



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

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Dear Richard,

Devolution of the Crown Estate in Scotland

The Rural Affairs, Climate Change and Environment Committee took evidence on the devolution of the Crown Estate in Scotland from stakeholders and local authorities on 27 May¹ and from the Crown Estate and yourself on 17 June.² The Committee also considered clause 31 of the Scotland Bill 2015-16 (the Bill). The Committee's views on the evidence received and on the Bill are set out below.

The Scotland Bill 2015-16

Complexity of Clause 31

The Committee considers that clause 31 of the Bill is very complex in its structure, providing for a scheme made by the Treasury with transferees, setting out procedures for the operation of the scheme and its amendment and covering matters which Smith envisaged might be included in a Memorandum of Understanding. Having considered this, the Committee is of the view that this complexity appears to be at odds with other reservations in the Bill and in the Scotland Act 1998. **The Committee would welcome the view of the Scottish Government on the necessity for this level of complexity and encourages the Scottish Government to seek to achieve a simpler form of transfer of powers in relation to the Crown Estate in Scotland.**

¹ Scottish Parliament. *Official Report*, 27 May 2015
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9979>

² Scottish Parliament. *Official Report*, 17 June 2015.
<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10025>

Maintaining the Crown Estate

The Committee understands that there will be a requirement on whoever manages the Crown Estate, whether in Scotland or elsewhere, to “maintain and enhance its value and the return obtained from it, with due regard to the requirements of good management”.³ **The Committee would welcome clarification from you as to whether Scottish Ministers will be enabled to take into account other factors, such as social considerations, in the management of the Crown Estate in Scotland.**

The Committee is concerned that the related provision of the Bill (at clause 31(10)) stating that the estate must be “maintained” and sufficient funding made available to make sure that happens is drafted in a very complex way. The Committee understands that the intention of the Bill is that this cannot be changed by Scottish Ministers in an Order in Council or by an Act of the Scottish Parliament. The Committee also understands that any surplus arising from the management of the Scottish assets, having met the requirements of the Crown Estate Act 1961, will be remitted to the Scottish Consolidated Fund, but it is not clear how this will be accounted for in the overall Scottish budget. **The Committee would welcome clarity from you in relation to these points.**

Limited Partnership – Fort Kinnaird

The Committee is concerned that the land held under the Limited Partnership (Fort Kinnaird) is effectively excluded from the transfer by the Bill, as are the related revenues. It is clear that the UK Government’s position is that this will not form part of the transfer to Scottish Ministers but it is not clear to the Committee whether this is a policy or a legal position.

In evidence to the Committee Mr Booth of the Crown Estate stated that that he considered as Fort Kinnaird is not owned or directly managed by the Crown Estate then legally it does not fall into the definition of what is to be transferred under section 90B(2) presumably on the basis the word “land “ is not used in section 90B(3). However the general wording in both sections is very similar.

The Committee is of the view that there may be an argument that if it is not “property” Fort Kinnaird is at least an “interest” and, as an economic asset, it is being managed by the Commissioners. That being the case the Committee considers that it should be feasible to remit the surplus income generated from that asset to Scottish Ministers. **The Committee would welcome your view on this and on whether the terms of the agreement in relation to Fort Kinnaird allow the governance to accommodate a legal successor to the Commissioners for the purpose of the transfer of the functions.**

³ Crown Estate Act 1961, Section 1(3)

The Transfer Scheme

In evidence to the Committee you described the powers of the proposed Transfer Scheme as restrictive. The Committee considers that there are constraints but the general powers appear to be widely drafted and it is difficult for the Committee to take a view at this stage on what the scheme will eventually look like after negotiation between the Governments. The Committee understands that the scheme will be passed by Westminster and the Scottish Parliament will have no legislative role in approving the scheme. **The Committee would welcome further information from you on the scheme, what it will cover, and what involvement the Scottish Government has had in the development of the scheme. The Committee would also welcome your view on whether subsequent amendments to the scheme, after the initial transfer, could be applied retrospectively.**

In terms of drafting, the Committee shares the view of the Devolution (Further Powers) Committee, as contained in their Interim Report,⁴ that is, if the current drafting of the Bill remains and the transfer scheme is to be adopted then the word “may” in section 90(B)(1) should be replaced with “shall”.

Operation of the Crown Estate in Scotland

Evidence heard by the Committee suggested that there may be a need to retain a degree of flexibility in the way in which the Crown Estate is managed in Scotland post devolution. The Committee considers that there are merits in exploring a hybrid approach to management which would provide a strategic perspective at a national level, for example on research and on the management of offshore assets, and would enable further devolution, not only to island and local authorities but directly to communities. The Committee understands that there will be significant challenges in this, not least in retaining the expertise of the Crown Estate staff in Scotland, and in ensuring the capacity to cross-subsidise and invest across the Crown Estate portfolio in Scotland is retained. **The Committee would welcome your views on this and on the Scottish Government’s plans for the management of the Crown Estate and for further devolution to local authorities and to communities.**

The Committee intends to invite the Treasury and the Scottish Government to provide an update on progress in September, however we would welcome a response from you on the questions raised in this letter as a matter of urgency.

Yours sincerely



Rob Gibson MSP
Convener

⁴ Devolution (Further Powers) Committee – New Powers for Scotland: An Interim report on the Smith Commission and the UK Government’s Proposals.

CC John Swinney MSP, Deputy First Minister and Cabinet Secretary for Finance,
Constitution and the Economy
Bruce Crawford MSP, Convener Devolution (Further Powers) Committee
Clerks to Devolution (Further Powers) Committee