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**Environment, Climate Change and Land Reform
Committee**
**Comataidh Atharrachadh Clìomaid is Ath-leasachaidh
Fearann**

**Stage 1 Report on the Scottish Crown
Estate Bill**



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Environment, Climate Change and Land Reform Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Environment, Climate Change and Land Reform.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/environment-committee.aspx>



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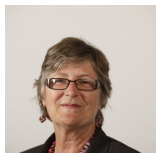
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Executive Summary

Purpose of the Bill

1. The Scottish Crown Estate Bill sets the framework for the long-term management of the Crown Estate in Scotland. The Bill follows on from the Smith Commission recommendationsⁱ the Scotland Act 2016 and devolution of the management of the Scottish Crown Estate to the Scottish Parliament. The Bill identifies who can become a manager of a Crown Estate asset, how management can be devolved within Scotland and what the remit of the new managers could be.
2. In line with the recommendations of the Smith Commission, the Bill provides for the devolution of Scottish Crown Estate assets including, but not limited to, rural estates, mineral and fishing rights, urban assets, the seabed and foreshore. The Bill also provides for further devolution, and for a Crown Estate Scotland asset to be managed by a Local Authority, public body or a community organisation.
3. The management of the Scottish Crown Estate was devolved on 1 April 2017 through:
 - The Crown Estate Transfer Scheme 2017 (to transfer management) and;
 - The Crown Estate (Interim Management) Order 2017 (to establish a new interim body to manage the Scottish Crown Estate).
4. The Bill seeks to recognise a different ethos in Scotland and so moves beyond a focus on profitability, to encompass other factors such as regeneration, social wellbeing, environmental wellbeing and sustainable development when considering how an asset should be managed. The Committee welcomes this approach.
5. While the Committee is broadly supportive of the general principles of the Bill, it makes a number of recommendations in relation to the drafting of the Bill and in relation to what is included and what is to be left to further regulation and guidance. The Delegated Powers and Law Reform (DPLR) Committee also made a number of recommendations, with which the Environment, Climate Change and Land Reform Committee agrees. The key issues considered by the Committee are set out below.

Good Management in the Context of the Bill

6. The Committee considers there should be a definition of good management that takes the wider public objectives, including socio-economic and environmental considerations, into account to guide managers of Scottish Crown Estate assets. The Committee recommends the Scottish Government gives consideration to whether a definition of good management should appear on the face of the Bill or in guidance and, if necessary, bring forward relevant amendments at Stage 2. If this is

ⁱ The Smith Commission. (2014) *Report of the Smith Commission on the further devolution of powers to the Scottish Parliament*

to be included in guidance, this should be available when the Bill, if passed, comes into force.

Section 7 Duties - 'May' versus 'Must'

7. The Committee recommends that the Scottish Government considers rewording Section 7(2) to make it clear that all managers are required to operate in a way that is likely to contribute to sustainable development and are also required to take account of economic development, regeneration, social wellbeing and environmental wellbeing, as well as profitability, when deciding how an asset should be managed. The Committee believes this should be the case even if such consideration leads to the conclusion that a factor may not be relevant.

Local versus National Management

8. The Committee agrees that local authorities, including the Island Councils, may be well placed to take on the management of assets. Further devolution to local authorities and communities is a significant recommendation of the Smith Commission and provision for this within the Scottish Crown Estate Bill is welcome.
9. The Committee is aware that the Scottish Government is planning a number of pilot schemes for local authorities who are seeking to manage a Crown Estate Scotland asset. The Committee asks that the Scottish Government provide the Environment, Climate Change and Land Reform Committee with an update as to the progress of these pilots, as well as any information relating to other pilot schemes being considered.
10. The Committee recommends the Scottish Government and Crown Estate Scotland (Interim Management) outline how they will plan for different eventualities (e.g. low/high interest in managing Crown Estate Scotland assets) and how they will factor this into their strategic planning processes.
11. The Committee believes the provision of support will be vital in ensuring smaller community groups are able to successfully take on and manage assets and this support should extend beyond the initial application process. The Committee recommends the Scottish Government considers when the provision of ongoing advice and guidance to smaller community groups may be necessary and what form that should take.
12. The Committee recommends a national body, with a Scotland wide overview, is responsible for the management of offshore renewables, energy related assets and other cables and pipelines. The Committee is of the view that the Bill should retain provision for this to occur where a local authority can demonstrate appropriate expertise and it is considered beneficial from a socio-economic, environmental or sustainable development perspective.
13. The Committee is of the view that the seabed is a national asset and should be managed nationally. The Committee recommends the Bill should be amended to ensure the seabed cannot be sold.

14. The Committee is broadly persuaded of the merits of continued national management of Crown Estate Scotland's four rural estates, but recognises circumstances may change and it may be desirable to retain the flexibility to have some local management in future.
15. Ahead of consideration of the Bill at Stage 2, the Committee recommends the Scottish Government clarifies how it intends to maintain strategic oversight of all Crown Estate Scotland assets, after the management of some assets is transferred to local authorities and community organisations.

Processes for the Transfer/Delegation of Management

16. The Committee recommends the Scottish Government should clearly outline which assets it anticipates will continue to be managed on a national basis and which can be devolved to a local level. Regulations on this should be subject to the affirmative procedure.
17. The Committee is of the view that potential managers should know the criteria against which their suitability is likely to be assessed. The Committee recommends the criteria for assessment are included in guidance and published alongside the Bill, if passed, when it comes into force.
18. The Committee understands the provisions of the Bill allow both for the transfer of management and the sale of assets by managers. The Committee recognises the concerns in relation to possible fragmentation of the Crown Estate in Scotland.
19. The Committee's view on the transfer of assets concurs with that of the DPLR Committee and is set out in paragraphs 89-98 of this report.

Communication & Engagement

20. The Committee recognises and welcomes the improvements in communication since the establishment of Crown Estate Scotland (Interim Management) and encourages further development of the emerging approach towards working with stakeholders.
21. The Committee acknowledges tenants providing evidence to the Committee felt the creation of the tenants' working group for the four rural estates had worked well and helped ensure there was clear communication with factors. The working group had also led to tenant meetings that were very well attended, which provided managers with confidence that the views expressed at those meetings were truly representative of Crown Estate Scotland (Interim Management) tenants.
22. The Committee welcomes this approach and believes it represents significant progress. The Committee looks forward to this approach being expanded in future.

Financial Flexibility

23. The Committee recommends the Scottish Government considers introducing provisions in the Bill to allow managers of assets increased financial flexibility. The Committee considers there are significant benefits in Crown Estate Scotland having the ability to hold capital reserves for strategic investment and management and retain revenue to service capital expenditure. The Committee also considered there may be benefits in Crown Estate Scotland being able to trade.
24. The Committee was concerned that the evidence and discussion around revenues was, at times, unclear and inconsistent. The Committee remains unclear as to the rationale for maintaining the current level of 9% gross revenue that can be retained by managers for re-investment in an asset, other than this being the historic figure inherited from the UK Crown Estate.
25. The Committee notes that the Bill currently makes provision for this figure to be varied, but the Financial Memorandum accompanying the Bill states there are no plans to do so (i.e. that the 9% figure will continue to apply).
26. The Committee seeks further clarification from the Scottish Government as to the rationale for setting the figure for retention at 9% and why there are no plans to alter this figure at present.

Value and Significance of the Assets

27. The Committee recommends Crown Estate Scotland establish and maintain a list of Crown Estate Scotland assets and associated liabilities. This requirement should be included on the face of the Bill as it will be vital to underpin continuation of the process of cross-subsidisation.
28. The process to manage the cross-subsidisation of Crown Estate Scotland assets should be subject to the affirmative procedure.
29. The Committee agrees with the recommendations of the DPLR Committee that the Scottish Government should provide a clear definition of what would constitute significance or significant value in relation to an asset. The Committee considers the affirmative procedure should apply to regulations which would transfer the management of assets which are of significance or of significant value.

Responsibility for Liabilities

30. The Committee agrees there should be a presumption that those managing an asset should be responsible for the liabilities associated with it, but the Bill as currently drafted does not make this presumption sufficiently clear. The Committee recommends the Scottish Government provides greater clarity on the responsibility for liabilities and brings forward amendments to address this.
31. The Committee is also aware that for some community groups the requirement to take responsibility for liabilities, including unexpected liabilities, might act as a

deterrent to applying to manage an asset. The Committee welcomes provision in the Scottish Crown Estate Bill for the Scottish Government to assume responsibility for asset-related liabilities in limited circumstances and would welcome further information on how the Scottish Government intends to prevent community groups from having to bear liabilities disproportionate to their size.

Maintenance & Upkeep of Assets

32. Understanding the current state of the Scottish Crown Estate assets and the cost involved in addressing any issues is vital to determining the value of the assets and the associated liabilities. This is also a crucial starting point for identifying a future programme of work. The Committee recommends the Bill provides for the creation of a 'record of condition' of assets, requires they are properly maintained and ensures tenants and other stakeholders are involved in the design of any audit to inform this.

Transparency & Accountability

33. Details of the process and criteria the Scottish Government will use to decide the suitability of a potential manager to manage an asset should be set out in guidance. This guidance should be available when the Bill, if passed, comes into force.
34. The requirement for potential managers to produce a forward plan as part of the application process to manage an asset should be published on the face of the Bill. The Bill should also clearly set out requirements for Parliamentary scrutiny in relation to the Strategic Management Plan and Annual Reports by individual managers.

Definition of Community

35. The Committee shares the concern expressed by some stakeholders over the range of possible definitions of community, community organisation and community benefit. The Committee considers the definition of community should be aligned with that in the Community Empowerment (Scotland) Act 2015 and the Land Reform (Scotland) Act 2016. The Scottish Crown Estate Bill should either reference this legislation or clearly state the definition of community on the face of the Bill to ensure the definitions are consistent.
36. The Committee agrees with the DPLR Committee recommendation that, given no further criteria are specified as to how a body might relate to a community before it can be designated, the regulations mentioned in section 6(1)(b) should be subject to the affirmative procedure.

Crown Estate Scotland Staff

37. The Committee recognises the unsettling impact of change and the uncertainty this may cause staff. The Committee considers existing Crown Estate Scotland (Interim Management) staff should be provided with a realistic indication of how their role might change, or not, as a result of the Bill.
38. The Committee recommends Crown Estate Scotland (Interim Management) consider how existing staff could be meaningfully consulted and engaged in planning processes both now and following the passage of the Scottish Crown Estate Bill.

Introduction

Membership Changes

39. The membership of the Committee changed during the course of the Committee's consideration of the Bill at Stage 1. On Thursday, 19 April 2018, Kate Forbes MSP was replaced as a member of the Committee by Gil Paterson, MSP. On Thursday, 24 May 2018 Gil Paterson MSP was replaced as a member of the Committee by Alex Neil MSP.

Committee Consideration

40. [The Scottish Crown Estate Bill](#) was introduced in the Scottish Parliament on 24 January 2018. The Bill was accompanied by—
- [Policy Memorandum](#);
 - [Explanatory Notes](#);
 - [Financial Memorandum](#)
 - [Statement on Legislative Competence](#); and
 - [Delegated Powers Memorandum](#)
41. The Scottish Government has also published the following documents in relation to the Bill-
- [Privacy Impact Assessment](#)
 - [Equality Impact Assessment](#)
 - [Business and Regulatory Impact Assessment](#)
42. Under Rule 9.6 of the Parliament's Standing Orders, the Parliamentary Bureau referred the Bill to the Environment, Climate Change and Land Reform (ECCLR) Committee to consider and report on its general principles.
43. No secondary committee was appointed to consider the Bill.
44. The Delegated Powers and Law Reform (DPLR) Committee considered the Scottish Crown Estate Bill and subsequently produced a [report](#) to Parliament on 21 March 2018.
45. The Finance and Constitution Committee also considered the Financial Memorandum and issued a call for evidence. It did not produce a report on the basis of the submissions it received.ⁱⁱ However, the Committee shared this evidence with the ECCLR Committee for its consideration.

Environment, Climate Change and Land Reform Committee Consideration

46. At its meeting on 6 February 2018, the ECCLR Committee considered its approach to its scrutiny of the Bill. It agreed to issue a call for evidence with a deadline of 23 March 2018 and to invite stakeholders to give evidence at a series of meetings during February, March and April 2018. The Committee also agreed to seek the views of existing Crown Estate Scotland (Interim Management) staff via a confidential survey.
47. The Committee's call for evidence sought views on the content of the Bill as drafted, and asked Stakeholders to comment specifically on the following questions—
 - Does the Bill allow Crown Estate Scotland, or a delegated manager, to appropriately manage the Scottish assets;
 - Are the powers to allow the transfer of the management function appropriate;
 - Are the managers' powers and duties as listed in the Bill appropriate; and
 - Should any additional power or function of the Scottish Crown Estate not currently provided for in the Bill which should be included.
48. The Committee held evidence sessions on 20 February, 13 March, 27 March and 24 April 2018. The Committee heard from—
 - The Scottish Government Bill Team;
 - NFU Scotland and representatives from Crown Estate Scotland's rural estates;
 - Stakeholders with an interest in the management of Crown Estate Scotland's non-agricultural assets;
 - Stakeholders with an interest in the strategic direction and governance of Crown Estate Scotland; and
 - The Cabinet Secretary for the Environment, Climate Change and Land Reform.
49. Detailed information on the Committee's evidence sessions is available at Annexe A of this report. Responses to the Committee's call for evidence can be found at Annexe B.
50. The Committee thanks all those who responded to the call for evidence and who gave evidence in person.
51. The Committee also sought the views of existing Crown Estate Scotland (Interim Management) staff on key elements of the Bill and the impact of the Bill on them personally. The survey was circulated to all 41 Crown Estate Scotland (Interim Management) staff in March 2018. Staff members were told that participation in the

ii Submissions were received from COSLA, Forth District Salmon Fishery Board, Orkney Islands Council, Scottish Coastal Forum and Seven Sisters/Milton Bay Mooring Association.

survey was entirely voluntary, their responses would be confidential and no comments would be attributed to them as individuals. The survey closed on 10 April 2018 and a total of 20 Crown Estate Scotland (Interim Management) staff members participated.

52. The Committee appreciates the thoughtful responses it received from staff and this helped inform the Committee's thinking on a range of issues.

Policy and Financial Memoranda

53. The lead Committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. It is also required to report on the Financial Memorandum.

54. The Committee is generally content with the information provided in the Policy Memorandum and Financial Memorandum, with the exception of the consideration given to the retention of revenues. The Committee comments further on this in paragraphs 244-255.

Background and Purpose of the Bill

Background

55. The Crown Estate in Scotland was originally part of the UK wide Crown Estate, which is one of the largest property owners in the UK. It is independently managed in the UK by the Crown Estate Commissioners (CEC) and belongs to the reigning monarch 'in right of The Crown'. However, it is not Her Majesty the Queen's private property as Crown Estate assets cannot be sold by the monarch nor do revenues from it belong to her.ⁱⁱⁱ
56. The Crown Estate in Scotland comprises a wide range of assets including rural estates, rights to fish wild salmon and sea trout in river and coastal areas, rights to naturally occurring gold and silver across most of Scotland, some moorings, ports and harbours, the seabed out to 12 nautical miles (nm), the rights to offshore renewable energy and gas, carbon dioxide storage out to 200 nm and business property in Edinburgh.
57. The Smith Commission Report^{iv} was published in 2014 and set out which further powers should be devolved to the Scottish Parliament. This included the management of the Crown Estate in Scotland.
58. The key findings included—
- 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.
 - Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Comhairle nan 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.
 - 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.
 - Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.^v

ⁱⁱⁱ Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

^{iv} The Smith Commission. (2014) *Report of the Smith Commission on the further devolution of powers to the Scottish Parliament*

59. The Scotland Act 2016 led to the creation of Crown Estate Scotland (Interim Management), which has managed Crown Estate assets in Scotland since its creation in April 2017.
60. Crown Estate Scotland (interim Management) is responsible for managing—
- 37,000 hectares of rural land with agricultural tenancies, residential and commercial properties and forestry on four rural estates (Glenlivet, Fochabers, Applegirth and Whitehill);
 - Rights to fish wild salmon and sea trout in river and coastal areas;
 - Rights to naturally-occurring gold and silver across most of Scotland;
 - Just under half the foreshore around Scotland including 5,800 moorings and some ports and harbours;
 - Leasing of virtually all seabed out to 12 nm covering some 750 fish farming sites and agreements with cables & pipeline operators;
 - The rights to offshore renewable energy and gas and carbon dioxide storage out to 200 nautical miles; and
 - Retail and office units at 39-41 George Street Edinburgh.^{vi}
61. A full list of assets is contained in Schedule 1 of the Crown Estate Transfer Scheme 2017 order.

Scottish Government Consultation

62. The Scottish Government issued a consultation on the Long Term Management of the Crown Estate in Scotland on 4 January 2017, with a closing date of 29 March 2017.
63. The Scottish Government received a total of 212 responses. Of those 115 were from organisations and 97 were from individuals.
64. An analysis of consultation responses was published on 25 January 2018.^{vii} Key issues identified in the consultation were—
- Those responding to the consultation favoured devolving the management of Crown Estate Scotland assets to other bodies on a case by case basis;
 - Some assets should continue to be managed on a national level, for example, rights over cables and pipelines, rural estates and offshore wind energy;

^v The Smith Commission. (2014) *Report of the Smith Commission on the further devolution of powers to the Scottish Parliament*

^{vi} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

^{vii} Scottish Government. (2018) *A Consultation on the Long Term Management of the Crown Estate in Scotland: Analysis of Consultation Responses*

- Individual fisheries and local moorings were identified as being suitable for management at a local level;
 - There was strong support for any future definition of good management to include environmental factors;
 - The management of the Crown Estate in Scotland should be transparent;
 - Any sizeable sale of Crown Estate assets should require Ministerial approval; and
 - Local authorities should not be automatically granted the ability to manage an asset, but rather should be required to demonstrate the requisite skills before doing so.
65. The analysis of consultation responses also highlighted the need to^{viii}—
- Ensure that local management approaches continue to align with national strategy; and
 - Take a phased approach towards the devolution of assets. Make provision to vary the proportion of the revenue to be retained by new managers.

Purpose of the Bill

66. The Scottish Crown Estate sets the framework for the long-term management of the Crown Estate in Scotland. The Bill follows on from the Smith Commission recommendations^{ix}, the Scotland Act 2016 and the devolution of the management of the Scottish Crown Estate to the Scottish Parliament.
67. The Bill identifies who can become a manager of a Crown Estate asset, how management can be devolved within Scotland and what the remit of the new managers could be, following devolution via the Scotland Act 2016 and in line with the recommendations of the Smith Commission.^x
68. The Bill also seeks to ensure that the management of Crown Estate assets in Scotland can be further devolved to local authorities, public bodies and community organisations. Crown Estate assets include, but are not limited to, rural estates, mineral and fishing rights, urban assets, the seabed and foreshore.^{xi}

^{viii} Scottish Government. (2018) *A Consultation on the Long Term Management of the Crown Estate in Scotland: Analysis of Consultation Responses*

^{ix} The Smith Commission. (2014) *Report of the Smith Commission on the further devolution of powers to the Scottish Parliament*

^x The Smith Commission. (2014) *Report of the Smith Commission on the further devolution of powers to the Scottish Parliament*

^{xi} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

69. The Bill seeks to recognise a different ethos in Scotland and so moves beyond a focus on profitability, to encompass other factors such as regeneration, social wellbeing, environmental wellbeing and sustainable development,^{xii} when considering how an asset should be managed.
70. The Scottish Crown Estate Bill puts in place permanent arrangements for the management of the Crown Estate in Scotland and renames Crown Estate Scotland (Interim Management) as Crown Estate Scotland.
71. The Bill contains four Parts and two schedules—
- Part 1 changes the name of Crown Estate Scotland (Interim Management), to Crown Estate Scotland;
 - Part 2 sets out definitions and the mechanisms by which the management of the Scottish Crown Estate (as defined in Section 2 of the Bill) can be changed;
 - Part 3 makes provision about the management of the assets, including provision about managers' powers and duties in relation to the assets and provision about planning, reporting and accounting by managers;
 - Part 4 makes general provision about regulations, ancillary provision, consequential and minor modifications, interpretation, commencement and the short title;
 - Schedule 1 modifies certain enactments in light of the change in the name of Crown Estate Scotland (Interim Management); and
 - Schedule 2 makes some minor and consequential modifications of other legislation.
72. The Bill makes a number of provisions for the management of Crown Estate Scotland (CES) assets by bodies others than CES, including local authorities and community groups. It also allows for managers of assets to balance the duty to maximise the value of those assets against other factors.
73. The duties set out in the Crown Estate Act 1961 (to secure a commercial return but with regard to the principles of good management) continue to apply to the new Scottish interim body following devolution. The Scottish Crown Estate Bill however dis-applies the 1961 Act, and section 7 of the Bill states that managers of the assets must maintain and seek to enhance the value of the assets and also the income they generate. Having said that they may do so in a way that is likely to contribute to a range of wider objectives including—
- economic development;
 - regeneration;
 - social wellbeing;
 - environmental wellbeing; and

xii The Scottish Crown Estate Bill, section 7(2)

- sustainable development.^{xiii}
74. In practice, as set out in section 11, this means that a manager will have a duty to obtain “market value” if they are selling or leasing an asset, but also the power to make a transaction for below the market value if it contributes to one of the objectives above.^{xiv}
75. Sections 3, 4, 5 and 6 of the Bill include a number of options as to who could be a manager—
- Scottish Ministers;
 - Crown Estate Scotland;
 - Public authorities;
 - Local authorities; and
 - Community organisations.^{xv}
76. Other provisions within Part 3 of the Bill set out the powers of managers, for example, they can act as though they were the owner (section 8), but also set out some restrictions placed on managers. For example, Scottish Ministers need to give consent for the transfer of ownership of some assets (section 10); Scottish Ministers may give directions about rent and other charges (section 13); and the bill includes provisions that leases shall be granted for no more than 150 years (section 14).^{xvi}
77. Sections 20 to 25 set out requirements for planning and reporting. Given the diversity of the assets in the Scottish Crown Estate and the potential complexity of management and reporting arrangements, these include national and local arrangements.^{xvii}
78. Sections 26 to 34 put in place a number of measures aiming to deliver appropriate and consistent financial reporting and accountability. This includes, for example, the treatment of income and capital, the requirements for transferring sums of money between asset managers, and the ability of Scottish Ministers to make grants and loans.^{xviii}

^{xiii} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

^{xiv} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

^{xv} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

^{xvi} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

^{xvii} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

^{xviii} Scottish Parliament Information Centre. (2018) The Scottish Crown Estate Bill. SPICe briefing 18/20.

79. Further information on the provisions is contained in the Explanatory Notes, Financial Memorandum and Policy Memorandum to the Bill. The SPICe briefing on the Scottish Crown Estate Bill (paper 18/20 March 2018) is available [here](#).

Delegated Powers and Law Reform Committee Consideration

80. At its meetings on 20 February, 13 March and 20 March, the Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers in the Scottish Crown Estate Bill.
81. The DPLR Committee entered into correspondence^{xix} with the Cabinet Secretary for the Environment, Climate Change and Land Reform in relation to the delegated powers provisions in the Bill.
82. The DPLR Committee was particularly concerned that Scottish Ministers anticipated dealing with most regulations arising from the Bill via a negative Parliamentary procedure. The Committee felt to do so would restrict the ability of the Scottish Parliament to scrutinise the content of these regulations.
83. The DPLR Committee considered significant policy considerations underlie: (a) the Scottish Government's decision not to seek to identify the future managers of particular assets within the Scottish Crown Estate ("the Estate") on the face of the Bill, and (b) any decisions on the timing of the transfer of management of particular assets by regulations. The Committee considered that such significant policy considerations, which are fundamental to the proposed framework for the management of assets in the Bill, should properly be considered by the Environment, Climate Change and Land Reform Committee.
84. The DPLR Committee was not persuaded that the regulations under section 3 should, in relation to all assets within the Estate, be subject to scrutiny by the negative procedure rather than the affirmative procedure. The Committee considered the affirmative procedure should apply where the regulations textually amend primary legislation.
85. The framework proposed in Section 3 for the future management of assets means that the powers are capable of being exercised so that management of all the assets within the Estate could be transferred by one set of regulations, or that several assets of significance could be transferred by one set. The DPLR Committee considered the affirmative procedure rather than the negative should apply to regulations which would transfer the management of assets which are of significance, or of significant value.
86. The Committee did not offer a view as to how significance should be assessed or what policy considerations should be taken into account.
87. The DPLR Committee also recognised that under the proposed framework it is possible that several regulations might be used to transfer the management of separate assets of relatively low value. The Committee considered it might not be a good use of Parliamentary time, if those regulations were subject to the affirmative procedure rather than the negative.

^{xix} Delegated Powers and Law Reform Committee, *Scottish Crown Estate Bill at Stage 1*, 14th Report, (Session 5)

88. The DPLR Committee noted the Scottish Government has undertaken to consider whether section 4(3) is sufficiently clear, to deliver the policy intention. The intention is that the Scottish Ministers should not be able to direct a manager of an asset to delegate the management function to the Ministers. The DPLR Committee has agreed to return to consider this aspect after Stage 2. The Committee considered the terms of directions issued by the Scottish Ministers under section 4 should be laid before the Parliament and published, although commercially sensitive or commercially confidential information may be withheld. The Committee recommended the Environment, Climate Change and Land Reform Committee consider whether any terms of directions and delegation agreements under sections 4 and 5 should be published, beyond the minimum details of directions that must be in a published notice in accordance with section 4(7).
 89. Given the Scottish Government's commitment to the DPLR Committee to revisit section 4(3), the Environment, Climate Change and Land Reform Committee did not consider sections 4 and 5 of the Bill substantively at Stage 1. However, the Committee does intend to examine these sections of the Bill in more detail at Stage 2.
 90. The DPLR Committee considered, given that no further criteria are specified as to how a body might relate to a community before it can be designated, the regulations mentioned in section 6(1)(b) should be subject to scrutiny by the affirmative procedure. The Committee noted the affirmative procedure applies to regulations under section 34(A1)(b) and section 97D(1)(b) of the Land Reform (Scotland) Act 2003, which similarly designate "community bodies" and "Part 3A community bodies" that do not fall within the criteria otherwise set out in those sections. The Committee also asked the Scottish Government to consider, in relation to section 6(1)(b), whether there is any policy intention that a community organisation that may be designated could be the trustees of a trust, given that a trust is not an incorporated "body".
91. The Environment, Climate Change and Land Reform Committee agrees with the findings and recommendations of the DPLR Committee. The Committee shares the concern of the DPLR Committee that Scottish Ministers anticipate dealing with most regulations arising from the Bill via a negative Parliamentary procedure. The Committee similarly considers to do so would restrict the ability of the Scottish Parliament to scrutinise the content of these regulations.
 92. The ECCLR Committee is conscious, however, of the need to strike an appropriate balance between matters that are operational decisions for Crown Estate Scotland and those that require further Parliamentary scrutiny.
 93. Taking account of the DPLR Committee recommendations, the ECCLR Committee recommends the affirmative procedure should apply where the regulations textually amend primary legislation.
 94. The Committee recommends regulations under section 3, in relation to all assets within the Estate, should be subject to the affirmative procedure.
 95. The Committee is of the view that the Scottish Government and Crown Estate Scotland (Interim Management) should clearly set out a definition of what would

constitute 'significance' or 'significant value'^{xx} in relation to an asset, on the face of the Bill, and the affirmative procedure should apply to regulations which would transfer the management of assets which are of significance or of significant value.

96. This definition should encompass factors such as the size of the asset; the value of the asset (including any cross-subsidy it might provide to other assets); the transfer of neighbouring assets and any environmental significance the asset may have. The Committee recommends the Scottish Government brings forward amendments to address this at Stage 2 and gives consideration to the need to provide detailed accompanying guidance.
97. The Committee recommends regulations to transfer the management of separate assets of relatively low value should be subject to the negative procedure.
98. The Committee welcomes the Scottish Government commitment to consider whether section 4(3) is sufficiently clear and, if required, bring forward related amendments at Stage 2.
99. The Committee agrees with the DPLR Committee that the terms of directions issued by the Scottish Ministers under section 4 should be laid before the Parliament and published, although commercially sensitive or commercially confidential information may be withheld.
100. Given no further criteria are specified as to how a body might relate to a community before it can be designated, the Committee agrees with the recommendation of the DPLR Committee that regulations mentioned in section 6(1)(b) should be subject to the affirmative procedure.

^{xx} Delegated Powers and Law Reform Committee, *Scottish Crown Estate Bill at Stage 1*, 14th Report, (Session 5)

Views of Existing Crown Estate Scotland (Interim Management) Staff

101. As previously stated, existing Crown Estate Scotland (Interim Management) staff members were asked their views on several aspects of the Bill via a confidential survey. The Committee was grateful to Crown Estate Scotland (Interim Management) for facilitating access to staff members.
102. Section 7 of the Bill was identified by staff as an area requiring further clarity. Staff members were unsure of the relative weight the duties in sections 7(1) and 7(2) would be given and what would be the overall driver for decision-making.^{xxi}
103. Staff members were concerned that if a local authority managed an asset then there would be the potential for "confusion, bad practice and collateral damage."^{xxii} Staff stressed the need for Crown Estate Scotland to be managed in a consistent and cohesive way, with responsible governance.^{xxiii} A key concern, not just in relation to local authorities, was that in broadening out the pool of potential managers, there could be an impact on existing industry sector relationships and "having multiple managers of assets will make these relationships more complex."^{xxiv}
104. Staff members also expressed concern that transferring the management of some assets could lead to "a detriment of the financial health of the assets or the estate generally"^{xxv} particularly where community organisations had not factored in longer terms costs or were inexperienced in managing assets over time. Some respondents did acknowledge, however, that there have been "some great examples of community management and development across Scotland"^{xxvi} and that there was the potential for benefit to be derived from this approach, as long as community organisations had the "right capacity and capability."^{xxvii}

^{xxi} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

^{xxii} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

^{xxiii} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

^{xxiv} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

^{xxv} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

^{xxvi} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

^{xxvii} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

105. Responses to the survey also highlighted concerns that, as currently drafted, the Bill provides very little information about existing Crown Estate Scotland (Interim Management) staff and "how they will be treated in cases of delegation or transfer."^{xxviii} For some staff, there were too many "unknowns"^{xxix} in the Bill for them to judge whether it was likely to lead to a "change in role, reduction in role or redundancy."^{xxx} The extent to which assets were likely to be managed by others following the passage of the Bill was a significant concern, and staff members felt that- "existing staff at CES deserve an honest assessment of potential impact on their roles for the entire journey of the Bill."^{xxxi}
106. There were some positives identified, however, with one staff member stating "the team in CES do a great job already, and have the potential to deliver long term benefits for Scotland".^{xxxii} Another suggested that the changes brought about by the Bill would mean their role could become "more diverse and interesting."^{xxxiii}
107. In her evidence to the Committee on 24 April 2018, the Cabinet Secretary for Environment, Climate Change and Land Reform, acknowledged existing Crown Estate staff were likely to be feeling unsettled by the Bill. She stressed, however, that staff may be anticipating a far greater change than may actually be the case-

” Change always creates uncertainty and I do not expect Crown Estate staff to be excluded from that feeling..... I suspect that the continued retention for national management of a significant part of what the Crown Estate does will mean that the change is far more minimal than staff might have feared at the outset.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 190¹

108. The Committee recognises that in any scenario such as this, change and uncertainty will have an unsettling impact on staff. The Committee considers existing Crown Estate Scotland (Interim Management) staff should be provided with a realistic indication of how their role might change, or not, as a result of the Bill.

xxviii Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

xxix Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

xxx Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

xxxi Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

xxxii Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

xxxiii Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished).

109. The Committee recommends Crown Estate Scotland (Interim Management) considers how existing staff could be meaningfully consulted and engaged in planning processes both now and following the passage of the Scottish Crown Estate Bill.

Key Issues Arising from the Bill

110. A number of themes emerged from the Committee's consideration of the Scottish Crown Estate Bill at Stage 1. These are outlined in more detail below.

Definition of Good Management

111. The Committee was keen to explore the concept of good management and how stakeholders interpreted this in the context of the Scottish Crown Estate Bill. In doing so, the Committee acknowledged good management is a term that has been used previously in the context of the Crown Estate Act 1961. The Committee wanted to examine how the perception of good management had changed over time, and look ahead to what it might mean in future.
112. A strong theme emerging from both the written and oral evidence was if management of an asset is to be successfully transferred to a local authority, public body or community organisation, there needs to be confidence that the asset will continue to be well managed. Ensuring those taking on the management of an asset have the requisite knowledge and skills to do so is key, as are clear accountability processes.
113. In his evidence to the Committee on 20 February 2018, David Mallon of the Scottish Government suggested the lack of a clear definition of good management under the previous legislation had led to different interpretations of the term by individual managers. As such, he welcomed the inclusion of the duties in section 7 of the Scottish Crown Estate Bill which, he felt, clearly set out the factors to be taken into account in decision-making.
114. Andy Wells of Crown Estate Scotland (Interim Management) referred to the interpretation of good management in the Crown Estate Act 1961, arguing that the proposals in the Scottish Crown Estate Bill did not represent a significant departure from existing practice, stating—

” Perhaps I should start, given that the question concerns one of the terms in the Crown Estate Act 1961. Obviously, the committee must consider how that term transfers into the new legislation. The interpretation of the term “good management” in the act has involved the question of operating the business in such a way as to deliver growth in the business, to deliver capital growth in the assets and to turn that to account by delivering revenue—but doing so according to good management. That covers a wide range of different ways of doing things in terms of how you operate, collaborate and work in partnership. It is also about how you take into account a wider range of benefits that you can deliver as the result of any particular transaction or decision. The bill specifies that that should be interpreted more in terms of social, economic and environmental objectives, with more of a focus on a sustainable approach to management, but that is how the Crown Estate has historically interpreted “good management” in any case. It involves making decisions that are in the best interests of a range of different considerations, while, clearly, given the terms of the act, taking account of commercial factors.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Andy Wells (Crown Estate Scotland), contrib. 4²

115. Dr Calum MacLeod of Community Land Scotland also emphasised the need to take into account factors beyond commercial success, including community empowerment, stating—

” There are various characteristics that make a good manager, such as the transparency of how you act and your accountability to the stakeholders for whom you are managing assets. It is important to have that process in place and to meet those best-value characteristics. In thinking about what constitutes a good manager in the context of the management of Crown Estate assets, I think that it is heartening that the bill contains a clear and unambiguous iteration of the fact that—as Andy Wells just mentioned—we are not thinking about managing assets only in relation to their financial components and that the focus on environmental and social aspects is fundamentally important, too.

Community Land Scotland would suggest that good management is very much to do with the focus on the broader considerations and on ensuring that the assets are managed in a way that ties into a wide array of public policy objectives, not least of which is community empowerment, and what that might mean in practice.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Dr Calum MacLeod (Community Land Scotland), contrib. 7³

116. Alex Kinninmonth from Scottish Environment LINK suggested the concept of good management should be defined in terms of “transparency and accountability for the wider public objectives.”^{xxxiv}

117. In her evidence to the Committee on 17 April 2018, Audrey MacIver of Highland and Islands Enterprise suggested the framework provided within the Bill is helpful in setting out requirements for strategic planning and ongoing management, including

forward planning and accountability. However, in her view there is a need to ensure the Bill considered "whole-life management" and—

” Looking at the wider social and environmental considerations, and not just immediate financial gain, is a key part of that.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Audrey Maclver (Highlands and Islands Enterprise), contrib. 13⁴

118. In considering what constitutes good management, the Committee was also keen to explore the concept of a good manager. As currently drafted, the Bill does not provide information about the processes Scottish Ministers anticipate using to help them decide if a potential manager is suitable to take on the management of an asset.
119. The Committee appreciates the Bill is a framework bill. Nevertheless, the Committee believes it would be helpful for both existing Crown Estate Scotland (Interim Management) staff and prospective managers to have an understanding of expectations in relation to management from the outset.
120. The Committee considers there should be a definition of good management that takes the wider public objectives, including socio-economic, environmental and sustainable development considerations into account.
121. The Committee recommends the Scottish Government provide further information on the definition of good management and further information on the process that will be used to assess the suitability of potential managers of assets, in advance of consideration of the Bill at Stage 2.
122. The Committee recommends the Scottish Government gives consideration to whether a definition of good management should appear on the face of the Bill or in guidance and, if necessary, bring forward relevant amendments at Stage 2. If this is to be included in guidance, this should be available when the Bill, if passed, comes into force.

Communication

123. In addition to a general consideration of what constitutes good management, a range of other factors were identified as being key to ensuring Crown Estate Scotland was run well. One factor was communication, with many stakeholders regarding this as something that had been lacking under the previous management arrangements.
124. In their evidence to the Committee on 13 March 2018, witnesses from the rural estates of Fochabers, Glenlivet, Applegirth and Whitehill recognised that, where previously there had been limited interaction between the UK Crown Estate and tenants, the creation of Crown Estate Scotland (Interim Management) had brought about a step-change in the way in which the Estate was managed. This had led to the establishment of a working group by the Scottish Government, with representation from all the rural estates, providing tenants with the opportunity to

raise issues at a local level. Tenants now feel Crown Estate Scotland (Interim Management) staff are more accessible and responsive than their predecessors.

125. Witnesses spoke highly of Crown Estate Scotland (Interim Management) as a manager, suggesting the new body had already shown care towards their tenants and demonstrated a willingness to work collaboratively with them to resolve any difficulties.

126. Brian Shaw of Applegirth Estate stated—

” We have come from a position, with the old Crown Estate, where we did not have any communication or say at all. Now we have established a working group and we are getting on very well with Crown Estate Scotland (Interim Management).

Source: Environment, Climate Change and Land Reform Committee 13 March 2018, Brian Shaw (Applegirth Estate), contrib. 139⁵

127. The Committee recognises and welcomes the improvements in communication since the establishment of Crown Estate Scotland (Interim Management) and encourages further development of the emerging collaborative approach to working with stakeholders.

128. The Committee recommends that the Scottish Government and Crown Estate Scotland (Interim Management) should consider what additional support might be required for existing Crown Estate Scotland (Interim Management) staff at this time of transition and take active steps to provide this.

129. The Committee recommends the Scottish Government provides clear information about what will happen to existing Crown Estate Scotland (Interim Management) Staff in the event of an asset being managed by another body, before consideration of the Bill at Stage 2.

Crown Estate Scotland (Interim Management) - As a Landlord

130. The evidence received by the Committee from tenants suggests that Crown Estate Scotland (Interim Management) has already set a positive tone for the future operation of Crown Estate Scotland, and the transition from Crown Estate UK to Crown Estate Scotland (Interim Management) has brought significant benefits to tenants in Scotland.

131. Tenants generally spoke warmly about Crown Estate Scotland (Interim Management) as a caring landlord. They were keen to explore the opportunities the Bill could offer in terms of working more creatively and taking a more sustainable approach.

132. One current tenant suggested that—

” I would say that we are quite fortunate to be on the Crown estate. Its management would like to see the wellbeing of the estate and the tenants within it, which is a healthy approach. Other landlords may be less scrupulous and less accommodating, so we have an opportunity to show best practice to the other landlords out there.

Source: Environment, Climate Change and Land Reform Committee 13 March 2018, Jim Inness, contrib. 144⁶

133. In relation to sustainability, tenant farmers were particularly keen for Crown Estate Scotland to offer opportunities to younger farmers.
134. They were conscious of the need to ensure a new generation of farmers was equipped to take over the management of the Estate in years to come, and emphasised the need for some decisions about asset management to be based on a longer-term view, rather than focusing on profitability in the short-term.^{xxxv}
135. Crown Estate Scotland (Interim Management) is generally well regarded across the range of assets it manages, with Patricia Hawthorn from Scottish Renewables describing the Estate as “landlord, catalyst and supportive partner.”^{xxxvi}

Maintenance & Upkeep

136. Whilst tenants appeared generally to be happy with the way in which Crown Estate Scotland (Interim Management) was operating as a landlord, there remain some issues that tenants felt the Scottish Crown Estate Bill provides an opportunity to resolve.
137. Tenant farmers, for example, felt that there are specific problems around the maintenance of rural buildings, and issues relating to upkeep are often not picked up early enough. This led to some buildings being in a state of dilapidation, including out-buildings and accommodation for farmers and their families.
138. Tenants suggested this was due to intermittent contact with factors on some estates, no centralised record of the current state of Crown Estate Scotland buildings and the absence of an ongoing maintenance programme. It was acknowledged, however, that experiences varied across different rural estates, with some tenants reporting that buildings had been repaired or replaced swiftly by the Crown Estate when requested.
139. Brian Shaw of the Applegirth Estate said—

^{xxxv} Environment, Climate Change and Land Reform Committee, *Official Report, 13 March 2018*

^{xxxvi} Environment, Climate Change and Land Reform Committee, *Official Report, 27 March 2018*

” My family has been there since before the Crown Estate took over. No proper maintenance is ever done. Investment is now left to the tenants, by and large..... An audit must be done...If the Crown Estate does not know its liabilities, it cannot do a budget.

Source: Environment, Climate Change and Land Reform Committee 13 March 2018, Brian Shaw, contrib. 153⁷

140. Tenants recognised Crown Estate Scotland (Interim Management) had inherited liabilities from the UK Crown Estate, and some problems are very long-standing in nature. Tenants suggested problems are often only picked up when reported by tenants and only then are they budgeted for. They suggested there is a need to plan pro-actively now and budget for better maintenance in future.

141. The suggestion of an audit of existing Crown Estate Scotland (Interim Management) assets was warmly welcomed by tenants as a potential means of achieving this aim.

However, tenants were clear that this audit should be co-produced with them and should not be something that is 'top down' (i.e. they should be involved in the design of the audit).

142. Tenants felt the creation of the tenants' working group for the four rural estates had worked well and had helped ensure there was clear communication with factors. The working group had led to tenant meetings that were very well attended. This provided managers with confidence that the views expressed at those meetings were truly representative of Crown Estate Scotland (Interim Management) tenants.

143. Gemma Cooper of NFU Scotland suggested that Crown Estate Scotland (Interim Management) should look upon the Bill as an opportunity to take stock and plan ahead—

” To build on what Jim Inness said, the Crown Estate calls it an audit, but I call it a record of condition. This is a chance to start afresh, and carrying out records of condition of all the holdings would be really useful. It could be followed by an agreed schedule of works, which would tie in with the estate budgets.

Source: Environment, Climate Change and Land Reform Committee 13 March 2018, Gemma Cooper, contrib. 212⁸

144. The Committee was surprised to hear there is no current up-to-date assessment of the condition of Crown Estate assets in Scotland. Understanding the current state of assets and the cost involved in addressing any issues is vital to determining the value of the assets, associated liabilities and is a necessary starting point for identifying a future programme of work.

145. The Committee recommends the Scottish Crown Estate Bill makes specific provision for the creation of a 'record of condition' of Scottish Crown Estate assets that identifies the cost to address issues and places a requirement on the Scottish Crown Estate to ensure that Scottish Crown Estate assets are properly maintained. Tenants and other stakeholders should be involved in the design of

any audit which will inform this. The Committee recommends the Scottish Government bring forward amendments to address this at Stage 2.

146. The Committee also recommends the 'record of condition' should be reviewed on a regular basis and aligned to the requirement in Section 24 of the Bill for managers to produce an annual report on its management of the assets during that year.
147. The Committee recommends tenants must be involved in agreeing a schedule of works for repairs. Priority should be given to repairs to accommodation for tenant farmers and their families and agreed repairs should be carried out without unreasonable delay.

Transparency & Accountability

148. In order to ensure Crown Estate Scotland assets continue to be managed to a high standard, the Scottish Crown Estate Bill includes a number of provisions designed to ensure transparency and accountability.
149. Section 18(1) of the Bill sets out a requirement for managers to be '*transparent and accountable*' and in a way that is '*consistent with any other principle of good governance*'.^{xxxvii}
150. Section 20 of the Bill requires Scottish Ministers to prepare a Strategic Management Plan setting out '*objectives, priorities and policies in relation to the management of the Estate*'. Scottish Ministers are also required to carry out an '*assessment of how those objectives, priorities and policies align with the Scottish Ministers' other objectives, priorities and policies*'.^{xxxviii}
151. Section 20(4) of the Bill ensures Scottish Ministers consult throughout the preparation of this Plan, with '*each manager*' and '*such other persons as they consider appropriate*'. The Bill requires this Strategic Management Plan to be revised every 5 years.^{xxxix}
152. The opportunities offered by the Bill to provide increased transparency and engagement with tenants was broadly welcomed and recognised as something that had previously been lacking.
153. Gemma Cooper of NFU Scotland said—

^{xxxvii} Scottish Crown Estate Bill, section 18(1)

^{xxxviii} Scottish Crown Estate Bill, sections 20(2)(a) and (b)

^{xxxix} Scottish Crown Estate Bill, sections 20(4)(a) and (b)

” Part of the issue is transparency. There has not been much transparency until now, and it is good to see that theme in the bill. The tenants do not have a lot of input into decisions or understanding of how they are made, so a bit more information might help them to feel confident about investment in future.

Source: Environment, Climate Change and Land Reform Committee 13 March 2018, Gemma Cooper, contrib. 155⁹

154. Section 23(1) of the Bill also provides for managers of the Scottish Crown Estate to prepare management plans, covering a 3 year period 'as soon as reasonably practicable after becoming a manager' and on a 3 year cycle thereafter.^{xi} Scottish Ministers can then approve the plan without modification; approve a plan with modifications agreed with the manager; or reject the plan.^{xii}

155. The Committee welcomes the provisions within the Bill to ensure transparency and accountability. The Committee considers there is greater scope to enhance those provisions.

156. The Committee considers details of the process and criteria the Scottish Government will use to decide the suitability of a potential manager to manage an asset should be set out in guidance. This guidance should be available when the Bill, if passed, comes into force.

157. The Committee considers potential managers should be required to produce a forward plan as part of the application process to manage an asset.

158. The Committee considers the requirement to produce a forward plan at the point of application should be included on the face of the Bill and recommends the Scottish Government bring forward amendments at Stage 2 to address this.

159. The Committee considers the Bill should clearly set out requirements for Parliamentary scrutiny in relation to the Strategic Management Plan and Annual Reports by individual managers (except where this would be commercially sensitive).

Section 7 Duties

160. The analysis of the Scottish Government's consultation on the long-term future of the Scottish Crown Estate provided a clear steer from stakeholders that, when deciding how an asset should be managed, factors beyond profitability should be taken into account. The Scottish Crown Estate Bill seeks to achieve this via sections 7(1) and 7(2) of the Bill.

161. The duty in section 7(1) currently states that managers 'must' maintain the value of an asset and seek to maximise the income generated by it. A further duty in section

xi Scottish Crown Estate Bill, section 23

xii Scottish Crown Estate Bill, section 23(2)

7(2) sets out the factors that 'may' be taken into consideration, namely economic development, regeneration, social well-being, environmental well-being and sustainable development.

162. The Committee heard concerns from stakeholders that the way in which section 7 of the Bill is currently worded, it is likely to lead to managers focusing on financial factors, to the detriment of the wider factors in section 7(2).
163. Some stakeholders suggested managers would prioritise the duty in section 7(1) of the Bill as this was something managers 'must' do, whereas section 7(2) only outlined factors that managers 'may' consider. There was a suggestion by some stakeholders that the 'may' in section 7(2) should be changed to become a 'must' too.^{xlii}
164. Without such a change, stakeholders felt the default approach would always be to favour options which maintained or sought to maximise income, even if this approach might offer only short-term gain at the expense of longer-term benefits.^{xliii}

'May' versus 'Must'

165. In their written evidence, Highlands and Islands Enterprise felt the current wording of the Bill was likely to lead to lost opportunities, stating there is a^{xliv}—
- ” possibility that the *must* of ‘maintain and enhance the value of assets’, could in practice make it very difficult, if not impossible for managers to take account of the wider benefits, effectively ‘neutralising’ that opportunity.
166. Providing oral evidence to the Committee, Highland and Islands Enterprise said there was a need for clarity as to the weight each of the duties in section 7 of the Bill should be given—
- ” ...we have picked up on the fact that the bill states that managers “must ... enhance ... the value” but “may” take into consideration other factors. We want to understand whether either there is a hierarchy or all the factors that the bill mentions will be taken into account.
- Source: Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Audrey Maclver, contrib. 31¹⁰
167. Professors Ross and Reid of Dundee University suggested in their written evidence to the Committee that the Bill^{xlv}—

^{xlii} Professor Andrea Ross and Professor Colin T Reid, Dundee University, Written Submission, Paragraphs 4 & 5

^{xliii} Environment, Climate Change and Land Reform Committee, 2018 (Session 5), *Call for Evidence*

^{xliiv} Highlands and Islands Enterprise, Written Submission, Paragraph 3

^{xlv} Professor Andrea Ross and Professor Colin T Reid, Dundee University, Written Submission, Paragraph 2

” gives undue pre-eminence to pursuing economic interests over other concerns. Although subsection (2) does allow other considerations to be taken into account, this is discretionary, rather than mandatory, and there is no obligation to pay heed to any of these. This seems to conflict with other statutory duties affecting all public bodies in Scotland in relation to biodiversity....and contributing to meeting climate change targets and sustainability.

168. They suggested the minimal solution would be to require managers to take the considerations in sub-section 2 into account and an enhanced approach would be to further embed concern for sustainable development. This would require managers to maintain and enhance assets in a way that is likely to contribute to the achievement of sustainable development.

169. In her evidence to the Committee, Patricia Hawthorn from Scottish Renewables said she thought the duty in section 7(2) should be read in conjunction with section 11 of the Bill. She remained unconvinced of the need to strengthen the duty in section 7(2) and also pointed out the need for consistency with existing provisions, stating that—

” ...there are other regulatory controls that are focused specifically on sustainability and environmental protection. We have to get all the forms of regulation to sit comfortably with and respect one another, and not all to be looking at the same thing.

Source: Environment, Climate Change and Land Reform Committee 27 March 2018, Patricia Hawthorn, contrib. 195¹¹

170. Other witnesses highlighted where obligations to take into account sustainable development already existed, for example in relation to the Climate Change (Scotland) Act 2009^{xlvi} and the Marine (Scotland) Act 2010.^{xlvii}

171. In his oral evidence to the Committee on 27 March 2018, Dr Alan Wells of Fisheries Management Scotland provided an example of where the duty in section 7(2) could usefully be applied-

” [Salmon fishings] tend to be on rivers that are not necessarily of high value in comparison with other rivers in Scotland. Therefore, trying to get a huge amount of economic benefit from those fisheries might not be the best way to go.

Another route is to look at getting a great deal more social and environmental benefit from those fisheries by getting people to use them, getting people into the outdoors and putting less emphasis on getting an economic benefit from them.

Source: Environment, Climate Change and Land Reform Committee 27 March 2018, Dr Wells, contrib. 199¹²

172. Andy Wells of Scottish Crown Estate (Interim Management) agreed there was merit in looking beyond creating financial value, suggesting the Bill offered the chance for

^{xlvi} Climate Change (Scotland) Act 2009, section 92

^{xlvii} Marine (Scotland) Act 2010, Section 3

managers to "consider how they can enhance value in a range of areas, and not just in terms of natural capital, but in terms of social capital."^{xlviii}

173. Alex Kinninmonth of Scottish Environment LINK pointed out that value should also be assessed in the context of broader benefits-

” There has been a lot of progress in recent years towards defining good management in terms of environmental wellbeing and in looking at approaches to widening what value means to include natural capital or the ecosystem services that can be got from natural assets.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Alex Kinninmonth (Scottish Environment LINK), contrib. 9¹³

174. The Cabinet Secretary was not in favour of changing the duty in section 7(2) to something managers 'must' consider, stating that—

” ...those factors might not be relevant to absolutely everything that a manager does. If we use the word “must”, and a manager then has to take into consideration something that is not relevant to a particular decision, that becomes an exercise in futility. I do not see that particularly helping managers to make the decisions that they need to make.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 199¹⁴

175. In her evidence to the Committee, the Cabinet Secretary also said there is a clear imperative to ensure the value of the Crown Estate in Scotland is maintained. She emphasised the devolution of the Crown Estate to Scotland under the terms of the Scotland Act 2016 meant that the UK Government's block grant to Scotland "has been reduced by the estimated annual amount of net revenue earned by the Scottish estate",^{xlix} with the income of all Crown Estate Scotland activities, minus running costs, being paid into the Scottish Consolidated Fund.¹

176. The Committee is mindful of the Scottish Government's desire to maintain the current value of the Crown Estate in Scotland in order to ensure that the Scottish Consolidated Fund is not depleted.

177. However, the current wording of the duties in section 7(1) and (2) appear to weight considerations heavily toward financial factors as opposed to balancing financial factors alongside wider socio-economic and environmental factors. As the Bill is drafted, the duties in this regard are clearly discretionary, rather than mandatory.

178. The Committee is convinced of the need to strengthen the duty in section 7(2) and considers this should be reworded so that it requires managers to demonstrate they have considered wider socio-economic and environmental factors when deciding how an asset should be managed. Where a manager believes that one (or more) of these factors is of lesser relevance, or does not apply, then the manager would simply be required to evidence the rationale for their decision.

^{xlviii} Environment, Climate Change and Land Reform Committee, *Official Report*, 17 April 2018

^{xlix} Environment, Climate Change and Land Reform Committee, *Official Report*, 24 April 2018

¹ Environment, Climate Change and Land Reform Committee, *Official Report*, 24 April 2018

179. Section 11(2) provides a means for asset managers to make transactions for less than market value where they can show wider economic, environmental or sustainable development benefits in doing so.
180. Whilst section 11(2) mirrors the provisions in section 7(2), it is a duty designed to provide managers with flexibility in some circumstances, rather than guiding the overall management of an asset (as in section 7(2)). The Committee therefore does not feel that strengthening the duty in section 7(2) requires a consequential amendment to section 11(2).


181. The Committee welcomes the policy intention of the Bill to ensure broader factors are taken into account when a manager decides how an asset might best be managed. However, the Committee remains unconvinced the current wording in section 7(2) is sufficient to ensure the desired intention is achieved.
182. The Committee recommends that the Scottish Government considers rewording section 7(2) to make it clear that all managers are required to operate in a way that is likely to contribute to sustainable development and are also required to take account of economic development, regeneration, social wellbeing and environmental wellbeing, as well as profitability, when deciding how an asset should be managed. The Committee believes this should be the case even if such consideration leads to the conclusion that a factor may not be relevant.
183. The Committee recommends the Scottish Government give consideration as to how managers should demonstrate these wider factors have been taken into account, possibly via the production of an impact assessment. This process should be set out in guidance which should be available when the Bill, if passed, comes into force.
184. The Committee is of the view that the duty in section 11(2) of the Bill does not require to be amended, in the event of the duty in section 7(2) being strengthened.

Local versus National Management

Key Principles

185. A key principle of the Smith Commission Reportⁱⁱ was that the management of Crown Estate assets in Scotland should be devolved as far as possible to local communities. This is in line with principles already enshrined within the Community Empowerment (Scotland) Act 2015 and the Land Reform (Scotland) Act 2016, which recognise that local communities have unique local knowledge, are motivated to ensure the continued success of an asset and are likely to have imaginative ideas about how to develop that asset further in future.

ⁱⁱ The Smith Commission. (2014) *Report of the Smith Commission on the further devolution of powers to the Scottish Parliament*

186. In the Scottish Government's consultation on the long-term future of the Crown Estate in Scotland, stakeholders were offered 3 options: 1) to retain Crown Estate Scotland as a national body; 2) to devolve management of Crown Estate Scotland assets completely to Local Authorities and community organisations; or 3) to consider the transfer of the management of assets on a case by case basis.ⁱⁱⁱ The latter option was favoured by the majority of stakeholders consulted.
187. The Scottish Crown Estate Bill, however, currently gives no indication as to the proportion of assets that it is anticipated will be managed locally (i.e. whether the majority of assets will be managed by others or only a very small proportion of them). As a result, many stakeholders were keen to ensure that devolution was phased in gradually to ensure that Crown Estate Scotland did not become fragmented.^{liii}
188. Existing Crown Estate Scotland (Interim Management) staff emphasised the need to ensure that decision-making processes were flexible enough to take a long-term outlook towards the management of an asset, rather than focusing on what might be a short-term gain.^{liv}
189. It appears to the Committee the Scottish Government is taking a demand-led approach to the devolution of asset management as in correspondence to the DPLR Committee, the Scottish Government stated—
-  It is also not sufficiently clear at this stage which are the assets that communities have an aspiration to manage locally in different parts of Scotland.^{lv}
190. The Committee is of the view that the Scottish Government needs to develop a clear picture of the proportion of the Scottish Crown Estate they envisage being managed by local authorities, community organisations or ports and harbour authorities in the initial years of operation of Crown Estate Scotland, and seeks an indication of how many local authorities, community organisations, or ports and harbour authorities across Scotland anticipate applying to manage assets (for example, through an 'expression of interest' scheme).
191. Without such information, the Committee considers it will be nearly impossible to anticipate the balance that will be achieved between assets continuing to be managed at a national level and those that will be devolved to a local level. This has the potential to impact negatively upon the day to day management of the Estate (and existing Crown Estate Scotland (Interim Management) staff) and it may affect Crown Estate Scotland's ability to discharge its strategic planning functions.

ⁱⁱⁱ Scottish Government. (2018) *A Consultation on the Long Term Management of the Crown Estate in Scotland: Analysis of Consultation Responses*

^{liii} Scottish Government. (2018) *A Consultation on the Long Term Management of the Crown Estate in Scotland: Analysis of Consultation Responses*

^{liv} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished)

^{lv} Delegated Powers and Law Reform Committee, *Scottish Crown Estate Bill at Stage 1*, 14th Report, (Session 5)

192. The Committee recommends the Scottish Government and Crown Estate Scotland (Interim Management) consider how they will plan for different eventualities (e.g. low/high interest in managing Crown Estate Scotland assets) and how they will factor this into their strategic planning processes.

Assets to be Managed at a National Level

193. As previously stated, Crown Estate Scotland encompasses a wide range of assets, not all of which may be suitable for management at a local level. The Bill does not identify which assets may be required to be managed at a national level.

Rural Estates

194. The Committee heard evidence on the management of the existing rural estates within the ownership of the Crown Estate in Scotland. Stakeholders generally felt that Crown Estate Scotland's rural estates should continue to be managed on a national basis.^{lvi} There was no call for a change to the management of rural assets and some concerns were raised as to the possibility of a change in management. However, some stakeholders did not want the possibility of local management to be dismissed outright.

195. The Committee is broadly persuaded of the merits of continued national management of Crown Estate Scotland's four rural estates, but recognises that circumstances may change and it may be desirable to retain the flexibility to have some local management in future.

Offshore Renewables and Energy Related Assets

196. The Committee considered offshore renewables and energy related assets in the context of the Scottish Energy Strategy.^{lvii}
197. In her evidence to the Committee on 27 March 2018, Patricia Hawthorn of Scottish Renewables was clear that some assets would require management to continue on a national basis—

^{lvi} Scottish Government. (2018) *A Consultation on the Long Term Management of the Crown Estate in Scotland: Analysis of Consultation Responses*

^{lvii} The Scottish Government. (2017) *Scottish Energy Strategy: The Future of Energy in Scotland*.

” From an offshore renewables perspective, particularly with large commercial offshore wind farms, it is critical that management is done at national level. An important function would be for one body to look at all the opportunities for development around our shores, and to try to work out where the best combination of developments may be. That process has to be done with an overview of Scotland and Scottish waters as a whole, of all the developers that have indicated interest in developing, and of all the opportunities for development that might exist. ...Our experience so far is that a centralised process is best, so we are keen to make sure that that approach prevails.

Source: Environment, Climate Change and Land Reform Committee 27 March 2018, Patricia Hawthorn, contrib. 216¹⁵

198. In its written submission, Highlands and Islands Enterprise was clear that leasing for wave and tidal energy and offshore wind energy required to be managed at a national level. Providing evidence to the Committee, Audrey MacIver of Highlands and Islands Enterprise suggested for some offshore assets—

” It is not necessarily about numbers of individuals or teams or resources; it is about having a strong understanding of the complexity of the environment and the due process that needs to be gone through. Having that understanding is possible at a local level, but expertise at a national level is also required in terms of the industry and the learning that the industry is undergoing.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018, Audrey MacIver, contrib. 15¹⁶

199. Scottish Carbon Capture and Storage raised concerns in relation to the fragmentation of management of the foreshore, seabed and rights for subsurface Co2 storage. They suggested there are a number of benefits of integrated management that would be lost if these nationally significant assets were further devolved. They stressed the importance of taking a long term view, managing assets to support innovative technologies and industries and providing stability and continuity of service delivery.^{lviii}

200. The Committee is of the view that not all assets may be suitable for management at a local level. Having considered the evidence the Committee is of the view that leasing for wave and tidal energy and offshore wind energy in the 0-12 nm and 12-200 nm zone should be managed at a national level in order to provide a coordinated approach.

201. The Committee is of the view that other offshore energy and energy related assets and investments, including Co2 storage rights and leasing rights for cables and pipelines, including oil and gas cables and pipelines, should be managed at a national level.

202. The Committee recommends that a national body, with a Scotland wide overview, is responsible for the management of offshore renewables, energy related assets and other cables and pipelines.

lviii Scottish Carbon Capture and Storage. Written submission. Paragraph 6.

203. The Committee is aware of the desire of some local authorities to manage smaller-scale tidal and wind projects within 12 nm of shore. The Committee is of the view that the Bill should retain provision for this to occur where a local authority can demonstrate appropriate expertise and it is considered beneficial from a socio-economic, environmental or sustainable development perspective.

Seabed and Foreshore

204. The Committee considered the Bill's provisions relating to the seabed and foreshore in the context of Scotland's National Marine Plan.^{lix}
205. In relation to assets at sea or on the foreshore, the Scottish Crown Estate Bill contains a presumption against the sale of the seabed. Nevertheless, there remains provision in section 10 of the Bill for this eventuality, albeit subject to Ministerial Consent.
206. The Committee received a range of evidence on the management and sale of the seabed and foreshore.
207. Alex Kinninmonth of Scottish Environment LINK felt the Bill could be stronger on this issue, stating—

” As the bill is drafted, it is at the discretion of ministers to consent to disposal of the sea bed against an unknown set of criteria. We should either be clearer about what the set of criteria is or we should make the sea bed in effect inalienable—it should be unable to be sold or Parliament should have a greater role in deciding when and where it should be sold.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018, Alex Kinninmonth, contrib. 121¹⁷

208. The Committee recognises the desire of many coastal communities to manage the foreshore at a local level. However, the Committee has some concerns that this may lead to the fragmentation of ownership of the foreshore. The Committee considers there a need for national oversight, but is supportive of the provisions which may allow for local management of the foreshore on a case by case basis.
209. The Committee is of the view that the seabed is a national asset and should be managed nationally. The Bill should be amended to ensure the seabed cannot be sold. The Committee recommends the Scottish Government bring forward amendments to this effect at Stage 2.

Assets to be Managed at a Local Level

210. Many of those responding to the Scottish Government's consultation on the long-term future of the Scottish Crown Estate considered local management of Crown Estate Scotland assets could contribute to greater diversification of ownership of land,^{ix} something they felt was a key aim of the land reform agenda. The Committee heard of a number of existing community-led projects which had been run successfully. Stakeholders believe these provide a model which could be replicated in relation to Crown Estate Scotland assets.
211. In his evidence to the Committee on 20 February 2018, Mike Palmer of Marine Scotland suggested devolving the management of Crown Estate Scotland assets to a local level would not only contribute to the community empowerment agenda, but would also signal a move away from the "the ethos that has been pursued by Crown Estate Commissioners" to date. He described this as "very commercial".^{lxi}
212. The potential to devolve the management of some assets to local authorities and community groups was not without its criticisms. A key concern raised by stakeholders was that local authorities and community groups would lack the knowledge and expertise to take on the management of an asset^{lxii} or their management of an asset would lead to conflicts of interest (for example where a local authority taking on the management of an asset would also be responsible for planning decisions relating to that asset).
213. There was also concern that having multiple managers could complicate existing commercial relationships for Crown Estate Scotland and cause difficulties in relation to management.

Local Authorities including Island Authorities

214. The Committee explored the issue of potential conflict of interest with regard to local authorities. Alex Kinninmonth of Scottish Environment LINK suggested the issue of local authorities experiencing potential conflicts of interest is "not insurmountable."^{lxiii} He did, however, acknowledge there is a need to ensure "adequate separation of decision making"^{lxiv} especially where there is a dual role as both landlord and regulator—

” It is essential that care is taken to ensure that there is adequate internal separation of decision making. The roles of landlord and regulator are very different and it is important that there is clear separation between those two functions within an organisation.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018, Alex Kinninmonth, contrib. 18¹⁸

^{ix} Scottish Government. (2018) A Consultation on the Long Term Management of the Crown Estate in Scotland: Analysis of Consultation Responses

^{lxi} Environment, Climate Change and Land Reform Committee, *Official Report, 20 March 2018*

^{lxii} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished)

215. Island local authorities responding to the Committee's call for evidence welcomed the potential devolution offered by the Bill, with some caveats.
216. In their written evidence, Orkney Islands Council stated the Bill, as currently drafted, did not sufficiently deliver on the recommendations of the Smith Commission, and should go further^{lxv} -

” Had there been real devolution as envisaged by the Smith Commission, Orkney Islands Council would have been “appropriately” empowered to facilitate development with local support and benefit by providing a one stop shop for planning, licensing and leasing. Furthermore, it should be up to the islands councils in terms of Smith to determine further devolution. This would also be consistent with the principle of subsidiarity as articulated in The Lerwick Declaration.

217. There was also recognition from stakeholders that local authorities are in many ways well placed to take on the management of assets, and to be good managers, given their familiarity with processes designed to offer transparency and accountability.^{lxvi}

218. In her evidence to the Committee, the Cabinet Secretary stated Local Authorities were already well-placed to deal with any perceived conflicts of interest-

” Our view is that councils already have to make a huge range of decisions across a number of areas in which it could objectively be argued that they have conflicts of interest..... Handling conflicts of interest is already part and parcel of what local authorities have to do.... I do not see why things would be any different under the Bill.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 230¹⁹

219. The Committee is aware of the concern expressed in relation to local authorities and potential conflicts of interest but is of the view that with adequate separation of decision making within councils, these concerns are not insurmountable.

220. The Committee agrees that local authorities, including the Island Councils, can be well placed to take on the management of assets. Further devolution to local authorities and communities is a significant recommendation of the Smith Commission and providing for this, as appropriate, within the Scottish Crown Estate Bill is important.

^{lxiii} Environment, Climate Change and Land Reform Committee, *Official Report*, 17 April 2018

^{lxiv} Environment, Climate Change and Land Reform Committee, *Official Report*, 17 April 2018

^{lxv} Orkney Islands Council. Written submission. Paragraph 5.

^{lxvi} Comhairle nan Eilean Siar. Written submission. Paragraph 7.

Community Groups

221. The Smith Commission report was clear that community organisations should have the opportunity to manage Crown Estate Scotland assets, where there is a desire to do so.^{lxvii}

222. Dr Calum MacLeod of Community Land Scotland suggested that there had previously been successful examples of community groups taking on the management, or part-management, of rural estate assets.^{lxviii}

223. Dr Alan Wells of Fisheries Management Scotland stated—

” With salmon fishing, we have had a very positive relationship with the Crown Estate, which leases its fishings occasionally to private owners but very often to angling clubs....We are in favour of the management of those fisheries being devolved further, because that will have lots of benefits not so much from an economic perspective but from a wider environmental and social perspective with regard to encouraging access to fishings and getting more people fishing, which is an issue for our sector.

Source: Environment, Climate Change and Land Reform Committee 27 March 2018, Dr Wells, contrib. 190²⁰

224. In evidence to the Committee, stakeholders also mentioned examples where community organisations had taken on the management of a specific aspect of an asset. For example, the community taking on the management of an old steading, woodland and river trails.^{lxix}

225. However, stakeholders raised similar concerns to those raised in relation to local authorities taking on the management of a Crown Estate Scotland asset, namely that potential managers should have the requisite skills and knowledge to do so.

226. In her evidence to the Committee, the Cabinet Secretary for Environment, Climate Change and Land Reform, suggested support would be put in place for community organisations at the beginning to the application process (to become the manager of an asset) and this would be similar in nature to the support provided to organisations in relation to community right to buy. This would ensure any plans put together by community organisations were well thought through.

227. The Cabinet Secretary also highlighted section 31 of the Bill, which makes provision for grants to community groups to help them prepare for an asset management change.^{lxx}

228. The Committee notes, however, there does not appear to be provision in the Bill for support to be provided to community organisations on an ongoing basis.

^{lxvii} The Smith Commission. (2014) *Report of the Smith Commission on the further devolution of powers to the Scottish Parliament*

^{lxviii} Environment, Climate Change and Land Reform Committee, *Official Report*, 17 April 2018

^{lxix} Environment, Climate Change and Land Reform Committee, *Official Report*, 13 March 2018

^{lxx} Environment, Climate Change and Land Reform Committee, *Official Report*, 24 April 2018

229. The Committee believes the provision of ongoing advice and guidance, as appropriate, will be vital in ensuring smaller community groups are able to successfully manage assets. In order to encourage community organisations to take on the management of certain Crown Estate Scotland assets the Committee recommends the Scottish Government considers if, and when, the provision of ongoing advice and guidance to smaller community groups may be necessary and what form that might take.

Ports and Harbours

230. The Committee was keen to explore the potential implications of the Bill on the governance arrangements for ports and harbours and specifically examine whether existing environmental considerations would continue to be prioritised under new management arrangements.

231. In its written evidence to the Committee, Lerwick Port Authority suggested there was a need to ensure the Bill "did not encroach, or permit to encroach, on the jurisdiction, established by legislation, of trust ports for the statutory harbours for which they are responsible"^{lxxi} or place new managers in a position where they would be faced with a conflict of interest.^{lxxii}

232. In his evidence to the Committee, Mark Simmonds of the British Ports Association stated most of the current contact ports and harbours have with the Crown Estate in Scotland involves arranging leases or licences for tasks such as "dredging and maintaining navigable channels".^{lxxiii} He suggested this process could sometimes lead to delays and there was potential for the Bill to lead to improved "responsiveness, contact with the users of the assets; and ensuring that the process remains affordable."^{lxxiv}

233. In relation to environmental considerations, Mark Simmonds suggested ports and harbours were already well placed to take on the management of a Crown Estate Scotland asset—

” Harbour authorities are generally good stewards of the environment. Development is usually carried out sustainably, and as I said, it is all licensable. If asset management or ownership is devolved to an authority, that will not mean that development activity will go ahead without permissions from the various licensing bodies.

Source: Environment, Climate Change and Land Reform Committee 27 March 2018, Mark Simmonds, contrib. 212²¹

^{lxxi} Lerwick Port Authority, Written Submission, paragraph 2

^{lxxii} Lerwick Port Authority, Written Submission, paragraph 2

^{lxxiii} Environment, Climate Change and Land Reform Committee, *Official Report, 27 March 2018*

^{lxxiv} Environment, Climate Change and Land Reform Committee, *Official Report, 27 March 2018*

234. The Committee understands there can be local benefit from local control and management of ports and harbours and is supportive of the provisions of the Bill that allow this flexibility, but is mindful of the potential for conflicts of interest to arise, particularly where there might be a lack of public accountability within existing management structures.

Fragmentation

235. The Committee understands the Bill contains provisions for both the transfer of management of Crown Estate assets and for the sale of Crown Estate assets by managers. While section 8 makes clear the manager of a Crown Estate asset may do anything on behalf of the Crown that the Crown could do as owner, sections 3(1) and 3(3) provide that Ministers may, by regulation, make provision for the transfer of the function of managing a Scottish Crown Estate asset and restrict the exercise of that function. Section 10 outlines the circumstances where disposal requires Ministerial consent.

236. Fragmentation of the Crown Estate assets was an issue raised both by stakeholders and existing Crown Estate Scotland (Interim Management) staff. One concern is that by allowing local authorities and community groups to take on the management of an asset, the Crown Estate would no longer retain its cohesion and elements of national oversight would be lost.

237. In her evidence to the Committee, the Cabinet Secretary for Environment, Climate Change and Land Reform addressed the issue of the potential fragmentation of Crown Estate Scotland—

” Whatever the concerns about the fragmentation of management were, the experience so far has been that the number of bodies that are prepared to take on management and are asking about the transfer of management has not been as high as I expected. The attractiveness of the option for some organisations and local authorities remains to be seen. We could be many years down the line before the final verdict is passed on internal devolution of the Crown estate.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 190¹

238. The Committee understands the provisions of the Bill allow both for the transfer of management and the sale of assets by managers. The Committee recognises the concerns in relation to possible fragmentation for the Crown Estate in Scotland.

239. The Committee’s view on the transfer of assets concurs with that of the DPLR Committee and is set out in paragraphs 262-264 of this report.

240. Ahead of consideration of the Bill at Stage 2, the Committee recommends the Scottish Government clarifies how it intends to maintain strategic oversight of all

Crown Estate Scotland assets after the management of some assets are transferred to local authorities and community organisations.

Processes for the Transfer/Delegation of Management

Approval Process

241. The Committee notes that the process for deciding which assets should be managed by local authorities and local community groups remains unclear. Equally, it is not yet clear how Crown Estate Scotland will establish potential managers' suitability for the role.

242. The Committee recommends the Scottish Government set out, either on the face of the Bill or in guidance, the process for deciding which assets should be managed on a national basis and which can be devolved to a local level.

243. The Committee is of the view that potential managers should know the criteria against which their suitability is likely to be assessed. The Committee recommends the criteria for assessment are included in guidance and this should be available when the Bill, if passed, comes into force.

Retention of Revenues

244. The level of revenue new managers could retain under the new legislation was a key focus of the Committee's consideration of the Bill. This was both in relation to how the figure of 9% had been arrived at and when there might be scope to vary the percentage of revenue that managers could retain under the current Bill.

245. The Cabinet Secretary told the Committee that "net revenue that is generated by the marine assets out to 12 nautical miles will be disbursed to the three island local authorities and the other 23 coastal local authorities".^{lxxv} Discussions with COSLA on an interim mechanism to achieve this are underway. The Committee would be interested to establish whether there has been any consideration given to dispersing these revenues more widely throughout Scotland.

246. The Committee was keen to explore the possibility of varying the percentage of revenues that might be retained by a manager under the terms of the Scottish Crown Estate Bill and what that might mean for future investment in the Estate.

247. In his evidence to the Committee, Andy Wells of Crown Estate Scotland explained the figure of 9% was a historical figure from the Crown Estate Act 1961 and that it

was created as the Crown Estate is unable to borrow money and therefore requires a method by which it can generate capital for reinvestment other than through sales of land—

” It comes back to the way in which Crown Estate Scotland has to separate its revenue account from its capital account. The capital is part of the ownership, under the Crown, of the asset itself and is retained as such....any capital raised from sales is reinvested in the estate. Under the terms of the Crown Estate Act 1961 and of the Scottish Crown Estate Bill, any manager needs to turn that capital into account through generating revenue from it. That revenue, minus the costs of securing it, is then surrendered to the Scottish Government.

Before doing so, under the terms of existing legislation, 9 per cent of that revenue can be moved into the capital account, and that is normally calculated on the basis of the previous year’s turnover. So, 9 per cent of gross turnover can be moved into the capital account, which creates an opportunity for the business to use that capital for reinvestment in the asset. In the current year, because we do not have operating accounts for last year—we were not Crown Estate Scotland then—we are having on-going discussions with the Scottish Government as to how that 9 per cent will be determined.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018, Andy Wells, contrib. 101²²

248. Dr Calum MacLeod of Community Land Scotland highlighted the ability to vary the revenue figure could offer an incentive to community groups to become asset managers—

” When David Mallon gave evidence to the committee on 20 February 2018, he said that 9 per cent is “a game changer” for communities. Perhaps it is, and I do not want to dismiss that, but it could be even more of a game changer if it was a larger figure.

There is also an interesting question about what happens to the 91 per cent that goes back into the Scottish consolidated fund. From Mr Mallon’s evidence, I gathered that there is some ambiguity around whether there is scope to redirect that money from the fund back into communities. If that is the case, we would be interested to hear how it might happen in practice.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018, Dr MacLeod, contrib. 113²³

249. Highlands and Islands Enterprise, in their evidence to the Committee, suggested that there should be an ability to vary the 9% figure and to provide a “top- up of that 9 per cent, particularly for community organisations”.^{lxxvi}

250. In her evidence to the Committee, the Cabinet Secretary explained the origin of the 9% figure and what this meant in practice—

” When the management of the Scottish Crown Estate assets was transferred to Scotland, we inherited the pre-existing arrangements, which mean that whoever manages the assets—currently, it is Crown Estate Scotland (Interim Management)—can retain 9 per cent of the gross revenue for investment in the estate, for example for renovations and repairs to farm buildings or the purchase of new assets. Thus, before the net revenue is surrendered by the manager to the consolidated fund, the 9 per cent figure is subtracted. We are keeping that facility in the bill, but we are taking the power to be able to vary in the future the percentage that is subtracted. It might be that some assets need more capital investment than others and that provision in the bill will allow a more responsive approach to be taken.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 135²⁴

251. The Committee is concerned that the evidence and discussion around revenues was, at times, unclear and inconsistent.
252. The Committee remains unclear as to the rationale for maintaining the current level of 9% gross revenue that can be retained by managers for re-investment in an asset, other than this being the historic figure inherited from the UK Crown Estate.
253. The Committee notes that the Bill currently makes provision for this figure to be varied, but the Financial Memorandum accompanying the Bill states there are no plans to do so (i.e. the 9% figure will continue to apply).
254. The Committee seeks further clarification from the Scottish Government as to the rationale for setting the figure for retention at 9% and why there are no plans to alter this figure at present. The Committee also seeks further information from the Scottish Government about the circumstances under which it believes it may be appropriate to vary this figure. The Committee would welcome this information ahead of consideration of the Bill at Stage 2.
255. The Committee seeks clarification from the Scottish Government on the arrangements it intends to put in place to ensure 100% of net revenues generated out to 12 nautical miles will be used for the betterment of coastal communities and whether it intends to produce guidance to that effect. The Committee also seeks an update from the Scottish Government on recent discussions held with COSLA on this issue. The Committee asks that the Scottish Government provide this information ahead of consideration of the Bill at Stage 2.

Financial Flexibility

256. The Committee explored the opportunities the Scottish Crown Estate Bill might offer for increased financial flexibility for Crown Estate Scotland staff.
257. The survey of existing Crown Estate Scotland (Interim Management) staff^{lxxvii} was very helpful in this regard. A number of suggestions were forthcoming, including a

suggestion that the Estate should have the ability to hold capital reserves for strategic investment and management of the Estate and an ability to retain more revenue to service capital expenditure. Another suggestion was that Crown Estate Scotland should be able to diversify through investment in other land assets to increase the level of returns obtained.

258. Existing staff members felt that Crown Estate Scotland should have the ability to trade, in order to *'generate more revenue, employment and economic development'*. This might include the ability to *'develop and operate a café or bed and breakfast or self-catering accommodation business on one or more of the assets.'*^{lxxviii}
259. As currently worded, the Scottish Crown Estate Bill does not make provision for increased financial flexibility in the way Crown Estate Scotland (Interim Management) staff outlined. The Committee is of the view that some degree of increased financial flexibility would be in keeping with the policy intention of the Bill (i.e. that management should be devolved as far as possible), as long as this is accompanied by suitable safeguards.

260. The Committee considers there are significant potential benefits in Crown Estate Scotland having the ability to hold capital reserves for strategic investment and management of the Estate and having the ability to retain revenue to service capital expenditure. The Committee notes the suggestion that Crown Estate Scotland should be able to trade and appreciates there may be benefits to this. The Committee asks the Scottish Government to reflect on the benefits, or otherwise, of Crown Estate Scotland having the ability to trade, in advance of consideration of the Bill at Stage 2.
261. The Committee recommends that, prior to Stage 2, the Scottish Government should set out how it might achieve these objectives via existing legislation, and whether any amendments to the Bill, within the constraints of the Civil List Act 1952, would offer greater flexibility for managers.

Value and Significance of the Assets

262. The Committee understands the DPLR Committee sought to explore the view of the Scottish Government on the significance of the Crown Estate Scotland assets at a national level.
263. In correspondence between the Scottish Government and the DPLR Committee, the Scottish Government stated^{lxxix} —

^{lxxvii} Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished)

^{lxxviii} *Environment, Climate Change and Land Reform Committee. (2018) Crown Estate Staff Survey (Unpublished)*

^{lxxix} Delegated Powers and Law Reform Committee, *Scottish Crown Estate Bill at Stage 1*, 14th Report, (Session 5)

- ” In considering changes to the future management of individual assets, the Scottish Ministers have not classified the assets into particular categories such as those which are of national economic or environmental significance, or those which are of less significance.

Indeed the economic or environmental significance of an asset may change over time. The approach taken by the Scottish Ministers has been that the most appropriate process is to enable decisions in respect of the future management of particular assets to be taken on a case by case basis. That would of course take into account the particular economic or environmental significance of that asset at that time. This approach is to ensure that the best decision is taken at the time of a change in management, and to also take into account that there may be further changes in the future.

264. The Committee's recommendations in relation to significance and significant value are set out earlier in this report. The Committee is of the view that the Scottish Government and Crown Estate Scotland (Interim Management) should clearly set out a definition of what would constitute 'significance' or 'significant value' in relation to an asset, on the face of the Bill and the affirmative procedure should apply to regulations which would transfer the management of assets which are of significance or of significant value. This definition should encompass factors such as the size of the asset; the value of the asset (including any cross-subsidy it might provide to other assets); the transfer of neighbouring assets and any environmental significance the asset may have. The Committee recommends the Scottish Government brings forward amendments to address this at Stage 2 and gives consideration to the need to provide detailed accompanying guidance.

Cross-subsidy of Assets

265. Under the current arrangements for the Scottish Crown Estate, some assets are more profitable than others. Therefore, it is usual practice for some assets to subsidise others, whose value may be great in other ways (e.g. they may offer particular community or environmental benefits, but not translate into financial gains).
266. The Bill provides for transfer of funds from one manager to another (Section 29). In considering the issue of cross-subsidy, the Committee explored concerns that, were the Scottish Crown Estate to become overly-fragmented, the ability of one part of the Estate to cross-subsidise another would be lost. However, the Committee is also mindful that in transferring funds in this way there could be consequences for managers who are planning based on an assumption of a certain level of funding being available to support and develop an asset.
267. In his evidence to the Committee, Dr Alan Wells of Fisheries Management Scotland, stated cross-subsidy is an important element and it would be useful to retain it.^{lxxx}

268. David Sandison of the Scottish Salmon Producers Organisation also acknowledged that cross-subsidies had a key role to play in ensuring sustainability of assets.^{lxxxi}
269. Andy Wells of Crown Estate Scotland stated the future approach would be dependent on the extent to which assets were devolved to local authorities and community groups, highlighting there may be some restrictions on local managers in future that would not exist currently—

” [At present] we may sell off assets in one part of the estate to fund investments in another part. A local manager will have less scope to do that, although obviously there is scope in the bill for a national framework and for ministers to direct one part of the estate to fund another. It could be workable, but there could be an issue in relation to some of the opportunities to cross-subsidise across the estate.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018, Andy Wells, contrib. 53²⁵

270. In her evidence to the Committee, the Cabinet Secretary suggested she was keen to avoid any negative impacts on community organisations or local authorities, stating—

” I do not want financial burdens to be placed on communities or local authorities, which would be invidious..... It would be an unfair imposition to put people or organisations in a position in which they have to manage assets that are not sustainable in their own right.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 149²⁶

271. The Cabinet Secretary also suggested where an asset was loss-making or 'broke even' that could mean one manager of an asset potentially having to transfer a proportion of the revenue they generated to the bank account of a manager of a loss-making asset. In her evidence to the Committee, the Cabinet Secretary, stated that—

” If one part of the estate is not earning enough income to cover its maintenance and management costs, it can be subsidised by the better-performing assets, which we all know as cross-subsidy. We want to keep the ability to cross-subsidise even when there are several managers of the assets. We are taking powers to enable ministers to direct a manager to transfer a sum of money from their account to another manager’s account. In that way, a community organisation should be able to take over the management of a local asset, even if the asset will not in itself generate enough income to cover costs. To be clear, that money would come from a manager’s Scottish Crown estate accounts and not from a manager’s personal accounts. The bill requires a strict separation between a manager’s Scottish Crown estate accounts and any accounts of the manager’s own.

The bill also sets up a national governance framework that will specify accounting and reporting procedures that should result in openness and transparency about the management of the assets, whether they are managed locally by communities or nationally by Crown Estate Scotland.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 135²⁴

272. Although cross-subsidy is an accepted practice under existing arrangements, the Committee considers there will be additional challenges in maintaining this approach in future where different managers may have a different understanding of the need to provide cross-subsidies and different managers will have their own plans for development of, and investment in, their assets.
 273. It is difficult to envisage how this could not act as a disincentive for some managers or at the very least cause some tension with the duty in Section 7 of the Bill to maintain the value of an asset and seek to maximise any income it may generate. So, whilst one asset must maximise income in order to be regarded as being 'well-managed', others may only have to maintain the asset's value at zero, or potentially the value may fall below this when liabilities are taken into account.
 274. Whilst the Committee appreciates the need to retain flexibility in respect of the requirement for cross-subsidy, the Committee is concerned that without clear information about the value of assets and the level of cross-subsidy currently taking place, it will be difficult to form a view about which assets should be managed by local authorities or community groups, and which should be retained by Crown Estate Scotland and managed on a national basis. The Committee is also concerned that without such knowledge, it will be difficult to take decisions about the level to which one asset should cross-subsidise another.
275. In order for the process of cross-subsidisation to continue, the Committee recommends Crown Estate Scotland establish and maintain a list of Crown Estate Scotland assets and the liabilities that attach to these. This should outline which assets are profit-making or loss-making, and clarify the extent to which profit-making assets currently subsidise loss-making or profit-neutral assets.
 276. Sitting alongside this should be an assessment of the value of the Scottish Crown Estate natural capital assets and the benefits they are delivering.

277. Consideration should also be given to including this wider valuation as part of managers' accounting processes to provide a more complete view of assets and liabilities.
278. The Committee recommends these requirements should be included on the face of the Bill and the Scottish Government should bring forward amendments to address these at Stage 2.
279. The Committee considers Scottish Ministers should clearly set out their proposals to maintain the cross-subsidisation of assets in any Strategic Management Plan they produce in accordance with section 20 of the Bill, recognising the need to cross-subsidise may vary from year to year and sector to sector.

Liabilities

280. The Committee also considered the issue of liabilities and how these should be managed under Crown Estate Scotland.
281. When the Crown Estate Scotland (Interim Management) took over the management of assets in Scotland, it inherited liabilities from the UK Crown Estate.
282. David Mallon of the Scottish Government explained the different levels of liabilities existing across the current Crown Estate in Scotland, and the work that had been carried out to explore how these liabilities could be managed in future—

” Before the transfer on 1 April 2017, quite a lot of work was done to better understand the liabilities. In simple terms, they boil down to landlord responsibilities and employer responsibilities. The landlord responsibilities form the more unusual aspects of the liability question; they split into contingent liabilities and residual liabilities.

Contingent liabilities refer to the expectation that, after part of the estate has been used, the landlord will restore it to the condition that it was in before. Through a lease agreement, the requirement to restore is normally for a developer—for example, if farmland were used for mining activity, the developer would be expected to restore the land to a condition that was fit for farming or another use.

Contingent liabilities sit with the manager, because of the possibility that a developer might not be able to honour its undertakings. If that were the case, Crown Estate Scotland, as the landlord, would be expected to pick up the cost.

Residual liabilities arise after an activity has been decommissioned. The Government is responsible for ensuring that a decommissioning scheme is in place for a wind farm, for example, and it is for the developer to complete that scheme. However, at the time of decommissioning, the developer might get approval not to remove all the infrastructure from the marine environment, so some infrastructure might remain in the water. If a third party incurred damages because of that, residual liability would exist.

Those are the main liabilities. There are also less expensive ones, such as maintenance of property and stewardship of the estate.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], David Mallon, contrib. 172²⁷

283. The Committee understands local authorities may be in a position to plan for the longer-term management of liabilities or to draw upon their existing resources (e.g. using their own staff members to ensure buildings are repaired), where required. However, the Committee is concerned this may not be true of community groups, for whom an unexpected liability might spell the end of a project, or even act as a deterrent to a group applying to manage an asset in the first place.
284. In their written evidence to the Committee, Comhairle nan Eilean Siar highlighted the importance of Local Authorities and Community groups knowing exactly what they were signing up to when offering to manage an asset.^{lxxxii}
285. Scottish and Southern Electricity Networks suggested that—^{lxxxiii}
- ” Asset managers should be responsible for the liabilities associated with their assets, not just the benefits, and at the moment it is not clear where the responsibility lies.
286. One potential solution suggested by stakeholders was that Scottish Ministers could offer some kind of insurance or bond service in order to protect smaller community

^{lxxxii} Comhairle nan Eilean Siar, Written submission. Paragraph 19.

^{lxxxiii} Scottish and Southern Electricity Networks. Written submission. p.4, Paragraph 7

groups from unexpected liabilities they could not afford, with COSLA proposing that^{lxxxiv}—

” an insurance fund is needed, and therefore full disclosure of liabilities is of crucial importance.

287. In his evidence to the Committee on 17 April 2018, Dr Calum MacLeod of Community Land Scotland made a link between the management of liabilities and sustainable development—

” There are some important questions to be addressed around how we manage liabilities with regard to the public interest and the common good in terms of the sustainable development of communities and the sustainable management of assets.

Something imaginative, or at least progressive, could be done there, which might help communities to engage with asset management in ways that contribute to their sustainability and add to the broader common good and the public good.

Source: Environment, Climate Change and Land Reform Committee 17 April 2018, Dr MacLeod, contrib. 81²⁸

288. When questioned on the management of liabilities the Cabinet Secretary indicated the Bill included a presumption that those taking on the management of an asset would assume the liabilities associated with that asset, stating—

” We are talking about trying to put in place a system in which there is a presumption that liabilities will transfer with assets. That is how it will operate unless there is a very particular set of circumstances.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 181²⁹

289. The Cabinet Secretary outlined her plans for dealing with liabilities in relation to local community groups—

” We have included in the bill a power for ministers to assume responsibility for potential liabilities when we devolve assets to local community groups, but we would consider that case by case. We would not want to proceed that way across the board. That is one of the matters that would be weighed up when the application is made, at which point we would look into all the facts and circumstances around a community group that wished to take over the management of an asset.

Source: Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 176³⁰

290. The Committee agrees there should be a presumption that those managing an asset should be responsible for the liabilities associated with it, but the Bill as currently drafted does not make this presumption sufficiently clear. The Committee recommends the Scottish Government give further consideration to

the need to provide greater clarity on the responsibility for liabilities ahead of Stage 2 and bring forward amendments to address this.

291. The Committee is also aware that for some community groups the requirement to take responsibility for liabilities, including unexpected liabilities, might act as a deterrent to applying to manage an asset. The Committee welcomes provision in the Scottish Crown Estate Bill for the Scottish Government to assume responsibility for asset-related liabilities in limited circumstances.
292. Ahead of Stage 2, the Committee recommends the Scottish Government give consideration to the potential of an insurance or bond service to protect community groups from unexpected liabilities. The Committee would welcome further information on how the Scottish Government intends to prevent community groups from having to bear liabilities disproportionate to their size.

Definition of Community

293. In their written evidence to the Committee, several stakeholders emphasised the need for a clear definition of 'community' in the context of the Scottish Crown Estate Bill.
294. Some stakeholders were keen to ensure the concept of community was defined in purely geographic terms, i.e. that it was only local communities who were afforded the opportunity to manage an asset.
295. However, other stakeholders took a broader view, suggesting that this definition could be widened. West Highland Anchorages and Moorings Association suggested that the definition should include communities of interest,^{lxxxv} which would allow for those with a keen interest in sailing, for example, to take on the management of an asset.
296. The Scottish Tenant Farmers Association suggested that the definition of community organisation be broadened to include tenants on each of the rural estates as communities.
297. Community Land Scotland suggested that^{lxxxvi}
- ” Communities which own land up to the foreshore, should have an automatic right to have that foreshore transferred into the ownership of the community owner if they so wish.
298. Some respondents, including Scottish Carbon Capture and Storage and the Law Society of Scotland, highlighted the need for greater consistency in terminology between the Scottish Crown Estate Bill and other legislation, particularly in relation to the definition of 'community organisations' or the definition of 'community benefit'.

^{lxxxv} West Highland Anchorages and Moorings Association, Written submission, p.2, Paragraph 4

^{lxxxvi} Community Land Scotland, Written submission, p.3, Paragraph 2

299. The Committee believes the current definition of 'community organisation' in section 6 of the Bill is based around geographical factors alone and, as such, may not encompass 'communities of interest'. Whilst section 6(b) provides for an order-making power in relation to the definition of a 'community organisation', including 'communities of interest' is something that stakeholders have clearly indicated to the Committee would be helpful and this would be in line with similar provisions in the Community Empowerment (Scotland) Act 2015.

300. The Committee shares the concern expressed by some stakeholders over the variety of definitions of community, community organisation and community benefit. The Committee considers the definition of 'community' should be aligned with that in the Land Reform and Community Empowerment legislation and the Bill should either reference this legislation or clearly state the aligned definition of 'community' on the face of the Bill to ensure the definitions are consistent.

301. The Committee recommends the Scottish Government give consideration to this and brings forward amendments at Stage 2 to clarify how community, community organisations and community benefit are to be defined.

Conclusions

302. Crown Estate Scotland tenants are generally happy with the way in which Crown Estate Scotland (Interim Management) is being run. Tenants felt that devolution had brought significant benefits to them, including an increased feeling of connectivity with the Estate, improved communication and more involvement in decision-making processes. Tenants regarded Crown Estate Scotland (Interim Management) as a good landlord and felt that the Scottish Crown Estate Bill offered the opportunity to make further improvements to how the Estate is run and to take an innovative approach towards Estate management. They particularly welcomed the collaborative approach taken by Crown Estate Scotland (Interim Management) in working with them.
303. However, they suggested some areas of the Estate require attention, as a result of liabilities inherited from the UK Crown Estate, particularly the rural estates, where many buildings require urgent maintenance. Tenants of those estates would welcome more regular contact with factors and suggested that an audit of current assets should take place, and they should have a role in the design of that audit.
304. The Committee is of the view that, following the passage of the Bill, some assets should remain under national management. The Scottish Government should clearly outline which assets it anticipates will continue to be managed on a national basis and which can be devolved to a local level.
305. The Bill does not prescribe the extent to which the management of Crown Estate Scotland can be devolved to Local Authorities and community groups. Neither does it propose a phased approach, either by sector or by geographical area. As such, it is impossible to tell whether the Bill will lead to the wholesale fragmentation of the Crown Estate in Scotland or whether the impact of this Bill on the day-to-day operation of the Crown Estate will be low. Whilst the Committee is supportive of the desire to increase local management, and recognises that this fulfils the objectives of Community Empowerment (Scotland) Act 2015, it considers this to be an omission which requires to be rectified.
306. The Committee recognises the Bill makes provision for a number of mechanisms which are designed to provide transparency and accountability in the management of assets. However, that there is no information provided on the face of the Bill which sets out how the suitability of those applying to manage an asset will be assessed. In order to ensure that transparency and accountability is woven throughout the Bill, the Committee considers this should be included in the Bill.
307. Similarly, the Committee felt that forward planning should begin at the point of application, rather than at the point where someone is appointed as the manager of an asset. Such a requirement should form part of the assessment process.
308. Members were concerned that the use of 'must' in section 7(1) of the Bill versus 'may' in section 7(2) could potentially detract from the Bill's stated intention to ensure that factors beyond profitability were considered when deciding how an asset should best be managed. The Committee felt that the Scottish Government should consider rewording the duty in section 7(2) to ensure decision-makers show they are operating in a way that is likely to contribute to sustainable development

and they are also required to take account of economic development, regeneration, social wellbeing and environmental wellbeing, as well as profitability, when deciding how an asset should be managed. The Committee believes this should be the case even if such consideration leads to the conclusion that a factor may not be relevant.

309. Whilst a policy of operating cross-subsidies across different Crown Estate Scotland assets appears to work well at present, there is the potential for this to become more complicated once assets are devolved to a local level. There will need to be careful thought about how this process is managed, from the perspective of knowledge management (i.e. knowing which assets are profit-making and which require subsidies), ongoing management, as well as explaining this process at the point of application to ensure that this does not act as a disincentive to those considering taking on the management of an asset.
310. The Committee heard from existing Crown Estate Scotland (Interim Management) staff that increased financial flexibility would be welcome in order to maximise the income generated by the Estate and also to ensure its sustainability. The Committee would welcome further consideration by the Scottish Government of the opportunities offered by the Bill to introduce a degree of financial flexibility in the way in which Crown Estate Scotland assets are managed. The Committee recognises that such flexibility would need to be accompanied by appropriate safeguards.
311. The Committee carefully considered the evidence presented to them in relation to the assets which should be continue to be managed on a national level and which could usefully be devolved to a local authority or Community Group. The Committee was particularly conscious the possibility of portions of the seabed being sold, albeit only in exceptional circumstances. The Committee considers it is important to maintain the national integrity of the seabed, however, and so recommends that the Bill should be amended to ensure that it could not be sold under any circumstances.
312. The Committee is of the view that the retention of revenues, both by managers generally and by island communities specifically, merits further exploration ahead of Stage 2. Whilst the Bill provides for the varying of revenues, it does not provide sufficient information as to the process that might be used to decide if such a variation is appropriate. The Committee would welcome further information about when such a variation would take place; the assets to which this may apply; the maximum level of revenues managers would be able to retain; the purposes for which those revenues could be used and how such a variation in revenues would be factored into decisions relating to cross-subsidies.
313. The Committee welcomes the provision of grants to community organisations to enable them to take on the management of an asset. The Committee would appreciate further detail on the level of support that will be provided to community organisations, both in relation to their application, but also on an ongoing basis.
314. In relation to liabilities, the Committee is pleased that the Scottish Government has acknowledged that it would not be appropriate for some community organisations to take on liabilities disproportionate to their size and would welcome further details of what help the Scottish Government plans to offer in respect of this.
315. The Committee also believes that the current definition of 'community organisation' in section 6 of the Bill is based around geographical factors alone and, as such,

may not encompass 'communities of interest'. Whilst section 6(b) provides for an order-making power in relation to the definition of a 'community organisation', including 'communities of interest' is something that stakeholders have clearly indicated to the Committee would be helpful and this would be in line with similar provisions in the Community Empowerment (Scotland) Act 2015. The Committee recommends that the Scottish Government reconsider its definition of 'community' ahead of Stage 2.

316. The Committee is in agreement with the Delegated Powers and Law Reform Committee that the transfer of the management of Scottish Crown Estate assets should be subject to the affirmative Parliamentary procedure. The Committee expects to see this matter addressed at Stage 2.
317. The Scottish Crown Estate Bill builds on the positive achievements of Crown Estate Scotland (Interim Management) to date. The Committee particularly welcomes the open and collaborative approach that has been taken towards setting up the new body.
318. The Committee anticipates the Scottish Crown Estate Bill will offer benefits not just to local authorities, public bodies and community organisations, but to Scotland as a whole, by ensuring that community empowerment and sustainability are at the heart of Crown Estate Scotland's future.
319. The Committee is aware that the current approach towards devolution is causing uncertainty for existing Crown Estate Scotland (Interim Management) staff, and is also likely to impact on strategic planning processes. The Committee believes that careful consideration should be given to how to keep existing Crown Estate Scotland (Interim Management) staff informed of developments and how to involve staff members in planning and decision-making processes.

Overall Conclusions on the General Principles of the Bill

320. The Committee welcomes the general principles of the Bill and, in particular, the commitment to manage Crown Estate Scotland assets with wider environmental and sustainability factors in mind. The Committee remains concerned, however, that as the Bill is currently drafted, Scottish Ministers anticipate dealing with most regulations arising from the Bill via a negative Parliamentary procedure. The Committee feels to do so will restrict the ability of the Scottish Parliament to scrutinise the content of these regulations.
321. The Committee commends the general principles of the Bill to the Scottish Parliament and recommends that they be agreed.
322. The Committee looks forward to considering the Scottish Crown Estate Bill at Stage 2.

Summary of Recommendations

323. The Committee is generally content with the information provided in the Policy Memorandum and Financial Memorandum, with the exception of the consideration given to the retention of revenues.
324. The Environment, Climate Change and Land Reform Committee agrees with the findings and recommendations of the DPLR Committee. The Committee shares the concern of the DPLR Committee that Scottish Ministers anticipate dealing with most regulations arising from the Bill via a negative Parliamentary procedure. The Committee similarly considers to do so would restrict the ability of the Scottish Parliament to scrutinise the content of these regulations.
325. The Committee is conscious, however, of the need to strike an appropriate balance between matters that are operational decisions for Crown Estate Scotland and those that require further Parliamentary scrutiny.
326. Taking account of the DPLR Committee recommendations, the ECCLR Committee recommends the affirmative procedure should apply where the regulations textually amend primary legislation.
327. The ECCLR Committee recommends regulations under section 3, in relation to all assets within the Estate, should be subject to the affirmative procedure.
328. The Committee is of the view that the Scottish Government and Crown Estate Scotland (Interim Management) should clearly set out a definition of what would constitute 'significance' or 'significant value' in relation to an asset, on the face of the Bill and the affirmative procedure should apply to regulations which would transfer the management of assets which are of significance or of significant value.
329. This definition should encompass factors such as the size of the asset; the value of the asset (including any cross-subsidy it might provide to other assets); the transfer of neighbouring assets and any environmental significance the asset may have. The Committee recommends the Scottish Government brings forward amendments to address this at Stage 2 and gives consideration to the need to provide detailed accompanying guidance.

330. The Committee recommends regulations to transfer the management of separate assets of relatively low value should be subject to the negative procedure.

331. The Committee welcomes the Scottish Government commitment to consider whether section 4(3) is sufficiently clear and, if required, bring forward related amendments at Stage 2.

332. The Committee agrees with the DPLR Committee that the terms of directions issued by the Scottish Ministers under Section 4 should be laid before the Parliament and published, although commercially sensitive or commercially confidential information may be withheld; and

333. Given no further criteria are specified as to how a body might relate to a community before it can be designated, the Committee agrees with the recommendation of the DPLR Committee that regulations mentioned in Section 6(1)(b) should be subject to the affirmative procedure.

334. The Committee recognises that in any scenario such as this, change and uncertainty will have an unsettling impact on staff. The Committee considers existing Crown Estate Scotland (Interim Management) staff should be provided with a realistic indication of how their role might change, or not, as a result of the Bill.

335. The Committee recommends Crown Estate Scotland (Interim Management) consider how existing staff could be meaningfully consulted and engaged in planning processes both now and following the passage of the Scottish Crown Estate Bill.

336. The Committee considers there should be a definition of good management that takes the wider public objectives, including socio-economic, environmental and sustainable development considerations into account.

337. The Committee recommends the Scottish Government provide further information on the definition of good management and further information on the process that will be used to assess the suitability of potential managers of assets, in advance of consideration of the Bill at Stage 2.

338. The Committee recommends the Scottish Government give consideration to whether a definition of good management should appear on the face of the Bill or in guidance and, if necessary, bring forward relevant amendments at Stage 2. If this is to be included in guidance, this should be available when the Bill, if passed, comes into force.

339. The Committee recognises and welcomes the improvements in communication since the establishment of the Crown Estate Scotland (Interim Management) and encourages further development of the emerging collaborative approach to working with stakeholders.

340. The Committee recommends that the Scottish Government and Crown Estate Scotland (Interim Management) should consider what additional support might be required for existing Crown Estate Scotland (Interim Management) staff at this time of transition and take active steps to provide this.

341. The Committee recommends the Scottish Government provide clear information about what will happen to existing Crown Estate Staff in the event of an asset being managed by another body, before consideration of the Bill at Stage 2.

342. The Committee was surprised to hear there is no current up-to-date assessment of the condition of Crown Estate assets in Scotland. Understanding the current state of assets and the cost involved in addressing any issues is vital to determining the value of the assets, associated liabilities and is a necessary starting point for identifying a future programme of work.

343. The Committee recommends the Scottish Crown Estate Bill makes specific provision for the creation of a 'record of condition' of Scottish Crown estate assets that identifies the cost to address issues and places a requirement on the Scottish Crown Estate to ensure that Scottish Crown Estate assets are properly maintained. Tenants and other stakeholders should be involved in the design of any audit which will inform this. The Committee recommends the Scottish Government brings forward amendments to address this at Stage 2.

344. The Committee also recommends the 'record of condition' should be reviewed on a regular basis and aligned to the requirement in Section 24 of the Bill for managers to produce an annual report on its management of the assets during that year.

345. The Committee recommends tenants must be involved in agreeing a schedule of works for repairs. Priority should be given to repairs to accommodation for tenant farmers and their families and agreed repairs should be carried out without unreasonable delay.

346. The Committee welcomes the provisions within the Bill to ensure transparency and accountability. The Committee considers there is greater scope to enhance those provisions.

347. The Committee considers details of the process and criteria the Scottish Government will use to decide the suitability of a potential manager to manage an asset should be set out in guidance. This guidance should be available when the Bill, if passed, comes into force.

348. The Committee considers potential managers should be required to produce a forward plan as part of the application process to manage an asset.

349. The Committee considers the requirement to produce a forward plan at the point of application should be included on the face of the Bill and recommends the Scottish Government bring forward amendments at Stage 2 to address this.

350. The Committee considers the Bill should clearly set out requirements for Parliamentary scrutiny in relation to the Strategic Management Plan and Annual Reports by individual managers (except where this would be commercially sensitive).

351. The Committee welcomes the policy intention of the Bill to ensure broader factors are taken into account when a manager decides how an asset might best be managed. However, the Committee remains unconvinced the current wording in Section 7(2) is sufficient to ensure the desired intention is achieved.

352. The Committee recommends that the Scottish Government considers rewording Section 7(2) to make it clear that all managers are required to operate in a way that is likely to contribute to sustainable development and are also required to take account of economic development, regeneration, social wellbeing and environmental wellbeing, as well as profitability, when deciding how an asset should be managed. The Committee believes that this should be the case even if such consideration leads to the conclusion that a factor may not be relevant.

353. The Committee recommends the Scottish Government give consideration as to how managers should demonstrate these wider factors have been taken into account, possibly via the production of an impact assessment. This process should be set out in guidance which should be available when the Bill, if passed, comes into force.

354. The Committee is of the view that the duty in section 11(2) of the Bill does not require to be amended, in the event of the duty in section 7(2) being strengthened.

355. The Committee recommends the Scottish Government and Crown Estate Scotland (Interim Management) consider how they will plan for different eventualities (e.g. low/high interest in managing Crown Estate Scotland assets) and how they will factor this into their strategic planning processes.

356. The Committee is broadly persuaded of the merits of continued national management of Crown Estate Scotland's four rural estates, but recognises that circumstances may change and it may be desirable to retain the flexibility to have some local management in future.

357. The Committee is of the view that not all assets may be suitable for management at a local level. Having considered the evidence the Committee is of the view that leasing for wave and tidal energy and offshore wind energy in the 0-12nm and 12-200nm zone should be managed at a national level in order to provide a coordinated approach.

358. The Committee is of the view that other offshore energy and energy related assets and investments, including Co2 storage rights and leasing rights for cables and pipelines, including oil and gas cables and pipelines, should be managed at a national level.

359. The Committee recommends that a national body, with a Scotland wide overview, is responsible for the management of offshore renewables, energy related assets and other cables and pipelines.

360. The Committee is aware of the desire of some Local Authorities to manage smaller-scale tidal and wind projects within 12 nm of shore. The Committee is of the view that the Bill should retain provision for this to occur where a Local

Authority can demonstrate appropriate expertise and it is considered beneficial from a socio-economic, environmental or sustainable development perspective.

361. The Committee recognises the desire of many coastal communities to manage the foreshore at a local level. However, the Committee has some concerns that this may lead to the fragmentation of ownership of the foreshore. The Committee considers there a need for national oversight, but is supportive of the provisions which may allow for local management of the foreshore on a case by case basis.

362. The Committee is of the view that the seabed is a national asset and should be managed nationally. The Bill should be amended to ensure the seabed cannot be sold. The Committee recommends the Scottish Government bring forward amendments to this effect at Stage 2.

363. The Committee is aware of the concern expressed in relation to Local Authorities and potential conflicts of interest but is of the view that with adequate separation of decision making within councils, addressing these concerns is not insurmountable.

364. The Committee agrees that Local Authorities, including the Island Councils, can be well placed to take on the management of assets. Further devolution to Local Authorities and communities is a significant recommendation of the Smith Commission and providing for this, as appropriate, within the Scottish Crown Estate Bill is important.

365. The Committee believes the provision of ongoing support will be vital in ensuring smaller community groups are able to successfully manage assets. In order to encourage community organisations to take on the management of certain Crown Estate Scotland assets the Committee recommends the Scottish Government considers if and when the provision of ongoing advice and guidance to smaller community groups may be necessary and what form that might take.

366. The Committee understands there can be local benefit from local control and management of ports and harbours and is supportive of the provisions of the Bill that allow this flexibility, but is mindful of the potential for conflicts of interest to arise, particularly where there might be a lack of public accountability within existing management structures.

367. The Committee understands the provisions of the Bill allow both for the transfer of management and the sale of assets by managers. The Committee recognises the concerns in relation to possible fragmentation of the Crown Estate in Scotland.

368. The Committee's view on the transfer of assets concurs with that of the DPLR Committee and is set out in paragraphs 262-264 of this report.

369. Ahead of consideration of the Bill at Stage 2 the Committee recommends the Scottish Government clarify how it intends to maintain strategic oversight of all Crown Estate Scotland assets, after the management of some assets are transferred to Local Authorities and community organisations.

370. The Committee recommends the Scottish Government set out, either on the face of the Bill or in guidance, the process for deciding which assets should be managed on a national basis and which can be devolved to a local level.

371. The Committee is of the view that potential managers should know the criteria against which their suitability is likely to be assessed. The Committee recommends the criteria for assessment are included in guidance and this should be available when the Bill, if passed, comes into force.

372. The Committee is concerned that the evidence and discussion around revenues was, at times, unclear and inconsistent.

373. The Committee remains unclear as to the rationale for maintaining the current level of 9% gross revenue that can be retained by managers for re-investment in an asset, other than this being the historic figure inherited from the UK Crown Estate.

374. The Committee notes that the Bill currently makes provision for this figure to be varied, but the Financial Memorandum accompanying the Bill states there are no plans to do so (i.e. the 9% figure will continue to apply).

375. The Committee seeks further clarification from the Scottish Government as to the rationale for setting the figure for retention at 9% and why there are no plans to alter this figure at present. The Committee also seeks further information from the

Scottish Government about the circumstances under which it believes it may be appropriate to vary this figure. The Committee would welcome this information ahead of consideration of the Bill at Stage 2.

376. The Committee seeks clarification from the Scottish Government on the arrangements it intends to put in place to ensure 100% of net revenues generated out to 12 nautical miles will be used for the betterment of coastal communities and whether it intends to produce guidance to that effect. The Committee also seeks an update from the Scottish Government on recent discussions held with COSLA on this issue. The Committee asks that the Scottish Government provide this information ahead of consideration of the Bill at Stage 2.

377. The Committee considers there are significant potential benefits in Crown Estate Scotland having the ability to hold capital reserves for strategic investment and management of the Estate and having the ability to retain revenue to service capital expenditure. The Committee notes the suggestion that Crown Estate Scotland should be able to trade and appreciates there may be benefits to this. The Committee asks the Scottish Government to reflect on the benefits, or otherwise, of Crown Estate Scotland having the ability to trade, in advance of consideration of the Bill at Stage 2.

378. The Committee recommends that prior to Stage 2 the Scottish Government should set out how it might achieve these objectives via existing legislation, and whether any amendments to the Bill, within the constraints of the Civil List Act 1952, would offer greater flexibility for managers.

379. In order for the process of cross-subsidisation to continue, the Committee recommends Crown Estate Scotland establish and maintain a list of Crown Estate Scotland assets and the liabilities that attach to these. This should outline which assets are profit-making or loss-making, and clarify the extent to which profit-making assets currently subsidise loss-making or profit-neutral assets.

380. Sitting alongside this should be an assessment of the value of the Scottish Crown Estate natural capital assets and the benefits they are delivering.

381. Consideration should also be given to including this wider valuation as part of managers' accounting processes to provide a more complete view of assets and liabilities.

382. The Committee recommends these requirements should be included on the face of the Bill and the Scottish Government should bring forward amendments to address these at Stage 2.

383. The Committee considers Scottish Ministers should clearly set out their proposals to maintain the cross-subsidisation of assets in any Strategic Management Plan they produce in accordance with Section 20 of the Bill, recognising this need to cross-subsidise may vary from year to year and sector to sector.

384. The Committee agrees there should be a presumption that those managing an asset should be responsible for the liabilities associated with it, but the Bill as currently drafted does not make this presumption sufficiently clear. The Committee recommends the Scottish Government give further consideration to the need to provide greater clarity on the responsibility for liabilities ahead of Stage 2 and bring forward amendments to address this.

385. The Committee is also aware that for some community groups the requirement to take responsibility for liabilities, including unexpected liabilities, might act as a deterrent to applying to manage an asset. The Committee welcomes provision in the Scottish Crown Estate Bill for the Scottish Government to assume responsibility for asset-related liabilities in limited circumstances.

386. Ahead of Stage 2 the Committee recommends the Scottish Government give consideration to the potential of an insurance or bond service to protect community groups from unexpected liabilities. The Committee would welcome further information on how the Scottish Government intends to prevent community groups from having to bear liabilities disproportionate to their size.

387. The Committee shares the concern expressed by some stakeholders over the variety of definitions of community, community organisation and community benefit. The Committee considers the definition of 'community' should be aligned with that in the Land Reform and Community Empowerment legislation and the Bill should either reference this legislation or clearly state the aligned definition of Community on the face of the Bill to ensure the definitions are consistent.

388. The Committee recommends the Scottish Government gives consideration to this and brings forward amendments at Stage 2 to clarify how community, community organisation and community benefit are to be defined.

Annexe A - Minutes of Meeting

13th Meeting, 2018 (Session 5), Tuesday 24 April 2018

3. **Scottish Crown Estate Bill:** The Committee took evidence from—

- Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, Scottish Government,
- Douglas Kerr, Solicitor, Scottish Government Legal Directorate,
- David Mallon, Head of Crown Estate Strategy Unit, Scottish Government, and
- Mike Palmer, Deputy Director, Aquaculture, Crown Estate, Recreational Fisheries, EMFF and Europe Division, Marine Scotland.

John Scott declared an interest as a farmer.

Donald Cameron declared an interest as the owner of the Achnacarry Estate.

8. **Scottish Crown Estate Bill** (in private): The Committee considered evidence heard earlier in the meeting.

12th Meeting, 2018 (Session 5), Tuesday 17 April 2018

2. **Scottish Crown Estate Bill:** The Committee took evidence from—

- Alex Kinninmonth, Head of Marine Policy at Royal Society for the Protection of Birds Scotland, Scottish Environment LINK;
- Councillor Norman MacDonald, Convener, Comhairle nan Eilean Siar;
- Audrey MacIver, Director of Energy and Low Carbon, Highlands and Islands Enterprise;
- Dr Calum MacLeod, Policy Director, Community Land Scotland;
- Andy Wells, Head of Property, Crown Estate Scotland.

Donald Cameron declared an interest as a landowner in the Highlands and Islands.

6. **Scottish Crown Estate Bill** (in private): The Committee considered evidence heard earlier in the meeting.

11th Meeting, 2018 (Session 5), Tuesday 27 March 2018

3. **Scottish Crown Estate Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Patricia Hawthorn, Board Member, Scottish Renewables;
- David Sandison, General Manager, Scottish Salmon Producers' Organisation;
- Mark Simmonds, Policy Manager, British Ports Association;

- Dr Alan Wells, Chief Executive, Fisheries Management Scotland.

Donald Cameron declared an interest as a landowner in the Highlands and Islands.

7. **Scottish Crown Estate Bill** (in private): The Committee agreed to consider evidence heard earlier in the meeting at a future date.

9th Meeting, 2018 (Session 5) Tuesday 13 March 2018

3. **Scottish Crown Estate Bill**: The Committee took evidence on the Bill at Stage 1 from—

- Gemma Cooper, Policy Manager (Legal and Technical), National Farmers Union Scotland;
- Tom Cattanach, tenant farmer representative, Fochabers Estate;
- Hew Hunter, tenant farmer representative, Whitehills Estate;
- Jim Inness, tenant farmer representative, Glenlivet Estate;
- Brian Shaw, tenant farmer representative, Applegirth Estate.

John Scott declared an interest as a farmer (although not a tenant farmer), and as a member of the National Farmers Union Scotland.

7. **Scottish Crown Estate Bill** (in private): The Committee considered evidence heard earlier in the meeting.

6th Meeting, 2018 (Session 5) Tuesday 20 February 2018

2. **Scottish Crown Estate Bill**: The Committee took evidence on the Bill at Stage 1 from—

- David Mallon, Head of Crown Estate Strategy Unit,
- Mike Palmer, Deputy Director, Aquaculture, Crown Estate, Recreational Fisheries, EMFF and Europe Division, Marine Scotland;
- Douglas Kerr, Solicitor, Scottish Government Legal Directorate.

Angus MacDonald declared an interest as the owner of a non-domestic property in the Hebrides.

Donald Cameron declared an interest as a land owner.

4. **Scottish Crown Estate Bill** (in private): The Committee considered evidence heard earlier in the meeting.

5th Meeting, 2018 (Session 5) Tuesday 6 February 2018

3. **Scottish Crown Estate Bill** (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1, and agreed;

389. • to issue and promote a call for views, with a deadline of 23 March 2018;

- to the content of the call for views;
- its timetable for Stage 1 consideration;
- an initial list of witnesses to give oral evidence;
- to consider further engagement at a later meeting;
- to consider any evidence heard on the Bill, as well as any draft Stage 1 reports, in private.

Annexe B - Evidence

The Committee received the following written submissions on the Bill—

- [001 West Highland Anchorages and Moorings Association](#)
- [002 Grangemouth Yacht Club](#)
- [003 National Farmer's Union Scotland \(NFUS\) Crown Estate Tenants Working Group](#)
- [004 Scottish Tenants Farmer Association](#)
- [005 Scottish Anglers National Association](#)
- [006 Allan Water Angling Improvement Association](#)
- [007 Scottish Carbon Capture and Storage](#)
- [008 Royal Yacht Association Scotland](#)
- [009 Professor Andrea Ross and Professor Colin T Reid, Dundee Law School, University of Dundee](#)
- [010 Fisheries Management Scotland](#)
- [011 Highlands and Islands Enterprise](#)
- [012 National Trust for Scotland](#)
- [013 SSE Generation Ltd](#)
- [014 Scottish Renewables](#)
- [015 Fauna and Flora International](#)
- [016 Seafood Shetland](#)
- [017 COSLA](#)
- [018 Scottish Natural Heritage](#)
- [019 Lerwick Port Authority](#)
- [020 Scottish and Southern Electricity Networks](#)
- [021 Orkney Island Council](#)
- [022 Community Land Scotland](#)
- [023 Highland Council](#)
- [024 Scottish Coastal Forum](#)
- [025 Argyll and Bute Council](#)

- [026 Forth District Salmon Fishery Board](#)
- [027 Comhairle nan Eilean Siar](#)
- [028 The Law Society of Scotland](#)
- [029 Oil and Gas UK](#)
- [030 British Goldpanning Association \(27](#)
- [031 Friends of the Sound of Jura](#)
- [032 RSPB Scotland](#)
- [033 Shetland Islands Council](#)
- [034 Ewan Kennedy](#)

Official report

- [Tuesday 24 April 2018 Evidence from Roseanna Cunningham, Cabinet Secretary for the Environment, Climate Change and Land Reform and Officials.](#)
- [Tuesday 17 April 2018 Evidence from stakeholders.](#)
- [Tuesday 27 March 2018 Evidence from stakeholders.](#)
- [Tuesday 13 March 2018 Evidence from stakeholders.](#)
- [Tuesday 20 February 2018 Evidence from stakeholders.](#)
- [Tuesday 6 February 2018 The Committee considered its approach to the scrutiny of the Bill at Stage 1.](#)

- [1] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 190, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085077>
- [2] Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Andy Wells (Crown Estate Scotland), contrib. 4, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082122>
- [3] Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Dr Calum MacLeod (Community Land Scotland), contrib. 7, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082125>
- [4] Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Audrey Maclver (Highlands and Islands Enterprise), contrib. 13, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082131>
- [5] Environment, Climate Change and Land Reform Committee 13 March 2018, Brian Shaw (Applegirth Estate), contrib. 139, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11414&c=2074632>
- [6] Environment, Climate Change and Land Reform Committee 13 March 2018, Jim Inness, contrib. 144, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11414&c=2074637>
- [7] Environment, Climate Change and Land Reform Committee 13 March 2018, Brian Shaw, contrib. 153, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11414&c=2074646>
- [8] Environment, Climate Change and Land Reform Committee 13 March 2018, Gemma Cooper, contrib. 212, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11414&c=2082474>
- [9] Environment, Climate Change and Land Reform Committee 13 March 2018, Gemma Cooper, contrib. 155, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11414&c=2074648>
- [10] Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Audrey Maclver, contrib. 31, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082149>
- [11] Environment, Climate Change and Land Reform Committee 27 March 2018, Patricia Hawthorn, contrib. 195, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11449&c=2079400>
- [12] Environment, Climate Change and Land Reform Committee 27 March 2018, Dr Wells, contrib. 199, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11449&c=2079404>
- [13] Environment, Climate Change and Land Reform Committee 17 April 2018 [Draft], Alex Kinninmonth (Scottish Environment LINK), contrib. 9, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082127>

- [14] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 199, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085086>
- [15] Environment, Climate Change and Land Reform Committee 27 March 2018, Patricia Hawthorn, contrib. 216, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11449&c=2079421>
- [16] Environment, Climate Change and Land Reform Committee 17 April 2018, Audrey MacIver, contrib. 15, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082133>
- [17] Environment, Climate Change and Land Reform Committee 17 April 2018, Alex Kinninmonth, contrib. 121, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082238>
- [18] Environment, Climate Change and Land Reform Committee 17 April 2018, Alex Kinninmonth, contrib. 18, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082136>
- [19] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 230, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085117>
- [20] Environment, Climate Change and Land Reform Committee 27 March 2018, Dr Wells, contrib. 190, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11449&c=2079395>
- [21] Environment, Climate Change and Land Reform Committee 27 March 2018, Mark Simmonds, contrib. 212, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11449&c=2079417>
- [22] Environment, Climate Change and Land Reform Committee 17 April 2018, Andy Wells, contrib. 101, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082218>
- [23] Environment, Climate Change and Land Reform Committee 17 April 2018, Dr MacLeod, contrib. 113, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082230>
- [24] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 135, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085022>
- [25] Environment, Climate Change and Land Reform Committee 17 April 2018, Andy Wells, contrib. 53, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2082171>
- [26] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 149, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085036>

- [27] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], David Mallon, contrib. 172, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085059>
- [28] Environment, Climate Change and Land Reform Committee 17 April 2018, Dr MacLeod, contrib. 81, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11465&c=2083407>
- [29] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 181, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085068>
- [30] Environment, Climate Change and Land Reform Committee 24 April 2018 [Draft], Roseanna Cunningham, contrib. 176, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11483&c=2085063>

