



The Scottish Parliament  
Pàrlamaid na h-Alba

**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**

**AGENDA**

**12th Meeting, 2016 (Session 5)**

**Tuesday 22 November 2016**

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 5, 6, 7, 8 and 9 in private.

2. **Report on deer management in Scotland:** The Committee will take evidence from—

Ian Ross, Chairman, Eileen Stuart, Head of Policy and Advice, and Claudia Rowse, Head of Rural Resources Unit, Scottish Natural Heritage.

3. **Subordinate legislation:** The Committee will take evidence on the Crown Estate Scotland (Interim Management) Order 2017 [draft] from—

Humza Yousaf, Minister for Transport and the Islands, David Mallon, Head of Crown Estate Strategy Unit, Marine Scotland, and Douglas Kerr, Solicitor, Directorate for Legal Services, Scottish Government.

4. **Subordinate legislation:** Humza Yousaf (Minister for Transport and the Islands) to move—

S5M-02399—That the Environment, Climate Change and Land Reform Committee recommends that the Crown Estate Scotland (Interim Management) Order 2017 [draft] be approved.

5. **Report on deer management in Scotland** The Committee will consider evidence heard earlier in the meeting.

6. **Biodiversity: Scotland's progress to 2020:** The Committee will consider its response to the Scottish Government.

7. **Scotland's greenhouse gas emission targets:** The Committee will consider its response to the Scottish Government.

8. **Draft climate change plan (RPP3):** The Committee will further consider its approach to the inquiry.
9. **Work programme:** The Committee will consider options for future areas of work.

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The papers for this meeting are as follows—

**Agenda item 2**

Report on deer management cover note

ECCLR/S5/16/12/1

PRIVATE PAPER

ECCLR/S5/16/12/2  
(P)

**Agenda item 3 and 4**

Affirmative instrument cover note

ECCLR/S5/16/12/3

PRIVATE PAPER

ECCLR/S5/16/12/4  
(P)

**Agenda item 6**

PRIVATE PAPER

ECCLR/S5/16/12/5  
(P)

**Agenda item 6**

PRIVATE PAPER

ECCLR/S5/16/12/6  
(P)

PRIVATE PAPER

ECCLR/S5/16/12/7  
(P)

**Agenda item 7**

PRIVATE PAPER

ECCLR/S5/16/12/8  
(P)

PRIVATE PAPER

ECCLR/S5/16/12/9  
(P)

**Environment, Climate Change and Land Reform Committee**

**12th Meeting, 2016 (Session 5)**

**Tuesday 22 November 2016**

**Consideration of the SNH Report on Deer Management in Scotland**

**Introduction**

1. As part of its work programme discussion (on 19 September 2016) the Committee agreed to consider the forthcoming report from Scottish Natural Heritage (SNH) on the review of deer management in Scotland. This report was commissioned by Scottish Ministers to review the effectiveness of deer management in protecting the public interest, with a specific focus on the impact on natural heritage. At its meeting on 15 November 2016 the Committee subsequently agreed its approach to consideration of the report. This report is now complete and was published on 18 November.
2. The Committee agreed to hear from SNH on the review process, the findings and their conclusions and recommendations and then hear stakeholder's views on the report at a future meeting. Following consideration of the evidence the Committee agreed to write to the Government outlining its views on the report and evidence received.
3. At the meeting on 22 November the Committee will take evidence from SNH: Ian Ross, SNH Chairman, Eileen Stuart, Head of Policy and Advice and from Claudia Rowse, Head of Rural Resources Unit.

**Background**

*Previous Parliamentary Consideration*

4. Deer management was on the agenda of the Rural Affairs, Climate Change and Environment (RACCE) Committee in session 4 when that Committee undertook an inquiry into the issue and then returned to it as part of its consideration of the Land Reform (Scotland) Bill. In considering the Bill, and following the recommendation of the RACCE Committee, the Scottish Government agreed to report on the issue of deer management before the end of 2016.

*RACCE Committee Inquiry - Session 4*

5. In November 2013 the RACCE Committee commenced scrutiny of the issue of deer management in Scotland. The Committee received briefing from SPICE [Wild Deer in Scotland](#). It also received a number of written submissions and took evidence from three panels of stakeholders.
6. The RACCE Committee then [sent a letter](#) in January 2014 to the Minister for Environment. The RACCE Committee considered that as the Code of Practice on Deer Management came in to force in 2012 it would be premature to make a

judgement as to how effective it was going to be. The Committee considered there was no definitive evidence of the need to introduce a statutory duty of sustainable deer management for deer management groups at that point in time. However it continued to monitor the effectiveness of the Code and undertook to review its success in generating changes in deer management before the end of session 4.

7. The Committee was also of the view that the pace of movement towards all Deer Management Groups (DMGs) having demonstrably effective and environmentally responsible management plans in place was too slow and a reasonable timeframe for all DMGs to have adopted deer management plans was by the end of 2016. The Committee agreed to monitor progress and consider what further action may be required, should the voluntary approach fail, to ensure that deer management plans are adopted and implemented by all DMGs by the end of 2016. The Committee considered that those plans should be environmentally responsible, demonstrate how they are delivering positive outcomes for deer populations and for the natural heritage, and be publically available.
8. The Committee also had concerns that the work of some DMGs was insufficiently transparent and publically accountable and it made a number of recommendations in relation to stakeholder and community engagement. The Committee agreed to monitor progress in the establishment and operation of these groups and consider what further action may be required.
9. The Committee considered the powers available to SNH and recommended that the Scottish Government undertake an assessment of the effectiveness of section 7 agreements and encouraged SNH and the Scottish Government to make full use of section 8 powers where voluntary agreement cannot be secured or where environmental damage is persisting<sup>1</sup>. The Committee also recommended that the Scottish Government undertake an assessment of how workable section 8 powers were, as they remain unused.
10. The response from the Scottish Government to the Committee is available [here](#).

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<sup>1</sup> Sections 7 and 8 of the Deer (Scotland) Act 1996 set out a process for SNH to negotiate with landowners to agree or impose measures to manage deer. Section 7 relates to voluntary “control agreements”. Control agreements usually set a target for reducing deer numbers, usually expressed as a density of deer per unit area. They may also provide for other measures, such as fencing, to manage deer impacts.

Section 8 relates to compulsory control schemes, where it has not been possible to secure a control agreement. This section provides that SNH “shall make a scheme (a “control scheme”) for the carrying out of such measures as it considers necessary for those purposes [reducing or preventing damage caused by wild deer]”. Section 8(7) states that “Where any control scheme has been confirmed, every owner or occupier shall take such measures as the scheme may require of him in accordance with its provisions.

11. In May 2015, the Committee wrote to stakeholders requesting updates on the operation and effectiveness of deer management groups, and the timescales for adoption and publication of deer management plans.

*RACCE Committee Consideration of Deer Management within the Land Reform (Scotland) Bill*

12. The RACCE Committee continued its consideration of deer management at stages one and two of the Land Reform (Scotland) Bill. At that time the Committee heard concerns that progress in deer management measures was mixed, and, in some cases slow. In considering the Bill the Committee was keen to see a review of the Code and the operation of the DMGs before the end of 2016.
13. Sections 69-71 of the Land Reform (Scotland) Act 2016 were commenced in July 2016. These deal with the management of wild deer populations in Scotland and provide for interim measures which could be used following completion of the planned inquiry into deer management in 2016. The Policy Memorandum to the Bill states— “What is being proposed at present are essentially interim measures which could be brought into effect quickly following upon the conclusion of the review that is to take place at the end of 2016, if it is decided that more stringent measures are required at that point. The intention is that these interim measures would be in force throughout the period during which the new statutory scheme was being developed.”
14. The interim measures are—
  - an additional use of existing deer panels to promote community involvement in local deer management;
  - a new power for SNH to require the production of a deer management plan where, in its view, the public interest in deer management is not being delivered; and
  - an increase in the level of fine for failing to comply with a deer control scheme, imposed under section 8 of the Deer (Scotland) Act 1996.

**Clerks**

**Environment, Climate Change and Land Reform Committee**

**SSI cover note for the Crown Estate Scotland (Interim Management) Order  
2017 [draft]**

<b>Title of Instrument:</b>	The Crown Estate Scotland (Interim Management) Order 2017 [draft]
<b>Type of Instrument:</b>	Affirmative
<b>Laid Date:</b>	21 October 2016
<b>Circulated to Members:</b>	17 November 2016
<b>Meeting Date:</b>	22 November 2016
<b>Minister to attend meeting:</b>	Yes
<b>Motion for approval lodged:</b>	Yes – <a href="#">S5M-02399</a>
<b>Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee?</b>	Yes
<b>Reporting deadline:</b>	2 December 2016

**Delegated Powers and Law Reform Committee**

1. At its meeting on 8 November 2016, the Committee agreed to draw the attention of Parliament to the instrument on reporting ground (h) as the meaning of article 5(1) could be clearer. The policy intention is that interim management board of Crown Estate Scotland must have a minimum of two members (i.e. the chair and one other member) rather than one. However, that intention could be more clearly expressed in article 5(1). The extract from the report can be found in the **annexe**.

2. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

**Purpose**

3. The management of the Crown Estate is currently a reserved matter. However, the Scotland Act 2016 gave the responsibility for the management of the Crown Estate’s economic assets in Scotland, and the revenue generated from those assets, to be devolved to Scotland. The purpose of this instrument is to establish an interim body, called Crown Estate Scotland (Interim Management), to manage those Crown Estate assets in Scotland which will be transferred to the body as part of a scheme made by the Treasury.

**Procedure**

4. The draft Order was laid on 21 October 2016 and referred to the Environment, Climate Change and Land Reform Committee. The Order is subject to affirmative procedure (Rule 10.6). It is for the Environment, Climate Change and Land Reform

Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Environment, Climate Change and Land Reform has, by motion S5M-02399 (set out in the agenda), proposed that the Committee recommends the approval of the Order.

### **Recommendation**

5. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 2 December 2016.

### **Supporting documents provided by the Scottish Government**

#### **EXPLANATORY NOTE**

As per purpose above and including:

This Order establishes Crown Estate Scotland (Interim Management) (“CES(IM)”). It is intended that CES(IM) is to be the person nominated by the Scottish Ministers for the purposes of section 90B(1) of the Scotland Act 1998 (“the 1998 Act”) to receive the transfer of the existing Scottish functions of the Crown Estate Commissioners under a scheme made by the Treasury under that section.

Article 3 establishes CES(IM) as a body corporate. CES(IM)’s Gaelic name (Oighreachd a’ Chrùin Alba (Stiùireadh Eadar-amail)) has equal legal status. Article 4 provides that CES(IM) must operate in a way which is transparent and accountable.

Articles 5 and 6 set out provisions for the membership of CES(IM). The Scottish Ministers must appoint a chair, and up to 8 other members. Members are appointed for such period as the Scottish Ministers may determine and members may be reappointed. A list is provided of public office holders who may not be appointed as a member. Article 7 makes provision for CES(IM) to pay its members remuneration, allowances and pensions, as determined by the Scottish Ministers.

Article 8 provides that the Scottish Ministers may remove a person if that member becomes insolvent; if that member has been absent without the permission of CES (IM) for a period of longer than three consecutive months; or if the Scottish Ministers consider that the member is unable to perform the functions required or is unsuitable to continue as a member. A person’s membership ends if that person resigns, or becomes a member of one of the listed offices.

Article 9 requires CES(IM) to employ a chief executive. The Scottish Ministers must appoint the first chief executive of CES(IM). Each subsequent chief executive of CES(IM) will be appointed by CES(IM), with approval of the Scottish Ministers. CES(IM) may also appoint other members of staff. Members of the staff of CES(IM) are not civil servants but are in Crown employment within the meaning of section 191(3) of the Employment Rights Act 1996.

Article 10 provides for CES(IM), with the approval of the Scottish Ministers, to make arrangements for payment of pensions, allowances and gratuities for its existing and

former members of staff. Article 10 is subject to any provision in a transfer scheme made by the Treasury under section 90B(1) of the 1998 Act regarding a person whose contract of employment is transferred to CES(IM) under that scheme.

Article 11 makes provision for CES(IM) to establish and operate committees and sub-committees. Article 12 provides that CES(IM) may authorise any of its members, any committee established by it, its chief executive, or any other member of staff to perform its functions. Article 13 provides that CES(IM) may regulate its own procedure (including quorum) and that of any committee or sub-committee.

Article 14 provides that the validity of proceedings of CES(IM) will be unaffected by any vacancy in membership, or a defect in the appointment of a member.

Article 15 requires CES(IM) to comply with any direction made by the Scottish Ministers about the performance of its functions. Any direction must be in writing and published after it has been communicated to CES(IM). Article 16 requires CES(IM) to have regard to any written guidance given by the Scottish Ministers about the performance of its functions. Any such guidance must be published after it is communicated to CES(IM).

Article 17 allows the Scottish Ministers to make grants and loans to CES(IM), subject to any conditions the Scottish Ministers may determine, including repayment.

Article 18 requires CES(IM) to prepare and publish an annual report on its activities as soon as practicable after the end of each financial year. A copy of the report must be sent to the Scottish Ministers who must lay a copy of the report before the Scottish Parliament.

Article 19 requires CES(IM) to prepare a corporate plan setting out how it intends to exercise its functions. The plan must be prepared and submitted to the Scottish Ministers as soon as practicable after CES(IM) is established. Scottish Ministers may approve the plan, approve it with modifications agreed with CES(IM) or reject the plan. If the plan is rejected, CES(IM) must submit a revised plan within such period as Scottish Ministers direct. Following approval, a plan must be published by CES(IM). CES(IM) may revise a plan from time to time, submitting any revised plan to the Scottish Ministers for approval.

Article 20 modifies the application (by virtue of, and as modified by section 36(7) of the Scotland Act 2016) of the Crown Estate Act 1961 in relation to CES(IM). Article 20(2)(a) substitutes paragraph (b) of section 2(4) which enables Scottish Ministers to direct the apportionment of revenues from mining between capital and income accounts. Article 20(2)(b) inserts subsections (4A) to (4G) into section 2. Subsections (4A) to (4C) regulate the making of directions under section 2(4)(b). Subsections (4D) and (4E) enable CES(IM) to transfer sums from its income account to its capital account and to repay these from capital account to income account. Subsections (4F) and (4G) make accounting provision regarding the repayment of loans by CES(IM). As regards investments, article 20(3) inserts a new section 3(4)(aa) allowing CES(IM) to invest sums in interest-bearing accounts.

Article 21 inserts a reference to CES(IM) into the House of Commons Disqualification Act 1975 and the Scottish Parliament (Disqualification) Order 2015. This means that members of CES(IM) and members of the staff of CES(IM) will be disqualified from becoming MPs, MEPs and MSPs. Article 21 further applies certain legislation relating to public bodies to CES(IM), by inserting references to CES(IM) into the Ethical Standards in Public Life etc. (Scotland) Act 2000, the Scottish Public Services Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002, the Public Appointments and Public Bodies etc. (Scotland) Act 2003, the Public Services Reform (Scotland) Act 2010, and the Public Records (Scotland) Act 2011.

Article 22 modifies the Crown Suits (Scotland) Act 1857 to exclude CES(IM) from the meaning of “public department” for the purposes of that Act.

## **POLICY NOTE**

The above instrument was made in exercise of the powers conferred by section 36(9) and (10) of the Scotland Act 2016 (‘the 2016 Act’).

The instrument is subject to the affirmative procedure.

## **Background**

This Order establishes an interim body to manage those Crown Estate assets in Scotland which will be transferred to the body as part of a Scheme made by the Treasury. The name of this interim body is Crown Estate Scotland (Interim Management) (referred to in this note as ‘CES(IM)’).

Currently, the management of the Crown Estate is a reserved matter. The Crown Estate Commissioners are a unique body which administers certain property, rights and interests which historically belong to the Crown. The Crown Estate Commissioners exercise powers under The Crown Estate Act 1961 (‘the 1961 Act’) in managing the Crown Estate on a UK-basis, and currently transfer surplus revenues to the UK Government. In Scotland, the Crown Estate Commissioners manage leasing of the seabed out to 12 nautical miles and rights to renewable energy, cables and pipelines on the Continental Shelf; 37,000 hectares of rural land; gold and silver mining; and approximately half of Scotland’s foreshore including 5,000 licensed moorings, 750 aquaculture sites, and salmon fishing rights. It has been a long-standing policy of the Scottish Government that there should be reform of the administration of the Crown Estate in Scotland.

The Smith Commission Report<sup>1</sup> recommended that responsibility for the management of the Crown Estate’s economic assets in Scotland, and the revenue generated from those assets be devolved. The resulting Scotland Act 2016 provided for this in section 36 of that Act. The 2016 Act gained Royal Assent on 23 March 2016. When section 36 of the 2016 Act is fully commenced the Scottish Parliament will have legislative competence for the management and revenue of the Crown

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<sup>1</sup> The Smith Commission, ‘Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament’, 27 November 2014 (available at: [http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The\\_Smith\\_Commission\\_Report-1.pdf](http://webarchive.nationalarchives.gov.uk/20151202171017/http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf))

Estate in Scotland. For this to happen, the existing Scottish functions of the Crown Estate Commissioners must first be transferred to Scotland.

The transfer of function to Scotland is to be made through a statutory transfer scheme. Section 36 of the 2016 Act inserts section 90B(1) of the Scotland Act 1998 ('the 1998 Act'). Under section 90B, the Treasury may make a scheme transferring all the existing Scottish functions of the Crown Estate Commissioners<sup>2</sup> to the Scottish Ministers or a person nominated by the Scottish Ministers ('the transferee'). Scottish Ministers have decided to nominate CES(IM) as the transferee. The Scheme will specify a transfer date on which the transfer will occur. The transfer scheme has not yet been made by Treasury but will require agreement from Scottish Ministers as well as the approval of the UK Parliament.

After the transfer and the full commencement of section 36 of the 2016 Act, the Scottish Parliament will have the power to legislate on the new framework for managing Crown Estate assets in Scotland.

Section 36(9) and (10) of the 2016 Act provide that provision may, by Order in Council, be made in connection with the exercise by the transferee of functions transferred by the transfer scheme. This includes provision establishing a body for the purposes of being nominated to receive the transfer. This is the present draft Order, which establishes CES(IM) to be the body nominated to receive the transfer.

Section 36(7) of the 2016 Act applies the 1961 Act (with modifications) in relation to the transferee as it applied immediately before the transfer date to the Crown Estate Commissioners. This means that the 1961 Act will apply to CES(IM) (with modifications). This draft Order makes further modifications to the application of the 1961 Act to CES(IM).

The 2016 Act amends section 1(2) of the Civil List Act 1952 to provide that the revenues from the Scottish assets must be paid into the Scottish Consolidated Fund.

Section 90B(8) of the 1998 Act provides that the property, rights and interests to which the existing Scottish functions relate must be maintained as an estate in land or as assets in land managed separately (with any proportion of cash or investments that seems to the person managing the estate to be required for the discharge of functions relating to its management).

## **Policy Objectives**

This Order establishes CES(IM). As stated above, it is intended that Scottish Ministers will nominate CES(IM) as the transferee for the purposes of any transfer scheme made under section 90B of the 1998 Act. This means that on transfer, the functions of CES(IM) will be the existing Scottish functions<sup>3</sup> of the Crown Estate Commissioners immediately before the transfer date. As stated above, section 36(7) of the 2016 Act applies the 1961 Act, in a modified form, to the transferee, which

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<sup>2</sup> The 'Scottish functions' are defined in section 90B(2) and (3) of the 1998 Act as the Commissioners' functions relating to the part of the Crown Estate that, immediately before the transfer date, consists of the property, rights or interests in land in Scotland and rights in relation to the Scottish zone. However, subsection (3) excludes the property, rights or interests of the Crown Estate held by, or in a member of, a limited partnership registered under the Limited Partnership Act 1907.

<sup>3</sup> See footnote 2 above

means that it will apply to CES(IM) subject to those modifications. Additionally, this Order makes further modifications to the 1961 Act as it applies to CES(IM).

CES(IM), as established by this Order, will be a body corporate, separate from Scottish Ministers. CES(IM) will have Crown status and enjoy the fiscal, tax and other benefits normally available to the Crown.

The interim body will be managed and led by a Chairing member and up to 8 other board members, appointed by Scottish Ministers. The period of appointment is unspecified in the Order, but Scottish Ministers may determine terms and conditions of appointment, including the period of appointment. Members and former members may be reappointed. Appointments to CES(IM) will be within the remit of the Commissioner for Ethical Standards in Public Life in Scotland.<sup>4</sup>

Members will need to have relevant skills, expertise and experience. This Order excludes MSPs, MPs, Members of the House of Lords and MEPs from becoming members and members of staff of CES(IM).

Members may resign from office, and a person's membership ends if they become an MSP, MP, Member of the House of Lords, or an MEP. This Order also provides that a member may be removed from office by Scottish Ministers under the following circumstances:

- a. insolvency;
- b. absenteeism from meetings for more than 3 consecutive months without permission from CES(IM); and
- c. if Scottish Ministers consider that the member is unable to exercise the functions of a member or is unsuitable to continue as a member.

CES(IM) will have a Chief Executive. The first Chief Executive will be appointed by Scottish Ministers, and subsequent Chief Executives will be appointed by CES(IM), with the approval of Scottish Ministers. CES(IM) may employ and appoint such employees as it considers appropriate.

CES(IM) will have committees, one of which must be an audit committee. There may be sub-committees.

The Order does not specify the quorum for meetings of members, including committees, to provide flexibility. CES(IM) will regulate its own procedure.

Proceedings will not be invalid by reason of any vacancy of membership or defect in the appointment of the Board.

The Order provides for a loan making power for Scottish Ministers, subject to any conditions the Scottish Ministers may determine, including repayment. Section 2 of the 1961 Act, as it applies to CES(IM), is modified to read as if new subsections (4F) and (4G) were inserted. The effect of these is that any loan made to CES(IM) by the

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<sup>4</sup> The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Crown Estate Scotland) (Interim Management) as Specified Authority) Order 2016 (S.S.I. 2016/311) enables the Commissioner for Ethical Standards in Public Life in Scotland to regulate appointments to CES(IM) before it is formally established by this Order.

Scottish Ministers is to be repaid from the account into which CES(IM) puts the sum it receives under the loan. A loan paid into the capital account is to be repaid from that account, and a loan paid into the income account must be repaid from the income account.

Scottish Ministers will have a direction making power whereby they can direct CES(IM) in writing with regards to the exercise of its functions. The Order also requires the interim body to have regard to guidance issued by Scottish Ministers.

CES(IM) will report on its performance and activities annually and submit this report to Scottish Ministers, who will lay the report before Parliament. In addition, CES(IM) must prepare a corporate plan which will set out the main objectives, outcomes, activities and risks for the planning period. This plan will be sent to Scottish Ministers who may approve the plan, approve the plan with modifications agreed by CES(IM), or reject the plan. If it is rejected, CES(IM) must prepare and submit a revised plan by a date specified by Scottish Ministers. Once a plan has been approved, CES(IM) must publish the plan.

The Order modifies the application of the 1961 Act to CES(IM). Section 2(4)(b) of the 1961 Act will apply as if a new paragraph (b) were substituted for the existing paragraph (b). This will enable Scottish Ministers to direct the apportionment of revenues from mining between capital and income accounts. Section 2 is further modified in that it applies as if new subsections (4D) and (4E) are inserted. These enable CES(IM) to move sums from its income account to its capital account, and to repay such sums from its capital account to its income account. The Order also modifies the application of 1961 Act to CES(IM) with regards to investments, inserting a new section 3(4)(aa) to allow CES(IM) to invest sums in interest-bearing accounts.

The Order amends other legislation relating to public bodies in Scotland, meaning that CES(IM) will be appropriately regulated – for instance, freedom of information legislation will apply to CES(IM), as will legislation relating to ethical standards in public life, the Scottish Public Services Ombudsman, public appointments, public services reform, and public records in Scotland.

## **Consultation**

A public consultation took place from 30 June to 26 August 2016. As a result of that consultation the following general themes emerged:

- Support for the proposed criteria and principles<sup>5</sup> for the most appropriate delivery model including the single entity approach.
- Requests for incorporation of ‘community benefit’ as part of the guiding principles and ‘community engagement’ to be part of governance principles and operational procedures.

The following specific key points were made:

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<sup>5</sup> The criteria and principles were not part of the proposals we consulted on.

- Request for management statement to reflect angling and fishing interests.
- Board members to be an odd number to avoid deadlock.
- Additions to the eligibility criteria for board members such as local government experience; and / or direct prior involvement with The Crown Estate.
- Clarity on how the board would provide opportunities for community representation.
- The Chief Executive should not be a member.
- The 'conflict of interests' provision regarding appointments was too stringent.
- Suggestions for ensuring that how the board conducts its business is transparent and accessible.
- That the body should have a rural sub-committee.

Partly as a result of the consultation, and during the time of the public consultation when we continued to engage with stakeholders and develop the draft Order, we amended the draft Order as follows:

- Removed the requirement for Scottish Ministers to appoint a deputy Chair. The consultation responses made us re-consider the appointments which should be specified in legislation, although it is worth noting that changing the maximum number of members to an odd number does not require an odd number to actually be appointed.
- Removed a 'conflict of interests' provision from the criteria for appointments. Potential conflict of interests will be covered through the body's Code of Conduct.
- Confirmed that the Chief Executive will not to be member of board.

Several responses are being addressed as part of the corporate planning arrangements, with the intention that the Order sets the overall, strategic framework for governance but that the body 'sets its own procedures'. Other points were about the long-term arrangements on which a public consultation is due to commence later this year.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report due to be published on the Scottish Government website; it includes COSLA, NFU Scotland, Scottish Carbon Capture & Storage, Scottish Environment Link and the Association of Scottish Shellfish Growers.

## **Impact Assessments**

Pre-screening for a Strategic Environmental Assessment (SEA) on the draft Order concluded that an SEA was not necessary because there were no significant environmental impacts as a result of the policy. A Privacy Impact Assessment (PIA) report on the draft Order has been completed which concluded that privacy impacts as a result of the policy were minor and are effectively dealt with through an Information Sharing Protocol and a Data Sharing Agreement in place between the organisations concerned. Screening for a Child Rights and Wellbeing Impact Assessment (CRWIA) on the draft Order concluded that a CRWIA was not necessary because there were no significant impacts on children's rights as a result of the policy. Screening for an Equality Impacts Assessment (EQIA) on the draft

Order concluded that an EQIA was not necessary because there were no significant equalities impacts as a result of the policy.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The likely impact of this policy on businesses that are customers of the Crown Estate will be neutral.

Scottish Government  
Marine Scotland Directorate  
18 October 2016

## **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

### **PROPOSALS TO ESTABLISH THE INTERIM BODY TO MANAGE THE CROWN ESTATE ASSETS IN SCOTLAND POST-DEVOLUTION**

#### **Purpose and Intended Effect**

- **Background**

The Crown Estate is the property of the Monarch 'in right of the Crown' and is currently administered by the Crown Estate Commissioners under the Crown Estate Act 1961. In Scotland it includes four rural estates, mineral and salmon fishing rights, around 50% of the foreshore, almost all of the seabed out to 12 nautical miles and associated rights on the Continental Shelf beyond 12 nautical miles (including leasing for renewable energy, pipelines and cables).

The Scotland Act 1998 reserved the Crown Estate Commissioner's management of the Crown estate in Scotland to Westminster. It has been a longstanding policy of the Scottish Government to bring about fundamental reform of the administration of the Crown Estate in Scotland so that it is more accountable to the views and wishes of Scottish people but also to ensure that Crown Estate assets in Scotland are managed for Scotland and its communities. The public accountability of Crown Estate Commissioners operations in Scotland has been the subject of a number of Parliamentary Committees and inquiries over the past few years.

In November 2014, the Smith Commission recommended:

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

33. Following this transfer, responsibility for the management of those assets

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

34. The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate's foreshore and seabed assets to the UK as a whole.

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

The Scotland Act 2016 includes provisions (clause 36) for the transfer of management of Crown Estate assets in Scotland (excluding non-wholly owned assets from the transfer) and payment of revenue into the Scottish Consolidated Fund. HM Treasury have a power to create a Transfer Scheme to devolve management of Crown Estate property, rights and interests in Scotland to the Scottish Ministers or to another body nominated by the Scottish Ministers. The Treasury transfer scheme to be made through a Statutory Instrument at Westminster needs to be completed to transfer the assets to Scotland and provide legislative competence for the Scottish Parliament to legislate on the Crown Estate subject to the reservations in the Scotland Act 2016.

The Act also provides for making arrangements to set up an interim body through a Scottish Statutory Instrument to be completed as an Order in Council.

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

### **Description of Crown Estate assets in Scotland**

Scottish Crown Estate assets include four rural estates, mineral and salmon fishing rights, about half of the coastal foreshore and almost all of the seabed. It has a significant role in supporting aquaculture, marine leisure, ports and harbours and offshore renewable energy. The Scottish portfolio also includes 39-41 George Street Edinburgh. It is responsible for leasing of the seabed out to 12 nautical miles, as well as rights to renewable energy, pipelines and

cables on the continental shelf. Rural interests extend to 37,000 hectares of rural land, which include agricultural tenancies, residential and commercial properties and forestry. Coastal activity, including salmon fishing rights and approximately half the foreshore, encompasses managing the licensing for 5,000 moorings and 750 aquaculture sites.

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

<b>Asset</b>	<b>Definition</b>
George Street	The land owned by Her Majesty known as 39 to 41 George Street, Edinburgh
Seabed	The land owned by Her Majesty forming the seabed of Scottish Territorial Waters
Storage Rights (Seabed)	The rights of: (1) Unloading gas to installations and pipelines (2) Storing gas for any purpose and recovering stored gas (3) Exploration with a view to use for (1) and (2)
Energy rights (Seabed)	The rights of exploitation, exploration and connected purposes for the production of energy from wind or water
Mineral Rights (Seabed)	The right to exploit the Seabed and its subsoil other than for hydrocarbons
Cables (including interconnectors)	The right to install all or part of a distribution or transmission system on or under the Seabed
Pipelines	The right to install pipelines
Whitehill	The Whitehill estate in the County of Midlothian owned by Her Majesty
Glenlivet	The Glenlivet estate in the County of Moray owned by Her Majesty
Applegirth	The Applegirth estate in the County of Dumfries and Galloway owned by Her Majesty
Fochabers	The Fochabers estate in the County of Moray owned by Her Majesty
Aquaculture Rights (Seabed)	The right to farm aquatic organisms
Mooring Rights (Seabed)	The right to lay and use permanent moorings
Foreshore	The land that is owned by Her Majesty: (1) In Orkney and Shetland, lying between mean high water springs and lowest ebb tide (2) In the rest of Scotland, lying between mean high and low water
Internal Waters	The land owned by Her Majesty forming the internal waters of Scotland
Salmon Fishing	The right to fish for salmon in rivers and coastal waters where the right belongs to Her Majesty
Gold and Silver (onshore minerals)	The right to all naturally occurring gold and silver except where the right is vested in some person other than Her

	Majesty
Reserved Minerals	All the reserved mineral rights owned by Her Majesty in Scotland other than on the Seabed
Rights beyond 12 nautical miles	Rights to natural resources on the continental shelf (excluding fossil fuels) under the Continental Shelf Act 1964  Rights to generate electricity from wind, waves and the tides on the continental shelf under the Energy Act 2004; and rights to the transportation and storage of natural gas and carbon dioxide on the continental shelf under the Energy Act 2008

### Revenue and Property Value by activity for year ended 31 March 2016

Revenue by Activity	Revenue (£m)	Property Value (£m)
Coastal	3.1	25.9
Dredging	0.1	0.7
Agriculture	2.3	96.3
Aquaculture	3.5	19.5
Minerals	0.3	3.4
Forestry	0.2	13.5
Residential	0.5	10.8
<b>Rural and Coastal Total</b>	<b>10.0</b>	<b>170.1</b>
Cables/pipelines	2.5	21.5
Renewables	0.7	65.2
<b>Energy and infrastructure Total</b>	<b>3.2</b>	<b>86.7</b>
<b>Urban retail</b>	<b>0.8</b>	<b>15.0</b>
<b>Total</b>	<b>14.0</b>	<b>271.8</b>

Overall revenue in Scotland for 2015-16 was £14.0m, which was 3.5% of the UK total. The total value of the estate was £271.8m, around 2.3% of the UK total value of the Crown Estate. Capital investment was £5.2million, of which £1.8million was for the MeyGen Ltd tidal power development project, as well as £0.6 million in rural estate buildings. At present all annual revenue profit across the Crown Estate managed portfolio is paid to the UK Government.

- **Objective**

The establishment of the interim arrangements will enable the transfer to Scotland to take place and for the Scottish Parliament to be given legislative competence to legislation on the management of the Crown Estate. Devolution of the management of, and revenues from, Crown Estate assets in Scotland will enable decisions to be taken in Scotland and revenue to be retained in Scotland for community and wider benefit.

- **Rationale for Government intervention**

These proposals are being implemented as a consequence of the Scotland Act 2016 which received Royal Assent in March 2016. The provisions on the

Crown Estate enable a new body to be established to manage functions in relation to the Crown Estate in Scotland.

Provision will be made by Order in Council via an affirmative Scottish Statutory Instrument to establish interim management arrangements, including how the transferee exercises the transferred functions.

The UK legislation requires the transfer to a single body at the point of devolution. Transferring management functions as a 'single entity' in the first instance means minimum disruption and ensures a smooth transition for Crown Estate staff and customers. It enables the devolution to Scotland to be completed, and help ensure the best decisions about the long term arrangements can be made by the Scottish Parliament.

We have committed to full public consultation before final decisions are made on the long term arrangements. We wish to ensure that communities will enjoy greater benefits from local assets following the transfer. but there will be consultation on opportunities for greater local control through a new long term framework in due course.

There is an opportunity to ensure that decisions on use of Crown Estate assets in Scotland are more transparent, and new processes for decision-making are put in place that take account of the priorities of Scotland and meet the needs of the Scottish people. The devolution of the management and revenue of Crown Estate assets gives us an ability to use capital assets in a way that enhances their contribution to the achievement of the following National Outcomes:

- We value and enjoy our built and natural environment and protect it and enhance it for future generations.
- We realise our full economic potential with more and better employment opportunities for our people.
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

Scottish Ministers' proposed model for the interim arrangements for management of the assets has been selected using the following criteria which have been developed with input from stakeholders' representatives to ensure the business is operational on day one and continues to be until decisions are reached and implemented on the long term future. These are:

1. Ministerial oversight at an appropriate level.
2. Potential to take long term decisions without requirement for Ministers to take day to day decisions on assets.
3. Scope to maintain commercial approach where necessary.
4. Continuity of business delivery.
5. Opportunity for community input at an appropriate stage of decision-making.
6. HR implications in terms of pay, staff morale.
7. Potential to maintain existing fiscal and tax benefits available to the

- Crown Estate Commissioners (CEC). These include exemption from Corporation, Income and capital gains tax.
8. Ability to establish robust governance, risk management structures and processes in time for the transfer.

## Consultation

- **Within Government**

The proposals for the interim body to manage Crown Estate assets in Scotland have been developed in a collaborative way, with extensive involvement from relevant officials across the Scottish Government, including:

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

- **Public Consultation**

The formal consultation process on the interim body to manage Crown Estate assets in Scotland took place during summer 2016. The consultation sought views on potential impacts. The only response was that: 'the detail in the partial BRIA does not allow for easy identification of potential additional costs or savings'. The BRIA for the interim arrangements has been conducted with the information available at the time. There will be a full BRIA for the long-term arrangements.

- **Business**

Scottish Government officials carried out informal face-to-face meetings with a variety of stakeholders who are members of the Stakeholder Advisory Group on the Crown Estate, established in September 2015.<sup>6</sup>

## Options

**Option A:** Do Nothing – Crown Estate property, rights and interests in Scotland would continue to be managed by the Crown Estate Commissioners as part of the UK-wide Crown Estate.

### Sectors and groups affected

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

<sup>6</sup> <http://www.gov.scot/Topics/marine/seamanagement/TCE/AdvisoryGroup>

**Benefits**

There are no quantifiable benefits to Scotland from option A and this option would not implement the Smith Commission's recommendations on the Crown Estate.

**Costs**

No additional costs associated with this option.

**Option B:** Establish a public corporation on an interim basis to manage Crown Estate assets and revenues in Scotland.

Subject to Ministerial approval, the interim measure would operate up until at least the establishment by the Scottish Parliament of a new legal framework for management of Crown Estate assets in Scotland.

**Sectors and groups affected**

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

**Benefits**

This option would enable the transfer of the management of the assets to Scotland and devolution of legislative competence to the Scottish Parliament to be completed.

Having responsibility and control of Scotland's Crown Estate assets means that management of existing assets and future leasing as well other strategic and investment decisions can be focussed on maximising benefits to Scotland.

A key consideration for putting in place interim arrangements for the management of Crown Estate assets is minimising disruption and maintaining service delivery. This phased approach would ensure a smooth transfer of functions under the provisions in the Scotland Act 2016 and provide continuity of service to those customers that rely on Crown Estate leases or services.

This interim measure would provide appropriate time to work through the complexities of devolution to better understand the assets and their potential.

This option will enable the above benefits to be achieved, providing for adequate stakeholder consultation prior to final decisions being taken on the long term framework. Opportunities for further devolution of management would be considered as part of future public consultation on the long term framework.

Final decisions on the long term framework will be informed by having the time to understand the respective benefits and costs of the Scottish Crown Estate assets. The interim period will therefore provide time to develop an understanding of each individual asset and determine the optimal long term approach to its management. The Crown Estate in Scotland has around 3,000

individual assets, not all of which may generate sufficient revenue for maintenance, investment and development. In addition there are potential liabilities across the estate that are not recorded on the Crown Estate asset register which will need to be managed. Therefore, provision for cross-subsidisation is required in order to ensure that legal duties can be delivered to maintain all parts of the estate, and balance risk across the portfolio. Retaining all assets under one public corporation at this stage ensures that this cross-subsidisation can continue.

In addition, a statutory public corporation successfully meets the key criteria for an interim body as outlined below:

- Ministerial oversight at an appropriate level and no requirement for Ministers to take day to day decisions on the long term use of assets.
- The model is appropriate for industrial or commercial enterprises, so a commercial approach can be maintained (CEC currently have a duty under the Crown Estate Act 1961 to manage the Crown Estate on a commercial basis).
- This delivery model is the nearest equivalent to the CEC of all the potential models and therefore could assist with continuity of delivery and staff retention. There would be no potentials issues such as integration of systems with a merger body for example.
- Continuity of business delivery would be assisted by current work by CEC to establish a Scottish business unit from April 2016, with systems being put in place to enable that unit to operate relatively autonomously under the existing legislation ahead of the transfer.
- The HR implications would be minimised as staff wouldn't need to become civil servants and the organisation would be outwith the Scottish Administration so not strictly covered by Ministers' Public Sector Pay Policy. Staff would not come under the SG head count and direct staff costs (including pension liabilities) and the capital and revenue would not appear in SG accounts. This means that there would not be a material change in employment status or terms and conditions for existing staff, with changes in terms and conditions leading to significant financial costs for buying out these benefits. This would provide certainty to staff and customers in short to medium term and ensure morale remains high.
- Scope to establish robust governance and for the body to be set up quickly without statute in the first instance if necessary.
- The design and composition of the Board and other governance arrangements would provide an opportunity for community and local input at an appropriate point in decision making.
- It would enable the protection of existing fiscal and tax benefits of the CEC.

The governance arrangements for the public corporation model could incorporate opportunities for community representatives to be involved in management or provide views on management. This could assist in demonstrating the change resulting from devolution ahead of final decisions on the long term framework.

## Costs

There will be short term administrative costs to set up a new body in Scotland e.g. to adapt existing IT systems or establish new systems. Administration costs of the new body are expected to be broadly cost neutral compared with the existing arrangements. The Crown Estate currently has a Scottish office which accommodates approximately 35 staff (of the 458 across the UK) and it is anticipated that a similar number of staff will be needed for the interim arrangements. There may be some costs for retraining or recruitment to fill gaps.

There may be some diseconomies of scale when compared with the “do nothing” approach. For example there currently may be staff with certain responsibilities at a UK-wide level that will now need to focus on management of assets in Scotland or assets in the rest of the UK.

There are a range of potential liabilities associated with Crown Estate assets that need to be carefully managed to prevent additional costs being incurred by the manager of the assets.

### **Scottish Firms Impact Test**

Scottish Government officials carried out informal face-to-face meetings with a variety of stakeholders who are members of the Stakeholder Advisory Group on the Crown Estate, established in September 2015.<sup>7</sup>

The limitations in the UK legislation preclude the Scottish Parliament from changing the duties in the Crown Estate Act 1961 in advance of a Scottish Bill. The likely impacts will be neutral on businesses that are customers of the Crown Estate.

### **Competition Assessment**

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

Interim measures for the devolution of the Crown Estate in Scotland are not expected to have any distortionary impact on competition.

### **Test run of business forms**

No new forms are proposed at this stage.

### **Legal Aid Impact Test**

<sup>7</sup> <http://www.gov.scot/Topics/marine/seamanagement/TCE/AdvisoryGroup>

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

### **Enforcement, sanctions and monitoring**

A public corporation would enable robust governance to be established through legislation. This would be headed by a decision making statutory board appointed by Ministers. The interim arrangements include proposals for appointments to be made in an open and transparent manner and opportunities for reporting performance to the Scottish Parliament.

We have committed to full public consultation before final decisions are made on the long term framework and wish to ensure that communities will enjoy greater benefits from local assets at the earliest opportunity.

### **Implementation and delivery plan**

Subject to legislative processes, the interim body would be established in 2017.

### **Summary and recommendation**

**Option B** is the recommended option for the interim measure. This would ensure early devolution and access to benefits. It would leave Scotland with time and capacity to better understand the complexities and options for future management, including stakeholder consultation ahead of final decisions on the preferred approach for the long term arrangement, while ensuring a smooth transition and delivery in the interim. It is important to note that this decision does not rule out any options for the long term approach.

**Annexe**

**EXTRACT FROM THE DELEGATED POWERS AND LAW REFORM COMMITTEE'S 10<sup>TH</sup> REPORT 2016**

**Crown Estate Scotland (Interim Management) Order 2017 [draft] (Environment, Climate Change and Land Reform)**

This Order in Council establishes the interim body to manage those Crown Estate assets in Scotland which will be transferred to the body as part of a Scheme to be made by the Treasury. The name of the body is Crown Estate Scotland (Interim Management) ('CES(IM)').

CES(IM) will be a body corporate, with Crown status. The body will be managed and led by a chair, and "up to 8 other members" appointed by the Scottish Ministers. Ministers may determine the terms and conditions of appointment, including period of appointment. Members and former members may be reappointed. Appointments will be within the remit of the Commissioner for Ethical Standards in Public Life in Scotland.

Members will need to have relevant skills, expertise and experience. MSPs, MPs, Members of the House of Lords and MEPs are excluded from being members and members of staff of CES(IM).

Members may resign from office, and a person's membership ends if they become an MSP, MP, Member of the House of Lords, or an MEP.

CES(IM) will have a Chief Executive, the first being appointed by Scottish Ministers. Subsequent Chief Executives will be appointed by CES(IM), with approval of Scottish Ministers. CES(IM) may employ such employees as it considers appropriate. It will have committees, one of which must be an audit committee, and there may be sub-committees.

The Order is subject to the affirmative procedure. If approved by the Parliament, and by Her Majesty by and with the advice of Her Privy Council, the Order will come into force on the day after it is made. The Order is made when it is signed by the Clerk of the Privy Council.

In considering the Order, the Committee sought written clarification from the Scottish Government of the policy intention as to the minimum number of members of CES (IM) in relation to the drafting of article 5(1). The correspondence is reproduced at [Annexe B](#).

The Scottish Government has clarified in the correspondence that it is intended that CES(IM) should be capable of having a minimum of two members (i.e. the chair plus one other member), rather than one.

Article 5(1) provides—

"(1) Crown Estate Scotland (Interim Management) is to consist of—  
(a) a member appointed by the Scottish Ministers to chair it; and  
(b) up to 8 other members appointed by the Scottish Ministers."

The Scottish Government contends that the division into sub-paragraphs (a) and (b) means that the provision cannot be read as meaning that the Scottish Ministers are capable of determining that no other members are appointed, apart from the chair.

The Committee does not agree that that provides a wholly satisfactory explanation as to the clarity of article 5(1). The provision could simply have expressed that the Ministers must appoint a minimum of (or at least) 2 members to the body, including the chair.

The Committee also considers that three aspects of the provisions combine, with the result that article 5(1) could more clearly express the minimum number of members which is intended:

(a) Article 5(1)(b) enables the Ministers to appoint “up to 8 other members”, which is capable of being read as meaning from zero to 8 members. It does not express in some manner that the Ministers must appoint at least one other member.

(b) Article 5(1)(b) refers to “ other members”, plural.

(c) Article 13 provides that CES(IM) may regulate its own quorum. The body is therefore at least capable of determining that there would be a quorum of 1, on the assumption that the minimum membership of the body is capable of being 1.

Other examples of legislation can be cited, which specify the minimum number of members of a body. One example is article 9 of the Justices of the Peace (Training and Appraisal) (Scotland) Order 2016, which instrument is referred to on page 5 below. In relation to a Justices’ Training and Appraisal Committee, article 9 specifies “at least 5 but no more than 8” JPs.

Another example is in schedule 1 of the Historic Environment Scotland Act 2014, which specifies that the body “is to consist of no fewer than 10 and no more than 15 persons appointed by the Scottish Ministers as members.”

A further example is the provision for the minimum number of members of Creative Scotland in schedule 9(2) of the Public Services Reform (Scotland) Act 2010. Another is the provision for the minimum number of members of Revenue Scotland, in schedule 1(1) of the Revenue Scotland and Tax Powers Act 2014.

**The Committee therefore draws the Order to the attention of the Parliament on the reporting ground (h) as the meaning of article 5(1) could be clearer in a particular respect.**

**The policy intention is that Crown Estate Scotland (Interim Management) must have a minimum of two members (i.e. the chair and one other member) rather than one. That intention could be more clearly expressed in article 5(1).**

**Annexe B**

**Crown Estate Scotland (Interim Management) Order 2017 [draft]**

**On 28 October 2016, the Scottish Government was asked:**

In relation to article 5(1), please clarify whether the policy intention is that Crown Estate Scotland (Interim Management) should be capable of having a minimum number of members of 1 (i.e. the chair), or 2.

In that respect could article 5(1) be clearer in specifying the minimum number of members, given that the Order does not specify a minimum number for a quorum of members, and “up to 8 other members appointed by the Scottish Ministers” could be read as allowing the Scottish Ministers to determine to appoint no other members apart from the chair?

**The Scottish Government responded as follows:**

The policy intention is that Crown Estate Scotland (Interim Management) should be capable of having a minimum of two members i.e. the chair plus one other member.

The policy intention is that the minimum number of members of Crown Estate Scotland (Interim Management) should be two (the chair and at least one other member). Article 5(1) provides that the body is to consist of the two categories of members mentioned. The conjunction of sub-paragraphs (a) and (b) is not to be read as meaning that the number of ‘other members’ may be zero. The Government does not therefore consider that the provision allows Ministers to appoint no other members apart from the chair. The Scottish Government intends to appoint at least one other member in addition to the chair.