

Scotland Bill

Community Land Scotland

Initial Thoughts

1. The recently published Scotland Bill makes provision for the devolution of the Crown Estate to a 'transferee' - Scottish Minister's (or some other agreed 'transferee').

2. There are a number of matters that require clarification from the proposals, to be able to judge whether the proposals are capable of meeting Community Land Scotland's (CLS) objectives, or might prevent or act against those objectives.

3. Community Land Scotland's policy position on changes to the Crown Estate might be summarised thus:

a) That communities which own land up to the foreshore, should have the right to have that foreshore transferred into the ownership of the community owner.

b) Where there is no community owner, the responsibility for ownership might rest with the local authority for the area and until such time as a community may wish to exercise a right to take ownership of the foreshore.

c) That community land owners should have the right to the control and management of the rights and obligations attaching to an 'inner zone' of seabed, touching to the foreshore rights. The area to be controlled and managed would be potentially different in different localities and should be the subject of a negotiated agreement, including how revenues generated are to be retained.

d) That beyond the 'inner zone' of seabed, CLS recognise many different interests come into play, and control and management may best rest at the wider local authority, or Scotland level, level.

e) That the statutory purpose of the Crown Estate in Scotland should be changed to give it a 'social and economic development' purpose and responsibility, perhaps akin to that which Highlands and Islands Enterprise has.

4. It therefore falls to be clear from the UK Government proposals, to meet CLS interests, that they permit:

i) the transfer from the 'transferee' of control, or the disposal, of foreshore

ii) the disposal, or transfer, from the 'transferee' of areas of seabed, into other hands for control and management

iii) the retention of all or part of any income generated from assets transferred from the 'transferee' to a community owner

iv) legislating to give the 'Crown Estate' in Scotland wider social and economic development powers.

5. The proposals in the Smith Commission, which are the basis for the new legislation, is not explicit as to the means by which the devolution is to be achieved (see Smith Commission extract below). No doubt there could be a number of ways of achieving this.

6. However, the Bill principally proposes the way in which the devolution of the Crown Estate will be effected, is through "scheme" made by the Treasury.

7. This raises a number of questions, the full relevance of which needs to be explored, as follows:

a) The Treasury appears 'enabled' to make a scheme, but is it required to?

b) Will the draft scheme to be proposed follow consultation and, if so, with whom?

c) The devolution by this scheme appears to leave the 1961 Crown Estate Act in place. To what extent, by leaving this Act in place, will there be any limitations placed on the actions of the 'transferee' in controlling and managing the assets, or Scottish Parliament in legislating for the Crown Estate, once devolved?

d) Could the scheme provide for, or require, the further devolution of responsibilities to communities and local authorities within Scotland? (There is a constitutional consideration here in so far as considering placing any requirement on the 'transferee' and whether it would be appropriate and within the spirit of devolution, to require the Scottish Parliament to act in a particular way in determining the future governance arrangements for the Crown Estate within Scotland. This implies, however, that there is clarity that in so deciding, that the Scottish Parliament will not be limited in what it can do).

e) Could the scheme be dis-applied at any time by a universal action of the UK Government?

8. There are a range of other matters requiring clarification as to their interpretation and application.

a) what does protection of the Scottish asset "an estate in land in perpetuity", actually mean and imply by way of any limitations to actions by the 'transferee'?

b) what is the effect of not devolving interests held in registered limited partnerships? How many of them are there, and what do they cover, could more be created?

c) the scheme will provide a comprehensive, but not exhaustive, list of property, rights and interests which are relevant to the transfer. What happens to matters not initially listed, when discovered or becoming apparent?

d) what does the requirement to maintain the Crown Estate an “estate in land with such proportion of cash or investments as they consider necessary” actually mean in terms of its implications and any limitations on actions?

e) Does the apparent requirement for income from the assets of the Crown Estate to be paid into the Scottish Consolidated Fund have or imply any limitations on income flowing directly to other parties, such as community owners or local authorities, which might be granted assets or control of assets?

f) Will the Crown Estate (once devolved) become a Scottish public body subject to the Transfer of Assets provisions in the Community Empowerment Bill (by that time Act) 2015?

9. Once these various matters are clarified, CLS will need to consider whether it wishes to make any representations to the UK Parliamentary legislative process.

10. In the short term CLS needs to engage with others and with the UK and Scottish Government's, and the Scottish Parliament to seek to bottom out the issues, their potential significance, as a prior step to considering what specific actions it may be necessary to take.

Smith Commission extract...

Crown Estate

32. Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament. This will include the Crown Estate's seabed, urban assets, rural estates, mineral and fishing rights, and the Scottish foreshore for which it is responsible.

33. Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities. It is recommended that the definition of economic assets in coastal waters recognises the foreshore and economic activity such as aquaculture.

34. The Scottish and UK Governments will draw up and agree a Memorandum of Understanding to ensure that such devolution is not detrimental to UK-wide critical national infrastructure in relation to matters such as defence & security, oil & gas and energy, thereby safeguarding the defence and security importance of the Crown Estate's foreshore and seabed assets to the UK as a whole.

35. Responsibility for financing the Sovereign Grant will need to reflect this revised settlement for the Crown Estate.