



SANDRINGHAM HOUSE



28th December, 2013.

Dear Joe,

Thank you for your letter of 10th December to Sir Christopher Geidt, in which you seek The Queen's consent to the Regulatory Reform (Scotland) Bill.

I can confirm that Her Majesty has given consent to this Bill.

With good wishes for a
Happy New Year,

Yours ever,



Edward Young
Deputy Private Secretary to The Queen

Mr Joe Griffin.

From: REDACTED
Aquaculture and Fisheries Bill Team
Performance, Aquaculture and Recreational Fisheries Division
Marine Scotland
10 April 2013

To:

1. Minister for Environment and Climate Change
2. Cabinet Secretary for Rural Affairs and the Environment
3. First Minister

AQUACULTURE AND FISHERIES (SCOTLAND) BILL – CROWN CONSENT

Purpose

1. To provide a draft letter for the First Minister's office to send to the Private Secretary to Her Majesty the Queen seeking the Queen's consent to the provisions of the Aquaculture and Fisheries (Scotland) Bill.

Priority

2. **URGENT**. Crown Consent requires to be signified at the start of Stage 3 which is provisionally timetabled for 15 May 2013.

Background

3. It is a Parliamentary requirement that Crown consent is required for any Bill which affects directly or indirectly the prerogative, hereditary revenues or the personal property or interests of the Crown.

4. The Aquaculture and Fisheries (Scotland) Bill was introduced 3rd October 2012 with the Stage 1 debate taking place on 28th February 2013. Stage 2 completed on 27th March 2013. Stage 3 is expected to be held on 15th May 2013. The Bill contains provisions which may affect the hereditary revenues of the Crown and also the personal property of Her Majesty.

5. Part 1 of the Bill contains provisions in relation to aquaculture which could impact upon the hereditary revenues of the Crown. In particular, section 2(3) of the Bill amends the Aquaculture and Fisheries (Scotland) Act 2007 to enable the Scottish Ministers to take samples of fish from fish farms to ascertain (amongst other things) the source of fish escapes. Section 3 of the Bill enables Ministers to make regulations specifying technical specifications for equipment to be used in fish farming. Section 50 of the Bill contains provisions enabling Ministers to impose charges for certain fisheries functions.

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Recommendation

11. I recommend that you issue the attached letter to the Private Secretary to Her Majesty the Queen, enclosing three copies of the Bill, and the Bill as amended at Stage 2, and accompanying documents. Copies of the letter, enclosing one copy of the Bill in each case, should be sent to the Secretary to the Crown Estate Commissioners and the Queen's Solicitors in Scotland.

REDACTED

Aquaculture and Fisheries Bill Team
Performance, Aquaculture and Recreational Fisheries
Marine Scotland
Ext. 46066

April 2013

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Lord Advocate Minister for Parliamentary Business					X X

DG – Enterprise and Environment
Linda Rosborough, Director Marine Scotland
Willie Cowan, Deputy Director for
Performance, Aquaculture and Recreational
Fisheries
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Willie Ferrie
REDACTED
Malcolm Fleming, Special Adviser
Comms Greener

Rt Hon Alex Salmond MSP
First Minister of Scotland

St Andrew's House, Regent Road, Edinburgh EH1 3DG
T: 0845 774 1741



The Rt. Hon. Sir Christopher Geidt KCVO OBE
Private Secretary to The Queen
Buckingham Palace
London
SW1A 1AA



10 December 2013

Dear Sir Christopher

REGULATORY REFORM (SCOTLAND) BILL

I have been asked by the First Minister to write to you seeking Her Majesty's consent to the application of the Regulatory Reform (Scotland) Bill to the Crown in Scotland.

The Regulatory Reform (Scotland) Bill was introduced on 27 March 2013, and was approved by the Scottish Parliament at the stage 1 debate on 12 November 2013. Stage 2 was completed on 4 December 2013. The stage 3 debate will be on or around 13 January 2014.

I enclose 3 copies of the Bill as amended at stage 2, together with a copy of the Policy Memorandum and Explanatory Notes which accompanied the Bill's introduction. The Bill and accompanying documents can also be accessed on the Scottish Parliament's website at:-

<http://www.scottish.parliament.uk/help/61582.aspx>

The Bill will enable provision to be made for the purpose of promoting regulatory consistency; to enable provision to be made, and to make provision as respects activities that affect the environment; to make provision for new environmental offences, and for the monetary penalties in respect of environmental offences generally; to make provision about regulatory functions relating to marine licensing, planning and street traders' licences; and for connected purposes.

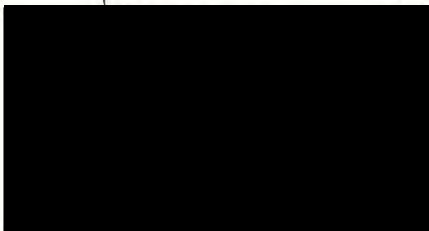
As you are aware, the consent of Her Majesty must be obtained where a Bill affects, directly, indirectly or by implication, the prerogative, hereditary revenues or the personal property or interests of the Crown. An overview of the Bill and how those provisions may affect Her Majesty is set out in the attached annex.

Crown consent has to be signified during the Stage 3 debate, before Parliament decides whether or not to pass the Bill.

We should be most grateful if you could confirm whether the Regulatory Reform (Scotland) Bill, to the extent that it affects the Crown as outlined above, is acceptable to Her Majesty. It would be appreciated if you were able to reply by 30 December 2013.

I am copying this letter and the Bill to The Queen's Solicitors in Scotland and the Secretary to the Crown Estate Commissioners.

Yours ever,



Joe Griffin
Principal Private Secretary

ANNEX

Overview of the Bill

The primary purpose of the Bill is to improve the way regulation is developed and applied, creating more favourable business conditions in Scotland and delivering benefits for the environment.

The Bill has 5 Parts:

- Part 1 enables the Scottish Ministers to make regulations for the purpose of improving consistency in regulatory enforcement, to require functions by the regulators specified in schedule 1 to be exercised in a way that contributes to sustainable economic growth, and to enable the Scottish Ministers to issue a code of practice aimed at encouraging such regulators to adopt practices that will promote better regulation.
- Part 1A makes provision for primary authorities, so that a person carrying on a regulatory activity in the area of two or more local authorities can carry out those activities in accordance with the partnership agreement made with a single such authority.
- Part 2 enables the Scottish Ministers to make by regulations provision for the purpose of protecting and improving the environment. Schedule 2 contains further provision in that respect.

It enables Ministers to make by order provision for the Scottish Environment Protection Agency to impose fixed or variable monetary penalties on a person where it is satisfied that the person has committed a relevant offence (as may be defined by order under section 39 of the Bill), and for enforcement undertakings and non-compliance penalties in that respect.

It provides for the courts to impose compensation orders on, and make publicity orders in respect of, a person convicted of a relevant offence.

It provides for new criminal offences, in particular an offence of causing or permitting to be caused significant environmental harm, vicarious liability for relevant offences committed by employees or agents, and liability for offences committed where a person is carrying on activity for another person.

It provides for fixed penalty notices for offences in carrier bag regulations made under section 88 of the Climate Change (S) Act 2009. It provides new enforcement powers for SEPA officers investigating regulatory breaches, or a suspected significant environmental harm offence.

It makes minor amendments to, or in respect of, regulatory functions. Those amendments include a power to administratively approve fireplaces and fuels in smoke control areas under the Clean Air Act 1993.

It provides for a new general purpose for SEPA, so that they include a requirement in respect of sustainable economic growth.

- Part 3 of the Bill makes provision for a statutory right of appeal in relation to marine licensing decisions; about charges and fees payable to planning authorities; and in relation to applications for street traders' licences for mobile food businesses.
- Part 4 of the Bill contains general provisions, including the delegation of a power to the Scottish Ministers to make by order such consequential provision as they consider necessary or expedient.

Schedule 3 makes minor and consequential amendments. The consequential modifications are, so far as they are not consequential on the Bill, removing spent environmental measures and references to such measures.

Crown Application

The measures in Parts 1 and 1A and in Chapters 1 to 3 of Part 2 (sections 1 to 32A) are free-standing, and apply to the Crown by virtue of section 20 of the Interpretation and Legislative Reform (S) Act 2010.

Section 46 of the Bill has the effect that no contravention by the Crown of any provision made by or under the Bill will make the Crown criminally liable, although the Court of Session may declare unlawful any act of omission which constitutes such a contravention.

The remaining measures in Part 2 and the measures in Part 3 (sections 32B to 42) make textual amendments to other enactments. Our view is that the application to the Crown of the measures introduced by these amendments will, in the absence of contrary provision, be determined by the Act that is being amended.

Street trader's licence: food businesses

Section 42 of the Bill amends section 39 of the Civic Government (S) Act 1982 with the objective that a certificate of compliance issued by a single food authority is acceptable throughout Scotland.

The 1982 Act does not bind the Crown (see section 131).

Carriers of controlled waste

Section 35 of the Bill amends section 3 of the Control of Pollution (Amendment) Act 1989, in relation to the liability of partnerships where an offence is committed by a registered waste carrier.

The 1989 Act is silent on Crown application, but in our view it does not bind the Crown, and in any event the measures in that Act – as is the case with almost all the measures in the Bill - do not appear capable of affecting the private interests of the Crown.

Contaminated land and special sites/abandoned mines/fit and proper persons

Section 34 of the Bill modifies Part IIA of the Environmental Protection Act 1990 (contaminated land), with the objective that land notified as contaminated land can be removed from the applicable register on the contamination being remediated.

The Bill as amended at stage 2 amends section 78F and 78X of the 1990 Act, in relation to land vested as bona vacantia, or falling to the Crown as ultimus haeres. Bona vacantia and ultimus haeres are part of the hereditary revenues of the Crown. The effect of these measures is that the Crown may not be identified as an appropriate person under section 78F with responsibility for remediating such land of contamination, and includes the Crown as a person acting in a relevant capacity under section 78X in respect of such land (so that the Queen's and Lord Treasurer's Remembrancer is not personally liable under the Act for remediating existing contamination).

The 1990 Act binds the Crown, except that the Crown may not be held criminally liable for any contravention, and Her Majesty's private interests are not affected (see section 159(5)).

Paragraph 16(2A) of schedule 3 of the Bill also amends section 30Y(1)(b) of the Control of Pollution Act 1974 so that a disclaimer by the Queen's and Lord Treasurer's Remembrancer is not to be treated as the abandonment of a mine for the purposes of Part 1A (abandonment of mines) of that Act.

Section 36 of the Bill amends section 74 of the 1990 Act so that the regulator may have regard to offences committed by partners and by partnerships when considering whether a person is a fit and proper person to hold a waste management licence.

Smoke control areas: authorised fuels and exempt fireplaces

Section 37A of the Bill amends sections 20 and 21 of the Clean Air Act 1993 so that the Scottish Ministers may approve fuels and fireplaces for use in smoke control areas without having to make a statutory instrument for that purpose.

The 1993 Act is silent on Crown application, although it does in our view apply to the Crown given that section 46 of that Act makes provision in respect of Crown premises. It might be that some premises owned by Her Majesty in her private capacity are situated in smoke control areas (which are designated by local authorities), but even if so the changes in the Bill appear to have no substantive effect on the private interests of the Crown.

Prosecutor's right of appeal

Section 33 of the Bill amends sections 108 and 175 of the Criminal Procedure (S) Act 1995, so that the rights of appeal in those sections are available in respect of publicity and remediation orders under sections 28 and 32 of the Bill respectively.

The 1995 Act is silent on Crown application, but the provisions being amended relate only to the Crown's prosecution functions.

SEPA: enforcement powers and purpose

Section 34A of the Bill amends section 108 and Schedule 18 of the Environment Act 1995, and inserts a new section 108A. Those measures provide for enhanced enforcement powers for persons authorised by SEPA for the purpose of investigating whether environmental permits etc. have been complied with or offences under that Act or the Bill have been committed. They will enable such persons to require the giving of names and addresses, to require attendance for interview, and to seize and remove documents (in all formats).

Section 38 of the Bill inserts a new section 20A into the 1995 Act, providing for the general purpose of SEPA.

The 1995 Act binds the Crown, but that does not affect Her Majesty in her private capacity (see section 115(6)).

Charges and fees by planning authorities

Section 41 of the Bill amends section 252 of the Town and Country Planning (S) Act 1997, so that the Scottish Ministers may provide for the fees payable to different planning authorities to be of different amounts.

The 1997 Act binds the Crown (see section 241A), although Part XIII of that Act makes extensive provision in respect of Crown land, and in any event the measures in the Bill only affect public authorities.

Carrier bag offences: fixed penalties

Section 32B of the Bill inserts a new section 88A and schedule 1A into the Climate Change (S) Act 2009. The inserted provisions need to be read together with section 88 of that Act, which enables the Scottish Ministers to make 'super-affirmative' regulations requiring suppliers of goods to charge for carrier bags.

A draft of the regulations proposed to be made under that power were laid with the Parliament on 20 September 2013 for pre-laying scrutiny, and the final draft when laid will if approved by the Parliament provide for a minimum 5 pence charge.

The measures in the Bill will enable Ministers to amend the made regulations so as to provide for the making of a fixed penalty notice as an alternative to the criminal sanctions for non-compliance provided for in the regulations.

The 2009 Act binds the Crown, but provides that no contravention by the Crown of any provision under that Act makes the Crown criminally liable. It follows that no fixed penalty notice can be given.

Marine (S) Act 2010 appeals

Section 40 of the Bill amends measures in Part 4 of the Marine (S) Act 2010, in respect of applications to the Court of Session by persons aggrieved by decisions of the Scottish Ministers under that Part.

The 2010 Act binds the Crown, but nothing in Part 4 of that Act affects Her Majesty in her private capacity (see section 162).

Her Majesty's prerogative or interests

Her Majesty's prerogative or interests are not in our view directly affected by any measures in the Bill.

They might be said to be indirectly affected, as regulations relating to protecting and improving the environment made under the powers in section 10 and schedule 2 might apply to activities carried out on behalf of Her Majesty, or affect the Queen's private estates (such as Balmoral).

The powers in section 10/schedule 2 are modelled on the powers in section 2 of and Schedule 1 to the Pollution Prevention and Control Act 1999, and it is the policy intention that the new powers will in due course replace the 1999 Act powers and other similar powers (see for example the powers in section 20 of the Water Environment and Water Services (Scotland) Act 2003).

The 1999 Act is silent as regards Crown application. However, regulations made under that Act may provide for Crown application in the same ways as regulations made under section 10 of the Bill may do (see paragraph 20(3) of Schedule 1 to the 1999 Act and paragraph 22(2) of schedule 2 to the Bill).

The powers in the 1999 Act have been used most recently to make the [Pollution Prevention and Control \(Scotland\) Regulations 2012](#). Regulation 71 of those Regulations provides for Crown application, and specified persons to be treated as if they were the operators of installations or plant operated or controlled on behalf of the Royal Household, but without the Crown being criminally liable for any contravention of the Regulations.

It is expected that similar provision would be made in any regulations made under the power in the Bill so far as measures in such regulations might affect Her Majesty's private interests.

RESTRICTED-ADVICE TO MINISTERS

PPS/First Minister

REGULATORY REFORM (SCOTLAND) BILL – CROWN CONSENT

1. To provide a draft letter for you to send to the Private Secretary to Her Majesty the Queen seeking the Queen's consent to the provisions of the Regulatory Reform (Scotland) Bill, insofar as they affect the Crown in Scotland.

Priority

2. **Urgent.** It is proposed that Crown consent should be signified during Stage 3 which is scheduled to take place on 14 January 2014. It is customary to allow Her Majesty at least 2 weeks to consider and respond to any request for Crown consent. The attached letter requests a response by 30 December and should therefore be issued by 11 December.

Background

3. It is a Parliamentary requirement that Crown consent is required for any Bill which affects directly, indirectly or by implication the interests of the Crown. Crown consent has to be signified during the Stage 3 debate before Parliament considers whether or not to pass a Bill.
4. The Bill will enable provision to be made for the purpose of promoting regulatory consistency; to enable provision to be made, and to make provision, as respects regulatory activities, and offences, relating to the environment; to make provision about regulatory functions relating to marine licensing, planning and street traders' licences; and for connected purposes.
5. An overview of the Bill and how those provisions may affect Her Majesty is set out in the attached draft letter.

Recommendation

6. I recommend that you issue the letter to the Private Secretary to Her Majesty the Queen, enclosing a copy of the Bill and accompanying documents. Copies of the letter, enclosing one copy of the Bill in each case, should also be sent to the Secretary to the Crown Estate Commissioners and The Queen's Solicitors in Scotland (address details are given in the annex to this submission).

REDACTED
Bill Manager / Environmental Quality Division
9 December 2013
x44967

RESTRICTED-ADVICE TO MINISTERS

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Parliamentary Business Lord Advocate Cabinet Secretary for Finance, Employment and Sustainable Growth Minister for Energy, Enterprise and Tourism Minister for Local Government and Planning Cabinet Secretary for Rural Affairs and the Environment Minister for Environment and Climate Change			X X X X X X		X
Permanent Secretary DG/Enterprise, Environment and Digital George Burgess REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED Madeleine MacKenzie REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED					

RESTRICTED-ADVICE TO MINISTERS

ANNEX A

REGULATORY REFORM (SCOTLAND) BILL – CROWN CONSENT

Arrangements for issuing letter

1. Copies of the letter, each with a copy of the Bill, should be sent to the following:

David Stewart WS
Morton Fraser
30-31 Queen Street
Edinburgh
EH2 1JX

Secretary to the Crown Estate Commissioners
The Great Park
Windsor
Berkshire
SL4 2HT