ It might be noted that Trust Ports, in comparison to local authority harbours, also have to pay corporation tax on all profits.

21. The Scottish Executive could readily start to address the issues associated with the CEC's approach to the seabed and foreshore within Trust ports, if it had the interest. Within the changed public policy context in Scotland following devolution, the Scottish Executive can expect the CEC to change its approach to complement Scottish Executive policies rather than work against them.
22. At the same time, the CEC's statutory remit gives it considerable flexibility to respond to situations through its duty to have due regard to the requirements of good management. The CEC's financial flexibility is illustrated by the fact that over 80% of the millions of pounds it collects each year through the marine property rights of the Crown in Scotland (£6.1m 2005-06), is 'net surplus revenue' or profit¹.
23. Trust ports might also reasonably expect that the Scottish Executive would at least be having a look at present at their situation with the CEC, given the Scottish Executive Partnership Agreement commitment to "*consideration of current management and rental arrangements for the sea-bed*"².
24. However, there seems little progress with this commitment. It appears that SEERAD will receive the outcome from the CEC's appointment of an 'independent' expert panel to review aquaculture rents, while there has been no contact between SEERAD and the Executive's Transport Department over seabed rents in harbours³. The Ports and Harbours Branch also appear to be taking no initiative with respect to the commitment⁴.
25. Trust Ports have felt let down before over the issue of the seabed in harbours⁵. The strength of their contribution to the Scottish Law Commission (SLC) enquiry into the law of foreshore and seabed is clearly apparent in the SLC's final report⁶. While the SLC doubted the CEC's interpretation of its remit and set out the case against the CEC as put to the SLC, it then had to explain that the issues were outwith the scope of its remit simply to clarify the existing law.
26. Trust Ports have also been neglected over the seabed ownership issue by the Scottish Executive in comparison to the Executive's positive policies to support other social enterprises and more community control in different contexts, including the Community Right to Buy legislation (CRtB) and National Forest Land Scheme (NFLS)⁷.
27. While the CRtB covers the foreshore and can include the land based parts of harbours where these can count as eligible land⁸, none of this helps Trust Ports. However, the Scottish Executive could seek an equivalent non-statutory scheme to the NFLS to deliver the orderly transfer of the ownership of seabed and foreshore within Trust Ports to the Harbour Board, where these rights are claimed on behalf of the Crown by the CEC.
28. The significant public benefits for local development from this would be straightforward, not least in simply removing charges which the CEC does not have to make or need to make. The fact that at least one Trust Port is not subject to the charges because it has been

¹ for example, see Table 3 in main report

² The Partnership Agreement is available on <http://www.scotland.gov.uk/library5/government/pfbs-02.asp>

³ The annual rents paid by Trust Ports to the CEC range from under £5K to over £100K.

⁴ Ports and Harbours Branch, Scottish Executive (March 2006)

⁵ Comments at meeting Scottish Ports Committee meeting at Tarbert, May 2006. However, responsibility for this commitment is assigned to SEERAD rather than the Scottish Executive Transport Department.

⁶ see for example paragraphs 1.10 and 5.4 "Law of Foreshore and Seabed" (2003)

⁷ Comments at meeting Scottish Ports Committee meeting at Tarbert, May 2006

⁸ The Portpatrick Trust has successfully register an interest under the legislation to buy Portpatrick Harbour from a private owner (Senscot News 2nd June 2006)

deemed to already own its seabed, emphasises the anomaly for the others. The only known example which does not have to pay is Aberdeen Harbour, which is the largest Trust Port in terms of turn-over.

29. There is no reason now why public policy in Scotland for Scotland's Trust Ports needs to be unduly constrained by the interpretation of what old documents say about the Crown's intentions long ago in a different historical and legal context for the seabed in particular harbours.

Local Authority Harbours

30. Local authorities own two thirds of the 375 harbours in Scotland and 90% of these are in the Highlands and Islands. These harbours have a range of different origins including 19th century public investment schemes, former uneconomic trust ports and private harbours and harbours built by the local authorities themselves and their predecessors as part of infrastructure requirements.
31. Local authority harbours play an essential role in the well-being of the Highlands and Islands and are a significant net cost to the authorities. The anomaly for public policy in Scotland of the CEC's charges over the use of the seabed and foreshore within these public interest harbours, seems even more explicit than the position with Trust Ports.
32. While it might be welcomed that the CEC appears to have softened its approach recently by offering rent reviews which are not 'upwards only' reviews, the CEC's charges are still charges on public services by one public body on other public bodies¹. It is also a curious public sector exercise, with private property management companies earning their keep sending an array of invoices to local authorities for their many harbours, slipways, jetties and moorings, with some of the invoices for amounts that must mean they are more expensive to issue and collect than they are worth².
33. While the CEC regularly describes in its annual reports how the revenues it raises are "*for the benefit of all taxpayers*", it might appear differently to Council taxpayers in the Highlands and Islands.
34. The appearance of the CEC in the last 25 years to claim revenues from the seabed in these public interest harbours, might be seen as a counter productive re-surfacing of the Crown in a sector where it was replaced long ago in other respects by statute law.

Law Reform

35. As indicated above (para.20), the Scottish Executive could immediately start discussions with the CEC about reduced charges and other improvements for local authority harbours. If the administration of Scotland's ownership of its sea bed was devolved, for example through the planned UK Marine Bill, it would be the Scottish Executive which would be faced directly with taking forward discussions with the harbour boards.
36. In any event, it would seem clear that public policy in Scotland would be best served if both Trust ports and local authorities as statutory harbour authorities each owned the seabed in their own statutory harbour areas.

¹ for example, set at 6% of related turn-over for Stornoway Harbour

² examples supplied by Highland Council

37. While this might be achieved by many individual conveyancings on behalf of the Crown by the CEC, there would appear scope for the Scottish Parliament to legislate on the nature of the right of the Crown in Scots law to the seabed in Scotland. It might, for example, be amended not to apply in statutory harbours.
38. Any attention to issues over the CEC's approach to Scotland's ports and harbours, should also include the issues with the CEC's terms and charges at private and commercial harbours. These need to be reviewed and addressed, not least given the importance of some of these harbours to local areas and of others to the Scottish economy.
39. It appears that some major commercial ports would prefer the Scottish Executive to the CEC as the landlord of the seabed within their harbours. These companies are already involved with the Scottish Executive through its devolved responsibilities for transport and harbours and also over the contributions of these major ports to local, regional and national economic development in Scotland.
40. Against this background, the Scottish Executive might be expected to recognise more fully the contribution of these harbours and to be a more responsive landlord in changing economic circumstances in comparison to the CEC with its UK wide approach and lack of re-investment.

Annex 17

MARINE FISH FARMS

Introduction

1. The purpose of this paper is to provide a short description of Scotland's marine aquaculture sector as part of the background to the management of the Crown Estate in Scotland, because fish farms need to obtain seabed leases from the CEC.
2. The sector has three components: salmon, other fin fish species and shellfish as described below¹. Salmon is by far the most important in terms of tonnage, value and employment. Overall marine fish farm production in 2004 was valued at c.£340 million, with salmon accounting for c.£330 million. The sector is estimated to support direct employment of c.2,300 full-time job equivalents.
3. Aquaculture has been a very important development in the Highlands and Islands during the last thirty years as:-
*"Fish farming has created a large number of jobs in small rural communities throughout the length and breadth of the Highlands and Islands and that has been exceedingly important in diversifying local economies and in reducing unemployment in areas where other options are particularly difficult to create"*².

Salmon

4. The production of Atlantic salmon in floating cages moored to the seabed around Scotland's coast started in the 1970s and has grown rapidly since then. Production was over 10,000 tonnes in 1986, 83,000 tonnes in 1996 and 158,000 tonnes in 2004.
5. Scotland is now the third largest producer of farmed salmon in the world after Norway and Chile and accounts for 10% of global production. While ex-farm production is valued at over £300 million, added value output is estimated to be worth another £300-400 million³.
6. The main production areas in Scotland are Shetland, accounting for 34% of Scottish production in 2004, with the North West Highlands 28%, the Western Isles and Argyll and the Inner Hebrides 15-20% each and Orkney 6%.
7. Employment in salmon production (including smolts) was reported at 1711 (18% part-time) in 2002 with essentially all these jobs in the Highlands and Islands. It is estimated that there were also more than another 5600 jobs in salmon processing (2001). With other downstream employment, the sector is considered to support c.10,000 jobs overall with around half of that total in the Highlands and Islands.

¹ The statistics here are mainly from the following two sources: the Fisheries Research Services' annual surveys of salmon, other species and shellfish (<http://www.frs-scotland.gov.uk/delivery/information>) and the Scottish Economic Report March 2004: Scottish Salmon Farming by Bob Henderson and Colin MacBean (<http://www.scotland.gov.uk/Publications/2004/03/19038/34138>)

² Sandy Brady, Director of Strategy for the Highlands and Islands Enterprise quoted on Scottish Salmon Producers Organisation (SSPO) website: <http://www.scottishsalmon.co.uk/economics.asp>

³ SSPO website: <http://www.scottishsalmon.co.uk/economics.asp>

8. The number of jobs in salmon production was fairly stable throughout the period 1988-2002 (+/- 10% of 1700). During this period, there were large increases in productivity per person in the sector and direct employment levels were only maintained by the growth in total production. This growth has been slowing down after the industry's rapid expansion from a small base. While the average growth in production between 1987-2002 was 21% per annum, it was 33% in 1987-94, 15% in 1995-99 and 5% in 2000-4.
9. The industry is also continuing to consolidate with production concentrated on fewer and bigger sites owned by fewer and bigger companies, with an increasing percentage of the companies owned overseas.
10. In 1992/3, sites producing over a 1000 tonnes of salmon a year accounted for 9% of total production. In 2001/2, it was 62%. In 2004, when there were 315 active seawater farm sites in Scotland, 193 (61%) produced salmon for sale. 55 of these produced over 1000 tonnes and 83% of total production was accounted for by 18 companies.
11. The number of companies involved in salmon production fell from 131 in 1994 to 69 in 2004 (of which 12 produced no salmon in 2004), with 85% of production owned by Norwegian and Dutch companies. The trend has continued with the merger in 2006 between Marine Harvest (responsible for one third of Scottish production) and Panfish¹.
12. The greatest gains in productivity have been made by the bigger companies, which also benefit from economies of scale and marketing advantage with the main retail chains, so that the concentration of salmon production is expected to continue. Many smaller scale producers specialise in organic production, where higher costs are offset by premium market prices.

Other Finfish Species

13. There has been increasing interest in farming alternative finfish species such as cod and halibut. Production is still at a low level and it remains to be seen which of the newer species may prove viable at relatively low production volumes and therefore suited to smaller scale producers.
14. Marine and freshwater production was reported in 2004 as supporting 61 full time and 18 part time jobs and involving:-

<i>species</i>	<i>no. of sites</i>	<i>tonnage</i>
arctic charr	8	3
brown/seatrout	45	167
cod	20	8
halibut	17	187

Shellfish

15. The farming of shellfish has developed over the same period as salmon farming and is spread over largely the same area: Shetland, Orkney, Western Isles, North West Highlands and Argyll down to south west Scotland.
16. In 2004, the sector supported 149 full time and 253 part-time and casual jobs and the value of the sector at first sale was estimated to be c.£6m, with common mussels by far the most important species.

¹ Scotsman 7th March 2006 "Fish farm job fears after £800m deal"

17. There were 309 active sites in 2004 of which 152 (49%) produced shellfish for the table or growing on. More than one species can be produced at one site. The species production was:-

common mussels	4223 tonnes
pacific oysters	287 tonnes
native oysters	8 tonnes
king scallops	10 tonnes
queen scallops	45 tonnes

18. The number of companies involved declined from a peak of 175 in 1990 to 175 at the end of 2004. Of these, 110 (69%) produced shellfish for sale and 65 had no sales but were still in operation.

Several Orders

19. Scottish Ministers can grant a Several Order over an area of seabed under the terms of the Sea Fisheries (Shellfish) Act 1967 to enable the establishment, improvement and protection of a shellfishery¹.
20. The Order restricts the public right to fish in a defined area of sea or coastal waters and the grantee has the sole right there to the species named in the Order. Within the area, it is an offence for others to fish, disturb or injure the shellfish, beds or fishery. Ministers can also specify how the Order is implemented, including the method of harvesting.
21. There are currently nine Several Orders fisheries in Scottish Waters. The total area covered by the Orders is 145 hectares.

¹ <http://www.marlab.ac.uk/Delivery/standaloneCM.aspx>

Annex 18

BOARD MEETINGS OF THE CROWN ESTATE COMMISSIONERS

References to Scotland January 2005 - March 2006

Dates of Board Meetings, with those where specific reference was made to Scotland underlined and the reference quoted below:

25 January 2005
22 February 2005
22 March 2005
24 May 2005
28 June 2005
26 July 2005
27 September 2005
18 October 2005
29 November 2005
16 December 2005
31 January 2006
28th March 2006
23rd May 2006
27th June 2006
25th July 2006
26th September 2006
17th October 2006
28th November 2006

25th January 2005

Scottish Affairs – Ian Grant had had a useful meeting with Ross Finnie (MSP and minister for Environmental and Rural Development) about The Crown Estate. One suggestion arising from that meeting was that we should provide separate financial information relating to Scotland at the time our annual report is published. It was also suggested that The Crown Estate made contact with Richard Wakeford, the new head of SEERAD.

22nd March 2005

Rural Managing Agents' Conference, Edinburgh – The Conference marked the start of the new rural structure. The event would focus on ensuring a full understanding of the new processes and expectations.

Public Relations – Scotland – TCE had appointed a new public affairs agency for Scotland, Pagoda.

26th July 2005

[Not specifically Scotland, but of principal relevance there] Review of Fish Farming Rents – Marine Estates was progressing the preparation to announce and put in train an independent and full review of fish farming rents. The Communications department had been briefed.

Drumin Castle, Glenlivet Estate – The Duke of York commemorated the completion of the restoration of Drumin Castle on 14 July.

31st January 2006

Proposed external activities for 2006 included the formal openings of The Savill Building and 16 New Burlington Place, an internal communications campaign to support the company's move to its new HQ, and specific emphasis would be given to extending our public affairs programme in Scotland.

28th March 2006

A series of meetings had been arranged with Scottish politicians, with the aim of improving the perception of The Crown Estate in Scotland.

25th July 2006

Scottish Committee Meeting: The minutes of the meeting held on 30 June had been circulated to all Board Members for information. The next meeting had been arranged for 20 October.
Rural Annual Report: It was suggested that the proposed Promotional Plan might have a Scottish element.

17th October 2006

Review of aquaculture rents: the Board formally recorded the decision taken out of committee on 22/9/2006, to agree the recommendation in the paper.

The Crown Estate in Scotland Review undertaken by the Highland and Islands Council would be discussed at the Scottish Committee meeting on 20th October.

28th November 2006

Ref Item 8, Marine Investment: an investment paper had been due to be presented to this meeting, but had been deferred because of the Highland and Island's review of The Crown Estate in Scotland.

The Crown Estate in Scotland: Ian Grant informed the Board that following the outcome of the Highland Council's 'review' of The Crown Estate, we were seeking to identify ways of further strengthening our working relationship with the Scottish Executive.

Source: The CEC, with the note that "other policy/capital/revenue issues etc discussed affect our Scottish holdings together with those in other parts of the UK."

Annex 19

The Crown Estate Act 1961

Section 1 (5)

1. The following section of the 1961 Act has long given rise to concern over the accountability of Crown Estate Commissioners:

1 (5) The validity of transactions entered into by the Commissioners shall not be called into question on any suggestion of their not having acted in accordance with the provisions of this Act regulating the exercise of their powers, or of their having otherwise acted in excess of their authority, nor shall any person dealing with the Commissioners be concerned to inquire as to the extent of their authority or the observance of any restrictions on the exercise of their powers.

2. The Scottish Law Commission (SLC) discussed section 1(5) under the heading of “Accountability” in their Discussion Paper on the Law of the Foreshore and Seabed.¹ The SLC were concerned about the need to clarify whether the actions of the CEC are subject to judicial review. However, the response from the CEC suggested that “*this is not appropriate and not necessary*”².
3. The SLC concluded in the end that 1(5) appears only concerned with upholding the validity of transactions and not with wider matters where the CEC have acted beyond the powers of the Crown, which would appear to be subject to judicial review³.
4. The CEC report regarding the scope of 1(5) that the Head of their legal section advises:-
*“there has never been, so far as we are aware, any judicial pronouncement in the courts as to the scope of this section, and we therefore cannot give any authoritative guidance on the point. Nor do we have any entrenched in-house view on the correct interpretation of section 1(5), which must be a matter for legal advice as individuals and circumstances may require”*⁴

¹ SLC Discussion Paper 113 (2001)

² CEC Response from Alan Menzies of Strathearn Anderson WS 24th July 2001

³ SLC Report on the Law of the Foreshore and Seabed (2003)

⁴ CEC letter, Head of Edinburgh Office 13th March 2006

Annex 20

THE CROWN ESTATE IN SCOTLAND

SOURCES OF BACKGROUND INFORMATION

Introduction

1. The purpose of this paper is to give a brief description on sources of information about the history of the Crown Estate in Scotland up to the present time.
2. In 1955, the Committee on Crown Lands produced an informative report in which they commented on the “*striking lack of knowledge about the Crown Estate and its ownership and management*”¹ and the Crown Estate Commissioners (CEC) endorsed this view in their first Annual Report in 1957.
3. In 1960, “The Crown Estate: An Historical Essay” by R.B.Pugh was published². This 40 page booklet, written by a member of CEC staff, is the only published history of the Crown Estate.
4. The booklet was published to commemorate two anniversary’s which occurred before the management of the Crown lands and revenues of Scotland were amalgamated with those for the rest of the UK in 1832 (i.e. 200th anniversary of Civil List Act of 1760 and 150th anniversary of the creation of the Commissioners of Woods and Forests in 1810).
5. Pugh’s historical essay does refer to the Crown lands and revenues in Scotland after the amalgamation. However, the Essay is essentially a history of the Crown Estate in England, which is understandable given the scale and importance of the Crown Estate there.
6. It remains the case that any background historical information in CEC publications tends only to tell the English history (for example, starting with William the Conqueror in 1066), even in CEC publications for Scotland. It is unusual for there to be any reference to the different origins and history of the Crown Estate in Scotland³. A timeline at the back of the 2002 CEC booklet “Creating Value for us all” does however include:-
“The Crown Lands (Scotland) Acts of 1832, ’33 and ’35 transferred the management of the land revenues of the Crown in Scotland to the Commissioners of Woods etc. thus unifying Crown estates management throughout the UK”

Pre-1832

7. There seems little published information on the Crown’s lands and revenues in Scotland before the 19th century (for example, “The Revenue of the Scottish Crown 1681” by Sir William Purves, edited D.M.Rose (Blackwood, 1897)⁴, while the very much greater Estates

¹ Report of the Committee on Crown Lands (Cmnd.9483) HMSO 1955

² HMSO 1960

³ see reference to CEC website at end of this annex.

⁴ There will, however, be information available in the records of the Baron Court of the Exchequer and other primary sources as well as other research related to the history of Scotland’s kings and queens.

of the English Crown in earlier centuries continue to be the subject of active academic research¹.

1830s – 1950s

8. There seems little if anything published about the management of the Crown lands and revenues in Scotland from their amalgamation in 1832 until the 1950s, other than the information in Pugh's historical essay.
9. There do seem, however, to be very extensive records covering the period. These include:
 - the collection of papers in the National Archives of Scotland, mainly catalogued under CR4 Miscellaneous papers;
 - the main collection of the "Records of the Crown Estate and predecessors 1441-2004" in the National Archives at Kew London (ref. CRES).
 - the debates in Parliament associated with the dozen Crown Lands Acts 1829-1943 (1829, 1845, 1851, 1866, 1873, 1885, 1894, 1906, 1913, 1927, 1936, 1943) over and above the three Acts in the 1830s relating the Scotland (see para.6 above).
 - other committee reports and the very extensive legal records of the Commissioners' many court cases during this period over Crown lands and rights in Scotland.

1950 - Present

10. Modern records of the composition and management of the Crown Estate start with the report of the Committee of Crown Lands in 1955 (above) and the main source of information since has been the Annual Reports of the CEC from 1957². A full set of the Annual Reports is held by the House of Lords Records Office.
11. The CEC Annual Reports from 1957-2002 have a separate section reporting on their operations in Scotland as one of 5 sections. The other four sections report on the CEC's Urban, Rural and Marine operations in the rest of the UK and on the Windsor Estate.
12. The CEC's Annual Reports initially included a schedule of properties under its management, with those in Scotland covered in a separate section of the list. The schedule was then included every fourth year and this continued in a more or less regular pattern until 2000, the last year in which a schedule was published.
13. The reports since 2000 have included at most a map of the UK with dots for the location of the urban and rural properties managed by the CEC and some comment on other rights that also form part of the Crown estate (e.g. ownership of the seabed, the right to mine gold and silver).
14. After ending any specific reporting on the operations in Scotland in its Annual Reports from 2002, the CEC produced a two side supplement on 'financial highlights' of the Crown Estate in Scotland at the request of the Scottish Executive at the same time as their 2004-05 Annual Report. This has been repeated in 2005-06.
15. During the 1990s, the CEC produced a number of newsletters and other publications connected to their operations in Scotland. These mainly included:-

¹ For example, "The Estates of the English Crown 1558-1640" edited by R.W.Hoyle, 458 pages, Cambridge University Press 1992)

² The Commissioners of Crown Lands gave up producing annual reports at some stage between 1924-53 (Report of Committee on Crown Lands)

- material about Glenlivet, in particular “Putting Glenlivet on the Map” the Report of the Glenlivet Estate Development Project by Neil Sutherland (1991);
 - an Annual Scottish Newsletter from 1995, with the seventh and last issue in 2001.
 - the red booklet “Promoting Development in Scotland” in 1998 which set out how the CEC saw their role in Scotland given devolution.
16. The CEC has continued to produce Scottish marine newsletters and Highlands and Islands marine updates, since other reporting on their operations in Scotland within the CEC’s Annual Reports stopped in 2002.
 17. The CEC also has an extensive website.¹ The search facility on the site used to produce no results for Scotland. However, recently (September 2006), the CEC has added several dozen pages of background information about its interests in Scotland. One page is on “Scottish FAQs” (Frequently Asked Questions). These include: “Why is The Crown Estate not brought under the control of the Scottish Parliament?”
 18. In December 2006, the CEC published a new promotional booklet “You’ll be surprised what The Crown Estate does for Scotland”.
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¹ www.thecrownestate.co.uk

Annex 21

CERWG CONTACT WITH THE CROWN ESTATE COMMISSION, SCOTTISH EXECUTIVE AND SCOTLAND OFFICE

Introduction

The purpose of this paper is to give a brief record of the CERWG's contact with the Crown Estate Commission (CEC), Scottish Executive and Scotland Office during the production of this report.

The CERWG was set up to produce the Report and adopted a straightforward and open approach to its task. The CERWG therefore contacted the CEC and Scottish Executive at the start of its work, given their respective interests in the management of the Crown Estate in Scotland. The CERWG continued in contact with the CEC and Executive at each stage of the Report's development and established contact with the Scotland Office at first draft report stage.

The pattern of the CERWG's contact reflected the five main stages in the CERWG's work from start up to final submission of the Report.

1. Start Up Period

In October 2004, prior to the establishment of the CERWG in December 2004, the proposed work of the CERWG was discussed at a meeting with the Head of Rural Affairs at the Scottish Executive Environment and Rural Affairs Department (SEERAD). As a result of interest in the CERWG's work, there were further discussions with the Head of Rural Affairs in January and February 2005.

The CERWG also discussed its proposed work with the CEC in December 2004 through the CEC's public affairs consultants in Scotland, Weber Shandwick. There was further contact during January 2005 at which, through Weber Shandwick, the CEC welcomed the CERWG's constructive approach and agreed that the CERWG and CEC should meet.

2. Main Investigations

In June 2005, the CERWG had its first contact with the Head of Department at SEERAD who had become responsible for SEERAD's interests in the Crown Estate. The CERWG also discussed its work informally with the Deputy Minister at SEERAD in June and continued in contact through the Minister's office, including supplying papers. The topic was also discussed at a meeting with the SEERAD Head of Department in November 2005.

The CERWG and CEC first met in May 2005 at the CEC's Edinburgh office and continued in contact up to and after another meeting in Edinburgh in November 2005. The contact included the CEC responding to written questions about the Crown Estate from the CERWG.

3. Pre-Report Findings

The CERWG met with the Deputy Minister at SEERAD in February 2006 to discuss the progress of the CERWG's work. The CERWG also met with the SEERAD Head of Department in March and continued in contact following the meeting.

The CERWG met the Chairman of the CEC in June 2006 to discuss the progress of the CERWG's work, including arrangements for consulting the CEC over the CERWG's forthcoming Draft Report. The meeting was followed by further contact with the CEC's Edinburgh office.

4. Draft Reports

In late September 2006, the CERWG sent the CEC an advance copy of its First Draft Report for comment. At the start of October, copies of the First Draft were also sent to the Head of Environment at SEERAD and to the Scotland Office.

The CEC's response to the CERWG at the end of October stated that the CEC would not be commenting on the Draft Report, despite the CEC's apparent undertaking in June to do so. The CEC considered that the Report had "interwoven facts with opinions" so that "it would be difficult if not impossible for us to comment".¹

The CERWG supplied the Second Draft of its Report to the CEC and SEERAD in November 2006 and also met with the Head of Department at SEERAD about the Report that month. Then and subsequently, he made it clear that the Scottish Executive would not be making any comments on the Draft Report as his staff were too busy dealing with other matters.²

5. Approval Process

During November and December 2006, the local authority members of the CERWG considered the Report in Committee and then in full Council, while the Report was also considered in a similar way by HIE and COSLA.

In mid December, during this process, the CEC launched an extensive public relations exercise against the Report. This included a press release and new CEC booklet "*You'll be surprised what The Crown Estate does for Scotland*"³, as well as letters from the Chairman of the CEC or senior CEC staff to a very wide range of interests in Scotland.⁴

Full approval of the CERWG Report by the six local authorities and HIE as members of the CERWG was completed on 20th December 2006 and by COSLA in early February 2007, with submission of the Report to Ministers due to follow shortly afterwards.

¹ Letter from CEC 27th October 2006

² Letter from SEERAD Head of Department (Richard Wakeford) 16th November 2006

³ CEC Press Release dated 14th December 2006

⁴ the letters, all or most of which were dated 14th December, were to local authorities, other public bodies, interest groups, CEC tenants and the CEC's other customers and contacts.