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Rt Hon Sir Christopher Geidt Esq CVO OBE
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10 April 2013

Dear Sir Christopher

THE AQUACULTURE AND FISHERIES (SCOTLAND) BILL 2013

I have been asked by the First Minister to write to you to seek Her Majesty's consent to the Aquaculture and Fisheries (Scotland) Bill 2013. I am writing following exchanges between R Bruce Wood, Partner, Morton Fraser Solicitors, the Queen's Solicitors in Scotland, and the Scottish Government's Legal Directorate.

As you will be 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. The Aquaculture and Fisheries (Scotland) Bill 2013 contains provisions which are considered likely to have such effect on Her Majesty's personal property.

The Bill was introduced on 3rd October 2012. The Stage 1 debate took place on 28th February 2013 with Stage 2 completed on 27th March.

I enclose 3 copies of the draft Bill as amended at Stage 2 together with a copy of the Policy Memorandum and Explanatory Notes which accompanied the Bill at introduction.

The Bill and its accompanying documents can also be accessed on the Scottish Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/55381.aspx#stageone>

The Bill makes provisions in respect of fish farming, freshwater fisheries and, to a limited extent, sea fisheries. The view of the parliamentary authorities is that the Bill will require Crown consent due to its possible effect on the hereditary revenues or personal property of Her Majesty. An overview of the Bill and how those provisions may affect Her Majesty is set out in the attached annex.

I would be most grateful if you would please confirm that the Aquaculture and Fisheries (Scotland) Bill 2013 is acceptable to Her Majesty and to signify consent. It would be

appreciated if you were able to reply by **1st May 2013**. Should Her Majesty be content with the proposals, our aim would be for the Minister to signify consent to Parliament at the start of Stage 3 which is currently expected to be held on 15th May 2013.

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

Yours sincerely



P.P. **MARY McALLAN**
Principal Private Secretary

ANNEX

The Aquaculture and Fisheries (Scotland) Bill

Overview

The Bill makes provision in respect of the management of fish farms and freshwater fisheries. It is divided into 6 Parts. Part 1 relates to aquaculture but only in respect of fish and shellfish farming. Part 2 is concerned with salmon fisheries and makes a number of amendments to the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”). Part 3 makes provision in respect of sea fisheries concerning the powers of British sea fishery officers as well as provision in respect of criminal offences related to prohibited types of fishing. Part 4 relates to shellfish and makes an amendment to the Water Environment and Water Services (Scotland) Act 2003 to allow areas of water to be designated as protected areas. Part 5 introduces a power of charging in respect of specified fisheries functions and makes an amendment to the Aquaculture and Fisheries (Scotland) Act 2007 to allow fixed penalty notices to be given in respect of certain matters.

The Bill's provisions-

- require fish farm operators to enter into farm management agreements, and for new powers to enable the Scottish Ministers to regulate commercially damaging species.
- amend salmon and freshwater fisheries legislation to enable the Scottish Ministers to introduce salmon carcass tagging, to extend their powers to impose requirements on fisheries management regulations and orders and to impose good governance obligations on district salmon fisheries boards.
- improve enforcement of sea fisheries legislation.
- provide for the protection of shellfish waters in light of the imminent repeal of EU legislation
- make provision for criminal offences, and amendments to existing offences, designed to target illegal cockle fishing.
- enable the Scottish Ministers to impose charges in relation to the exercise of fisheries functions, and to increase the scope of the current fixed penalty regime for fisheries offences.

At Stage 2 amendments were lodged to amend existing offences under the Inshore Fishing (Scotland) Act 1984 and the Sea Fisheries (Shellfish) Act 1967 to combat illegal cockle fishing in the Solway. The amendments also introduce new criminal offences where it can be shown that an individual was about to fish in contravention of those enactments. In addition rights of access are created to allow British sea fishery officers access to the foreshore for the purpose of carrying out their enforcement functions. That includes Crown land but does not extend to Her Majesty's private estates.

In addition, further amendments will be lodged at Stage 3 which will concern Crown application. The first of these will amend section 67 (Crown application) of the 2003 Act to clarify and to extend the application of that Act to all Crown land. The second set of amendments will make further provision in respect of section 55 of the Bill (Crown application) to exclude those in the public service of the Crown from immunity from prosecution for criminal acts.

Provisions which may have an effect on the hereditary revenues of the Crown

Part 1 of the Bill contains provisions in relation to aquaculture which are considered 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 the source of fish escapes. And section 3 of the Bill enables Ministers to make regulations specifying technical specifications for equipment to be used in fish farming. Section 49 of the Bill contains provisions enabling Ministers to impose charges for certain fisheries functions.

Provisions which may affect the personal property of Her Majesty

It is believed that the proposals in the Bill in relation to salmon and freshwater fisheries could impact on Her Majesty's private estate. Part 2 of the Bill contains, in particular, provisions to amend Part 6 of the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003 (Parts 2, 3 and 4 of the 2003 Act currently apply to Crown land, including salmon fisheries.)

The Bill extends the application of the provisions to amend the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003 (sections 21 and 28 of the Bill) to the Crown. We understand that at present, statistics in relation to Her Majesty's salmon fishings at Balmoral are currently provided to the River Dee Salmon Fishery Board on a voluntary basis, to enable that Board to compile data on stock levels, etc within the River Dee. The provisions of sections 21 and 28 of the Bill extend the Scottish Ministers' powers to enable them to require persons with rights in a salmon or freshwater fishery to provide them with information, or for authorised persons to take fish or samples of fish from such a fishery for monitoring, etc purposes. It is considered that the exercise of these powers could affect Her Majesty's salmon fishings on the Balmoral estate. It is, of course, the intention that the exercise of such rights would not be undertaken without first obtaining the consent of Her Majesty.

The amendments, to be lodged at Stage 3, will further extend that application. The intention is that section 67 (Crown application) of that Act will be re-cast with the effect that the whole of the 2003 Act will apply in respect of Crown land. This will include Her Majesty's private estates. Part 1 of the 2003 Act creates certain offences which will then apply in respect of acts committed on Crown land. However the Crown will not be criminally liable (although that immunity will not extend to those in the public service of the Crown). Where access to Crown land is sought under the 2003 Act then entry will only be sought with the consent of the appropriate authority being the person nominated under the Royal Sign Manual.