

Crown Estate - Consultation on Proposals for Establishing the Interim Body to Manage the Crown Estate Assets in Scotland Post-Devolution

**Summary Report on the Responses
to the Consultation**

October 2016

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1. Introduction

1.1. The Scotland Act 2016 includes provisions for the transfer of management and revenues of The Crown Estate assets in Scotland. Section 36 of the Act provides for the transfer of specific functions, and the associated rights and liabilities, to the Scottish Ministers or a person nominated by them, on a transfer date. It is only then that the Scottish Parliament has legislative competence for the management of, and revenue from, the Crown Estate in Scotland.

1.2. The Scotland Act 2016 also makes provision for an Order in Council to be made, making arrangements for the management of the transfer of Crown Estate assets, including establishing the interim body, commencing from the point of transfer of the existing Scottish functions.

1.3. The Scottish Government undertook an online consultation on the principles for the interim management arrangements, and proposals to establish a new interim body 'Crown Estate Scotland (Interim Management)' to manage Crown Estate assets in Scotland using the Order in Council powers. The consultation invited views on those principles and proposals between 30 June and the extended closing date of 29 August 2016.

1.4. The legal framework for the interim body is constrained by the requirements of the Crown Estate 1961 Act. There will be public consultation on options for the long-term framework, in due course, ahead of primary legislation.

2. Summary of responses

2.1. The Scottish Government received 40 written responses. These will be published alongside the Consultation Report on the Scottish Government website.

2.2. Thirty four of the responses were from organisations; 9 from bodies representing land interest groups; 9 from marine interest groups; 5 from coastal interest groups; 7 from local authorities; 4 from others, including environmental interest groups; and 6 individual responses. Not all respondents addressed all sections in the consultation paper. Sections 4-8 set out the Scottish Government response including any action already taken or proposed in response to the feedback received.

3. Key findings

Criteria

3.1. While the criteria were not part of the consultation proposals, they did attract a number of responses: Eight respondents provided comments on the draft criteria in the

consultation. Four respondents expressed agreement with the specific proposals outlined in the consultation paper. Other respondents suggested additional criteria that might be embedded in the interim body's corporate approach.

3.2. The majority of respondents were supportive of the single entity approach outlined in the consultation paper. A number of respondents highlighted support for stability and continuity of service delivery in Scotland, and the importance of on-going relationships with the rest of UK Crown Estate and UK wide bodies.

3.3. Views were expressed that governance has to be clear and transparent and others indicated that they would welcome further clarification on the working arrangements of the interim body. Others respondents noted that, in their view, the interim arrangements should explicitly state an intention to continue investments in support of business sectors. Respondents suggested that it would be beneficial if a register of the risks associated with the assets, and financial and asset management information could be made available.

3.4. Four respondents, including two local authorities, stated that the proposals for the interim body must not constrain the potential for a pilot scheme in the three island authorities. Another respondent requested a pilot for community landowners in the Outer Hebrides.

3.5. Several respondents requested local community input at an early stage on decisions directly affecting them. A related view was that seeking community input should be extended to include wider communities of interest, not only local geographical communities.

3.6. Some respondents expressed a view that it was important for the interim body to operate commercially in a way that is balanced with social and environmental aspects, including community benefit arrangements. One respondent suggested amending the principle on maintaining a commercial approach to 'Scope to maintain a commercial approach when necessary with no introduction of a detriment to any future managers of certain Crown assets such as tenant farmers'.

3.7. There were other suggestions about additional considerations for the interim arrangements. These included:

- Review of planning exemptions and provisions for Crown Estate development.
- Addition of other criteria, including wider local economic development; community empowerment, community benefit, and further devolution of responsibilities to communities.

Proposals for the interim arrangements

3.8. All but one outlined support for the single entity approach. Some respondents expressed agreement with the proposal that the interim body will be a body corporate and a separate body from Scottish Ministers. One respondent expressed concern about the creation of a new arms-length body which they felt would not be sufficiently accountable.

3.9. Some respondents requested a timetable commitment for the interim and permanent arrangements, and an evaluation of the interim body prior to the establishment of long-term arrangements.

3.10. A significant number of respondents suggested adding to the eligibility criteria for Board members e.g. to include experience of local government or local communities, the Crown Estate, management of marine, rural or commercial assets, community empowerment, law, finance, economic issues or planning and development or land use expertise.

3.11. There were other suggestions about additional considerations for the specific proposals. These included:

- Specific directions as to the management purposes.
- Membership of the Board should be an odd number to avoid deadlock.
- Councillors and employees of any local authority and office holders of the Scottish Administration added to the list for disqualification, and add a disqualification period of 12 months before appointment.
- Suggestion that the person employed as the Chief Executive should not be a member, although that person may sit on the board.
- There should be a specific rural sub-committee.
- Meetings of the interim body's Board should be recorded and a written record of meetings be published in an accessible form.
- Interim body should engage with relevant local authorities in shaping the corporate plan before it is submitted to Scottish Ministers.
- Ministerial direction should include explicit provision for the interim body to take into account social and community benefit.
- Crown exemption waived to statute unless there is overriding opposing statutory requirement.
- Refer any asset transfer from the Crown to another government or community body to the District Valuer for valuation based on the compensation model set out in any associated legislation.
- Work with other Government bodies to achieve published local and national objectives, for example, as set out in the Local Development Plan, Single Outcome Agreements.
- Waive the Crown exemption to the Roads (Scotland) Act 1984 in regards to 'assumed' adopted roads listed in Register of Public Roads which are not adoptable without Crown Estate's agreement.

3.12. Several respondents sought clarity on how the Board of the interim body would provide opportunities for community representation.

3.13. Some respondents requested greater clarity on the nature and scope of the proposed direction-making power for Scottish Ministers or suggested that it takes into account economic, social and community benefits.

General comments

3.14. Respondents offered suggestions for elements that could be considered, including:

- Detail on how the interim body will decide whether individual assets will be able to retain profits they have generated, above and beyond that required to repair and maintain assets.
- Request specific commitment to retaining the Coastal Communities Fund.
- Interim body should be located in North / Inverness.
- Interim body should be involved in second round of Community Empowerment legislation.

4. Scottish Government response

4.1. The analysis of responses suggested a number of areas that may need to be considered, and this section sets out our response including any actions already taken or proposed in response to the feedback received.

5. Policy and Criteria

5.1. While the comments on the policy and criteria did not directly address the proposals on establishing interim body of the consultation paper, they have been included here for completeness: The responses demonstrate an overwhelming general level agreement (with one exception) with the criteria and proposal for establishing an interim body, independent from the Scottish Ministers, as a single entity, maintaining business continuity. There are some specific issues arising from the responses:

5.2. Criteria

- The criteria should be flexible to respond to changing political, cultural and economic landscape.
- Recognise importance of on-going relationships and collaboration with rest of UK Crown Estate, other UK bodies and Scottish agencies.
- Proposals for the interim body should be accompanied by a statement of management objectives.

RESPONSE 1: The work to seek views on the proposed long-term framework for management of Crown Estate assets provides an opportunity to review the criteria. We see merit in exploring the potential for a Memorandum of Understanding or similar arrangements with the manager of Crown Estate assets in other parts of the UK. Management objectives will be considered further as part of the development of the corporate planning arrangements for the new interim body and the forthcoming consultation will seek views on the main objectives for the future.

5.3. Community input

- Early involvement of communities and community input to be extended to include communities of interest.

RESPONSE 2: The request for early involvement of communities can be achieved without legislation and the consultation paper included proposals to seek to include opportunities for direct representation of community interests on the interim Board. The

consultation paper stated that “the appointment of the board provides new opportunities for community interests to be represented.”

5.4. Maintaining a commercial approach

- ‘Good management’ to embed principles of sustainable development and environmental stewardship.
- Would like specific directions to be given as to management purposes specifically: (a) ‘good management of our land, marine environment and other natural resources’; and (b) ‘an opportunity to ensure that decisions on the use of Crown Estate assets in Scotland are more transparent, and new processes for decision-making are put in place to take account of the priorities of Scotland and which meet the needs of the Scottish people and local communities be addressed’, perhaps using Ministerial power.

RESPONSE 3: We have to maintain the commercial approach during the interim arrangements due to the duties in the Crown Estate Act 1961 and there is also a duty in the act to have regard to the requirements of good management. The existing legal framework therefore requires decisions to be taken with due regard to good management and enables the principles of sustainable development and environmental stewardship to be followed. The draft Order stipulates that the interim body must operate in a way which is transparent and accountable.

5.5. Piloting

- Request for pilots in the three wholly island areas, including a pilot initiative for devolving management and revenues for marine estate to community landowners in the Outer Hebrides. Proposals should not constrain or compromise the potential for a pilot scheme in respect of the three island authorities.

RESPONSE 4: Scottish Ministers are having on-going discussions with the three island authorities on the possibility of pilot arrangements for enhancing local management of Crown Estate assets within the context of the legislative framework that will exist from the point of transfer until the Scottish Parliament has reformed the legislative framework for the Crown Estate in Scotland.

5.6. Funding and resourcing

- Interim arrangements should state intention to continue investments in support of business sectors with grant funding as necessary. The interim body has to be adequately resourced.

RESPONSE 5: The Scottish Ministers will continue to work with the UK Government to ensure the best possible financial deal during the devolution process of the Crown Estate.

5.7. Operational issues

- Clarification on the working arrangements of the interim body e.g. in relation to development leasing rounds for renewables.

- Establish risk register for assets at the earliest opportunity.
- Confirm whether the interim body becomes part of, or participates in meetings of the Key Agency Group.
- Review and evaluation of the process / review of current planning exemptions and provisions for Crown Estate development.

RESPONSE 6: Further consideration will be given to these proposals in the context of the operational activities of the new body or in developing the new long-term framework.

6. The Proposals

6.1. Type of body

- Detail is requested on what ‘certain specified functions’ may cover with regards to: ‘It is possible that the interim body will be retained on a more long-term basis for certain specified functions’; and what criteria may be used to establish whether any continuation of the interim body may be justified.

RESPONSE 7: Scottish Ministers have committed to a consultation on the long-term management of the assets and no decisions have been taken on the long-term arrangements in advance of this consultation.

6.2. Membership

- The board should be subject to Parliamentary scrutiny.
- Membership should be an odd number to avoid deadlock; minimum of two members is too small. Will all members will be non-executive.

RESPONSE 8: There will be Parliamentary scrutiny. The affirmative procedure will apply to the draft Order to set up the interim body. This means that the draft Order cannot be made unless it is approved by the Scottish Parliament. In addition, an Order has been made under section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 which will allow appointments to Crown Estate Scotland (Interim Management) to be regulated by the Commissioner for Ethical Standards in Public Life in Scotland. A draft of this Order was laid in Parliament on 30 June 2016 and approved on 28 September 2016. The intention is for an annual report will be provided to the Scottish Parliament.

RESPONSE 9: The draft Order will provide for a maximum number of nine members, including a Chair. We decided not to legislate for a deputy Chair. It will be for the Board to set its own procedures, including specifying the quorum and what the procedures are in the event of a tied vote on a matter.

6.3. Eligibility criteria

- Several respondents suggest eligibility criteria to include experience in:
 - local government, local communities
 - direct prior involvement with The Crown Estate
 - experience in management of marine, rural and commercial assets
 - community empowerment

- law, finance, planning, land use, development and environmental issues.
- Some request a definition of how the board will provide new opportunities for community interests to be represented. One suggests half of board members should be community representatives. Another that board members should be part of the community of tenants or those who have an understanding of agriculture and land management.
- One suggests that councillors and employees of any local authority and office holders of the Scottish Administration should be added to the list for disqualification – and this disqualification should precede to the 12 months before appointment.
- One respondent is looking for a definition of how a ‘conflict of interests’ is defined; another respondent commented that the ‘conflict of interests’ proposal is too stringent.

RESPONSE 10: The eligibility criteria for board members to be included in the order, in terms of experience, skills and expertise, will be at an appropriate level of detail for legislation and additional criteria for the public appointments process will best ensure the Board has a good range of skills and experience– **also see RESPONSE 2.**

RESPONSE 11: There is overwhelming agreement with the proposed list of exclusions and there is no proposal to add further categories to ensure a wide range of appropriate candidates may apply. It is not usual to add that a disqualification should precede 12 months prior to an appointment to legislation.

RESPONSE 12: On reflection, we have removed the ‘conflict of interests’ provision. Any potential conflict of interests will be covered through the body’s Code of Conduct.

6.4. Members’ terms of appointment etc.

- One respondent wonders whether the proposal on removal of members includes those who are incapacitated, either physically or mentally, also those who are unsuitable through conviction of an ‘imprisonable’ criminal offence.

RESPONSE 13: The proposals on removal of members will include those who are incapacitated and also those who are unsuited through conviction for an imprisonable criminal offence. As currently drafted, the Order in Council enables Scottish Ministers to remove a Member for various reasons. These include that the Scottish Ministers consider that the person is unable to perform their functions or that they are unsuitable or continue as a member. This would cover scenarios where a person is incapacitated or if they are convicted. In all scenarios a decision to remove would have to be reasoned and rational in the circumstances.

6.5. Chief Executive and staff

- One respondent says that the person employed as Chief Executive should not be a member, although that person may sit on the board.

RESPONSE 14: The proposal is that the Chief Executive will not be a member of the board of the interim body. As a member of staff, the Chief Executive would be eligible to sit on committees and sub-committees – but it is for the interim body to decide such matters.

We also propose to extend the disqualification of members from becoming MPs, MEPs and MSPs to staff.

6.6. Committees and meetings

- One respondent suggests a specific rural committee.
- Another recommends that meetings of the interim body's board should be recorded and a written record of meetings of its Committee published in full; and another that board meeting papers should be published in accessible form
- Someone else says committees must comply with any directions given to it by the board and appointments to a committee or sub-committee should follow the rules of eligibility for members.

RESPONSE 15: It will be up to the interim body to establish any committees or sub-committees as appropriate. We do not feel this should be determined by legislation.

RESPONSE 16: The draft Order stipulates that the interim body must operate in a way which is transparent and accountable; and is consistent with any other principle of good governance which appears to it to constitute best practice.

RESPONSE 17: The proposal is for committees to consist of board members but that they may also include staff, as appropriate. The criteria for committee membership are to be set by the interim body, rather than through legislation.

6.7. Grants and loans

- One respondent requests further detail on the loan making powers for Scottish Ministers.

RESPONSE 18: The loan (and grant) making power by the Scottish Ministers to the interim body proposed in the draft Order is subject to any conditions as the Scottish Ministers may determine, including repayment. The purpose of providing for this is to offer the interim body additional flexibility, for example, to assist with land purchases or business start-ups. In addition, we are proposing a provision to allow the interim body to invest sums in interest-bearing accounts.

6.8. Corporate plan

- The Interim body should engage with local authorities in shaping corporate plan.
- The corporate plan should include financial elements and targets should be considered.

RESPONSE 19: The corporate plan will include targets and an investment strategy and it is anticipated that the new interim manager will seek input from other organisations where appropriate when developing the corporate plan.

6.9. General powers and Ministerial guidance

- While one respondent questions the need for a Ministerial direction power; another says there should be greater clarity over the nature and scope of the direction-making

power; and one that the new body should be obliged to submit an annual report to Scottish Parliament which should include detailed statement on environmental, social and economic performance.

- Provision for a pilot could be included in the general power and Ministerial direction section.

RESPONSE 20: A general Ministerial direction making power is normally available as part of the legal framework for public bodies reporting to Ministers and is required, for example, in relation to the board appointments and terms and conditions of employment. The intention is to require an annual report to be laid in the Scottish Parliament.

- One respondent wants to see Crown exemption waived to statute unless overriding opposing statutory requirement and refer any asset transfer from Crown to another government department / community body to the District Valuer; and to waive the Crown exemption to the Roads (Scotland) Act 1984 in regards to 'assumed' adopted roads listed in Register of Public Roads which are not adoptable without The Crown Estate's agreement.

RESPONSE 21: Crown Status in part runs through the Scotland Act 1998, section 90B(5) which we cannot change. As for exploring whether it should be waived in certain circumstances, such as the Roads (Scotland) Act 1984, this is not something we have considered as part of establishing the interim body and it would require time to determine if this is (a) possible and (b) desirable. The intention is for the interim body to be treated similarly as to The Crown Estate at the point of transfer for reasons of continuity.

7. Other comments

- Specific commitment to retain and grow Coastal Communities Fund:

RESPONSE 22: Scottish Ministers have committed to continuing the Coastal Communities Fund in 2017/18.

- Interim body to be located in Inverness/hold its meetings in the Highlands and Islands:

RESPONSE 23: The existing manager has a lease agreement for offices in Edinburgh and this will transfer to the new body. A consultation is planned on the long-term framework for management of the assets.

- Interim body could be included by Ministerial direction as a Schedule 2 and Schedule 3 provided for by the Community Empowerment Act. Suggest interim body involved in second round of Community Empowerment legislation. Suggestion to enable a community participation body to make a request to the interim body under section 22 to permit the body to participate in an outcome improvement process; and enable a community transfer body to make an asset transfer request to the interim body under section 79 in relation to land owned by the interim body, or leased by the interim body.

RESPONSE 24: There are powers under the Community Empowerment (Scotland) Act 2015 for Scottish Ministers to designate bodies as public service authorities or as

relevant authorities but the interim body is in a different position to an owner of land because only management functions and revenues will transfer. Further consideration will be given to these issues as part of the land reform agenda and the long-term management of the Crown Estate in Scotland. In the meantime, we expect that requests for transfer of assets from community bodies or similar will continue to be considered in line with the interim body's duties and wider strategy. After devolution, under interim arrangements, decisions are up to the interim body.

- The timetable for a Scottish Bill:

RESPONSE 25: We intend to consult on the long-term arrangements later this year and this will provide further information on the overall timescales subject to the Westminster process for completing the transfer.

- Clarification on cross-subsidisation:

RESPONSE 26: The interim arrangements will be governed by the Crown Estate Act 1961 as amended by the Scotland Act. The assets will be managed as a single entity during the interim period and the duty to maintain the estate may require expenditure on an asset in excess of the revenue received for the asset. Further consideration will be given to whether this will be required under the long term framework.

8. Impact assessments

- Detail in the Business and Regulatory Impact Assessment (BRIA) does not allow for easy identification of potential additional costs or savings:

RESPONSE 27: The BRIA for the interim arrangements has been conducted with the information available at present. There will be a full BRIA for the long-term arrangements.

- Clarification requested on Strategic Environmental Assessment (SEA) requirements as concern expressed about additional regulatory burden through SEA assessment; Request info on how interim body will co-ordinate environmental policy across the portfolio of assets and deal with conflict resolution between environmental and economic developments:

RESPONSE 28: Pre-screening has established that a SEA is not required.



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