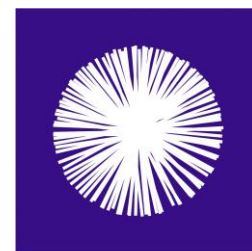


Response to the Scottish Government's Consultation on Proposals for Establishing the Interim Body to Manage the Crown Estate Assets in Scotland Post-Devolution



Scottish
Environment

LINK

by the Scottish Environment LINK Governance Group

Date: August 2016

Summary: LINK members regard changes to the management of Crown Estate assets in Scotland as presenting a significant opportunity to improve both the health and governance of Scotland's terrestrial and marine environment. Our response to the proposals set out in this consultation are that in developing the interim arrangement, Scottish Ministers must:

1. define "good management" to embed principles of Sustainable Development and environmental stewardship in the interim body's corporate approach
2. ensure the public accountability of the interim body;
3. set a clear timetable for the development of a more considered legislative framework for managing Crown Estate assets in Scotland

Introduction

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK members welcome the opportunity to comment on this consultation.

LINK members regard changes to the management of Crown Estate assets in Scotland as presenting a significant opportunity to improve both the health and governance of Scotland's terrestrial and marine environment. The consultation outlines two straightforward options: either do nothing, or set up a public corporation to manage Crown Estate assets in Scotland, "at least until" a new legislative framework has been devised. We acknowledge that the proposals are for an interim – and therefore likely temporary - arrangement to manage Scottish Crown Estate assets. However, until a new legislative framework has been set up, it is essential that the principles of Sustainable Development¹ and environmental stewardship underpin any interim arrangement for the management of what are effectively public assets.

We also acknowledge and welcome the Scottish Government's clear intention for the management of Crown Estate assets in Scotland to contribute to National Outcomes, most specifically the

¹ UK Sustainable Development Commission, The Principles: http://www.sd-commission.org.uk/pages/the_principles.html

“enhancement of the natural environment”... “for future generations” (see below). However, neither the ‘Policy Statement’ nor the ‘Proposals’ in the consultation document specify *how* this can be achieved. This is a fundamental point: the environmental health of some Crown Estate assets ([most notably the seabed](#)) have experienced significant declines in recent decades. Determining how the interim arrangements will safeguard and recover the environmental health and biodiversity of the ‘assets’ transferred is of utmost interest to LINK members.

Defining “good management”

The Scottish Government must embed Sustainable Development principles in delivery and clarify the duties of Crown Estate Scotland (Interim Management)

We welcome the Scottish Government’s clear intention to link its proposed new management powers to the National Performance Framework, specifically the National Outcome: “*We value and enjoy our built and natural environment and protect it and enhance it for future generations.*”

However, it is notable that a commitment to environmental stewardship and recovery was not included in the Scottish Government’s ‘draft principles and criteria’ that guided the proposals for the delivery model for the interim body. The Transfer Scheme will confer on Scottish Parliament the power to legislate on management functions of the Crown Estate assets, including the management of Scotland’s seabed (0-12 nautical miles) and significant terrestrial (43,000 hectares of rural land) assets.

This is a crucial opportunity to state the values and statutory duties of what will now become the Scottish equivalent of the Crown Estate Commissioners. Until 1961, the duties of the Crown Estate were only “[inferred and tacitly understood](#).” The situation today is still far from satisfactory as the statutory requirement of Crown Estate Commissioners remains only broadly defined:

*“it shall be the general duty of the Commissioners, while maintaining the Crown Estate as an estate in land (with such proportion of cash or investments as seems to them to be required for the discharge of their functions), to maintain and enhance its value and the return obtained from it, but with due regard to the **requirements of good management.**”*

It is with due regard to “the requirements of good management” that we are most concerned. The UK Parliament’s Treasury Committee’s 2010 [report on the management of Crown Estate](#) identified that the Crown Estate Commissioners’ three core values of commercialism, integrity and stewardship are suited to delivering “good management.” However, these core values are not protected in statute and it is not clear whether the Crown Estate Scotland (Interim Management) will inherit them. We regard this consultation as a vital opportunity to set out guiding principles and duties – however interim – which will help to embed environmental stewardship and Sustainable Development in the management and functions of the new interim body.

The Scottish Government has two options to achieve this: either make statutory provision for these duties or issue clear guidance in advance. The first option would require the legislative input of Parliament. We would recommend that Parliament confer on the interim body a duty to promote objectives consistent with relevant UN Sustainable Development Goals and that where there is conflict

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Registered office: 2 Grosvenor House, Shore Road, Perth PH2 8BD, T. 01738 630804, information@scotlink.org
Advocacy office: 3rd Floor, Gladstone’s Land, 483 Lawnmarket, Edinburgh EH1 2NT, T. 0131 225 4345, advocacy@scotlink.org

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between such objectives, the new Crown Estate Scotland (Interim Management) body should prioritise the protection and, where necessary, the enhancement of the environmental health of its assets, upon which economic and social activity depends.

The second option would be for these principles to be set out clearly via Ministerial guidance until such time as more comprehensive legislative reform has been undertaken. Indeed, section 38 of the consultation paper states that: “[w]e propose to require the interim body to have regard to guidance issued by Scottish Ministers.” No guidance has yet been issued. The consultation document also makes clear that the Scottish Government has not yet determined whether the proposals could have a likely significant effect on the environment. We contend that until guidance has been issued by Scottish Ministers, it is not possible to determine whether the proposals are likely to have a significant impact on the environment and therefore whether a Strategic environmental assessment (SEA) is necessary.

It is worth noting that as new (interim) public body, this body would be subject to the biodiversity duty to further the conservation of biodiversity under the Nature Conservation (Scotland) Act 2004 and to report against that duty as per the provisions of the Wildlife and Natural Environment (Scotland) Act 2011 and be subject to the sustainable development and enhancement duty under s.3 of the Marine (Scotland) Act 2010. This body should be an exemplar of both delivering these duties and reporting on compliance with them.

In practical terms, we note that a significant proportion of Crown Estate revenues are reinvested into projects, many environment-focussed, via the Coastal Communities Fund. Forthcoming Ministerial guidance should also specify that revenues accruing to the interim body should be used to further the environmental stewardship of the interim body’s assets.

Ensuring accountability

The Scottish Government must establish processes to secure good governance and community engagement

In our [response to the Smith Commission](#), LINK members called “for the Commission to give full consideration to devolving the rights, duties and functions of the Crown Estate within Scotland to the control of democratically elected Scottish public bodies.” Whilst having no formal view on the constitutional circumstances of the proposed transfer, we therefore welcome the consultation as a step towards addressing some of the concerns set out in our [‘Governance Matters: The Environment and Governance in Scotland’ report](#).

We acknowledge the Scottish Government’s community empowerment agenda. We also acknowledge that through Local Management Agreements, the Crown Estate has sought to implement a community-led approach to the management of its assets. We would therefore hope that the new interim body is an exemplar of consulting with communities when managing its assets, in line with both the Land Reform Act and, in due course, the Community Empowerment Act. Indeed we would suggest that the interim management body could be included by Ministerial direction as both a Schedule 2 ‘Public Service Authority’ for the purposes of section 21 participation requests and as a Schedule 3 ‘Relevant Authority’ for the purposes of section 78 asset transfer requests provided for by the Community Empowerment Act. Section 36 of the consultation document states: “[w]e propose that the interim

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body will normally follow the standard procedures (unless Scottish Ministers determine otherwise or specific procedures for the Crown apply) and is to be subject to the standard requirements intended to cover all relevant public bodies in Scotland, including coverage under Freedom of Information and public appointments (subject to oversight of the Commissioners for Ethical Standards in Public Life)."

We suggest that Ministers must publish their intentions to deviate from standard procedures and provide an explanation as to why they plan to do so.

We suggest that meetings of the interim body's Board should be recorded and a written record of meetings of its committees be published in full.

We would also suggest that the new body is obliged to submit an annual report to the Scottish Parliament which includes a detailed statement on its environmental, social as well as economic performance. We would be happy to discuss our views on what indicators could be used to demonstrate environmental performance in due course.

Setting a clear timetable

The Scottish Government must publish a schedule for wider legislative reform

We acknowledge that the proposals are interim, but given the unpredictable political climate and 'known unknowns' (such as the period of uncertainty surrounding the implementation of the UK Government's planned withdrawal from the European Union), the interim body could subsist as a working arrangement for some years more. During this period, many important management decisions will be made (eg the leasing of seabed areas for offshore energy developments and aquaculture sites).

To be clear, given the ongoing political uncertainty, the rationale for proposing an 'interim arrangement' is undisputed, but LINK members are not comfortable with an 'interim' arrangement unless there is a clear committed timetable for delivering broader legislative reform of the management and functions of the interim body.

This response was compiled on behalf of Scottish Environment LINK's Governance Group and is supported by: Badenoch and Strathspey Conservation Group, Marine Conservation Society, Nourish Scotland, Planning Democracy, Plantlife Scotland, RSPB Scotland, Scottish Wild Land Group, Whale and Dolphin Conservation, Woodland Trust Scotland

For more information contact:

Lloyd Austin

Convener of the LINK
Governance Group

Lloyd.austin@rspb.org.uk

Nick Underdown

LINK Marine Policy and
Engagement Officer

nick@scotlink.org

07726362727

Daphne Vlastari

LINK Advocacy Officer

daphne@scotlink.org

0131 225 4345

www.scotlink.org

www.savescottishseas.org

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