

**Business and Regulatory Impact Assessment**

**Scottish Crown Estate  
Strategic Management Plan**

**April 2020**

## **Partial Business and Regulatory Impact Assessment**

### **First Strategic Management Plan for the Scottish Crown Estate**

#### **Background**

The Scottish Crown Estate includes a diverse range of property, rights and interests. These assets are owned by the Crown and include currently: leasing of the seabed out to 12 nautical miles; leasing rights to renewable energy, cables and pipelines on the Continental Shelf; 37,000 hectares of rural land; rights to naturally-occurring gold and silver; and just under half of Scotland's foreshore including 5,800 licensed moorings, 750 leased aquaculture sites and salmon fishing rights.

In 2014 The Smith Commission recommended responsibility for management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, should be transferred to the Scottish Parliament.

On 1 April 2017, the management of the Crown Estate's Scottish assets was devolved to Scotland and Scottish Ministers established Crown Estate Scotland (Interim Management) to manage the assets.

The Scottish Crown Estate Bill was introduced in Parliament on 24 January 2018 to provide a legislative framework for delivery of The Smith Commission's recommendations concerning the Crown Estate in Scotland. The Bill was approved by the Scottish Parliament on 21 November 2018 and the Scottish Crown Estate Act 2019 (the Act) received Royal Assent on 15 January 2019.

The Act reforms the legal framework for management of the assets including powers to change the manager of a Scottish Crown Estate asset, a new set of duties and accounting arrangements for the assets and for the name of the current manager to be changed to Crown Estate Scotland.

Until provisions of the Scottish Crown Estate Act 2019 are commenced the existing legislative framework under the Crown Estate Act 1961 and the Crown Estate Scotland Order 2017 continue to apply.

The Act provides an opportunity for a phased approach to implementation of the reforms, including consideration of which parts of the estate are managed at the local level and wider reforms to how assets are managed, while recognising that a one-size-fits-all approach is not practical and some assets will need to be managed at the national level.

The remaining provisions of the Act will be commenced in order to become law through a series of instruments to be laid in the Scottish Parliament. The first commencement regulation<sup>1</sup> brought into force on 1 June 2019 a duty for the Scottish Ministers to prepare a Strategic Management Plan (the Plan) for the Scottish Crown Estate. In accordance with the Act the Plan must set out the objectives, priorities and

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<sup>1</sup> <http://www.legislation.gov.uk/ssi/2019/170/made>

policies in relation to the management of the Scottish Crown Estate and must include an assessment of how those align with the Scottish Ministers' other objectives, priorities and policies. It can also include such other information about the Scottish Crown Estate and its management as the Scottish Ministers consider appropriate.

The Scottish Ministers were required to consult with managers and other persons they considered appropriate in preparing the Plan. Scottish Ministers consulted on the draft Strategic Management Plan between 30 August 2019 and 22 November 2019. A total of 34 responses were received. Overall, respondents agreed with our proposed vision, objectives, and priorities and how they align with Scottish Ministers' other objectives, priorities and policies.

A copy of the Plan will be laid before the Scottish Parliament, with the Scottish Ministers then publishing the Plan as soon as reasonably practicable after this. A manager of one or more Scottish Crown Estate assets is to have regard to the Strategic Management Plan when preparing a Corporate Plan or Management Plan and when exercising management functions.

A five-yearly review of the Plan will take place in accordance with section 23 of the Act. A review may either result in a revised Plan being prepared (subject to the same statutory consultation, laying and publication requirements) or in the Scottish Ministers laying a statement before the Scottish Parliament stating that they consider the Plan should not be revised.

The second commencement regulation<sup>2</sup> renames Crown Estate Scotland (Interim Management) to Crown Estate Scotland and includes duties such as financial matters, reporting arrangements, grants and loans to managers and the schedules of the Act. Restriction on removal of wild kelp from the seabed is also within this regulation and will come into effect on 1 October 2020.

A third commencement regulation will bring into effect the remaining provisions within the Act surrounding Transfer and Delegations, including eligibility, reporting and management provisions for these managers. It is expected this regulation will be brought into force during 2021.

## **Objective**

The purpose of the Strategic Management Plan is to set out Scottish Ministers' objectives, priorities and policies in relation to the management of the Scottish Crown Estate and an assessment of how these align with other objectives, priorities and policies. In doing so Scottish Ministers have set out a transparent statement on the vision and high level objectives for the future management of the estate, including how the new framework could look at the end of the five year period.

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<sup>2</sup> <http://www.legislation.gov.uk/ssi/2020/77/contents/made>

In summary the Plan includes:

- Vision;
- Objectives, priorities and policies in relation to the management of the Estate;
- Information and policies on other issues including revenue;
- Plans for a process for inviting and considering proposals for transfer or delegation of management of an asset or part of an asset;
- Future intentions on what guidance will be developed;
- Plans for how the powers for Scottish Ministers contained in the Act may be used e.g. general powers of direction to define accounting or other requirements, rent and other charges, investment of money.

### First Strategic Management Plan Vision

The Scottish Government' Strategic Management Plan vision is provided below:

“The Scottish Crown Estate is managed sustainably, responsibly and fairly, and in a transparent and inclusive manner, to deliver long term financial and wider social, economic and environmental wellbeing benefits for Scotland and its communities.”

### **Objectives, priorities and policies**

The high level objectives, priorities and policies for the first Strategic Management Plan are presented below:

1. Scottish Crown Estate assets should be managed for the benefit of Scotland and communities, with market value being charged for sales or leases, unless the manager of the asset can demonstrate that wider benefits of equivalent scale will be delivered.
2. In order to realise the benefits potential, and in recognition that some land and property has been acquired over time for specific investment purposes, there are likely to be sales of assets or parts of assets over the five year period of the Plan, particularly on land or at the coast in response to requests for public benefit purposes or opportunities to increase value to Scotland, while recognising that the seabed is a national strategic asset that Scottish Ministers do not wish to become fragmented.
3. Strategies and Plans for Scottish Crown Estate assets should consider the potential for delivering benefits to island communities with an assessment of possible impacts to be completed as required under the Islands (Scotland) Act 2018.
4. Managers should consider the potential to contribute to wider policies on land reform and community empowerment by offering opportunities to own or manage these assets directly, and as part of strategies to consider the wider value of the existing land assets remaining part of the Scottish Crown Estate.
5. By 2025, the relative level of activity related to management of coastal and marine assets is likely to have grown compared with the rural land assets, to reflect

the new opportunities that can be realised, but the Scottish Crown Estate is likely to still include a significant amount of land and property assets.

6. Managers should consider the potential for investments that contribute to the achievement of Scotland's Climate Change Plan and Climate Change Adaptation Plan, and consider the potential for increased investment activity for the purpose of regeneration for community or national benefit, including land on the coast around ports, harbours and other infrastructure, to realise opportunities for Scotland and local economies, and for these investments normally to be prioritised over other new commercial property investments.

7. Investments in the Scottish Crown Estate should not be limited to the land or property that currently forms part of the Estate, if returns or wider benefits to the Estate and Scotland can be realised (for example, to deliver benefits to communities living on the coast adjacent to parts of the seabed contained in the Estate.)

8. The diversity of the Scottish Crown Estate means that a one-size-fits-all approach to management is not practical and there are potential benefits of local control, management or enhanced input to decision-making within the national governance framework provided by the Act. This framework therefore provides the potential for different approaches in different parts of Scotland.

9. It is anticipated that by the end of the five year period there may be a variety of managers of Scottish Crown Estate assets with individual assets managed at the appropriate level and opportunities through either transfers, delegations or pilots for councils, communities and other eligible organisations to contribute to or control decisions on how assets are managed and used.

10. Scotland's seabed is a national strategic asset and the Government's current view is that it should be managed at the national level but Scottish Ministers will keep the arrangements under review to determine whether in the longer term it is most appropriate for assets to be managed at the national or local level.

11. Scottish Ministers will run an initial round to invite proposals for transfer or delegation of management of an asset, or parts of an asset, to local parts of Scotland, and will consult in advance on draft guidance on proposals, including relevant considerations when exercising the powers to obtain market value for an asset.

12. All managers should exercise functions when managing a Scottish Crown Estate asset in a way that is transparent, accountable, inclusive and consistent with any other principle of good governance.

13. Scottish Ministers will develop guidance or directions on the manner in which a manager is expected to comply with the requirements of the Scottish Crown Estate Act relating to furthering sustainable development and seeking to manage assets in a way that is likely to contribute to wider benefits to Scotland, including relevant considerations when exercising the powers in section 11 of the Act.

14. Scottish Ministers will develop directions or guidance on other requirements for managers including accounting requirements and any charging directions about rent and other charges.
15. The net revenues from the Scottish Crown Estate will be used for the benefit of Scotland and communities with appropriate arrangements to co-ordinate funding for programmes and projects that cannot be undertaken by a single community or council.
16. The net revenue from marine assets out to 12 nautical miles should demonstrably benefit coastal communities and all arrangements for the use of net revenue should be transparent and accountable with opportunities for communities to express views on how the revenue is used.
17. The Scottish Government will work with COSLA to complete a review of the future arrangements for net revenue from marine assets out to 12 nautical miles. The review will take account of the management requirements of the estate, how future revenue can be increased through strategic funding, and the potential for other communities of interest to be managers and the case for these organisations to directly benefit from the net revenue.
18. Local organisations interested in management of a Scottish Crown Estate asset, should consider how they could take on the function and liabilities for the longer term and manage the asset in a way that delivers added value, transparency and efficiency and which is compatible with their core remit.
19. Scottish Ministers have a preference for shared services approaches to administration of the assets in order to maximise efficiency and hence net revenue available to Scotland and local communities.
20. An organisation that wishes to take on direct management will normally be expected to manage the associated liabilities, including those arising from their decisions on the management, and cover the associated costs from the income generated from the asset.
21. Crown Estate Scotland staff rights will be respected and protected in the reform of the management of the Scottish Crown Estate and they will have opportunities to contribute their views.
22. Crown Estate Scotland will assist Scottish Ministers in implementing the Strategic Management Plan and will develop new roles in contributing to the co-ordination of the management of the wider Scottish Crown Estate, facilitating delivery of the Plan and realisation of potential benefits, including piloting new partnership working models and potentially including joint ventures.

### **Rationale for Government intervention**

The Scottish Crown Estate Act 2019 places a duty on the Scottish Ministers to prepare a Strategic Management Plan for the management of the Scottish Crown Estate. Section 22 and section 23 of the Act make provision for what must be

included in the Plan and how it must be prepared, consulted on and reviewed. These requirements include:

(a) setting out the Scottish Ministers' objectives, priorities and policies in relation to the management of the Estate; and

(b) assessment of how those objectives, priorities and policies align with the Scottish Ministers' other objectives, priorities and policies.

The Strategic Management Plan will sit within, align with and contribute to the delivery of the National Performance Framework and the Scottish Government's purpose:

"To focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth."

The diversity of the property, rights and interests of the Scottish Crown Estate means that decisions on sale or use of the assets can deliver significant economic, social and environmental benefits for Scotland and local communities. However, decisions on property, land and other assets sit within the context and requirements of other elements of Scotland's broader regulatory system such as property law, environmental legislation, land use strategy and the marine and terrestrial planning systems.

Several of the assets within the portfolio, such as parts of the rural estate (e.g. forests) and the seabed have some public good characteristics and are characterised by both positive and negative externalities. Public goods are goods that individuals cannot be excluded from and where use should not reduce the availability for others. Government intervention is required as without appropriate management of the use of these assets, negative consequences can occur whereby users only act in their own self-interest and do not consider the wider costs to society of their activities. For example, the provision of seabed leases with clearly stipulated rules and regulations for development ensures that negative side effects such as pollution are minimised (or are paid for by the developer rather than wider society). In contrast to the ownership rights to the seabed, which are almost exclusively owned by the Crown, there is a wider pattern of ownership of rural estates and forests.

With respect to externalities, these occur when actions by users or managers of assets affect other parties positively or negatively, in a way that is not reflected in market outcomes. In many cases the market does not account fully for the value of benefits and costs of activities of the marine environment, rural estate and infrastructure. For example, for marine harvestable goods that are traded market prices often do not reflect the potential damage caused to the environment or the impact on other users of the marine environment.

The implementation of rules and regulations can also ensure that the seabed or other assets are not abused or overly depleted, allowing a range of users across

different sectors to make use of the resource. Being able to plan strategically for seabed leasing (for example the appropriate location of development sites or cable routes) can ensure a more efficient allocation of resources as the needs and requirements of potential users can be considered. In addition, management of the Scottish Crown Estate allows for important non-market benefits, such as the cultural heritage of certain assets to be protected and maintained, although it has not been possible to quantify these for the purposes of this Partial Business and Regulatory Impact Assessment.

### Current arrangements

To date, the property, rights and interests of the Scottish Crown Estate have been managed mainly on a commercial basis, with land and property being bought, sold and leased with the aim of maintaining or enhancing the value of the Estate. This has been carried out so as to ensure the best consideration has been secured – that is, obtaining the best return from a property sale or the best revenue stream that can be secured from the sale or lease without extracting a monopoly value (the manager should not abuse their position as sole right holder in such situations). These aims were laid out in the Crown Estate Act 1961 and the Scotland Act 2016, which charges Crown Estate Scotland with maintaining and enhancing the Estate's value and the return obtained from it, but with due regard to the requirements of good management.

The Scottish Crown Estate Act 2019 provides for an amended purpose for the Scottish Crown Estate – one which can take into account wider considerations, including economic, social or environmental benefits. It will remain that all capital receipts from the sale of assets must be reinvested in the Scottish Crown Estate, as required by the Scotland Act 2016.

The Crown Estate Transfer Scheme 2017 included provisions on charges for leases for electricity infrastructure, telecommunication cables and pipelines. These provide for independent review and ensure that monopoly value is excluded. The Transfer Scheme also specifies the basis for essential use of the Estate for defence purposes.

As well as the core activity of acting as a landlord by buying and selling and leasing land and property, the current manager of the Scottish Crown Estate also undertakes strategic planning and develops investment strategies on a national or industry sector basis with the aim of enhancing the value of the Estate for the future.

## **Consultation**

### **Within Government**

The provisions in the Strategic Management Plan for the Scottish Crown Estate were developed in a collaborative way, with extensive involvement from relevant officials across the Scottish Government, including:

Directorate for Marine Scotland  
Directorate for Environment and Forestry

Directorate of Financial Management  
Transport Scotland  
Directorate for Local Government and Communities  
Directorate for Agriculture and Rural Economy  
Directorate for Culture, Tourism and Major Events  
Directorate for Energy and Climate Change  
Directorate for Legal Services

## **Public Consultation**

The Scottish Government consulted informally with members of the Stakeholder Advisory Group on the Scottish Crown Estate and Crown Estate Scotland (Interim Management) as it was known at the time of the consultation on the vision and objectives, priorities and policies.

The consultation ran from 30 August 2019 until 22 November 2019. A total of 34 responses were received. Overall, respondents agreed with our proposed vision, objectives, priorities and policies.

The profile of respondents by category consisted of organisations from Local Authorities, Enterprise or Coastal Management Bodies, Leisure/Tourism, Fisheries/Seafood Bodies and Others.

The consultation responses received have been used to finalise this document. No substantive changes have been made to the Partial Business and Regulatory Impact Assessment as a result of responses received.

## **Business**

The Stakeholder Advisory Group, established in September 2015, provides a forum for stakeholders to contribute their views on the future management of the Scottish Crown Estate. The diverse membership of the Advisory Group brings together the perspectives of numerous representatives of Scottish Crown Estate portfolio interests including representatives of marine industries and tenant farming interests. The Advisory Group has met on twelve occasions to date.

## **Options for the future management of the Scottish Crown Estate assets**

The objectives, priorities and policies in the final Strategic Management Plan are set out above on pages 3 to 5. These have been grouped into three different themes and various options have been identified.

**Theme 1 – Delivering Benefits and Realising Opportunities. Options 1 to 3 under this theme correspond with high level objective, priority or policy 5-7 as listed above.**

### **Option 1 (preferred option):**

Pursue new opportunities to enhance the value and revenue of the estate and wider benefits outlined in the Strategic Management Plan.

### **Sectors and groups affected**

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

### **Description**

Scottish Ministers would like any manager of a Scottish Crown Estate asset to consider the potential for increased investment activity for the purpose of regeneration for community or national benefit, including land on the coast around ports, harbours and other infrastructure, to realise opportunities for Scotland and local economies, and for these investments to normally be prioritised over other new commercial land or property investments. Scottish Ministers would also like any manager to consider the potential for investments that contribute to the achievement of Scotland's Climate Change Plan.

### **Benefits**

The primary benefit of this option is to take advantage of new opportunities in a proportionate way with expected financial benefits to the capital value and revenue of the estate and wider benefits to local communities and Scotland. It also allows assets that currently do not have significant commercial values to be managed for other benefits, such as social and environmental, according to the vision for the Strategic Management Plan. The costs associated with the acquisition of new assets could also be lower compared with the alternatives to this preferred policy as a significant element of the policy relates to promoting additional investment in assets that are already owned by the Scottish Crown Estate, so there would be no acquisition costs required before additional investment could be directed at existing assets.

### **Costs**

Like all investments there are associated risks – but there is no evidence that the risks associated with option 1 are higher than option 2 except where investment is being made in novel industries that are not currently being invested in.

### **Option 2:**

Maintain the current structure/content of the estate and current pattern of investment i.e. the “do nothing” option.

### **Sectors and groups affected**

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

### **Description**

This would involve continuation of the current Investment Strategy.

### **Benefits**

The primary benefit of this approach would be clarity for tenants that the current pattern of investment in the assets would be maintained over the period of operation of the Strategic Management Plan and up to a review of the Plan. It also avoids potential costs that may be associated with changing the structure of the estate.

## **Costs**

The primary cost relates to the opportunity cost of keeping the current pattern of investment constant over this period and not pursuing the new opportunities outlined in option 1 (see above). The costs are likely to:

- (a) miss opportunities to further optimise diversification of the estate and the benefits that come from that (e.g. risk pooling).
- (b) miss opportunities to better align the estate with the objectives set by Scottish Ministers and therefore to optimise impact.

## **Option 3:**

Go significantly beyond option 1 by focusing investment to an even greater extent on the new opportunities that would be delivered under objectives, priorities and policies 5-7 above.

## **Sectors and groups affected**

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

## **Description**

This option would involve any manager of a Scottish Crown Estate asset being asked to give an even higher priority to considering the potential for increased investment activity for the purpose of regeneration for community or national benefit, including land on the coast around ports, harbours and other infrastructure, to realise opportunities for Scotland and local economies, and for these investments to normally be prioritised over other new commercial land or property investments.

## **Benefits**

This option could lead to an even greater financial return to the Scottish Crown Estate in terms of capital value or revenue return or the wider benefits that can be achieved compared with option 2. Some assets will not have significant commercial returns and this could create further opportunities for investment to derive higher financial or other direct benefits.

This option could also lead to greater indirect social, economic or environmental benefits to Scotland and communities than option 2. Coastal communities across Scotland would benefit from any enhanced revenue generation under the existing proposed formula to distributing net revenue for coastal community benefit, but the direct social, economic and environmental benefits from the investments are likely to be located in those areas where the opportunities exist, and the skewing of management and investment towards these opportunities would constrain investment in other parts of the estate elsewhere in Scotland (see outline of possible costs below).

## **Costs**

The main cost is likely to be more limited funds being available for investment in other parts of the Scottish Crown Estate, with the consequent risk of some assets not being maintained to a high standard in future. There may also be reduced commercial returns to the Scottish Crown Estate if a more significant proportion of

these assets is managed through the further investments to derive wider benefits rather than revenue generation or enhancement of the capital value of the asset. However, policy 1 should ensure that the wider benefits to Scotland are equivalent in scale to any financial benefit to the Scottish Crown Estate that is foregone.

### Theme 1 – Pattern of Investment – Assessment Criteria

Criteria	Option 1	Option 2	Option 3
1. Maximise opportunity to increase return to estate (both commercial and public good)	High	Low	High
2. Maximise flexibility to adapt to changing context (e.g. new opportunities may require purchasing new assets or selling existing ones)	High	Low	High
3. Ensure adequate funds available for all parts of the estate	High	Low	Low

**Theme 2 – How the Scottish Crown Estate assets are managed. Options 1 to 3 under this theme correspond with high level objective, priority or policy 8-10 as listed above.**

#### Option 1:

Retain management of all assets at the national level (“do nothing”).

#### Sectors and groups affected

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

#### Benefits

Option 1 is retention of management of all assets at the national level and is the “do nothing” approach. It most closely follows the current arrangements which aim to achieve economies of scale, avoid fragmentation, ensure that revenue from one asset can be used to cover maintenance or investment costs for other assets and minimise disruption to the administration and management of the Estate. As a result it is likely to be the option with the lowest associated administrative costs. Minimising change would also reduce costs associated with setting up alternative organisational arrangements for managing the assets. However, it may not deliver some of the additional socio-economic or environmental benefits to Scotland that can be derived from local management of assets.

This option would retain the benefit of economies of scale in the current arrangements, relating to managing assets at a national level. For example, retaining a central body would avoid situations under a less centralised system where similar,

duplicate roles could be required across several local managers. It would also ensure a consolidated approach to the management of liabilities. In addition, decision-making would be supported by staff who currently have the most experience in dealing with issues across the Estate.

This option is likely to be the simplest approach for marine industries such as renewables and other marine industries that rely on Scottish Crown Estate leases or services as it would enable them to continue to deal with one manager and involves a consistent approach across Scotland.

Scottish Ministers consider there will be a continuing need to provide for strategic planning and investment strategy development for the Estate on a national basis or for industry sectors in order to co-ordinate work to enhance the value of the Estate in future. A central body would allow for continuity of investment in strategic research and initiatives including activity to enable new industries to develop, grow and mature to a stage where they become new sources of revenue for the Estate. Examples include the provision of funds to support aquaculture research projects and funding of strategic research to accelerate commercial-scale development of offshore wind, wave and tidal renewable energy. Option 1 would enable the continuation of this approach where the capital value of the land and property can readily provide collateral for investment in new opportunities elsewhere in the Estate.

We consider there to be benefit in retaining a strategic planning or investment strategy role at the national level involving discussion and co-ordination with managers of individual assets at the local level. Examples of functions best retained at a national level include offshore renewable leasing, rights over marine cables and pipelines, and other seabed rights such as gas storage rights and mineral rights contained in the Scottish Crown Estate.

Crown Estate Scotland leases land and property to approximately 2,000 individuals and businesses. Not all assets may generate sufficient revenue for maintenance, investment and development. In addition, there are potential liabilities across the Estate which will need to be managed. Therefore, provision for the transfer of funds is required in order to ensure that legal duties can be delivered to maintain all parts of the Estate. This could be achieved under all three options but retaining all assets at a national level is likely to be the most efficient approach.

There has also historically been a general presumption against selling the seabed so that this national strategic asset does not become fragmented. This presumption could be retained under both this option and the other options under this theme.

### **Costs**

Option 1 would limit community empowerment and control and it would not follow all of the principles of The Smith Commission recommendations. There are dangers in adopting a one-size-fits-all approach which does not allow any opportunity to tailor the approach to the aspirations of communities. This could forego potential benefits of further devolution of management of an asset where there are synergies with local community responsibilities, limiting new opportunities for local control and accountability and the scope for community empowerment. Furthermore, a centralised approach could limit creativity and innovation in the way that assets are

managed, thereby limiting the benefits which might accrue to Scotland or local communities.

### **Option 2:**

Devolve management of all assets to local authorities, community organisations or Scottish harbour authorities.

### **Sectors and groups affected**

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

### **Description**

This option would devolve management of all Scottish Crown Estate assets and liabilities to local authorities, Scottish harbour authorities or community organisations. The bulk of existing functions of Crown Estate Scotland would need to be replicated in each local area. A national framework could set standards and procedures and lease prices could be set at a strategic level for consistency across Scotland.

There are a range of different sub-options plausible within this option such as the potential for some administrative activity to be managed through a shared services model at the national level with decisions taken locally (the degree of which having corresponding implications on the estimated costs and benefits).

### **Benefits**

Option 2 would provide for local control and it would be a way of delivering on the Smith Commission's recommendation relating to local authority areas such as Orkney, Shetland, and Comhairle nan Eilean Siar or other areas who may seek such responsibilities for the management of Scottish Crown Estate assets in their area. It would allow for potential synergies with local authority community planning functions and their environmental responsibilities for the foreshore, and provide greater community empowerment. Local management would also enhance local control and accountability in decision-making, and would offer the flexibility for local managers to tailor the management of assets in ways which best serve their local communities.

### **Costs**

Not all local authorities or communities may have the desire to manage the assets in their area. The skills and expertise may not be available locally in all areas to manage assets and these may take time to be developed to ensure efficient management in the near future. It is also not clear that all the individual assets will be self-funding in future so there may be costs for local authorities or community organisations.

Large scale further devolution would also have significantly higher administrative as well as public sector costs than option 1. The current national manager has around 40 staff working on management of Scottish Crown Estate assets. It is reasonable to expect that the number of people needed to manage the assets would have to increase should existing functions of Crown Estate Scotland require replicating in

each local area. Thus it is likely that economies of scale will be lost, resulting in costs such as replicating the expertise of the existing manager in each local area.

Fragmentation of the Estate and loss of economies of scale and duplication of administration costs could risk the realisation of net revenue in the future. This would impact on the net revenue available for coastal communities and Scotland as a whole.

Not all the assets may be sustainable in their own right in future which could result in financial burdens being placed on councils or communities and there is uncertainty surrounding the value of each standalone asset. There is good reason for the manager of the asset to take on associated liabilities (i.e. the person taking on the responsibility for management of an asset or for controlling use of the asset should take on the responsibility for managing the associated liabilities). However, this may result in local managers taking on significant contingent liabilities. It is not possible in advance to be sure that the revenue from individual assets or groups of assets at the local level will be able to cover their contingent liabilities. Under this option the future viability of parts of the Estate could thus be endangered if they failed to be maintained.

There is also uncertainty surrounding how certain assets would be apportioned to local authorities or communities. For example it is unclear how best to divide up a pipeline that runs between two local authority areas or how to apportion marine areas. To take a more specific example, there is a risk that increased complexity affecting transboundary transport of carbon dioxide (CO<sub>2</sub>) by pipeline, or of CO<sub>2</sub> storage across a number of areas of local responsibility, could discourage carbon capture and storage (CCS) developers from considering CO<sub>2</sub> storage in the Scottish offshore area. There may be other potential institutional issues that require management such as potential conflicts of interest between leasing decisions for the Scottish Crown Estate and planning or licensing applications at a local authority level.

In the absence of a national framework, this approach to local management is more likely to lead to fragmentation, competition between different parts of Scotland and reduced net revenue for communities. Whilst there is the opportunity for competition between local authorities or communities to increase the attractiveness of the assets being managed by them to spur investment in their area, such competition between local authorities or communities that results in lower lease prices would result in less net revenue across the board for no wider economic benefit. It would also result in inconsistency across Scotland which may result in higher transaction costs for industry sectors having to deal with a substantial number of different managers, which may in turn limit external investment. A shared services model could reduce some of the administration costs compared with separate regional or local management arrangements, but it could still result in higher administration costs than the national level approach outlined in option 1.

**Option 3 (preferred option):**

There will be different levels of control based on the diversity of the Scottish Crown Estate with the manager of the asset to be decided on a case-by-case basis in line with policies 8, 9 and 10 and based on future opportunities for communities to outline

their ambitions for local management and how that will lead to greater benefits or efficiencies.

### **Sectors and groups affected**

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

### **Description**

The Scottish Crown Estate Act 2019 provides the potential for different approaches to management in different parts of Scotland. (This was the option which received the most support from respondents to the 2017 Consultation on the Long Term Management of the Crown Estate in Scotland, to consider managers on a case-by-case basis).

Functions that could potentially be further devolved to councils or communities include: foreshore rights; leasing for wave and tidal energy out to 1 nautical mile, 3 nautical miles or 12 nautical miles; and land in local authority operated ports. In contrast Scottish Ministers consider there to be a strong case for the management of the seabed, particularly the rights to the 12-200 nautical mile zone, and leasing for strategic national infrastructure such as telecommunication cables, pipelines and offshore wind farms to be undertaken at the national level. Other functions would require more consideration on a case-by-case basis.

Under this option Scottish Ministers expect prospective local managers to make a case for further devolution of management to the local level in relation to particular property, rights and interests of the Scottish Crown Estate. They should also demonstrate that they have the capability to take on the management of these assets or parts of assets to maintain service delivery to customers and deliver increased benefits.

A 'shared services' approach for assets managed at the local level could be adopted, involving either a national administration to support local decision-making or a similar administration at a wider regional level to provide support services for clusters of council areas or communities. This approach would enable local areas to take democratic decisions on the use of an asset even if the council or community has no prior experience, or limited experience, in managing similar assets.

### **Benefits**

Option 3 will involve a case-by-case assessment and enable a geographic or functional approach to be followed. This will enable the principles of The Smith Commission to be delivered while recognising the diversity of the Scottish Crown Estate portfolio.

This option is the most appropriate and efficient to allow arrangements to be put in place for the management of each asset based on The Smith Commission principles and an understanding of the ambitions of local authorities, local tenants, local communities and others who have an interest in or depend on the use of Scottish Crown Estate assets. The option has been designed to make it possible to increase local control over decision-making with support arrangements for decision-making

which reduce duplication and fragmentation, with efficiencies emerging as local management structures develop according to good governance procedures, and new expertise is gained. It provides the opportunity to seek the views of tenants of the rural estates on whether they would like to be responsible for management, before any change of the management arrangements for these national assets. It will also ensure stability and continuity for some customers that rely on Scottish Crown Estate leases or services by enabling them to continue dealing with one manager in Scotland for some activities.

This option avoids the imposition of a 'one-size-fits-all' approach across Scotland, provides scope for further devolution opportunities to be tailored to the aspirations of communities and provides space for alternative solutions if some assets or interactions with industry are challenging to run appropriately on a fragmented basis. There is the potential for local employment and enterprise opportunities to reduce costs or increase revenue, and for improved infrastructure supported by re-investment of revenue into local areas.

A national manager for some assets would also enable a lead organisation to be identified to ensure continuity of investment in strategic research and initiatives including activity to enable new industries to develop, grow and mature to a stage where they become new sources of revenue for the Scottish Crown Estate.

A phased approach under option 3 would allow Ministers to make better informed decisions on the future of the Estate based on greater understanding of the individual assets and liabilities as they are managed in Scotland. In addition, a more considered approach to devolution of assets on this basis will help reduce administration and public sector costs. A phased approach is also possible under option 2.

### **Costs**

Devolving management of assets to local communities on a case-by-case basis where there is a strong rationale to do so and when the appropriate desire, knowledge and expertise is in place will help minimise the potential costs that are outlined in option 2. There will be the opportunity to build up local institutional capacity before appropriately apportioning management of assets and liabilities to communities that wanted them. This will help limit diseconomies of scale and duplication of effort, and ensure that the skills and expertise of staff currently employed by Crown Estate Scotland could still be employed to the fullest.

In the short run there may be transitional costs in establishing management at a local community level. Whilst a shared services model could reduce administration costs compared with regional or local management, the introduction of such a model would still result in higher administration costs than the national level approach in option 1.

Further information is contained in the Financial Memorandum which sets out the costs associated with the measures introduced by the Scottish Crown Estate Bill.

### **Theme 2 – Summary of key criteria and assessment of each option**

The options are ranked 'low, medium or high' in terms of their ability to meet the criteria:

Criteria	Option 1	Option 2	Option 3
1. Administration costs (whether likely to be higher/lower relative to baseline)	Low or zero	High	Medium
2. Ability to share risk across portfolio of assets (opportunities to offset short-term losses on assets)	High	Low	High
3. Opportunity to take advantage of synergies across assets (this could be phrased as economies of scope)	High	Low	High
4. Opportunity for local influence	Medium	High	High
5. Opportunity to focus on individual asset/s and use local knowledge	Medium	High	High
6. Maximise opportunity to keep seabed unfragmented	High	Low	High

**Theme 3 – Guidance. Options 1 to 2 under this theme correspond with high level objective, priority or policy 13 and 14 as listed above.**

**Option 1: (preferred option)**

Scottish Ministers develop guidance or directions for a manager of a Scottish Crown Estate asset that is tailored to the Scottish Crown Estate and aligns with the Scottish Government’s Purpose and the National Performance Framework.

**Sectors and groups affected**

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

**Description**

In 2014 The Smith Commission recommended responsibility for management of the Crown Estate’s economic assets in Scotland, and the revenue generated from these assets, should be transferred to the Scottish Parliament.

Following this recommendation, Scottish Ministers consulted in 2016 to establish the interim body to manage the Crown Estate in Scotland, post devolution. Scottish Ministers established Crown Estate Scotland (Interim Management) (as they were then known) to manage the Scottish Crown Estate assets from 1 April 2017. Interim arrangements were then put in place to ensure a smooth transition from the point of devolution.

Scottish Ministers consulted in 2017 on the proposals for the long term management of the Scottish Crown Estate. The consultation sought views on how the Scottish Crown Estate should be managed in future and what reforms were needed. It focused on the future purpose of the Crown Estate in Scotland and what changes were needed to the existing legislation to deliver that purpose.

An emerging theme was that the strategic framework developed for the Crown Estate in Scotland should make explicit links to the key National Outcomes and other related national policies. Many respondents emphasised the need for the framework to provide guidance.

The Scottish Crown Estate Bill was introduced in Parliament on 24 January 2018 and built on The Smith Commission recommendation on the management and revenue of the Crown Estate in Scotland. The Bill was approved by the Scottish Parliament on 21 November 2018, and the Scottish Crown Estate Act 2019 received Royal Assent on 15 January 2019. The Act includes provisions on guidance and directions.

Scottish Ministers plan to develop guidance or directions on how a manager should comply with the requirements of the Scottish Crown Estate Act 2019 relating to furthering sustainable development.

Under Section 7 of the Scottish Crown Estate Act 2019, the manager of a Scottish Crown Estate asset must maintain and seek to enhance the value of the assets and the income arising from them. The manager must also take into account wider considerations in a way that supports sustainable development and economic development, regeneration and social and environmental wellbeing specifically. Section 11 includes equivalent provisions for sales, leases and the granting of another right in or over the asset and the requirement on managers to obtain market value.

### **Benefits**

General guidance in relation to socio-economic or environmental factors exists but has been developed for a wider purpose than the management of the Scottish Crown Estate Act 2019. It may not be practical or appropriate for a manager of a Scottish Crown Estate asset to be asked to contribute to the full range of possible benefits that are covered in other guidance. Development of complementary and more specific guidance that is tailored to the legal framework for the Scottish Crown Estate would better describe the requirements of a manager and avoid suboptimal decisions on how the estate is managed in future. It would also promote greater consistency in decision-making where there is more than one manager of Scottish Crown Estate assets.

## **Costs**

There will be minor costs to central government associated with the time required by officials to develop the guidance but these are likely to be less than the total costs of each manager having to develop their own guidance separately, or the potential costs of sub-optimal decisions being taken because of the lack of tailored guidance.

## **Option 2:**

Scottish Ministers do not produce specific directions or guidance for a manager of a Scottish Crown Estate asset using the powers under sections 37 and 38 of the Scottish Crown Estate Act 2019 i.e. the “do nothing” option.

## **Sectors and groups affected**

The Scottish Crown Estate is a diverse portfolio and stakeholders include local authorities, tenant farmers, marine industries and other tenants and users of the Estate.

## **Description**

Instead of developing guidance on these concepts that is specific to the management of the Scottish Crown Estate Act 2019, the Scottish Government could choose to expect a manager to rely on existing general guidance in relation to socio-economic or environmental factors that has been developed for a wider purpose.

## **Benefits**

The primary benefit of this option would be to central government in terms of minimising or avoiding in the short term the costs outlined in option 1 associated with Scottish Government officials developing new guidance (but additional costs are likely to be incurred by a manager to develop their own guidance to assist with complying with the legal duties in the Scottish Crown Estate Act 2019, including section 11 of the Act).

## **Costs**

If no specific guidance on these concepts were to be produced in relation to the Scottish Crown Estate Act, this could potentially result in inconsistencies and each manager interpreting the requirements of the Act differently. This could increase the transaction costs for businesses that deal with more than one manager.

This approach is also likely to be more costly to managers of the assets and lead to them being required, for practical reasons, to develop their own detailed guidance on such issues separately, which could potentially duplicate effort and lead to inconsistency in how decisions are taken for similar assets.

### Theme 3 – Summary of key criteria and assessment of each option

The options are ranked 'low, medium or high' in terms of their ability to meet the criteria:

Criteria	Option 1	Option 2
1. Alignment with Scottish Government objectives	High	Low
2. Administrative costs	Higher in short term	Lower in short term but higher in medium and long term
3. Maximise flexibility – ability of estate managers to respond to changing context	High	High

#### Scottish Firms Impact Test

The Scottish Government continued engagement with the Stakeholder Advisory Group throughout the development of the Scottish Crown Estate Bill and following the Act receiving Royal Assent. Stakeholders were given the opportunity to provide verbal and written comments on the high level objectives contained in the draft Strategic Management Plan.

The diverse membership of the Group brings together the perspectives of many Scottish Crown Estate portfolio interests. This includes representatives of relevant small businesses and other industries.

#### Competition Assessment

The Strategic Management Plan is not expected to have an impact on competition as it provides high level objectives, priorities and policies on the management of the Scottish Crown Estate which align with Scottish Ministers' wider objectives, priorities and policies. Any manager of a Scottish Crown Estate asset is required to have regard to the Plan and decisions on management of the Scottish Crown Estate must comply with the wider legal framework for public bodies in Scotland.

None of the measures, or objectives, priorities and policies, contained in the Plan will directly or indirectly limit the number or range of suppliers or limit the ability of suppliers to compete, and nor will they limit the choices and information available to consumers.

#### Consumer Assessment

The Scottish Government definition of a consumer is "anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future".

None of the proposals contained in the Plan will have an impact on consumers, including consumers whose circumstances make them more vulnerable. The Plan provides high level objectives, priorities and policies on the management of the Scottish Crown Estate which align with Scottish Ministers' wider objectives, priorities and policies. Any manager of a Scottish Crown Estate asset is required to have

regard to the Plan and decisions on management of the Scottish Crown Estate must comply with the wider legal framework for public bodies in Scotland. In particular, none of the proposals:

- affect the quality, availability or price of any goods or services in a market or the essential services market, such as energy or water.
- involve storage or increased use of consumer data.
- increase opportunities for unscrupulous suppliers to target consumers.
- impact on the information available to consumers on either goods or services, or their rights in relation to these.
- affect routes for consumers to seek advice or raise complaints on consumer issues.

### **Test run of business forms**

No new forms are proposed at this stage.

### **Digital Impact Test**

The Plan does not involve direct provision of services and the consultation is being undertaken via a web-based consultation. The Plan does not therefore provide direct opportunities for enhancing digital provision of services. The Plan provides high level objectives, priorities and policies on the management of the Scottish Crown Estate which align with Scottish Ministers' wider objectives, priorities and policies. Any manager of a Scottish Crown Estate asset is required to have regard to the Plan and decisions on management of the Scottish Crown Estate must comply with the wider legal framework for public bodies in Scotland.

Implementation of the Plan will provide an opportunity for a manager of a Scottish Crown Estate asset to consider within this wider policy and regulatory framework whether there are opportunities for a manager to enhance digital provision of services and contribute to the increasing shift of economic, social and governmental interactions online with appropriate arrangements, where necessary, to mitigate any adverse impact on traditional or offline businesses.

### **Legal Aid Impact Test**

It is not expected that the proposals will have any impact on the current level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund.

### **Enforcement, sanctions and monitoring**

The Scottish Crown Estate Act 2019 provides the new legal framework for the management of the Scottish Crown Estate. Under sections 22 and 23 of Act, Scottish Ministers must prepare a Plan for the management of the Scottish Crown Estate. The Plan must set out Scottish Ministers' objectives, priorities and policies in relation to the management of the Estate and an assessment of how those objectives, priorities and policies align with the Scottish Ministers' other objectives, priorities and policies. Section 23 of the Act outlines requirements for review of the Plan.

### **Implementation and delivery plan**

The Scottish Crown Estate Act 2019 is being commenced in phases. Phase one includes sections relating to the Strategic Management Plan and other Scottish Ministers' powers and duties which enable the Scottish Ministers to perform a number of activities in respect of management of the Scottish Crown Estate.

Crown Estate Scotland is currently responsible for the management of the Scottish Crown Estate. The Scottish Ministers' Strategic Management Plan and Crown Estate Scotland's new three year Corporate Plan (2020-23) are related and complementary. The Strategic Management Plan will be implemented and delivered via this Corporate Plan in the first three years of operations and via the updated Corporate Plan, and the Management Plan for any other future manager of a Scottish Crown Estate asset, in the remaining years of the implementation of the Strategic Management Plan.

To ensure the finalised Strategic Management Plan was published in advance of Crown Estate Scotland's Corporate Plan, the Strategic Management Plan was published on 31 March 2020.

### **Post-implementation review**

A five-yearly review of the Plan is to take place in accordance with section 23 of the Scottish Crown Estate Act. A review may either result in a revised Plan being prepared (subject to the same consultation, laying and publication requirements) or in the Scottish Ministers laying a statement before the Scottish Parliament that they consider the Plan should not be revised.

### **Summary and recommendation**

A summary of the options with recommendations is outlined below:

## Theme 1 – Delivering Benefits and Realising Opportunities

### Summary of key criteria and assessment of each option

The options are ranked ‘low, medium or high’ in terms of their ability to meet the criteria:

Criteria	Option 1 – Pursue new opportunities to enhance the value and revenue of the Scottish Crown Estate and wider benefits outlined in Strategic Management Plan	Option 2 – Maintain the current structure/content of the Scottish Crown Estate and current pattern of investment	Option 3 – To go significantly beyond option 1 by focusing investment to an even greater extent on the new opportunities that would be delivered under objectives, priorities and policies in the Strategic Management Plan
1. Maximise opportunity to increase return to estate (both commercial and public good)	High	Low	High
2. Maximise flexibility to adapt to changing context (e.g. new opportunities may require purchasing new assets or selling existing ones)	High	Low	High
3. Ensure adequate funds available for all parts of the estate	High	Low	Low

## Theme 2 – How the Scottish Crown Estate assets are managed

### Summary of key criteria and assessment of each option

The options are ranked 'low, medium or high' in terms of their ability to meet the criteria:

Criteria	Option 1 – Retain management of all Scottish Crown Estate assets at the national level	Option 2 – Devolve management of all assets to local authorities, community organisations or Scottish harbour authorities	Option 3 – Different levels of control based on the diversity of the Scottish Crown Estate with the manager of the asset to be decided on a case-by-case basis
1. Administration costs (whether likely to be higher/lower relative to baseline)	Low or zero	High	Medium
2. Ability to share risk across portfolio of assets (opportunities to offset short-term losses on assets)	High	Low	High
3. Opportunity to take advantage of synergies across assets (this could be phrased as economies of scope)	High	Low	High
4. Opportunity for local influence	Medium	High	High
5. Opportunity to focus on individual asset/s and use local knowledge	Medium	High	High
6. Maximise opportunity to keep seabed unfragmented	High	Low	High

## Theme 3 – Guidance

### Summary of key criteria and assessment of each option

The options are ranked ‘low, medium or high’ in terms of their ability to meet the criteria:

Criteria	Option 1 - Scottish Ministers develop guidance or directions for a manager of a Scottish Crown Estate asset that is tailored to the Scottish Crown Estate and aligns with the Scottish Government’s Purpose and the National Performance Framework	Option 2 - Scottish Ministers do not produce specific directions or guidance for a manager of a Scottish Crown Estate asset using the powers under sections 37 and 38 of the Scottish Crown Estate Act 2019
1. Alignment with Scottish Government objectives	High	Low
2. Administrative costs	Higher in short term	Lower in short term but higher in medium and long term
3. Maximise flexibility – ability of estate managers to respond to changing context	High	High

## **Recommendations**

The following options are preferred:

<b>Theme</b>	<b>Preferred Option</b>
1. Delivering Benefits and Realising Opportunities	Option 1: Pursue new opportunities to enhance the value and revenue of the estate and wider benefits outlined in the Strategic Management Plan.
2. How the Scottish Crown Estate assets are managed	Option 3: There will be different levels of control based on the diversity of the Scottish Crown Estate with the manager of the asset to be decided on a case-by-case basis.
3. Guidance	Option 1: Scottish Ministers develop guidance or directions for a manager of a Scottish Crown Estate asset that is tailored to the Scottish Crown Estate and aligns with the Scottish Government's Purpose and the National Performance Framework.

I have read the Partial Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**



**Date:** 9 April 2020

**Minister's name** Roseanna Cunningham

**Minister's title** Cabinet Secretary for the Environment, Land Reform and Climate Change

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