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Scottish Affairs Committee

The Crown Estate in Scotland

Seventh Report of Session 2010–12

*Report, together with formal minutes, oral and
written evidence*

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The Scottish Affairs Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

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Summary

This report examines the Crown Estate Commissioner's (CEC's) management of the Crown property, rights and interests which make up the Crown Estate in Scotland. We note that the management of these rights is a very small part of the CEC's UK operations at only 3% of both value and revenue. Marine operations are by far the largest component of the CEC's responsibilities in Scotland, compared to the current dominance of urban property in the rest of the UK.

The CEC's operations in Scotland can be split into two categories: ancient possessions/responsibilities and modern activities relating to the buying, selling and management of property and land.

The evidence identified major issues over the CEC's management of its responsibilities, particularly in relation to the seabed and the foreshore: including the lack of accountability, the lack of communication and consultation with local communities, the inappropriateness of the CEC's statutory remit for its responsibilities in the marine environment, the cash leakage from local economies and other adverse impacts arising from the way the CEC operates, together with the limited benefits in Scotland from the CEC's involvements. We identified no such problems with the CEC's management of its urban and rural estate.

We conclude that the only way in which to address these fundamental issues is that the CEC's responsibilities for the administration and revenues of the ancient Crown property, rights and interests in Scotland be ended. However, centralising these responsibilities in Edinburgh would be insufficient and would not address the fundamental problems identified.

The CEC's responsibilities for the seabed, the foreshore and other ancient rights in Scotland should therefore be devolved then decentralised as far as possible. Devolution to Holyrood should be conditional upon an agreement between the Secretary of State for Scotland and the Scottish Government on how such a scheme of subsidiarity to local authority and local community levels should be implemented. We recommend the CEC continue to operate as a commercial developer on a UK wide basis.

In the second part of the report, we set out how different arrangements could be made for each of the Scottish Crown property rights and responsibilities. Further consultation is required, but should proceed on the basis of the proposals set out by the Highlands and Islands local authorities, which provides a clear framework on which to base discussion about future arrangements.

1 Introduction

Background

1. The Crown Estate consists of the Crown property, rights and interests managed by the Crown Estate Commissioners (CEC) on behalf of the Crown. The CEC is a public body first constituted in 1956 and now governed by the terms of the Crown Estate Act 1961. The CEC operates under a commercial remit and all surplus revenues are transferred to the UK Treasury for use as part of government expenditure.

2. The Crown property, rights and interest administered by the CEC in Scotland are different from those in the rest of the UK, as they are defined by Scotland's property law and are rights that belong to the Crown under its distinct legal and constitutional identity in Scotland. For the most part, responsibility for Scotland's Crown property rights is devolved to the Scottish Parliament. These rights are managed by the Scottish Government with the exception of those which are still managed by the CEC in London as part of the Crown Estate. The latter include the Crown's ownership of Scotland's territorial seabed and around 50% of Scotland's foreshore.¹ While the CEC is formally accountable to the Treasury, the Secretary of State for Scotland is the Minister with lead responsibility for the CEC's operations in Scotland.

3. Over recent years, there has been a significant increase in the potential for the development of marine renewable energy projects in the coastal waters around Scotland.² Indeed, the CEC has forecast that the revenues from Scotland (raised from leasing areas of seabed) from such developments are set to be somewhere between £12 and £49 million by 2020.³ As the rights to the seabed are administered by the CEC, these revenues will go directly to the UK Treasury.⁴ Furthermore, while most responsibilities for marine planning and development are devolved to the Scottish Parliament and Government, the CEC is not formally accountable to either institution in any way.

Our inquiry

4. In January 2011, we launched our inquiry into the Scotland Bill, with a view to focusing on the main provisions in the Bill for increased tax raising and borrowing powers for the Scottish Parliament.⁵ Clause 18 of the Bill makes a relatively minor provision for the statutory appointment of a Scottish Commissioner to the Board of the CEC.⁶ The Committee was therefore surprised both by the volume of submissions to that inquiry,

1 For a full list of Scottish rights managed by the CEC see page 10 of this report.

2 For a broader discussion of the development of marine renewable in the UK, see the House of Commons, Energy and Climate Change Committee report, *The Future of marine renewable in the UK*, Eleventh Report of Session 2010–12, HC 1624, 19 February 2012.

3 Ev 126. See table 2 on page 18 of this report.

4 In July 2011, the Government announced a Coastal Community Fund grant scheme, which will be financed by the Treasury each year with an amount equivalent to 50% of the CEC's marine revenues. This is considered in greater detail in paras 148–153 of this report.

5 Scottish Affairs Committee, *The Scotland Bill*, Fourth Report of Session 2010–11, HC 775, 21 March 2011

6 *Strengthening Scotland's Future*, Cm 7973, 30 November 2010

which specifically related to the CEC's operations in Scotland, and by the strength of criticism of the CEC expressed in those submissions: not least that the CEC is an anachronistic institution in a devolved Scotland, with insensitive and unaccountable working practices which do not serve the best interests of the people of Scotland and Scottish communities.

5. We therefore decided to launch a separate inquiry into the Crown Estate in Scotland. We held an informal seminar in Inverness on 28 March 2011 in order to identify the most appropriate terms of reference for the inquiry, as a result of which we published formal terms of reference on 12 May 2011:

- The management and governance of the Crown Estate in Scotland;
- The role and mandate of the Crown Estate Commissioners, and
- The interaction between the Crown Estate Commissioners and UK, devolved and local government.

6. In particular, we invited responses to the following questions in relation to the Crown Estate Commissioners:

Do the CEC serve a useful purpose in Scotland?

What is/should be the role of the CEC in investing in Scotland?

What is the legacy of the CEC in Scotland?

Are the current management, administration and accountability arrangements of the CEC appropriate?

How could the CEC best act in the public interest in Scotland?

7. On 11 July 2011, we issued a further call for evidence, which invited submissions specifically related to the following questions:

How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?

At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?

What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?

8. We thank all of those who submitted written evidence and who gave oral evidence during the course of the inquiry. A full list is attached in this report. We also thank the staff of the CEC for their co-operation and participation in this inquiry, and Robin Callander, Specialist Adviser.

9. During the course of our inquiry, we visited Inverness, Orkney, Shetland, Caithness, Stirling, Tiree, Barra, the Isle of Lewis, Glasgow and Edinburgh, and held informal

meetings with individuals and organisations with first-hand experience of dealing with the CEC.⁷ We thank all of those who took the time to meet us—this greatly added to our understanding of the key issues involved in this inquiry. We are particularly grateful to Highlands and Islands Enterprise who provided considerable assistance in organising our visits to the Highlands and Islands.

10. Our report is divided into two main sections: In the first part we set out the composition and finances of the CEC's operations in Scotland, and consider the issues identified during the course of our inquiry in terms of the lack of transparency and accountability, poor communication, narrow commercial focus and lack of community benefits. In the second part of our report, we make a case for the reform of the CEC. We also set out a framework and key principles for how reform might be delivered.

7 A full list of the places we visited and people and organisations we met is printed at the end of the report.

2 Composition, accountability and finances

Composition

11. The Crown Estate Commissioners (CEC) is a statutory corporation which operates under the Crown Estate Act 1961. The various Crown property, rights and interests managed on behalf of the Crown by the CEC are known as the Crown Estate.⁸ It consists of what are described as the “hereditary properties of the monarch”, which constitute “properties to which the monarch retains the title but for which she has surrendered the revenue at the start of her reign”.⁹ They are not the personal property of the monarch, but the monarch “holds them in trust for the nation”.¹⁰ As the Treasury Committee observed in its 2010 report, *The Management of the Crown Estate*: “these formal definitions [...] tend to obscure the fact that the CEC are a public body charged with managing public resources for public benefits”.¹¹

12. The CEC exercises the rights of ownership over the property which make up the Crown Estate, but is not the owner. Roger Bright, the then Chief Executive of the CEC, told us that the 1961 Act “vests in us [...] all the powers of ownership but we do not have actual ownership of the assets”.¹² Andy Wightman explained the position with the Crown property rights in Scotland which are managed by the CEC as part of the Crown Estate:

The property rights themselves are defined by Scotland’s law of property. They are thus distinct and separate from those of the English crown. Responsibility for the property rights themselves is devolved and it is within the competence of the Scottish Parliament to legislate to amend or abolish any of them. Scottish Crown property rights are managed and administered by the Scottish Government, with the exception of the rights which make up the ‘Crown Estate’, which have been administered by the CEC and its predecessors in London since the responsibility was transferred in 1832.¹³

The CEC therefore “merely administer some of the totality of Crown property rights in Scotland. These rights are Scottish public rights and the Scottish Parliament has legislative authority over them”.¹⁴

13. Management of the Crown property rights which make up the Crown Estate in Scotland and the revenues from them were reserved to the UK Parliament under the Scotland Act 1998.¹⁵ The Secretary of State for Scotland is therefore the Minister with lead responsibility for the CEC’s operations in Scotland. The CEC is not accountable to the

8 The CEC is also known as ‘The Crown Estate’ with a capital T.

9 Qq 2 and 3

10 Q 5

11 Treasury Committee, *The management of the Crown Estate*, Eighth Report of Session 2009-10, HC 325, 30 March 2010

12 Q 10

13 Ev 131 and 132

14 Ev 132

15 Schedule 5, Part 1, 2(3) and 3(3)a

Scottish Parliament or Scottish Ministers. The Scottish Parliament can, under the Scotland Act 1998, legislate over the extent and nature of Crown property rights in Scotland subject to normal Crown consent procedures, except those covered by the reservation of the management of the Crown Estate in Scotland. However, we are surprised that the Scottish Government has not approached the CEC in an attempt to reform some of the more archaic rights managed by the CEC in Scotland.

14. The Crown property rights in Scotland currently managed by the CEC are listed in the table below. Traditionally, a distinction has been made between the ‘ancient possessions’ held by the Crown since medieval times and the modern acquisitions acquired by the CEC and its predecessors since they first started to buy new properties in Scotland in the 20th century.¹⁶ Another way of making this distinction is to differentiate between the **responsibilities** and the **activities** of the CEC in Scotland. The ancient rights refer to the **responsibilities** of the CEC in Scotland (numbered 1–9 in the table below), for which the CEC inherited responsibility from its predecessors dating back to the 1830s. The buying and selling of modern acquisitions (number 13 in the table below) is not a responsibility of the CEC in Scotland, nor is it a specified duty under the 1961 Act. As such, the modern acquisitions can be defined an **activity** undertaken by the CEC in Scotland. Given the different nature of the ancient possessions and modern acquisitions therefore, they are treated differently in this report. When we refer to the responsibilities of the CEC in Scotland throughout this report, we are referring to the ancient possessions—in particular the rights to the seabed and foreshore. The modern acquisitions, or the CEC’s activities in Scotland are considered separately in chapter 6 of this report.

16 For the purposes of this report, when we refer to the Crown property, rights and interests managed on behalf of the CEC, we are referring to the ancient possessions. We deal separately with the modern acquisitions in chapter 6 of this report.

Table 1: *The Crown Property, Rights and Interests in Scotland which are managed by the Crown Estate Commissioners*

<p>Responsibilities</p> <p>Ancient Possessions</p> <ol style="list-style-type: none"> 1. Ownership of the <u>seabed</u> (excluding hydrocarbons) within Scotland's territorial seas out to the 12 nautical mile limit, where this has not been granted out 2. Rights over the <u>continental shelf</u> to minerals (excluding hydrocarbons) and sedentary species from Scotland's territorial seas to 200 nautical mile limit 3. Ownership of Scotland's <u>foreshore</u> where this has not been granted out and excluding areas under udal tenure 4. The right to all <u>naturally occurring mussels</u> in Scotland's territorial seas where this has not been granted out 5. The right to all <u>naturally occurring oysters</u> in Scotland's territorial seas where this has not been granted out 6. (a) The right to all <u>coastal salmon fishing</u> within Scotland's territorial seas where this has not been granted out (b) The right to all <u>salmon fishing in rivers and lochs</u> in Scotland where this has not been granted out and excluding areas under udal tenure 7. The right to mine naturally occurring <u>gold and silver</u> in Scotland 8. Ownership of 5 ha of <u>West Princes Street Gardens</u>, Edinburgh, including the Castlebanks. 9. Ownership of the historic <u>Kings Park</u>, Stirling (136 ha) 10. <u>title reservations</u>: minerals rights and other rights reserved by the Crown over former Crown lands, including Edinburgh Castle and other prominent sites. 11. <u>heritable revenues</u>: feu duties & surplus teinds still due to Crown over former Crown lands. 12. <u>other income</u>: The right of the Crown to income if the one site in Scotland transferred to government ownership under the Forestry (Transfer of Woods) Act 1923, is sold. <p>Activities</p> <p>Modern Acquisitions</p> <p>(a) ownership of five <u>rural properties</u>:-¹⁷</p> <table border="0"> <tr> <td>Glenlivet (Banff)</td> <td>22350</td> <td>ha</td> </tr> <tr> <td>Fochabers (Moray)</td> <td>4850</td> <td>ha</td> </tr> <tr> <td>Applegirth (Dumfries)</td> <td>6850</td> <td>ha</td> </tr> <tr> <td>Whitehill (Midlothian)</td> <td>1400</td> <td>ha</td> </tr> <tr> <td>Old Mills Farm (Stirling)</td> <td>47</td> <td>ha</td> </tr> </table> <p>(b) ownership of one <u>urban property</u> in Edinburgh:- 39/41 George Street (+ Thistle St Lane) (2000+1000 sq.ms. office and retail, purchased CEC 1995)</p> <p>(c) involvement in <u>joint property partnerships</u>:- Fort Kinnaird Retail Park (Edinburgh) (50% ownership through Gibraltar Ltd Partnership 2007)</p> <p>(d) ownership of <u>coastal properties</u> (excluding harbours & related property):- Rhu Marina (Firth of Clyde) (purchased by CEC in 2007-08)</p>	Glenlivet (Banff)	22350	ha	Fochabers (Moray)	4850	ha	Applegirth (Dumfries)	6850	ha	Whitehill (Midlothian)	1400	ha	Old Mills Farm (Stirling)	47	ha
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Old Mills Farm (Stirling)	47	ha													

Source: *Scottish Government: The Case for Change Annex A (2010) and Government's Working List 8.9.10*

17 Land areas update from CEC written evidence Scotland Bill Committee ,1st January 2011.

Accountability

15. Under the 1961 Act, the CEC is formally accountable “via the Treasury to the Westminster Parliament”.¹⁸ Roger Bright emphasised that the CEC meet formally with the Treasury to discuss “the corporate plan for the year ahead” and to discuss the financial targets which they aim to deliver.¹⁹ As the accounting officer, the Chief Executive can be called before the Public Accounts Committee and the Treasury Committee.²⁰ However, as Paula Diggle, Treasury Officer of Accounts, confirmed, prior to the Treasury Committee’s inquiry of 2010, there had only been “a couple of PAC hearings about 20 years ago”.²¹ The Treasury Committee noted that, for a public body that had been in existence for 50 years, the CEC had “been subject to remarkably little scrutiny”.²²

16. The Chancellor of the Exchequer and the Secretary of State for Scotland have a power of direction over the CEC’s operations, which can be used jointly at a UK level or separately by the Secretary of State over matters in Scotland and by the Chancellor in the rest of the UK.²³ While Roger Bright stated that “formally, we have to be accountable to the Treasury. We can’t be formally accountable to two masters”,²⁴ Gareth Baird, the CEC’s Scottish Commissioner, argued that the 1961 Act, which gives the Secretary of State for Scotland powers of direction over operations in Scotland, “does make us accountable to him”.²⁵

17. The Scottish Islands Federation (SIF) noted, however, that the power of direction had never been used, and that the Secretary of State for Scotland has “very little to do with the day-to-day governance of Crown rights”. SIF concluded that, in any case, the Secretary of State “had neither the experience or staff capacity to take a view on how such power should be deployed or to draw conclusions about desirable outcomes”.²⁶

18. The Commission on Scottish Devolution (the Calman Commission) considered the work of the CEC in Scotland as part of its deliberations. In its June 2009 report, it recommended that: “The Secretary of State for Scotland should, in consultation with Scottish Ministers, more actively exercise his power of direction under the Crown Estate Act 1961 and, having consulted Scottish Ministers, should give active consideration to whether such direction is required immediately”.²⁷ It also recommended that the traditional designation by the CEC Board of one of its members as a Scottish

18 Q 14

19 Q 15

20 Q 14

21 Q 815

22 HC 325

23 The Crown Estate Act 1961, 1(4)

24 Q 74

25 Q 725

26 Ev 170

27 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st century*, June 2009

Commissioner, should be made a statutory appointment. While the UK Government accepted the second recommendation, it did not accept the first.²⁸

19. In its 2010 report, the Treasury Committee noted the lack of any formal accountability of the CEC in Scotland. It recommended that, in addition to the statutory appointment of a Scottish Commissioner, “this initiative be further strengthened through a concordat or memorandum of understanding between the Scottish Government and the CEC to consolidate their working relationship, and that the CEC greatly strengthen their management arrangements within Scotland to assist this process”.²⁹ However, to date, the CEC has not entered into a concordat or memorandum of understanding with the Scottish Government.

20. Rt Hon Michael Moore MP, Secretary of State for Scotland, appeared to be acutely aware of the lack of the accountability of the CEC in Scotland. He highlighted that “the accountability beyond the accounts is clearly important”.³⁰ Since taking office in May 2010, he had participated in five formal meetings with the CEC. Following criticisms he had heard from many coastal communities in relation to the accessibility and transparency of the CEC, he had used these meeting to encourage the CEC to “develop its accountability in Scotland and its willingness to engage”.³¹ However, when giving evidence to us in December 2011, he said: “I am not going to claim today that we have reached the right balance in terms of engagement and accountability to local communities”.³² Since then a new informal arrangement between Scotland Office and Treasury ministers, to meet with the CEC twice-yearly to consider how they are operating Scotland, has been reached. Mr Moore described this as “an important development”.³³

Administration

21. At the time of devolution, the CEC managed the Crown Estate in Scotland as one of its distinct operating divisions. However, this division was closed in 2001–02 as part of a reorganisation of the business. In practice, the post of Head of the Scottish Estate was abolished, the CEC stopped keeping separate accounts for their operations in Scotland and no longer had a section on Scotland in their Annual Reports. Roger Bright explained the rationale for this decision:

We are a UK-wide business with a UK-wide investment strategy. At that time it was becoming apparent to us that the structure we had, meant that we were not achieving economies of scale that we might have been able to achieve. It also meant that we were not able to make use of expertise right the way across the business very effectively.³⁴

28 UK Government response to the Commission on Scottish Devolution, *Scotland's future in the United Kingdom: Building on ten years of Scottish devolution*, 25 November 2009

29 HC 325

30 Q 877

31 Qq 810 and 811

32 Q 822

33 Q 878

34 Q 76

22. Roger Bright considered that there were several advantages to the operations in Scotland of the CEC being organised as a UK wide body: “we are able to make capital available from elsewhere in the UK to invest in Scotland”.³⁵ He also identified that “expertise”, especially in relation to marine and offshore renewable energy could be drawn on from across the UK. He concluded: “we are able to bring to bear the benefits of critical mass”.³⁶

23. Nonetheless, a number of witnesses criticised this decision. Gareth Williams, Head of Policy, Scottish Council for Development and Industry (SCDI), expressed “regret that there is no longer a principal officer for Scotland with the remit to engage more with civic organisations and the Parliament”.³⁷ Brian Swinbanks, Chair, Tobermory Harbour Association, said that despite good working relationships with the CEC, he disagreed with the decision to centralise the operation in London. He said: “they should have had a Crown Estate in Scotland [...] a Scottish Crown Estate, a Scottish model”.³⁸ Comhairle nan Eilean Siar (Western Isles Council) noted:

Devolution presented an opportunity to re-focus the way in which Crown property rights are managed in Scotland to benefit local communities but this opportunity was missed. The Crown Estate’s response to devolution was to close its Scottish headquarters and to move management of Crown properties in Scotland to its London office. The property rights of the Crown in Scotland are now managed, by sector, from London in common with the wider UK estate. This move has lessened the accountability of The Crown Estate in Scotland and further limits local benefits from its management of Crown property rights in Scotland.³⁹

24. Most witnesses agreed that the main impact of the closure of the Scottish operating division has been, as Jenny Meade noted, that the CEC has “reduced its accountability in Scotland since devolution”.⁴⁰ The Scottish Government described the CEC’s current arrangements as “anachronistic” and “out of step with devolution, thereby preventing the optimal management of Scotland’s marine assets”.⁴¹ In February 2007, the Crown Estate Review Working Group (CERWG) published its report, *The Crown Estate in Scotland—New Opportunities for Public Benefits*.⁴² The report included a main conclusion:

That without undue delay, the Secretary of State for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of Scottish Executive policies and the well being of the people of Scotland.

35 Q 11

36 Q 11

37 Q 597

38 Q 233

39 Ev 135

40 Ev 185

41 Ev 148

42 This was a public sector partnership that consisted of the six local authorities that cover the Highlands and Islands of Scotland, the Convention of Scottish Local Authorities and Highlands and Islands Enterprise.

To date, no such review has taken place.

25. The closure of the Scottish division also had a practical impact on the operation and delivery of the business in Scotland. Linda Rosborough, Acting Director, Marine Scotland, pointed out that it had resulted in a lack of “consistency of engagement at a senior level of people with the real authority to make decisions for Scotland”, which could lead to “dysfunction and attempts sometimes by The Crown Estate at first blush to encourage and to look to Scotland to conform with the position elsewhere in the UK rather than being prepared to adapt to the different policy context and organisational context in Scotland”.⁴³ The Scottish Island Federation described the CEC as operating in a similar fashion to a “London-based investment company” with a “peculiarly English way of managing the Crown Estate that has no roots in Scottish history”.⁴⁴

26. When faced with the challenge that the CEC “restructured to avoid accountability” in Scotland, Roger Bright gave a “cast-iron assurance that that was not the driving force. It was to do with how we run our business to optimum effect”.⁴⁵

27. Despite the closure of the separate operating division, the CEC has a Scotland Committee, membership of which includes the Scottish Commissioner and CEC Chief Executive, who is also a Commissioner. This Committee usually meets three times a year with the Directors of the CEC’s Marine and Rural Estate business divisions, as well as other senior staff involved in Scotland. There is also a Scottish ‘leadership team,’ comprising senior staff in Scotland. Among its responsibilities is the management of the Scottish Liaison Group, which was established in 2008 in response to “a good deal of criticism [...] that the Crown Estate had very little Scottish presence in relation to the industry”.⁴⁶ Roger Bright identified this group as a “structured way of seeking feedback” and a “specific vehicle in Scotland for engaging with all of those interests”.⁴⁷ Phil Thomas, Chairman, Scottish Salmon Producers Association, noted that from an industry point of view, this group had been “helpful” in terms of getting a much better idea about how The Crown Estate is thinking about developing some of the marine energy activities”.⁴⁸

The Scottish Commissioner

28. As noted above, following the recommendation of the Calman Commission, the Scotland Bill included provision for the statutory appointment of a Scottish Commissioner following formal consultation with Scottish Ministers.⁴⁹ In its 2010 report, the Treasury Committee endorsed Calman’s recommendation for a Scottish Commissioner as a means of improving the CEC’s relationships in Scotland.

43 Q 615

44 Ev 169

45 Q 86

46 Q 355

47 Q 70

48 Q 355

49 Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st century*, June 2009, paras. 5.110–5.122

29. Roger Bright explained:

We have had a Scottish Commissioner for a good many years [...] but it has been a non-statutory appointment. It is an appointment we have chosen to make. The Scottish Commissioner fulfils an important role on our main board in ensuring that Scottish conditions and considerations are taken into account when the board takes its decisions. He also chairs the Scottish Liaison Group and [...] Committee. He has a number of important roles within the Crown Estate. He is also an ambassador for us in Scotland and he will meet Ministers. Having the Scottish Government as a party to his or her appointment in future will be very valuable. The mere fact of making it a statutory appointment is very much to be welcomed. It cements and consolidates his position.⁵⁰

However, while welcoming that proposal, Gareth Baird, Scottish Commissioner, acknowledged that in practical terms, making his appointment statutory would “not make an awful lot of difference” to his role.⁵¹ While Gareth Baird added that his role on the board was to make sure that “Scottish conditions and consideration are taken into account when the board makes its decisions,” he conceded that he had no delegated authority for anything in Scotland.⁵²

30. While we accept the points made in relation to the benefits of the economies of scale, the CEC’s decision to close the operating division in Scotland appears to have been an unusual move, given that, at the time, most organisations were opening Scottish divisions and offices in the context of the new devolved arrangements. In practice, this has had a negative impact, both upon the CEC’s accountability in Scotland and on its relationships—as there is no longer a single person in the Scotland office responsible for its operations in Scotland. The decision was indicative of the CEC’s out-dated attitude towards the UK post-devolution.

31. While we welcome the creation of the Scottish leadership team and the industry liaison group, these are poor substitutes for the fully-functioning operations division closed in 2002. Furthermore, the provision in the Scotland Bill to make statutory the appointment of a Scottish Commissioner, will in practice, as the current Commissioner acknowledged, have no direct impact on his role. None of these steps therefore fundamentally address the structural lack of accountability within Scotland.

32. We welcome the attention and focus given by the Secretary of State for Scotland to improving the accountability of the CEC in Scotland. However, these steps do not go far enough in remedying the situation which currently exists in terms of the lack of formal arrangements for the accountability of the CEC in Scotland.

Finance

33. The Crown Estate Act 1961 requires the CEC to maintain the Crown Estate as an “estate in land” and “to maintain and enhance its value and the return obtained from it, but

50 Q 73

51 Q 718

52 Qq 715 and 716

with due regard to the requirements of good management”.⁵³ The assets are managed “in accordance with a commercial mandate” and the CEC “seek a commercial return from them”.⁵⁴ The CEC operates under the financial rules as set out in the 1961 Act, including that the CEC cannot borrow money, own property indirectly through companies or acquire property outside the UK. The CEC has separate capital and revenue accounts: the sale and purchase of property take place through the capital account, while the management of the Crown Estate produces a net revenue surplus (or ‘profit’) each year, which is paid into the Treasury’s Consolidated Fund for use as part of the Government’s public expenditure. The CEC does not pay corporation, income or capital gains tax.⁵⁵

34. The overwhelming majority of the Crown Estate is in England. In 2010–11, 96% of the capital value of the Crown Estate was in England and 95% of the CEC’s revenue. Wales and Northern Ireland together accounted 0.7% of value and 1.3% of revenue. The Crown Estate in Scotland accounted for 3.1% of the value and contributed 3.9% of the CEC’s revenue.

35. The capital value of the Crown Estate in 2010–11 was £7,253 million, with the property portfolio other than indirect investments valued at £6,703 million.⁵⁶ The CEC’s total revenue in 2010–11 was £306.8 million (excluding service charge income), with £230.9 million of that transferred to the Treasury as net surplus revenue. Both the capital value of the Crown Estate and the CEC’s revenue from it principally come from urban property, with the majority of both the value and revenue in London. In the last ten years, the CEC’s Urban Estate has accounted for 74–80% of the capital value and 70–75% of the CEC’s annual revenue. Over the same 10 years, the Rural Estate has been 10–16% of value and 8–9% of revenue, while the Marine Estate has been 5–7% of value and 13–16% of revenue. The Windsor Estate represents about 3% of the value and contributes around 2% of the revenue. It is managed at a net loss each year and is thus subsidised by other CEC income.

Scottish finances

36. Following the closure of the Scottish operating division in 2001–02, separate accounts were no longer kept for Scotland. In 2005, the CEC resumed some reporting on its operations in Scotland and now produces an annual Scotland Report. In 2010–11, the CEC’s revenue from Scotland was given as £11.9 million and the revenue surplus as £9.9 million.⁵⁷ At the time of devolution in 1999–2000, the revenue was £11.8 million and the gross revenue surplus was £9.9 million. At that time, around 50% of the revenue came from the modern acquisitions and around 50% from the CEC’s marine activities. By 2010–11, two-thirds of the revenue came from marine activities.

37. In recent years therefore, the CEC’s marine involvements have been growing rapidly. This has included the purchase of Rhu Marine in 2008, and beginning in the same year, capital investments in harbours, as well as the CEC’s expanding involvements in the development of the marine renewable energy sector. In the five years to 2010–11, the

53 Q 11

54 *Ibid.*,

55 Issues relating to any potential subsidy or unfairness arising from this are best addressed by others.

56 Ev 195

57 Ev 197

CEC's capital investment in Scotland was £23.2 million. During the same period, the CEC's capital receipts from property sales in Scotland totalled £75.8 million.⁵⁸

38. The CEC has highlighted that a key benefit to Scotland of its operations, is that the CEC can call on the wider financial resources of the UK wide Crown Estate to invest in the development of the marine renewable energy sector in Scotland.⁵⁹ However, the data compiled during the course of our inquiry shows that there has actually been a net outflow of capital from Scotland over the last five years. **The CEC has raised £10.6 million more capital by selling assets in Scotland since devolution, than it has invested in Scotland over that period.**⁶⁰ The average proportion of the CEC's annual capital investment that has been invested in Scotland has also been less than Scotland's percentage share of the CEC total value or revenue.

Net profits

39. The financial data provided by the CEC includes the gross surplus revenue for the Crown Estate in Scotland each year (£9.9 million in 2010–11). However, this does not take account of the costs and overheads accounted for centrally by the CEC, which means that the actual surplus is significantly less than the amount shown. When asked about the actual surplus revenue for Scotland, Rob Hastings, Director of the Marine Estate, CEC, conceded that the CEC do not “actually calculate” this figure. He explained that this was a “very difficult thing for us to do because of the way we operate the organisation”.⁶¹ We asked the Treasury to calculate this figure, and they cited a sum of £5.7 million for the net surplus revenue or profit from the CEC's operations in Scotland in 2010–11. This is significantly lower than might have been expected from the UK figures published by the CEC. Chloe Smith MP, Economic Secretary to the Treasury, added the caveat that this figure was of “limited utility, and is likely to represent more of a judgement than hard information”.⁶²

40. The lack of clear and accurate data in terms of annual profit in Scotland highlights the lack of transparency in relation to the CEC's finances in Scotland, and is, no doubt, a consequence of the re-configuration of the business in 2001–02. The SCDI called for “greater clarity and transparency about the Crown Estate accounts—revenues, profits and investments—in Scotland”.⁶³

41. Despite the fact that the CEC has introduced the publication of a Scotland annual report which includes some basic financial information, the end of the Scottish division has led to a lack of transparency in terms of revenues raised and spent in Scotland, and in particular, of the decisions made in shifting revenue from one part of the business to another. This lack of transparency is clearly highlighted by the fact that neither the CEC nor the Treasury could provide an accurate figure for the net profits raised in Scotland following the deduction of operating costs. We understand the organisational

58 Ev 195 and 196

59 Ev 126

60 Ev 195 and 196

61 Q 776

62 Ev 210

63 Q 582 and Ev 139

and structural reasons for this, but nevertheless conclude this is an inappropriate way for the CEC to manage public assets in Scotland.

Marine renewables

42. Rob Hastings, Director of the Marine Estate, CEC, told us that the CEC had committed £23 million in investment in marine renewable in the next three years,⁶⁴ but did not have “firm investment plans much beyond that”.⁶⁵ Putting this in context, Councillor Michael Foxley, Highland Council, described the average annual amount as “a very small forward investment”, noting that the Highland Council’s capital programme is £70 million a year.⁶⁶ The Highland Council also pointed out that the Scottish Government had already committed itself, if the CEC’s responsibilities are devolved, to equalling and exceeding the CEC’s projected capital investment in Scotland over the next three years.⁶⁷

43. In the rest of the UK, the CEC’s dominant involvement is with commercial urban and rural properties with marine activities accounting for only 15% of revenue. By contrast, in Scotland, two-thirds of the CEC’s revenue is from marine activities (£7.9 million of £11.9 million in 2010–11, and this proportion is increasing rapidly).

44. The CEC’s UK income from marine renewable energy was £3.5 million in 2010–11 (of which £0.5 million or 14% was raised in Scotland). This income is expected to rise significantly over the next few years. Based on two scenarios used by the CEC for the amount of generating capacity installed by 2020—14GW or 42GW—the CEC’s UK income from leases for marine renewable energy are projected to be £66 million or £221 million respectively, while the income for Scotland is projected to be £12 million or £48 million. These amounts are 18% and 22% of the UK totals respectively, and reflect the fact that the majority of the CEC’s income from marine renewable energy is expected to continue to come from the rest of the UK.

Table 2: Two Scenarios for the Approximate Potential for Revenue Income to the CEC from Offshore Renewable Energy Leases by 2020

14 GW by 2020	GW		££ millions	
	UK	Scotland	UK	Scotland
Total	14	3	66	12
% of total	79%	21%	82%	18%
42 GW by 2020	GW		££ millions	
	UK	Scotland	UK	Scotland
Total	42	12	221	49
% of total	72%	28%	78%	22%

Source: Supplementary Information from The Crown Estate to the Scotland Bill Committee (7/2/11) p.3

45. Although Scotland’s share of the CEC UK wide income from marine renewables is relatively small, the likely increase in these revenues and their use, is a key issue in Scotland. Highlands and Islands Enterprise therefore identified that its most prominent concern

64 Q 745

65 Q 745

66 Q 273

67 Ev 183

relating to the CEC in Scotland was: “the CEC’s approach to managing Scotland’s seabed and foreshore, and their primary focus on maximising revenue from offshore developments with limited re-investment in Scotland”. They continued: “that there is particular potential for the management of the seabed and foreshore to contribute far greater benefits to the region’s communities is indisputable”.⁶⁸

46. The Scottish Council for Voluntary Organisations highlighted that the property, rights and interests currently administered by the CEC were increasingly important because of the development of marine renewable energy projects, but that under current arrangements, any revenue from these would go straight to the UK Treasury.⁶⁹ Other witnesses also expressed concern as to how these revenues would be distributed, and how, in particular, they would be used in order to provide direct benefits to the communities (mostly coastal and island communities) most affected by the development of marine renewable projects. Councillor Walsh, Argyll and Bute Council, identified “a real opportunity to get positive and tangible developments for some of the remote and island communities”.⁷⁰ He continued:

Once in a lifetime we get a real opportunity to do something about that, not just in the islands but in the remote and rural areas, and there needs to be some kind of synergy about this. There is this question about, first of all, clarifying the issue of devolving the administration and the revenues currently enjoyed by the Crown Estate—and they are significant and there is a potential for even more significant resources. It is how we use that to the betterment of or the benefit of Scotland, and also specifically those communities where there will be an impact. Without a doubt there will be an impact. It is trying to get that kind of balance, if you like, and getting a mechanism and a process for actively doing that.⁷¹

47. Comhairle nan Eilean Siar (Western Isles Council) stated that: “unless the current, archaic lease model is changed now, The Crown Estate, and not the local community, stand to benefit from unprecedented levels of lease income while host communities miss out on the economic benefit of these transformational developments”.⁷² Andy Wightman concluded therefore that: “there is nothing to be gained and many opportunities to be lost by having the CEC as the power-broker and deal-maker over the development of marine renewable energy”.⁷³

48. Having identified the lack of accountability and transparency at the heart of the CEC’s operations in Scotland, the question must be raised as to whether the CEC is the most appropriate organisation to harness the likely benefits from marine renewables for local communities. We recognise the investment of the CEC in the development of marine renewable in Scotland, but as the CEC is currently configured, the revenues

68 Ev 143

69 Ev 145

70 Q 282

71 Q 282

72 Ev 136

73 Ev 132

from such developments will be transferred to the UK Treasury, and Scotland's communities are in real danger of missing out.

3 Relationships and communication

Communication and engagement

49. In the previous chapter, we identified the lack of accountability of the CEC in Scotland. While formal democratic accountability to an appropriate Parliamentary institution in Scotland is crucial, so is the accountability and relationships of the CEC with its stakeholders and local communities in Scotland. The work of the CEC in Scotland has a tangible impact on the daily lives of ordinary people, whether it be through raising rents from fish farms, issuing licences for marine renewable developments, working with local harbours on the development of moorings, or with larger scale ports on developing new facilities. The future of many economically fragile coastal communities depends on the CEC getting things right.

50. During the course of our inquiry we found examples of good practice, and some witnesses noted recent improvements in both the manner by which the CEC conducted its business, and the positive impact of the CEC on individual projects and communities. Captain Bailey, speaking on behalf of the British Ports Association noted:

It is our experience that over the past 10 years and starting from a position where there was strong criticism of the way in which The Crown Estate went about lease negotiations, the British Ports Association is now in a position where there is relative satisfaction with the lease agreements that have been reached and the way in which they have been negotiated, albeit that there will always be some tensions in the landlord-tenant relationship.⁷⁴

However, he added that: “on occasions, the CEC can be perceived to be slow and difficult to deal with”.⁷⁵ He nonetheless concluded that the working relationship with the CEC had “improved significantly over the last seven or eight years”.⁷⁶

51. A positive example of the CEC’s contribution in Scotland was described by Tobermory Harbour Association, which had been supported by the CEC in developing moorings for the harbour.⁷⁷ Brian Swinbanks, described the relationship as being “very good”,⁷⁸ and recalled that “quietly and with very few staff” the CEC brought order to a rapidly evolving marine leisure industry “which has delivered massive benefits to our coastal communities”.⁷⁹

52. The West Highlands Mooring Association (WHAM) found the CEC to be “very good listeners [...] very willing to work towards a mutually beneficial outcome”.⁸⁰ Plockton Harbour Community Interest Company, described the CEC as “very fair and easy to deal

74 Q 192

75 Q 192

76 *Ibid.*,

77 Q 229

78 Q 232

79 Ev 129

80 Ev 128

with, and could see no reason to change the way in which the CEC operates”.⁸¹ The Scottish Boating Alliance noted that its interaction with the CEC was “satisfactory”—and that the officers of the CEC had shown an understanding of the needs and priorities of the sector”.⁸²

53. Furthermore, in the specific area of marine renewable development, Andrew Jamieson, Policy and Innovation Director, ScottishPowerRenewables, described relationships with the CEC as “strong and fruitful”,⁸³ and highlighted the CEC’s “world leading” position when it comes to leasing.⁸⁴ However, he also spoke of direct experience of the locals not being as fully informed as they might be by the CEC, and identified some “deficiencies in its engagement and communication style”.⁸⁵ Gareth Williams, noted that the companies represented by the Scottish Council for Development and Industry were, however, subject to some improvement with community input, “relatively happy with the position as it stands with the Crown Estate”.⁸⁶

54. However, most of our witnesses and those individuals and organisations whom we visited during the course of our inquiry were highly critical of the working relationships which existed between themselves and the CEC. Most frequently, both individuals and organisations complained of extremely poor communication, and alleged the CEC were often high-handed and even arrogant in their dealings with people.

55. In commenting on the working relationship between the Western Isles Council and the CEC, Councillor Campbell, said that “there is no relationship and it is as blunt as that”.⁸⁷ Councillor Foubister, Orkney Islands Council, also identified a “lack of communication” as a “major issue”.⁸⁸ He cited an example in relation to the identification of development sites for marine renewables in the Pentland Firth and Orkney waters :

We have a very strong inshore fishing industry, and there are some 7,000 ship movements annually through the Pentland Firth, where one or two of these locations are. There was absolutely no consultation whatsoever with the local authority, the inshore fishing industry or any local interests at all; and while we welcome and encourage the development of renewables, there was no consultation whatsoever.⁸⁹

56. Fiona Matheson, Orkney Fisheries Association (OFA) confirmed that there had been “no consultation whatsoever with the fishing industry” and said that it was “bizarre [...] how poor” the efforts to contact the industry had been.⁹⁰ Ms Matheson noted that since our original visit to Orkney in July 2011, the CEC and OFA had been in communication, and

81 Ev 133

82 Ev 146

83 Q 534

84 Q 542

85 Q 547

86 Q 544

87 Q 255

88 Q 256

89 Qq 256 and 272

90 Q 375

that the relationship had improved “if you are looking at a score of one to 10, it is probably edging up to 0.5”.⁹¹ The OFA concluded, however, that the CEC “demonstrated very poor public relations ability and a corporate attitude of arrogance towards local fishing interests”, and that the CEC “operate as a feudal entity with attitudes that append to that. They are wholly unaccountable and non-transparent”.⁹²

57. Lack of communication and consultation with local communities was a common complaint. Councillor Foxley, Highland Council, said that he himself as well as the Chief Executive and Director of Planning of the Highland Council, often heard about CEC decisions on leases on the radio “or when we get the Scottish national papers”.⁹³ Lorne MacLeod, Community Land Scotland, cited an example from one member who did not know about a development on their coast until a developer contacted them to access the land to get to the sea.⁹⁴

58. This lack of communication was also indicative of the CEC’s complete marginalisation of local communities in the decision making process in terms of agreements and leases for new projects. Community Land Scotland noted that the interest of local communities were not being taken into account with regard to the development of offshore renewable energy.⁹⁵ Consequently, the Highland Council noted that it was “most concerned with the lack of transparency regarding marine renewable energy negotiations and the allocation of exclusivity agreements”.⁹⁶

59. Linda Rosborough, Marine Scotland, described the CEC as being “rather nervous of commercial confidentiality issues” which often resulted in them being “very reluctant to engage”, and in turn, leading to people being surprised by developments and then starting on “quite a negative foot”.⁹⁷ Comhairle nan Eilean Siar (Western Isles Council) stated:

The total exclusion of local parties from the lease assessment process and a culture of secrecy which leaves local parties discovering lease determinations through the press mean that local communities feel excluded from the management of the marine resource around their coasts. [...]

Current management of the Scottish Marine Estate is remote and disinterested from local imperatives. The culture of secrecy within The Crown Estate, legitimised by spurious ‘commercial confidentiality’ claims, and the reluctance to involve the local community in decision making means there is no transparency or accountability in Crown Estate decisions and leaves the local community feeling totally excluded from determining its own destiny.⁹⁸

91 Q 382

92 Ev 153

93 Q 273

94 Q 470

95 Ev 129

96 Ev 134

97 Q 625

98 Ev 136

60. Other witnesses concurred: Philip Maxwell, Chairman, Islay Energy Trust said that his perception of the CEC was “that they see us as a little boy to be patted on the head and patronised. It is quite irritating”,⁹⁹ while Victor Thomas described the CEC as “an obnoxious quango”.¹⁰⁰ The OFA asserted that the CEC “acts in an arrogant manner” and described it as being badly out of touch with the ethos of a progressive and modern Scotland, combining “arrogance and patronising attitudes attributable only to the like of a colonial or feudal landlord”.¹⁰¹

61. However, Roger Bright strongly disputed any claim that the CEC were either arrogant or complacent.¹⁰² He described the CEC as “extremely sensitive to the context in which we operate and the various stakeholders that we have to deal with”.¹⁰³ He added that there was a “good story to tell in Scotland which [...] does not get very much air time”.¹⁰⁴

Financial focus

62. Frustration with poor communication and a high-handed approach was further exacerbated by the perception that “The Crown Estate is simply a tax collector”,¹⁰⁵ and that local communities saw no direct benefit or re-investment by the CEC in return for the monies collected. Phil Thomas, Chairman, Scottish Salmon Producers Association, noted that the aquaculture industry saw “very little investment back into the industries that it [the CEC] raises money from”.¹⁰⁶ Councillor Cluness, Shetland Islands Council, said that the Council had “not yet seen any return of any size from The Crown Estate in relation to the fees that we have paid them”.¹⁰⁷

63. Councillor Campbell noted that in terms of harbour development, the CEC simply presents “a bill for the extra rental”.¹⁰⁸ Based on his experience as a member of the Mallaig Harbour Authority, Councillor Foxley said that no funding was received from the CEC to facilitate the development of the harbour. Instead, he noted, “what we did receive was protracted and bureaucratic negotiations and legal exchanges in order to acquire the seabed to carry out that development”.¹⁰⁹ Councillor Campbell said in relation to Stornaway harbour and other trust ports, the money should not be “going down the road to London”, but should be “used to invest in the infrastructure of these ports”.¹¹⁰

64. We acknowledge that there was some indication of improved engagement from the CEC over the past eighteen months or so, and some examples of good practice where

99 Q 345

100 Ev 159

101 Ev 164

102 Q 59

103 Q 59

104 Q 59

105 Q 361

106 Q 415

107 Q 257

108 Q 255

109 Q 258

110 Q 259

the CEC had added value—especially in relation to commercial and business interests. However, the general pattern demonstrated in evidence to the Committee, was one of a lack of engagement and communication between the CEC, key stakeholders and local communities.

65. As the CEC deny this as a result of complacency, we can only conclude that, at best, the organisation has a fundamental misunderstanding of the needs and interests of local communities and indigenous industries on the Scottish coast. At best, it has little regard for those needs and interests other than where it serves CEC’s business interests. At worst, it behaves as an absentee landlord or tax collector which does not re-invest to any significant extent in the sectors and communities from which it derives income.

Community benefits and the public interest

66. Many of our witnesses re-asserted the findings of the Crown Estate Review Working Group (CERWG) report, *The Crown Estate in Scotland—New Opportunities for Public Benefits*, that the CEC was largely driven by the pursuit of revenue, with very little regard for other public benefits. Roger Bright dismissed this view and described the report as being “unfair” in implying that the CEC were driven by “purely the pursuit of revenue return and that we did not have a good legacy as a landlord”.¹¹¹

67. Under the terms of the 1961 Act, the CEC has an obligation to manage the Estate in order “to maintain and enhance its value and the return obtained from it, but with due regard to the requirements of good management”.¹¹² During the course of our inquiry we had detailed discussions about what this meant in practice. Roger Bright explained that the CEC was not “under a statutory requirement to maximise our revenue and the Treasury does not expect us to maximise our revenue. We seek to optimise it. That means taking account of the circumstances in which we are charging, whether it is land or whatever”.¹¹³ He clarified that this meant that the CEC took a medium to long term approach, “nurturing long- term assets [...] to deliver a sustainable medium to long-term source of revenue”.¹¹⁴

68. When challenged as to how the CEC balanced the commitment to optimising revenue while showing regard for the requirements of good management, Rob Hastings, Director of the Marine Estate, CEC, described good management as a “generic term”, which the CEC has interpreted to mean as “how do we sustainably manage our estate?”¹¹⁵ This is a very specific interpretation, and it appears that the CEC has chosen to interpret good management only to mean sustainable financial management, rather than the broader areas of sustainability that this could cover. It remains unclear to us as to why this generic term cannot be interpreted more broadly: why, for example, could ‘good management’ not be interpreted to include ‘for the benefit of the community’?

111 Q 34

112 Ev 211

113 Q 29

114 Q 31

115 Q 786

69. However, Roger Bright made it clear that the Crown Estate Act 1961 “does not allow us to act in the wider public interest in a non-specific way”, but emphasised that in pursuit of its mandate “to maintain and enhance the value of the estate” that the CEC “consciously seek to act in the interest of tenant, the communities where we operate and our various stakeholders, provided we can be satisfied that there is a clear business benefit”.¹¹⁶ He continued:

Everything we do in terms of spending money has to be, in some way or other, to the benefit of the assets for which we are responsible. You can interpret that reasonably broadly, but what it means is that we have to look at every proposition that comes to us. If it is a proposition asking us to make some sort of financial contribution we will look at it and, if we think it is worthwhile and it can be construed as having some sort of benefit to our business interests, then we can look at it positively.¹¹⁷

Roger Bright concluded that it was “difficult [...] under the terms of our Act to contemplate putting money into a generalised fund which would be applied by a third party [...]”.¹¹⁸ It would be for Parliament to change that mandate”.¹¹⁹

70. Chloe Smith MP, Economic Secretary to the Treasury, confirmed this definition of the CEC’s mandate. She asserted that the CEC “do not include wider public interest, for example those of people not connected to the Crown Estate’s properties. Nor is there scope for The Crown Estate to take account of the broader issues such as energy policy, local employment prospects or wildlife sustainability—except in so far as they relate directly to improving the Crown Estate or the welfare of its tenants and employees”. She added:

The Crown Estate is not a fund designed to invest public funds to secure government policy objectives. It cannot go further and support broader aims—whether local economic or environmental—because it would act *ultra vires* if it did so.¹²⁰

71. This is a narrow interpretation of the terms of the Crown Estate Act 1961. Indeed, in its 2010 report, the Treasury Committee noted that it too had “encountered circumstances where the extent of their [CEC] emphasis on revenue generation appeared to prevent the CEC taking full account of potential wider public interests”.¹²¹ It went on to say that:

Our most important finding is that, even within the current statutory framework, the CEC have more flexibility to accommodate the wider public interest than either they or the Government appear to realise [...]. We also consider that the Government is taking too narrow a view of the scope it has to advise the CEC on the extent to which it ought to take wider public interest into account.¹²²

116 Q 19

117 Q 152

118 Q 25

119 Q 27

120 Ev 211

121 HC 325, Summary

122 *Ibid.*

The Highland Council agreed that the role of the CEC was “too rigidly interpreted” where the duty to maintain and enhance the capital value of the estate and its revenue income was concerned, and consequently too little emphasis was given to the duty to observe the principles of good management.¹²³

72. In practice, this interpretation has had a detrimental impact on local communities. Highlands and Islands Enterprise concluded that the CEC’s “primary focus on the maximisation of income from rents, their strong commercial focus, and limited reinvestment can mitigate against wider community benefit”.¹²⁴ Lorne MacLeod, Community Land Scotland, summarised as follows:

Effectively, The Crown Estate are taking considerable revenues out of some of the most marginalised communities in the whole of the United Kingdom and some of the most depressed in many ways.¹²⁵

Given the potential revenue from marine renewables to Scotland over the next 15 to 20 years, this issue is more urgent than ever. Councillor Cluness, Shetland Islands Council, said that based on past experience of the CEC, there was no indication that the Highlands and Islands would see any benefit to their communities from this revenue at all.¹²⁶

73. The views of many of our witnesses can be summarised in the words of the Highland Council:

As it is currently set up, the CEC is unable to deliver adequately for Scotland. If the purpose of the CEC is restricted to raising revenue for the UK Treasury then it can be considered useful. However, if it is accepted that their role is also to support community development, to be transparent, and that this should be carried out in partnership with other public sector bodies in Scotland then its usefulness is at very best limited.¹²⁷

David Wilson, Director of Energy and Climate Change, Scottish Government, concurred:

The Crown Estate works within a commercial mandate, seeks a commercial return on them, but in doing so wishes to act as a good corporate citizen delivering business objectives in the wider public interest [...] that is a very difficult set of issues to weigh up by a body that is a public body. Our feeling is that this is a public policy issue that should be part of a public policy process as opposed to an arm’s length organisation acting under a commercial mandate. I am not criticising in any way the professionalism of what the Crown Estate do or the effectiveness of what they do, but under the terms of the legislation they have a difficult task to pull off of being commercial while working in the public interest all at the same time.¹²⁸

123 Ev 133

124 Ev 143

125 Q 474

126 Q 263

127 Ev 134

128 Q 626

74. We are concerned by the very narrow interpretation of the Crown Estate Act 1961 employed by both the CEC and the Treasury, and agree with the Treasury Committee, which, in 2010, suggested that the remit of the CEC could be interpreted more broadly to include wider public policy objectives. The CEC should be more accommodating of other public interests in its day to day operations.

75. While one possibility would be to amend the 1961 Act, it appears to us that part of the problem is one of an over-rigid and self-serving interpretation of the Act, rather than with the terms of the Act itself. If the Government and CEC continue to insist on this rigid interpretation of the Act, it reinforces our conclusion that the CEC is not the appropriate organisation to manage and administer the Crown ownership of Scotland's seabed—a publicly owned national asset, which requires proper multiple objective management in the public interest to benefit the people of Scotland and its many coastal communities.

76. During the course of our inquiry, despite identifying specific examples of good practice, overall we have found a clear lack of accountability of the CEC in Scotland, either formally, through democratic structures of governance, or locally; a lack of transparency in relation to finances in Scotland, and; a lack of consultation, communication and engagement with local communities. Furthermore, the CEC has no statutory capacity or willingness to meet multiple public interest objectives and re-invest appropriately into the sectors and communities from which revenues are raised in Scotland. On this basis, we conclude that the CEC as presently run represents a series of missed opportunities and is either incapable or unwilling to change its ways. Urgent reform is required and the control and management of the organisation in Scotland must be changed.

4 The need for reform

77. Andy Wightman identified a widespread consensus across Scotland “that the status quo is not defensible”¹²⁹ and that the responsibility for the administration and revenues of Crown property rights in Scotland – currently managed by the CEC, should be devolved. We identified two main reasons for this: first, as Community Land Scotland put it, the current arrangement is not “the best structure to allow for proper governance, accountability, openness and transparency”.¹³⁰ In other words, the CEC is not fit for purpose in Scotland. The second reason, as Andy Wightman argued, is that there is “no conceivable logic” in continuing with an arrangement that “splits the administration of Scotland’s Crown rights between two separate bodies in two separate legal jurisdictions”.¹³¹ In other words, there is no constitutional logic to the Crown property rights in Scotland that currently make up the Crown Estate in Scotland being managed by the CEC as part of the Crown Estate.

78. Linda Rosborough, Acting Director, Marine Scotland expanded upon the constitutional issue in terms of the role of the CEC in Scotland. She explained: “the arrangement by which management of the seabed and other elements of the land administered by the Crown Estate are decided upon by a body at arm’s length from Scotland on a UK basis causes a gap in terms of accountability and engagement and a disconnect”.¹³² Councillor Walsh, Argyll and Bute Council, described these arrangements as “anachronistic in a post-devolution Scotland for the Scottish Parliament not to have some form of authority over the Crown Estate”.¹³³ Ruchir Shah, Head of Policy Department, SCVO, said that the organisation proposed the devolution and management of the Crown Estate in Scotland to the Scottish Parliament, as this would achieve “robust scrutiny of an important resource like the Crown Estate in Scotland”.¹³⁴

Two-phase decentralisation

79. On 22 June 2011, Scottish Government published a paper entitled ‘*Scotland Bill—Crown Estate*’, which sets out its case for the management and revenues of the Crown property, rights and interests in Scotland that are part of the Crown Estate to be devolved.¹³⁵ It is proposed that the Scotland Bill be amended to remove two sub-clauses from the current 1998 Scotland Act (Schedule 5, Pt 1, 2.2 and 3(3)a). This would mean that the CEC would no longer operate in Scotland. Instead, the Scottish Parliament and Scottish Government would be responsible for the management and revenues of the Crown property rights that currently make up the Crown Estate in Scotland.

129 Q 437

130 Ev 130

131 Ev 132

132 Q 609

133 Q 252

134 Q 297

135 www.scotland.gov.uk/Publications/Recent/CrownEstate-22-06-11

80. The Scottish Government also explained that following agreement that the CEC's responsibilities in Scotland will be devolved, the changes to the administration of the Crown Estate in Scotland would be introduced in phases as follows:

Phase 1: Pending implementation of the legislation to devolve the CEC's responsibilities and powers in Scotland, a range of interim changes to the CEC's operations will be introduced to improve accountability, transparency and policy alignment, including a separate Scottish operating division.

Phase 2: When the Scottish Government becomes responsible for the Crown property rights currently managed by the CEC (and following a wide public and stakeholder consultation during the transition period) the Government will bring forward proposals to involve local authorities and communities in decisions about marine resources.¹³⁶

81. We identified widespread support for this two phased approach to the devolution of the responsibilities of the CEC. Andy Wightman concluded that the CEC should no longer have any role at all in Scotland. He said: “as a first stage, we should remove the Crown Estate Commissioners from any legislative competence in Scotland [...] and hand over the powers to the Scottish Parliament”.¹³⁷ He continued:

the national interest needs to be represented by the Scottish Government, or an arm's-length body such as a public lands trust, who would steward these resources in the national and public interest. That is a big difference from the position now where the Crown Estate Commissioners are unaccountable and are not managing in the public interest; they are managing it according to very strict criteria under the 1961 Act. You would then have a scheme of devolution to local authorities, and that scheme would involve both the administration of the rights and the extent to which that was devolved, and the sharing of the benefits.¹³⁸

82. Councillor Foxley, Highland Council, also advocated “the devolution of the management not just to Scotland but further down to local authorities and even further down to local community owned harbours and community owned land”.¹³⁹ Lorne MacLeod, Community Land Scotland, argued that there should be delegation to the very local level—to community development bodies and community landowners, and, where they do not exist “powers should be given to local authorities”.¹⁴⁰

83. Some witnesses expressed concern about the potential devolution of the CEC's responsibilities, in particular to local authority level. A lack of information about the potential outcome of devolution meant the British Ports Association was “unconvinced that devolution of the Crown Estate will produce significant benefits and could, in fact,

¹³⁶ *Ibid.*,

¹³⁷ Q 453

¹³⁸ Q 453

¹³⁹ Q 249

¹⁴⁰ Q 438

produce disbenefits”.¹⁴¹ Tobermory Harbour Association also noted apprehension in relation to proposals to devolve some of the powers of the CEC to local authorities.¹⁴²

84. Despite these reservations, we found widespread consensus in support of the devolution of the CEC’s responsibilities to the Scottish Parliament, based on a commitment to two phase devolution. We were concerned then, when Councillor Walsh, Argyll and Bute Council, confirmed that there had been no specific discussions between the Scottish Government and the Convention of Scottish Local Authorities (COSLA) in relation to the “operational nature” of the future management of the Crown Estate in Scotland if the CEC’s responsibilities were devolved to Scotland.¹⁴³

85. David Wilson conceded that there had been little discussion of the detail as the focus had been on “making the case for the devolution of those powers to enable the Scottish Parliament and Scottish Ministers to consult and decide on how they would utilise those powers”.¹⁴⁴ Linda Rosborough, Acting Director, Marine Scotland, nonetheless added that the Scottish Government had “very clear” policies on safeguarding the role of local authorities [...] and that the approach to the future of the administration of the Crown Estate would be based on those policies”.¹⁴⁵

86. We recommend that the responsibilities of the CEC for the administration and revenues of the ancient Crown property, rights and interests in Scotland, which are currently managed as part of the Crown Estate, should be decentralised. Upon receiving satisfactory assurances, the Secretary of State should make the necessary legislative provision.

87. The overwhelming majority of our witnesses emphasised that it is essential that the CEC’s responsibilities do not all end up centralised in Edinburgh. If that was the case, many of the key issues that we have identified in this report would not be addressed. While we welcome that fact that the Scottish Government is proposing a two phased devolution process, we were somewhat surprised and concerned at the lack of detail provided by the Scottish Government as to how this could be achieved in practice and the lack of evidence that any serious consideration had been given to this.

88. We therefore recommend that the Secretary of State for Scotland should enter discussion with the Scottish Government to ensure that any devolution of the CEC’s responsibilities be conditional on a clear commitment and a detailed agreement, based on the principle of subsidiarity, to the further decentralisation to the maximum extent possible of the CEC’s responsibilities to local authority and local community levels.

Transition

89. A specific concern identified by many of our witnesses was that the expertise of the CEC’s staff based in Scotland could be lost if responsibilities were devolved. The CEC

141 Q 209

142 Ev 129

143 Q 253

144 Q 677

145 Q 665

mainly operate through agents and contractors, but the number of staff based in Scotland has increased in recent years as the marine energy sector has developed, to 35 in 2011.¹⁴⁶ Some of these staff have a Scotland remit, while others operate UK wide. Gareth Williams, SCDI, identified that the CEC’s Edinburgh office has within it “a level of expertise that has been very useful, particularly to the marine energy and offshore wind industries”.¹⁴⁷ Alasdair Rankin of the CEC also noted their expertise in the aquaculture sector: “we have a lot of the information, a lot of the data, a lot of the management experience”.¹⁴⁸

90. Sandy Brunton, SIF, described the CEC staff “as well qualified for what they currently do” and suggested that it would be mutually beneficial for the CEC staff to be transferred to Marine Scotland. “to do the job that they are currently needed to do but with a different remit and more input”.¹⁴⁹ Linda Rosborough acknowledged that in the event of devolution, a lot of work would be required, including “the financial arrangements, the staffing, the administration, the workload, the details of the work that the Crown Estate Commissioners do, and the scope for how that could be managed differently in Scotland, including the arrangements whereby staff might be moved to a different structure or there might be cross-border management arrangements going forward”.¹⁵⁰

91. Witnesses also identified the specialist resources currently held by the CEC. Linda Rosborough mentioned the marine planning tool—MaRS, and said that Marine Scotland had an agreement with the CEC for full access to the MaRS information.¹⁵¹ We see no reason why this information could not be transferred, and also suggest the CEC’s staff based in Scotland are given the opportunity as employees of a public body to transfer to an appropriate part of the Scottish Government at devolution.

92. We recognise there would be a period of time between the decision to devolve responsibilities of the CEC, and this coming in to effect. There must be a smooth transition, so as to avoid delay or disruption to the development of Scotland’s marine renewable energy sector. A key element of this is the maintenance of the expertise of the CEC’s staff currently based in Scotland. We recommend this be a priority in any transition.

Financial implications

93. The devolution of the CEC’s responsibilities to the Scottish Parliament would not change the Crown’s ownership of the property and property rights in Scotland currently managed by the CEC. However, the position over a revenue settlement would need to be considered. The Scottish Government has proposed that: “given the relatively small sums of money involved, the variability of revenues, past sales of assets and future investment plans, the Scottish Government believes this should be taken forward on a no detriment

146 Ev 125

147 Q 597

148 Q 802

149 Q 330

150 Q 683

151 Qq 604–605 and 734

basis and will negotiate on a block grant adjustment”.¹⁵² We agree with the Scottish Government that these issues need to be taken into account, and the block grant adjusted accordingly.

94. The Exchequer Secretary to the Treasury wrote to the Scottish Parliament's Scotland Bill Committee in relation to the Barnett formula, and referred to the small percentage contribution from Scotland to the CEC's net surplus which is transferred to the Treasury each year, compared to the higher percentage used to calculate what Scotland receives under the Barnett formula. The Exchequer Secretary, while stressing that there is no direct relationship between these two figures, stated that “the contrast does demonstrate an indirect benefit to Scotland from the Crown Estate's presence and investment in Scotland”.¹⁵³ By implication therefore, devolving the CEC's responsibilities in Scotland to the Scottish Parliament might be considered to be of an indirect financial benefit to the rest of the UK.

95. The limited amount involved is illustrated by the figure of £5.7 million supplied by the Treasury as the net profit from the CEC's operations in Scotland in 2010–11.¹⁵⁴ This was 2% of the CEC's overall net profit of £231 million that was transferred to the Treasury in the same year. Based on the CEC's marine revenues in Scotland, the Treasury will be returning £3.9 million to Scotland for 2010–11 through its new Coastal Communities Fund.¹⁵⁵ This funding is equivalent to over two-thirds of the CEC's net profit of £5.7 million from Scotland. The Scottish Parliament's Scotland Bill Committee reached a consensus conclusion that “the ‘loss’ of these revenues to either the CEC's business model or HM Treasury is so small as to be of no detriment to any future change or to be prejudicial to the other parts of the United Kingdom”.¹⁵⁶

96. There is a clear and compelling case that the CEC's responsibilities in Scotland should be decentralised on the basis that: there is a widespread consensus; there should be no detriment to either the UK or Scotland, and; that the framework should be based on further decentralisation to more local levels wherever possible. Devolution on this basis would bring many benefits to Scotland. As described in the second half of this report, these benefits would include the opportunity to have a multiple objective, integrated system of marine leasing and licensing that would benefit all sectors using Scotland's marine environment, as well as the long overdue chance for coastal communities to be involved with and to benefit directly from the management of the marine environment in their area.

97. The second part of our report therefore outlines a potential framework for further measures in relation to the devolution of the ancient Crown property, rights and interest managed by the CEC in Scotland, which is based on the following principles:

152 Ev 152

153 This correspondence is available at www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/31329.aspx

154 See para 39.

155 See paras 148-153.

156 Scotland Bill Committee, *Report on the Scotland Bill*, 1st Report, 2011 (Session 4).

- i. The Crown property, rights and interests involved are public assets which should be managed for the benefit of the people of Scotland.
- ii. Further specific measures should ensure that the most appropriate outcome is achieved for each of the different Crown property, rights and interests.

The measures should be based on the principle of subsidiarity, with responsibilities for the administration and revenues of the individual Crown property rights devolved to the most local level possible in each case.

5 Marine rights

98. During the course of our inquiry, we identified a widespread consensus in relation to the problems and the weaknesses of the CEC as it operates in Scotland, including: the absence of accountability, the narrowness of its financial focus and the lack of benefits, and the consequent economic leakage, in particular from the Highlands and Islands. We also identified a broad consensus that the only solution to these issues is that the responsibilities of the CEC in Scotland should be devolved to Scotland. However, there was less common ground over the details of how the rights, and the revenues raised from those rights, should be best managed, administered and distributed following devolution.

99. In this context, we decided to consider the rights individually, in order to identify the most suitable level of governance for the administration of each of the different types of Crown property rights involved. While they include most prominently the Crown's seabed and foreshore rights, they also include the CEC's responsibilities for two historic sites and four other ancient Scottish Crown property rights, as well as the four rural estates and one urban investment property that make up the CEC's modern acquisitions in Scotland.

100. In this chapter we focus on the marine rights—those to Scotland's foreshore and seabed. In the next chapter we briefly consider the other ancient rights and modern acquisitions managed by the CEC in Scotland. Much of the detail of these proposals will require further consideration and consultation. Nonetheless, we have attempted to outline a framework and set out the basic principles, which it is hoped could form the basis of an agreement going forward.

Crown foreshore

101. In Scots law, the foreshore is defined as the area between the high and low water marks of ordinary spring tides (or the strip of coastline between the land and the seabed) and is presumed to be owned by ancient right by the Crown, except in areas under udal tenure in the Northern Isles or where the ownership has been acquired from the Crown.¹⁵⁷ Approximately 50% of the length of Scotland's foreshore is still held by the Crown and managed by the CEC as part of the UK wide Crown Estate.¹⁵⁸ The foreshore is subject to many uses and has been a traditional source of income for the CEC from leases and sales. Over 80% of the length of Scotland's foreshore is in the Highlands and Islands.¹⁵⁹

102. The Highland Council recommended that the administration and revenues of the Crown foreshore in Scotland should be devolved to the Scottish Parliament, and then transferred to each local authority where Crown foreshore occurs.¹⁶⁰ In the 2007 CERWG report, the case was set out that the CEC's responsibilities for Crown foreshore in Scotland should be devolved to local authorities.¹⁶¹ In doing so, the report noted the existing

157 Ev 190

158 Ev 190

159 Ev 182

160 Ev 183

161 Ev 182

responsibilities and involvements of local authorities with the foreshore and the fact that the CEC themselves had recognised the logic of involving local authorities in the management of Crown foreshore by issuing regulatory leases.¹⁶² The foreshore is currently covered by Scotland’s statutory planning system and half of it managed by owners other than the Crown. As Andy Wightman commented, devolving the CEC’s responsibilities would only involve the transfer of the administration and revenues of the Crown foreshore in Scotland, and not a change in the Crown’s ownership of these lengths of foreshore. He continued:

I am quite clear that those foreshore rights should be left with the Crown, although you could simply transfer them by a general vesting declaration to local authorities. I would not have a problem passing the ownership of the foreshore currently owned by the Crown into the hands of local authorities. Even if you did not do that, I think local authorities should administer the foreshore and should have clear powers to alienate the foreshore particularly to harbour trusts, ports and people, for example.¹⁶³

103. If the CEC’s responsibilities were devolved to local authorities, they would have the authority to dispose of Crown foreshore. Many of our witnesses, however, noted that there should be a general presumption against disposing of lengths of foreshore as it is a national public resource. Alasdair Rankin, Head of New Business Developments in the Marine Estate, CEC, opposed the devolution of the rights to the foreshore to local authorities as it would result in the “overall fragmentation of the coastal estate” which he described as “negative”.¹⁶⁴ On the other hand, Sandy Brunton, SIF, recommended that the rights be devolved even further beyond local authorities to local development trusts or community councils.¹⁶⁵

104. We recommend that the CEC’s responsibilities for Crown foreshore in Scotland be devolved to the local authorities. The benefits of this would include clear local accountability, responsiveness to local conditions and an end to the current economic leakage from the CEC’s charges, as well as revised rents set to reflect multiple objectives in contrast to the CEC’s narrow commercial remit.

105. The Secretary of State for Scotland should enter into discussions with the Scottish Government and Scotland’s local authority representatives with a view to securing a consensus over the devolution of the CEC’s responsibilities for Crown foreshore in Scotland to local authorities.

Harbours

106. The Highlands and Islands local authorities suggested that local authority and other public sector statutory harbour authorities should also be able to take over the ownership of any Crown foreshore within their immediate harbour areas.¹⁶⁶ The Scottish Islands

162 CERWG, *The Crown Estate in Scotland- New Opportunities for Public Benefits*, 2007

163 Q 509

164 Q 800

165 Q 314

166 Q 509

Federation noted that the CEC “does not seem to recognise the difference between ownership and management in the context of devolution. With public harbours, there is a distinct contradiction between public and community benefit and the focus of CEC on capturing their development value and transferring it out of the area”.¹⁶⁷

107. Trust Ports are individually constituted local harbour authorities, community bodies with a requirement to re-invest any profits in their harbour area. During our visits to the Highlands and Islands, we met representatives of a number of Trust Ports, including Lerwick, Scrabster, Wick and Stornaway. Many of them highlighted the important social and economic benefits from the transfer of the ownership of any Crown foreshore within their immediate harbour—as this would allow all profits to be re-invested in the harbour area to the benefit of the local community.

108. Community Land Scotland argued that appropriate community land owning bodies should also be able to acquire Crown foreshore adjoining their land, and that foreshore rights should be delegated to the community landowners.¹⁶⁸ As Lorne MacLeod explained “many community land groups have historical foreshore rights themselves”.¹⁶⁹

109. Foreshore land is within the scope of the community right to buy legislation in Scotland. Lorne MacLeod advocated a scheme similar to the Scottish Government’s National Forest Land Scheme for the foreshore:

where communities could come forward to the Forestry Commission and say they wanted to purchase an area of forest to which they would be able to add value in terms of economic development or alternatively, lease that land.¹⁷⁰

110. However, not all appropriately constituted community bodies have the same level of capacity. Such a scheme for the foreshore could therefore include other options in addition to purchase and leasing, for example, management agreements. Andy Wightman suggested that communities should pay to acquire Crown foreshore as a public resource (as is currently the case with any Scottish Government land acquired through the National Forest Land Scheme).¹⁷¹ However, as he pointed out, the foreshore is arguably worth nothing unless developed and that this is reflected in the CEC’s approach of only attributing a capital value to an area of foreshore as part of the Crown Estate, if it is covered by a commercial lease.¹⁷²

111. With ownership, Trust Ports and community land organisations would become responsible for expenditure involved in managing their own foreshore and also benefit from any net income that it might produce. However, with the Crown foreshore administered by the local authorities, the revenues would, as Andy Wightman commented:

167 Ev 169

168 Q 441

169 Q 509

170 Q 518

171 Q 513

172 Ev 188

have to go into a separate pot because, technically, they still belong to the Crown, but all of that would be subject to your revenue plans and what you were doing. You could say that all profits and income, capital and revenue from the foreshore should go into local authority funds.¹⁷³

112. The Highlands and Islands local authorities warned against the use of this income for general expenditure.¹⁷⁴ Instead they proposed that, for both foreshore and seabed revenues, the net income should be administered by Area Coastal Partnerships, as part of a broader scheme for the management of funds at community, regional and national level.¹⁷⁵ This scheme is considered in further detail in paras 141-144 of this report.

113. We recommend that any devolution settlement over the CEC's foreshore responsibilities should enable Trust Ports, public sector harbour authorities and appropriate community landownership bodies, to take over the ownership of Crown foreshore.

Seabed rights

114. The ownership of Scotland's territorial seabed is an ancient possession of the Crown in Scots law and the most prominent of Scotland's Crown property rights managed by the CEC as part of the Crown Estate. Since the CEC was first established in 1956, and through international treaties enacted into UK law, the extent of Scotland's territorial seabed and the CEC's responsibilities have expanded out to 12 nautical miles, with additional rights vested in the Crown over the seabed of Scotland's adjoining continental shelf area out to the 200 nautical mile limit.¹⁷⁶

115. The Crown owns virtually all of Scotland's seabed other than some small scale coastal sites associated with harbours or other developments and an area in the Firth of Forth, which was sold to the Port of Leith in the 1930s.¹⁷⁷ As Andy Wightman said, the seabed is therefore "national public land".¹⁷⁸ Anybody intending to make use of Scotland's territorial seabed outwith these minor exceptions needs to obtain the permission of the CEC, as is the case for use of the seabed in the adjoining continental shelf area. If the CEC agree to a proposed use, they will grant permission through a lease or other legal agreement and charge rent or other fees.

116. In addition to the agreement of the land owner through the CEC, most uses of the seabed also require permission through the statutory marine planning system in Scotland. There has been a series of major developments in marine planning and regulation in Scotland since devolution: not least the establishment of Marine Scotland, the Marine (Scotland) Act 2010 and the development of a National Marine Plan by the Scottish Government which covers both Scotland's territorial sea and continental shelf areas. Linda

173 Q 512

174 Q 282-284

175 Ev 206-208

176 Ev 190

177 *Ibid.*,

178 Q 449

Rosborough, Acting Director, explained that Marine Scotland had been formed to bring together a “centre of gravity to provide for the integrated management of the sea”.¹⁷⁹ She concluded that these developments: “provide for an integrated system of marine licensing [...] and for marine planning. For the first time you have the possibility of plan-led development in the sea”.¹⁸⁰

117. As described earlier, the CEC’s role in Scotland’s marine environment has been the focus of most of the evidence we received and demonstrated a broad consensus that the CEC’s reserved responsibilities in Scotland for administering the Crown’s seabed rights and their revenues should be devolved. Given the importance of the seabed we were surprised that, as Rob Hastings acknowledged, the CEC did not “specifically have a plan for the management of the seabed”, but a “Marine Estate business strategy”,¹⁸¹ which meant that certain sectors had been prioritised for development “within a strategic framework for the business”.¹⁸² While the CEC has a business plan in terms of optimising revenue from the seabed, this is quite different to a plan for the strategic management of the seabed.

118. Sandy Brunton, SIF, said that given the increasing importance of the sea, more strategy is required to manage it: “that is why we believe that an investment company is basically working within its own parameters at the minute, but it needs to have a much wider remit to consider things for the benefit of the future”.¹⁸³ Philip Maxwell, Chairman, Islay Energy Trust, noted that it would be more appropriate for issues to do with the seabed to be dealt with by an authority in Scotland, because it would then be accountable.¹⁸⁴ Linda Rosborough added that: “the nature of the arrangement within which the Crown Estate Commissioners operate is to maximise the financial revenues and benefit. They do not have a wider community development or economic development perspective, and because that is their main driver that governs how they approach the whole issue of the management of the landlord’s role of the seabed. That is a constraint from the point of view of those who look to see the benefits of the prospective new industry in the waters around Scotland benefit Scotland’s communities”.¹⁸⁵

119. Many of our witnesses subsequently concluded that Marine Scotland, rather than the CEC would be best placed to administer and manage the Crown property rights to the seabed in Scotland. Brian Swinbanks said:

This idea that the seabed is a sheet of paper covered in pound notes, and all conversations seem to lead back to pound notes, is utterly wrong going forward in the 21st century. The person that runs the seabed in the future must be given a duty of care over the seabed [...] This has to be down to something like Marine Scotland.¹⁸⁶

179 Q 601

180 Q 601

181 Q 781

182 Q 782

183 Q 294

184 Q 297

185 Q 624

186 Q 239

120. However, there was less clarity amongst witnesses over the specific details of how new devolved arrangements for managing seabed rights and their revenues might best be implemented. In considering the future arrangements for these rights, several different aspects need to be considered, including: “ownership, administration of the rights, planning and revenues”.¹⁸⁷

121. We agree that there is a need for a plan for the strategic management of the seabed in Scotland, which is integrated with the planning system and delivered for the benefit of local communities and users, indigenous industries and developers. The CEC are not best placed to offer this, and we welcome the creation of Marine Scotland as a body with the potential to oversee and co-ordinate this, taking a more holistic view of the management and use of Scotland’s seabed than has been the case with the CEC.

Ownership

122. As with the transfer of foreshore rights, the devolution of the CEC’s responsibilities for the Crown’s ownership of the seabed in Scotland to the Scottish Parliament, would not directly affect the Crown’s ownership of Scotland’s seabed. Devolution would only transfer the responsibilities for administering the seabed rights and their revenues from the CEC, not change the Crown’s ownership.

123. Scotland’s seabed is a major national public estate and Andy Wightman argued that there should continue to be a clear presumption against sales of the seabed, except some small areas in restricted circumstances directly connected to the coast.¹⁸⁸ In considering the need to protect the public interest in the seabed in possible decentralised arrangements, Mr Wightman commented that: “it may be at that level that no local authority would be allowed to alienate or sell the seabed without the consent of Scottish Ministers, for example. They can quite happily enter into leases that should be no longer than a certain period”.¹⁸⁹

124. Witnesses identified two particular situations where there is a case for disposing of Crown seabed in Scotland. The first concerns Scotland’s public sector harbours and in particular Trust Ports. While some of the Trust Ports already own their harbour seabed (for example, Aberdeen), most do not. As with the foreshore, the Trust Ports themselves and the Highlands and Islands local authorities proposed that ownership of the seabed within their immediate harbour area should be held by each of Scotland’s Trust Ports.¹⁹⁰ In addition, the local authorities argued that there should also be arrangements for Scottish Government and local authority harbour authorities to become owners of the seabed within their harbours.¹⁹¹

125. The second instance where the disposal of an area of seabed was suggested was where the seabed had been permanently reclaimed into land, for example as part of a harbour

187 Q 474

188 Qq 504 and 505

189 Q 505

190 Q 506

191 Ev 208

development, as at Tobermory, or as part of other coastal developments.¹⁹² The CEC has continued to charge rent for some of these areas. A more straightforward and appropriate outcome in most circumstances would be that the conversion of seabed to land would lead to the transfer of the land from the Crown.

126. We recommend that the CEC’s responsibilities for Crown property rights over Scotland’s territorial seabed and adjoining continental shelf area, and the revenues raised from these rights, be devolved to the Scottish Parliament. Whatever devolved arrangements might be put in place, there should be a clear presumption against the disposal of Crown seabed except in the instances of permanent seabed land reclamation and the immediate harbour area of Trust Ports, other public sector harbour authorities and community owned companies which operate harbours.

127. The Secretary of State should enter discussions with the Scottish Government with a view to securing a consensus over the devolution to the Scottish Parliament of the CEC’s responsibilities for Crown property rights and their revenues over Scotland’s territorial seabed and adjoining continental shelf area.

Administration

128. The CEC’s two basic responsibilities in relation to the seabed are the administration of the seabed rights and of the revenues raised from them. However, Highlands and Islands Enterprise identified that in both “administrating these rights, and undertaking activities aimed at maximising the commercial return of these rights, there appears to be a conflict of interest for the CEC”.¹⁹³ These responsibilities are covered by different reservations in the Scotland Act 1998 and if devolved, the outcome for each could be different, so that this potential conflict of interest could be avoided under the new arrangements.¹⁹⁴

129. In its 2010 report, the Treasury Committee expressed concern in relation to the UK’s two tier public sector leasing and licensing system compared to other European maritime states, a consequence of the involvement of the CEC.¹⁹⁵ Mr Wightman commented: “in most other European countries, developers simply go to one agency in the Government and sort things out, whereas here they need to go to two. It would lead to greater efficiency if the Crown Estate Commissioners were removed from the picture”.¹⁹⁶ Marine Scotland also commented “if you look in other countries generally there is not the same difference between the seabed in terms of the lease and also the licence”.¹⁹⁷

130. Many witnesses identified that the devolution of the CEC’s responsibilities for the seabed would present an opportunity to integrate the issuing of seabed leases with the system of marine planning. The Scottish Government has proposed that Marine Scotland be responsible for both “rather than the current situation with two bodies in two different

192 Q 245–246

193 Para 13

194 S Act 1998, Schedule 5, Part 1, 2(3) and 3(3)(a)

195 HC 325

196 Q 457

197 Q 632

jurisdictions, operating under different policies”.¹⁹⁸ It noted “this would give greater clarity to developers” and “an enhanced range of levers to deliver both upstream and downstream benefits”, including the “mitigation of social and economic impacts”.¹⁹⁹ Marine Scotland added that the “greater integration would be advantageous in terms of bureaucracy and clarity of process, and transparency and accountability”.²⁰⁰

131. While Phil Thomas welcomed the rights being devolved to the Scottish Government, primarily because it would bring “democratic accountability closer to the community”,²⁰¹ he was not sure that you should simply “bundle up” the whole of the CEC’s activity into Marine Scotland—primarily because of the “difficult association of the ownership of the asset and the development planning”.²⁰² If this approach were followed, there would need to be adequate distinction between the regulatory role and the financial benefits deriving from the leases (landlord and regulator). Linda Rosborough agreed that there was an issue that no regulator should benefit financially from the decisions that they make but said that officials were “quite used, within Government, to having functions that have separation”.²⁰³ She added:

We have a regulatory process that involves both regulation in terms of the environmental side and access to the asset. It is perfectly possible within one organisation to have both roles. What you would not do is allow that bit of Scottish Government to have itself a financial benefit resulting from that. That would have to be safeguarded in the process, and again that would be quite normal in terms of the way in which government accounting works.²⁰⁴

132. Scotland’s new marine planning system will be implemented by dividing Scotland’s territorial sea area into Marine Planning Partnerships. Linda Rosborough explained:

We also in Scotland have a provision that is not shared elsewhere and is not part of the legislation that governs 12 to 200 nautical miles, but that provides for the delegation of marine planning powers to local partnerships. There are specific requirements in the legislation about the composition of those partnerships and that provides the planning framework for Scotland going forward, a high level national marine plan incorporating elements prepared under the Westminster legislation, 12 to 200, and the Scottish legislation, 0 to 12, supplemented by Scottish marine regions that will have marine planning partnerships formed of local public authorities and local stakeholders. They will have delegated marine planning responsibilities within the framework of the national plan.²⁰⁵

198 Ev 151

199 *Ibid.*,

200 Q 632

201 Q 423

202 Q 423

203 Q 633

204 Q 636

205 Q 605

133. Brian Swinbanks, Tobermory Harbour Association, described these Marine Partnerships as being “the way forward”,²⁰⁶ as they could provide a decentralised and integrated regime that is transparent and accountable, based on multiple objectives and in this and other ways more responsive to local circumstances, than with the current involvement of the CEC.

134. While these partnerships will each be developing regional marine plans within the framework of the national marine plan, they could also develop regional policies for seabed leases within a national framework. For example, Tobermory Harbour Association, the Islay Energy Trust and Community Land Scotland each expressed a strong desire to be able to promote the development of their communities through such arrangements over the use of their local seabed.²⁰⁷ There is no reason why partnerships should not be able to enter into leases or other agreements with individual coastal communities. A specific example is West Highlands Moorings Association, which identified the need for the local management of moorings.²⁰⁸ Marine Planning Partnerships could support and encourage the development of a pattern of community based local mooring associations, which could be managed by locally accountable community bodies, such as community development trusts or community land owning bodies.

135. We welcome the new Marine Planning Partnerships, particularly as they could provide a decentralised yet integrated regime, which is also accountable to local communities. The Partnerships should address many of the concerns expressed to us about the lack of community involvement in decisions making for developments in local coastal waters.

Revenues

136. Arguably, the greatest cause for anger towards the CEC amongst our witnesses was that revenues raised by the CEC in Scotland are removed to a “general pot in London”, when they should be used for the benefit of the sectors and communities from which the revenues are raised. Even amongst those ambivalent about devolving the CEC’s administration, there was broad consensus that revenues raised in Scotland should stay in Scotland.²⁰⁹ As noted above, in the proposed post-devolution arrangements, it is anticipated that the Marine Planning Partnerships would issue the territorial seabed leases and also collect the revenues. In its paper on the Crown Estate, the Scottish Government also proposed the creation of a national ‘Future Generations Fund’,²¹⁰ which Philip Maxwell, Chairman, Islay Energy Trust, described as “a very good idea”.²¹¹

137. Community benefits were identified by the Scottish Government as one of the two main purposes proposed for that fund.²¹² We were therefore surprised that the Scottish

206 Q 243

207 Ev Ev 129 and Ev 166

208 Qq 223–240

209 Ev 150

210 Q 685

211 Q 300

212 Ev 150

Government had not had any discussions with the Highlands and Islands local authorities about this.²¹³ Furthermore, Marine Scotland was unable to indicate the proportion of the fund that might be allocated to community benefit, beyond that the Scottish Government’s paper “makes it clear that communities is core to the thinking for the future,”²¹⁴ nor was there a clear response on whether the Scottish Government would match the 50% of the revenues to the community, to be allocated by the UK Government’s Coastal Communities Fund.²¹⁵

138. Given this lack of detail, we sought to clarify the proportions of revenues that might be allocated between the national, regional, local authority and local community levels, and how those proportions might be best decided upon and administered. The Islay Energy Trust wanted to see revenues administered locally, with the possibility of a cap on maximum revenues with the surplus going to a national fund.²¹⁶ While Ruchir Shah, SCVO, agreed that “primacy should be given to those communities that are directly affected in that area [...] then surpluses should be available through a national fund mechanism”,²¹⁷ he admitted that the SCVO were “struggling” with which way those revenues should flow. He said: “if revenues were aggregated at a national level first and then distributed onwards, that would be easier to scrutinise than a fragmented set of funds in different areas, with some surpluses coming through”.²¹⁸ However, the SCVO agreed that all revenues generated within a community should return to that community and that “where the revenue generated exceeds a level appropriate for the scale of that community, revenue should flow into a national fund for distribution to other areas”.²¹⁹

139. Councillor Cluness told us that, “in theory” it would be “reasonable for a certain relevant section of income from the CEC to go to Scotland as a whole [...] provided that [...] there was some secondary system whereby the areas that are directly related to these developments achieve a fair degree of income as well”.²²⁰ Community Land Scotland noted that it was particularly challenging to define specific seabed and community areas with ease, and that “any simple rules to govern potential arrangements are elusive”.²²¹ Sandy Brunton agreed that while it was not possible to achieve a straightforward formula, the principle should be to seek to achieve the most local level of management of resources. He explained that “one size does not fit all” because not every community has the same “capacity, networks or access”,²²² and therefore “to do it correctly is complicated and it can be an extensive process, but in the long term the benefits will always outweigh the challenges”.²²³

213 Q 252

214 Q 671

215 Qq 692–695

216 Ev 167

217 Q 301

218 Q 303

219 Ev 181

220 Q 263

221 Ev 211

222 Q 299

223 Q 299

140. In terms of the management and distribution of revenues by local communities, witnesses proposed several different models by which this could be achieved. The Orkney Fisheries Association suggested Sea Benefit Trusts, while Comhairle nan Eilean Siar noted that the existing Western Isles Development Trust model (established to ensure community benefit from onshore wind developments), could be used as a basis for wider disbursement of revenues.²²⁴

141. The Highlands and Islands local authorities submitted a joint memorandum which outlined an indicative model and illustrative principles for the management of revenues from the seabed and foreshore leases at a regional and local level. This model “seeks to ensure that communities which host marine developments are the key beneficiaries of deployments and are placed at the heart of decision-making in regard to future investments in their local areas [...] whilst also ensuring strategic coherence at a regional and national level”.²²⁵

142. The proposals distinguish between national interest developments and regional and local developments around the Highlands and Islands. National interests are defined as those relating to infrastructure “which will deliver national priorities or are deployments of such a scale that they represent a significant national impact”, for example, inter-regional grid infrastructure or strategic marine spatial planning and licensing.²²⁶ It is proposed that around 20% of lease income generated in the Highlands and Islands should be retained for national developments, while 80% should support regional and local development activity.

143. To this end, the Highlands and Islands local authorities propose the creation of a Regional Coastal Partnership to undertake the marine estate management function of the CEC. They also propose the creation of six Area Coastal Partnerships in the Highlands and Islands, which would: “identify and promote investment opportunities which will stabilise and grow local coastal communities and will also disburse lease revenue funding into these communities in accordance with strategic criteria set out by the Regional Coastal Partnership”.²²⁷ The 80% of lease revenues to be administered by both Regional and Area Partnerships will ensure that all areas in the Highlands and Islands “will benefit appropriately from the development of marine renewable energy”.²²⁸

144. Highlands and Islands Enterprise expressed its support for these “high-level recommendations”. It added that given its “region wide remit for economic and community development, and with the benefit of knowledge which comes from our decentralised delivery system, HIE would be in a strong position to administer funds both at the strategic and local levels and we would welcome the opportunity to be part of local partnerships, with local authorities and others, to achieve these important outcomes”.²²⁹ The experience of Highlands and Islands Enterprise in administering funds was

224 Ev 165

225 Ev 206

226 Ev 207

227 *Ibid.*,

228 *Ibid.*,

229 Ev 210

acknowledged by witnesses who supported the fact that “they very much encourage a bottom up approach and engagement”.²³⁰

145. We recognise that with the devolution of the CEC’s responsibility for the seabed in Scotland, the integrated system of marine planning, regulation and leasing over the use of the seabed must flow from the centre outwards. However, we recommend, as a matter of principle, that the allocation of the revenues from that use should flow the other way. On this basis, the areas where the revenues are being earned should benefit first before revenues flow up to wider geographic scales. While further discussion is necessary on the proportions of revenues to be allocated at each level—this should be strongly weighted in favour of the local community.

146. While further work and wider public consultation is required to agree final arrangements, we recommend that discussion and consultation proceeds on the basis of the proposals set out by the Highlands and Islands local authorities for managing the seabed revenues, thereby providing a clear framework on which to base discussion about future arrangements.

147. We recommend therefore, that the Secretary of State for Scotland in seeking a consensus with the Scottish Government on proposals to devolve the CEC’s responsibilities for the administration and revenues of the Crown’s property rights to Scotland’s territorial seabed and continental shelf area to the Scottish Parliament, should do so on the basis of a clear commitment to decentralised arrangements for administering the revenues along the lines proposed by the Highlands and Islands local authorities.

Coastal Communities Fund

148. During the course of our inquiry, in July 2011, the UK Government announced a new Coastal Communities Fund to be financed by the Treasury with an amount equivalent to 50% of the CEC’s marine revenues, calculated and distributed each year by the Big Lottery Fund on a regional basis.²³¹ Scotland was split into two regions: the Highlands and Islands and the rest of Scotland. Chloe Smith MP indicated that based on marine revenues from the Crown Estate in 2010–11 the UK fund in 2012 is worth £23.7 million. The figure would be £3.9 million for Scotland—broken down as £1.85 million to the Highlands and Islands, and £2.05 million to the rest of Scotland.²³² She explained that the Big Lottery Fund was chosen because it had a record of delivering with as little bureaucracy as possible, and that it is one of the very few organisations that have a UK wide reach.²³³

149. However, Andy Wightman pointed out that the Fund:

could simply be withdrawn at any time. It is not embodied in statute; it is mainly a Treasury initiative which could disappear at any time. I do not think you will find

230 Q 304

231 The Fund will not use revenues from the Crown Estate, but is based on the Treasury financing the Fund with an amount equivalent to 50% of the CEC’s marine revenue each year.

232 Q 893

233 Q 888

anyone who does not welcome money coming back to the communities from which it has been derived, but there are serious questions about its long-term structure and accountability.²³⁴

Many of our witnesses echoed these concerns. The Highland Council welcomed “recognition by the UK Government [...] of the principle that revenues raised from the Crown’s marine rights should be returned to the region where it was raised”.²³⁵ However, Councillor Foxley suggested that an amount equivalent to 100% of the revenues raised, rather than 50%, should be returned. He also explained the Council’s view that marine revenues should be “managed by a strategic group for the Highlands and Islands local authorities with Highlands and Islands Enterprise and anybody else who was appropriate, rather than by the Big Lottery”.²³⁶

150. Other witnesses were also critical of the use of the Big Lottery to distribute the Coastal Communities Fund.²³⁷ Philip Maxwell said that the Big Lottery Fund was “not the answer [...] because it keeps the administration for that fund in a centralised body”.²³⁸ Comhairle nan Eilean Siar strongly opposed its use on the basis that it “disenfranchises host communities, dilutes the benefit, rewards communities who do not suffer the disbenefits of deployment and creates a needless dislocation between deployments and the communities hosting them”.²³⁹ Lorne MacLeod described it as being “overly fixated on process”.²⁴⁰ Sandy Brunton suggested that, as an alternative, “people are approving of the mechanism that Highlands and Islands Enterprise use within their area specifically”.²⁴¹ Andy Wightman agreed that the arrangements for the distribution of funds needed to be “a much more local public trust and common good type arrangement, that is much more accountable to local sensibilities”.²⁴²

151. While the Scottish Government welcomed the UK Government’s recognition that local communities should realise the benefits, it argued that the Coastal Communities Fund “does not address the fundamental and longstanding concerns [...] about the lack of accountability and transparency in the current arrangements for administration of the Crown Estate, and the inflexible and outdated management principles”.²⁴³

152. We welcome the fact that the UK Government’s new Coastal Communities Fund is a recognition that coastal communities in Scotland should directly benefit from the revenues raised by the CEC in Scotland—albeit only by a sum equivalent to 50% of the revenues raised. However, we share the concerns expressed to us that the Big Lottery is not the most appropriate mechanism for the distribution of these funds and

234 Q 487

235 Ev 183

236 Q 279

237 Qq 304 and 409

238 Q 300

239 Ev 166

240 Q 486

241 Q 304

242 Q 507

243 Ev 160

recommend that the UK Government give further consideration to the selection of a more appropriate body, for example, the Highlands and Island Enterprise, for the distribution of these funds in Scotland in the short term until wider issues are resolved.

153. Furthermore, the Coastal Communities Fund does not directly involve the Crown Estate and does not address the fundamental problems with the CEC's responsibilities in Scotland. Therefore, while it is welcome as an interim measure, the Fund does not lessen the need for the essential reform of the CEC in Scotland. We note that the Coastal Communities Fund will be unnecessary in Scotland following the devolution of the administration of the CEC's revenues in Scotland.

6 Other rights

Other ancient possessions

154. While much of the evidence we have received has been focused on the economically important foreshore and seabed rights, the Crown Estate in Scotland also includes a number of other ancient possessions of the Crown in Scotland, namely two historic sites (part of West Princess Street Gardens, Edinburgh and the King's Park, Stirling) and four other ancient Crown property rights (oysters, mussels, salmon, gold and silver) that produce no revenue for the CEC.²⁴⁴

Historic sites

155. The CEC is responsible for five hectares of West Princess Street Gardens, Edinburgh, which is currently managed by Edinburgh City Council on their behalf.²⁴⁵ The 2007 CERWG report concluded that there was no public benefit in the five hectares forming part of the Crown Estate in Scotland.²⁴⁶ Andy Wightman noted that there is a clear case that the ownership of the land should be conveyed to the City Council. He said: "we should simply hand over the title. It should no longer be Crown land and it simply becomes part of the common good of the city of Edinburgh".²⁴⁷

156. We recommend that the Secretary of State for Scotland directs the CEC to enter discussions with the Scottish Government and Edinburgh City Council, with a view to the CEC transferring the ownership of the Crown land in West Princess Street Gardens to the City Council.

157. The second historic site managed by the CEC as part of the Crown Estate is the King's Park at Stirling Castle. The national historical and cultural importance of this ancient possession of the Crown in Scotland has been highlighted by the Scottish Government. Andy Wightman was very critical of the CEC's record of managing the King's Park:

there has been a lot of controversy over it. That was one of the reasons I got very angry with the Crown Estate Commissioners. [...] It is an incredibly important historic area which they just regard as a piece of farmland and a lease to a golf course. In 2001, they were going to sell the land to the golf course, and even the local authority did not know about that.²⁴⁸

158. He concluded that the Park should be the responsibility of Historic Scotland rather than the CEC with its commercial remit.²⁴⁹ Historic Scotland already manages Stirling Castle and a part of the King's Park on behalf of Scottish Ministers as owners.

244 Ev 188

245 *Ibid.*,

246 CERWG, *The Crown Estate in Scotland- New Opportunities for Public Benefits*, 2007

247 Q 504

248 Q 518

249 Q 518

159. We recommend that the Secretary of State for Scotland directs the CEC to enter discussions with the Scottish Government, with a view to the CEC transferring the ownership of all of the King’s Park still held by the Crown to the Scottish Government.

Ancient rights

160. In its 2010 report, the Treasury Committee recommended that the CEC should seek to transfer non-economic historic sites to other appropriate bodies, so that the CEC could better pursue its aim of concentrating on its core financial remit.²⁵⁰ It would be consistent with this approach if the CEC’s responsibilities for the four other ancient Crown property rights in Scotland, currently managed as part of the Crown Estate—the rights to oysters, mussels, salmon and gold and silver—were transferred. The CEC do not earn revenue from these rights and the first three are Scottish Crown property rights for which there are no equivalent Crown property rights in English law.²⁵¹

Oysters and mussels

161. In relation to the archaic rights to naturally occurring native oysters and native mussels, the CEC noted that: “there are no current leases from The Crown Estate of naturally occurring oysters or mussels, and no income is derived from them. The Crown Estate plays no active part in managing them”.²⁵² We identified a general consensus that these rights should be reviewed and potentially abolished. Andy Wightman stated: “we could just make oysters wild animals and there would be no issue”.²⁵³

Salmon fishing

162. There is a distinction between the ancient right of the Crown in Scotland to salmon fishing, and the salmon fishing acquired by the CEC through the purchase of the rural estates.²⁵⁴ As the Scottish Islands Federation (SIF) commented on the former, “the feudal aspects of this right have no place in modern Scotland”.²⁵⁵ In addition to the archaic right itself, there are the coastal netting stations and freshwater salmon fishing beats still held as ancient possessions by the Crown and managed by the CEC.²⁵⁶ None of the coastal salmon fishing stations are let by the CEC and SIF argued that the rights “should be devolved to the Scottish Executive to enable the protection of wild salmon as part of their policies”.²⁵⁷

163. In relation to freshwater salmon fishing, there is considerable potential for greater community control and increased public access. Half of the 139 freshwater salmon leases are already let to local angling associations and these “involve a larger proportion of

250 HC 325

251 Ev 191

252 *ibid.*,

253 Q 449

254 Ev 191

255 Ev 169

256 Ev 191

257 Ev 169

available water as a good number of these lets cover entire rivers from source to sea and their tributaries”.²⁵⁸ There should be a scheme to enable appropriately constituted local community bodies to become fully responsible for the management of all these public salmon fishings.

Gold and silver

164. The final ancient right considered here, is the separate right of the Crown in Scotland to mine gold and silver, which the Crown holds over most of Scotland.²⁵⁹ This right is governed by Acts from 1424 and 1592, which are amongst the oldest extant legislation of former Scottish Parliaments.²⁶⁰ There has been no commercial gold mining in Scotland during modern times and the CEC list the right as one of their non-revenue generating responsibilities.²⁶¹ The responsibility for this ancient Scottish Crown property right should be devolved to the Scottish Parliament. If there should be revenue in future, as the CEC expects there to be at Colonish in Perthshire,²⁶² the money should be administered with the hereditary revenues of the Crown in Scotland already devolved through the Scotland Act 1998.²⁶³

165. We recommend that the CEC’s responsibilities for the administration and revenues of the ancient Crown property rights in Scotland to naturally occurring oysters and mussels, to coastal and freshwater salmon and to gold and silver, should be devolved to the Scottish Parliament. The Secretary of State for Scotland should enter discussions with the Scottish Government, with a view to securing a consensus over the devolution of these responsibilities, including a commitment that the freshwater salmon fishing still held by the Crown will continue to be held for community and wider public use.

Modern acquisitions

Existing management

166. The modern acquisitions in Scotland managed by the CEC are urban and rural properties that have been purchased on behalf of the Crown in Scotland by the CEC or its predecessors.²⁶⁴ The CEC’s Urban Estate in Scotland consists of one retail/office property in George Street, Edinburgh.²⁶⁵ The CEC’s Rural Estate in Scotland consists of four estates (Glenlivet, Fochabers, Whitehills, Applegirth), together with a small area of development land in Stirling, and the Rhu Marina on the Clyde.

258 Ev 191

259 *Ibid.*,

260 CERWG, *The Crown Estate in Scotland- New Opportunities for Public Benefits*, 2007

261 Ev 188

262 Ev 191

263 Scotland Act 1998, Schedule 5, Part 1, (3)(a)

264 Ev 188

265 While there is a 50% interest in the Fort Kinnaird Retail Park, Edinburgh, the CEC do not account for that interest as part of the Crown Estate in Scotland as it is held by the CEC through a Joint Property Partnership based in England.

167. These modern acquisitions in Scotland are a very small part of the UK wide Crown Estate. Linda Rosborough noted: “the historic tradition in Scotland hasn’t been equivalent to that elsewhere in the UK of having a substantial portfolio of urban property”.²⁶⁶ The rural and urban properties in Scotland contributed less than 2% of the CEC’s revenue from its Urban and Rural Estates in 2010–11.²⁶⁷ Similarly, these Scottish properties accounted for only 2% of £6 billion capital value of those Estates. While marine operations are the main component of the Crown Estate in Scotland, the CEC’s urban and rural properties are their core business in the rest of the UK. In 2010–11, the CEC’s Urban and Rural Estates accounted for 83% of the CEC’s revenue and 89% of the capital value of the Crown Estate.²⁶⁸

168. Although there is a compelling case for the appropriate devolution of the CEC’s responsibilities for managing ancient possessions of the Crown in Scotland, it is less clear that the CEC’s activities in relation to modern acquisitions in Scotland should also be devolved. In this role as a property investor, the CEC measures itself by private sector industry standards.²⁶⁹ Against those benchmarks, the critics of the CEC’s operations in other contexts seem to acknowledge that the CEC’s “land based properties are well managed”.²⁷⁰

Rural estates

169. While no issues were raised with us in relation to the CEC’s management of its only urban investment property in Scotland, some witnesses commented on the position of the rural communities on the four rural estates managed by the CEC in Scotland. Community Land Scotland’s noted that:

there is great potential for community involvement in the ownership and management of much of the Crown Estate’s rural estate in Scotland. We should like to see procedures put in place to allow those communities resident on these estates to explore the feasibility of community land ownership where there is a desire to do so.

If those communities wish to pursue their interest in land ownership further, then we believe they should be allowed to take forward their plans in a similar way to the procedures as set out in the ‘Crofting Community Right to Buy’ under part 3 of the Land Reform (Scotland) Act 2003, i.e. the right to buy can be exercised at any time.²⁷¹

170. In addition, Lorne MacLeod pointed to the existing right to buy of agricultural tenants on the CEC’s rural estates and also advocated a scheme similar to the Scottish Government’s National Forest Land Scheme “where communities could come forward to the Forestry Commission and say they wanted to purchase an area of forest to which they

266 Q 698

267 The Crown Estate: *Annual Report 2011 and Scotland Report 2011*

268 The Crown Estate: *Annual Report 2011*

269 *Ibid.*,

270 Ev 143

271 Ev 132

would be able to add value in terms of economic development or alternatively, lease that land”.²⁷²

171. There are over 200 agricultural tenancies on the four rural estates managed by the CEC, with nearly three-quarters of these on the Glenlivet and Fochabers Estates in the Highlands.²⁷³ These two estates were not purchased as commercial investments,²⁷⁴ the Whitehills and Applegirth Estates on the other hand were both purchased in the 1960s as conventional CEC investments. Andy Wightman pointed out that a quarter of the tenants on the four estates “have already registered an interest to acquire their tenant farm under the Agricultural Holdings [(Scotland)] Act 2003”.²⁷⁵ He continued:

If the Crown Estate Commission no longer had a role in administering these rights, they would automatically fall, in the absence of any other proposal, to the Scottish Government and the Scottish agriculture department, or whatever it is called today, which already administers a number of agricultural estates. I would like to see the Scottish Government decide that those tenants who wished to buy their farms could do so without having to sell it, because the right to buy for tenant farmers is triggered only if and when the landowner chooses to sell. If it is retained in Crown ownership, it is not sold and tenants do not have the right to buy. I would like to give them the opportunity to buy their farms. For the remaining 75%, that would be a very useful reserve of farmland to administer, specifically with the intention of encouraging young entrants to farming, for example. There is now a huge problem in getting young people into farming; there is just not the land available. I think this land should be retained in public ownership and should be used creatively to allow new agricultural tenants. You could also parcel up much of it, hand it over and sell it to community organisations, if they wished.²⁷⁶

172. The Scottish Government has, to date, been silent on the options for the future of the rural estates, other than to note that it would carry out a widespread consultation on the options if devolution occurs.²⁷⁷ However, Linda Rosborough confirmed that the transfer of responsibility for administering the estates which would occur at devolution, would not necessarily trigger the opportunity for the agricultural tenants to exercise the right to buy their farms,²⁷⁸ although she commented “this is something that, in policy terms, the Scottish Government is very enthusiastic about”.²⁷⁹

272 Q 518

273 Ev 192

274 They were acquired by the Commissioners of Crown Lands in 1937 as part of wider public sector land purchase to mitigate the impact of the break-up of the Duke of Richmond and Gordon’s extensive estates in the area.

275 Q 518

276 Q 518

277 Ev 150

278 Q 708

279 Q 704

Future options

173. Since the establishment of the Scottish Parliament, successive administrations have supported measures to promote community landownership and a more diverse pattern of landownership in Scotland. While Gareth Baird, Scottish Commissioner, emphasised that the CEC “are actively looking to purchase assets throughout the United Kingdom in the rural estate”,²⁸⁰ some doubt has been expressed about the appropriateness of the CEC as a public body committed to working with the grain of public policy in Scotland, buying further estates in the Highlands or much of rural Scotland as commercial investments.

174. The four rural estates currently managed by the CEC in Scotland were acquired over 40 years ago, while the one urban property in Edinburgh was purchased in 1995.²⁸¹ This does not suggest an active engagement by the CEC in the market for urban and rural properties in Scotland. Linda Rosborough pointed out that the CEC “has been disinvesting in urban property in Scotland in recent years, and that has been quite marked”.²⁸² Andy Wightman concurred: “the point is that over the last 10 years they have got out”.²⁸³ The CEC confirmed that the net movement of capital out of Scotland for investment elsewhere in the UK was largely a reflection of where there “was opportunity for achieving enhanced value”.²⁸⁴

175. The priority is to devolve the CEC’s responsibilities for the Crown’s foreshore and seabed rights and other ancient Crown property rights in Scotland. If the CEC’s activities in buying and selling was devolved with, or subsequent to, the devolution of those other Crown property rights, this would end the CEC’s operations in Scotland. This would mean that the CEC was then only acting for the Crown in English law in the rest of the UK. The Highland Council pointed out that over 96% of the CEC’s business is already in the rest of the UK and “involves dealing with a different set of Crown property rights in a different public policy environment [...] the CEC’s approach as an organisation continues to be out of place in a devolved Scotland”.²⁸⁵

176. While there could be issues therefore in leaving the CEC with this operational activity, Andy Wightman could see: “no objection to the Crown Estate Commissioners residual buying property in Edinburgh if they wanted to, like any commercial developer [...] they would be free to operate in the market.”²⁸⁶

177. In the previous sections of our report, we have recommended that the CEC’s responsibilities for the ancient possessions in Scotland be devolved, however, we see no principled objection to the CEC continuing its activities in Scotland in the buying and selling of land and property. We recommend therefore that the CEC should be able to

280 Q 803

281 Ev 36

282 Q 698

283 Q 521

284 Q 739

285 Ev 181

286 Q 520

buy and sell land and property in Scotland like any other property investor, as part of managing its commercial urban and rural property portfolio on a UK basis.

7 Conclusion: the way ahead

178. During our inquiry, we have examined the CEC's management of the Crown property, rights and interests which make up the Crown Estate in Scotland. These Crown property rights are legally different from those managed by the CEC in the rest of the UK, as they are held by the Crown in Scotland. The management of these rights is a very small part of the CEC's operations at 3% of both value and revenue. There is also a different balance in the CEC's operations in Scotland, with marine operations by far the largest component in Scotland compared to the dominance of urban property in the rest of the UK.

179. In the first part of our report, we identified major issues over the CEC's management of the Crown Estate in Scotland. These include the lack of accountability in Scotland over the CEC's operations there, the inappropriateness of the CEC's statutory remit for its responsibilities in Scotland's marine environment, the economic leakage from local economies and other adverse impacts from the way the CEC operates, together with the limited benefits in Scotland from the CEC's involvements.

180. We conclude that the only way in which to address these fundamental issues is that the CEC's responsibilities for the administration and revenues of the Crown property, rights and interests in Scotland be decentralised to Scotland. However, in order to ensure that the new arrangements address the issues raised, this change must be based on a commitment from the Scottish Government to further devolution to more local levels wherever possible. Devolution of the CEC's responsibilities should be based on three key principles:

- i. The Crown property, rights and interests involved are public assets which should be managed for the benefit of the people of Scotland.
- ii. Further measures should ensure that the most appropriate outcome is achieved for each of the different Crown property, rights and interests.
- iii. The measures should be based on the principle of subsidiarity, with responsibility for the administration and revenues of the individual Crown property rights devolved to most level appropriate in each case.

181. In the second part of our report, we therefore considered how different arrangements could be made for each of the varied Scottish Crown property rights, which would meet these criteria and bring benefit to Scotland. We identified clear options for new arrangements as a basis for going forward, and made a series of specific recommendations to this effect.

182. To conclude, in his evidence to the Scottish Parliament Committee on the Scotland Bill, Michael Moore MP, Secretary of State for Scotland, set out "three key tests" necessary for any further changes to the Scotland Bill:

They must be based on detailed proposals and be capable of establishing a broad consensus, and they should, while clearly benefiting Scotland, not be detrimental to the rest of the UK.²⁸⁷

There is no doubt that the case presented in this report meets these three criteria. **We therefore recommend that the Secretary of State for Scotland should announce the UK Government's commitment to devolve the CEC's marine and ancient rights and responsibilities in Scotland, conditional on a clear commitment to, and a detailed agreement on, the further decentralisation to the maximum extent possible of the CEC's responsibilities to local authority and local community levels, and that he make the necessary legislative provision to this effect.**

287 Col 54, Scotland Bill Committee, 8th September 2011.

Conclusions and recommendations

Accountability

1. While we accept the points made in relation to the benefits of the economies of scale, the CEC's decision to close the operating division in Scotland appears to have been an unusual move, given that, at the time, most organisations were opening Scottish divisions and offices in the context of the new devolved arrangements. In practice, this has had a negative impact, both upon the CEC's accountability in Scotland and on its relationships—as there is no longer a single person in the Scotland office responsible for its operations in Scotland. The decision was indicative of the CEC's out-dated attitude towards the UK post-devolution. (Paragraph 30)
2. While we welcome the creation of the Scottish leadership team and the industry liaison group, these are poor substitutes for the fully-functioning operations division closed in 2002. Furthermore, the provision in the Scotland Bill to make statutory the appointment of a Scottish Commissioner, will in practice, as the current Commissioner acknowledged, have no direct impact on his role. None of these steps therefore fundamentally address the structural lack of accountability within Scotland. (Paragraph 31)
3. We welcome the attention and focus given by the Secretary of State for Scotland to improving the accountability of the CEC in Scotland. However, these steps do not go far enough in remedying the situation which currently exists in terms of the lack of formal arrangements for the accountability of the CEC in Scotland. (Paragraph 32)

Finance

4. Despite the fact that the CEC has introduced the publication of a Scotland annual report which includes some basic financial information, the end of the Scottish division has led to a lack of transparency in terms of revenues raised and spent in Scotland, and in particular, of the decisions made in shifting revenue from one part of the business to another. This lack of transparency is clearly highlighted by the fact that neither the CEC nor the Treasury could provide an accurate figure for the net profits raised in Scotland following the deduction of operating costs. We understand the organisational and structural reasons for this, but nevertheless conclude this is an inappropriate way for the CEC to manage public assets in Scotland. (Paragraph 41)
5. Having identified the lack of accountability and transparency at the heart of the CEC's operations in Scotland, the question must be raised as to whether the CEC is the most appropriate organisation to harness the likely benefits from marine renewables for local communities. We recognise the investment of the CEC in the development of marine renewable in Scotland, but as the CEC is currently configured, the revenues from such developments will be transferred to the UK Treasury, and Scotland's communities are in real danger of missing out. (Paragraph 48)

Communications and engagement

6. We acknowledge that there was some indication of improved engagement from the CEC over the past eighteen months or so, and some examples of good practice where the CEC had added value—especially in relation to commercial and business interests. However, the general pattern demonstrated in evidence to the Committee, was one of a lack of engagement and communication between the CEC, key stakeholders and local communities. (Paragraph 64)
7. As the CEC deny this as a result of complacency, we can only conclude that, at best, the organisation has a fundamental misunderstanding of the needs and interests of local communities and indigenous industries on the Scottish coast. At best, it has little regard for those needs and interests other than where it serves CEC’s business interests. At worst, it behaves as an absentee landlord or tax collector which does not re-invest to any significant extent in the sectors and communities from which it derives income. (Paragraph 65)

Community benefits and the public interest

8. We are concerned by the very narrow interpretation of the Crown Estate Act 1961 employed by both the CEC and the Treasury, and agree with the Treasury Committee, which, in 2010, suggested that the remit of the CEC could be interpreted more broadly to include wider public policy objectives. The CEC should be more accommodating of other public interests in its day to day operations. (Paragraph 74)
9. While one possibility would be to amend the 1961 Act, it appears to us that part of the problem is one of an over-rigid and self-serving interpretation of the Act, rather than with the terms of the Act itself. If the Government and CEC continue to insist on this rigid interpretation of the Act, it reinforces our conclusion that the CEC is not the appropriate organisation to manage and administer the Crown ownership of Scotland’s seabed—a publicly owned national asset, which requires proper multiple objective management in the public interest to benefit the people of Scotland and its many coastal communities. (Paragraph 75)
10. During the course of our inquiry, despite identifying specific examples of good practice, overall we have found a clear lack of accountability of the CEC in Scotland, either formally, through democratic structures of governance, or locally; a lack of transparency in relation to finances in Scotland, and; a lack of consultation, communication and engagement with local communities. Furthermore, the CEC has no statutory capacity or willingness to meet multiple public interest objectives and re-invest appropriately into the sectors and communities from which revenues are raised in Scotland. On this basis, we conclude that the CEC as presently run represents a series of missed opportunities and is either incapable or unwilling to change its ways. Urgent reform is required and the control and management of the organisation in Scotland must be changed. (Paragraph 76)

Two-phase decentralisation

11. We recommend that the responsibilities of the CEC for the administration and revenues of the ancient Crown property, rights and interests in Scotland, which are currently managed as part of the Crown Estate, should be decentralised. Upon receiving satisfactory assurances, the Secretary of State should make the necessary legislative provision. (Paragraph 86)
12. The overwhelming majority of our witnesses emphasised that it is essential that the CEC's responsibilities do not all end up centralised in Edinburgh. If that was the case, many of the key issues that we have identified in this report would not be addressed. While we welcome that fact that the Scottish Government is proposing a two phased devolution process, we were somewhat surprised and concerned at the lack of detail provided by the Scottish Government as to how this could be achieved in practice and the lack of evidence that any serious consideration had been given to this. (Paragraph 87)
13. We therefore recommend that the Secretary of State for Scotland should enter discussion with the Scottish Government to ensure that any devolution of the CEC's responsibilities be conditional on a clear commitment and a detailed agreement, based on the principle of subsidiarity, to the further decentralisation to the maximum extent possible of the CEC's responsibilities to local authority and local community levels. (Paragraph 88)

Transition

14. We recognise there would be a period of time between the decision to devolve responsibilities of the CEC, and this coming in to effect. There must be a smooth transition, so as to avoid delay or disruption to the development of Scotland's marine renewable energy sector. A key element of this is the maintenance of the expertise of the CEC's staff currently based in Scotland. We recommend this be a priority in any transition. (Paragraph 92)

Crown foreshore

15. We recommend that the CEC's responsibilities for Crown foreshore in Scotland be devolved to the local authorities. The benefits of this would include clear local accountability, responsiveness to local conditions and an end to the current economic leakage from the CEC's charges, as well as revised rents set to reflect multiple objectives in contrast to the CEC's narrow commercial remit. (Paragraph 104)
16. The Secretary of State for Scotland should enter into discussions with the Scottish Government and Scotland's local authority representatives with a view to securing a consensus over the devolution of the CEC's responsibilities for Crown foreshore in Scotland to local authorities. (Paragraph 105)
17. We recommend that any devolution settlement over the CEC's foreshore responsibilities should enable Trust Ports, public sector harbour authorities and

appropriate community landownership bodies, to take over the ownership of Crown foreshore. (Paragraph 113)

Seabed rights

18. We agree that there is a need for a plan for the strategic management of the seabed in Scotland, which is integrated with the planning system and delivered for the benefit of local communities and users, indigenous industries and developers. The CEC are not best placed to offer this, and we welcome the creation of Marine Scotland as a body with the potential to oversee and co-ordinate this, taking a more holistic view of the management and use of Scotland's seabed than has been the case with the CEC. (Paragraph 121)
19. We recommend that the CEC's responsibilities for Crown property rights over Scotland's territorial seabed and adjoining continental shelf area, and the revenues raised from these rights, be devolved to the Scottish Parliament. Whatever devolved arrangements might be put in place, there should be a clear presumption against the disposal of Crown seabed except in the instances of permanent seabed land reclamation and the immediate harbour area of Trust Ports, other public sector harbour authorities and community owned companies which operate harbours. (Paragraph 126)
20. The Secretary of State should enter discussions with the Scottish Government with a view to securing a consensus over the devolution to the Scottish Parliament of the CEC's responsibilities for Crown property rights and their revenues over Scotland's territorial seabed and adjoining continental shelf area. (Paragraph 127)

Administration

21. We welcome the new Marine Planning Partnerships, particularly as they could provide a decentralised yet integrated regime, which is also accountable to local communities. The Partnerships should address many of the concerns expressed to us about the lack of community involvement in decisions making for developments in local coastal waters. (Paragraph 135)

Revenues

22. We recognise that with the devolution of the CEC's responsibility for the seabed in Scotland, the integrated system of marine planning, regulation and leasing over the use of the seabed must flow from the centre outwards. However, we recommend, as a matter of principle, that the allocation of the revenues from that use should flow the other way. On this basis, the areas where the revenues are being earned should benefit first before revenues flow up to wider geographic scales. While further discussion is necessary on the proportions of revenues to be allocated at each level—this should be strongly weighted in favour of the local community. (Paragraph 145)
23. While further work and wider public consultation is required to agree final arrangements, we recommend that discussion and consultation proceeds on the basis of the proposals set out by the Highlands and Islands local authorities for

managing the seabed revenues, thereby providing a clear framework on which to base discussion about future arrangements. (Paragraph 146)

24. We recommend therefore, that the Secretary of State for Scotland in seeking a consensus with the Scottish Government on proposals to devolve the CEC's responsibilities for the administration and revenues of the Crown's property rights to Scotland's territorial seabed and continental shelf area to the Scottish Parliament, should do so on the basis of a clear commitment to decentralised arrangements for administering the revenues along the lines proposed by the Highlands and Islands local authorities. (Paragraph 147)

Coastal Communities Fund

25. We welcome the fact that the UK Government's new Coastal Communities Fund is a recognition that coastal communities in Scotland should directly benefit from the revenues raised by the CEC in Scotland—albeit only by a sum equivalent to 50% of the revenues raised. However, we share the concerns expressed to us that the Big Lottery is not the most appropriate mechanism for the distribution of these funds and recommend that the UK Government give further consideration to the selection of a more appropriate body, for example, the Highlands and Island Enterprise, for the distribution of these funds in Scotland in the short term until wider issues are resolved. (Paragraph 152)
26. Furthermore, the Coastal Communities Fund does not directly involve the Crown Estate and does not address the fundamental problems with the CEC's responsibilities in Scotland. Therefore, while it is welcome as an interim measure, the Fund does not lessen the need for the essential reform of the CEC in Scotland. We note that the Coastal Communities Fund will be unnecessary in Scotland following the devolution of the administration of the CEC's revenues in Scotland. (Paragraph 153)

Historic sites

27. We recommend that the Secretary of State for Scotland directs the CEC to enter discussions with the Scottish Government and Edinburgh City Council, with a view to the CEC transferring the ownership of the Crown land in West Princess Street Gardens to the City Council. (Paragraph 156)
28. We recommend that the Secretary of State for Scotland directs the CEC to enter discussions with the Scottish Government, with a view to the CEC transferring the ownership of all of the King's Park still held by the Crown to the Scottish Government. (Paragraph 159)

Ancient rights

29. We recommend that the CEC's responsibilities for the administration and revenues of the ancient Crown property rights in Scotland to naturally occurring oysters and mussels, to coastal and freshwater salmon and to gold and silver, should be devolved to the Scottish Parliament. The Secretary of State for Scotland should enter

discussions with the Scottish Government, with a view to securing a consensus over the devolution of these responsibilities, including a commitment that the freshwater salmon fishing still held by the Crown will continue to be held for community and wider public use. (Paragraph 165)

Modern acquisitions

30. In the previous sections of our report, we have recommended that the CEC's responsibilities for the ancient possessions in Scotland be devolved, however, we see no principled objection to the CEC continuing its activities in Scotland in the buying and selling of land and property. We recommend therefore that the CEC should be able to buy and sell land and property in Scotland like any other property investor, as part of managing its commercial urban and rural property portfolio on a UK basis. (Paragraph 177)

Conclusion: the way ahead

31. We therefore recommend that the Secretary of State for Scotland should announce the UK Government's commitment to devolve the CEC's marine and ancient rights and responsibilities in Scotland, conditional on a clear commitment to, and a detailed agreement on, the further decentralisation to the maximum extent possible of the CEC's responsibilities to local authority and local community levels, and that he make the necessary legislative provision to this effect. (Paragraph 182)

Formal Minutes

Wednesday 7 March 2012

Members present:

Mr Ian Davidson, in the Chair

Iain McKenzie
Pamela Nash

Mr Alan Reid
Lindsay Roy

Draft Report (*The Crown Estate in Scotland*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 182 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 14 March 2012 at 2.00 p.m]

Witnesses

Wednesday 08 June 2011

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Roger Bright, (then) Chief Executive, The Crown Estate, and **Tom Mallows**, Consents and External Relations Manager, The Crown Estate Ev 1

Monday 31 October 2011

Brian Swinbanks, Chair, Tobermory Harbour Association, **Robert Clement**, Chairman, West Highland Anchorages and Moorings Association, and **Captain Ron Bailey**, Harbour Master, Clydeport Operations Limited Ev 22

John Watt, Highlands and Islands Enterprise, **Cllr Michael Foxley**, Highland Council, **Cllr Angus Campbell**, Comhairle nan Eilean Siar, **Cllr James Foubister**, Orkney Islands Council, **Cllr Sandy Cluness**, Shetland Islands Council, and **Cllr Dick Walsh**, Argyll and Bute Council Ev 29

Wednesday 23 November 2011

Ruchir Shah, Policy Manager, Head of Policy Department, Scottish Council for Voluntary Organisations, **Philip Maxwell**, Chairman, Islay Energy Trust, and **Sandy Brunton**, Chairman, Scottish Islands Federation Ev 41

Phil Thomas, Chairman, Scottish Salmon Producers Organisation, **Fiona Matheson**, Secretary, Orkney Fisheries Association, and **Dr Sally Campbell**, Vice Chair, Arran Seabed Trust Ev 50

Wednesday 7 December 2011

Lorne MacLeod, Community Land Scotland, and **Andy Wightman** Ev 62

Gareth Williams, Head of Policy, Scottish Council for Development and Industry, and **Andrew Jamieson**, Policy and Innovation Director at ScottishPower Renewables Ev 74

Monday 12 December 2011

Linda Rosborough, Acting Director, Marine Scotland, and **David Wilson**, Director of Energy and Climate Change, Scottish Government Ev 84

Gareth Baird, Scottish Commissioner for the Crown Estate, **Rob Hastings**, Director of the Marine Estate, **Tom Mallows**, Consents and External Relations Manager, and **Alasdair Rankin**, Head of New Business Development in the Marine Estate, The Crown Estate Ev 98

Wednesday 14 December 2011

Right Hon Michael Moore MP, Secretary of State for Scotland, **Rt Hon David Mundell MP**, Parliamentary Under-Secretary of State for Scotland, **Miss Chloe Smith MP**, Economic Secretary to the Treasury, **Paula Diggle**, Treasury Officer of Accounts, and **Alisdair McIntosh**, Director of the Scotland Office Ev 113

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4	Community Land Scotland	Ev 129
5	Andy Wightman	Ev 131
6	Plockton Harbour Community Interest Company	Ev 133
7	Highland Council	Ev 133
8	Comhairle nan Eilean Siar	Ev 135
9	Scottish Council for Development and Industry	Ev 137
10	RSPB	Ev 140
11	Highlands and Islands Enterprise	Ev 142
12	Scottish Council for Voluntary Organisations (SCVO)	Ev 144
13	Scottish Boating Alliance (SBA)	Ev 146
14	The Scottish Salmon Producers' Organisation	Ev 147
15	The Scottish Government	Ev 148
16	Orkney Fisheries Association	Ev 153
17	Supplementary: The Crown Estate	Ev 154
18	Additional: The Crown Estate	Ev 154
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21	Scotrenewables Tidal Power Ltd	Ev 158
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23	Victor Thomas	Ev 159
24	Lerwick Port Authority	Ev 160
25	Rt Hon Alex Salmond MSP	Ev 160
26	Supplementary: Orkney Fisheries Association	Ev 164
27	Supplementary: Comhairle nan Eilean Siar	Ev 165
28	Islay Energy Trust	Ev 166
29	Scottish islands Federation (SIF)	Ev 168
30	Community of Arran Seabed Trust	Ev 171
31	Further: The Crown Estate	Ev 174
32	Kenneth J. Hutchison	Ev 175
33	Further: Scottish Council for Development and Industry	Ev 175
34	Scottish Power Limited and ScottishPower Renewable Energy Limited	Ev 177
35	Further: Highlands and Islands Enterprise	Ev 178
36	Further: Scottish Council for Voluntary Organisations (SCVO)	Ev 180
37	Further: Highland Council	Ev 181
38	Jenny Meade	Ev 185
39	Further Supplementary: The Crown Estate	Ev 188
40	No Tiree Array	Ev 199
41	Argyll and Bute Council	Ev 200

42	Supplementary: Community of Arran Seabed Trust	Ev 202
43	Patrick Stewart	Ev 203
44	Lorna Elliott	Ev 205
45	Highlands and Islands Local Authorities	Ev 206
46	Duncan MacPherson	Ev 209
47	Additional: Highlands and Islands Enterprise	Ev 210
48	Supplementary: Chloe Smith, Economic Secretary to the Treasury	Ev 210
49	Supplementary: Community Land Scotland	Ev 211
50	Further Supplementary: The Crown Estate	Ev 212
51	Highland Council	Ev 216
52	Supplementary: Marine Scotland	Ev 216

List of organisations visited

During the course of this inquiry the Committee visited the Shetland Islands, Orkney, Tiree, Barra, Lewis, Caithness, Inverness, Stirling and Edinburgh, and met with representatives from the following organisations;

Shetland Marine Energy Group; Shetland Aquaculture; Lerwick Harbour Trust and Port Authority; Highlands and Islands Enterprise Shetland area panel; Shetland Amenity Trust; Shetland Arts; Shetland Islands Council's Telecom Project; Community Abattoir and Marts; The Crofters Commission; Shetland Livestock Marketing Group; Lerwick Fish Traders; Greig Seafood Hjaltland UK Ltd; Shetland Islands Council Development Committee; Orkney Lobster Hatchery; Scotrenewables; Orkney Renewable Energy Forum (OREF); Orkney Islands Council; Orkney Fishermans Society; European Marine Energy Centre; International Centre for Island Technology; Orkney Islands Council Marine Renewables; Highland Park Distillery; Gills Harbour Ltd; Scrabster Harbour Trust; Northlink Ferries; Highlands and Islands Enterprise; Caithness Chamber of Commerce; Wick Harbour; The Crown Estate; Tiree Community Trust; Fishing Fleet at Milton Harbour; Hebridean Trust; Agrimarine; ScottishPower Renewables; NFU; Discover Tiree & Blue Beyond; Scottish National Heritage; Argyll & Bute Council; Tiree Community Business; No Tiree Array; Barratlantic; Community Projects Barra and south Uist; Coimhearsnachd Bharraidh agus Bhatarsaidh Ltd (CBAB) - the local community development company; HS9 – An off-shore cabling storage project; Storas Uibhist – the community landowners of South Uist; Eriskay & Benbecula; Comhairle nan Eilean Siar; Southern Hebrides Against Marine Environmental Designations (SHAMED); Stornoway Port Authority; Outer Hebrides Renewables Group; Creative Industries Media Centre (CIMC); The Scottish Salmon Company; Marine Harvest; Hebridean Mussels; Western Isles Fisherman's Association; Community Land Scotland; Galson Trust – Business Development & Community Renewables; Harris Tweed Hebrides; Harris Tweed Authority; Scottish Crofting Foundation; Outer Hebrides Renewables Group.

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–11

First Report	Postal Services in Scotland	HC 669 (HC 884)
Second Report	Video Games Industry in Scotland	HC 500 (Cm 8076)
Third Report	UK Border Agency and Glasgow City Council	HC 733
Fourth Report	The Scotland Bill	HC 775
Fifth Report	Student Immigration System in Scotland	HC 912 (Cm 8192)
Sixth Report	The Referendum on Separation for Scotland: Unanswered Question	HC 1806

Oral evidence

Taken before the Scottish Affairs Committee

on Wednesday 8 June 2011

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Cathy Jamieson
Jim McGovern
David Mowat
Fiona O'Donnell

Simon Reeve
Mr Alan Reid
Lindsay Roy
Dr Eilidh Whiteford

Examination of Witnesses

Witnesses: **Roger Bright**, Chief Executive, The Crown Estate, and **Tom Mallows**, Consents and External Relations Manager, The Crown Estate, gave evidence.

Q1 Chair: Welcome to this meeting of the Scottish Affairs Select Committee. This is the first evidence session of our investigation into the Crown Estate in Scotland. I envisaged that this would be an initial exploratory meeting. I know that we have already had an informal meeting with you, Mr Bright, which we found very helpful. We will go through some of the detail and place things on the record so that when we are meeting people as we travel around Scotland we are able to compare notes and so on and so forth. Some of the points that we raise might appear as if they are things we have covered already but we want to go through them for that specific reason. It would be helpful if you started off by telling us who you are and what your capacities are.

Roger Bright: Thank you very much, Chair. We are very pleased to have this opportunity to talk to you about what we do in Scotland. My name is Roger Bright and I am Chief Executive of the Crown Estate.

Tom Mallows: My name is Tom Mallows and I am the Consents and External Relations Manager based in Scotland.

Q2 Chair: Could you start off by telling us what the Crown Estate is, what do you do and what is the point of it?

Roger Bright: Basically the Crown Estate is responsible for managing what are described as the hereditary properties of the monarch. All our profits go to the Treasury and last year they were £210 million. Our portfolio consists of urban, rural and marine properties—land and buildings—right the way across the UK. We operate under a commercial mandate which is contained in the Crown Estate Act 1961. As a long-term business with a huge range of assets, many of them historic and in sensitive locations, we would say that we have a very keen sense of stewardship in how we manage those assets.

Q3 Chair: Could you clarify for us this question of the hereditary properties of the monarch? What does that actually mean?

Roger Bright: They constitute properties to which the monarch retains the title but from which she has surrendered the revenue at the start of her reign. This

is an arrangement which began in 1760 when George III surrendered the revenues of these properties in return for what has become known as the civil list payment. The monarch was getting regularity and continuity of income through the civil list and in return he was surrendering the revenues from these properties. This is an arrangement that comes up for renewal every time there is a change of monarch. That renewal decision has to be taken within six months of a change of monarch. Ever since George III, each new monarch has elected to surrender the revenue from their properties in this way.

Q4 Chair: Let me clarify this question of the monarch's properties. They are not the personal property of the monarch.

Roger Bright: No; absolutely not.

Q5 Chair: Are they the Estate's property?

Roger Bright: That is an interesting question. Another way of describing them is that the monarch holds them in trust for the nation.¹

Q6 Chair: If we decided to become a republic, what would happen to the Crown Estate?

Roger Bright: I don't think I could speculate on what might happen in those circumstances. A decision would need to be taken as to what should happen.

Q7 Chair: But if the Crown went off to a family home in Germany—and I am glad to have a delegation from Bavaria in the visitors' gallery—would the properties go with her, would the right to access the money go with her or does it remain with the country?

Roger Bright: I am not absolutely certain of my ground here. This is not a circumstance that I have contemplated, but I would have thought that since they form part of a deal initially with Parliament and the Government, and the surrendering of the revenues was given in return for the civil list, in those circumstances there would obviously need to be a

¹ Note by witness: We think the question referred to the 'state's property' rather than the 'Estate's property' and that is the meaning to which Roger Bright responded.

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discussion presumably with the monarch as to what became of those properties.

Q8 Chair: What would happen to the Crown Estate properties in Scotland if Scotland became independent? To whom would they belong?

Roger Bright: That also is an interesting question.

Q9 Chair: That is why I am asking you these questions.

Roger Bright: It would depend upon the basis on which Scotland became independent. There has been talk, as far as I am aware, that one model of independence has the Queen remaining as Head of State in Scotland as well as in the rest of the UK. I guess that would suggest that in that eventuality those assets might well remain hereditary properties.

Q10 Chair: I put it to you at the very beginning that this question of ownership is key to the question of control. The delightful obscurity with which this is cloaked makes it much more difficult to democratically control both the Crown Estates themselves and any money that comes from them. When dealing with the royals and their finances in the Public Accounts Committee, we were always struck by the extent to which it was made deliberately obscure by royal bureaucrats in order to try and avoid any scrutiny. Is that what is happening here?

Roger Bright: Chair, I would say very definitely not. We seek to be as transparent as possible. I am an accounting officer. I account to Parliament for the stewardship of these assets and the revenues that come from them. The revenues that come from them, because they go to the Exchequer, are public money. We have the Crown Estate Act 1961 which is pretty clear in its provisions. It vests in us what are described as all the powers of ownership but we do not have actual ownership of the assets. We have all the powers of ownership, which enables us to manage this as a portfolio primarily of investments. It places a duty on us to maintain and enhance the assets and the value of them and the return that we get from them.

Q11 Chair: This question of ownership and control is something to which we will probably return. When we were drawing up the terms of reference for the consultation there were a number of points that we asked people to comment on. We have agreed that we would want to put these to you in order to get responses from yourselves. The first of these is, do the Crown Estate Commissioners serve a useful purpose in Scotland?

Roger Bright: We would say that we do. We manage our assets in accordance with a commercial mandate and we seek a commercial return from them. We are quite clear that we are a long-term landowner—forgive me if I use the term “owner” because it is a convenient shorthand—and we operate in the long-term interest. That is all about making sure our assets are of good quality, sustainable and they deliver sustainable sources of revenue.

The other thing is that because of our long-term ownership the fact that we are, for example, not a quoted public company and we are not chasing a share

price enables us to take a long-term view about the best way of maintaining and looking after those assets. We are not chasing, if I can put it like this, a “short-term buck”.

I think, too, because we are a UK-wide body, we are able to make capital available from elsewhere in the UK to invest in Scotland. Certainly the investment that we have undertaken in Scotland has been possible because of the capital that we are able to release from assets elsewhere in the UK. I think also because of the expertise that we have, particularly in relation to marine and offshore renewable energy, we are able to bring to bear the benefits of critical mass. We have accumulated in the last two or three years a very considerable body of expertise in that field. We can bring those to bear for the benefit of Scotland. I would argue that the Crown Estate Commissioners do have a useful purpose.

Q12 Chair: The next point we asked people about was what is, or should be, the role of the CEC in investing in Scotland. You have covered much of that already.

Roger Bright: Yes.

Q13 Chair: The next point is the legacy of the CEC. What do you see as being the legacy, both at the moment and going forward?

Roger Bright: Perhaps I can just talk about where we are at the moment. There is a lot of focus at the moment on our marine holdings, understandably so, and particularly because of the prospect of the substantial development of offshore renewable energy. We are also responsible for about 90,000 acres of agricultural land in Scotland which are in five large estates and just under 200 tenanted farms.²

In that area we are regarded as a pretty good landlord. We were one of the first landlords to introduce a new type of tenancy that was introduced by the Scottish Government earlier this century. These are tenancies that provide greater certainty for agricultural tenants. They replaced the limited duration tenancies. We have also been active in helping new entrants come into agriculture. In estates like Glenlivet we have put a lot of effort into developing ancillary activity on the estate—in particular tourism, mountain bike trails and so on and so forth. We would say certainly on our rural estate that we have a pretty good record, we are a good landlord, and if you ask the majority of our tenants they would probably endorse that. I would like to think we have set good standards for agricultural land management.

If I turn now to the marine estate and the offshore legacy there, going forwards anyway, we have worked very closely with the Scottish Government in their promotion both of offshore wind and also wave and tidal energy. You are probably aware that we have granted 11 agreements for lease for wave and tidal devices in Pentland Firth and Orkney Waters. It is the first such round in the world and it has enabled Scotland to be right at the front of the pack in the development of wave and tidal energy.

² Note by witness: We have just under 200 agricultural tenancies, rather than tenanted farms. There are 196 tenancies. A farm may comprise more than one tenancy.

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We are also working closely with the Scottish Government in the development of offshore wind. Again, that promises to be very productive and very successful over the coming decade. We have certainly played a key part in working with the offshore wind industry and with developers in helping them enter this market. There is a strong legacy there.

Another area where we have played a useful part is in the development of the aquaculture industry. That is certainly now a very well-established industry. That began in the late 1970s, early 1980s, and that was an industry that we helped nurture. It has not always been completely free of controversy but nevertheless it is now well established. Amongst other things, we have funded research into various aspects of aquaculture to help support the industry and improve its competitiveness.

I would say that on a whole range of fronts we have played a very positive part in helping various aspects of the Scottish economy and we are very much committed to continue doing that.

Q14 Chair: Moving on, are the current management, administration and accountability arrangements of the CEC appropriate?

Roger Bright: I would argue in principle, yes, they are. I am formally accountable via the Treasury to the Westminster Parliament. As I mentioned a moment ago, I am an accounting officer. Our annual report is laid before the Westminster Parliament. I can be called before the Public Accounts Committee and the Treasury Select Committee and so on, and I think that is right. What I would also say, though, is that we are very conscious that we work across the UK. We work in all three devolved Administrations. While we are not formally accountable in the statutory sense to the devolved Administrations, we certainly seek to work very closely with them. We have always said that we seek to work with the grain of Government policy and that means both at the UK level and at the devolved Administration level.

Perhaps I could just say a little bit more about the basis on which we are constituted. It is an important principle that we are established essentially as a trust and at arm's length from central Government. There is a history behind this. I can, if the Committee wish, provide further detailed background on it. It goes back to something called the Crichton Down affair in the 1950s, where at the time Government essentially got too entangled with the Crown Estate's affairs. It led to a scandal and the Minister having to resign. Out of that came the Eve Report which recommended that the Crown Estate should be at arm's length with a measure of independence and freedom to manage the assets as they judged appropriate in pursuit of their commercial mandate. As I say, that does mean that we are at arm's length from central Government. Whilst we share with central Government our strategy and our principal objectives, central Government, particularly in the form of the Treasury, does not seek to micromanage us or to get involved in detailed operational business decisions.

Q15 Lindsay Roy: In the last year how often have you been in attendance at the Treasury or a Treasury

Select Committee and been held to account? If so, how robust has that accountability been?

Roger Bright: Since the last election I have had meetings three times with the Economics Secretary to the Treasury, Justine Greening. I have had a number of meetings with Treasury officials. We have a mixture of more formal meetings and informal meetings. We meet the Treasury formally to talk about our corporate plan for the year ahead and to discuss with them the financial targets that we are aiming to deliver.

In March last year, shortly before the general election, I also appeared before the Treasury Select Committee, who were conducting an inquiry into the Crown Estate. I would say that these accountability arrangements, as far as I am concerned, are robust. I am extremely conscious of my accounting officer responsibilities. I am very well aware that the revenues that we deliver to the Treasury are essentially public money because that is where they are going and they need to be applied in accordance with the terms of our governing legislation. We are audited by the National Audit Office. One of the things that they will want to do, as Mr Davidson will remember from his time at the PAC, is ensure that we have acted within our powers and not exceeded them.

Q16 Lindsay Roy: Is one of the outcomes a summary statement of agreement? You said you put forward a plan.

Roger Bright: Yes, indeed. We have a memorandum of understanding with the Treasury which sets the framework for our dealings with the Treasury. That is available on our website. If it would help the Committee, we can certainly provide a copy of that.

Lindsay Roy: That would be helpful.

Q17 Chair: You have never been in front of the PAC, though, have you?

Roger Bright: Not in this incarnation, no, I haven't.

Q18 Chair: In what previous incarnation were you in front of them?

Roger Bright: Actually, I don't know that I have been in front of the PAC. I used to work at one stage for the Financial Services Authority. I appeared before a Select Committee in that capacity. I must correct myself; I think it wasn't the PAC but the Treasury Select Committee.

Q19 Chair: Generally, meeting the PAC is not something that people tend to forget. One of the things we may ask the PAC to do is to have a look at yourselves more widely because they have a wider remit than we do. The final point of the formal questions that we sent out was about how the CEC can best act in the public interest in Scotland.

Roger Bright: That is an interesting question. The first thing I would say—and I alluded to it in my introductory remarks—is that we regard it as very much a part of our DNA to act as a good corporate citizen. We believe very strongly it is the right thing to do and we also believe it is right for business. We have a very keen sense of our stewardship responsibilities, our responsibilities to our tenants, our

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stakeholders and the communities where we have a dominant interest.

I have to make it clear that the Crown Estate Act does not allow us to act in the wider public interest in a non-specific way. That means that everything we do has to relate in one way or another to those assets for which we are responsible. The Crown Estate has to manage its assets in a way that is consistent with the duty that is placed on it in the Act, which is to maintain and enhance their value and the return obtained from them. In pursuit of that mandate, we do very consciously seek to act in the interests of our tenants, the communities where we operate and our various stakeholders, provided we can be satisfied that there is a clear business benefit. If it would help the Committee, we can give several examples of where we do that.

Q20 Chair: This is one of the areas where I find it very difficult to understand what you are saying to us. You said you can't take account of "the wider public interest in a non-specific way". I don't understand what that means. I am aware that you gave land away for a Land Girls' memorial. I can't remember where it was. That seems to me to be an example of public benefit which clearly was permissible otherwise you wouldn't have done it. If you can give things away, I find it difficult to see what there is that would be of public benefit that is excluded.

Roger Bright: I may ask my colleague Tom if he is able to add any further detail on that. The point is that we can, under certain circumstances, give land away but there has to be in our minds a clear business benefit. In this case the land was in Glenlivet.³ We were persuaded that it was in our broader interests as a dominant landowner in that area to take that particular action. It is about establishing and maintaining good relationships with a community where we are a dominant landowner. Tom, I don't know if there is anything more you can add to that?

Q21 Chair: I am not sure I understand that either, but maybe Mr Mallows can clarify it.

Tom Mallows: In that particular case, if it would be useful to the Committee, we could write with the specific details around that instance. If we can give some other examples of how we can act while delivering our business objectives in the wider public interest, one is that we have a range of enabling actions in the area. I particularly work in the marine estate, which is a process of leading by example in relation to offshore health and safety. On the face of it, that doesn't have a direct benefit. We don't gain revenue directly from that particular enabling action. However, if it is to be successful, the offshore wind industry that will eventually succeed and provide revenue streams in the marine estate is arguably dependent entirely on a successful health and safety regime. Therefore, we can help facilitate that process.

Q22 Chair: Let me get this clear. You are saying that one of the public act goods you provide, in a sense, is

operating a health and safety regime offshore. But that is the law.

Tom Mallows: No; I am not saying that. I am saying that we are facilitating the process.

Q23 Chair: What does that mean—"facilitating the process"?

Tom Mallows: There are three examples that I could take on that. One is that we have worked with the industry developers, and it is still a relatively young industry, to set up a reporting programme for health and safety incidents across the board. That is not something for which we have a direct responsibility, as the Health and Safety Executive might do, but it is in the industry's interests to ensure that good practice is delivered in that context. There is a wider public benefit from that process.

Q24 Chair: There were two others, I think you said.

Tom Mallows: Let me try and frame them better. The two others were providing best practice guidance documentation and protocols, so working up those protocols. The third one was employing within the Crown Estate offshore construction experts to facilitate that discussion between the different parts of the industries. There are not tangibles. We are not delivering the health and safety requirements in that context but we are facilitating good practice for our industry.

Q25 Chair: Coming back to the point where you are the dominant landlord and you are giving something away in order to establish good relationships, the sort of criteria that allowed that to take place hardly exclude anything.

Roger Bright: We would have to say that we look at every such proposal on its merits and we have to form a judgment as to whether or not it is something that is a good use of our funds and in a reasonably tangible sense has some link with our business benefits. Where we say we can't act in a non-specific way—and this was raised at the Treasury Select Committee last year—is where we say it is difficult for us under the terms of our Act to contemplate putting moneys into a generalised fund which would be applied by a third party. We think that is probably a step too far within the Act.

Q26 Dr Whiteford: To pick up on the Treasury Report which came out in March last year, the key finding was: "Even within the current statutory framework the Crown Estate Commissioners have more flexibility to accommodate the wider public interest than either they or the Government appear to realise." That is what the Treasury Committee concluded last year. For me, that is really quite a challenging statement for Government and for yourselves. Do you think that is a fair assessment? How have you responded to the Treasury Committee's finding?

Roger Bright: Dr Whiteford, if you will forgive me, there is a sentence that follows that which perhaps I may also quote. It went on to say: "We accept"—that is the Committee—"that it is very difficult for the Crown Estate Commissioners unilaterally to arrive at

³ Note by witness: The land in question was in Fochabers rather than Glenlivet. Further information supplied separately as requested (Ev XX)

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a significantly different interpretation of the balance it strikes between their duty to maintain and enhance revenue and the extent to which they can and should accommodate wider public interests as part of their regard to good management.”

Q27 Dr Whiteford: Would you accept, though, that 50 years on from the legislation it might be time for it to get a bit of a dusting down and a bit of revision?

Roger Bright: The Committee then went on from that comment to suggest in their Report or to direct a recommendation to Government that Government should consider giving us a steer about how the public interest should be addressed. In the Government’s response to that they didn’t pick up that particular recommendation.

What I would say is that our mandate is set out in the Crown Estate Act, which has been determined by Parliament. It is not really for me to say how you, the parliamentarians, should change our mandate. If Parliament should decide to change our mandate, then of course we would work within a revised mandate, but I don’t think it is for us to suggest how our mandate should be changed.

Q28 Dr Whiteford: Have you had any discussions with the Treasury, or indeed with any of the devolved Administrations, on how you might go about establishing what the public interest might be? That is quite a difficult thing, as I think your earlier comments indicated. How on earth do you assess what is in the public interest? Is it putting statuses up or is it granting leases for long-term economic development? Would that be helpful and have you done it?

Roger Bright: We haven’t had explicit discussions with the Treasury or the devolved Administrations about that particular point. I go back to what I said before, which is that we always seek to manage the assets for which we are responsible in a way which, as far as we possibly can, takes account of local stakeholder and local community interests. It is a judgment call as to how far away you can get from our core responsibility, which is to maintain and enhance the value of our assets.

Q29 Dr Whiteford: How would you say that balance was between the revenue-collecting side of your work and the public interest side of your work?

Roger Bright: I don’t know that I can answer that question specifically. What I can say is that we have a good record as being, and I used the phrase earlier, a corporate citizen. For example, we entered the Business in the Community’s Corporate Responsibility Index. We have just recently been given silver status, which is one below the top status. It is recognised that across a whole range of issues we do demonstrate a very strong sense of corporate responsibility.

The other thing I would say—and there is sometimes some misunderstanding about this—is there is a view that our approach is to maximise our revenue in every circumstance. That is not correct. We optimise our revenue. We are not under a statutory requirement to maximise our revenue and the Treasury does not expect us to maximise our revenue. We seek to

optimise it. That means taking account of the circumstances in which we are charging, whether it is land or whatever.

There are two good examples of that. In the early days of the aquaculture industry, when this was a fledgling industry which was just trying to get off the ground, we were very careful to construct a charging regime which was going to give us a return on our asset but would enable that industry to develop and flourish. We are doing exactly the same thing with offshore wind. It would be extremely short-sighted from our point of view to kill the golden goose before it has even got airborne. As I say, the emphasis is on optimising our return. We take account of the circumstances.

Q30 David Mowat: I think the distinction between “optimising” and “maximising” is interesting, isn’t it? You could say “optimising” is the same as “maximising” over the long term. That is how I would usually hear that being used.

Roger Bright: I think that is right.

Q31 David Mowat: But the way you are using it isn’t like that.

Roger Bright: It is about developing a sustainable medium to long-term source of revenue. If you talk about straightforward commercial property, you can boost your return in the short term very easily by just squeezing the fruit until the pips squeak, but then you are left with an asset that is probably going to be devalued. Our focus is very much on nurturing long-term assets so that they are able to prosper and deliver a sustainable medium to long-term source of revenue. That is what we are about.

Chair: Leaving aside the fact that the golden goose doesn’t actually lay eggs while it is airborne, I turn to Lindsay.

Q32 Lindsay Roy: Is the distinction between optimisation and maximisation a critical criterion in terms of the valuation with the Treasury?

Roger Bright: It is very much a factor in our investment strategy and that feeds through into the revenue that we deliver.

Q33 Lindsay Roy: So you are asked in detail about why certain things have gone ahead in the way they have.

Roger Bright: We will take the Treasury through our investment strategy in a reasonable degree of detail and explain the rationale for it. Then we will talk to them about the revenue we expect to be able to generate from those assets over a one, two or three-year period. They will challenge us and question the investment strategy and whether it is soundly based. The Treasury understand that this is a long-term business and it is about looking after and nurturing assets for the long term so you have a sustainable, good-quality portfolio that delivers a sustainable, good-quality revenue stream.

Q34 Chair: I turn now to the question of the various investigations or discussion documents about yourselves so as to place things on the record and so

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that we can come back to them at a later stage. In relation to the Crown Estate Review Working Group from the local authorities, we have met Councillor Foxley informally and we intend to do so again. It would be helpful if you clarified for us your view of the report that they produced and whether or not you accept that that was a fair or unfair assessment of your role.

Roger Bright: That was several years ago now. I don't think it was fair in every respect. I am trying to recall the details of it because I think that report was produced about four or five years ago now.

Chair: 2007.

Roger Bright: Yes; four years ago. In some respects I think it was unfair. My recollection was that it implied that we were driven purely by the pursuit of revenue return and that we did not have a good legacy as a landlord. I seem to remember, too, there were some inaccuracies in the report, but I would need to refresh my memory of that. The Crown Estate Review Working Group report served a purpose in the sense that it increased public awareness about the Crown Estate and, among other things, it led to an inquiry by the Rural Affairs Committee of the Scottish Parliament to which we gave evidence. Following on from that, I would say we appreciated that we needed to improve our stakeholder engagement in Scotland and provide more information about our activities. In that sense it had a positive outcome and it helped us raise our game, which we are keen to do.

Q35 Chair: If we meet the people who were involved in that now, do you think they will give you better marks than they did then?

Roger Bright: I would hope that they would give us better marks. I am sure you appreciate, Mr Davidson, that in some quarters there are people who have an "in principle" objection to the idea of land in Scotland being managed by a non-devolved entity, particularly when it comes to foreshore and seabed. I suspect people who hold those views will—

Chair:—never be reconciled. I think we are sufficiently experienced to distinguish between those who have an "in principle" objection to your existence and criticisms that are made about the way in which you conduct your business. You have outlined to us quite a strong case that you are benevolent despots. You have emphasised the benevolence. What we have heard from other people is the other element of that. We will judge that in due course.

Q36 Lindsay Roy: You may recall that Brian Wilson made a criticism of the Crown Estate Commission, saying it was a law unto itself. How did you respond to that? Was that at the same time as this report in 2007?

Roger Bright: There are a number of quite complicated issues here. I know that Mr Wilson has long been a critic of ours. He has criticised us generically and I suspect he may be one of those who has "in principle" objections to our being in Scotland. I know that he has in the past expressed concern about aquaculture on the west coast and in particular our granting of licences to fish farms, apparently against the will of the local community.

There is a slightly complicated story here but I will make it as simple as possible. Up until four years ago the Crown Estate found itself combining both the role of landowner—excuse my use of the term but you will understand what I mean—with that of regulator. We were effectively the planning authority for fish farms as well as owning the land. That was a role that we didn't want and with which we were very uncomfortable. We pressed for years to have those roles separated. They were finally separated after a period of 20 years when legislation was passed in 2007 which transferred the responsibility to local authorities for agreeing to the siting of fish farms. That is a very important distinction which runs throughout all our holdings. We are a landowner or we act as a landowner. We are not a regulator. That is a very relevant point to offshore energy as well.

Q37 Lindsay Roy: Are you contending now that there is a genuine partnership between local councils and the Crown Estate Commission?

Roger Bright: We believe so. I would say, certainly in the Highlands and Islands, one of the things that we have been pursuing over the last year or so is the development of a memorandum of understanding between us and the seven Highlands and Islands authorities and Highlands and Islands Enterprise to try and ensure that we are able to work in tandem with their objectives so that the benefits of development of offshore renewable energy accrue to those Highland communities.

Q38 Lindsay Roy: That MoU is designed in part to engender further trust and confidence.

Roger Bright: Yes, absolutely. I would say across a whole range of our activities, not just in Scotland—and it is perhaps a slightly overused term—we work in partnership with a number of bodies, both private and public sector. If you are a long-term manager of assets you have to be able to work in partnership with stakeholders.

Tom Mallows: Might I just add something there? The offshore wind programme is a good example around Scottish waters of how things have moved on from the aquaculture industry. There are now regulators in place for these activities. Our role in the offshore wind programme was effectively as a delivery vehicle for entering these legal agreements that need to be entered with these developers. That was at the request of the Scottish Government. In 2007 we delivered how they asked us to deliver, which was very different from the position in which we found ourselves 20 or so years ago around the aquaculture industry.

Q39 Fiona O'Donnell: Roger, when you were answering Lindsay's question about Brian Wilson's criticism of the Crown Estate Commission and the granting of a licence for a fish farm, you used the words that it was "apparently against the will of the local community". Does that mean that the Crown Estate Commission did not consult with the local community before granting these licences?

Roger Bright: This was a good few years ago. My understanding was that when we had this unfortunate combined role of owner and regulator there was a

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process by which we would publish notices saying that an applicant for a wind farm wanted to locate a wind farm in a particular place. We published notices in local newspapers, in the local post office and so on and so forth. I don't think we were completely oblivious to local opinion, but what I would say is that things have moved on very considerably since then. That was 15 or 20 years ago.

Q40 Fiona O'Donnell: I have to say that that is a charge we have heard again, though, repeated in evidence and submissions that we have received. Maybe it is something to which we could return once we have finished collecting evidence.

Roger Bright: I am not in any sense devaluing people who have genuine concerns in any way but some of these issues are quite old. They go back a good many years. We would argue strongly that we have moved on very considerably since then. In relation to aquaculture, a very important part of that was finally being relieved of having to be the regulator as well as the owner.

Tom Mallows: We voluntarily set up an interim scheme around the aquaculture programme for a number of years—I don't recall the exact number—whereby we provided the local planning authorities with all the information for their advice. We effectively delivered what they determined in those situations. We recognised the need for that. There were a number of points to try and address that over the years.

Q41 Chair: To be clear, coming back to the point about whether or not you were oblivious of local opinion, the fact seems to be that you went ahead anyway. Is that right? There is a dispute about whether or not you were aware of local opinion, but even if you were aware of local opinion you went ahead and did what you wanted to do anyway.

Roger Bright: I don't know that that was necessarily the case, Chair. There are hundreds of fish farms, as I am sure you are aware, and I am not aware that it is the case that—

Q42 Chair: In any event, your case is that you are now reformed characters. That is the case for the defence, isn't it?

Roger Bright: Yes.

Q43 Chair: It's a bit like Bart Simpson. "I didnae do it, but even if I did do it then I didnae do it now." That is the position you are adopting. It is worth clarifying that. There was then the question of the Calman Report and the Treasury Select Committee. I thought that one of the most interesting phrases from the Treasury Select Committee was that you "had been subject to remarkably little scrutiny". That probably is true and now you are having, as it were, a glut of it, which is, as I am sure you will appreciate, for your own good.

Roger Bright: Absolutely.

Q44 Chair: That is what we say to people in front of the Public Accounts Committee as well: "This is for your own help." You have seen all the material about

the Scotland Bill. The thing that struck us about this was the ferocity and volume with which people have been addressing this issue in terms of not only the written evidence but people approaching us privately about it and speaking to us on these things. There is clearly a lot of ill-feeling out there about your role. We are here now to try and make sense of some of this.

Could we turn to the question of how you are run internally? I am not entirely clear how your Commissioners appear. I know that they are appointed by the Chancellor with the agreement of somebody else to the Queen and so on. How does a name emerge? I am not clear about the process, for example, by which a wealthy Kelso farmer is on a board looking after the coastline of the north of Scotland. There is not an immediate connection there. I am not aware of anybody up there knowing them, having voted for them or having had a say. How do these things happen? How do these people pop up?

Roger Bright: We are subject to the regime for public appointments that is set out by the Office of the Commissioner for Public Appointments. That means we have to follow a process which they specify. We advertise when a Commissioner vacancy comes up and we go through a recruitment process on which an independent observer from the Office of the Commissioner for Public Appointments sits. That results in an assessment and an interview process. There is a full job specification and role profile produced for that. Out of that a recommendation for an appointee is made. That recommendation then goes via the Secretary of State for Scotland to the Chancellor of the Exchequer, to the Prime Minister. If the Prime Minister endorses it, he recommends it to the Queen.

Q45 Chair: How many people applied the last time?

Roger Bright: I am not sure if I can remember offhand. The last two vacancies that we filled were from 1 January this year. They were for two people with knowledge and experience of renewable energy.

Q46 Chair: This is specifically for the Scottish Commissioner. In a sense we have taken a self-denying ordinance that we are not going to be looking at the role of the Crown Estate Commissioners generally across the UK as a whole. We are specifically restricting ourselves to Scotland because that is our remit. How many people applied for the Scottish Commissioner and who interviewed?

Roger Bright: I can't remember offhand, I am afraid. There were a healthy number, I would say, but I can't remember.

Q47 Chair: What is "a healthy number"?

Roger Bright: 20 or 30 maybe.

Q48 Chair: Who then interviewed these people? Who shortlisted?

Roger Bright: We used a firm of search consultants, namely Odgers. We used their Glasgow team. In tandem with advertisements which were placed in various parts of the Scottish media, we used Odgers' Glasgow office to help us search out potential

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candidates. They took delivery of all the applications. We saw all the applications and working with them we went through the process of longlisting followed by shortlisting, which I am sure you are familiar with, Mr Davidson. There is a selection panel for these appointments which is chaired by the Chairman of the Crown Estate. There is usually one other non-executive member of the Crown Estate, another Commissioner, who sits on the panel. I sit on the panel. The Treasury are represented on the panel. As I say, there is an independent observer who observes.

Q49 Fiona O'Donnell: Can I quickly check this? When you said that Odgers searched out candidates, does that mean they actively approached people and encouraged them to apply?

Roger Bright: That is my understanding. That was one of the things that they did.

Q50 Chair: It is a pretty self-perpetuating process really, isn't it? People like yourself appoint people like yourself to be on a board that then selects more people like yourself.

Roger Bright: I would say that the Treasury are represented on this. There is also, as I say, an independent observer. The process is then overseen by Ministers in the UK Government.

Q51 Chair: "Overseen by Ministers". That is a nonsense in a sense. None of them has ever been along to any of the meetings. In theory, they are there represented on earth by the Treasury, but it is not an active role by Ministers at all. There has been no political involvement in this in any shape or form, has there?

Roger Bright: There is no political involvement but the recommendation for the appointment has to be approved by Ministers.

Q52 Chair: Has a recommendation ever been turned down?

Roger Bright: Not to the best of my knowledge.

Q53 Chair: So that is a meaningless step, basically.

Roger Bright: I don't think I could agree that that is the case.

Q54 Chair: If you have a 100% success rate, it does call into question whether or not the Ministers actually exercise a meaningful role, does it not?

Roger Bright: But you could argue that the selection panel has consistently produced good quality candidates.

Chair: Indeed, and no doubt you would.

Q55 Dr Whiteford: Can I ask if the Equality Act and its terms that apply to other parts of the public sector apply to yourselves? The organogram is very helpful but I can't help noticing that all the senior management in Edinburgh are men. It just seems to me that that wouldn't be happening in other public bodies since the Equality Act came in. I just wonder what steps, both with the Commission and with staff appointments, there are to ensure that equality and diversity policies are applied.

Roger Bright: We are of course subject to the Equality Act. As a public body in that sense we are certainly very aware of our responsibilities there. We monitor by gender and by ethnic group where people are at different levels within the organisation.

Q56 Dr Whiteford: How many Commissioners come from an ethnic minority or are women?

Roger Bright: At the moment we have one of seven non-executive Commissioners who is an ethnic minority. We have one who is a woman.

Q57 Jim McGovern: One of each out of how many?

Roger Bright: The total board size is eight. I am a member of the board. So there are seven non-executive slots on there.

Q58 Jim McGovern: One woman.

Roger Bright: At present.

Dr Whiteford: That is worse than us.

Jim McGovern: Worse than the SNP, you mean.

Roger Bright: Up until the end of last year there were actually two women on the board, but one of the women candidates stood down.

Chair: We turn now to some of the formal questions we have been given by staff to raise. Fiona, do you feel that yours are covered already?

Q59 Fiona O'Donnell: There is one that wasn't raised by staff. Going back to the Treasury Select Committee Report, which was only a year ago after all, that looked across the UK but there were a number of submissions from Scotland which all had negative things to say about the Crown Estate Commission. You may expect people to rush forward more to say negative things. The only submission which was entirely positive about the Crown Estate Commission was the Crown Estate Commission's own submission. Can you understand that that might lead people to think of you as either being complacent or even arrogant in terms of your self-perception?

Roger Bright: I can see that you might well say that. However, I would dispute very strongly that we are arrogant; nor are we complacent. We are extremely sensitive to the context in which we operate and the various stakeholders that we have to deal with. That said, I would say that on many fronts we have a good story to tell in Scotland which we think does not get very much air time. We thought it was right to point out the good things that we do, which if I may say so we don't get much credit for.

Q60 Fiona O'Donnell: Do you not see, though, that maybe setting that stage which was entirely positive almost prompts more negative responses? It is almost like the Crown Estate Commission saying, "We can't think of any ways that we could do our job better." That might be the perception.

Roger Bright: I take the point that you are making obviously, but I would certainly say that is not where we are. We are always seeking to improve. We would not say that we are perfect. We are very receptive to suggestions and proposals as to how we might improve, absolutely. I am certainly not a complacent chief executive, nor an arrogant one.

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Q61 Fiona O'Donnell: That is really pleasing to hear. In the submissions that came from Scottish stakeholders, a number of them vented frustration about the way in which the Crown Estate Commission engaged with them. That is a theme, I have to say, which a year on is still running through the submissions we are receiving. What has happened since the Report of the Treasury Select Committee? In what ways have you changed and what are the further plans?

Roger Bright: I would say that we have put a huge amount of effort into engagement with the Scottish Government and with Marine Scotland in particular. Tom, who handles a lot of that in Edinburgh, would be able to provide you with more chapter and verse on that. I would say we bend over backwards to engage with the Scottish Government and its agencies where they interact with our work.

We are certainly trying extremely hard to engage with local authorities. Indeed, it pre-dated the Treasury Select Committee, but we had begun these discussions on our initiative with the Highland Councils trying to agree the terms of a memorandum of understanding. We will continue to do that. Engagement is absolutely the name of the game. We understand very much that we have to communicate clearly what we are about and, at the same time, listen to what people have to say. We are very well seized of that. As I say, I don't in any way dismiss lightly criticism that is made of us but I suspect legacies take quite a long time to change, if that is a legacy. We will continue to work at it.

Q62 Fiona O'Donnell: Everyone would acknowledge that there are problems with the management of the Crown Estate Commission in Scotland. Often in these circumstances politicians say, "It's just that we are not communicating well." Do you think those problems are about communication and perception or are they about management, structure and organisation?

Roger Bright: It is quite difficult to say. There is a point of view which fundamentally objects in principle to our being in Scotland as a UK body. That objection in principle is probably going to be impossible for us to resolve. Communication and engagement is absolutely vital, but I think it is also about being proactive and making sure that we listen to our tenants and those with whom we do business. There is a very good example of that in relation to offshore energy, where we are extremely active at the moment not only with the Scottish Government but also with the offshore wind and wave and tidal development industry. Equally, we are putting a lot of effort into improving our contacts and communications with ports and harbour authorities. We are also aware that that is an area where we have been criticised, perhaps not always fairly in the past, for not being as communicative or as helpful as they would like us to be. I would say that across a range of fronts we are doing everything we can within the framework within which we have to operate to try and improve our perception in Scotland.

Q63 Fiona O'Donnell: Can I just say, Roger, it is encouraging, but it is also imperative that the Crown

Estate Commission's only line of defence isn't, in the words of a *Carry On* film, "Infamy! Infamy! They've all got it in for me." I will conclude my remarks at that stage.

Tom Mallows: Chair, for the sake of a good record, I suppose, certainly the Scottish renewables comments in relation to the Treasury Select Committee were fairly positive about the work that the Crown Estate is doing in Scotland. More recently we have had comments from the likes of the Scottish Council for Development and Industry acknowledging explicitly the improvements that have been made to how we have approached our business in Scotland over the last three years, acknowledging that their members have noticed and have commented to them on those improvements. These are key to Scotland's economy. The points that Roger is making aren't just words. There is a lot to back these up.

Sitting alongside that are the offers that we made even before the Treasury Select Committee. These were annual offers to the First Minister in Scotland; to the Rural Affairs and Environment Committee; the Energy, Economy and Tourism Committee; and to COSLA; to meet with them on an annual basis to explain our Scottish annual report which we publish and to set out what our plans are for the following year. We received only one response, which was that they didn't want to see us at that particular time. You can keep on knocking on the door but—

Q64 Chair: It would be very helpful if you would let us have a copy of the letters that were sent to whom offering meetings and the fact that there was no response. I take it that is fairly recent, is it?

Tom Mallows: Since 2009 we have explicitly offered that dialogue around the annual report.

Q65 Chair: Let me just get this clear. You have written to the First Minister and various Committees of the Scottish Parliament since 2009 and have had no reply, save one, saying that they didn't want to meet you.

Roger Bright: Apart from one Committee, which I think was the Energy and Environment Committee, which thanked us very much but they didn't want to meet us. The Rural Affairs and Environment Committee are slightly different because we appeared before them. We went back to them a year later and said, "Would you like us to report on what we've done since we last appeared in front of you?", and they said, "Thank you, but no thank you." To the best of my knowledge, we have not had a response to our letters to the First Minister, which our previous Chairman sent in 2009 offering an annual meeting.

Q66 Chair: Do you know it was received? Was it registered?

Tom Mallows: We understand it was received, yes.

Q67 Chair: It was definitely received. I find it surprising, given that there has been such a fuss about the position of the Crown Estate, that having been invited to meet you these offers were not taken up.

Tom Mallows: If the Committee is interested we will provide copies of those letters.

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Chair: I did ask for that and therefore I am presuming that will take place.

Q68 Lindsay Roy: Have you undertaken any other independent research with clients? As Members of Parliament, we are inundated with correspondence asking, "How well are you acquainted with the following companies? How well do they communicate with you?" Have you done something like that with the Highland Council and with various aquaculture and renewable energy companies?

Roger Bright: Tom, are you able to help with that one?

Tom Mallows: There are a number of ways in which we engage on those levels. The best way to look at it is to split the industry engagement, which has elements of our contractual tenant and lessee relationships with the aquaculture industry in the event that we carry out an independent review of the rentals. That involves consultation with the industry. That is one way of understanding it.

Q69 Lindsay Roy: What I am asking is, is this systematic or is it ad hoc?

Tom Mallows: What in particular, sorry?

Q70 Lindsay Roy: The communication with potential clients. Is it a systematic approach or is it ad hoc, as and when it seems to fit a purpose?

Tom Mallows: I see what you mean. We have a systematic approach to it on a number of levels as well as a responsive ad hoc approach, as you would expect, if a problem is flagged up. With MSPs, for example, we stand ready to meet them. On a more structured approach with all of our renewables developers, soon hopefully to be tenants if the developments go ahead, we have collaborative developers' forums where we meet. With the wave and tidal developers in the Pentland Firth and Orkney Waters we meet with them explicitly on a regular basis to do a number of things, including understanding and gaining feedback.

We also have a group called the Scottish Liaison Group which meets three times a year. That has around 20 or 22 members which includes representatives of all our tenants: Scottish Renewables, Scottish Salmon Producers' Organisation and COSLA. That is a structured way of seeking feedback. So, yes, that is a specific vehicle in Scotland for engaging with all of those interests.

Q71 Chair: How many times has that group met?

Tom Mallows: It meets around three times a year.

Q72 Chair: How many years has it been going for?

Tom Mallows: It has been going since 2009 as well, I believe.

Roger Bright: We established that after we had been in front of the Rural Affairs and Environment Committee. We identified that we needed to establish, as Mr Roy said, a more formal liaison group.

Chair: What would be helpful is if you could let us have a copy of the minutes of that so we can see the sort of issues that come up, if that is possible.

Q73 Lindsay Roy: Can I also ask about the Crown Estate Commissioner and the Scottish statutory appointment? What, if any, difference is this likely to make in practice to the management of the Crown Estate in Scotland?

Roger Bright: This is the provision in the Scotland Bill which will specify that Scottish Ministers will be consulted before his or her appointment in future. I would have to say I very much welcome this. We have had a Scottish Commissioner for a good many years, as I am sure you are aware, but it has been a non-statutory appointment. It is an appointment we have chosen to make. The Scottish Commissioner fulfils an important role on our main board in ensuring that Scottish conditions and considerations are taken into account when the board takes its decisions. He also chairs the Scottish Liaison Group that we have just been talking about and he chairs our own internal Scottish Committee. He has a number of important roles within the Crown Estate. He is also an ambassador for us in Scotland and he will meet Ministers. Having the Scottish Government as a party to his or her appointment in future will be very valuable. The mere fact of making it a statutory appointment is very much to be welcomed. It cements and consolidates his position.

Q74 Lindsay Roy: What, if any, further discussions have you had with the Scottish Office or the Scottish Government about further measures to improve your accountability? We know you have been with the Treasury Select Committee. Have there been recent discussions with either of these two?

Roger Bright: Since the last general election I have had at least four meetings with Michael Moore, the Secretary of State for Scotland. Those have been very valuable. It has partly been an opportunity for us to explain to him what we do and how we go about it, but it has also been very valuable in terms of having his perspective of how we are perceived and how we can improve the way we are perceived in Scotland. He has placed a strong emphasis on the need to improve our transparency where we can and also to strengthen informal lines of accountability. Formally we have to be accountable to the Treasury. We can't be formally accountable to two masters.

Q75 Lindsay Roy: Is that why, in 2002, you stopped treating Scotland as a separate management unit?

Roger Bright: No, it isn't why we stopped treating Scotland as a separate management unit in 2002.

Q76 Lindsay Roy: It seems strange when there is a Scottish Parliament.

Roger Bright: Perhaps I could just explain the background to that. It basically goes back to our business model. We are a UK-wide business with a UK-wide investment strategy. At that time it was becoming apparent to us that the structure we had meant that we were not achieving economies of scale that we might have been able to achieve. It also meant that we were not able to make use of expertise right the way across the business very effectively. More to the point, in 2002, we were in the early stages of the offshore wind industry which began to emerge in

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2001. It was apparent to us that in order to help this industry develop and play our part in that we needed to operate on a UK-wide basis. That was the set of decisions that led us to integrate the management of our assets in Scotland into UK management.

At the same time we moved from a rather grand office on Charlotte Square into more modern fit-for-purpose offices around the corner in Bell's Brae. At the time that we did that there was also a reduction in staff in our Edinburgh office, but since then we have been recruiting rapidly, particularly in the field of marine renewable energy expertise. We now employ more staff in Scotland than we were employing in 2002. That is the course that that has taken and those are the reasons why.

Q77 Lindsay Roy: Finally, would reinstatement of the previous accounting system and appointment of a member of staff as head of operations improve accountability and generate further confidence in Scotland in the Crown Estate?

Roger Bright: Of course I am aware of that argument. I am not altogether sure that it would because, as I say, the structure of our office in Scotland reflects our business model, which is a UK-wide business model underpinned by a UK-wide investment strategy. It depends on what issues you are trying to address. If the issues are questions of control of the Crown Estate in Scotland, if they are the retention of Crown Estate revenues in Scotland, then I don't think a change like that would address those issues. The important thing we have to do is to continue to do absolutely everything we can, as I have been saying, to improve our engagement with the Scottish Government, with Scottish local authorities and with other Scottish stakeholders, and continue to strive to do a better and better job. Within the framework within which we have to operate that is the right way for us to approach that issue.

Q78 Chair: I take you back to the question about the appointment and about it being a statutory appointment. What happens if the Scottish Government say, "No, we don't accept this person because he is another one of the same—another establishment figure"? What then happens? Do they have the right to appoint their own person or does that go back to you to have another go?

Roger Bright: I am afraid I don't know the answer to that, Mr Davidson. We have not yet encountered that situation. It is a provision in the Scotland Bill.

Q79 Chair: No; that is right. Are your appointments not statutory appointments at the moment, in the sense that they go through the Chancellor? If the Chancellor turned round and said, "No, I'm not taking him, he's got convictions for X, Y or Z" or "He's a person of whom I disapprove", it would be sent back again for you to try again, wouldn't it?

Roger Bright: Yes. All our board members are statutory appointees under the Crown Estate Act.

Q80 Chair: The only difference now is that the Scottish one has to go through the Scottish Parliament and be statutorily appointed through that route.

Roger Bright: As I understand it, the Scotland Bill amends the Crown Estate Act. It says "there shall be a Scottish Commissioner". At the moment, as you know, that is not the case. It says that his or her appointment shall be made "after consultation with Scottish Ministers". I think that is the wording. That presumably will be a matter between UK Government Ministers and Scottish Government Ministers. I don't think I can speculate how that mechanism is going to work in practice.

Q81 Chair: But is it your understanding that the Scottish Ministers would have a veto over the Scottish Commissioner?

Roger Bright: I don't have a precise understanding of how the consultation with Scottish Ministers is envisaged at this stage. It will be conducted by UK Ministers.

Q82 Chair: So at the moment UK Ministers have a veto, which has never been exercised.

Roger Bright: They could refuse a recommendation, so it is effectively a veto.

Q83 Chair: That is a veto. We are unclear at the moment as to whether or not the Scottish Government would have a veto over the Scottish Commissioner.

Roger Bright: I don't know, unless there is something you can add to that, Tom.

Tom Mallows: As a point of clarification, this is still a Bill going through here so we don't know how this is going to act in principle. That would be for the Scottish Government and the UK Government to agree on. We wouldn't have an input into that.

Q84 Chair: I wasn't clear whether or not anything had been communicated to you about that at all.

Tom Mallows: No.

Q85 Chair: I come back to the points that you made in response to Mr Roy about the way in which you stopped treating Scotland as a separate unit in 2002. That does rather look like a manoeuvre to avoid accountability in Scotland, doesn't it? Only a little while after the Scottish Parliament is established, you decide to restructure yourself so that you don't have a separate Scottish structure which could be held accountable or be embraced more closely by the Scottish Government than before. How do you respond to cynics such as those that might raise these points?

Roger Bright: All I can say, Mr Davidson, is that I can give you an absolute assurance that that is not the case and that was not the intention. It would not be in our interests to worsen our relationships with the Scottish Administration.

Q86 Chair: To be fair, at that time I don't think you could have done much to worsen your relationships. You were seen as being pretty bad folk altogether. It comes back to the point that I made at the very beginning about royal finances in any shape or form always being made as obscure as possible in order to diminish any possibility of accountability. It does look to me, and to the people that raised this with me, that

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this is a classic example of that. You restructured in order to avoid accountability.

Roger Bright: Absolutely not. I can give you a cast-iron assurance that that was not the driving force. It was to do with how we run our business to optimum effect.

Q87 Chair: Following on from Lindsay's point, it is presumably possible, if requested, that you could reassemble the Scottish accounts since all the figures are there. It would be possible to produce all of that in a way that could be examined.

Roger Bright: Yes.

Q88 Fiona Bruce: My question is also on accounts. I would like to ask you about the capital funding of the Crown Estate. In your report to us you say, "The Crown Estate has been able to invest £16 million in our marine holdings in Scotland over the last five years." Was that all capital investment?

Roger Bright: To the best of my knowledge it was capital investment, yes.

Q89 Fiona Bruce: I want to seek clarification on this because you have also provided us with figures for capital investment over the past five financial years. The total capital investment in the whole of Scotland was £16 million. Does that mean that all of your investment of a capital nature in Scotland over the last five years was in the marine area?

Roger Bright: It depends how you define "capital". Repairs and maintenance expenditure, which is also something that we incur particularly on our rural estate, will generally tend to be revenue expenditure but you could nevertheless say it is investment. A recent example of that was following the severe winter of the winter before last a lot of our properties in Glenlivet were very severely snow-damaged. We spent over £1 million in repairs and maintenance for that. From time to time we do undertake capital investment on our rural estate. The majority of what is pure capital will tend to be on the marine estate.

Q90 Fiona Bruce: That is very helpful. Obviously a lot of maintaining your capital assets comes out of revenue and that is how you have treated it in the accounts.

Roger Bright: Yes.

Q91 Fiona Bruce: My next question relates to the capital raised over the last five years in terms of Scottish receipts. You indicated earlier on in answers to questions from the Chairman, "We are able to make capital available from elsewhere in the UK to invest in Scotland." My understanding was that this is what you do. Would it be fair to say that that is a trend, by and large?

Roger Bright: There will be a trend of increased capital investment in Scotland because of the projected development of offshore renewable energy over the next five to 10 years. We are envisaging that we will be spending about £20 million over the next five years. That is more than we spent in the last five years.

Q92 Fiona Bruce: And that will be capital investment.

Roger Bright: Yes.

Q93 Fiona Bruce: It does seem to me as though there is a balance to be redressed. Over the last five years the capital receipts have been something over £70 million and the investment of a pure capital nature, as you have said, is around £16 million.

Roger Bright: Yes.

Q94 Fiona Bruce: You might possibly have explained that quite wide discrepancy earlier on. Was it the sale of the property at Charlotte Square in Edinburgh that you referred to?

Roger Bright: No, it wasn't. Perhaps I could explain this because it is quite important and it again goes to our business model and the fact that we have a UK-wide investment strategy. The purpose of the investment strategy is to ensure that we have a mix of assets across the UK which best enable us to meet our commercial mandate, which is to deliver a good-quality, long-term sustainable source of revenue. What that means is that at any point in time we are disposing of some assets and investing in others. We are also investing in developments as well.

In the last financial year for which we reported we conducted transactions, both buying and selling, to a total value of over £800 million across the UK. The big capital receipt that is identified from our Scottish assets relates to the sale of two particular buildings in Edinburgh. One was a small retail and office unit on Princes Street. Much the largest was the sale of an office building in Princes Exchange in Tollcross.

However, if you go back 10 years—just after I joined the Crown Estate in fact—we funded the development of the Princes Exchange building with capital at a cost of about £60 million, which again was capital released from our English assets. The capital that funded the development originally came, as it happens, from south of the border. The Princes Exchange building in terms of our investment strategy had reached a point where it was not meeting our needs so it was time to dispose of it. That is what any investment fund would do. It is constantly looking at its assets to see whether the balance of them is going to deliver the performance that we are looking for. That explains that capital flow.

Q95 Fiona Bruce: What you are saying is that this is perhaps a blip rather than a trend.

Roger Bright: Yes. It was a decision taken on pure commercial investment criteria. This was an asset that from our point of view was getting to the end of its usefulness in terms of supporting our commercial mandate and delivering revenue. It was time to sell it and reinvest the capital.

Q96 Fiona Bruce: What did you sell the Princes Exchange for, as a matter of interest, bearing in mind that you used £60 million worth of assets?

Roger Bright: I think the price was in the region of £55 million.

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Q97 Fiona Bruce: So there was a net loss of how much?

Roger Bright: There wasn't a loss. We have sold it for less than we put into it but the reason is that the whole market had moved.

Q98 Chair: So that is a loss then. That is the whole principle of loss, isn't it—that you sold it for less than you bought it for?

Roger Bright: Yes, but by the same token, in the particular circumstances of the market at the time, we would have been able to use that capital to buy other assets whose price had similarly decreased.

Q99 Chair: I understand that, but let us be clear. Fiona did ask, "So you sold it at a loss then?" and the answer is yes, you did.

Roger Bright: If you compare the purchase and the sale price, yes, that is right.

Q100 Chair: What other way is there of doing it?

Roger Bright: What I am trying to say is that we don't hold a building like that as an operation—

Chair: I understand that.

Roger Bright: We hold it as an investment, and we have to operate in the market as the market moves. It is like selling and buying—

Q101 Chair: I completely understand that, but I think it would be much better if you just said, "Yes, we sold it at a loss and we were able to buy something that was distressed and we will make even more money out of that in the future." I can understand that. The point is that the figures we have demonstrate that over the last five years capital investments in Scotland were £16 million and capital receipts in Scotland were £71 million. Therefore, it does look from that as if you were taking more out of Scotland than you were putting in, thereby somewhat responding to the point that you make, "No, no, it is a one-way traffic. Money comes into Scotland." I think we understand the fact that you sold something at a loss and used some of that money on this.

Roger Bright: Thank you because you have given me the opportunity to explain this. We don't have separate investment strategies for different parts of the country. We have a UK-wide investment strategy.

Q102 Fiona Bruce: You bought Princes Exchange a decade earlier.

Roger Bright: We pre-funded the development of the site in fact.

Fiona Bruce: A decade earlier.

Roger Bright: Yes.

Q103 Fiona Bruce: So it was over that period that the loss was made.

Roger Bright: The drop in value between when we invested in it and sold it was in that period. I suspect—I do not have the detailed figures to hand—the loss, if you like to use that term, or the reduction in value was probably in the last two or three years of that period because that is when the market generally was travelling south.

Q104 David Mowat: I have a couple of questions on revenue. Before we do that I want to understand your overall accounts. You make about £250 million surplus a year. That is what the numbers you gave us suggest. That is on assets of about £5 billion or £6 billion.

Roger Bright: Yes; that is right.⁴

Q105 David Mowat: That implies a return of the order of 5%.

Roger Bright: Yes.

Q106 David Mowat: I am not an expert in your industry but how would that compare with what a best practice private company might achieve on assets of that size?

Roger Bright: It compares pretty favourably, I would have to say. The property industry benchmark approach to this is to measure total return. They do this through something called the Investment Property Databank which produces indices for the industry. We measure our total return performance, which is the combined capital growth and revenue return, against the benchmark. In every year bar one in the last 10 years we have outperformed the benchmark.⁵ The other thing to bear in mind—

Q107 David Mowat: Is your capital employed based on revaluations of the assets, so it is an up-to-date valuation and not some historical book figure?

Roger Bright: No, no.

Q108 David Mowat: So £6 billion is what you could expect to sell them for today, roughly speaking, notwithstanding those issues we have just talked about.

Roger Bright: Yes. Our assets are revalued on an annual basis.

Q109 David Mowat: Some of your revenue, though, comes from marine, doesn't it?

Roger Bright: Yes.

Q110 David Mowat: I presume you don't value the coastline.

Roger Bright: We value marine holdings where there is a dealing. Where there isn't a dealing, the coastline or the seabed has no value. Once there is a dealing there it acquires a value. That value is essentially—

Q111 David Mowat: Then you put it into your asset valuation, do you?

Roger Bright: Yes; it goes into the asset valuation.

Q112 David Mowat: So you don't have revenue that doesn't have an effective asset behind it, because if

⁴ Note by witness: For clarification, the '£250 million surplus' referred to in the question is the gross surplus, that is the turnover less operating costs.

⁵ Note by witness: Over the last 10 years to March 2011 The Crown Estate's average total return was 10.8% per annum as against the IPD Quarterly Index average of 6.6% per annum. There were three individual years during the last 10 years when we did not outperform the IPD benchmark on an annual basis.

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you have revenue you have to value it and therefore you put it in.

Roger Bright: Yes.

Q113 David Mowat: What I was interested in, in terms of the discussion earlier, was how you actually evaluate yourselves as an entity. If you were a private company you would have all these metrics and all the rest of it, but during the course of your evidence you have used “stewardship” a lot, and “stakeholders”, “community assets” and “corporate citizenship”. Do you measure your effectiveness at all of those things? There was a question whether you did systematically do that earlier.

Roger Bright: We certainly systematically have key financial KPIs, but the total return one, in financial terms, is the most important one. Obviously we look at capital growth and we also look at revenue return on our assets.

Q114 David Mowat: Maybe you answered it by saying you thought you were effectively achieving best practice, but I was getting to the fact of whether you make less money for the Treasury as a consequence of your corporate responsibility ethos than otherwise they would expect. If so, how do you judge whether you are doing it right and how effective you are?

Roger Bright: That is probably an almost impossible question to judge. Certainly in the property world you can accelerate your income return by, to put it bluntly, trashing your assets, basically, and squeezing every last penny out of them. You can do that and deliver a short-term return, but we don't do that. We invest and manage for the long term. We don't seek to quantify what the difference might be between an approach that took no account of our wider corporate citizenship responsibilities and what the return is. The acid test is total return, which is capital growth and income return, and how that measures against what the rest of the industry is doing. That tells us whether or not we are performing comparatively well.

Q115 David Mowat: Your judgment is that you are above benchmark on that.

Roger Bright: Yes.

Q116 David Mowat: Turning to Scotland, that is about 4% of your revenue.

Roger Bright: Yes; it is slightly less than that. It is about 3.5%.

Q117 David Mowat: It was 3.7% last year but the previous years were a bit higher.

Roger Bright: Yes.

Q118 David Mowat: In a sense, if the Crown Estate was devolved to the Scottish Government and therefore obviously that 4% would go, there would be a net loss of income to Scotland because at the moment Scotland gets more than that from the Barnett formula. That is the way it works. If you were to lose the Scottish part of the Crown Estate, the Scottish Government would lose income, I believe, on the

arithmetic. That is right, isn't it? Is that your understanding as well?

Roger Bright: I don't know. I am not familiar with the working of the block grant formula. All our revenue goes to the consolidated fund.

Q119 David Mowat: Yes, and because that 4% is lower than the Scottish proportion of the consolidated fund that is what the effect of it would be. You don't keep separate accounts for Scotland but you have produced some numbers for us. It is management accounts effectively which you can tie in, you are confident that they are right and all the rest of it.

Roger Bright: Yes.⁶

Q120 David Mowat: We have talked about the investment in renewables and offshore which is going to be biased a bit towards Scotland in the next few years. You would expect that 4% figure to increase.

Roger Bright: Once it becomes revenue-generating. At the moment there is a very clear distinction. Because we are constituted as a trust, we have to go back to the beginning, with the assets being the hereditary property of the monarch and the revenue going to the Treasury. There has to be a clear distinction between capital and revenue. The capital that we are putting into Scotland and into renewable energy will eventually produce revenue returns. Like all the capital that we are putting into renewable energy investment across the UK, at this point in time the revenue return is pretty low. It is capital that will start to deliver a more significant revenue return about four to five years from now.

Q121 David Mowat: I am interested in the renewables capital that you are spending. I am a bit surprised that you, as an entity or the landlord, are doing that. What are you purchasing? What are you buying for that capital?

Roger Bright: Basically what we are doing is co-funding with the developers of offshore wind farms the preparatory work to get sites to the point where they are fully surveyed, consented and ready to be developed. We are doing that for two reasons. First of all, that process is very expensive. Generally speaking, it is much more expensive than preparing a site on dry land. There are more consents to be obtained and they require more and expensive surveys.

Q122 David Mowat: Would you have done that for offshore oil?

Roger Bright: We have no involvement in offshore oil at all.

⁶ Note by witness: Following the hearing, when reviewing the 2009/10 Scotland Report in readiness for preparing the 2010/11 report, an error of allocation was identified within the gross surplus figure published for 2009/10. Accordingly we will be restating the management accounts figures in the Scotland Report for 2010/11 to show the gross surplus for 2009/10 as £11.0m rather than the £9.1m previously stated. The total revenue figure stated at £13.1m is unaffected. The Scotland Report figures are not subject to a formal audit, however we have agreed with The National Audit Office that from 2010/11 onwards they will audit the management accounts figures published in respect of our Scottish operations.

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Q123 David Mowat: What about nuclear? I am just wondering whether this is a further subsidy for offshore wind that we are disguising under this.

Roger Bright: No, I would say that it isn't.

Q124 David Mowat: You are doing it commercially.

Roger Bright: Yes indeed, we are doing it commercially. We will get to a point where there is a fully consented site which is ready to develop and that will have a value, just as it would on dry land if you have a site which is fully consented.

Q125 David Mowat: In principle, you would do that for any source of energy or any other activity economically that will bring you in revenue subsequently.

Roger Bright: It is where we saw it as being in our interests, because that will give us a stake in the return that comes out of it. Furthermore, we saw it as part of our role, going back to working with the grain of Government policy, to play our part in helping this industry which the Government is committed to getting off the ground.

Q126 David Mowat: What you have just said is different. That sounded like a non-commercial thing. If you are saying that you are doing something for the greater good of genuine government etcetera, that doesn't sound to me like an argument about commercial return. It sounds like a subsidy.

Roger Bright: No, I think there is a certain amount of chicken and egg in here. The Government has said it has these clear objectives to see the development of offshore wind. We have the monopoly management of the seabed. If it is going to happen, it has all got to be on our seabed. That puts us in a certain position where we can be passive and say, "All right, we will stand back" and we can let the industry develop and take its own chances.

Q127 David Mowat: That is a model that is used in most of the world for most energy development types—just that. You stand back as the landlord, you let the industry have access to where they need to be and they take their chances. What you have described is different.

Roger Bright: In the first two rounds of offshore wind, which were in 2001 and 2005, we found that developers were often very reluctant to expend essentially risk capital before they had the array of consents that they needed to get. That was the first point. The second point we found was that quite often, when leases were granted, they weren't being developed or they were being sold on and they sat fallow.

Q128 David Mowat: My question then would be why are you keener to invest public money in these developments than the private sector is to risk their own money? The answer, I think, that you gave earlier was because there was apparently some kind of general Government thrust behind all of this.

Roger Bright: Yes.

Q129 David Mowat: It sounds like it is a subsidy.

Roger Bright: No; I would argue it is not a subsidy. When we have a fully consented site, we then grant a lease at a premium to the developer and we get a return on that. Once the offshore wind farm is in operation, we get a rental return from that as well. It is an investment which is in our business interests in terms of helping to make this happen and bringing forward a revenue flow sooner which goes to the consolidated fund.

Q130 David Mowat: So you have never invested in a location that has not subsequently looked like it was going to go into development, because obviously the way that would fail to work, as you have just described it, is if you were taking speculative positions that subsequent private developers didn't.

Tom Mallows: There are a number of points around it. There is a lot of risk in developing these sites.

David Mowat: Yes, there is.

Tom Mallows: The risk can come from a number of places. One is regulatory public policy. It makes good business sense and all commercial entities will seek to work with Government policy wherever they can because that means that everybody is aligned. There is a fundamental principle of good business sense being where we have an opportunity, to realise future revenues, to work with the grain of Government. The point about whether we can just stand back and let it all happen or whether it is in our interests to invest up front comes back to our long-term view that we are not beholden to shareholders. We can put up front and facilitate what we hope will generate revenues in future on a commercial basis—so it is not a subsidy in that sense—but with a view to longer-term revenue streams in the future.

Q131 David Mowat: The question that remains is whether or not that risk should be being taken with public money and the extent to which you are qualified to make those judgments versus people in the private sector making those judgments.

Tom Mallows: Absolutely. That is a fair point and there are two ways we could respond to that. Roger may have others. First, there are the technical skills that the Crown Estate has taken on board, including from the oil and gas industry and various other offshore industries, to ensure that we have the skills to make those judgments. Secondly, there is the position that the UK currently holds as of late last year in the Ernst & Young Attractiveness Index for offshore wind, which is No. 1. The two of them are related in that sense. Yes, it is a risk but the risk is paying the dividends.

Q132 David Mowat: If you were a private company making those sorts of judgments and risk investments, you would be taking equity in the subsequent activity. Are you doing that or are you just getting rent?

Roger Bright: As things stand at the moment we are just getting rent.

Q133 David Mowat: Is that something that you have considered? You are taking risks on behalf of the taxpayer here. You are making investments, you are

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making judgments and all of the rest of it which may or may not pay off. Hopefully it will.

Roger Bright: Hopefully it will, not least because Government policy is very much behind this. In that sense there is a very happy confluence of our business interest and Government policy.

Q134 David Mowat: How much money have you invested in offshore renewables over the last few years? Do you have a number for that?

Roger Bright: So far it is relatively modest, Tom, isn't it?

Tom Mallows: Yes; £10 million.

Q135 David Mowat: But that is going to increase. It is of the order of £10 million a year.

Tom Mallows: It is round about £120 million by 2020.

Q136 Fiona O'Donnell: Do you mind if I interrupt at this stage? On the theme of scrutiny and accountability for the investment—the loans or grants that you give—I am looking at the submission we have had from the West Highland Anchorages and Moorings Association. They talk about being aware of “much modest and sometimes very substantial help given with minimal fuss to our members and others around the coast”. It slightly concerns me that there was minimal fuss. I have this impression of lots of people with yachts getting money from the Crown Estate Commission so they have somewhere to tie them up. Can we have an assurance? I don't know if you want to go away and consider this submission. This is in contrast with local authorities where we would hope that the same scrutiny was there.

Tom Mallows: First of all, yes, we would welcome the opportunity to come back and prepare some more detail around that point and the point you are making. On the West Highland Moorings point, if I understand it, they are presenting a case where the administration is efficient, I would hope, rather than providing opportunities willy-nilly, which is obviously not what we do.

Fiona O'Donnell: I would hope so too.

Tom Mallows: I can seek to reassure you in that sense.

Fiona O'Donnell: It is understanding why there is the investment in Tobermory for people with private boats or ships. We are not talking about the commercial side for a fishing fleet to come in. It doesn't sound like that in terms of the submission but maybe we can have a look at that, just to understand that it is about the public good. I am very pleased for you in Tobermory.

Q137 Chair: That is quite helpful. At the moment my wife is in the Western Isles. She has just told me that apparently there are rumours flying around that the Crown Estate are going to start charging people for moorings in their own sea lochs. That is an example of you being seen as the big bad wolf that is going to come along and charge people for something that they have been doing for years. You are contributing nothing but you are taking money out. Can you understand how that image occurs?

Roger Bright: Yes, I can. To some considerable degree, for whatever reason, it may be based on some misunderstanding of what our role is. Tom is quite

familiar with this particular area. He might want to say a bit more about it.

Tom Mallows: In the context of moorings we do charge a very small fee, often significantly less than where those administration fees are charged by local authorities, for example.

Q138 Chair: But this is somewhere, for example, where the people have created the moorings themselves and where you have never previously charged moorings. You are just coming along like despots to charge them money.

Tom Mallows: The legislation that defines how we have to work is quite clear in that respect. We do have a duty to act in that way.

Q139 Chair: Let us be clear then. You are saying that the legislation tells you that, despite people having had free moorings created by themselves for years, you are now driven to go round and try and take money off them.

Fiona O'Donnell: Is that optimising or maximising?

Tom Mallows: I don't know the case you are talking about in particular, so perhaps we could have an opportunity to respond on that particular case. What I would say in relation to the West Highland Moorings, for example, is that the positive bit we do in relation to moorings is in helping create and putting back into the associations, so helping with the co-ordination and the management side. There is a positive response. I know that West Highland Moorings is very pleased with our work in that respect.

Chair: We are going to see the Western Isles so we will be able to find out some of the truth of this. We understand there is going to be a vote at quarter past. We still have a number of points to raise so we will probably end up having to come back for a short period. You will have to excuse us when we go off when the bell rings. Those who are asking the next questions can come back as quickly as possible and we will start immediately.

Mr Reid: In relation to what Fiona has said, I stress the importance of these moorings to the local economy. The users may well be well-off people, but because the moorings are there those well-off people are coming into the local community and spending a lot of money.

Chair: We will be able to see whether or not we are subsidising the undeserving when we go and see them.

Mr Reid: The whole local community is benefiting from these wealthy people.

Chair: We will go and see whether or not there is a trickle-down effect when we go and visit these various locations.

Q140 Cathy Jamieson: I will try and keep this very brief. It is to firm up some of the points that David made, particularly on the issue about marine renewables. I was listening very carefully all the way through to what you were talking about in relation to working closely with the Scottish Government, with developers and so on. Primarily, who has the lead role in terms of marine renewables in Scotland? Is it yourselves or the Scottish Government? Who is driving that?

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Roger Bright: The Scottish Government, basically. We are the landowner.

Q141 Cathy Jamieson: You see yourselves as the landlords, essentially.

Roger Bright: Yes.

Q142 Cathy Jamieson: How does that fit with some of the investments or the development role that you are taking? Are there tensions between the two of those and between yourselves and the Scottish Government's agenda?

Roger Bright: I am sorry, I am not quite sure what you mean.

Q143 Cathy Jamieson: For example, you have talked a lot about what your powers allow you to do. Are there any tensions or conflicts between trying to deliver on the Scottish Government's agenda in terms of marine renewables and any of the other pressures on you? That is what I am getting at.

Roger Bright: There is no conflict in terms of other pressures that are on us. We work extremely closely with the Scottish Government, particularly at official level. Tom and his colleagues in Edinburgh have frequent meetings with Scottish Government officials. Those relationships are working very well. As far as I am aware, we are not finding those discussions difficult because of other pressures that may be upon us elsewhere.

Chair: We will adjourn now and be back as soon as we can.

Sitting suspended for a Division in the House.

On resuming—

Chair: We can move straight on to Alan Reid's questions.

Q144 Mr Reid: What is your policy regarding community benefit schemes arising out of renewable developments in the area where the community lives?

Roger Bright: This was something that came up when we appeared in front of the Treasury Select Committee. As I explained then, if there is a question of us putting money into general purpose funds we would have a problem with that. However, what I would say is that the principal benefit for communities that comes out of offshore renewable energy is going to be jobs. Certainly, for example, the work that we have been doing with the Highland local authorities in terms of developing a memorandum of understanding with them has been all about trying to make sure that the work that we are involved in with offshore developers is aligned with the aspirations and objectives of the local authorities in terms of helping capitalise on job opportunities and making sure that local businesses and companies are able to contribute to and benefit from offshore renewable energy adjacent to them.

Our focus on communities in relation to renewable energy in that sense is very much in that direction. Certainly we are very keen to try and make sure that what we are doing and what we know of what offshore wind farm developers need can be, as far as possible, satisfied from local communities. The most valuable contribution, in a way, that we can make is

doing our part to ensure that the needs of the offshore wind farm industry can be met from local communities, and that will mean jobs and advantages for local businesses.

Q145 Mr Reid: But we are talking about huge engineered structures and the communities tend to be very small and remote, based on agriculture and tourism. Can you give examples of where you think jobs will be created as a result of these developments?

Roger Bright: Perhaps I could ask Tom to say more.

Tom Mallows: The first point to make is that it is not for us to decide what happens to any revenues that we generate from these in future. The second point is about our role. We have already talked about who is the lead on renewables in Scotland. We are not the regulator, but we do act in accordance with and working with the grain of the Scottish Government effectively as a delivery vehicle.

Q146 Mr Reid: Who is the regulator?

Tom Mallows: Marine Scotland is the regulator for offshore renewables.

Q147 Chair: But you are the developer.

Tom Mallows: No; we are not the developer. There are two different models. Within Scottish territorial waters, the process for the offshore sites that have been proposed at the moment is known as the Scottish Territorial Waters Offshore Wind Programme. We suggested in 2007, as I think I mentioned previously, that the Scottish Government should do their formal strategic planning process: the SEA—Strategic Environmental Assessment. We were asked to proceed with an ad hoc leasing round where we simply say to the industry, "Where would you like to go?" Industry chose those locations. We didn't choose those locations. We changed our process of leasing specifically in the Scottish territorial waters to reflect the difference in approach with the Scottish Government. We provided what is known as exclusivity agreements which gave companies the choice, at their risk, whether to carry out some of the work that they needed to do to start understanding the sites—the site investigation and survey work—that would then be used to apply for a consent from the Scottish Government. The agreements to lease that we propose are all subject to the securing of statutory consents. All they do is give the developer the security to those sites. We will not give a lease unless those statutory consents are obtained.

Q148 Mr Reid: What do you actually do? You don't construct the development. You don't regulate the development. What do you actually do?

Tom Mallows: In that case we effectively administer the rights to that.

Q149 Mr Reid: But that sounds like five minutes' work. The applicant says, "We want a site there." What do you actually do?

Tom Mallows: The delivery vehicle is the most important aspect of that. For example, this is not in your constituency but on the east coast. Roger made the point before that we are set up under the Act to

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realise and enhance the value of the Estate. Ultimately that is what we are mandated to do. The role we filled in the Scottish territorial waters is based on the experience we have from rounds one and two, almost entirely south of the border, where achieving that consent is very difficult. What we have done on both the west and east coast is to bring the developers together. We have actively facilitated that process of development. With regard to the consenting problems that they face, for example, cumulative impacts and landscape impacts, we have provided a vehicle for getting developers together to collaborate, which they wouldn't necessarily otherwise do. We have funded strategic bird studies to provide the data that they then need at a regional scale on the east coast to put into their consent applications.

Q150 Mr Reid: Why doesn't the developer fund these?

Tom Mallows: They do, but there are certain aspects with which we are in a good position to help where it is not just about a specific site. Where it is just one specific site issue the developer will lead that process.

Q151 Mr Reid: You said earlier that you generate the revenue, but it is not for you to decide what that revenue is used for. Who would have to take that decision?

Roger Bright: It would have to be the Treasury. Basically under the terms of the Civil List Act all our revenues have to be surrendered to the Treasury.

Chair: But this is the argument that says all the bag of swag gets carried off to the Treasury and you just dump it there.

Q152 Mr Reid: But you have given other examples such as the statue to the Land Girls. You didn't say, "Well, that's up to the Treasury to fund that." You seem to be saying that you are not going to set up any community benefit schemes.

Roger Bright: No. What I am trying to get at goes back to a point I made earlier. Everything we do in terms of spending money has to be, in some way or other, to the benefit of the assets for which we are responsible. You can interpret that reasonably broadly, but what it means is that we have to look at every proposition that comes to us. If it is a proposition asking us to make some sort of financial contribution we will look at it and, if we think it is worth while and it can be construed as having some sort of benefit to our business interests, then we can look at it positively. What we can't do is deliver a pot of money to a third party and say, "You can have this to spend how you wish." That is what we can't do under the terms of the Act. If you are talking about generalised funds, that is something we would have a difficulty with putting money into, which is why we say, if that model is going to be developed, then it would be a matter for the Treasury to decide how it applied our revenues, not for us, because we believe we are constrained by our Act.

Q153 Mr Reid: If, for example, there was a proposal to develop a harbour, is that something you could put money into? Am I right in saying that you can look at

a specific project and say, "Yes, we will put money into that", but what you cannot do is say, "We will put money into this fund for other people to decide how it is spent"?

Roger Bright: That is exactly it.

Tom Mallows: If I may, that is precisely why we have proposed a memorandum of understanding with the various local authorities, including Argyll and Bute Council, to try and understand better where there are proposals that those local authorities have taken forward that fit with our own aspirations in terms of providing a business opportunity.

Q154 Mr Reid: We talked earlier about creating local jobs. I am still not clear as to what those local jobs are going to be doing. Can you give some examples of where you think local jobs would be created? You have proposals for wind farms offshore from the Isle of Tiree. Where do you think the local jobs in the Isle of Tiree are going to come from in these developments, if they go ahead?

Tom Mallows: The opportunities are clearly there in a number of ways.

Mr Reid: It is not clear.

Q155 Chair: It is not clear to us, so clarify it for us.

Tom Mallows: We have published a report or an information document called "Your Career in Offshore Wind", which may be of interest to the Committee to see, if that would be useful. That sets out the range of jobs that are associated with, for example, offshore wind development. There are a number of different types of jobs. I can't list them all off the top of my head.

Q156 Mr Reid: But for the likes of working on a oil rig, for example, the oil rig jobs don't all go to people in Aberdeen. There are people from all over the world who come to Aberdeen to work on the oil rigs.

Tom Mallows: But it is the opportunity.

Q157 David Mowat: Did you say you had published a book on opportunities in wind?

Tom Mallows: Yes.

Q158 David Mowat: Why would the Crown Estate publish a book about the opportunities in wind?

Tom Mallows: There is a good answer to that. It relates to our public role. One of the biggest challenges facing the offshore wind industry—and we know this because of the technical expertise we have within our teams—is skills and the supply chain. It is one of the key challenges facing the industry if it is going to deliver as Government has set out its priorities for delivery. This is where we become the vehicle for delivery, effectively. We facilitate the process. We act in the centre of this particular issue.

Q159 David Mowat: Do you see yourselves as some kind of godfathers for the offshore wind industry?

Tom Mallows: Not in the slightest.

Q160 David Mowat: It seems to be what you are implying.

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Roger Bright: Perhaps, Mr Mowat, I can put it this way. We have a very clear business interest in doing what we can to help an industry get on-stream that is going to deliver quite significant flows of revenue ultimately for the benefit of the public finances.

Q161 David Mowat: On a point of fact, there is no foreseeable likelihood in the near future of offshore wind producing anything other than very, very, very heavily subsidised electricity. I agree that it is Government policy to do that, but let's not hide that fact with something like Thanet. That is a brilliant technical achievement but the subsidy for that is £1 billion over its life. There are huge, huge levels of subsidy. I was just interested that you seem to be regarding yourselves as, as I have described, some kind of godfathers to this industry.

Tom Mallows: Might I give you another example? The aquaculture industry is another example where we are not passive in our role. We fund annual research into biotoxins, for example. There are problems that the industry faces industry-wide.

Q162 Chair: I understand that point. Let me come back to this question of local jobs. Maybe wind farms are slightly more difficult, but let us come to aquaculture. It seems to me entirely reasonable that you should make it a condition of developing an aquaculture centre or facility that they employ local people. It seems to me that that is not beyond your powers or beyond the realms of possibility. It does not clash with your idea about not giving money away and all the rest of it. Do you do that? If not, why not?

Roger Bright: We don't do that because that is not a normal condition of a lease. It would be very difficult for us to put a condition like that into a lease because who would enforce it?

Q163 Chair: You would enforce it.

Roger Bright: But how are we going to enforce it?

Q164 Chair: This is one of the worst examples, I think, of where you are clearly trying to wriggle out of something that you could do but are choosing not to. We developed a shopping centre in my constituency. It was a private developer. He told the contractors who were working for him that he wanted a specific number of local people employed or they didn't get on the site. He told a number of shopkeepers that they had to employ a certain percentage of local labour or they weren't getting allocated shops. They did it. I do not understand in those circumstances, if you are giving somebody the right to develop something like aquaculture, why they should not be obliged to employ a certain percentage of local people with the only get-out being that there is nobody available locally with those particular skills. I can accept that if it is something particularly exotic—you can't get a fish chemist or something similar—you get out of that. But I cannot understand why you are not willing to make a stipulation that jobs go to locals.

Roger Bright: What we have tried to do is to use other means of facilitating the employment of local people in areas where we operate. We have not tried

to write them into the terms of our leases. Maybe that is something we could look at, but I can see some quite difficult practical problems around enforcement of that. What we have tried to do, as Tom was saying, in relation, for example, to development of the offshore wind industry is promote something like 20 supply chain events around the UK, half a dozen of which have been in Scotland.

Q165 Chair: Let us not drift on to something else. Let us come back to this question of employment. How successful have your efforts been to get local employment? What measurements do you make? Can you produce figures for us?

Tom Mallows: Can I answer a couple of points on the previous question and then come back to that one? There are two points. First of all, we don't have an offshore wind industry in Scotland yet. We don't have wave and tidal industries in the UK yet. If these industries are to be successful we have to be an attractive place to do business. There are clearly going to be points where writing in difficult conditions of leases is not in the interest of the industry as a whole. That is why we do things like working with the Highlands and Islands Enterprise, whose job it is to do that kind of work. We try and give them as much information as we can to help them to do their work.

Q166 Chair: These are alibis rather than explanations. Rather than you diverting us on to something else, let me just come back to aquaculture. It is not rocket science. A number of the jobs in aquaculture are essentially labouring jobs. Is it the case that you make any stipulation that these have to go to locals? As I understand it, the answer is no.

Tom Mallows: Yes.

Q167 Chair: Why not?

Tom Mallows: The other point which I was just going to come on to—and I would need to check this and come back to the Committee if I may—is that we are a public authority and therefore we are subject to state aid regulations in the same way as any other public authority would be. It may be that we are not allowed to do that.

Q168 Chair: Fine; that might be an acceptable alibi but it has taken you quite a while to get round to that.

Tom Mallows: Apologies.

Q169 Chair: It is a question of the will and the attitude. Other people have managed to get round this. There are hospitals in my area which are being built which have managed to get round some of that by constructive efforts. You have lawyers who manage to tell you what you cannot do when it suits you. Surely you can find lawyers who tell you that you can do what you want to do when it suits you. You have lawyers here with you. If they can't do it themselves, there will be other lawyers who will be able to help you to do that.

Tom Mallows: And we have done that. That is why we are giving the examples of all the various other things which are pushing at the edges of what you might say are direct investments. There is careers

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guidance, working with the Highlands and Islands Enterprise—

Chair: You are possibly picking up that we think this is not sufficient.

Fiona O'Donnell: Tom, the problem I have with all of this is that you are generating all this work for yourselves with environmental impact assessments of birds on wind farms. I know that the RSPB carries out that work. You are looking at skills development. People in Scotland vote for a Government here and in Holyrood, which is politically accountable to set the direction of policy. Nobody elects you. I get the feeling that you can decide, "This is interesting; this is a niche we can carve for ourselves", but how does it fit in with the overall strategic plan for Scotland's future energy needs? Where is the accountability in all of this? Where does the evidence of best value come from if you go off and you do this research? I am finding this all slightly uncomfortable.

Chair: We are not happy. We have gone through quite a lot of stuff. It is the point I made earlier on about the benevolent despot. It gets to a point on things like this, which I anticipated, where you do not seem to be as responsive and as helpful. It is almost as if you don't understand what you are saying and that you are not up to speed with best practice elsewhere in development and the way in which there are efforts being made to share best practice from elsewhere. I do genuinely find myself astonished by this.

Q170 Mr Reid: Could you make sure that we get a copy of the book you referred to on local jobs?

Tom Mallows: Yes, of course.

Q171 Jim McGovern: On the same subject as Alan, on local employment, a number of companies in my constituency of Dundee have committed to the fact that if they win the contract they will guarantee so many local jobs, etcetera, and then they bring in companies from Aberdeen, Edinburgh, Newcastle or Manchester. Increasingly I have people coming to my surgery saying to me, "Why is it that I can't get a job on that building site because everybody there seems to be either from Newcastle, Manchester, Edinburgh or Poland?"

There was a ridiculous situation. There was an advert in the job centre in Dundee for a GF—general foreman—on a building site. A local person was able to tick every box for health and safety and organisation but at the very bottom it said "Must be able to speak fluent Polish." That is on a building site in Dundee. Surely you would agree that that is ridiculous if a commitment is made to employ local labour. I have to say it doesn't matter to me if that local labour is of Polish, Lithuanian or Estonian origin as long as they live in our area.

Roger Bright: I can quite understand the point you are making, Mr McGovern. All I can say is that we are acutely aware that offshore renewable energy in particular has the potential to create huge job opportunities. We are conscious that those job opportunities could be in locally adjacent areas. To take your point, Mr Davidson, we have not enshrined in any leases that it should be a requirement for people to be employed locally by the tenant or the occupier.

At the moment we haven't entered into any leases on offshore wind farms in Scotland anyway. All I can say is that I take delivery of your point. What I would say, though, is that we are pursuing a range of other non-statutory mechanisms, which includes our proposed MoU with the Highland local authorities. It includes supply chain events with companies that could benefit from offshore wind. We are pursuing a whole range of non-statutory devices to try and stimulate awareness of the opportunities for jobs.

Q172 Chair: There is a division between us. I can see why you are doing a lot of things that are eminently sensible from a business perspective. They are about safeguarding or enhancing your assets or future assets. But we have interests beyond that, which you clearly do not.

Roger Bright: I understand that.

Q173 Chair: This is the issue about accountability and so on and to whom you are responsible. We are interested in making sure that the local areas involved get some form of rent, whether it is financial contributions or jobs on the things that you are developing. You don't have that perspective. I am not sure how we bridge that because every time we raise issues you retreat behind legal advice.

Roger Bright: With respect, no, that is not what we are doing. We are constrained by our Act, and the Public Accounts Committee would be the first people to jump all over me if I started acting outside—

Q174 Chair: I am not sure they would on this issue.

Roger Bright: We perceive that we have to operate within our Act. That said, we have every interest in ensuring that communities prosper where we have a major interest. That is in our business interest and it is in the interest of the communities where we are present.

Q175 Chair: I think you are possibly identifying that we are less than totally satisfied with the status quo; otherwise we would not have been established in the first place. Change is going to come, in my view. It is either going to be done with you or against or despite you. It seems to me that there are two alternatives for us. One is for you to help us identify ways in which the rules under which you operate can be changed in order that mutual objectives can be achieved, or we just give up and say, "This is not an organisation that is capable of reform." We would end up saying we devolve it, break it up or hand it over to the local authorities or something different. It seems to me that that is the choice we are going to be faced with. Whether or not the Government picks up our observations we will wait to see, but that is the position in which we find ourselves.

Q176 Mr Reid: There is one more question. The Crown Estate already has a Marine Community Fund that gives out project grants. Can you tell me how you decide which grants to give out? What are the criteria?

Tom Mallows: All of the information is on our website in simple terms and we can provide that in more detail.

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Q177 Mr Reid: But in simple terms today.

Tom Mallows: In simple terms, we will take applications. Any grants that are given out have to add value to our business. They have to be in line with our Act. It is a limited pot of money. Each and every application, if it is successful, has to have a legal review to make sure it is within the vires of our Act. Effectively it is about projects that are either beneficial to the community or provide research and improve information around the marine environment that also have tangible benefits to our assets.

Q178 Chair: I will come back to a couple of smaller points. You don't pay corporation tax or any other form of tax. Why is that?

Roger Bright: The reason for that is simply because all our profits go to the Treasury—the whole lot.

Q179 Chair: Are there circumstances where you might be in competition with someone else for, say, the purchase of property and the absence of tax distorts the market and makes proposals financially viable for you which would not be viable for someone else? Is there an issue there that we ought to be aware of and that we ought to be considering?

Roger Bright: I don't think so because we pay transactional taxes. We pay SDLT and we pay VAT. When it comes to transactions we are competing on all fours with other players in the marketplace.

Q180 David Mowat: The answer to that question is to do with how well you are doing against your overall benchmark. The question was, are you in some way subsidised and therefore you can bid more for the same asset as a private company? Your answer to that would be that judge and jury on your financial performance is your benchmark and, as far as you are concerned, you beat it.

Roger Bright: Yes.

Q181 Chair: That is one of the issues that will concern us. Looking at your accounts, I also notice that the Windsor Estate element of your portfolio runs at a loss. I take it, therefore, that is being subsidised by the rest of the Crown Estate rather than the income from the Crown Estate going to the Treasury and then money coming back out again. In a sense you are taking a decision to subsidise the Windsor Estate when you have indicated to us that you are not perhaps willing to subsidise or pay out costs for other things. Can you square that circle for me?

Roger Bright: Yes. Under the terms of our Act it is the one asset that is specified on the face of the Act that we are required to maintain and keep in the manner of a Royal Park. We are under a statutory duty to run Windsor Great Park and to maintain its character as a Royal Park. That obviously has a cost attached to it. We seek to offset those costs by raising revenue wherever we can on Windsor, and we do to a considerable degree offset those costs. We have been gradually reducing the deficit on the Windsor Estate but there is still a small deficit. I think it is about £1.5 million.

Q182 Chair: That is quite a lot of mooring fees from the Western Isles, isn't it? Effectively, mooring fees off the west of Scotland are being used to subsidise Windsor Estate.

Roger Bright: No. It depends how you choose to express it.

Q183 Chair: I think that is how I would choose to express it. There certainly seems to be an element of truth in it, doesn't there?

Roger Bright: No. All our revenues from all our sources go into a single pot.

Q184 Chair: A bucket.

Roger Bright: And they then go to the Treasury. The amount we give to the Treasury is less by the loss that we incur at Windsor.

Q185 David Mowat: The issue the Chair has raised, though, is that it is a non-transparent subsidy. Effectively, it is done by you before it is all divvied out, whereas had it been paid out by some other mechanism it would be transparent.

Roger Bright: But what I would say is that in our annual report and accounts you will find the figures about Windsor, which is presumably where you have identified that it does run at a loss.

Q186 Chair: The biographies of your Edinburgh Corporate Leadership Team list something about some of your people. One of your members of staff was partly educated at Dingwall Academy and partly somewhere else, if I remember correctly. It doesn't mention anything about where the others were educated. Given that we have asked before about how many of them are public schoolboys, I presume that they all are. Is that correct?

Roger Bright: I don't know that for a fact.

Tom Mallows: I don't believe that that is the case.

Q187 Chair: We did actually ask that when we met you informally and I thought that that would be in the paper. Maybe you could let us know that in due course. I think we have covered just about everything. Is there any final point you want to make to us that will appear on the record? I mean by that answers you had prepared for questions that we have not asked.

Roger Bright: No, Mr Davidson. You have given us a very fair hearing, if I may say so, and an extensive one. All I would want to say in conclusion, as I said at the beginning but it is perhaps appropriate to repeat it, is that we do wish to be a very good corporate citizen, if I can put it like that. We regard it as the right thing to do and in our business interests. We do, however, have to operate within our Act. If Parliament chooses to change the mandate under which we operate, that must be for them. Within our Act, as I say, we seek to be a responsible and corporate citizen.

Chair: Thank you very much for coming along.

Monday 31 October 2011

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Graeme Morrice

Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Brian Swinbanks**, Chair, Tobermory Harbour Association, **Robert Clement**, Chairman, West Highland Anchorages and Moorings Association, and **Captain Ron Bailey**, Harbour Master, Clydeport Operations Limited, gave evidence.

Q188 Chair: Gentlemen, there is a photographer here who wants to take a photo of you. Apparently we have to do it before we formally start, so if you do not mind sitting there while he takes a photo of us, and hopefully we will be ready to start before 3.00pm.

The Committee paused for photographs.

Q189 Chair: Right, could I start the Committee then, gentlemen? Could I apologise, first of all, for that slight delay and welcome you to this meeting of the Scottish Affairs Select Committee in Glasgow. As you are aware, we are looking at various aspects relating to the Crown Estate, and particularly today we are wanting to meet local authorities and yourselves. I wonder if I could start off by asking a number of points about Clydeport and your operations. In particular, just for the record, could you just tell us who Clydeport are, what you do, who owns you, how big you are?

Capt Bailey: Good afternoon. My name is Ron Bailey. I am the Harbour Master for Clydeport and have been for the last 15 years. Clydeport are a statutory harbour authority. We have, we understand, the largest area of jurisdiction in Western Europe, some 450 square miles. We have an annual turnover of approximately £50 million and about 250 employees. We operate our own ports at Hunterston, which imports coal, power station coal; Greenock, which exports whisky—cruise vessels come in; 40 I think we have for next year—and also building materials. King George V dock has a lot of turbines coming in now, wind turbines, for the various developments onshore in Scotland, and there is building products, cement, animal feed and so on. In addition to that—those are the three berths that Clydeport operate—there are many independent berth operators. There are berths that export scrap. There is the Finnart terminal in Loch Long. That is connected to Grangemouth so it imports crude oil and also exports refined products. In Rothesay dock at Clydebank we have over 1 million tonnes of petrol and diesel coming into the port. We share the port with the Royal Navy and, of course, there are also very many leisure activities. We have over 1,500 leisure moorings within the Clyde and we have commercial fishing as well. We are part of the Peel Ports Group. The other ports within the group are Mersey Docks and Harbour Company, the Port of Heysham, Manchester Ship Canal and Medway Ports.

Q190 Chair: Can I just clarify the responsibility and role of Clydeport for the management of the River

Clyde and its estuary? You are a private organisation, privately owned, yet you clearly have wider responsibilities for the running of the river and the estuary. Can you just clarify what these are?

Capt Bailey: Yes, that is correct. I should have said as well I am also here today to represent the British Ports Association, who represent the majority of ports within Scotland. That then leads me on to the types of port. There are municipal ports, municipally owned and operated ports. There are trust ports, of which Aberdeen would be the best example or the largest example in Scotland. On private ports, we did have plc ports of which Clydeport in the old days—a few years ago—was one, and Forth Ports is the last one that has just recently gone into private ownership. But no matter where or what the ownership of the particular port is, we all have the same statutory duties, which is the safety of navigation and the regulation of navigation for water users in our port area. The public have a right to navigate. Ports have a right to make reasonable charges and they have a statutory duty to ensure that it is safe, that those who choose to navigate do so within their own waters.

Q191 Lindsay Roy: Good afternoon. What responsibility does the Crown Estate have for the seabed and foreshore within your harbour area?

Capt Bailey: The Crown Estate operates as the landlord and gives, or we negotiate—not just Clydeport—leases with the Crown Estate for the use of the seabed. That is done for commercial reasons, but also I chair a committee called the Clyde Moorings Committee in which these 1,500 moorings that I talked about, private moorings and some commercial moorings, deal with the Crown through us. We give permission from a navigational point of view. They lease a proportion of the seabed. We prefer if they do it through mooring associations. It is cheaper for them and it is also easier to regulate, and that then goes through to the Crown. Of course, we also have fish farms and so on—so anything to do with the seabed. Where it has been artificially made, the Crown do not own that proportion.

Q192 Lindsay Roy: How meaningful are the negotiations? In other contexts we have heard that the Crown Estate has more or less dictated the terms.

Capt Bailey: Well, if I might just quote from the British Ports in Scotland: “It is our experience that over the past 10 years and starting from a position where there was strong criticism of the way in which

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the Crown Estate went about lease negotiations, the British Ports Association is now in a position where there is relative satisfaction with the lease agreements that have been reached and the way in which they have been negotiated, albeit that there will always be some tensions in the landlord-tenant relationship.” To move or to drill down, as seems to be the phrase these days, a little bit more into that, there are always going to be difficulties with this landlord-tenant arrangement. On occasions, the Crown can be perceived to be slow and difficult to deal with. There is a tendency, we would feel, for their lease agreements to take a disproportionate amount of value, given that it is generally areas that they give to us that need an awful lot of capital investment to realise any value at all. I am not talking about moorings here; I am talking about commercial use of their land.

Q193 Lindsay Roy: What kind of figure are we talking about in terms of payments to the Crown Estate for the use of the seabed and the foreshore with your businesses, roughly?

Capt Bailey: That would be very difficult for me to give and I am afraid I did not come prepared for that particular question.

Q194 Chair: Well, if there is anything like that that any of you are asked, you can maybe just drop us a note afterwards. We are not trying to catch you out, but if there is information requested that you do not have at your fingertips, you can maybe just let us know subsequently.

Capt Bailey: Yes.

Q195 Lindsay Roy: Can I just follow that up? Do you think that the rental charges and other payments that you make are on a fair basis?

Capt Bailey: I would split that into two halves. I think on the mooring side of it they are, yes. On the commercial side, we as Clydeport—and I am not trying to be evasive here but it is not something that I deal with—my property colleagues I am sure would always argue that they were paying too much.

Q196 Lindsay Roy: Why do you think that is?

Capt Bailey: That’s the nature of the game, isn’t it? But if I could take that question away, particularly the previous question on the figure, and come back to you rather than pluck a figure from the air.

Q197 Lindsay Roy: Can you give us a few words that would describe your working relationship with the Crown Estate, that characterise the relationship?

Capt Bailey: I have been dealing as Harbour Master with the Crown Estate, as I say, for 15 years. I would think it was about five, six, seven years ago when there was a company called Bidwells who became their agents and were introduced into the equation. Bidwells seem to be a little bit more aware of the sensitivities when dealing with leaseholders or potential leaseholders. Generally speaking, we find that it has improved significantly over the last seven or eight years.

Q198 Lindsay Roy: That is a couple of words. Have you any other words that you would use to characterise the relationship—things like trust, integrity?

Capt Bailey: I have no reason to doubt their trust or their integrity at all. I have always had very good dealings with them. If we have had a problem, we have been able to resolve it.

Q199 Lindsay Roy: The culture of secrecy, which has been put forward as a way in which the Crown Estate deal with some of these rental charges?

Capt Bailey: Not that I have experienced, no.

Q200 Jim McGovern: Could you tell me, please, Mr Bailey—

Chair: Sorry, could you press your button?

Jim McGovern: I beg your pardon, I am sorry. I think everybody forgets that the first time. Could you tell me, are there any other large private sector harbour operators in Scotland similar to Clydeport, for example, in the Firth of Forth; and if so, are they paying, as far as you are aware, similar charges to the Crown Estate?

Capt Bailey: Well, yes, of course, there is Forth Ports, which are on the east coast. As far as I am aware, they are paying similar charges to the Crown Estate, yes.

Q201 Jim McGovern: Being slightly parochial, do you know if that would apply to Dundee, because I think Dundee is run by Forth Ports? That is my constituency.

Capt Bailey: Sorry, I missed that one.

Jim McGovern: Would that apply to Dundee as well? I think Forth Ports run Dundee. I don’t know if you would be aware of that.

Capt Bailey: No, I am obviously aware of Dundee and I know the harbour staff there, albeit most of them are based in Edinburgh now. I have no reason to doubt that there would be any difference whatsoever. As far as I am aware, there is a fairly common charging structure across Scotland.

Q202 Lindsay Roy: Would it be fair to say that you don’t have a great deal of dialogue with Forth Ports Authority about the Crown Estate?

Capt Bailey: As we are rival companies, that would be correct.

Q203 Lindsay Roy: Is it not in your interest to share information, particularly if—

Capt Bailey: Particularly on the Crown Estate—

Lindsay Roy:—you feel you are being overcharged?

Capt Bailey: We have never had the need to do that, no.

Q204 Chair: Could I just follow that up, and I will try this without the microphone because there is quite a bit of boom and I am not quite sure whether or not this is better. I am struggling slightly to try and work out the relationship between yourselves and the Crown Estate in terms of financing. I have almost never come across a situation where the tenant did not feel that they were being overcharged and the landlord, as it were, felt that they were overcharging.

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Presumably, you have benchmarks that you can compare with what is happening elsewhere in the UK. To what extent are the Crown Estate charges reasonable as compared to what would be appropriate elsewhere in the UK or anywhere else?

Capt Bailey: This is where, for myself, this becomes a little bit difficult. I am talking on behalf of the Scottish Ports Association. David Whitehead, who is the director based in London, deals with all of the ports on a national basis, so he would be better placed to answer that question. Again, I would have to take that back to him.

Q205 Chair: But surely you must have an impression. It must be something that either is or is not talked about at the office—how outrageous it is in Scotland or how outrageous somebody else is. If you are saying that there is no discussion about that, well, that tells us something.

Capt Bailey: On the mooring side, there is very little, almost no discussion about it. Obviously, you will always get somebody objecting to the price of moorings, the very fact that there had to be moorings. For a long time the Rothesay charter was talked about. Moorings in Rothesay were to be free, it was deemed. That was settled, I think, in the Court of Session last November. You are obviously always going to get some people who do not want to pay. What we try to do on the moorings side is to impress upon people the value that they are getting from that, in that you are getting a secure mooring. You are not going to get a free for all. You are going to get something that is protected and—

Q206 Chair: No, I understand that side of it. Do people feel that it is better like this?

Capt Bailey: Yes, personally I do.

Chair: I don't know whether those in the cheap seats, as it were, at the back—you can't hear anything? You can't hear the witnesses. In that case, we had better use the microphone, then.

Capt Bailey: Sorry, could I just read from what I was given by—

Chair: Could you put your microphones on, because they can hear us but they can't hear you.

Capt Bailey: If you could just bear with me, I don't know if this paragraph will help. Devolving the Crown Estate's affairs to Scotland—I am quoting a paragraph here: "The paper also refers to the Crown Estate's narrow remit of maximising returns. Notwithstanding our previous comments about profitability, the Crown Estate has nevertheless been investing in the development of offshore renewables. For example, British Ports Association is a member of the Offshore Wind Developers Forum Supply Chain Group, a group organised by the Crown Estate, which is actively looking to control and reduce the cost of renewable-generated electricity. It has set aside £300,000 for the project. It was announced in July that 50% of the revenues from the Crown Estate's current activities would finance a new Coastal Communities Fund. We are not here to act as agents for the Crown Estate. These activities and other co-operative agreements serve to demonstrate that the Crown Estate do not always act in a traditional landlord way

and do appear to see themselves as investors." I hope that answers the question a bit better.

Chair: Fine. Thanks very much.

Capt Bailey: That has not always been the case.

Chair: No, I think we understand that.

Q207 Jim McGovern: Chair, can I maybe make a brief suggestion? I am sorry for interrupting, but there is quite a lot to get through here. With your indulgence, maybe we should say to the witnesses that if you wish to read from pre-prepared statements that are in the public domain, it would save time if you just sent them to us rather than reading a full page.

Capt Bailey: Okay, understood.

Jim McGovern: If you agree, Chair?

Chair: Yes, fine, thanks.

Q208 Graeme Morrice: Good afternoon, gentlemen. I want to ask about your relationship with the Scottish Government and, in particular, how much contact and what kind of contact you have with Scottish Government officials.

Capt Bailey: One at a time or—

Chair: No, with yourselves at the moment and we will come on to the others later on.

Capt Bailey: It is a small department and I am pleased to say that I know most of them on a first-name basis. They are particularly conscious and interested in the success of the ports. I have a lot more to do with them than I do with the Westminster Government. If there is any threat of bad weather or disruption they seem to want to know what is going on. Generally speaking, I think it is very, very good. The one criticism I would have, and this must happen in all areas of devolved activity, is that sometimes I am answering London and Holyrood for the same question. It is not quite clear whom it lies with. I am sure you are very familiar with that.

Q209 Graeme Morrice: Thanks. Can I also ask, do you have any particular views on whether there might be any benefits, or indeed any disbenefits, in the Scottish Government managing the seabed permissions and charges rather than the Crown Estate?

Capt Bailey: Again, if I might just look at the conclusions that the British Ports came to. My colleagues here who represent other interests may well disagree, but the majority view of the British Ports in Scotland is that, "The ports have achieved a good and workmanlike commercial relationship with the Crown Estate in recent years. There is evidence that the Crown Estate, using national resources, is making investments in new businesses and specifically offshore renewables. Using lease agreements to raise money for specific projects could lead to price distortion. Prices, we believe, should be controlled by market demand. In conclusion, the British Ports Association are unconvinced that devolution of the Crown Estate will produce significant benefits and could, in fact, produce disbenefits."

Q210 Chair: I think we understand that. There is a discussion to be taken later on about the question of passing many of the responsibilities of the Crown

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Estate to local authorities. Do you have any observations on that?

Capt Bailey: Some local authorities may wish for that but the majority of commercial ports, we would not support any such transfer.

Q211 Chair: Why?

Capt Bailey: We believe that this would lead to even longer delays and bias from bodies who have no resource and are possibly politically motivated, and we would resist anything that could lead to just becoming another tax.

Q212 Chair: Can I just clarify the point? You mentioned bias there. Could you expand a little on that? What sort of bias would there be?

Capt Bailey: Well, I think the two would go in together. I think there would be concern that we are beginning to see the Crown Estate now putting some investment back into the benefit of ports and the ports industry and the future in terms of renewables. We are not so sure that that would happen with local authorities, and it may just become another tax-raising power.

Q213 Chair: Yes, I understand, but your sole reservation, then, is that the local authorities, because they might be cash strapped, would not be able to put in the capital investment that the Crown Estate might and that they might see you as a means of raising money, rather than somewhere to spend money?

Capt Bailey: That is our overall concern, yes.

Q214 Mr Reid: At various times over the years there have been boats that have not been in use that have been moored in sea lochs, and I believe it is Clydeport that benefit from that. If you are charging boats for mooring in some of the sea lochs when they are tied up for long periods, do you have to pay the Crown Estate a fee for the use of that sea loch?

Capt Bailey: Could I just clarify, when you are talking about boats you are talking about commercial ships?

Mr Reid: Commercial ships, yes.

Capt Bailey: And particularly then you would be referring to Loch Striven, which was the ship we—

Mr Reid: Yes.

Capt Bailey: Loch Striven actually is very interesting. It is a sort of history of recessions. If you read about the ships that have been in Loch Striven, you go through the oil crisis from the 1970s, the various recessions that we have had. You will no doubt be aware that in 2008–09 we had six very large container ships there. There was an exchange of letters from Bidwells on behalf of the Crown to us. I think—I am pretty sure—I went back and said, “Well, these ships are here for six to nine months”. We did not agree with Bidwells and it went no further. I really could not comment, without going back to the files, as to what happened in the 1970s or even the 1980s when they were there.

Q215 Mr Reid: Sorry, I am still not clear. Did you have to pay a fee to the Crown Estate for the use of the seabed while those containers were there?

Capt Bailey: No, we did not. Bidwells wrote a letter to us. They asked, “How long are they going to be there?” I don’t have the letter in front of me.

Chair: A simple “no” is sufficient.

Q216 Mr Reid: Did the Crown Estate have the power to charge but chose not to do so?

Capt Bailey: I think that is a matter of debate, to be quite honest. I don’t think that they have the power to charge and they certainly didn’t come to us and say, “Yes, we have”.

Q217 Mr Reid: What you are saying is the legislation that set you up gives you the power to have container ships moored anywhere in the Clyde Basin?

Capt Bailey: I believe that it does. If we had these ships, bearing in mind where we are today, 2011, if those ships had been there two or three years, I suggest that Bidwells would have had more of an argument. As it was, I think they were there for less than a year.

Q218 Mr Reid: Is your contract for ever, or is there a certain timeframe for which your company is the port authority for the Clyde?

Capt Bailey: No, we are the port authority for the Clyde. The contract that we had with the container ships that were laid up, that was only for a few months and I think it went on a month-by-month basis. Nobody knew what was happening in 2008–09 when we were coming out of this.

Q219 Mr Reid: No, but I think the point I am trying to get across is, are you the port authority for the Clyde for ever or does the legislation set you up for a limited period of time?

Capt Bailey: No, it is not time limited. Clydeport as it is now is a combination of the River Clyde Navigation Trustees, the Clyde Lighthouse Board, and so on. That came about in the 1960s. That was set out under the Clydeport Confirmation Act in 1965. Clydeport is the body. It has had different names over the years, but it has basically been the same body, going through, with different names.

Q220 Chair: As I mentioned earlier on, you are a private sector organisation with some public responsibilities.

Capt Bailey: Going a little bit off, but the way I always put this is that the holding company is Peel Ports. If you owned a vessel and that vessel committed an offence in each one of Peel’s ports, and the port decided to prosecute, then you would be prosecuted under Clydeport legislation, Mersey Docks and Harbour Company legislation, Heysham legislation, and so on. There is no Peel Ports port authority legislation. Does that explain it?

Chair: Yes.

Q221 Lindsay Roy: Can I just clarify, are you really saying that you feel that local authorities would be a bit more punitive in their tax regime than the Crown Estate, and if so, what evidence do you have to substantiate that?

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Capt Bailey: No, I don't think I am saying that. In fact, I know I am not saying that. I am not saying they would be more punitive. It is a combination of things. The ports industry is beginning to see the Crown Estate put some investment back—give some direct payback into the ports industry. We are not sure that would happen with local authorities, and we are also concerned about the amount of time you are giving this—if this was to go to local authorities, it is just adding more and more layers on to them for what they already have. We feel that at the moment, the system seems to be working well. We are not against it. We are just saying we need to be convinced—that there has to be further benefits than we are seeing at the moment, if it was to be transferred.

Q222 Lindsay Roy: You would like more evidence?

Capt Bailey: We would like more evidence, please.

Chair: Fine. I wonder now if we could move on to the other witnesses.

Q223 Mr Reid: Good afternoon, Robert and Brian. Thanks very much for coming along. Perhaps you could both tell us how your associations are constituted.

Robert Clement: Yes; we are a little bit smaller than Clydeport and we have no commercial side whatsoever. The West Highland Anchorages and Moorings Association was set up subsequent to the proliferation of fish farms and suchlike appearing on the west coast of Scotland and taking up the better anchoring areas, such that the leisure industry was prevented in some cases from seeking refuge and finding a safe anchorage overnight. When it was first formed back in about the mid-1980s, there were some disagreements with the Crown Estate at that time, but over the period it has now been realised that WHAM do know what they are talking about and the Crown Estate sometimes come to us with regard to the positioning of moorings on the west coast.

Q224 Mr Reid: Just to clarify how you are constituted—

Robert Clement: We are just an association.

Q225 Mr Reid: You are an association of moorings associations. How would those individual moorings associations be constituted?

Robert Clement: The individual moorings associations pay a subscription to WHAM but we are not—they are affiliated to WHAM but that is as far as it goes.

Q226 Mr Reid: Thank you. Brian of Tobermory?

Brian Swinbanks: Good afternoon, everybody. Tobermory Harbour Association was first formed in 1983 as a pressure group, as an association. We realised that we would have to take responsibility for leasing areas on the seabed for the laying of moorings. We knew that the seabed belonged to the nation and we were happy from the earliest outset, from 1985, to pay the Crown Estate. They were offering a discount for moorings. That discount was very advantageous. We also knew that if we took in and got the authority to lay and maintain, that authority would give us some

power locally, and it did. I consider that many people, by continuing to fight and continuing to prevaricate, have missed an opportunity to devolve localism to their communities, to their harbours, through the system that was in place. We have used that quite a number of times. We have used that to achieve a car park—a huge car park for over 100 cars—bus parks and everything in Tobermory, in conjunction with Strathclyde. We forgave that right to lay and maintain to Strathclyde. They came in, in conjunction with us, and built a very large car park, boat park, bus park—facilities that drove forward community businesses and other businesses and private infrastructure within the town. That is partnership using the Crown Estate to an advantage, but maybe we had a committee that realised that could be done.

Q227 Mr Reid: Are you both non-profit-making organisations?

Brian Swinbanks: We are totally non-profit-making.

Robert Clement: Yes.

Brian Swinbanks: We have now moved forward to a company limited by guarantee with a board of 17, which ploughs all profits back into the community, for the community on behalf of the community.

Q228 Mr Reid: How do people become members of the association? Whom is it open to?

Brian Swinbanks: It is non-fee. You just come into the AGM or any other thing and say, "I want to be a member of the THA", you sign a form and you are a member of the Tobermory Harbour Association. It is open to anyone—associates from outside the Isle of Mull, direct members within the Isle of Mull.

Q229 Mr Reid: If somebody wanted to have a mooring—I think the question will be to both Robert and Brian, but maybe Brian first—in Tobermory Harbour, what do they have to do to go about that?

Brian Swinbanks: They would apply to us to get a mooring in Tobermory Harbour. Unfortunately, at present we have just over 100 moorings in the bay and a waiting list of just over 20. We are trying to re-juggle the grid. We go back to the question of unregulated moorings, and you both alluded to that before. When it was unregulated moorings and we wanted to reorganise the bay, we had to call upon the Crown Estate and PJ Korbelt, their moorings officer, who came to Tobermory, read the riot act to the community who were refusing to move, and said, "If you don't reorganise Tobermory Bay, everybody will have to apply individually". Nobody, of course, wanted to apply individually because they got the discount. We were doing all the work for them. We went in to form the mooring association. We reorganised the whole bay at that time, which included a new fairway, new moorings, a new cleared anchoring area, as specifically requested by the Crown Estate, to give some clear areas for other visitors when they came.

But this was all done on behalf of the community, the fishermen, the people who owned hotels and everything around Tobermory. This was not done for visiting yachts. In fact, our main opponents throughout this whole process were the RYA. Time

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and again they asked for a third of the bay. They asked for more and better facilities for visiting yachts. We opposed that regularly. We wanted to have our bay and our community working for the community by the community, and in this we were supported by the Crown Estate.

Q230 Mr Reid: Robert, in the other, smaller moorings associations, what do people have to do to get a mooring?

Robert Clement: More or less exactly the same. Each association covers a small area and anybody who wishes to put a mooring down in that area has to apply to the association to see if they can.

Q231 Mr Reid: I believe that Marine Scotland and Crown Estate consents are required. Do you do that for the individual?

Robert Clement: Yes, every mooring has to have what used to be called a section 34, which was a licence to place the mooring in a position that was proved not to be detrimental to navigation. Once that was obtained, they could then apply to the Crown Estate for a lease of the seabed in that area.

Q232 Mr Reid: How would you both describe your relationship with the Crown Estate?

Robert Clement: Satisfactory now. Initially there were some arguments between us, but I think we both realised that we have to work together and we are doing that very successfully.

Q233 Mr Reid: And Tobermory?

Brian Swinbanks: I have a couple of things to say. We have a very good relationship. As you know, it is a financial relationship. We manage the pontoons now for the Crown Estate. They have bought them off us and they have invested in Tobermory to the tune of over £300,000. We manage them on behalf of the Crown Estate. We have a very, I think, advantageous but commercial agreement with them to manage them and have a profit share. Where I have disagreed with the Crown Estate—and you asked for that really—is that they should not have gone to London. I feel that they should have had a Crown Estate in Scotland that was, like the Forestry Commission, a Scottish Crown Estate, a Scottish model.

Q234 Chair: That is presumably the argument—that you want to have them closer. One of the suggestions has been that the powers of the Crown Estate should simply be passed to the local authority, on the basis that they are even closer than the Crown Estate would be if it was based in Edinburgh. What do you think of that idea?

Brian Swinbanks: No, I think the model is Marine Scotland, I really do. I have read a lot of the work that has been put out, and the Crown Estate working as a management team with Marine Scotland in partnership could do this job exceptionally well.

Q235 Chair: What would be your unhappiness about working with the local authorities?

Brian Swinbanks: The local authorities for many, many years owned and managed the visitor moorings,

they were gifted them by the HIDB, or they may have bought them commercially, I don't know—eight moorings in Tobermory, six in Salen, some in Loch Aline, some at Loch Sunart. They lay, they were badly managed, not very well serviced, and they had no foresight to upgrade them. Within one year we had turned eight into 20. We had taken on an employee and we had turned something that they were just doing into a commercial operation. A parallel is Oban, where the Crown Estate were prepared to put money into Oban Bay Marina to make a new pontoon marina right in the centre of Oban and bring benefit to the town; the local authority refused to invest and match the money from the Crown Estate.

Robert Clement: My comments would be very similar. I live in the Oban area and I experienced that decision in Oban, and I think that was a great pity. From our experience in the area, I am afraid I would not like it to go to councils.

Q236 Chair: Can you just clarify why exactly that is?

Robert Clement: There is greater difficulty in trying to get them to do anything. In Oban it started off as everybody being for it, but in the end nothing came. This was over about four years.

Q237 Chair: You can understand why we have to ask these sorts of questions. We are being given various alternatives as to how the Crown Estate's rights might be managed in future. I detect signs that your enthusiasm for local authority control is less than total, then?

Robert Clement: I would agree with that, yes, and it was not just in Oban. There was an instance elsewhere where the local authority dropped moorings in a completely unsuitable position and it took a long, long time for anything to be resolved about that.

Q238 Jim McGovern: The Committee has visited Orkney, Shetland, Caithness, Tiree, Barra and Stornoway as part of this inquiry. I concur with some of what you have said. Quite a lot of people we have met would rather that there was local control but not necessarily by the local authority. I think a lot of organisations would like to see it even more local than that—community trusts and so on being set up. I wonder if Robert and Brian have an opinion on that. Brian, given recent events, I wonder if you could just clarify that, when you said that your organisation read another organisation the riot act, you don't mean literally.

Brian Swinbanks: No; what I meant was the Crown Estate had to read some people within the community the riot act to get—

Q239 Jim McGovern: You don't mean literally the Riot Act?

Brian Swinbanks: No. He had to come in and say that we would remove the moorings—that is, the Crown Estate—if the people failed to follow our plan to reorganise the bay.

I think it is critically important, ladies and gentlemen—I think it is on your shoulders here—that this idea that the seabed is a sheet of paper covered in

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pound notes, and all conversations seem to lead back to pound notes, is utterly wrong going forward in the 21st century. The person that runs the seabed in the future must be given a duty of care over the seabed. The seabed is a living infrastructure. It is the earth that supports the column of water above it. It has crabs on it, it has shells on it, it has everything on it. It has oil below it. It has the detritus of eons that created gas and oil. Above that, you have the tides. You have the wind above that. You must impose a duty of care on this, and I do not see you are going to be able to do that with the local authorities. This has to be down to something like Marine Scotland. We need a duty of care on the seabed going forward. It is not just pounds.

Chair: That was very poetic.

Q240 Mr Reid: We have had your views on devolving to local authorities. What would your views be on situations where there was a constituted harbour association or a mooring association, and that association was itself given control of the seabed? Is that something you would support, or do you see any drawbacks to that?

Brian Swinbanks: I welcome it. We would take responsibility.

Robert Clement: To a certain extent we do at the present moment. The association has leased an area and we can put into that space as many or as few moorings as we wish, but no lease is exclusive. It does mean that anybody could come and apply to put a mooring within our leased area, and if it is deemed that there is space he will probably get permission.

Q241 Mr Reid: You said in evidence that you have worked well with the Crown Estate and they have helped you to put in new investments. If the Crown Estate were out of the picture and the harbour association was in complete control, do you foresee any problems getting access to capital for investment in new pontoons, say?

Robert Clement: I will have to leave that to Brian because we have nothing to do with the pontoons.

Brian Swinbanks: There is a history of us going to banks to try and get mortgages on pontoons or to use pontoons as collateral for our harbour building, which costs approximately £1 million and has toilets and offices for local businesses and starter businesses, and things like that. When we went to borrow money against the pontoons, we were told by banks no, but when we went to the Crown Estate and asked them to lend money or to buy the pontoons back off us so that we could reinvest in future facilities, they had no problem investing. If you want actual figures, I think the rate was 5.75%.

Q242 Mr Reid: The thing that is concerning me is that if the Crown Estate or Marine Scotland—if nobody else was in the picture and you had complete control of the seabed yourselves and you went to the bank, do you think you would be able to get the money at a reasonable rate of interest for investment?

Brian Swinbanks: No; there must be some vehicle set up to do that, yes.

Q243 Chair: When we were out and about up in Lewis particularly and we were meeting community-owned land sites and groups and so on, they were very keen to take control of some of the foreshore and the like. Does an arrangement whereby your organisations—which could be seen as mutuals, in a way—were given control, but within a framework of someone like the local authority, the Scottish Government or Marine Scotland having overarching responsibility, sound more suitable than the existing arrangements?

Brian Swinbanks: From Scotland's point of view, yes. At the moment, the existing arrangements work very well from Tobermory's point of view, I have to say that; but from Scotland's point of view, yes. Marine partnerships in future are the way forward, definitely.

Robert Clement: Yes, I think they probably would be, but to a certain extent it would not affect the WHAM to a great extent because we are not even a regulatory body; we are just an advisory body, really.

Q244 Chair: Right. I was thinking in terms of the groups for whom you are speaking.

Robert Clement: Yes. In some cases it would be very helpful, I would think; in other cases possibly not so helpful, because very few have any land facilities.

Chair: Yes. I think we are just coming to the end of this session. Are there any other final points?

Q245 Graeme Morrice: Yes, Chair; perhaps I will direct this question to Brian. In your written evidence you mention a major project to develop new facilities at the harbour in the 1990s. The project involved reclaiming an area of seabed. Was this area of seabed bought or leased from the Crown Estate, and if the project was publicly funded, were other public funds used to pay any charges by the Crown Estate?

Brian Swinbanks: The land that we are talking about, which was a reclamation of the Ledaig area in Tobermory—a large area probably four or five times the size of this room—was reclaimed because there was rock available from a new project to build the new roads. But in reply to your question, as I said earlier, we passed on our lease for the seabed to Strathclyde, but the problem is that our right to lay and maintain was on the seabed in that area. The Crown Estate then wrote to us and asked, "I would be grateful if you could advise, Tobermory Harbour Association will agree to the blue area on the plan being removed from the current moorings agreement". We removed it from the moorings agreement. Strathclyde was then able to go ahead and infill that area with moneys raised also by the harbour association through the enterprise companies to create this massive car park, boat park, bus park, promenades, everything like that. That now resides in a joint ownership between the local authority—that is Argyll and Bute now—and it has been recognised that it is a community park designed by the Tobermory Harbour Association, such that I have to admit in this room they don't impose parking charges. They can't.

Q246 Graeme Morrice: Just finally, Chair, could I ask what, if any, future plans you have that could involve reclaiming further foreshore or seabed; and

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would these be likely to involve payments to the Crown Estate to buy or lease the areas?

Brian Swinbanks: Well, the rental for the land on the Crown Estate land at Ledaig was £1,596 when it was built in 1996. It has gone up a small amount since then. It may be—and I don't know because that was a private arrangement between them and Argyll and Bute at that time—about £2,000 for the rental of the whole seabed for this massive car park, bus park and so on.

Q247 Chair: Any final points that you want to add—very, very briefly?

Brian Swinbanks: This is a very confidential document. You asked for documents not in the public domain, and this is our agreement with the Crown Estate. It says here, "Objectives means the following objectives, namely the provision of berthing facilities in Tobermory Bay at a reasonable cost but not purely for maximum profit". It goes on to say, "In the further interests of the community of Tobermory, with objects from time to time that would include berthing facilities". They are giving us the right to impose charges and things like that, and we may give

discounts and benefit to local people. What they are not saying in our lease agreement is that you must maximise profits all the time.

Q248 Chair: No, I think we understand that. Sorry, Mr Bailey.

Capt Bailey: Could I just make one point? We touched upon Marine Scotland and their consents now replacing the old section 34 of the Coastal Protection Act. The change that has happened there is that no Marine Scotland consent is needed if it is within a statutory harbour area. On the Clyde, the way that we do this is this. I chair the Clyde Moorings Committee, which has just celebrated its 30th anniversary. It was ahead of its time because it is actually a sort of marine forum. The representatives are the Clyde Fishermen's Association, the Royal Yachting Association, Clyde Yacht Club, ourselves, the MOD, and so on. They consider all the moorings and regulate moorings as a group, for the benefit of the whole of the Clyde area.

Chair: Thank you very much, gentlemen. That has been very helpful and we will obviously be producing our report in due course. Thank you.

Examination of Witnesses

Witnesses: John Watt, Highlands and Islands Enterprise, Cllr Michael Foxley, Highland Council, Cllr Angus Campbell, Comhairle nan Eilean Siar, Cllr James Foubister, Orkney Islands Council, Cllr Sandy Cluness, Shetland Islands Council, and Cllr Dick Walsh, Argyll and Bute Council, gave evidence.

Q249 Chair: Gentlemen, thank you very much for coming to see us today. You are aware of the background. We have been having an investigation into the Crown Estate for a little while. We have been meandering around Scotland. We have been up in Orkney, Shetland and Caithness and elsewhere, the Western Isles—I have forgotten all the places we went to, actually.

Graeme Morrice: Tthree.

Chair: Tthree, thank you. Tthree as well. We are interested in the proposals that you put forward about the extent to which responsibilities should be shifted from the Crown Estate directly to yourselves. Could we start off by asking you about the *Crown Estate Review Working Group Report* that you produced? What response have you had from the Scottish Government on that, and is there an agreement at all between them and you about the way forward on these areas? With six council leaders I am not quite sure what the collective term is. I am not quite sure who gets to speak first. It is probably safer for me just to point in that general direction and you sort it out yourselves.

Cllr Foxley: Thank you very much for inviting us again to give evidence. It is good to see you here in Glasgow. In the sense that we have been advocating the devolution of the management not just to Scotland but further down to local authorities and even further down to local community-owned harbours and community-owned land, we are in agreement with the Scottish Government on the first part. They have been silent on the second part, the secondary devolution. As recently as last Monday we were all in Boat of

Garten in the Highlands at the Convention of Highlands and Islands, which was chaired by John Swinney. It was an issue raised by both Angus Campbell and myself at that meeting, but they have been silent so far on that secondary devolution down to the local level.

Q250 Chair: I am not betraying any secrets if I indicate that I think most of us have been persuaded of the very strong argument for secondary devolution, decentralisation further and so on. I am a bit surprised, though, to hear that there has been no discussion between the Scottish Government and yourselves about taking this matter further. Surely there must have been something. Surely there has been some dialogue at some stage. When you produced your initial report, surely there was some sort of feedback to you from the Scottish Government about what they thought of it.

Cllr Campbell: I think the only feedback I certainly can think of, and I speak for my own authority, is one meeting we had with Richard Lochhead in Inverness when we talked round the subject. We have had nothing back in terms—I think we as local authorities have made our view known to the Scottish Government in terms of the secondary devolution of power for the seabed, but there has been very little conversation at all that I am aware of from my local authority area.

Q251 Chair: Is that the view of all of you?

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Cllr Cluness: Yes. I think the Scottish Government has made its position fairly clear, in that it wants to take over, if you like, the control—

Chair: Sorry, you will have to speak up a little bit.

Cllr Cluness: I think the Scottish Government has made its position fairly clear. It says that it believes that the powers in this respect should devolve to the Scottish people.

Q252 Chair: Sorry, it is the operational issue—how that actually happens. I think that the view we have heard from many people is they want to see some power staying in Edinburgh and then other powers going beyond that, down closer to the Scottish people. I remember when we were in Scrabster, I think, people there said that they did not want powers going to Edinburgh, they did not even want powers going to Inverness and they certainly were not happy about the idea of Wick or Thurso. They wanted things to go to Scrabster if possible. We are not necessarily going to be able to resolve all that here today, but the thrust, as I understand it, of your argument is that you want decentralisation beyond just simply Edinburgh. I am quite surprised that either you have not pursued this or you have not had anything back at all. I am just trying to seek clarification. Surely there must be dialogue through COSLA or some other bodies about what was, I think, a major report that you produced.

Cllr Walsh: Could I just come in, Chair? We have not, in all honesty, had that kind of detailed discussion on how the operation would roll out. Personally speaking, I felt it was anachronistic in a post-devolution Scotland for the Scottish Parliament not to have some form of authority over the Crown Estate, given the huge agenda that we all face here in terms of renewables and the potential income that is likely to come to Scotland, not least the jobs. We have not had that kind of dialogue. In fact, I think it was only in July that the Scottish Parliament themselves agreed an all-party motion to devolve more of the Crown Estate powers to the Scottish Parliament. We have, through the Highlands and Islands, had our dialogues as to how we would do that, but we have not gone into the nuts and bolts and the detail, to be fair.

Cllr Foxley: In the last three months I have spoken to the First Minister; Richard Lochhead, Cabinet Secretary; and John Swinney, Cabinet Secretary about the need for that secondary devolution, without any satisfactory response or, indeed, much of a dialogue. The conversation has just stopped. The other thing is that several of us gave evidence to the Scottish Committee on the Scotland Bill in the Scottish Parliament about a month ago, and certainly the members there were very, I suppose the word would be, empathetic towards that secondary devolution, because we see that as essential. I would like to come back to Scrabster at one point because that sums up what this is all about.

Q253 Graeme Morrice: Can I just pick up on that point about consultation and discussion. In particular, COSLA was mentioned and Michael latterly mentioned discourse between individual local authorities and the powers that be at Edinburgh. Could

I just ask—and Dick kind of alluded to it—just to clarify, has there been discussion internally within COSLA to at least get a line on this, or is that something that still needs to happen? Does a line need to be determined so that there can be a united voice within Scottish local government on this issue, as it continues to have discussions with the Scottish Government and other agencies?

Cllr Walsh: From my recollection, we have had no specific discussions on that in COSLA. There have been no papers produced. There have been a number of papers produced in terms of planning that have skated round about it, but nothing in relation to the operational nature of the Crown Estate if it was devolved to Scotland. We have not had that dialogue yet.

Q254 Lindsay Roy: That seems quite surprising to me given that there seems to be a collective commitment within local authorities to have some of these powers.

Cllr Walsh: Absolutely, yes. I think we are fairly clear and definite in what we want and, as I say, we had the decision in July. In fact, I remember attending a video conference call where we were talking about some form of memorandum of understanding and we were advised by the Scottish Government to hold fire on the memorandum of understanding because the Scottish Government and the UK Government were talking about this, but nothing beyond that. A bit of time passed on that when, as I said, the Scottish Parliament took the decision that they did in July this year. We have not, as I understand it, yet developed the operational roll-out of that if it were to happen. In fact, your input into this is the first time that I personally have had an involvement in this important business.

Cllr Cluness: Whatever legislation comes about, it probably is more relevant to the Highlands and Islands than some other areas of Scotland, which is why some local authorities are perhaps not quite so interested in the subject as we are.

Cllr Foxley: Can I briefly reinforce what Sandy has just said? In the Highlands and Islands we have been campaigning. Both Orkney and Shetland took legal action over the status of the Crown Estate for about 30 years because it did affect our harbours, moorings and fish farming over that period, but it has not affected much of Scotland outwith the Highlands and Islands. I think, to be honest, it is only recently—I am not saying the seabed is covered in pound notes or whatever the phrase was earlier on, but it is the potential for offshore marine renewables that has captured the attention of the rest of Scotland. But we have seen this as an issue, whether it is the location issue of a fish farm, local control of moorings or development of a harbour, and that is why we have campaigned for long enough; but it has been a voice from the Highlands and Islands that has been making that case.

Chair: Can I just say I think that is entirely fair. We really only picked this up when we were invited to look at Calman and we saw that quite a number of people had written in about Calman saying that this is

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something that had been omitted. I think that certainly moved it up our agenda and I think that the extent to which reviewing devolution is an ongoing process certainly has worked in this particular case. I wonder if, rather than just continuing with that, Alan, I could maybe turn to you to pick up the issues relating to harbours.

Q255 Mr Reid: Yes. A lot of the harbours in the Highlands and Islands are obviously under council control—the council for harbour authority—but clearly the Crown Estate also has a role. I wonder perhaps if you could tell us what the relationship with the Crown Estate has been regarding the ports and harbours.

Cllr Campbell: Well, I would say, quite frankly, from our local authority point of view there is no relationship and it is as blunt as that. All we have done in the Western Isles in terms of development of any harbour has been done at the hands of the local authority, and what you quite simply get at the end of the day is a bill for the extra rental. That is the sum-up of the relationship we have with the Crown Estate. I think you have to remember very clearly that without the input of the local authorities, particularly in the island areas, the new harbours that I have seen happening in the Outer Hebrides in the last three, four, five, six years would not have happened. Regarding the Crown Estate, the only knowledge I have is of the Storas Uibhist, which is one of the community land buy-outs where we are trying to get an £11 million redevelopment of the harbour there. They offered to lend at a rate of 6%—slightly more than the gentleman in the last session said—where we could access that money a lot cheaper. That is the only input in 13 years of local government I have seen from the Crown Estate, apart from the bills coming through the door.

Q256 Mr Reid: Is that the general view of all the councils?

Chair: Sorry—it is quite difficult again. James caught my eye first. I know that council leaders are not used to having to speak in order, but I will try.

Cllr Foubister: If I could add and corroborate largely what Angus has said because here within Orkney I am sure the Committee is well aware of the development of marine renewables, which is now beginning to happen. Part of our policy within Orkney is to develop a three port strategy at strategic locations to service this huge, growing industry. The only investment—of which there has been none—the only contact, essentially, as Angus has just said, that we have had with the Crown Estate is a bill for development facilities. But perhaps more importantly for us—and I don't know if the members have seen the designated areas in and around Orkney, which are extremely extensive—there is a major issue there in terms of communication, or rather lack of communication.

We have a very strong inshore fishing industry, and there are some 7,000 ship movements annually through the Pentland Firth, where one or two of these locations are. There was absolutely no consultation whatsoever with the local authority, the inshore

fishing industry or any local interests at all; and while we welcome and encourage the development of renewables, there was no consultation whatsoever.

Q257 Lindsay Roy: James, that is very interesting because that confirms exactly the evidence we had from people on the ground when we were in Orkney, and they were most dissatisfied with the whole arrangement.

Cllr Foubister: Yes, a lot of enthusiasm for the development but absolutely no consultation whatsoever.

Lindsay Roy: They felt disfranchised.

Cllr Foubister: Yes.

Cllr Cluness: I was going to say we always used to pay the Crown Estate revenues under protest. We, of course, have had a long experience of the Crown Estate Commission, although it tended to be simply a question of them sending us the bills. We have run, as you know, the Port of Sullom Voe as a local authority for more than 30 years. In that time we have paid a great deal one way and another to external bodies like the Crown Estate Commission without seeing any return for it. We did have a visit from a representative of the Crown Estate some years ago, whose name I forget. At that time he was suggesting that should there be some kind of joint venture, and they would be happy to look into that. I have to say that probably we have not taken them up on it.

I can also say from the point of view of Lerwick Point Authority, which is the only harbour not controlled by the local authority, they have recently purchased a piece of seabed from the Crown Estate Commission to enable them to develop their decommissioning. As far as I am aware—I am not a member of the port authority—I think they would say on that occasion, at least, agreement has been reached.

Our only basis for complaint against the Crown Estate is that, in essence, they derive considerable incomes not only from anything we do within the oil industry and the considerable developments that come there—of course in addition to renewables—but also in relation to salmon farming. We have not yet seen any return of any size from the Crown Estate in relation to the fees that we have paid them.

Q258 Mr Reid: This is a question for Dick. You were here in the earlier session, when they were giving evidence that the Crown Estate had been willing to invest in Oban but the council had not. What is your response to that?

Cllr Walsh: Can I preface my answer, because there is an important issue here that relates to connectivity and the importance of infrastructure in supporting that connectivity? I am talking about, in our case, ferries. The councils commit a significant capital resource in order to create those facilities, but they don't own the land that they sit on and there is an issue about the periods of the leases that we are able to negotiate with them, the period of borrowing, and so on. So it is all about satisfying the business cases that you produce in order to satisfy that level of investment. Specifically related to the Oban initiative, as you know Argyll and Bute have a significant CHORD

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project proposing £30 million of investment in the main waterfront areas of the town, and Oban is part of that. We had committed £900,000 towards a marina proposal in the Oban area. The difficulty for the Council was that, following independent advice to scrutinise the business plan, it did not stack up. It is not the case that you can plant moorings anywhere; not every type of mooring arrangement is brought on in terms of business. The clear advice from independent advisors was that it was not a good, sound business case, so we could not continue to invest in the £900,000. We are, however, promoting a significant investment and have submitted a bid for the tax incentivisation fund to support that in that particular area.

Cllr Foxley: Can I just briefly cover harbours from the Highland perspective? On many occasions over the past few years the Crown Estate have repeatedly said the only funding they would put in to any development would be £5,000 to £10,000, unless it was an investment and they expected a substantial return from the funds they contributed. That is the general point.

On the specifics, I was a member of Mallaig Harbour Authority for 21 years. We carried out three major developments in the harbour in that time. We did not receive any funding from the Crown Estate. What we did receive was protracted and bureaucratic negotiations and legal exchanges in order to acquire the seabed to carry out that development.

The other example I want to give was Scrabster, with a £20 million-plus development under way. They again ran into the same minefield of legal and bureaucratic delays from the Crown Estate. As a council, we were prepared to guarantee a loan in principle of £6 million towards that development, and in the event they managed to, remarkably, raise that money from the bank, which helped the funding package in terms of other sources of funding. But we as a council were heavily involved with the Mallaig development, we were promoting the development at Kishorn and so on. We were prepared to put in energy and money into these developments; the Crown Estate aren't.

Q259 Chair: Can I just pick up one point relating to this? When we were in Lewis we met the Stornoway Port Trust and I think their enthusiasm for being linked to the local authority was again less than total, and all the things that you are accusing the Crown Estate of they were accusing the local authority of in terms of being bureaucratic, slow and so on. You will have heard the witnesses earlier on, and being embraced by local authorities is not necessarily universally welcome. How do you respond to these sorts of points? I think all of us understand the general democratic point about decentralisation, but if the response of ordinary people is that the local authority is so hidebound by rules and systems that it is worse than it was before, then you can see that there is a natural difficulty about arguing for that case.

Cllr Campbell: Can I maybe take that one? You raised a specific there. I met the Stornoway Port Authority on Friday afternoon in the knowledge I was coming

here. To say we are slow and difficult to deal with—I would contend it is the other way round, and I was on the Stornoway Port Authority as well. Each development that has happened in the last few years has resulted in the local council putting money in to make it happen. At the moment we have a community planning bid in for the whole redevelopment of the inner harbour, which is dependent on the local authority coming across with the money to make that happen.

The statement that came out of the Stornoway Port Authority was based on no knowledge of our position, because our position is that everything that has gone in the trust port area should return to them, not to the local authority. We are not looking to take control over ports that we don't now have control of. What we would say is someone at the Stornoway Port Authority could use the money they are presently paying in rent to the Crown Estate to improve the facilities that are badly needed and improve that port.

The same would be true of the port that is the only trust port in the whole of the Outer Hebrides. We would look at that money, instead of going down the road to London, being used to reinvest in the infrastructure of these ports. So it is not a matter of local authority take-over. That, I think, was said in a lack of understanding of where we were coming from.

Cllr Foubister: If I can go back to what we discussed earlier there, whereby leased areas were designated without any local consultation. By a similar quirk of fate the Crown Estate then decided that we are not going to allow any more within this particular area, and that gave a huge disadvantage to ourselves as the port operators, because we are building up infrastructure to support an industry. Then the Crown Estate came back and said, "Well, sorry, guys, we are not going to allow any more development here" when there are still vast resources. Thankfully we have had further negotiations with them and they have tended to relax that to a degree, but not the current position that we are in. This is where I totally agree with Shetland, Sandy, inasmuch as my understanding of Scottish law is that, if you own the title, effectively you own anything and everything that is on that piece of land—or, in this case, the seabed. I would ask the Crown Estate to come forward with the titles for the seabed in Orkney and Shetland.

Chair: Tomorrow.

Q260 Jim McGovern: Could I first of all thank James for raising what I would regard as the plight of the various fishermen's associations. Like Lindsay, I would say that of all the associations that we met, and there were numerous local authorities, community trusts, and so on, the fishermen probably felt most that they had been ignored in any consultation process—that no one had spoken to them. Announcements were made and heralded in the press and the media, and they only knew about them when they heard it on the radio or read it in the paper or whatever, so I am grateful to James for that.

Again, Angus referred to Stornoway Port Authority and said that, far from what the Chair said about them being not totally enthusiastic about the local authority

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running it, you thought maybe it was the other way about—the local authority were less than enthusiastic about them running it. There is only going to be so much of a cake, if it is decentralised at all. Obviously the Scottish Government in Edinburgh feel it should go there. The various local authorities that we have met feel that somehow or other they should be in control of it. There is a safe community trust that feel they should somehow be involved—fishermen’s associations, Uncle Tom Cobley and all. How are we going to get together? Our report will contain some recommendations. Nobody is obliged to follow them, but they will be read and they will be commented upon. How do I reach some sort of consensus as to how this cake should be divided?

Cllr Campbell: First of all, I think what I was saying—not answering that question—was that we were accused of being slow and bureaucratic. My experience of working with the Stornoway Port Authority is that the boot should be on the other foot, but that is not the question.

Jim McGovern: Beg your pardon if I misunderstood you.

Cllr Campbell: That is not the question you are really asking.

Jim McGovern: We recorded all this.

Cllr Campbell: We have a very clear idea as a local authority how that could work and we believe that there are different layers of benefit there. Like I said, we would not want to get involved in what was within the area of a port. Let them get on with—if they received back what they are at present paying in rent and if any developments took place, we would expect them to be the ones that took control of that situation. But remember, we are talking about the whole of the coast in the Outer Hebrides; it is huge. Something like Stornoway Port Authority—it is a minute piece of seabed compared to what we are talking about here.

We see Marine Scotland as probably having a play in terms of the legislation of the sea and looking after the planning aspect. We see at the higher level there being a very strategic cue for the UK Government to take on things like interconnection of renewable energy, and there must be an acknowledgement of that because that is the level it sits at. We could see a three-layered system of working that benefit down that could go to the National Government at Westminster, to the Scottish Government and through to Marine Scotland; but ultimately local communities and the local authority should have a slice of that that they can use for what comes on.

You can draw these lines for renewables, for instance, at the number of megawatts that are involved in a transaction. In something like connection of electricity to the mainland you obviously have to have a national input of the money that goes in to provide that strategy. But within 12 miles, for instance, that could relate back to the local authority, and that is why I would see a three-tiered answer to this: where it is not going to the Crown Estate, but it is coming to direct economic benefit on joint criteria that we have both as a local area and nationally.

Q261 Jim McGovern: I meant to put a point in my question which I did not quite get in. In Angus’ two most recent contributions, I am conscious he referred to “we”. Is that “we” at this table, or “we” Highlands and Islands? Who is “we”?

Cllr Campbell: I think the case is common for the communities right across the Highlands and Islands, and I would think that we all have the same interests and we all have the same issues to deal with. So when I say “we” I probably speak—I hope; unless anybody is going to bang me on the head—for the Highlands and Islands.

Cllr Walsh: Could I come in and deal with the specifics of your question in relation to the renewable energy revolution? The question about the identification of sites in the first place in offshore is something that local authorities and others have been divorced from; there is a question about the authority. You have the Crown Estate that deal with the exclusivity rights, and Marine Scotland deal with the development, so there is a need for some clarity around that. On the process around exclusivity of rights, a number of people in the communities believe that when the Crown Estate grant an exclusivity right, they are granting a licence when clearly that is not the case. There was a degree of fog regarding Tiree, where I know the fishermen are pretty irate. The problem with this whole process has been that nobody can add clarity to it. There is still an area of development that is unknown. Development companies have been promoting schemes and have been pressurised into providing photomontage information; but in reality, that will in no way look like the sites that are to be developed.

So there is an issue about the multiplicity of bodies and what they do, and a lack of clarity about that. We, the local authorities, in my view, are tending to be dragged into those aspects when we don’t have the authority for those areas. In Argyll and Bute we have set up the Argyll and Bute Renewables Alliance, which I think is a fairly positive initiative that is bringing all the key players around the table and now, fortunately, includes the Crown Estate. Hopefully we can start developing that kind of clarity in a way that the communities will understand, and it will also involve them. In the Island communities—and I know the one in Tiree, which you experienced—there are indigenous communities that are all for it, while others in the community have no desire to have it. But there is a lot of fog: nobody is clear on any aspect of it.

Q262 Chair: Before we go into some detailed questions, it seems to me that one of the points that you made, Angus, about yourselves having met the harbour trust and them not having realised what it was you were essentially proposing, was that they were not aware that under your grand scheme of things for the Crown Estate, they would retain their control over it. It would be immensely helpful to us, I think, if we had a much clearer view of what exactly it was that you wanted to see going forward.

I used to be in a local authority and I know some of my colleagues have close links with local authorities. If you were giving us something that we can then

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consider as the basis of recommendations, which would spell things out, what exactly would be the relationship between mutually owned port authorities and yourselves? How would you relate to other community land buy-outs and so on? There is a lot of apprehension about all of that, and about your hierarchy, which we discussed when we were in Stornoway. I was not clear whether or not that was, as it were, you and I agreeing about the way forward—whether or not you were necessarily speaking on behalf of the other local authorities. I think it would be quite helpful if we had something concrete coming forward that we can either accept wholesale, or come back to you and say, “Look, on the basis of our evidence, what about some minor adjustments?” and so on, and see whether or not we can then have an agreed position. If your position ends up completely at variance with ours, and we then have the community land people and harbour people all arguing in different directions, that “divide and rule” situation is a recipe for nothing very heartening at all. I think we are quite keen to roll this forward so that when we report there is going to be a momentum behind it—where something will happen rather than just being shelved. I am conscious of that, to some extent, passing some of the onus back on to yourselves. You are closer and you have more staff than we have for this sort of investigation and you will have closer links with the community land groups and so on. I hope you will take that in the spirit in which it is intended—about wanting to move things forward.

If we can now move on to some of the other questions. Graeme, you wanted to come in.

Cllr Foxley: Can I just reply, Chairman, and say on behalf of my colleagues, we would be extremely happy to do that. We will come back with an absolutely explicit, very simple statement about that, as it were, tertiary devolution of harbours, community-owned land and trusts. We will organise that very quickly.

Chair: So if we have that for next Monday.

Cllr Foxley: We will do that for next Monday.

Q263 Graeme Morrice: I think that direction from yourself, Chair, is certainly useful. I would like to touch on the general issue of where we are with this and where we are going, and obviously there are different points of view based on what we heard earlier from the first round of witnesses. I think in what you have said in terms of your own experiences, and giving the tangible examples of what you do in your own local authority areas, to an extent you have dispelled that and obviously given examples of where other agencies perhaps have dragged their feet when you have wanted to go forward, and we all understand the restrictions in relation to finance.

We all believe in subsidiarity and, of course, we need to see a kind of strategic framework in which we operate that could be implemented at both the national and regional level. It is not about having everything locally carried out by a local authority; it is about yourselves working in partnership. I think it is about the framework in which local authorities have to

operate, what is specified; and, secondly, working in partnership with the community planning process.

What are you doing on utilising the community planning process within your local authority areas, and how do you think more effectively you could utilise that by working with various agencies? You have the Highlands and Islands Enterprise here; we have mentioned Marine Scotland, the Crown Estate and the ports and harbours authorities and associations. Rather than having all these issues, problems and difficulties and barriers to change, you can all get beyond that and work together to make a difference at the most localised level possible. How do we do that?

Cllr Cluness: I can only speak from the point of view of Shetland and of course, a bit like Orkney, we are slightly different in that we have a special Act of Parliament, in our case the ZCC Act 1974, which allows us to operate around Shetland, other than Lerwick. Although we don't always agree with Lerwick Port Authority, I don't think we have any difficulty in relation to what happens with the Crown Estate Commission. But that Act allows us, to a certain extent, to control any development up to the 12-mile limit, which means that anyone wishing to get a works licence still has to come through our local authority. What we have done with the funds we obtained from our operation at the port is to invest it in the local economy and at this time that runs at about £500 million.

What interested me, and what I saw in the Scotland Government papers, was the proposal for the creation of a fund for future generations, which is very much what we have created in Shetland. Having spent this £500 million on infrastructure, we still have a similar sum that we can invest for the future. I would go along with the Scottish Government, to the extent that, clearly, because most of the renewable development is going to be based in, if you like, Scottish waters, in theory it would be reasonable for a certain relevant section of income from the Crown Estate Commission to go to Scotland as a whole—always provided that, as you say, there was some secondary system whereby the areas that are directly related to these developments achieve a fair degree of income as well. I cannot see from our past experience of the Crown Estate Commission at the moment any indication that the Highlands and Islands, which will bear the main brunt, if you like, of development in renewables, will benefit in any way to their communities. I am not prepared to enter into this discussion, to some extent, about the difference in communities. Every local authority has its difficulties in many ways with local groups and so on. As I say, I am not aware of any specific case of the Crown Estate Commission having any difficulty with the Lerwick Port Authority, which is extremely successful in its own right and good luck to it.

I would not like this meeting to end without thinking in terms of whether or not Scotland, as a country, should gain from the revenues that are going to come as a result of this. I say that as an independent individual, not a member of any political party. So I think what we have achieved in Shetland could be

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achieved for Scotland as a whole, but I would doubt whether that was possible if control of the Scottish interest in the Crown Estate remains in London.

Q264 Chair: I think to be fair we have moved a bit on from that, and I think in our visits we can say that the roads in Shetland we were immensely impressed by. The only place I think that had better roads was Barra, if I remember correctly, which is the constituency of the roads convenor, which I presume is just a coincidence.

I wonder if I could just turn to the question of the foreshore because we have a number of issues to go through. You have most of the foreshore. It would be helpful if you just gave us, for the record, an indication of why you think the local authority in particular should have control of the foreshore. The same applies to our colleagues from Orkney and Shetland, in terms of udal rules—how exactly those would apply, for the record, here as well for the foreshore. Perhaps we can deal with non-Orkney and Shetland first. Why should you get the foreshore? Could somebody spell that out for us?

Cllr Campbell: I think to begin with, from a strategic point of view for planning for any sort of development in our islands, it is crucially important that you identify one body who has the foreshore, and I would argue that if one thing you do from this Committee is that you get us the same rates as Orkney and Shetland, then we would benefit greatly from that.

But seriously, I think you have to stop and look at how the system works at the moment. I think this is something you alluded to when you talked about the way it would work within the local community and community planning in particular. We in renewables, on land, for instance, have put together something called the Western Isles Development Trust, which has centres right across the islands, which is not just a local authority but brings all these centres to bear. We have a very effective community planning partnership, which includes everything from youth representation to community land owners' representation, as well as statutory bodies. You will, if you go to every small community, have them putting forward what they see as what is right in front of their door, quite correctly, but somebody within an area like the Outer Hebrides has to have some strategic plan of how you can go ahead and develop the economy of the Outer Hebrides. What I would argue is that whether the local authority deliver it directly through their own organisation, or through an organisation similar to the Western Isles Development Trust, that is where it should sit at the level of bringing forward what is best for the Outer Hebrides.

Cllr Foxley: Coming from the Highland perspective, it is just so that there is one body dealing with the development on the land and on the foreshore, to take an overview as to what happens without having other consents and leases being granted about which we know nothing. To respond to Mr Morrice's comments about Highlands and Islands, certainly from Shetland's point of view, there are very local issues but strategically across the Highlands and Islands we have agreed that the strategic issues need to be dealt

with by some form of joint body between the local authorities, HIE and appropriate members like Marine Scotland once they become a bit more active. Secondly, that also applies to the proposed Coastal Community Fund—that that should be managed across the local authorities. We meet regularly, about once a month, through one venue and another, and we have made progress on those two aspects and we can progress others.

Q265 Chair: Mr Watt, you have not said anything that anybody has disagreed with so far, so let us—

John Watt: I have not said anything at all, Chairman.
Chair: Indeed.

John Watt: Just a minor correction, flattered though I am: I am not a local authority leader. I do not work for a local authority. I work for Highlands and Islands Enterprise, I work in partnership with all of the gentlemen at the table here and I have been letting them answer very direct questions related to local authorities because I think that is only correct.

Let me say just a couple of reinforcing things, from an agency that has a region-wide responsibility and a more strategic responsibility. I think the main principle of our position is that the marine asset is one that we have to capitalise on as best we possibly can in the Highlands and Islands for reinvestment into the Highlands and Islands for broad community benefit, and the potential loss of revenue from that asset has been a problem over the years. We are already seeing, at a time of difficulty in public funding, some very creative collaborations beginning to happen on investments in the Highlands and Islands between local authorities and ourselves and others.

It was interesting to hear the evidence from Tobermory, where you have an independent harbours association which, of course, has access to all sorts of other sources of funding. In that particular impressive investment, we and the Lottery had quite significant input, as well as other bodies.

My colleague from Comhairle nan Eilean also mentioned Lochboisdale, where we have several partners trying to develop a major port in the southern isles, and in Scrabster and other places. So I think your challenge for us to come back with a very clear statement of how double devolution, and in fact triple devolution, might work is one we would take very seriously. I think there is enough evidence now of collaboration at the regional level of alliances that already distribute other funding, European funding and the like, which can be targeted for the general benefit of all the communities in the Highlands and Islands.

Q266 Mr Reid: Mr Watt, we heard evidence earlier from Tobermory Harbour Association. They were very keen to be able to take over control of the seabed for themselves but there was the concern about access to capital—that the Crown Estate had been able to negotiate a loan for them from the bank at a reasonable rate of interest, but Brian Swinbanks said there would need to be some other umbrella. Would Highlands and Islands Enterprise be able to step into the breach there and negotiate loans at a reasonable

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rate for access to capital if the Crown Estate were no longer there and the harbour association owned the seabed?

John Watt: We can consider lending ourselves, but inevitably we are constrained by State aid issues in terms of our investments into property.

Q267 Mr Reid: But surely the Crown Estate has the same restrictions. It is a public body so it must have the same State aid rules.

John Watt: Yes. For two reasons I think that is why they charge commercial rates for lending. One is that they have to comply with State aid and, secondly, they have to maximise the return for the Treasury on their investments.

Negotiating with banks at the moment is extremely challenging and we are seeing that all over Highlands and Islands, and not just in port facilities but in businesses everywhere. It is a significant challenge.

In terms of, if you like, third sector organisations or community-based organisations like Tobermory and some of the harbour trusts that we have talked about, they do have the privilege of access to other types of lending through social banks. Already we have experience of the Co-op Bank, Triodos Bank, and the like, who are now making investments in this property-based infrastructure, sometimes more generously or more easily than the hard commercial banks, if you like. That is what I was trying to illustrate, that there are more creative collaborations possible now for some of these investments than there were in the past; but all the better if some of the revenue being generated is retained and recirculated locally.

Cllr Foubister: Just to go back to the question of the Crown Estate again and the lease of the seabed. Sandy is the lawyer here, not me, but my experience of udal law is that the Crown Estate will accept an individual's title to the foreshore, provided that that is recorded within the title. But in terms of diversification of funds and how it could be administered, we need to look no further than the rural transport partnerships in the days when they had capital funding. For Shetland there is a separate entity within Hightrans. There are some five different councils where as a group, we looked at allocating capital funding for major projects working within the area, and I think perhaps that is a model that could be developed for disbursement of funds here. I think the point is that there is experience within the Highlands and Islands area for doing this.

Q268 Chair: I hope you are not going to tell us all about the legal basis of udal law, because we have heard this several times and we lost the will to live on several occasions while we were having it explained to us.

Cllr Cluness: I will do it in two minutes then. There are the cases of Balfour and Bruce, if you want to look them up. They are from the 19th century, but essentially it was that the King of Scotland could not have inherited such rights from Norway because the Norwegians did not operate on that basis and still do not. If you look at these old Orkney and Shetland

titles, they say that the land is owned to the lowest stone in the ebb, but of course in Shetland some estates are now owned by the local authority because the owners have been glad to get rid of them. It is a minimal and, to me, marginal point.

Chair: Thanks very much. Lindsay, you were going to ask about your point 6 in the marine renewable energy.

Q269 Lindsay Roy: I think first of all, John, I want to ask you about Highlands and Islands Enterprise and your strategic engagement and interaction with the Crown Estate and local government and what the advantages and disadvantages are of the development role that the Crown Estate Commission are playing in this sector. Are you an intermediary, are you a catalyst? What is your role with the Crown Estate and local authorities?

John Watt: Our main relationship with the Crown Estate in recent times has been around the potential development of offshore renewables and in that respect, although it is not my direct responsibility, we have had varying degrees of relationship with them, and some have been reasonably positive. They have teams of professionals that are able to advise on offshore developments. At other times we are perhaps not getting as much information as we would have liked in hearing about potential developments.

Q270 Lindsay Roy: Have you been consulted by the Crown Estate Commissioners about potential licences and potential locations?

John Watt: We get some degree of consultation but I still think we feel at times we are not maybe getting as much as we would like.

Q271 Lindsay Roy: Have you raised that with them?
John Watt: Yes.

Q272 Lindsay Roy: Gentlemen, with regard to the local authorities, what is the current role of the Crown Estate Commissioners in the development of marine renewables? Are you happy with that role? Briefly—don't all jump in at once. I think we know the answer, but just for the record.

Cllr Foubister: I can start, but I think I effectively answered that question previously. We have our own indigenous industries in and around the Islands, and these decisions are being taken without any local consultation whatsoever, which can have a serious impact on inshore fishing and so on.

Q273 Lindsay Roy: Is that universal across the authorities?

Cllr Foxley: Yes. Can I just make a couple of comments? No, we are not happy with the Crown Estate. First of all, in terms of capital, I recently listened to Rob Hastings, who is the Marine Director of the Crown Estate, giving evidence and their investment across Scotland in terms of the marine environment was £4 million to £5 million over the last five years and £5 million over the next five years per annum. To put that in context, the Highland Council's capital programme is £70 million a year and we are

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prepared to guarantee loans to Scrabster of £6 million. The figures have stuck—I was surprised it was that small. That is a very small forward investment. Secondly, I usually hear about the leases, as does my director of planning and chief executive, on the radio or when we get the Scottish national papers. I recently met quite a prominent developer of offshore marine, and this is a direct quote from him. He said, “Now I know what it is like to have dealt with a medieval feudal baron because they have the power to say yes or no with no right of challenge, no right of recourse”. He was explaining he had spent £1 million on development work, not in Scotland but within the UK, came to the second stage of leasing and that lease was going to another company. That is what we are up against in terms of the leases.

Q274 Lindsay Roy: So it is not engagement, it is exclusion?

Cllr Foxley: Yes.

Cllr Walsh: There is a need for clarity, because the Crown Estate have this commercial approach to business. They have the land that is under the sea and they are actively promoting that land for particular developments, in this case it is renewable energy, and that is the way the process works. I think in recent times we are a bit more fortunate in Argyll and Bute inasmuch as we have the Argyll and Bute Renewables Alliance, which has the developers and the Crown Estate now in the one room and we are able to discuss the renewable energy approach; but that is after, if you like, the areas have been identified. We do get some information on the exclusivity process, and I think there is probably a good area for discussion. I think it was Graeme who raised the question of what will happen in relation to the UK Government and the Scottish Government and how this process will roll out; that also will involve the exclusivity process, because there is a whole range of things that can be built into that, and that is something we are working at just now. For example, on community benefit—whether it is the Scottish Government, a local authority or another body—the issue is to get involved in this process, which is not clear at the moment and not possible, although we are beginning to move that way.

Q275 Lindsay Roy: So initially, and perhaps thereafter, things have been done to you and not with you; would that be a fair summary?

Cllr Campbell: Sorry to interrupt, but could I give one example? Pelamis were trying to develop a 40 megawatt development off the west coast of Lewis, which is an area we were trying to include in the infrastructure of the harbour for a long time. We did not find out anything about that until days after Pelamis had been told that their business plan had been looked at by the Crown Estate; it thought it did not stack up and therefore it would not go ahead. For us or our communities not to be involved in these discussions—what could have been gained if that infrastructure were put in place, and what else could have been built on in terms of fishing infrastructure, tourism infrastructure, yachting infrastructure. If we

are going to look at developing a place, we have to have discussions that include all the stakeholders, not just the Crown Estate saying on a business plan basis that this goes or does not go ahead without us even being involved.

Q276 Lindsay Roy: We have heard from you already, if I am right, that the Scottish Government has been reluctant to talk about further decentralisation with you in any depth whatsoever. The Crown Estate referred to memorandum of understanding proposals, on the one hand, with the Scottish Government and also with local government. Have you been involved in any discussions on that with the Crown Estate, and if so, on what basis?

Cllr Campbell: The Highlands and Islands Leaders Group got involved in discussions with the Crown Estate about two or three years ago as to having a memorandum of understanding with them. Speaking for my own council, when we took it back and looked at it, my own view was it was not worth the paper it was written on. It was a draft.

Q277 Lindsay Roy: So it has remained a draft and there have been no further discussions?

Cllr Campbell: Our council took a view that we would not pursue that because we did not think we were gaining anything out of it in any meaningful way.

Cllr Walsh: But that was a drive from the local authorities collectively in the Highlands and Islands to be involved, so we were happy to draft a memorandum of understanding that did involve us in the process. As I said, we had a meeting in which the Minister was present through VC, and he suggested that we hold fire on the memorandum of understanding until they had discussions with the UK Government on devolution.

Q278 Lindsay Roy: So it would be euphemistic to say that you were disenchanted and disillusioned?

Cllr Foxley: We are all in agreement on that but we had a draft MOU and the words sounded fine. It was the underlying action plan where I think there were to be direct actions into the local authorities and local communities, but, to be honest, two things changed. Things changed within the Scottish Government, but they certainly changed at a UK level because there was the Treasury Sub-Committee 18 months ago and now your own Committee. That is a level of interest that none of us have ever experienced before in the Crown Estate, so this was not the time to try and sign up for half a fig leaf. I think 10 years ago, if I am honest about it, we probably would have done that because there was nothing else, but the climate has significantly changed. There are wee cracks in the edifice now.

Lindsay Roy: Just wee cracks?

Chair: Boys with levers trying to widen them a little bit.

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Q279 Jim McGovern: Possibly this question has been covered in large part in previous contributions, but just for the record it is worth asking it again. I realise the Chair has been trying to juggle the balls or keep the plates in the air, or whatever you want to call it. I know if there are five different leaders the chances are you get five different answers, but everybody does not have to answer this one. The UK Government announced a new Coastal Communities Fund. I am sure Highlands and Islands Enterprise will have a view on this, but everybody can give us an answer or you can nominate one person—deal with it how you will. How do you view the fund from the Highlands and Islands' perspective?

Cllr Foxley: We certainly welcome it. There are three elements. First of all, we said informally to the Treasury and also in a letter we would certainly like that to be 100% rather than 50%. We think the figure anyway is too low. Our estimate of marine revenues, fish farming, alone in Highland is £2 million; we think across the Highlands and Islands it is £5 million. It is very hard to get the figures out of the Crown Estate but our estimate is about £7 million in total; half of that is £3.5 million, so we would settle for that. The discussion we had before, which I alluded to briefly, is we would see that being managed by a strategic group for the Highlands and Islands local authorities with Highlands and Islands Enterprise and anybody else who was appropriate, rather than a big lottery.

Q280 Jim McGovern: Can I just interrupt you? When you say £3.5 million would be acceptable, you are saying £3.5 million would be 50% of your figure, and that that would be acceptable?

Cllr Foxley: That would be an acceptable start because we are then doubling it and then we will say 100%. There are clearly implications for the Barnett formula but it is a significant start.

Q281 Lindsay Roy: I take it you are unhappy about the proposal that these applications should be through the Big Lottery Fund?

Cllr Campbell: Absolutely. I think one thing that we can point to is that on European funding we have an organisation that works very well across the Highlands and Islands regarding how we judge and disburse such funding. I think we are all in agreement that we can equally manage that without the Lottery being involved, just on the condition that the actual office for the employees comes to the Western Isles.

Chair: And drives on the road in Barra. I think we do understand that. That has had a lasting impression on us. If you are going to come back to us about how the division would be between the ports and all the rest of it, consider being a bit more explicit about how you see the resources coming and then being divided up. I think we did hear the people in Scrabster saying that they did not want all the money to go to Inverness because they thought they were a bad lot; they wanted it to come to Scrabster. They certainly did not want it to go to Edinburgh. There has to be some sort of way in which particularly local community groups that maybe own the land do get something out of it, and

then beyond that it goes to a wider area, and beyond that a wider area.

I think you have to give us some sort of feel for what would be appropriate in these circumstances. There has been a lot of wandering around the subject without having something firm, and I think if you were maybe proposing something that could then be the basis for further discussion with all the relevant interested parties, it would have the advantage of you doing it and getting the blame, rather than maybe us doing it. It could confirm people's prejudices about local authorities, rather than about MPs. You wanted to come in, Alan, and then I will pick up some of yourselves.

Q282 Mr Reid: It was just Michael's point that he thought the Crown Estate were underestimating the profits made in Scotland. Would you be able to send us a breakdown of your calculation so that we can challenge the Crown Estate on that?

Cllr Foxley: Yes.

Cllr Walsh: There is a big issue here that I think is vitally important in terms of the moneys that are likely to come to Scotland from renewable energy, some £30 billion. You have heard me saying this, Chair, at Tiree: that for once there is a real opportunity to get positive and tangible developments for some of the remote and island communities. At the moment we suffer out-migration of the economic activities group people. There is an issue about people having to leave the Island to get a skill, to get a qualification, and they usually don't come back until they retire. Once in a lifetime we get a real opportunity to do something about that, not just in the islands but in the remote and rural areas, and there needs to be some kind of synergy about this. There is this question about, first of all, clarifying the issue of devolving the administration and the revenues currently enjoyed by the Crown Estate—and they are significant and there is a potential for even more significant resources. It is how we use that to the betterment of or the benefit of Scotland, and also specifically those communities where there will be an impact. Without a doubt there will be an impact. It is trying to get that kind of balance, if you like, and getting a mechanism and a process for actively doing that.

Local authorities are well placed to do it. We spoke about the Coastal Communities Fund there. Would it not be wrong for resources to be channelled for flavour of the month projects? We need resources to invest in our schools, in our roads, creating jobs and all the rest of it; it is this important balance that we need to work out. The reason local authorities have taken the view they have is that we are best placed locally to do that through community planning. We have all the main players in the room discussing strategic policy with the local authorities, looking at our budgets, looking at our priorities. I think that is a key way forward.

Cllr Foubister: I see this in a different light. I do not see this as a sort of slush fund for local authorities for trust ports; rather, as an investment in a new industry for the future to make Scotland, in particular, as a whole much more sustainable. For example, a large

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part of the resources are on the north, and certainly on the west coast of Scotland here, but if we are going to have a complete industry here we have to look at other venues within Scotland for manufacturing, because that is what we are looking for. We are looking for a combined thing—the resources can be at one place, the manufacturing can be at others—that, if it is supported and diversified throughout Scotland, can support communities throughout the length and breadth of Scotland. There is a huge opportunity for this to be a world leader here.

In terms of actual payback, certainly in the developments we are involved in in Orkney, at the moment we are looking towards Europe for partnership funding. It is difficult for a local authority—it is certainly more difficult even for trust ports to access that money without some sort of percentage input from themselves. This is an area and an opportunity where, not only will the payback be to the local areas, but we could enhance that by taking money in from Europe as well.

Q283 Chair: I like very much the sort of things you are saying there, but much of that is what we are asking you to do for us, is it not?

Cllr Foubister: Sorry, I did not catch that.

Chair: Much of what you are saying there is what we are asking you now to do for us, ranging from how you are going to deal with the funding of the interconnectors and so on, right down to what is the benefit for the community-owned land group in Ness, for example. That is specifically what we are asking you to come back to us on. I think we will try and make time to see you as soon as—I said Monday, but Tuesday possibly. Same time next week we could meet, if you had your report ready by then. I think it is a question of: the mood is there to start exploring these things and it might not come round again at all for a long time, so the onus now lies on you to discuss some of these things and put them forward to us.

We are getting towards the end of this meeting. If this was Edinburgh we would have said you will have had your tea. We have tea and coffee there for you, and everybody else is welcome to join us, but I just wondered whether or not there are any final points that you want to make—any answers that you had ready to questions that we have not asked yet?

Cllr Campbell: Can I just maybe come in? I am eager to come in on what Dick says because we have a different opinion on that one, I think. I would hold up what we have done with the Western Isles Development Trust for onshore renewables as a way of delivering what we can get out of this. It has to go to empowering communities. It has to go to building for the advantages for renewables; it is not there to fill gaps in budgets. I want to make that absolutely clear. A lot of the work you are asking us to do has already been done, so your date of Monday or Tuesday I don't think is impossible because we have a good relationship working together. We have been working on the coastguards and the tugs very coherently together over the last while. I think that we can bring it forward to our respective authorities very quickly, get overall approval and get it to you.

Q284 Chair: Just following that up, it may very well be that if you have something, you do not just simply present it to us—we could maybe meet with some of the trust ports and some of the community organisations collectively just so they can have some sort of input into this as well. I will maybe leave that with you to think about—where and how and when we could do that. But it will be much better if going forward we had a broad alliance: a consensus of opinion emerging about how this is progressed, because there will be those, I think, that just want to grab as much as possible either to Edinburgh or somewhere else, where it could quite easily disappear into a black hole, to be used to subsidise general spending, cut taxes or something similar. As you said, I think it is a once in a lifetime opportunity so I think we have to try and not only identify what we want to do but build a consensus.

Cllr Walsh: Can I just pick up a point in that one, so that there is no confusion. It is about what has real community benefit, rather than grabbing money because it is there. It is about developing real community benefit.

Cllr Foxley: I am very happy to get as much as possible back by Monday or Tuesday. I just want briefly to touch on one thing that has not been referred to, which is about training. I had a discussion with head of external affairs at the Crown Estate as recently as last Friday and, as we all know, there are significant cuts in the public sector, including the Scottish Funding Council. The point that we were making is that we want as many people in the Highlands and Islands to get the jobs in offshore renewables—we want as many people within Scotland to get those jobs. We were pressing the Crown Estate as to what investment they could make, so that an offshore island, the local community, would train to take part in that, and we did not get very far with that conversation.

I had a conversation with Roger Bright, the chief executive of the Crown Estate, two years ago about making that sort of investment. We were talking about a potential figure of £4 million a year. That was at the time we were talking about the MOU but nothing has come through. So, on the 3,500 jobs that will be coming to NIG in the near future, unless people are trained up, it won't be people from there that will be getting those jobs, and that is critically important.

Q285 Chair: I have been advised that I should make it absolutely clear: he did not pass us a note but he did tell us that when I said Monday or Tuesday, that was a joke. I mean it was not necessarily Monday or Tuesday.

Cllr Foxley: We rise to the challenge.

Q286 Chair: I didn't want to get myself into any bother for saying something that is misunderstood; so "as soon as" I think would be the best way of dealing with that.

John Watt: I was just going to repeat Michael's point: the important aspect is, if you look at the supplementary written submissions from the people at the table, there is a reasonably clear consensus that

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we need to invest in long-term legacy projects with any revenue that is derived from these activities; and skills and infrastructure and energy-related projects are consistent across the responses.

Chair: I think there is a consensus, but there is also a great deal of misunderstanding or anxiety about what might be involved, so I think that is where we do need to speak to some other people.

I thank you very much for coming. As I said, there is tea over there, at a modest charge, and there might even be a biscuit.

Lindsay Roy: We would also like to thank you for the warm welcome that we have had when we have been in your communities, because it certainly has been exceptional.

Wednesday 23 November 2011

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Jim McGovern
Graeme Morrice

Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Ruchir Shah**, Policy Manager, Head of Policy Department, Scottish Council for Voluntary Organisations, **Philip Maxwell**, Chairman, Islay Energy Trust, and **Sandy Brunton**, Chairman, Scottish Islands Federation, gave evidence.

Q287 Chair: I welcome you to this meeting of the Scottish Affairs Select Committee. We are here, as you know, to discuss matters relating to the Crown Estate. You have all been good enough to give us formal written evidence. We have decided that it was so interesting that we wanted to meet you and talk about it further. Hopefully, we will be able to shed light on some of the issues.

I start off the questioning by asking you, Mr Shah, of the SCVO, to remind us about your organisation, how it is constituted and basically what you do.

Ruchir Shah: Yes, of course. SCVO is the national umbrella body for the third sector in Scotland. As such we represent charities, voluntary organisations and social enterprises within our membership. We have 1,300 members, who elect a policy committee of about 30 individuals from inside and outside their ranks to represent the views of the third sector in Scotland. This policy committee sets the direction for the policy views that SCVO puts out publicly.

Q288 Chair: We have had this sort of discussion with you before. Can you clarify that the policy you have put forward on this matter has been agreed by your policy committee?

Ruchir Shah: It has, yes.

Q289 Chair: But it has not been out to your wider membership.

Ruchir Shah: In terms of the wider membership, we have flagged the issue—both the initial consultation and the supplementary consultation of the inquiry—to our members and to the policy officers' network, which is a subset of individuals within our membership who have particular expertise in dealing with policy issues as well.

Q290 Chair: How are you funded as an organisation?

Ruchir Shah: We have a diverse mix of funding. We get some limited funding from the Scottish Government's core grant, but it is a very limited amount. I cannot give you the exact figures right now, but it is a small percentage. We get a lot of income through self-generated sources such as providing contracts on behalf of UK Government, other agencies and so on. We also sell services to members and others as well. We have a variety of funding.

Q291 Chair: So it would not be fair to see you as completely subservient to the Scottish Government.

Ruchir Shah: No. We have taken a very deliberate approach to limit any core funding we get from the Scottish Government.

Chair: We will come on to the details of your policy in a moment.

Q292 Mr Reid: Thank you all very much for coming this afternoon. Sandy, perhaps you could describe how the Scottish Islands Federation is constituted. Do you have regular contact with all or most of Scotland's 100 inhabited islands?

Sandy Brunton: Thank you for the invitation. I don't think we can honestly say we have regular contact with all the inhabited islands. Fairly recently, we became a company limited by guarantee. We have a mix of organisations that are members. They are mostly from islands that are not within the unitary authorities, because we are aiming to be a voice but particularly with a European context. We are also members of the European Small Islands Network, so that we can have direct impact on or influence into European affairs.

Q293 Mr Reid: Is it mainly the Clyde Islands and the Inner Hebrides that you would represent?

Sandy Brunton: Mostly from the Highlands and Argyll and North Ayrshire, but there are some in Orkney and some in the Western Isles as well. We are a voluntary group, so everything we do is voluntary. Our AGM is next week, so, if you are in Oban, you are very welcome to come.

Chair: We will bear that in mind.

Q294 Mr Reid: It will be next Saturday, so I might well be there. Sandy, in your written submission you describe the Crown Estate as operating as a "London-based investment company". What do you think the consequences of this have been for our island communities?

Sandy Brunton: If an organisation is dealing in investment particularly, they have a different view from what we would see as a longer-term view, and much more of an overall strategic view on what some people call the "asset" but what is the resource of the seabed and the foreshore. If we consider that the sea is becoming increasingly important to our future one way or the other, then we need to have much more strategy involved in what we do with it in the long

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term. That is why we believe that an investment company is basically working within its own parameters at the minute, but it needs to have a much wider remit to consider things for the benefit of the future.

Q295 Mr Reid: Philip, will you describe how the Islay Energy Trust is constituted and what your relationship is with all the other community organisations and the Community Council in Islay?

Philip Maxwell: The Islay Energy Trust is a community-owned charitable company. The members come from people who are resident on, or have property on, Islay. We have about 300 members at the moment. That is approximately 15% of the people who are eligible to join. We feel that we are reasonably representative of the community. We have been appointed by the Islay Community Council as its official advisers on renewable energy issues. In fact, one of our directors is also on the Community Council; so we have a close working relationship with the Community Council.

Q296 Chair: I want to be clear about that. You are an organisation of individuals.

Philip Maxwell: Our members are individuals. We are constituted as a charity and a company limited by guarantee. The objective of the enterprise is to develop renewable energy projects for the benefit of the community.

Chair: I was not quite clear about the make-up and structure.

Q297 Fiona Bruce: Mr Shah, could I ask you, first, to clarify for the Committee what you see as the benefits of the management and revenues of the Crown Estate in Scotland being passed to the Scottish Parliament? Then, in turn, could I ask you, gentlemen, more widely, do you agree with that proposal?

Ruchir Shah: The reason we are proposing the devolution of the management and administration of the Crown Estate in Scotland to the Scottish Parliament is because we see that the Scottish Parliament at that level is an institution which already has a good relationship with the third sector. There are a number of legislations within which the third sector has been able to brief and ensure good outcomes, such as mental health, self-directed support, homelessness legislation, anti-smoking and so on. The relationship we have built up with the Scottish Parliament has given us the trust to feel that, at that level, we could have quite a good and robust scrutiny of an important resource like the Crown Estate in Scotland.

Sandy Brunton: The way it appears is that the decisions which are taken—and, again, it comes back to the strategic thing—are taken far away from the results of the decisions. The way that we try to consider things is that the decisions should be taken as close to where the implications of those decisions are. That means that it should be put back up toward Scotland and that there should be more engagement and involvement with those people that are affected by the decisions. That should be done much more at a local level and there should be resources to be able to allow that to happen. Quite often, that type of

decision is taken and given lip-service with a number of organisations. They just tick a box to say that they have been consulted, but they may have just spoken to people on the Council or Community Planning Partnership or some other organisation like that that does not speak to people on the ground at all.

Philip Maxwell: While I agree that it would seem more appropriate that issues to do with the seabed should be dealt with by an authority in Scotland, because it would then be more accountable, right down at the community level there is some scepticism regardless of whether it is Westminster, the Scottish Parliament or, indeed, a local authority. Certainly, so far as Islay is concerned, an island tends to feel rather remote from the tiers of local government. The experience that we have had in dealing with the Crown Estate has led us to think that there ought to be a reappraisal of the way in which Crown Estate revenues are accrued. At the moment there is a lease payment made by a company that gets a Crown Estate lease and that goes into the Crown Estate coffers. In terms of renewable energy, which is our area of expertise, this is a not inconsiderable sum. The calculations that I have put in our submission are that renewable energy—offshore wind, wave and tidal—in 20 to 30 years could be worth as much as £200 million per annum. This is serious money by anybody's standards. For Islay, the calculation is about £4 million per annum.

On Islay, we are saying that we do not necessarily want all that, but we want a fair share of that to be able to administer ourselves for what we see as our needs in terms of long-term sustainability and so on. It is the way that the Crown Estate leases are given out which is more the issue than where the ultimate accountability lies.

Q298 Fiona Bruce: Mr Shah, do you agree that perhaps further devolution should be looked at down toward local authorities and community groups in terms of the management and revenues from the Crown Estate? What kind of obstacles do you think there are in achieving that?

Ruchir Shah: We entirely agree that there should be as much devolution—subsidiarity—toward the local level as possible. We would go beyond local authorities on that as well, right down to the community level. It would not necessarily be just the current institutions we have, but right down to community level. A number of our members—for example, Community Land Scotland—represent interests at a community level and are trying to engage with the Crown Estate.

As a step towards that, it is absolutely fundamentally important, in our view, that we have a Scottish Parliament at the level at which we can have that kind of discussion about how we take things further. Ultimately, if we are going to devolve down to a further level from the national level, the Scottish Parliament currently has that kind of remit anyway to decide at what level these kinds of resources can be devolved. For us, it is important at least that at Scottish Parliament level we can have the kind of debate to decide what best mechanisms can be in play to devolve further down to local level.

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I know we have said in our submission that we would be quite keen for a national fund. One of the issues that we are thinking through, for example, is whether resources should first flow to a local community and then into a national fund, if we are trying to look at the benefits of the Crown Estate's resources, or whether it should start with a national fund and then flow back down. The key point for us is that that kind of debate or discussion should involve a full consultation overseen and led by the Scottish Parliament. That is the initial step that we would like to see.

Q299 Fiona Bruce: Would Mr Maxwell or Mr Brunton like to comment on that and on what Mr Shah has highlighted, which are the challenges of outworking such proposals in practice?

Sandy Brunton: It is quite clear to us that one size will not fit all. Every community is different. That does not mean that every community should be treated the same, but there ought to be the time and resource to allow the proper benefit to get to where it is best used. That does not mean it is an easy thing to do. If it was easy, it would be getting done just now, and it is not. To do it correctly is complicated and it can be an extensive process, but in the long term the benefits will always outweigh the challenges. We are quite clear that one size does not fit all, because not every community has the same capacity, networks or access. Some islands are very small and have a very small population. Capacity is often a big issue, but that does not mean to say that they should not have the services as a benefit from the investment.

Q300 Fiona Bruce: Mr Maxwell, do you have any comments? Perhaps I could also ask you to comment on the merits of the creation of a Scottish National Fund, particularly from revenues from the uses of the seabed.

Philip Maxwell: I will take that one first. In general, setting up a Scottish National Fund is a very good idea. If we look at what has happened in Norway with their oil revenues, they have a very considerable sum of money—several hundred billion dollars—in a fund which is set aside for the benefit of the country. That must be a good thing. But, as part of that kind of settlement, we would want to see a split between the money that goes into that sort of fund and the money that finds its way straight down to the community level which can be administered by the community for the benefit of that community.

The current proposal that is on the table, where the Treasury have said they are going to put 50% of the Crown Estate revenues into the Coastal Communities Fund, which will be administered by the Big Lottery, is not the answer, I am afraid. It is not the answer, first, because it keeps the administration of that fund in a centralised body. Secondly, while the Big Lottery has been a great thing and has done all sorts of good things, it is quite a barrier to entry. Getting money from the lottery is a major process. You have a 40-page form to fill up and it is quite difficult. Of course, it does not address what the needs of local communities are because they have national criteria.

Q301 Chair: I want to come in on a couple of points. Mr Shah, we have moved on a little from the initial trawl, as it were. One of the things that slightly disappoints me about your evidence is potentially how centralising it is. You have just indicated that you want things to go to Edinburgh, into Holyrood. You have not mentioned this scope for devolution further in your written evidence. Given the evidence that you are aware we have had, presumably, particularly from local authorities, what is your view about the idea that there should be a firm commitment or steer coming from us that either stuff goes directly to local authorities, or, where there has been a community land buy-out, some powers and some financial input would go directly to those organisations? Is that the sort of thing you would support being said at this stage?

Ruchir Shah: In a slightly nuanced sense, and I will explain myself. What we would support is that, with regard to any kind of Crown Estate resources coming from an offshore or marine renewable-generated resource, primacy should be given to those communities that are directly affected in that area. We completely agree with our colleagues on that. I have no problem whatsoever with the idea of resources flowing to those communities, because they are directly affected. I will not be alone in also saying that it would not make sense for all the resources to flow just to those communities. Where we are coming from is that, once those communities have had their fill and have enough so that they can regenerate their communities, then surpluses should certainly be available through a national fund mechanism, or whatever mechanism we want to see, for other parts of Scotland, other communities and perhaps even areas within inner cities in parts of Scotland as well. That is the reason why we do not want it to be devolved in its entirety just to those communities that are directly affected. The importance for us here is that we do not know what would be the appropriate levels and amounts of surpluses that would need to pass on, and so on. That is the reason why we have not taken a very firm view in the evidence that we submitted to you in response to your dividend supplementary question.

Q302 Chair: I understand the difficulties about percentages, proportions and so on, and we have discussed this with others. In terms of the general principle, rather than assuming we start from Holyrood and work downwards, you, in a sense, like us, are starting from a perspective that you start with the local communities and work upwards. Once their buckets are full, so to speak, the overflow goes towards the centre but not the other way around, where you start in the centre and the overflow trickles down. We would fear that there would not be all that much of a trickle downwards effect. Potentially, Holyrood, like the Treasury here, is just a vast black hole into which huge amounts of money could be poured and nothing would then escape. In your evidence you did seem to be very much stressing the centralising thrust of your direction. On reflection, are you now changing that?

Ruchir Shah: No. Let me explain the reason why we are struggling with this one. The idea of the bucket

full at local level and then surplus going to a national fund before distribution to other areas is a view which we find has a lot of credibility. The other view—and the bits which that does not address—is the accountability issue. If all the resources from the Crown Estate revenues were aggregated at a national level first and then distributed onwards, we feel that would be easier to scrutinise than a fragmented set of funds in different areas, with some surpluses coming through. That is one area which we are struggling with. We are not quite sure that has been squared yet. The other issue is that we very much would not want any kind of national fund being soaked up through a black hole of existing resources within the Scottish Government or any such body. That is why we have stressed in our evidence to you that any kind of national fund would need to be independent of the UK Government and report directly to Parliament.

Q303 Jim McGovern: Which Parliament?
Ruchir Shah: The Scottish Parliament.

Q304 Chair: In terms of this exchange that we have had, you hear, Mr Maxwell, that we are minded to go along the lines that you have put forward on percentages and so on. I want to clarify something with Mr Brunton. With regard to your relationship with local authorities, can you give us some advice on how you see the idea that some of this money in the first instance goes to local authorities for them to manage, rather than to the centre, then to be delegated outwards?

Sandy Brunton: The feeling we have is that the lottery is not the mechanism to use. Generally, people are approving of the mechanism that Highlands and Islands Enterprise use within their area specifically. They very much encourage a bottom-up approach and engagement. They have quite a streamlined process in the way that HIE calculate areas of deprivation, and they have very clear guidelines as to why and how they support different communities and different projects within the communities. We think HIE may be the mechanism, certainly from the Islands' perspective, about how that would be used.

Q305 Chair: I want to clarify that with you. There is a general respect for HIE and the work that it does. Does that not clash to some extent, first, with democratic accountability? The local authorities of the Western Isles and Highlands and so on are elected in a way that HIE is not. Secondly, there has been a view that the communities which generated the money should, in a sense, be the first ones to benefit. If it is simply spread across the whole of the HIE area without discrimination, except by the sort of criteria you are indicating, which is according to origins, that breaks that link.

Sandy Brunton: There would be additional work to do to determine how best to allocate the money within the HIE area so that those who are affected most would get a fairer share of the hit. We are talking about the money aspect, but this whole thing is to do with the decision about what happens to generate the money. We feel that there has to be a real partnership approach to this. That can be done with local authority

and community council input. In many places, there are development trusts which are very able bodies, with capacity to do astonishing things. There are many more of them becoming available as well. There needs to be quite a significant thinking. It may not be that the first time it happens is the right way round. It may mean that it needs to be a step-by-step approach and things need to change as it is proved or not proved. But we believe very much in the partnership. Each area or each specific project, request or whatever may mean a different partnership, because there may be different capacities that are able to represent that area better than others.

Q306 Chair: Mr Maxwell, do you want to contribute to this? You have heard the general area of discussion.
Philip Maxwell: Yes. What Sandy has just been talking about in terms of partnership is absolutely critical. At the grass-roots level we have had contact with the Crown Estate directly on a number of issues. I categorise that experience as being the lip-service lure. The Crown Estate pays a lot of lip-service to the fact that it believes in community consultation, community participation and community involvement. Indeed, when we were talking to it directly about the possibility of the Islay Energy Trust having a lease for a tidal project in the Sound of Islay, it led us to believe that we would be very acceptable leaseholders for a demonstration lease. That never materialised because ScottishPower Renewables came along and made us an offer that in a sense we could not refuse.

We formed a consortium with Tyree and Kintyre, when the Scottish territorial waters offshore wind farm proposals were made, to look at the socio-economic impacts of offshore wind farms on the three in Argyll. The Crown Estate invited us to give a presentation to their forum where they sit with the developers, which was very welcome, and we did that. But since then there has been a deafening silence. When the Islay Energy Trust came to enter into the leasing round that the Crown Estate has just announced for the sea areas off Islay and elsewhere in Scotland for the Saltire Prize, for wave and tidal projects, it is impossible for a community organisation to participate in that because we are not a corporate entity with a health and safety management policy and assets worth millions of pounds and all the rest of it. We fell at the first hurdle and we felt that this was an unfair barrier to entry.

I have come across this with other corporate entities. People talk about participation, partnership and consultation, but the reality does not match the rhetoric. That is how I characterise—

Chair: To be fair, we have heard criticisms of the Crown Estate from quite a number of people, so we are aware of that general background. I do not know if you have read the written evidence submitted by the Orkney Fisheries Association, who seem to slightly understate the position, if anything. It is worthwhile just drawing that to your attention.

Q307 Mr Reid: Philip, you said in response to a question that the Big Lottery was not the appropriate body to be distributing through the Coastal

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Communities Fund. How do you think that money should be distributed?

Philip Maxwell: If we look at devolution to the communities first and then an upwards waterfall, the proximate affected communities should at least be confident of having some proportion of those revenues, and then you have a surplus going up instead of it being a top-down approach all the time.

Q308 Mr Reid: Is there any particular use? Would you set up a body to do the distribution, or are there existing bodies that you think could take on that job?

Philip Maxwell: There are two. I did not really expand on it earlier on, but one of the options that the Crown Estate said it was considering—and this was in discussions we had with it about three or four years ago—was that it was going to give local communities a head lease. In other words, I interpreted that to mean that the local communities would then have some say about the commercial terms on which the leases were given out.

The other example is the one that is adopted in Canada. In Nova Scotia, feed-in tariffs are only given to entities which have a 51% community ownership. That would be another mechanism.

Chair: Your metaphor of an upward waterfall is an interesting one. If you reverse it so that you have the periphery at the top and the black hole at the bottom, then it makes much more sense as a metaphor.

Q309 Jim McGovern: I would like to take you back, Mr Maxwell, to when you mentioned Norway. I think you said there was £100 million.

Philip Maxwell: No. The Norwegian fund is worth something between \$400 billion and \$600 billion.

Q310 Jim McGovern: That is much more.

Philip Maxwell: Yes.

Q311 Jim McGovern: You said that that is set aside, which must be a good thing. I know I am digressing from the Crown Estate Commission, but I assume that the UK spends oil revenues as they come in. Why would it be a good thing to set them aside?

Philip Maxwell: This becomes a macro-economic and political thing, or it has implications. Norway's foreign exchange reserves and its robustness in terms of finance are partly because they have set aside a large sum of money for a rainy day. At least that is my understanding of it.

Q312 Jim McGovern: That was the metaphor that came into my mind. Why set it aside for a rainy day when the public needs it now?

Philip Maxwell: There has to be a balance between expenditure today and setting aside money for future demands. If you buy a pension, you are putting money into a pot which you keep and then take out of it at some later occasion.

Chair: Before we get into macro-economic territory and the responsibility of the Treasury Select Committee, let us come back to the foreshore.

Q313 Jim McGovern: First, I have a question for Sandy. In the Scottish Islands Federation submission

you note support for the transfer of the responsibility for Crown foreshore rights to local authorities. Do you think there would be benefits in this? Apparently, it just seems to be noted.

Sandy Brunton: The submission was done a while ago and we have done quite a bit of work since. We have taken other folks' views. The general view now is that the rights should be passed to one body and not split up. There has been more information feeding back into this. A number of folk have contributed to this. The consensus now is that probably the Council would not have the right to the foreshore separate from the other rights.

Q314 Chair: Why do you think the local authority is not the right body? Would this presumably be a centralised body based in Holyrood or Edinburgh? Why would they be more appropriate?

Sandy Brunton: It is not that they are more appropriate; it is that, instead of being the Council, it should be the local development trust or community councils.

Q315 Chair: So even more local.

Sandy Brunton: Yes.

Q316 Chair: Sorry; I misunderstood that.

Sandy Brunton: It would drop down further.

Q317 Chair: Is there not a danger then that you would just get an enormous amount of fragmentation?

Sandy Brunton: Fragmentation would be one way of putting it. Local benefit is another way of putting it.

Q318 Chair: The local authority would presumably retain planning powers over the foreshore anyway, would it not?

Sandy Brunton: Yes.

Q319 Chair: This would just really be a case of agreeing leases and the like over foreshores.

Sandy Brunton: It would be a genuine partnership where there would be weight given to the community. There would be proper engagement with those that are within the partnership. That would be slightly tipping the balance to the community.

Q320 Chair: I understand that. I am sorry, Jim, but I would like to clarify this.

Jim McGovern: You are in charge.

Chair: If you handed it over to community land groups, I can see that that is for the benefit of the community as a whole. If, on the other hand, you have private ownership, then you are taking that away from a democratically accountable body like a local authority and handing it over to a private landlord, who might very well not have the same interests as the wider community. This has come up when we have been travelling around in the Islands. How do you respond to that?

Sandy Brunton: I had not imagined it would be handed over to a private landlord but that there would need to be this engagement with the community and those other powers and agencies involved. The decision would be taken specifically.

Q321 Chair: If it went to the local authority on the understanding that it was then up to the local authority to decide whether or not to transfer it further, that overcomes the point. I thought you were saying that, almost automatically, it should just be given out to the local owner, whether or not it was a community land group, a private company or a private individual.

Sandy Brunton: There will probably be circumstances where the local authority there would be the most appropriate body to do that, but there will be other circumstances in other places where they are not. This comes back to the one size does not fit all. To get the bigger benefit for the longer term, this is where it would be quite complicated. If we are going to aim at the long-term benefits—

Q322 Chair: I want to be clear about what circumstances you envisage where the local authority would not be the appropriate body either to control it or to decide who to pass it to.

Sandy Brunton: The consultation that is carried out decides that. When the partners in the consultation have been deemed to be genuine and have engaged the community and other agencies, if they decide by consensus that that is not appropriate, then—

Chair: Jim, I got carried away with the excitement.

Q323 Jim McGovern: It is not a problem. As part of our inquiry we have visited Orkney, Shetland, Caithness, Tyree, Bara and Stornoway. It would probably be fair to say that the overwhelming opinion is that any revenues generated by the CEC should not go to Edinburgh. In fact, in some cases we were told it should not even go to Inverness, but it should go absolutely locally in terms of local trust funds, community groups, community councils and so on. Would you agree with that view?

Sandy Brunton: I think it needs to be a partnership approach, but I believe that there needs to be a strategic overview for that partnership. I suspect that, within the Highlands and Islands area, HIE has that strategic view. It may well be that their influence would affect the decisions, but, likewise, local organisations, local harbour groups or whatever it is would have a share in the decision process. It is democracy. The Community Land Unit description is “subsidiarity”. They are trying to get the decisions taken at the lowest level, but, if they cannot be taken at the lowest level, then they get passed back up, if they are not appropriate.

Q324 Jim McGovern: Mr Shah and Mr Maxwell, do you agree with the Scottish Islands Federation’s view or is there a difference of opinion here?

Ruchir Shah: It would be quite helpful to make a distinction between what the funds are used for and accountability of the funds. This is the fundamental dichotomy that we are struggling with. The use of funds for us has to be at the local level, as local as possible. It could be a local development trust, a heritage trust, or it could be a housing association. There are myriad different forms it could take at local level. I very much agree with Sandy on that point. I would make a distinction, at that level, between organisations and people through those organisations

coming to a view on how those funds should be used within that local community. They must absolutely have that right to be able to do so because they know best what works for their communities. I would make a distinction between that and the need for accountability of the fund. Certainly, I would not want to see a fund like this going down the same route as, say, Common Good Funds, which does not have the level of accountability and scrutiny that they deserve. That is part of the reason why we mentioned in our response that, while we have some sympathy with the idea of a waterfall that goes upwards, there is also an argument for scrutiny on the basis of accountability to be able to gather together the resources at a national level and then look at how it is dispersed at local level. Having said that, of course, any use of the fund would have to take place at that local level. This is not just islands and coastal communities. It would also be the case in terms of dispersing any funds to the wider people and communities in Scotland and, therefore, to local areas within cities and other areas as well.

Q325 Chair: We have met a number of organisations—I forget most of the names of them now, which is a sign of age—most of whom are run in quite complicated structures. I have no reason to believe that there was any suggestion that money was running away into the Sound or anything. These bodies are all probably audited and so on. Therefore, the issue of accountability surely does not come up, if that is the way in which you are using it.

Ruchir Shah: Where we are coming from on this is that a national level fund which aggregates all the resources from the Crown Estate revenues in Scotland can be scrutinised quite effectively through the Scottish Parliament at that level and with a much wider range of input than can be the case with a fragmented fund.

Q326 Chair: Surely, this goes to the very core of the difference between the centralisers and the devolvers. If you have money that is generated locally, some of which goes to an island somewhere, and it is then decided on and spent there subject only, I would have thought, to appropriate audit, there is no difficulty. I do not see why that needs to be investigated or accountable to the Scottish Parliament as a whole. Presumably, if it is accountable to the Scottish Parliament as a whole, accountability is then going to develop into discussion of the types of decisions that are being taken and not just about whether the money has been stolen. There is an element of audit which is basically making sure that nobody steals the money and everybody would be in favour of that, of course. I would have thought, with the centralising tendency, if it is being supervised centrally, there is bound to be an extent to which Ministers and MSPs will then want to have some degree of control over the money. Do you recognise that as being desirable?

Ruchir Shah: I absolutely recognise the problem you have highlighted on the centralising tendency, and I do have sympathy with that as well. That is the reason why, right at the start, when you asked me this question initially, I mentioned that we were struggling with this. We were struggling with the idea of whether

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you start off with funds going straight to the communities at a local level and then surpluses going up, or whether you aggregate it all at a national level and then allocate it to communities so that they can use it in the way in which they find best. I do not know what the answer to that is. As a Committee taking evidence, you may have a better perspective on that. What I would say, though, is that this kind of debate or discussion is something which we strongly feel should take place at a Scottish Parliament level, overseen by the Scottish Parliament. That is one of the key points that we have made in these consultations.

Q327 Chair: We have some sympathy with that as a general view. However, if it takes place at a central point, then they will quite naturally have a strong view as to their own interests. They are not disinterested in the question of whether or not the money should be coming initially from the bottom and then flowing downwards into the black hole. They will see themselves at the peak dispersing the money. Politicians, believe it or not, do generally quite like handing out money. There is then an issue about whose money it is that they are handing out. There is a real danger, is there not, that, if the money goes into the centre, those who see themselves as being responsible for it will then determine where it goes, and local communities will lose all sorts of control?

Ruchir Shah: In addition to that, one of the issues we were struggling with earlier on, when we were thinking about the Crown Estate resources in Scotland back in January, was whether there could be some kind of alignment between the way in which the Crown Estate resources were used with policies that were being approved at the Scottish Parliament level. I do not want to pursue that one too much because it can take us into areas which I do not feel very comfortable I have a grasp of. But, certainly, at that stage, we were thinking about whether the Crown Estate resources in Scotland could be aligned better with the drive towards renewables, for example. At the same time the danger, which I am sure, Chair, you would recognise in the first instance anyway and which we would not want, is the Crown Estate resources being used to subsidise any kind of Government spending.

Q328 Chair: That is right. If the money goes into the Scottish Parliament, or anywhere else centrally, to be aligned with central policies, then that is entirely incompatible with having local control.

Ruchir Shah: Exactly, yes, which I agree with.

Q329 Chair: But you agree with two things which are mutually incompatible, unless I am mistaken.

Ruchir Shah: That is why we are struggling.

Philip Maxwell: I am not sure that they are necessarily incompatible. My analogy of the upwards waterfall is that the local community, the proximate community, does get a share. One can argue about whether that should be 25%, 30% or 50%. Whatever figure it is, at least the communities would get that. As I said earlier on, when I look at what is potentially available to Islay if the offshore wind, wave and tidal resources are exploited around Islay, it could be in

gross terms about £4 million per annum. I am not going to argue here that we should take all £4 million per annum, but, if we had £1 million or £1.5 million of that per annum, that would have a huge effect on our local communities. That is the point I am making.

Chair: Perhaps I have not been giving you enough time to expound on your view because we have heard it so many times before and we are broadly sympathetic to it. In a sense, the wave is now moving on beyond that. Graeme, you had some questions.

Q330 Graeme Morrice: Good afternoon, gentlemen. Excuse me for this heavy cold that I have at the moment. First of all, Mr Brunton, in your written submission you expressed concerns in relation to Marine Scotland's track record to date in protecting the seabed. You propose that a new Scottish body with a holistic remit should be created to manage seabed leases. Could you expand on this and explain how such a new body could work?

Sandy Brunton: This is where it gets very complicated, but this is where the long-term view has to prevail. The long-term view of many people around the islands is that the seabed is not managed correctly in that it is misused by certain types of fishing and fish farming in some respects as well. It is a controversial issue. It is quite complex, but it is the longer-term holistic approach that we would approve to be looking at what the effect is going to be in 20 years' time, not just in two or five years' time. For instance, if those that are currently employed by the Crown Estate—and they are all well qualified for what they currently do—were tagged on to Marine Scotland to do the job that they are currently needed to do but with a different remit and more input, it appears that Marine Scotland might benefit from further input as well.

Q331 Graeme Morrice: I address the next question to all three of you. How do you envisage that island and coastal communities might have some direct influence over the uses that are made of the seabed closest to their communities? What is the appropriate territorial limit of the seabed over which communities should have particular influence? Maybe we can start with Mr Maxwell.

Philip Maxwell: Particularly for Islay communities, my perception is that island communities look upon the seabed a little as land-based communities look upon common grazings. It is their common ground. On Islay, there is the possibility of a big offshore wind farm 13 km offshore. We regard that as being proximate to our community. Certainly, the Crown Estate has just awarded a lease for a tidal project 5 miles off Portnahaven. That is definitely within our area of interest. If you go any further out than that, you start getting into issues of, "Well, it is so far over the horizon that it is probably of less interest and probably does not involve local fishermen", and so on. Speaking for people from Islay, they would like to have some partnership arrangement in anything that takes place within, say, a 20 km zone of the seas around Islay. That would include nearly all the renewable energy resources that are likely to be exploited. As I have said before, the form of that

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partnership arrangement could be a share in the lease; it could be the right to invest in that project. One of the things we are looking at is setting up a co-operative fund that we could then use to invest in renewable energy projects. That gives people a stake in the developments that take place locally.

Q332 Chair: You mentioned a figure of 20 km. Is that to do with the topography under the water? Is there any particular reason for that figure or has that just been plucked out of the air?

Philip Maxwell: There is a limit of 12 nautical miles, which is territorial waters. Anything that is further out from that, unless it is an extremely big structure, is not visible at beach level. If you stand on the beach, unless it was a tower bigger than 500 feet or something, you are probably not going to see it if it is more than 12 miles offshore. It is also the range of inshore fishing.

Q333 Chair: If we said the limit was as far as the eye could see on a clear day—

Philip Maxwell: It is more than that. It is any structure over the horizon that stands up that would become visible.

Q334 Chair: In that case that would be even better, because the bigger it was, then the more chance there would be of having an involvement. If you were able to stand on the foreshore, irrespective of who it was owned by, and you could see it, then you would want a bit of it. If you could not see it, you would reckon that was beyond your ken.

Philip Maxwell: It is a reasonable view. Why not?

Q335 Jim McGovern: I am going to display my ignorance here. Is 12 nautical miles and 20 km the same thing or is it different?

Philip Maxwell: Give or take, it is the same thing.

Chair: The communities will be searching out their tallest person in order to determine what share they have of the resources.

Q336 Graeme Morrice: Mr Shah, what do you think?

Ruchir Shah: I would simply add, without taking a view on the technical aspects of how far you can see into the horizon, that an important issue for us about the Crown Estate land and seabed resources is that this should not just be about community benefit from large-scale projects. There should also be mechanisms for regions within this to support community scale renewables. Some of the ideas mentioned by Philip about rights of lease are very valid here. Community scale renewables is also a very important factor for the communities and organisations that certainly we engage with in our sector.

Q337 Graeme Morrice: Finally, Mr Brunton, what do you think?

Sandy Brunton: Particularly to do with engagement, as I have explained before, we believe that the partnership approach has to be based on what is appropriate for that specific place. It may well be that each place has a different partnership approach. There

may be different organisations or individuals that have capacity or capabilities within that. It is not going to be a one shoe fits every foot. It is going to have to be done on an individual basis for it to work properly, which will no doubt be complicated, but in the longer term it will have the longest benefit.

Q338 Mr Reid: I have a question for all three witnesses. Would you expand on what type of local body would be appropriate to manage a community's share of its seabed revenues? How would such a body be constituted and should there be national guidelines about how the money would be spent, or should it be a completely free discretion to local communities?

Philip Maxwell: Taking the last point first, we would not want to have any national guidelines about how we would be spending our money other than the fact that we, as a local community, should not be spending money on what is a statutory obligation of a central or local government. It needs to be on other sources. As to the organisation best suited to do that, whether it is development trusts or local charities set up in that way, it is already happening in many areas of Scotland, where there is a locally owned development trust which is locally accountable. In some cases it may be the same as the community council; in other cases it may not. There are plenty of good models for setting up a trust to administer and disperse those funds.

Ruchir Shah: Diversity is the hallmark of the third sector, the community sector, the voluntary organisations and so on. It is really important that we do not try and prescribe any particular format or even scale at which an entity of people coming together associating to try and make a difference in their communities should be constituted. Some of them may decide to take on charitable status for various reasons that might support and make it easier for them to run their operations. Others might want to form coalitions and partnerships between development trusts and other entities, which is perfectly fine. Some might simply be community art centres or village halls that want to get into the game. Others might be community energy projects and might have much more formal status with Companies House and so on. It is important that we do not try and prescribe any particular format or scale for these entities.

Q339 Chair: With some of the groups that you mentioned there—village halls and so on—surely, there is an issue, first, of scale and, secondly, about comprehensiveness. You have to make sure that something that presumably has a monopoly of interest in a particular area is genuinely representative. You mentioned community art groups or something similar. They might be the beneficiaries of a community structure, but it would not be the community structure itself, surely.

Ruchir Shah: No; I do not agree with that. In many cases people come together around a community arts centre, for example. We see examples like that in areas such as Dumfries and Galloway, where an arts centre becomes the hub for activity around it. There are plenty of good examples out there already of ways in which communities will express themselves. We

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should not decide that this cannot happen and it is not the right vehicle without seeing what is available. We should not say that it has to have this kind of democratic governance structure in order to be eligible to get involved in this. Rather than decide from the start and look out and say those are the kinds of organisations that we think could work, we should be much more flexible and try and reflect the full diversity of what is available in the third sector, the voluntary sector and communities up and down Scotland.

Sandy Brunton: I would like to back up most of what has been said there. It is quite apparent that there are organisations that just don't have the capacity as they stand to do big projects. It needs to be a stepping-stone by delivering smaller-scale things to begin with, perhaps, and then building up the capacity within the community or the group itself to be able to take the next step. That is where guidance can be received from other organisations. This is where the partnership approach can be used to best benefit. It could well be that other community groups, development trusts or community councils, or whoever, who are involved in setting up those partnerships, are contributing knowledge to the partnerships to be able to get the best for that specific community. It is about exchange of that information and making it appropriate. It may well be that a group that has just been set up last year that has a turnover of £5,000 is not appropriate to manage a £6 million harbour development. But it may well be that they could do that after having done various other smaller projects and work up the capacity, staffing, knowledge and credibility within five years' time.

Ruchir Shah: I want to add to that. I do not feel I stressed something enough, and it builds on Sandy's point there. It is about collaboration. Through collaborative activity, a lot of smaller organisations can scale up so that they can get involved in much larger projects. That should certainly be seen as part of the bundle here. It should be easier for organisations and small community groups to collaborate with others on an equal partner basis in order to scale themselves up so they can then get involved in development as well.

Q340 Chair: When you say it should be easier, what is stopping them from doing that at the moment?

Ruchir Shah: It is very difficult because legal fees are very expensive. There are barriers just in terms of being able to compete at that level. I certainly would not be able to get into details on all those kinds of problems and difficulties that they face right now, but, if you would like me to, I can certainly send you something on that.

Philip Maxwell: My first-hand experience would bear that out. For example, when it gets to something like legal fees, at the moment we are partly dependent upon grants from things like the Scottish Government's Climate Challenge Fund. When you say, "Can I have some funding to help me with legal advice and drawing up an agreement that would allow me to go into a partnership?", you find that that is not covered under the terms of the grant. Either then you do not do it because you do not have the resources

available, or else you are steered toward a trade body's favoured solicitor. It is often quite difficult and time-consuming for voluntary organisations to get off the ground.

Q341 Chair: We have heard some criticism of the Crown Estate Commissioners being voracious, but we are not investigating lawyers. That takes us in a completely different direction. We are seeing fishermen later on, and sharks might very well be part of that. Surely, that is something that SCVO are in a position to help these groups with, are they not? Presumably, you get things off the shelf and so on.

Ruchir Shah: We do have pro-bono legal advice services for our members. For example, the Islay Trust is a member of SCVO, as are Community Land Scotland and others. Part of their motivation for coming to us is so that they can access and network with others.

Q342 Chair: We have heard this on a number of occasions, but I very much appreciate the difficulties that organisations have about gearing up and getting in the expertise. The wheel has been invented in a whole number of places around the Highlands and Islands. Groups have been set up and, surely, there must be the expertise there. If it is not being shared, then that is obviously a cause for concern.

Sandy Brunton: If I can come in there, I do not think, necessarily, that is an easy thing to do. A lot of the groups are voluntarily managed. They are extremely tight on financial budgeting. To be able to exchange and share, where islands are concerned, it took me a day and a half to get here. If you are talking about getting from Mull to Coll, it likewise takes about a day, and you cannot get a ferry back the next day. There is a lot of expense involved in getting smaller communities to be able to exchange. That is why I said at the beginning that it would not necessarily be easy, but in the longer term the benefits would outweigh the difficulties. The other thing I hope I said was that the resources have to be made available from the bottom up to allow the capacity to be built. Part of that capacity is sharing and exchanging ideas.

Q343 Chair: This point about bottom up depends on how you look at it. If you take our view that the black hole is the bottom and therefore the periphery is the top, then it makes these things a lot easier to visualise and a lot more progressive.

Sandy Brunton: From the community up then, shall we say?

Q344 Chair: No; from the community down, surely, to the black hole. It is a question of direction. First, can I ask you whether or not there are any answers you had ready to questions that we have not asked? Are there any observations that you wish to make that we have not drawn out of you, or has everything been covered?

Sandy Brunton: I think you have been very thorough, from my point of view.

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Q345 Chair: Do any of my colleagues have any other points they want to raise? Philip, were you about to say something?

Philip Maxwell: It is just the point I have made before, which I will reinforce. The perception we have of the Crown Estate is that they see us like a little boy to be patted on the head and patronised. It is quite irritating.

Q346 Chair: You are a very moderate man considering some of the things that other people have said to us. I would just ask for clarification on one point we have been discussing with a variety of organisations, and clearly there is a multiplicity of groups and structures and so on. Is there anyone to whom you look for a lead? We have been speaking to the grouping of local authorities; I forget the title. It is not COSLA. There is the Highlands one. It is a working group on the Crown Estate. Are they a group with whom you have links and liaison? We have been discussing whether or not we want to have some forum to discuss these things more widely, possibly in the Highlands. We were not quite sure whether or not that grouping of Highlands and Islands local authorities was appropriate with drawing in others, or whether or not there was another group to which you

could point us as being the group, apart from yourselves. Is there an individual group or structure that more truly represents the wide range of interests involved in this?

Philip Maxwell: No. We know that the Crown Estate and the local authorities have been discussing a memorandum of understanding about community benefit, but we have found it impossible to get any information on it either from the Crown Estate or our local authority. It is as if neither side wants to deal with the people about whom they are discussing.

Sandy Brunton: I would need to say that a number of local organisations will have strong contact with Highlands and Islands Enterprise. They have various programmes; for instance, Growth at the Edge, which is designed specifically for peripheral areas and islands. There is a whole big project that has been going on now for about six or seven years where they put small amounts of money to build capacity, have a community plan developed and take that further. The organisations build abilities and capacities. I would think that most of the islands would happily be able to speak to Highlands and Islands Enterprise.

Chair: Thank you very much for coming to see us, even though it took you 12 days or however long it was to make it here. Thank you very much; it has been very helpful.

Examination of Witnesses

Witnesses: **Phil Thomas**, Chairman, Scottish Salmon Producers Organisation, **Fiona Matheson**, Secretary, Orkney Fisheries Association, and **Dr Sally Campbell**, Vice Chair, Arran Seabed Trust, gave evidence.

Q347 Chair: I welcome you to the meeting of the Scottish Affairs Select Committee. We have been discussing, as those of you who were in earlier on will be aware, the issues relating to the Crown Estate. I will start off by asking you to introduce yourselves and to tell us a little bit about your organisations, to set things in context.

Fiona Matheson: I am Fiona Matheson. I am the Secretary to Orkney Fisheries Association, which is a trade protection body representing fishermen, processors and anyone involved in furthering industry in Orkney. We are financed through subscriptions from our members. We cover a large diversity of different types of fishing, sizes of boat and types of boat from under 10-metre vessels up to 40-metre vessels across the shellfish, inshore and white fish sectors.

Q348 Chair: Are you the author of the submission?

Fiona Matheson: I am, yes.

Q349 Chair: You don't think you were a bit mealy-mouthed at all, do you?

Fiona Matheson: Very mealy-mouthed, yes.

Dr Campbell: I am Sally Campbell. I am part of COAST, which is the Community of Arran Seabed Trust. That has been going about 14 years. It came out of the collapse of our international sea-angling festival on Arran where we could no longer catch white fish because they had gone from the Clyde. We are very much into sustainability: environmental,

economic and social sustainability for the island. We have worked very hard, and in 2008 we secured a small and the only No Take Zone in Scotland, which is in Lamlash Bay, with the idea that, given a rest from bottom trawling for prawns and dredging for scallops, there would be a chance in this small area for regeneration and overspill of the young into the rest of the Clyde. We are still fighting for the rest of the Bay to become a marine protected area. One of the reasons that we submitted was our concern that, in fact, Marine Scotland could suddenly be in charge of all the marine resources in Scotland when they clearly cannot manage sustainability of inshore fisheries.

Phil Thomas: I am Phil Thomas. My background is in research and academia. I am here wearing the hat of the Chairman of the Scottish Salmon Producers Organisation, which is the body that is the trade association, in effect, for pretty well all of the salmon producers in Scotland. Our members account for about 98% of total salmon production. That covers producers in the Western Isles, in Shetland, in Orkney and on the mainland.

It might also be helpful to say that, in terms of the Crown Estate, I wear a number of other hats and interface with them. Probably most importantly, I chair the Tenant Farming Forum, which is the interface body between tenant farmers and landowners. That has elements of the Crown Estate linked with it. I also sit on the Crown Estate's Scottish Industry Liaison Committee, which has been established; so I see quite a lot of the Crown Estate.

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Q350 Fiona Bruce: Welcome to all of you. Mr Thomas, I will direct my questions to you. First, just to put it into context, as you have said, the salmon farming industry is now a very substantial industry. If I am right from your submissions, it is nearly 40% by value of Scotland's food exports. That is about £1 billion.

Phil Thomas: That is right.

Q351 Fiona Bruce: You are mainly geographically based in the west and north west coast and on the islands of Scotland. That is the main geographical location. The Crown Estate is landlord of all the marine fish farms and some of the freshwater farms.

Phil Thomas: That is right.

Q352 Fiona Bruce: Obviously your relationship with the Crown Estate is a very interlinked one. I want to ask you about your relationship with the Crown Estate over time. Your submission talks, first, about your past relationship. You have said that the Crown Estate was highly instrumental in promoting and supporting the creation of a new Scottish rural industry. In the past, your dependency on the Crown Estate was substantial.

Phil Thomas: That is right. The industry started, in terms of the commercial marine part of the industry in particular, in about 1980. Until 1997, the Crown Estate was both the owner of the seabed and the development authority. The two were hand in hand. It was in the Crown Estate's interest for the industry to develop, and in the early days they were very supportive. Post-1997 there were a series of changes which have ended up, in effect, with the local authorities being in charge of the development stage, in the sense that fish farms are now under the Town and Country Planning Act. It is as if you were building a house in the water, if I can put it that way. It is the same system, essentially. The Crown Estate still owns the seabed and operates its seabed leases. We have the additional regulation of lots of other agencies, including Marine Scotland that has been mentioned already, the Scottish Environment and Protection Agency, and Scottish National Heritage. In fact, there are about 10 agencies that regulate fish farming in one way or another.

Q353 Fiona Bruce: Your industry has matured over time.

Phil Thomas: I would like to think it is still growing.

Q354 Fiona Bruce: Indeed. Your relationship with the Crown Estate will also have changed over time.

Phil Thomas: Yes.

Q355 Fiona Bruce: You mentioned the Industry Liaison Committee. Could you tell me how the Crown Estate interfaces with your industry, represented by you on that group?

Phil Thomas: I may not have the date exactly right, but the Industry Liaison Committee came about probably in 2006 or 2007. This was post-devolution, and there was a good deal of criticism in Scotland that the Crown Estate had very little Scottish presence in relation to the industry. This was not just aquaculture but the energy industry, farming and tenant farmers,

for example—the fishing industry right across the piece. The Crown Estate set up a Liaison Committee that typically meets twice a year, simply to provide an interface with those industries. It is that committee of which I have been a member right from the outset.

Essentially, it is no more of a committee than a forum for exchange of views and discussing things that are of mutual and common interest. So you have the Crown Estate listening on the one hand to the industry, but, on the other hand, also, exchanging with the industry some of the Crown Estate's thoughts on various developments, how its policies are evolving and so on. That is chaired by the Crown Estate's Scottish Commissioner.

Q356 Fiona Bruce: Can I just probe a bit further? Forgive me for using the phrase, but it is the one that comes to mind. Tell me how that, in the interests of your industry, is more than a pleasant biannual talking shop?

Phil Thomas: It has been very helpful, for example, in terms of us getting a much better idea of how the Crown Estate is thinking about developing some of the marine energy activities. That may seem a bit incidental, but I can put it to you in this way. If you are talking about anything that is offshore in terms of a development, once you get to the point where you have some solid foundation on the seabed, to my view of life that is prospectively a position in which you could develop fish farming. If you have something solid, you can anchor a fish farm to it, in essence. We are interested in offshore development.

Equivalently, and probably more importantly, anything that looks like a nodding donkey, a wave machine or a turbine that is seabed-mounted inshore in areas that could be used for fish farming, immediately creates a situation where you have a conflict of interest in a particular area of water. There is a particular difficulty there. Everything else that is in the water that is licensed—all marine developments in Scotland—would come under Marine Scotland, except fish farming, which is under the Town and Country Planning Act. We have a long-term concern that you could have a development in a single area or, indeed, you might have a combined development where you have two entirely different planning development authorities involved. It has been helpful for us to try to get a view of how the Crown Estate's views on alternative energy and renewable energy are developing.

We have also had quite a good interface with them through that Committee on some things specific in relation to fish farming. For example, we have been keen for a number of years in the aquaculture sector to develop what would be called in other areas permitted development rights. As I mentioned, if you are getting development planning for a fish farm, then you are effectively looking at something that looks rather like building a house in the water. Under normal planning circumstances, if you had a house, you would apply for an extension. With a fish farm, at the moment, you don't have that possibility. That is something that the Scottish Government is currently developing. There is a piece of legislation which we hope will go through over the next year or so.

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Dr Campbell: Can I say something about fish farming? Would that be permissible at this point? As small communities on the west coast of Scotland—and Arran is no different—we do have a problem with fish farms. They are still in their infancy in terms of industrialisation. They started small; they are getting bigger and bigger. We are against very long leases. It is almost like privatisation of the seabed. There must be break clauses in it so that if development comes along—for example, a need for a harbour extension or something—then those leases can be changed. Too long leases remove the navigation rights for people. One of the things in the west of Scotland now is an increase in sea leisure of all sorts. There is quite a lot of concern about that.

There must be EIAs—Environmental Impact Assessments. When they were first started, it was before EIAs became compulsory. All around there are fish farms that are growing in size that have never had an Environmental Impact Assessment. The communities have not really been consulted. We have a fish farm in Lamlash Bay that they have requested to make bigger. A month ago we were on the ferry going over to the mainland and there was a terrible smell of dead fish. We now understand through various means and asking people, because we were never told on the island, that between 600 and 800 tonnes of fish have died. It is totally inappropriate that the community was not informed by the Scottish Salmon Company and is something with which we would take issue with the Crown Estate, to ensure that its lease holders inform communities of their actions, any diease and any plans. But, in fact, of course, the legislation, SEPA and the Fish Inspectorate of Marine Scotland are involved in this outbreak.

This extension of fish farms up the west coast, which is the latest push, is a real problem for small communities. The fish are automatically fed. They are not providing vast numbers of employment opportunities. Marine Harvest recently advertised for a Polish interpreter, so they are not necessarily going to the Scottish people. I would wish to make sure that the Crown Estate becomes much more accountable to local communities before embarking on those. Although local authorities now have the say-so in terms of planning, nevertheless there is major concern on the west coast—and these are all on the west coast of Scotland—as to the damage that is being done to wild salmon populations and in fact to the seabed because underneath these fish farms it is pretty dreadful.

Q357 Jim McGovern: What caused the death of the fish?

Dr Campbell: They think it is some sort of an amoeba combined perhaps with a big autumn overturn. The weather has been fine and warm, and there have been some gales up the west coast. They have had a fairly big autumn bloom and probably calcareous diatoms which might have made them susceptible. They do not really know. We have not had the final results yet.

Q358 Jim McGovern: Unfortunately I am not familiar with the terms you are using.

Phil Thomas: Could I come back on one of those two points because I feel I really have to?

Q359 Chair: Jim, are you happy with that response? There are dead fish. I do not think we necessarily need to know why or how they died, do we?

Jim McGovern: I do.

Phil Thomas: If it is helpful, I can clarify the present diagnosis. There were fish that died as a result of this. It is thought it was from an amoebic bloom, which is rather like an algal bloom. It is a spontaneous natural event. If you can imagine an algal bloom in the water as a cloud, if I can describe it that way, drifting in the tide, in this case it affected a particular fish farm and they lost a considerable number of fish. That kind of algal bloom can occur in almost any position in the sea at almost any time, if the conditions are right. It is a rare event on fish farms, I have to say, but it can happen.

Q360 Jim McGovern: As you know, our inquiry is into the Crown Estate Commission. I just wondered if we were blaming the Crown Estate Commission for this.

Phil Thomas: No; even the Crown Estate cannot be blamed for algal blooms, I am afraid.

Chair: Oh, I don't know; I don't know.

Phil Thomas: Could I come back on the substantive point that Sally has made?

Chair: Fiona, did you want to come back on that point before Mr Thomas comes back?

Q361 Fiona Bruce: I want to follow this theme of the relationship between the Crown Estate and the salmon farming industry over time. In the early days the Crown Estate was the nurturer. Now you have talked about there being a reasonably amicable partnership arrangement, in many respects, through the board that you are on. May I put my question to you?

Phil Thomas: As far as the aquaculture industry is concerned, the Crown Estate is simply a tax collector.

Q362 Fiona Bruce: This is what I want to probe, if I may. If you look at some of the impressions that you have touched on in your submission, for example, there are very substantial revenues that the Crown Estate now earns from your industry. It is about £2.5 million.

Phil Thomas: It is £2.5 million a year.

Q363 Fiona Bruce: It is due to grow by 50% by 2020. You say you are generally content with the organisation and operation of the Crown Estate. “However, our members naturally will always wish to see a fair and equitable system of rents that does not add unreasonable cost burdens.” I would like you to amplify what you mean by that. A little bit further on you say: “There would be significant benefits to the aquaculture industry for a more apparent linkage between marine developments and a visible income stream to the Scottish economy.”

Let me put in context what I mean by this. One of the witnesses here earlier said to us—and I am saying this in the context of you being now a very valuable and

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maturing industry—“We feel rather like we are a little boy to be patted on the head by the Crown Estate”, rather than perhaps the mature relationship that should exist. I would be very interested in your comments vis-à-vis your industry looking forward and what you want from the Crown Estate in that relationship.

Phil Thomas: You have to put it into the context of different people coming from different directions toward this. The point that was made in our submission about the accountability element is that we have a very clear view. The Crown Estate collects £2.5 million a year in tax from the salmon farming industry. That goes into some wider pot. You would anticipate that somehow or other, through Treasury, it filters back in part at least to Scotland—and through the Scottish allocations will filter back in part to the local communities that we were talking about earlier on. The perception that release of the Crown Estate will suddenly create a big new pot of money, unless there is further development of some sort, is quite wrong. The money is in the wider pot. Local communities, at least in our view, have very little perception of a lot of the benefits that come from developing aquaculture in a particular area. We as an organisation over the last few years have deliberately broken down investment by the industry on a local authority basis. We want local authorities to recognise the investments that are taking place in their area. You cannot do that with the Crown Estate income streams because they are not transparent.

Q364 Chair: It would make no difference to you if the rent you paid went, say, to the local authority, the local community or something else because you are still paying it. Where the money goes does not really matter much to you at all.

Phil Thomas: It is a parafiscal payment. It is a taxation system, essentially, which is operated for the Crown Estate. You could then say, in terms of the reinvestment of that income, are there priorities? If you were to ask me from an industry standpoint, I would say that we would have some priorities that we would put to the Crown Estate. For example, if you have a situation where, for any reason at all, aquaculture is badly disrupted—I will give you a specific case—at the moment the companies are entirely responsible for dealing with that. A few years ago, there was an outbreak of infectious salmon anaemia in one bay in Shetland. There is no compensation scheme; so it is the case that the company simply had to take the loss for that. That hit the Shetland economy to the tune of about £12.5 million within a single year.

Chair: We are going to have to cut you off there. That is the bell ringing for the vote. We have to go and vote. You talk among yourselves and we will come back and discuss this with you as soon as we return.

*Sitting suspended for a Division in the House.
On resuming—*

Q365 Chair: Mr Thomas, you wanted to get something off your chest in response to the points made by Dr Campbell.

Phil Thomas: It is just that Sally was wrong. I think we have probably squared it. The situation with fish

farms, historically, is that a lot of them were established before the Environmental Impact Assessment Regulations, as they now stand, came in. They were assessed for environmental impact but under a different set of regulations. The farms that are there now that are under the local authority loop are all under present legislation. All the ones that are not under the present legislation, as they are being brought into the present legislation, are all having the equivalent environmental impacts. It is just that the point that was being made was wrong.

In relation to Sally’s view about fish farms generally, I think we will have to agree to disagree because we will be here all afternoon otherwise.

Q366 Chair: I am glad an agreement to disagree has been resolved. I want to clarify this. Of the £2.5 million income from aquaculture, how much of that is from salmon farming? Is that all of it?

Phil Thomas: It is a bit complicated. I could explain in detail why. The vast majority will be from salmon farms. There will be a small amount from trout farms and a very small amount from shellfish farms by comparison. The vast amount will be salmon. In round terms, over 90% of all the production in Scotland is salmon farming.

Q367 Chair: Are seabed rents calculated on tonnage, on throughput? If you double the volume going through, does your rent double or something similar?

Phil Thomas: Yes. It is calculated on tonnage. The present figures, off the top of my head, are £1.70 per tonne. It is going up to £2.25 per tonne in January of next year.

Q368 Chair: That goes up per tonne, but obviously it rises as tonnage rises.

Phil Thomas: It rises as tonnage rises, yes.

Q369 Chair: I am not aware of there being enormous concern in local communities about the level of rents being charged to yourselves, since very little of it comes back to the local community anyway except by some indirect mechanism. Are you aware of any of that?

Phil Thomas: Local communities would not see that rent at all. Indeed, industry sees no benefit of that rent. There is a distinct difference between a Crown Estate lease for a piece of land, for example, where very often, if the Crown Estate was leasing a farm, it would lease a farm with buildings on. You would have a normal arrangement where the Crown Estate would be responsible for the buildings and so on and so forth. With a marine lease, the Crown Estate leases the seabed. All the investment on that site, from the development of the site through the regulatory process and any hardware that is put on site, is paid for by the company. It is like a bare land lease, in effect.

Q370 Mr Reid: You have said that you pay this in rent. Do you see any benefit back from either the Crown Estate itself or the wider public sector? Does the salmon farming industry get any help from the public sector in terms of research or any other method?

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Phil Thomas: There is a small amount of money, relatively speaking, which goes into the Scottish Aquaculture Research Forum. Some of that is from industry and some is from the Scottish Government. From time to time some of it is from the Crown Estate, but it is relatively small. It is not a big fund at all. There is investment under the normal research programmes, for example, in aquaculture and marine science. If you were to take the Technology Strategy Board, they have a scheme. They have just put a number of projects in the ground at the moment, oddly enough, into aquaculture. The Research Council is funding that. In the generic sense there is funding going into research, but not very directly at all in relation to the aquaculture industry per se.

The Scottish Government have their own research establishment. It is part of Marine Scotland and is called Marine Scotland Science. That really does not do any work in relation to aquaculture from a business standpoint. It does work in relation to fish diseases, both of wild fish and aquaculture. Indeed, it does work on wild fish populations and things of that sort. There is no specific fund for aquaculture.

Q371 Mr Reid: Has there ever been any attempt made at putting a monetary value on the value of that research to you? I am trying to get at whether the public sector is a net beneficiary from your rent or a net contributor. Has any work ever been done?

Phil Thomas: It is a huge net beneficiary, in the sense that the aquaculture industry has developed essentially on the back of industry research. The industry puts vast amounts of money into the research pot to develop the industry. That is the model that has always been there.

Q372 Chair: When the Committee met you in July you were fairly critical of the Crown Estate. Has anything improved since then at all? Maybe, for the record, you could tell us about some of your concerns on lack of consultation and discussion.

Fiona Matheson: Historically, what occurred in Orkney with the very first leasing round was that no consultation whatsoever took place with the fishing industry. We did not even appear on the radar as far as the Crown Estate was concerned. Obviously, it does not derive any financial benefit from our industry, although we are the indigenous industry of the islands and have been there since the days of Skara Brae. There is evidence of people having fished and consumed shellfish. That was a massive omission which obviously angered the fishing industry in Orkney hugely. Our first knowledge of the scale of the development was when maps were made open to the public and we were faced with large squares of sea shaded in green and orange which had basically been sold from under our noses. It is understandable that feelings were running high. As an industry we have been on the back foot ever since.

It is very difficult to understand how that omission occurred. Until literally three weeks ago we have never had any direct communication to ourselves from the Crown Estate. I wrote a letter to the Crown Estate because I had basically been tipped off by somebody else that there was potential for changes in the

strategic sea area and possibly changes to what we thought were the agreed boundaries of the leasing sites. I wrote to ask that we be involved and consulted prior to any decision taking place on these boundaries. We had a meeting last week (16 November 2011) with two members of the Crown Estate (Colin Warwick and John Robertson) about that very thing. But that information did not come voluntarily to us first.

Q373 Chair: Apart from the meeting that you have had with them in the last couple of weeks or so, have you had no written communication and no meeting with the Crown Estate in any shape or form?

Fiona Matheson: No.

Q374 Chair: Have they circulated materials to the community which you would be expected to see?

Fiona Matheson: They have had public information days. These were opportunities for the renewables developers to show what they were doing in Orkney waters.

Q375 Chair: That was after the decision about the areas was taken.

Fiona Matheson: Yes, after the decision was taken. There was a public meeting for fisherman scheduled in Orkney, which I think I referred to in my submission. We as an organisation were never directly contacted. In fact, it still seems bizarre to me how poor the efforts to contact the fishing industry were, given that we have a web site, we are on e-mail and we have a telephone number.

Q376 Chair: Were you the only organisation that was not contacted, or did they not try to contact anybody?

Fiona Matheson: No, none.

Q377 Chair: The developers had an event.

Fiona Matheson: Yes, which we went along to like any member of the public would do.

Q378 Chair: But there has been no thrust or efforts from them to consult you in any way, shape or form.

Fiona Matheson: Not until just this last couple of weeks.

Q379 Chair: You wrote to them.

Fiona Matheson: Yes.

Q380 Chair: Is that the first time you have written to them?

Fiona Matheson: Yes.

Q381 Chair: They might very well argue that you had never written to them before.

Fiona Matheson: They could do, but I spoke at the public meeting so they were well aware of my presence then back in the spring time. I cannot remember the exact date.

Q382 Chair: One of the questions we were going to ask is whether or not there has been any improvement in your liaison with them since we were there in July. You cannot put a percentage on nothing compared with one then, can you?

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Fiona Matheson: It has improved. If you are looking at a score of one to 10, it is probably edging up to 0.5.

Q383 Chair: You are a very generous woman. That is the first contact at all you have had from them. Was the meeting particularly satisfactory?

Fiona Matheson: The recent one?

Q384 Chair: Well, the only one.

Fiona Matheson: Yes. We met with their fisheries liaison person (Colin Warwick and John Robertson, chair of the renewables forum) and someone else who has responsibility for tidal developments. It was an opportunity for us to outline again the economic importance of the fishing industry in Orkney, which is a multimillion pound industry. In total, including white fish, the value is up around £20 million. The inshore industry—crab and lobster—is £7.5 million. It was our opportunity to illuminate for them the interdependency of the industry in Orkney between the catching, processing, marketing and selling. It is a high-value product now being sold in all the leading supermarkets in the UK.

Q385 Chair: But surely they were aware of all this already.

Fiona Matheson: No, they were not.

Q386 Chair: I thought you said you met somebody called the fisheries liaison person or officer. With whom has the fisheries liaison officer been liaising, if not with yourselves, who are the only group in Orkney?

Fiona Matheson: That is a question for him. You should ask him.

Q387 Chair: Did you ask him, though, with whom he had been liaising?

Fiona Matheson: I don't know who he has been liaising with. The first time we saw him was at the general meeting for fishing interests in Orkney. He is an employee of the Crown Estate and from our perspective is there to sell the Crown Estate's goods to us.

Q388 Chair: I understand that. He is employed by the Crown Estate.

Fiona Matheson: He did not have a meeting with us.

Q389 Chair: It just seems bizarre that a fisheries liaison officer has not been liaising with the fishermen. You would tend to think that the secret was in the title.

Fiona Matheson: That is why I am totally puzzled as well. I would like to think it is a cock-up rather than conspiracy, basically.

Q390 Chair: We will obviously check because I am not quite sure what this man is being paid for. It sounds like a fairly good job.

Fiona Matheson: That is a matter for the Crown Estate, isn't it?

Chair: It seems a fairly good job to be paid as a fisheries liaison officer but not to actually liaise with any fishermen.

Mr Reid: Is that his only job or does he have other work as well?

Q391 Chair: Things have not got better.

Fiona Matheson: They have got a little bit better, I have to concede.

Q392 Jim McGovern: Who is this person?

Fiona Matheson: Sorry?

Q393 Chair: Do we know who this person is?

Fiona Matheson: Which one?

Q394 Jim McGovern: The one who should be liaising but is not.

Fiona Matheson: His name is Colin Warwick. I believe he has a part-time position as a fisheries liaison officer with the Crown Estate.

Chair: It would be very part-time, it would appear.

Jim McGovern: Minimal time.

Phil Thomas: Chair, I would not like to comment on the fisheries industry because I don't know anything at all about it, but, simply as a matter of information, the person who sits on the Crown Estate Industry Liaison Committee is Bertie Armstrong, whom Fiona will know. I am not sure which hat he wears when he sits there, but he is certainly present in that committee.

Fiona Matheson: Perhaps I should clarify that. Orkney Fisheries Association is affiliated to the Scottish Fishermen's Federation. Bertie Armstrong is the chief executive of that body. If the Crown Estate has liaised with Bertie Armstrong, that may indicate, in their view, that they have liaised with the fishing industry, but Bertie Armstrong is several tiers away from us in the Orkney Fisheries Association.

Q395 Chair: Whether or not they have met with Bertie Armstrong, it would appear that that does not mean that word has been transmitted to the Orkney Fisheries Association.

Phil Thomas: What was concerning me was that there appeared to be a view emerging in the Committee that the Crown Estate did not talk to the fishing industry. I was simply trying to balance that up.

Q396 Chair: So the fisheries liaison officer is liaising with somebody, but not somebody in Orkney. Is that fair?

Fiona Matheson: Yes.

Phil Thomas: I could not comment. All I can comment on is that they do have somebody from the fishing industry on the Industry Liaison Committee.

Fiona Matheson: That is correct. To further clarify, the Scottish Fishermen's Federation operate a services company which employs guard ships and standby boats in the North sea, and have done for a long time, in the oil and gas industry. Much of the liaison would take place with that company, which is a service company. It is not a fishing company.

Q397 Chair: But you would not be involved in a discussion about guard ships in the North sea and so on. Presumably, when you are liaising with the Scottish Fishermen's Federation and the liaison officer, you are discussing fish farms.

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Phil Thomas: I hold my hands up; it is not me. I was simply putting in a piece of information related to the Crown Estate. The Crown Estate does have a membership from the fishing industry on the Industry Liaison Committee that I mentioned earlier that they have established. How that process works from that point onwards I would have no idea, since I am not involved at all.

Chair: I do not think any of us have any idea how that process works. That is possibly the difficulty.

Q398 Jim McGovern: When was that Liaison Committee formed or founded?

Phil Thomas: It has been going about three years or possibly four.

Q399 Jim McGovern: It is probably worth recording that, when we met representatives of the Orkney Fishermen's Association, they were quite clear that they had no correspondence and no communication whatsoever from the Crown Estate Commission, except when they made an announcement about wind farms and so on. But there had been no prior consultation with the Orkney Fishermen's Association.

Phil Thomas: I would not attempt to defend the Crown Estate in any shape or form. I was simply volunteering a bit of information that seemed to be helpful.

Jim McGovern: That is helpful; thanks.

Q400 Chair: Can I clarify whether or not the Orkney Fisheries Association were aware of this industry liaison structure?

Fiona Matheson: No. It is only in the last couple of weeks that we have become familiar with how the Crown Estate works.

Chair: It was just to cover your point that there was an industry liaison structure of which the ordinary fishermen are not aware. It would appear certainly not to liaise with them. That is clear enough. Graeme, do you have a question?

Q401 Graeme Morrice: Dr Campbell, I wanted to touch on the issue of marine protection. You mentioned in your submission the community campaign to protect the maerl beds in Lamlash Bay from destructive trawling and dredging. What are maerl beds and was the campaign successful?

Dr Campbell: They are a calcareous, very small seaweed. I don't know, when you were a child, if you ever played jacks, where you had a ball and 10 little things with lots of points on, and you could put them all together.

Q402 Graeme Morrice: I was a marbles man.

Dr Campbell: If you piled your marbles up, you would have lots of holes between them. Maerl gathers often in very ancient beds. It is thought that some of them are 200 or 300 years old. They are pink and calcareous, so they look a bit like coral, but they are actually seaweeds. They are an ideal nursery ground for small fish and all the small creatures that live in it that are at the bottom of the food chain for eco-system services. They are very important. If you destroy the

maerl beds, then you very often destroy the food for small fish. While we can find small fish in the Clyde, they never get bigger because they also get trawled up and destroyed by bottom dredging.

Q403 Graeme Morrice: In terms of your campaign to save the maerl bed, how successful were you?

Dr Campbell: We have a small piece of No Take Zone in Lamlash Bay. That is doing okay. We are doing research now every summer with divers looking at what is happening. Basically, a lot of the things on the seabed are quite fragile as they grow. It is in and out those rather fragile things that these small fish really start to grow. You have to recognise that cod need to get pretty big before they are very productive in producing offspring. That is what we are aiming for. It is an overflow to go out from our No Take Zone into marine protected areas.

Q404 Graeme Morrice: Recognising the responsibility the Crown Estate has for seabeds, what role did it play in this regard and in relation in particular to what you were doing to protect the maerl beds?

Dr Campbell: We were liaising mostly with Marine Scotland and the Scottish Government because they have control of the management of the sea—the actual water column. As you know, the sea is held in trust for us all. We are all entitled to go fishing. We felt very much that, somehow, there had been this grabbing of the resources of the sea for relatively few organisations and local communities were really losing out in many ways. We had an enormous international sea angling festival in Arran. After they took away the 3-mile limit in the Clyde in 1986, fishing just dived. The number of white fish just collapsed. In the mid-1990s, sadly, we had to stop our sea angling festival because they could not catch anything.

Q405 Graeme Morrice: Presumably, you would take the view that the community of Arran should have a greater say than at present over the uses that are made of the seabed around Arran. If this is the case, what would you perceive as being the most effective way of achieving this?

Dr Campbell: Under the new legislation from Europe we need to have marine protected areas around Scotland. We have an enormous sea area and we would like to see a marine protected area around Arran. We are gradually building up a case for that. We have opposition from various other sectors who would like to use the seas around Arran either for fish farming or for commercial fishing, bottom trawling for netrops mainly—that is prawns—and for scallop dredging.

If we are looking at long-term sustainability of Scottish waters, we desperately need marine protected areas. We have found that the Crown Estate has been quite helpful for us when we have asked for research data. It has done some research on eco-system services, which is a complicated way of looking at what the value of the seabed is for the long-term sustainability of our inshore waters. We found it quite helpful for that information. If we ask it for

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information, it provides it. We have found it somewhat more helpful than other people here have intimated today.

Q406 Chair: If dredging is taking place on the seabed and the Crown Estate is responsible for the seabed, has it been intervening at all in any of that?

Dr Campbell: No. The Marine Scotland Compliance are the people who are responsible for managing fisheries.

Q407 Chair: Yes, but the whole Marine Scotland structure is relatively recent. Before that, was the Crown Estate entirely hands-off?

Dr Campbell: As far as I know, it was fairly hands-off.

Q408 Mr Reid: Sally, in your submission you had proposed the creation of a foundation to allocate surplus Crown Estate revenue in Scotland. As you know, the Government are setting up the lottery to do this. What do you think of the Government's proposals? How would your foundation work?

Dr Campbell: Looking at all the financial figures and reading all of the submissions, it did occur to me that there seems to be a sort of sense that there is going to be this huge pot of gold. I don't perceive it as a huge pot of gold. Having some sort of way in which communities can apply for moneys from a central fund is a good way because it is independent of the Scottish Government, the Crown Estate or anyone that might have power and control in Scotland. One of the things for small communities in Scotland like Arran or up the west coast is that we are a long way, as has been pointed out, from Edinburgh and London. We are neither a multinational nor a major fisheries consortium. As some people have said, small communities are very often the last to hear about what is going on. It is not that we have not got our ear to the ground, but somehow it does not filter out. I think we are in favour of having a system whereby there is clear accountability, but it is up to the community to say what is needed in their community and how they might apply for it.

Q409 Mr Reid: Is a lottery the right way to go?

Dr Campbell: I am not sure a lottery is because that always feels a bit like you are putting in a huge amount of work and the chances are that it will fall on its nose.

Q410 Mr Reid: Would the same thing not happen with the foundation you are proposing?

Dr Campbell: I don't know, but I think a foundation or a lottery would be the preferable way. If you had this pot of gold and you said, "We will give it just to the communities that are affected by energy or fish farms", you set up a tension between communities. What about those that are 10 miles from the coast? What we don't want to do is say, "It is fine if you are a coastal entity, but otherwise you don't get anything." There needs to be a sharing.

Q411 Chair: Surely, there is a difficulty about people bidding to a body that is not accountable to anybody else.

Dr Campbell: Why we thought the foundation would be a useful way was because you could put on that foundation, based in Scotland, a whole variety of people with expertise in various things about Scottish communities that would be pertinent to the Scottish scene, if you like.

Q412 Chair: Surely, it would just be a collection of toffs.

Dr Campbell: Not if you set it up right.

Q413 Chair: Goodness me, most bodies in Scotland are.

Dr Campbell: Yes, we know that. It is a very small sycophantic group that work together.

Q414 Chair: Absolutely. They all attended the same private schools and so on and so forth. It is a bad lot altogether; I am not sure I am in favour of that, I must confess. Alan, do you have something?

Mr Reid: No; that is fine. I think Fiona had something to say.

Fiona Matheson: On the whole issue of revenues from the Crown Estate, it is really important that the status of the money is secured, whether it is public or private money. The problem we have in the fishing industry is that funds that we might wish to access, for instance through the local authority, we virtually cannot because we come up against state aid competition rules, which is an EU problem. If anything for improving a boat or changing a gear or anything like that comes through a public mechanism, that conflicts with EU state aid rules. At the moment, our best means of accessing money is through some kind of private source or some body that would be set up where the money has the status of private money. That would be why we would want to avoid a Scottish Government direct disbursement of money or local authority disbursement of money. I have other issues about local authorities, if you want to go on to that. There are a few points I would pick up on that.

Q415 Chair: I will come on to that in a second. That is helpful because I had not thought of that. I do not think that has come up properly before. We heard earlier on that some of the structures can be limited companies and so on and so forth. Presumably, if the money is collected and then redistributed, there must be a route by which industry can be supported.

Fiona Matheson: One of the points of information that I gleaned from our recent meeting with the Crown Estate was that, when the money comes into the Crown Estate, at that point it is private money. When it is transferred to the UK Treasury, it then becomes public money. If it is intercepted before it goes to the UK Treasury, its status could be either/or or both, if you see what I mean.

Chair: "Intercepted"—what a wonderful word.

Phil Thomas: Can I comment quickly on that, because that is a really important point? The crucial issue in most of the island communities and up the west coast of Scotland is the issue of economic

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development. Without jobs you have no sustainable communities, basically. One of the problems that does arise—it does not matter whether it is fishing or aquaculture—is that the Crown Estate has very little investment back into the industries that it raises money from. In the case I was trying to raise before the bell went, in 2007–08 there was a small ISA outbreak in Shetland which closed two companies down pretty well for effectively a year. The island took about a £12.5 million hit in terms of its economy. The only people who could absorb that were the companies that were involved. In that particular case both the companies were large enough to stand behind that, but, if that had happened to a smaller business in an island community, the business would probably have gone out of business and then you would have got into a position of decline. Rather in the way that the Crown Estate has tended to nurture and develop its agricultural resources, there is a very valid case for some of the funding being recycled in a way that would allow industry issues to be addressed, where that is necessary. The problem with the Treasury route is exactly the one that Fiona has highlighted.

Q416 Chair: I understand that. Presumably, that would apply to almost any form of economic regeneration that was being pursued. It would depend upon whether or not it goes directly to an individual owner as distinct from a collective. If there was the provision of, say, a new harbour wall or something that benefited everybody equally, all of that is acceptable, but assisting a particular boat would not be. To some extent, this then becomes a decision more appropriately taken at a local level, which is why, if it was delegated down either to local authorities or community land structure or something similar, they can then pursue this. I am hesitant about saying that we want to specify things from the centre here in Westminster and about how all this should be done. We are quite keen, as I think we have indicated, to try and see things shovelled down beyond the black hole that is Holyrood, down to local areas. It is how this point is included or overcome that is causing a little bit of difficulty now.

Dr Campbell: We are hearing a lot about fishing and salmon production. Tourism and inland waterway fishing are absolutely critical for the whole of the west of Scotland. Tourism in Arran is its bedrock now. If you talk to people on the small islands, they will tell you how important tourism is, including yachting and so on, which is on the rise. There would be some very good reasons why there should be further investment, as I noted in my paper, in infrastructure for that tourism. If we only concentrate on what are seen as the major “industries”, we will forget some of the—¹

Q417 Chair: I understand that, but the question of infrastructure that provides a collective good in the

¹ Note by witness: If we only concentrate on what are seen as the major “industries”, we will forget some of the most important employment areas—tourism, static fishermen, water sports, yachting, sea angling which support marine communities particularly on the west coast.

local area, as it were, is not troubled by any of the sort of points that Fiona was raising just now.

Fiona Matheson: Yes, that is correct. For instance, we could apply through our Association for a project. You are probably aware of the way things used to work. Orkney Islands Council, through oil development, has a development fund which used to provide, for instance, interest-free loans to fishermen to help them purchase boats. It cannot be used for that any more. Currently, with the banks not lending, all the resources for borrowing have dried up. That is digressing a wee bit.

Q418 Chair: No; that is very helpful, actually. Presumably, if the banks are not lending, there is no reason why HIE could not be funded to lend.

Fiona Matheson: My understanding is that HIE is struggling to disperse money at the moment because people cannot set up the seed corn of their business.

Q419 Chair: That is presumably because the projects that they are seeking money for are not financially viable.

Fiona Matheson: No; it is because they cannot get a borrowing.

Phil Thomas: Normally the issue here is matching funding. If you cannot raise the matching funding from the bank, then you cannot access the Government public sector funding that would go along with it. That is part of the problem. Almost all of these schemes work on proportionate funding.

Q420 Chair: We have had discussions as part of our look at the Scottish economy about the way in which the banks are behaving. We will note that point. I want to be clear, though. If there was funding made available by the resources that were coming in from the development of either wind farms or something similar, and part of that was being allocated to an HIE bank or a lending fund, that would not constitute state aid, would it, because, presumably, it would be getting let on what could be considered to be commercial terms? It is just that the hurdle level of difficulty—the banks’ caution and so on—is making that impossible at the moment. That would overcome the issues that you have raised about the potential for state aid. If it was a grant, I think I could understand that; that would be a problem. But, if it was commercial loans, to be repaid and so on, that would be a mechanism to get round it.

Fiona Matheson: As long as the money was coming out of what was the Orkney Islands Council’s private pot. The development fund they have, we assumed, was once a private pot, but they ran into difficulties because Europe designated that that was public money.

Q421 Chair: As I understood what you were saying to us earlier on, though, that stopped them giving the money to projects.

Fiona Matheson: It also stopped them lending on these loans, yes.

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Q422 Chair: Sorry; I had not picked that point up before. We will have to take that on board. Phil, you wanted to say something.

Phil Thomas: The point I was going to make about local investment—and it applies to local authorities or indeed any local structure—is that one of the difficulties there, is the conceptual one of defining what is local. If I can take a specific example, Sally would see the water around Arran as being local to Arran. For about 20 years I lived in Ayr. As far as I was concerned, the water between Ayr and Arran was local to Ayr. Immediately, you get into these difficulties of where you draw the line. That is one of the problems with the whole conceptual way that you would allocate the funding. If there is going to be some sort of arrangement where the funding comes back, it can have an emphasis on coastal communities or some structure like that, but it is very difficult to pin it down very locally.

Q423 Chair: We understood that. There have been various models floated about how a certain percentage can go to an immediately proximate area and then you have a wider area and so on, depending on how big the amount is. There are models for that which can be haggled over. In principle, I do not think we see that as being a major difficulty. We will probably pass that to somebody else to work out the detail of it.

I want to clarify one or two other points in terms of devolution and whether or not people believe that just simply handing all of this over to the Scottish Government would be appropriate. That is the salmon producers' view, is it not?

Phil Thomas: We would be very content with that, simply on the basis that, for us, that would put part of the democratic accountability closer to the community. Of the various proposals that have been discussed in Scotland, the one that we would have much more reservation about is the notion that you should simply bundle up the whole of the Crown Estate activity into Marine Scotland. The reason for that is that, if you trace it back historically, one of the reasons that planning was taken out of the Crown Estate's hands and put with the local authority was because you had the difficulty that the landlord and the developer were one and the same person. If you transfer the ownership of the seabed to Marine Scotland—and for most of the planning that takes place in marine areas Marine Scotland is also the development authority—you once again have that difficult association of the ownership of the asset and the development planning. We have some reservations about that simply because it seems to us to take us back to a problem that we had thought had been solved.

Q424 Chair: On the Orkney Fisheries Association's view, you were in favour of it being devolved to the Scottish Parliament and then further devolved to locally elected Sea Benefit Trusts.

Fiona Matheson: Yes. That is just a name; it could be anything. Given that the status of the money is important to us, we would say that disbursement and control nearer to us is going to be better. The fishing industry has been severely burned in the process of

admission to the EU and the loss of fishing grounds. We would be pretty sceptical about control of that remaining with London.

Q425 Chair: Suppose we just said it should all be given to the local authority. Rather than creating something separate, let us just give all that to the local authority and let them deal with that.

Fiona Matheson: Given, again, the problem with the money—whether it is public or private status—I do not think the local authority could find a mechanism whereby it could disperse it as private money.

Q426 Chair: We understand that point, but other than that.

Fiona Matheson: I have to say, not to be disingenuous to many good people who become councillors and participate in local democracy in the Islands, when you have a non-party independent council there are issues about accountability. Once someone has crossed the threshold into a position of political power without a manifesto or any kind of prioritising of how they are going to operate for the next four years, they have no accountability to the population. The economic difficulties in the Islands also prescribe against certain industries and certain age groups or certain genders becoming councillors. This is a problem. It is not to say that people don't go in there in a well-meaning fashion, but the collective responsibility and accountability sometimes produces a situation where areas like ours, who cannot supply councillors to Orkney Islands Council because of the nature of the job, become neglected or fall off the priority list. That is a particular problem with accountability, and accountability is the nub of where we would be coming from in terms of how any future of the Crown Estate was managed.

Q427 Chair: I do understand that, but the difficulty of having a group which would be specially elected is that potentially it would fall prey to a lot of the same sort of difficulties. Because they were elected by an electorate which was solely involved with the seabed, the difficulties about having the courage to take long-term decisions when you are facing short-term elections is even more pronounced.

Fiona Matheson: That is a problem with the current political system in terms of councils, MSPs and everything. As a fishing industry, we see that we are the people who are going to lose the most economically. We support remote areas and fragile islands an enormous amount economically. There is one island in Orkney which is about 90% dependent upon crab. It is a complex economic and social picture.

Chair: We are not unsympathetic to this. It is a question of identifying a way of progressing it that covers as many needs as possible. Jim, you wanted to come in.

Q428 Jim McGovern: As I mentioned earlier, quite a few of the associations and organisations that we have met on our travels in the Highlands and Islands in the north of Scotland have said that not only did they not want any revenues generated by CEC to go

to Edinburgh but they do not even want them to go to the local authority. They want them to go to local community organisations. I recall our most recent spat, as it were, in Stornoway where we met the Harbour Trust. When the Chair mentioned that perhaps the revenue should go to the local authority, he was quite indignant and said, “No way should it go to the local authority; it should go to the Harbour Trust.” Is that the sort of thing you would be supporting?

Fiona Matheson: Yes, with the proviso of the reasons that I have given. In particular, in remote small communities, it is always difficult to fully represent all the aspects of these places because they are small. We have a population of 19,000. That is a housing scheme in Edinburgh. You do get an imbalance at times. The balance does have to be struck. I am speaking for the fishing industry, but I know there are other interests that have issues, in particular, with granting leases for renewable energy. For instance, there is the tourist industry and other people.

Q429 Jim McGovern: Certainly, in Orkney, if I recall correctly, the Orkney Fishermen’s Association felt that, if their livelihood was going to be changed in some way, then any revenues generated by changes to the CEC should go to them.

Fiona Matheson: Yes, absolutely. Currently, if all the renewable sites that have been mooted come to pass, the devices become economic commercially and all these sites are utilised. As an aside, we hear now that the Crown Estate wants to re-jig the border so that they can put more sites in. If they all come on stream, it will basically wipe out the inshore lobster and crab industry in Orkney, which is a world exporting industry. It is of huge economic importance to the Islands.

However, we realise that we have to enter a dialogue with this potential industry. That is why we are keen to have dialogue with the Crown Estate and get some input to sustaining our industry. Looking at the bigger picture, because of what is happening with the review of the CFP from Europe, we are not certain yet what is going to happen. On the books there is a potential for quotas to come into non-quota species such as lobster, crab, squid and scallops. That poses a lot of questions and worries for our industry because we do not want to see the parasitic markets of leasing coming into our inshore industry.

The other premise that the EU regulation-driven system looks at with the white fish fleet is that everything is predicated on science. The likelihood is that that will come into the inshore industry to the lobster and crab fishery. To ensure that our fishermen could continue to fish, that would mean we would need to have evidence that our fishery is sustainable and viable. At the moment there is nowhere that has any of that kind of evidence. We have never had to prove that sort of thing before. We have never had to prove our requirement, our right to the sea or our right to the space on the sea. There are a lot of big issues facing us.

Q430 Chair: To be clear, if you had to produce a scientific case, that would be something that could be

funded out of public money. That is a bit like building the harbour wall, isn’t it? The industry can collectively be supported without the individuals being supported.

Fiona Matheson: Yes.

Q431 Chair: Leaving that aside for the moment, as I said before to the previous group, can I ask whether or not there are any answers that you had prepared to questions that we have not asked you? Without having a long dialogue about fish farms, good or bad, are there any particular points relating to the Crown Estate that you would want to bring up?

Fiona Matheson: Can I just come in with one or two things that I have not covered? Both the Crown Estate and the Scottish Government currently have a conflict of interest with the fishing industry. That is a problem that we have with them. One of the provisions in the 1961 Act was that the Crown Estate uphold the public right to fish. That is 40-odd years ago and things have changed. The whole concept of how the sea is used is changing rapidly as we speak, but that is still enshrined in their duty. The leasing of the seabed for these large renewable projects is in direct conflict with the public right to fish. The assumption that the Crown Estate makes is that it not only has the right to the seabed but to the water column and also the surface of the sea. I would say that that is stretching the limits of its rights, certainly in spirit, if not legally. Whether a definition could be found in that, I don’t know, but the fishermen use the surface of the sea and the water column. If a renewable device is placed in the sea or a farm of 60 or 100 devices or however many, their right to fish in that area of sea has been taken. The Crown Estate’s right is only to the seabed. That is an anomaly.

The Crown Estate is also tasked with maximising its income to the UK Treasury. It is in search of things that will maximise money for it.

Q432 Chair: We are aware of the issue about taking a long-term or a short-term view. It would argue that it takes a long-term view of these things. We have had that discussion with it already.

Fiona Matheson: The problem with the fishing industry is that it is dynamic and moving. If you chip away bits, there are knock-ons, people are pushed onto other’s areas and it raises your costs further. Environmental problems are another area with overfishing or conflict between different operators and all that kind of thing. In terms of the Scottish Government, their conflict of interest, as far as we would see it, is that they have put all their eggs in the basket of renewable energy. They want 100% by 2020. There is a presumption that developers will get rights to use the seabed over the top of other users. The fishing industry is in a very weak position—in fact no position currently as far as their right to the seabed is concerned. That is the important point that I wanted to shove in there.

Q433 Chair: We also have your written evidence and we had the meeting with yourselves in July. A number of members here were at that.

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Fiona Matheson: There is a precedent for fisheries' interests at least getting a say on what happens because we get a say on marine aquaculture developments. We can input and we are considered in that.

Q434 Chair: We have already discussed the fisheries liaison officer. We'll not reopen that one.

Fiona Matheson: It would be disingenuous to him.

Q435 Chair: If there are no other questions from my colleagues, I thank you very much for coming along.

Dr Campbell: Can I just say that one of the things we are very concerned about is that there must be a separation of policy ownership and regulatory powers.

They cannot all be under one roof. That is just reinforcing what my colleague has said.

Q436 Chair: This is a reference to Marine Scotland, presumably.

Dr Campbell: Yes. It is really very important. The second thing I would say is that, as a small community group that is really interested in sustainability in all aspects, not just economic but social and environmental, we do urge that the small communities have a lot more liaison and consultation when anything is planned by whoever is going to have control of the inshore seabed or waters in Scotland.

Chair: On that happy note, I thank you all for coming along.

Wednesday 7 December 2011

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Jim McGovern
Iain McKenzie
Graeme Morrice

David Mowat
Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Lorne MacLeod**, Community Land Scotland, and **Andy Wightman** gave evidence.

Q437 Chair: If we may make a start, I welcome both of you to this meeting of the Scottish Affairs Select Committee. We are continuing our evidence sessions on the Crown Estate in Scotland. I am conscious that we have been around and about and met a number of people at various locations informally, but we thought it was important also to have formal sessions. As you will appreciate, discussions have moved on a bit from the time some of the written evidence was submitted. Therefore, we want to explore some of the detail rather than the broad sweep. The Committee has come to the view that the status quo is not defensible, and we are aware of many of the iniquities of the Crown Estate and the way they deal with people, and so on. We do not want to labour all of that unnecessarily.

Perhaps I may start off by asking Mr Wightman a question. Last time you gave evidence to us I think you said that the Crown Estate should simply be devolved to the Scottish Parliament and they could dispose of it as they saw fit from there. Has anything that has happened in the last year either influenced or expanded your view on these matters?

Andy Wightman: The political situation in Scotland has changed, and that in a sense has created a higher profile for the issue. The Scottish Government have made this one of the things they wish to pursue. In that context, I have certainly been discussing the matter with a wide range of people over the last few months. I suppose the one thing that has changed is that there is now a consensus that the status quo is not defensible and we need some form of change. Other than that, my evidence stands; nothing changes materially from that.

Q438 Chair: Mr MacLeod, you suggest that the same sort of change is necessary. In your written evidence you suggested that it should be devolved to the Scottish Parliament. Is that still your view?

Lorne MacLeod: Our view is very much that there should be delegation to the local level—to community development bodies and landowners. Where they do not exist, the powers should be given to local authorities. Whatever the initial stage is, we are not particularly hung up on whether it is Westminster or Holyrood. We are keen to see delegation of powers to the local level, be it community bodies or local authorities.

Q439 Lindsay Roy: Mr Wightman, is that something you have also picked up in your discussions?

Andy Wightman: I have always been an advocate of far greater local control of land and all sorts of natural resources, including public land.

Q440 Lindsay Roy: So, greater input at a local level is something that has come through in your discussions.

Andy Wightman: Yes.

Q441 Chair: We are of the view that we want to have further devolution and decentralisation. We want to explore with you how some of this can be done in practice. Mr MacLeod, you have mentioned local authorities, community land structures and so on, and Mr Wightman, you have also mentioned things along those lines. It would be helpful if you could clarify for us your view as to how the dividing line should be drawn. What should be going where and to whom in terms of both power over it and the revenue from it? The Committee are minded not simply to say that this is a whole raft of responsibilities that ought to be sorted out by somebody else and the Scottish Parliament can deal with it, but to make quite firm and clear recommendations about what we believe should go where. Having seen some of what has happened under the Scottish Parliament, we are anxious that there is a tendency for powers to be sucked into Edinburgh. When we were in Scrabster, for example, we heard strong opposition to the idea that powers should be given to Inverness because they wanted it for Scrabster and far less Holyrood. All of that raises the question of what is divided between whom and how, and that is what we want your evidence upon now. Perhaps Mr MacLeod could go first.

Lorne MacLeod: Our organisation represents all the community landowners, as you know, and 500,000 acres, which are mostly island or coastal communities. We feel that our powers, such as foreshore rights, should be delegated to the community landowners where they do not already have them. In addition, things like licensing powers for coastal erosion works and the grant of licences for fish farms or shellfish farms should be delegated to the community body. We are also talking about licensing of the sea bed.

To give an illustration, one of our members is Glenelg and Arnisdale Development Trust, which is situated in the narrows between the Isle of Skye and the mainland. There are considerable tidal flows there between the two bits of land and considerable potential for a tidal energy development. One of their

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difficulties is that at the moment they have been bypassed by the Crown Estate. They tried to move forward discussions with the Crown Estate, but they had said they would speak only to developers. One of the difficulties is that a very remote and fragile community needs a seat at the table to become part of a development such as that. It so happens that they are now in discussion with a potential developer who wants to work very closely with the community. Those are the kinds of powers I would wish to see delegated to communities at the local level.

Q442 Jim McGovern: Thanks for coming here and welcome. I get the impression both of you feel that the Crown Estate Commission should no longer be a function of the UK Government. Do you have a preference as to where it should go? Putting that question to both of you, should it go to local government, community structures or straight to Holyrood?

Lorne MacLeod: I would very much like to see delegation to the more local level. I do not have particular expertise to know about the difference between whether it should remain at Westminster or Holyrood. We have a mandate on behalf of our members to push for local control, and that is what we are all about. We represent all the community landowners and 500,000 acres of coastal island communities. We would like to see the delegation of responsibilities to the local community bodies but, where they do not exist, those powers should go to the local authority concerned.

Q443 Chair: Your line is that, wherever possible, everything would go to the community land structure and it would go to the local authority only where that did not exist,

Lorne MacLeod: Yes. I would have to add that undoubtedly there will be particular situations. I give the example of a very large development like the Tiree Array. That is so large and goes across many local authority boundaries, and many communities will be able to see the development. I think it is of the order of £6 billion. Something like that would, presumably, have to be considered at a much higher level, but hopefully some of the funds would be disbursed from the communities affected.

Q444 Chair: We will come to that in a moment. Leaving aside big, major projects, we want to be clear that, essentially, you are saying that the community land structure should get the responsibility and revenue, and it is only where that is missing that it would fall to the local authority.

Lorne MacLeod: Yes, indeed. If in future a community body was to develop, sought those powers and had the capacity to take it on, it would enter into discussions with the local authority about passing on those powers.

Q445 Chair: To follow up the point about capacity, there is a possible difficulty about some community land organisations dealing with multinationals and not having the professional expertise that the Crown Estate argue they have.

Lorne MacLeod: To give an illustration, the body of which I am a member is Sealladh na Beinne Moire, which is an estate of 93,000 acres covering the islands of Eriskay, South Uist and Benbecula. At the moment, we have a £1 million turnover business. We have 24 members of staff. We are involved in a £10 million project to deliver a 6.9 MW turbine development that will be wholly owned by the community. In addition, we are undertaking a £10 million development of Lochboisdale harbour to create 52 pontoon berths, a new fisheries pier and industrial and commercial land. I argue very strongly that we and many of our members have the capacity to take on these powers. We are in constant discussion with commercial developers and various other business developments.

Q446 Chair: Does that apply to all of your members?

Lorne MacLeod: Another one I am familiar with, to give you an illustration, is the Island of Gigha. It also has a turnover of £1 million and 20 staff. They run the only community-owned hotel in the United Kingdom and their own wind farm.

Q447 Chair: I understand that some of them have that expertise. What is the smallest?

Lorne MacLeod: The smallest members are probably pre-buyout. To come back to that particular point, a way forward would be similar to the early days when many of our members had to apply to get the land reform powers. We had to submit the postcode areas that it covered and show a level of governance in terms of our memorandum and articles of association to ensure there was full democracy within that. There is also a clause within our memorandum and articles which allows a dissolution. In such instances the balance of assets would be passed to another local community body. I think there could be a process whereby community bodies could apply to take these powers, and they would have to demonstrate the capacity. Many organisations are already governed by the Office of the Scottish Charity Regulator, as well as the Land Reform Department of the Scottish Parliament.

Q448 Chair: If they did not reach that level, it would fall back to the local authority.

Lorne MacLeod: If they did not reach the threshold, yes, indeed.

Q449 Chair: Andy, do you want to respond to Jim's question?

Andy Wightman: Yes. The Crown Estate in Scotland is public land governed by Scots law. It is the administration of property rights with which we are concerned here. They are currently administered by the Crown Estate Commissioners. The administration of those rights is a reserved matter. I believe that should be devolved, and, therefore, the Crown Estate Commission should no longer have any role at all in Scotland. As to what happens to the different rights, that will depend on the rights themselves. For example, at one extreme we could just make oysters wild animals and there would be no issue. For example, on the rural estates there would be solutions

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to be looked at. A number of tenants want to buy the land. On places like Princes Street Gardens, let's just hand it over to the town council.

On the bigger issue of the sea bed and foreshore, this is national public land. I am not sure whether Community Land Scotland are advocating that some of their members should be able to take on the ownership or administrations of the rights of that public land. That would be quite a dramatic change. There is no other public land where the Government allow communities simply to manage them. The Forestry Commission will not allow communities just to manage the public forest estate; it demands rental, for example. There are some practical problems there. My ideal solution is to see the introduction in Scotland of real local government. At the moment, we are the most centralised governance in Europe. We have 32 very large local authorities. For example, the Highland Council is the size of Belgium. Belgium has 589 municipalities; Norway has 431 communes. We need a statutory governance structure at a much more local level, and that is where eventually a lot of the powers of administering these rights, and receiving a proportion of the benefits, would flow. That is a big debate, but it is a little messy to think, at least as far as concerns the rights, that community landowners and others on an ad hoc basis can administer these rights, and everything else should be administered by local authorities. In the current structure, ultimately it should probably be local authorities who administer these rights within a national strategic plan, which Marine Scotland are already drawing up.

As to local authorities, the interests of communities as they stand at the moment—they do not have any form of statutory representation—should be to do with the question of benefit sharing and revenues. But when it comes to the administration and exercise of those rights, the granting of leases and all the rest of it by community landowners, I remain to be convinced. It may well be the case, but I think it would be presumptuous to go straight into a situation where community landowners are basically given these rights. Why not other landowners? Ideally, it should be administered by statutory local government, which in my view should be much more local than it is, but that is another debate.

Q450 Chair: Unfortunately, we are not going to reorganise local government at the moment.

Andy Wightman: Of course not.

Q451 Chair: Therefore, we have to operate within the situation we have.

Andy Wightman: Exactly.

Q452 Chair: Unless I am mistaken, you are saying that you would want these rights and responsibilities passed to local government.

Andy Wightman: To be administered by local government. There is an issue about the national administration of these rights. I do not think they should all be handed over completely to local government because there are national interests in terms of the exploitation of important areas of public land, principally the territorial offshore seas. There

needs to be a national body to have oversight of that. I would favour some kind of public lands trust which would be the national body to administer these rights.

Q453 Chair: How would we guarantee that it did not simply become a black hole, as it were, and you just ended up replicating the Crown Estate? It would just be the Scottish Crown Estate called something different. How do you make sure there are powers going downwards? What would then be the division between those held at national and local authority level? Presumably, under your scheme, the local authority would be able, if it wished, to delegate responsibilities to community land structures.

Andy Wightman: I do not have a very fixed view on that. All of that needs to be debated. Your question is: how can we make sure of that? That raises a rather more fundamental question. If you—by which I take it to mean the Scottish Affairs Committee or Westminster—want to make sure of anything, you need to take the legislative steps to do it. There is a fundamental question here as to whether you believe that, as a first stage, we should remove the Crown Estate Commissioners from any legislative competence in Scotland and, therefore, hand over the powers to the Scottish Parliament. It essentially picks up many of your recommendations, considers them and further develops them into a scheme of devolution, in which case Westminster would be handing over those powers to the Scottish Parliament. There would be no guarantees as to what it might do. It does what it wants. There is nothing you can do to guarantee that. If you wanted to guarantee it, you would have to pass the legislation yourself.

In answer to your question about how you would guarantee that, you cannot. These questions need much more detailed debate. I welcome the Committee's scrutiny of this and ideas you will be coming forward with will be very helpful in that debate, but I do not think they will be able to answer every last question that arises.

But I am quite clear that the national interest needs to be represented by the

Scottish Government, or an arm's-length body such as a public lands trust, who would steward these resources in the national and public interest. That is a big difference from the position now where the Crown Estate Commissioners are unaccountable and are not managing in the public interest; they are managing it according to very strict criteria under the 1961 Act. You would then have a scheme of devolution to local authorities, and that scheme would involve both the administration of the rights and the extent to which that was devolved, and the sharing of the benefits.

Q454 Iain McKenzie: I want to deal with the question which was put to Mr MacLeod about community bodies and their relationship and interaction with local authorities. At what level is that? Do they share in, or are they contributors to, the local plan for that particular area?

Lorne MacLeod: Most of our members will be heavily involved in that and work very closely with local authorities. At the moment, our membership

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representing 500,000 acres simply covers the Comhairle nan Eilean Siar—the Western Isles Council—the Highland Council and Argyll and Bute Council, and none of the other local authorities. The working relationship with these three particular local authorities is extremely close.

Q455 Graeme Morrice: Mr Wightman, earlier you mentioned the new regime for planning and strategic management since the creation of Marine Scotland. Can you explain the key features of that new regime and the main points of departure from the previous system for the management of the marine environment in Scotland? What, if any, impact does this have on the role of the Crown Estate?

Andy Wightman: I am no expert on the marine environment or planning. In the summer the Scottish Government completed a pre-consultation, as they call it, on a draft marine plan. They have a statutory responsibility to draw up a national marine plan which would cover strategic planning on things like nature conservation, fisheries, offshore renewables, minerals and all the uses of the marine environment. The importance of that plan is that it also has responsibilities under the UK Marine Act as well for non-territorial waters. The importance of that Act is that it gives a strategic framework within which the marine environment can be managed because there are many competing interests there, and hopefully it will begin to resolve some of those in advance of specific developments coming forward.

As to the relationship between that and the Crown Estate Commission, it really changes nothing. The Crown Estate Commissioners merely administer the property rights of the Crown Estate. Nobody can do anything in the marine environment without, first, consent from the people who administer the property rights, the Crown Estate Commissioners, and, secondly, planning consent from Marine Scotland. I suppose the change from the previous regime is that the marine environment is now going to be subject to a strategic plan, which is a big step forward.

Q456 Graeme Morrice: You both express concerns in relation to the role of the Crown Estate in the context of the development of offshore marine renewable energy. Community Land Scotland noted that the CEC's role in this respect needed to be addressed as "top priority", while Mr Wightman noted there was much to be lost by having CEC as "power broker and deal-maker over the development of marine renewable energy". Can you explain your specific concerns in this respect, and what, if any, role CEC should play in the development of offshore renewable energy?

Andy Wightman: My concerns in relation to the role of the CEC and its dealings?

Q457 Graeme Morrice: Yes—in the development of offshore renewable energy.

Andy Wightman: In my view, the process of developing offshore renewables is somewhat hindered by the fact that, on the one hand, you have a statutory planning framework governed by the Scottish Parliament, Marine Scotland, the marine

strategic plan and so on, and then you have all this Scottish public land administered by the Crown Estate Commissioners. Their interests may not coincide with the interests of either the Scottish Government or the marine plan at all times. We have already seen this where consents, or at least pre-consents, have been entered into for areas of sea bed for which subsequently Marine Scotland have refused planning consent. In most other European countries developers simply go to one agency in the Government and sort things out, whereas here they need to go to two. It would lead to greater efficiency if the Crown Estate Commissioners were removed from the picture.

Q458 Graeme Morrice: Mr MacLeod, do you have anything to add to that?

Lorne MacLeod: The remit of the Crown Estate Commission is to look on a commercial basis at all of the developments. The bit that is missing is looking at the economic and social development of many of these communities. The communities that our body represents are among the most fragile, remote and peripheral in the whole of the United Kingdom. We are talking here about trying to create jobs and develop businesses. To me, it is rather strange that our community landowners own all the land and are able to facilitate developments on it, but immediately you go into the sea environment they have no remit whatsoever. We do not have all the tools in the toolbox, and that is where I see great advantages.

To return to points raised earlier by Andy, I am surprised he has not been more radical. He mentioned he was not so keen on the communities themselves having some of these powers. A role that could be had by Marine Scotland is to oversee, regulate and look at compliance to make sure that, if any powers were given to a community land body, Marine Scotland could be the compliance regulatory body to make sure there was openness and transparency and it was following the general strategy to promote development in the marine environments, similar to the way at the moment many of the bodies are subject to the Office of the Scottish Charity Regulator and others. That role might give greater confidence to your Committee in granting powers at local level.

Q459 Chair: There are two issues, are there not? As to the question of planning powers and so on, if Marine Scotland is given strategic planning powers, that is the equivalent of national planning powers on land, is it not? Then you come down to the tactical level, as it were, where the local authority has planning powers over detailed development. They could quite easily have the same tactical planning powers for the coastline. The issue then is the equivalent of property rights where there would not necessarily be ownership, as it were. If property rights replicated those on land, that would solve your issues. As to the reservations you are expressing, presumably, it then depends upon who controls those, how they cascade downwards and how it is handled, does it not? Taking your point about the local authority perhaps being the organisation which has the property rights, and they in turn can delegate them to community land

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structures, trust ports or anybody else, that encompasses both of those issues, does it not?

Andy Wightman: Yes. To be clear, on property rights I do not envisage any change in ownership; they will continue to be owned by the Crown. But the question is who administers these rights and decides whether, for example, trust ports, harbours and local authority ports should be granted the sea bed in those ports. I think they should be given the sea bed to get on with it. Edinburgh Council should be given Princes Street Gardens to get on with it, but the point is who administers those rights and makes the decisions. I certainly think that local authorities have a big role in administering those rights—absolutely. I am prepared to be extremely radical on many topics.

Chair: Go for it.

Andy Wightman: I am not in any way disputing Community Land Scotland's position. Their suggestions are interesting and reasonable ones. I just think it needs more thought. There are other landowners who are charities. For example, would the RSPB or the Scottish Wildlife Trust qualify to be given the right to administer the sea bed off their holdings?

Lorne MacLeod: I am sorry to interrupt. I would commend those bodies that have democracy at their core. All community land bodies set up under the Land Reform Act 2003 have to have open democracy. Under our memorandum and articles we can never go below 20 members; indeed, the one I represent has 850 members. I would also advocate development trusts. There are many development trusts that are slightly different from community land-owning bodies. I think you had evidence from the likes of Tobermory Harbour Association, for instance. Anybody in the community can become a member of it and have voting rights. They have done an absolutely fantastic job in the development of Tobermory harbour, erecting buildings and developing pontoons. A body such as that truly has the capacity to take on the powers of administering the rights of the Crown Estate in that area. I would advocate that most strongly.

Andy Wightman: The problem is how you put that into effect. You cannot put that on the face of a Bill; you cannot divvy it up, because some of these organisations may disappear the day after Royal Assent.

Q460 Chair: That is absolutely right. Suppose you said that the powers lie with the local authority and the local authority recommended that. That would cover your point about the RSPB, which, as I understand, it is not a democratic body.

Andy Wightman: It is a democratic body; it has members who—

Q461 Chair: Up to a point, but they are not necessarily locally based.

Andy Wightman: No; they can be living anywhere.

Q462 Chair: It is not democracy as we know it.

Andy Wightman: It is not local democracy, no. I think local authorities should get more power, and we should have much more local government. I like the

situation in places like Denmark where Danish communes raise 60% of their own finance. I want lots of power held locally. Without any disrespect to Highland Council and Argyll and Bute Council—they are doing great jobs, and all the rest of it—you might find they are rather disinclined to hand over some of these powers to community bodies. I do not know. That would be another uncertainty. It would be an act of faith.

Q463 Chair: This is a major point, and that is why we have had meetings with Michael Foxley from Highland Council and a number of others from various councils. We are hoping to have an event with them in the not-too-distant future at which we will clarify some of these points. This is a “Scrabster not trusting Inverness” point, is it not?

Andy Wightman: It is a similar reflection of that.

Q464 Chair: That is why I think we are a bit hesitant about saying we should simply pass all this over to somebody else to deal with. In our report we would want to be quite specific about what we want to see happen. If somebody does not accept that, the onus would be on them to justify why they were not doing it on that particular basis. That covers all the community land matters. To come back to your point about the RSPB, presumably, they could always have the equivalent of a subcontract which would be democratically accountable to the local authority so that, within certain parameters, they would be operating various things as decided by a democratically elected body. They would be the hands-on people on the ground, but the local authority would always have the power to step in, unlike, say, the powers they gave to the community land groupings. They would be much more hands-on and able to manage things. Does that seem to be a possible structure?

Andy Wightman: Absolutely. Local authorities are key to this, but it is also important to recognise that there are different levels of control. You have the question of title and ownership. As I say, I think the land stays with the Crown, unless some of it is alienated. If you gave harbour trusts the land in their harbours, you would be alienating Crown land, but it would remain owned by the Crown. You then have the question of who administers the rights, signs the deeds and says, “Scrabster Harbour can have this” and so on. In my view, that should be the local authority. Then you have the question of planning, which I have already covered.

But you raise the question of the RSPB. I just raised them off the top of my head. But you do have the question of management. The role of organisations like the RSPB and even private landowners may be to manage some of this estate—not to administer the rights. They would not be capable of leasing or alienating it but managing it. In theory, that would be a role that anybody could come along and offer to do.

Q465 Chair: Subject to the democratic accountability of the local authority.

Andy Wightman: Absolutely. You could put together a quite radical scheme that would certainly assist in

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other debates that are hardly even happening just now, for example, over the management of Forestry Commission land, which again is a highly centralised operation and has no local input whatsoever. Therefore, if you came up with a scheme that was quite decentralising and empowering, that would be very useful as a model for how other public lands are administered.

Chair: That is for somebody else next week. Perhaps we may turn now to questions about control of the sea bed, some of which we have already touched on.

Q466 Lindsay Roy: Are you aware whether the Crown Estate have a strategic plan about the development of the sea bed and the leases?

Andy Wightman: I do not know; I am not privy to their internal affairs, but we know they have been bringing forward areas of the sea bed in rounds.

Q467 Lindsay Roy: Does it seem ad hoc or strategic?

Andy Wightman: It seems ad hoc to me, but maybe it is not; maybe it is strategic. I have never seen a strategic plan.

Q468 Lindsay Roy: Should we not know that?

Andy Wightman: Ask the Crown Estate Commissioners.

Lindsay Roy: We will do that.

Q469 Chair: The public collectively should know that.

Andy Wightman: Yes.

Chair: I think his question was rhetorical.

Q470 Lindsay Roy: We will find out next week because we are meeting the Crown Estate Commissioners.

Lorne MacLeod: Further to that, there is also the need for greater openness and transparency. Part of the feedback from one of our members in particular was the fact that they did not know about a development on their coast until a developer contacted them to access the land to get to the sea.

Q471 Lindsay Roy: Was it a fish farm?

Lorne MacLeod: It was not; it was a renewable energy proposal. But then they presented our member with a fait accompli—"Give us access across the land to get to the sea." They were certainly not invited to the table to talk about their participation in the development.

Q472 Lindsay Roy: So they felt completely disenfranchised.

Lorne MacLeod: Indeed.

Q473 Lindsay Roy: What arrangements should replace the Crown Estate Commissioners' monopoly of the sea bed and the current issue of sea bed leases? Should it be Marine Scotland?

Andy Wightman: This is a national public estate. At the end of the day, what we are talking about, essentially, is who is administering the rights. Is it an unaccountable body like the Crown Estate

Commissioners or a more accountable set of arrangements within a national strategic planning framework by Marine Scotland with a devolved structure, whereby local authorities have a certain amount of control and so on? I think that would be an improvement, but basically the situation would be the same. There would be an authority of some sort that would lease the sea bed, draw up the leases and grant them, but it would be done in a more transparent and democratic way; and it would also be done in a way that made more strategic sense. You would not have a body talking to developers and pre-leasing rounds in areas of land in respect of which two years down the line Marine Scotland decided, "No, sorry; you can't develop there."

Q474 Lindsay Roy: If it were Marine Scotland, concerns have been raised with us about the responsibility for a revenue-generating role in issuing leases as well as a regulatory role in marine planning. Is that a concern you would share?

Andy Wightman: Yes. As I said earlier, you have the question of ownership, administration of the rights, the planning and how the revenues are handled. How the revenues are handled is much more flexible. At the moment, they are governed by the 1961 Act, but, if that were to be stripped away, you could devise a scheme where you had a system of revenue sharing among local communities, local trusts, local authorities and national Government. The national Government should get a substantial slice of this. It is national Government that pay all the costs of regulating and planning this environment, and they are getting none of the financial benefits from the leases. That is completely flexible, and I would like that to be much more transparent. It would be important that a substantial amount of the revenue arising from all types of the Crown Estate was used for investment. This is not simply a tap you turn on and lots of cash comes out which people can go and spend; it would be important to invest it. It was very helpful to see in the evidence of the Crown Estate Commissioners to your Committee their capital investments over the last 10 years since devolution. There has been a net outflow of capital from Scotland of £10.6 million. I would want to see a position where we were investing a lot of the revenues from the Crown Estate into long-term investment in infrastructure, harbours, communities and so on.

Lorne MacLeod: That has to be a "must". Effectively, the Crown Estate are taking considerable revenues out of some of the most marginalised communities in the whole of the United Kingdom and some of the most depressed in many ways. Because they are so peripheral—in particular our members are mostly island and coastal communities—they have to have the opportunity for economic development and to get some of these additional revenues to plough back into business.

I would also argue that many community land-owning bodies have the capacity to negotiate leases, and do it on a day-to-day basis. This is in effect big society in action, and has been for many a year among these community landowners. They are essentially running businesses, generating profits and are involved in

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renewable energy developments on the land at the moment. It is just that we do not have a seat at the table in terms of those renewable energy developments in the sea area.

Q475 Lindsay Roy: It is interesting that you draw that parallel, because there is another parallel with the localism agenda south of the border.

Lorne MacLeod: Yes.

Q476 Lindsay Roy: How could coastal communities be given a direct input into what sea bed leases might or might not be granted in adjoining coastal waters? How far out to sea would coastal communities' legitimate interests lie, if we think of the Tiree Array, on which I have a follow-up question?

Lorne MacLeod: We advocate that community land-owning bodies that have the capacity and the wish to be involved should be involved in these sea bed leases. I gave the example earlier of Glenelg, which is very close to their shore. We are talking about immediately on their doorstep. This would be a lost opportunity for them if they were not able to be involved in the tidal energy proposal. Our members have varying discussions about how far out the powers should go. We talked about the Tiree Array. It is such a massive development that there is probably no capacity to take on something of that magnitude, but certainly other developments, particularly tidal or wave energy projects, are closer to shore. There may be other developments that are not far offshore. I cannot give you an exact distance. The standard at the moment is 12 nautical miles, but many of our communities are looking more at the immediately adjacent land. As I have illustrated before, many of our communities are involved in very large land renewable energy developments. Our own one, Sealladh na Beinne Moire, is a £10 million 6.9 MW development. That is pretty major. There could be similar offshore developments in which Sealladh na Beinne Moire would want to get involved.

Andy Wightman: Again, it comes down to exactly what it is one is talking about in terms of their involvement. I think coastal communities should be totally involved in the planning regime as to whether consent should be granted for whatever developments—minerals, offshore fish farms, pontoons, harbours—just as they are on land.

Q477 Lindsay Roy: Any distance?

Andy Wightman: I think you had some evidence about how far you can see if you stand on the shoreline.

Q478 Chair: What worries us about that is that Iain McKenzie—

Andy Wightman: He's a tall chap.

Chair: That's right. He will see a wider area than I can. He would be able to see at least a couple of miles further than me.

Andy Wightman: The territorial waters are the obvious limit, I think. In planning they should have a big role, but in terms of the actual leasing probably no role at all. At the end of the day, it is a technical matter of drawing up a lease with a developer for a

plan that has already been approved. If the national strategic plan and local authority think that certain areas would be good for mineral extraction, offshore renewables or whatever, it simply comes down to a bidding round as to who is going to develop it. I am not sure the community really needs to have a great deal of say as to which developer develops it. A third point is the revenue sharing. Again, I think they should have a strong role in that.

Q479 Lindsay Roy: It will not be a surprise to you that there was a group of people in Tiree who felt that 100% of the revenue should go to Tiree.

Andy Wightman: And also Islay I think?.

Chair: No. The people we saw in Tiree felt it should all go to Tiree.

Q480 Lindsay Roy: Others felt there should be a proportionate element, for example, to arrange an interconnector. Indeed, an interconnector might be not to Scotland but south of the border. Do you have any views on how that might take place?

Andy Wightman: That relates back to my point about investment. A lot is talked about offshore renewables. The actual projected direct revenues to the Crown Estate Commissioners for 2020, even at top level, are only £49 million, which is not a great deal of money. The really big numbers being talked about are all projections into the next 20 to 30 years. They are highly speculative because they are dependent on issues like interconnectors, or whether the technology will be developed in time to build these things and all the rest of it. That highlights the fact that offshore renewables in particular require an awful lot of investment, not just in the plant itself but the infrastructure. A lot of the revenue from the Crown Estate will have to be invested and, therefore, will not be available for people in Tiree or anywhere else. If this money is not invested in developing that industry and coastal communities, it will be a lost opportunity.

Q481 Lindsay Roy: But it would be right and proper if some of the funding went back to the community.

Andy Wightman: Absolutely.

Q482 Lindsay Roy: And how you work out the percentage are variable factors.

Andy Wightman: Yes; it is a complex picture.

Lorne MacLeod: That would be an excellent use of moneys particularly from the Tiree Array. The Outer Hebrides in particular suffer from not having an interconnector, which means that many communities cannot access the grid at the moment. The same goes for the Inner Hebridean communities where grid capacity is full. Indeed, taking our own development in the South Uist area, once we are on grid, the capacity will be absolutely full. An interconnector would be a particularly good use of money, because we have a wind resource that is among the best in the whole of Europe. It just seems a shame that we are hampered because of the lack of an interconnector.

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Q483 Lindsay Roy: Are community bodies such as community councils and trusts suitable organisations to administer the revenues from the sea bed locally?

Lorne MacLeod: Asking myself that question, we believe that community land boards are properly constituted, have the capacity and are willing to take that forward. A similar position would apply to development trusts and harbour trusts that have the capacity. There should be a system under which these bodies can apply to get those powers on a local basis.

Q484 Lindsay Roy: And, where there is not, there should be liaison or negotiation with the local authority.

Lorne MacLeod: Indeed.

Andy Wightman: Your question was whether community councils would have the capacity to administer the funds. I do not think they should administer the funds because some of them will want to be beneficiaries of them. The administration of those funds needs to be in an arm's-length local trust-type body which can be seen to be independent and impartial.

Q485 Lindsay Roy: Since we last met, the Government decided that a coastal communities fund was the most appropriate means for distributing the funds. What are your views on that?

Lorne MacLeod: It is a welcome start, and certainly 50% of the revenues from the Crown Estate are to be put back into the communities from 1 April onwards. That fund will increase as time goes on and there are more marine renewables involved. We would welcome that as a good start, and, hopefully, the 50% can gradually increase to a higher level as time goes by.

Q486 Lindsay Roy: Would it be administered through the Big Lottery Fund?

Lorne MacLeod: We are not so keen on administration through the Big Lottery itself because the experience of many of our members is that it is overly fixated on process.

Q487 Lindsay Roy: It is bureaucratic.

Lorne MacLeod: For instance, the Growing Community Assets Fund presently administered by the Big Lottery is telling applicants at the moment that it will be a minimum of six months before an application would be approved. Further to that, they have had 63 applications so far, of which, as I understand it, only one has been approved in the second round of the Growing Community Assets Fund. I do not feel that is a particularly good report card, but the funds themselves are greatly welcomed. We would question the Big Lottery handling those funds.

Andy Wightman: It is clearly a political move. It is not hypothecating 50% of the Crown Estate revenues from the marine environment; it is handing over an equivalent sum to that, so that could be varied. It could simply be withdrawn at any time. It is not embodied in statute; it is mainly a Treasury initiative which could disappear at any time. I do not think you will find anyone who does not welcome money

coming back to the communities from which it has been derived, but there are serious questions about its long-term structure and accountability.

I would point out that there are a substantial number of community benefit funds around Scotland, England and Wales deriving funds from onshore wind farms. We are now at a stage when a lot of lessons have been learned as to how these funds are handled. Some of them are not doing it terribly well; others are doing it rather better, and lessons can be learned there. I think lessons are being learned about how best to administer it. I was talking to people in South Ayrshire, who have a community benefit fund of over £500,000 a year. It is not that experience is lacking, but we could learn something from how they have been handled.

Q488 Lindsay Roy: Do you feel it has been a knee-jerk reaction?

Andy Wightman: What?

Q489 Lindsay Roy: The Coastal Communities Fund.

Andy Wightman: Absolutely.

Q490 Lindsay Roy: And not well thought through.

Andy Wightman: I do not know that it has not been well thought through, because all we have at the moment is a press release; we have no details. "Knee-jerk" is rather pejorative. It is a response to the fact that the SNP won the election on 5 May and raised the profile of the Crown Estate by making it one of the things they wanted adding to the Scotland Act. It is politics, fair enough. Had someone else won the elections in May, I do not think the coalition Government would be coming forward with a community benefit fund, frankly.

Q491 Lindsay Roy: But this inquiry started long before the SNP won the election, so we would be pursuing this with the same robustness.

Andy Wightman: Yes.

Q492 Chair: You are a deeply cynical man. Fancy taking that view. I come back to control of the sea bed just to be clear about a couple of things. One of the points raised with us is whether or not it is appropriate for Marine Scotland to be the equivalent of the planning authority and to have a role in issuing the leases. Our view coming forward is that we can see a role for Marine Scotland in terms of strategic planning and the like, but the issuing of leases by, say, local authorities would overcome the clash of interests in the one organisation. I want to be clear about this, because we shall be taking it to other people as well. Is that a formulation with which you are happy?

Lorne MacLeod: I would agree with that format. Where Marine Scotland or some other body might have a role is in terms of regulating or overseeing how a community land body operated, but not the actual delivery of the licences.

Q493 Chair: I understand that, but it is a slightly different point.

Lorne MacLeod: Indeed.

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Q494 Chair: The supervision of community land structures is perhaps for someone else; it has to be decided. I cannot see that Marine Scotland necessarily has a remit in that at all.

Andy Wightman: I can offer a view here. It is a classic potential conflict of a body which is both regulating and planning and also receiving the benefits. Of course, local authorities already have that conflict; they own a lot of land over which they are also the planning authority. There are other public bodies like the Forestry Commission that administer a lot of land and have potential conflicts. My emerging view is that all the rights that form the Crown Estate should be administered and held by some form of independent public lands trust. Therefore, while Marine Scotland would be regulating and offering planning and all the rest of it, it would not be responsible for granting the leases; that would be separated off into another body.

Q495 Chair: The difficulty, surely, about having some sort of quango doing it, which presumably is appointed by somebody somewhere, is that they could be cutting across a democratically elected local authority.

Andy Wightman: Yes. I was going to say that, alternatively, you could simply hand over the whole question of granting leases to local authorities. That would also be a perfectly reasonable way forward, but there is a potential conflict. In many other European countries essentially the Government own the sea bed, decide what happens there, grant leases, receive income and decide who goes where. It is a vast public estate, and there are not the same kinds of conflicts, if you like, that might exist on land where people live and there are other land uses, and all the rest of it. I am not sure that the conflict can be characterised in exactly the same way as other similar conflicts.

Lorne MacLeod: Where I would disagree with Andy is that I would not like to see another level of bureaucracy brought in by some other body. I would rather those powers went to the local authorities themselves and to community development bodies where they had the capacity to take them on. It is just another level of democracy which means it is even more difficult to get down to local level and empower local people.

Q496 Chair: I just want to be clearer on the second point. Lindsay has already picked up some of these points. Have you given any thought to the sort of division of resource that might take place? We have discussed the Tiree Array, which is of enormous scale. We have been discussing in the abstract with other organisations how, if you have one wind farm or one turbine, 100% of that might go to the local community. If it goes above a certain level, a percentage might go to the local community but the rest goes to the local authority. Have you thought about what those steps might be?

Lorne MacLeod: We have certainly thought about the principles, and it reflects just what you have said. But, with regard to the actual thresholds and setting the parameters, we have not got to that stage in the debate. At the moment, we are having that internal-type of discussion with our members, and we are happy to

produce a follow-up paper that perhaps would flesh it out in more detail.

Q497 Chair: That would be helpful. We are getting pretty close to having a meeting where we draw up our heads of report and so on. Clearly, that will be some part of it. We have the choice of either putting something out there that provides the basis for discussion or we just leave it in the abstract. I fear that, if we leave it in the abstract, it will be centralised. Of course, it has to pick up Lindsay's point about the need for an interconnector. People raised with us the possibility of interconnectors coming down from Iceland with bits coming in and all the rest of it. It was a major strategic proposal which would be beyond Scotland in a sense; it would be a UK-wide remit. We can see several different levels at which that should happen, and guidance from you would be helpful.

Andy Wightman: I think the principle is sound. The problem is that, at the end of the day, you will have to draw lines on maps. You will have to decide where communities stop. There are no community boundaries; they do not exist, because we have no real local government. The only statutory boundaries we have are local authority boundaries.

Q498 Chair: This takes us back to your attempt to reorganise local government. I do not think we are going to do that today.

Andy Wightman: No, but, if you do want a scheme like that, you will have to draw lines on maps that are based on community council areas or, in the case of community landowners, they have to have a boundary that extends out to the sea. We all know the problems of extending boundaries out to sea and the controversy there has been on the Scottish-English boundary on the east coast north of Berwick. At what angle do you head off? These are not insurmountable, but, if you are to have that kind of plan, you have to do that level of work.

Q499 Chair: Surely, you can have a general structural approach and then fill in some of the details. The community land structures are of different sizes; the local authorities are of different sizes.

Andy Wightman: Yes, but, if there is a turbine of a certain size and all the benefits go to the community, the question is: which community? If the turbine is half-way between Eigg and Skye, does it go to Skye or Eigg? What about the mainland? Some of the detail is quite tricky.

Q500 Chair: I underestimated your capacity to cause a row in an empty house, and find a difficulty where I had not previously seen one.

Andy Wightman: I am just suggesting that you will probably not be able to get down to that level of detail, but at some stage we have to.

Q501 Chair: We need guidance from somebody on something related to that; otherwise, we just leave a blank page.

Andy Wightman: I want to come back to your point about the conflict of interest between national and

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local and all the rest of it. If all the administration of Crown rights was handled by local authorities, there would be tension. You might find that a local authority simply decides to alienate all the sea bed to a multinational private company.

Q502 Chair: But it is then accountable.

Andy Wightman: It is accountable, but the point is that this is still a national estate.

Q503 Chair: Edinburgh Council could presumably sell off Princes Street Gardens.

Andy Wightman: If they own it. Do you mean on the Crown Estate?

Q504 Chair: Yes; it is a parallel.

Andy Wightman: Yes. I advocate we should simply hand over the title. It should no longer be Crown land and it simply becomes part of the common good of the city of Edinburgh. But the sea bed is all owned by the Crown. If you are to give local authorities exclusive rights to administer the sea bed and decide who does and does not get leases, and give them power to administer the property rights, they could in theory sell the whole lot. There is a national interest in that. I am not talking about another quango but some kind of body that would be set up by statute to look after the public interest in this national estate.

Q505 Chair: Presumably, the public interest could be retained by the Scottish Government under some phraseology.

Andy Wightman: Exactly. It may be at the level that no local authority would be allowed to alienate or sell the sea bed without the consent of Scottish Ministers, for example. They can quite happily enter into leases that should not be longer than a certain period.

Q506 Chair: When we spoke to harbours there were circumstances in which small pockets had been alienated.

Andy Wightman: Yes; and they should alienate it. All the trust ports and harbours should get complete control over their sea bed, so there would be circumstances in which it would be perfectly permissible for local authorities to do that.

Q507 Mr Reid: Lindsay asked about the lottery distributing the Coastal Communities Fund. Both of you felt that it was not an appropriate body. Do you have any suggestions about what the appropriate body should be?

Lorne MacLeod: In the past, funds like the Scottish Land Fund were administered by Highlands and Islands Enterprise, and Scottish Enterprise in the lowland areas. I think that set-up worked particularly well. Even though the Big Lottery were maybe the bankers for that fund, they set up a separate committee drawn from experts in the field. They administered it and were extremely successful. Some of the processes involved can be quite laborious in terms of applying for Big Lottery money, but we welcome the funds.

Andy Wightman: I do not have a view on the Big Lottery administering this fund. It is not something over which I have lost any sleep. The Scottish Land

Fund was a committee of the Big Lottery, and I sat on it. While Highlands and Islands were the managers and the people who took in the applications, considered them and drafted reports, it was the Scottish Land Fund committee that took the decisions. That committee was appointed by the Big Lottery. It was a full-blown lottery scheme, although it was not a Big Lottery board itself; it was a sub-committee, the Scottish Land Fund.

For what it is worth, I am not sure the Big Lottery is an appropriate distributor for these funds. It needs to be a much more local public trust and common good-type arrangement that is much more accountable to local sensibilities. The Highland Council, for example, used to administer the Highland Fund. Local authorities administer a lot of bequests and charitable funds and, indeed, administer common good funds, so for the life of me I cannot see why a local authority shouldn't administer this fund. It seems daft. What does the Big Lottery have to do with it?

Q508 Chair: I think they are referred to as the great and the good, and that was before I realised you were on it.

Andy Wightman: I was on the Scottish Land Fund, which was wound up in 2006. I have absolutely nothing to do with the lottery any more.

Lorne MacLeod: They were the good guys.

Chair: The good subsidiaries.

Q509 Mr Reid: Turning to the foreshore, we have been talking about the sea bed. I suspect you have also answered a lot of questions about the foreshore. So we are clear, if the Crown Estate lost their property and other rights to the foreshore, who do you think should be responsible for taking over those property rights?

Lorne MacLeod: Again, I would commend there community land bodies. There are important powers. I can understand why we have concentrated on marine renewables, but there are other things. Many community land groups have historical foreshore rights themselves, but those that do not are not even permitted to allow a TV or film crew to film on the foreshore without the blessing of the Crown Estate. That is a nonsense. These are powers that could easily be transferred to a local body.

We are also talking about local powers to dredge and to allow pontoons to be developed and coastal erosion work to be done, which is so important to keep the land intact. That should be delegated to local level. There is also the development of shellfish farming and fish farming. If you are a crofter, it is a fantastic opportunity to be able to lay mussel beds or scallop fishing near to the coast. These are things in which the local community should be involved as of right in delegating that power. Those are the important things that need to be looked at.

Andy Wightman: The foreshore differs from the sea bed because the foreshore is subject to quite active management and development, and also half of it has already been alienated; it is no longer Crown land. A lot of it was stolen by landowners in the 19th century. There were big debates in this place, or the other place, as you call it, with the Duke of Argyll and

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others arguing that the Crown should have no role. There were big fisticuffs there, and there were a lot of presumptions about who owned it. The presumption of Crown rights to the foreshore is a rather ambiguous one in Scots property law. But, leaving that to one side, the question is that half the foreshore is still Crown foreshore. I am quite clear that those foreshore rights should be left with the Crown, although you could simply transfer them by a general vesting declaration to local authorities. I would not have a problem passing the ownership of the foreshore currently owned by the Crown into the hands of local authorities. Even if you did not do that, I think local authorities should administer the foreshore and should have clear powers to alienate the foreshore particularly to harbour trusts, ports and people, for example.

Q510 Mr Reid: Do you not feel there is a danger that any profits would just disappear into the local authority pot?

Andy Wightman: Profits from?

Q511 Mr Reid: Profits from renting to, say, fish farms.

Andy Wightman: That would depend on the structures you set up for dealing with the revenues, assuming you have a structure for dealing with the revenues, which I think you need.

Q512 Mr Reid: Rather than just handing over all the rights to the local authority and say, "It's yours."

Andy Wightman: Remember, there is a difference between handing over the rights—you are suggesting that one transfers ownership—and the question of the administration of those rights. If local authorities are simply administering Crown rights, they have to go into a separate pot because, technically, they still belong to the Crown, but all of that would be subject to your revenue plans and what you were doing. You could say that all profits and income, capital and revenue from the foreshore should go into local authority funds. Offshore renewables would be different; you could do it according to the scale, and many of them would go into a national pot.

Q513 Chair: We have had a lot of discussion with others. Today, we have not spent nearly as much time on the foreshore, on the basis that it is much easier in a sense. The view we have tended to take is that that goes to the community land people or to the local authority, and that is it. You are raising an important point about the question of ownership as distinct from control, in respect of which we have not yet come down on one side or the other, but the foreshore is much easier to deal with, is it not?

Andy Wightman: Yes. If community landowners want to take ownership of the foreshore, they should probably pay for it because, after all, private landowners would have to pay for it. This is public land.

Q514 Mr Reid: How valuable is it? I have no idea of the value of the foreshore.

Andy Wightman: It is very difficult. In the absence of any detailed proposals for its use, arguably it is worth nothing. In the paper given to you by the Crown Estate Commission their capital valuations indicated as much. I cannot quite remember the value they attribute to the foreshore.

Q515 Chair: It depends on whether you are buying or selling in those circumstances, does it not?

Andy Wightman: Yes.

Q516 Chair: We welcome the commercial for your book, which I have read. Therefore, I was aware of the bits about the House of Lords and the iniquities of 19th-century landowners, dukes and so on. If you remember, on the previous occasion you were here I could not find your book south of Berwick. There was not a copy available in London to be had for love nor money, although I think that is now resolved.

Andy Wightman: Excellent.

Q517 Chair: The paperback is out, but we are still waiting for the film.

Andy Wightman: I'll give you a starring role.

Chair: Indeed.

Q518 Iain McKenzie: Looking at the rural estate, the Crown Estate Commissioners are responsible for the management of five rural properties in Scotland—the four estates and the King's Park. How might the future of these estates be managed if the Crown Estate Commissioners were no longer operating in Scotland?

Lorne MacLeod: There is an opportunity there for a scheme similar to the National Forest Land Scheme where communities could come forward to the Forestry Commission and say they wanted to purchase an area of forest to which they would be able to add value in terms of economic development or, alternatively, lease that land. If we are talking about Glenlivet, Fochabers, Whitehills—wherever—there are opportunities for communities locally to take ownership of part of the land, like similar community land bodies elsewhere. I do not know these areas well, but, from the reports of the Crown Estate, some of the tenant farmers there might wish to exercise an option to purchase the farmland which they have been tenanted for many generations. Those are two ways forward. As for the urban estate itself, I am sure that could be disposed of on a commercial basis.

Andy Wightman: From the Crown Estate Commission's evidence to you, there are in the region of 214 agricultural tenancies of which about a quarter have already registered an interest to acquire their tenant farm under the Agricultural Holdings Act 2003. If the Crown Estate Commission no longer had a role in administering these rights, they would automatically fall, in the absence of any other proposal, to the Scottish Government and the Scottish agriculture department, or whatever it is called today, which already administers a number of agricultural estates. I would like to see the Scottish Government decide that those tenants who wished to buy their farms could do so without having to sell it, because the right to buy for tenant farmers is triggered only if and when the landowner chooses to sell. If it is

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retained in Crown ownership, it is not sold and tenants do not have the right to buy. I would like to give them the opportunity to buy their farms. For the remaining 75%, that would be a very useful reserve of farmland to administer, specifically with the intention of encouraging young entrants to farming, for example. There is now a huge problem in getting young people into farming; there is just not the land available. I think this land should be retained in public ownership and should be used creatively to allow new agricultural tenants. You could also parcel up much of it, hand it over and sell it to community organisations, if they wished.

King's Park is a particular example; there has been a lot of controversy over it. That was one of the reasons I got very angry about the Crown Estate Commissioners. Historically, they just treated that as part of their rural estate, yet it is Scotland's most ancient royal park, going back to the days of Alexander II. It is an incredibly historic area which they just regard as a piece of farmland and lease to a golf course. In 2001 they were going to sell the land to the golf course, and even the local authority did not know about that. This is an ancient royal park of incredible historic importance. I think King's Park should be handed over to Historic Scotland. Historic Scotland took ownership over part of it when Edinburgh castle, Stirling castle and all the rest of it were handed over to Scottish Ministers in 1999.

Q519 Iain McKenzie: As we go forward would that be one of the key issues that needs to be addressed in the management of rural estates in Scotland?

Andy Wightman: One has to take a view of what is going to happen to those rural estates. I was drawing the distinction between Fochabers, Glenlivet, Whitehills and so on, as genuinely rural estates, and places like the King's Park, which they have called a rural estate but is an ancient possession which they have managed incredibly badly in my view, even to the point of secretly agreeing to sell it to a private organisation. As to the urban property, just get rid of it. There is virtually none left; there is a property in George Street and a share of a development at Fort Kinnaird, which is not technically owned by the Crown Estate Commissioners but is held by some investment vehicle. You can just forget about that.

Q520 Chair: From your perspective, as to the urban estate I can see the advantage. If the UK Government want to have a property development company that operates across the UK as a whole, with a shopping centre in Scotland, I do not think there is anything particularly Scottish about that.

Andy Wightman: No. I think 75% to 80% of the business is already urban commercial property. I would have no objection. If the Crown Estate Commissioners were to be removed from any role in administering and managing the Crown Estate in Scotland, I would have no objection to the Crown Estate Commissioners residual buying property in Edinburgh if they wanted to, like any commercial developer. I would not stop them; they would be free to operate in the market if they wished.

Q521 Chair: There are issues about what is achievable. There is a stronger political case for looking at the foreshore, sea bed, mussels and so on than there is about Fort Kinnaird and these sorts of things.

Andy Wightman: The point is that over the last 10 years they have got out. They used to have a more substantial urban estate; now they have virtually nothing left, so it is really a non-issue.

Q522 Chair: Are there any answers you had prepared for questions that we have not asked you? Is there anything you want to get off your chest that you feel we have not touched on?

Lorne MacLeod: I think you have been particularly thorough. I have nothing left on my list.

Q523 Chair: People say that flattery does not work. That has never been my experience.

Andy Wightman: There is one thing. Section 1(5) of the Crown Estate Act 1961 is a disgrace. That section says that no one shall be concerned to inquire as to their business, etc. I do not think you have ever looked at that.

Q524 Chair: I do not think that was in your book.

Andy Wightman: It is.

Q525 Chair: Offhand, I cannot remember looking at that. We were looking at the Crown Estate from the point of view of the land and what we wanted to achieve, rather than looking at the Crown Estate as an organisation in the way that, say, the National Audit Office or Committee of Public Accounts might look at it. We were looking at it from a different angle. There are so many other institutional and vested interests relating to the Crown that we were being self-limiting.

Andy Wightman: This section is in a sense fundamental to the debate because it purports to prevent anyone questioning what they are doing, which is part of this.

Q526 Lindsay Roy: Locally it is none of your business.

Andy Wightman: That is what the section suggests.

Chair: But there is more than one way of skinning a cat. Therefore, we have got all this information.

Q527 Lindsay Roy: That is very helpful because we do need evidence.

Andy Wightman: I have nothing to add, other than that what has been useful in your work is the fact that you have flushed out a lot of information that has not been in the public domain until now.

Q528 Chair: Is there any major omission in terms of the information we have been asking for? Do you think it is all very well asking for A, B and C, but we really should have asked for D, E and F?

Andy Wightman: I do not think so. I was quite impressed by the information that the Crown Estate Commissioners supplied to you in response to earlier questions put to them by the Committee, and various

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annexes. I am not sure they physically handed them over to you; they said they were available.

Q529 Chair: I understand we have the annexes.

Andy Wightman: There are some maps of gold and silver. These things should have been in the public domain and on their website years ago and have never been. That is extremely valuable.

Q530 Chair: I understand that these maps are not now publicly available through our website; they crashed the system.

Andy Wightman: Were they supplied in paper or in digital form?

Q531 Chair: In digital form.

Andy Wightman: Therefore, their potential availability could be flagged up.

Chair: Presumably, it was not their intention or ours to crash the system, so in theory we will put them on the system.

Lindsay Roy: Gold-plated.

Chair: That will happen. In drawing this to a close, if there is anything you suddenly remember as you are walking down the street and wish you had been asked, or had said such and such, or there are further pieces of information that it would have been helpful if we had asked for it, let us know. If it does not crash the system, we will ask for it and try to put it on. Thank you very much for coming along. I hope you have found his helpful.

Examination of Witnesses

Witnesses: **Gareth Williams**, Head of Policy, Scottish Council for Development and Industry, and **Andrew Jamieson**, Policy and Innovation Director at ScottishPower Renewables, gave evidence.

Q532 Chair: I welcome you to the second session this afternoon of the Scottish Affairs Committee. You were both here during the earlier session, so you will have an idea of the sort of issues we are pursuing. Perhaps you would start by telling us about SCDI, how it is constituted and what the point of it is. Is ScottishPower one of your members, and what is its relationship to the Crown Estate? Just give us the background.

Gareth Williams: We are an economic development membership network. We have a broad range of members from the private sector, but I suppose the unique aspect is that we also have local authorities and other public bodies and trade unions as members. That gives us a bit of a unique perspective. We have offices round the country, including a highlands and islands office, and these issues have been of interest to the Committee in that area for a number of years. In terms of members, ScottishPower are a member of ours, along with many leading players in the aquaculture sector, ports industry and equally local authorities. We have to balance their perspectives in terms of our contribution to the debate. The Crown Estate are also a member of SCDI. We have done work with them in bringing them together with those constituencies' of interests. We have discussed these points on a number of occasions over the last year.

Q533 Chair: Turning to Mr Jamieson, could you just clarify who you are, what your company is, what it is part of, who runs it and where decisions are made?

Andrew Jamieson: I am Andrew Jamieson, the policy and innovation director for ScottishPower Renewables, which is headquartered in Glasgow. We have 15 operational wind farms in Scotland and a further five or six throughout the United Kingdom. We have over 200 members of staff. We are the largest developer of onshore wind in the UK, and we were the first in the UK to reach 1,000 MW of capacity. In addition to our onshore wind portfolio, we are also developing wave and tidal energy devices as well as

offshore wind around Scotland. Ultimately, we are owned by Iberdrola, a Spanish company based in Madrid, but the offshore part of the business is managed entirely from Glasgow. We look at Iberdrola's offshore business globally, which includes projects in Scotland, England and throughout Europe.

Q534 Chair: The criticism of the Crown Estate has been its centre in London, but presumably you are centred in Madrid. How do you manage to have linkages with Scotland, and how do you avoid being remote?

Andrew Jamieson: Our UK operations are very autonomous from Spain. Clearly, they have a lot of management control over things like budgets and so on, but the interfacing and operational part of management is done from Glasgow or offices in London. We enjoy very strong and fruitful relationships with the Crown Estate in the projects we are exploring with them as landowners for those projects.

Q535 Chair: As to the management of marine renewables elsewhere in Europe, since you are part of a Spanish firm, does Iberdrola have operations equivalent to ScottishPower elsewhere in Europe developing marine renewables? If so, how are the differences expressed?

Andrew Jamieson: It has similar operations for wind power throughout Europe and North America. As to marine stuff, in terms of offshore wind, for clarity, "marine" to me always means wave and tidal. Forgive me if I confuse the terminology here from time to time.

Q536 Chair: When I say "marine" I think of water.

Andrew Jamieson: Yes, I understand. All of the offshore developments are run from Glasgow for Iberdrola.

Q537 Chair: Is that throughout Europe?

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Andrew Jamieson: Yes. There are some services that come from our Spanish colleagues, particularly in technical engineering services, but it all comes back through the Scottish HQ. Our Spanish colleagues have invested in R and D in very small experimental wave devices before, so there has been no drive to do anything in the wet environment beyond what we are now controlling from Glasgow.

Q538 Chair: So you as a company have no experience of any other jurisdictions.

Andrew Jamieson: We have projects under development in Germany, and potentially in France. In the Baltic sea we have active projects that are being pursued, and there are some off the coastline of Spain.

Q539 Chair: You have heard a lot of the discussion. No doubt you will have been briefed before you came about the nature of the debates we have been having about local participation. Are there any lessons you would draw to our attention about what has been happening elsewhere that might be of value to us?

Andrew Jamieson: To be honest, not elsewhere. I think the UK is looked at as a model for other countries in particular in terms of, when we are going to develop an offshore wind sector, what the best way is to do it. In terms of what the Crown Estate have done for offshore wind, they ran the licensing for what were called rounds 1 and 2 projects, which were mainly, if not exclusively, south of the border. They acted purely as landowner in those projects, so they granted licences to go off and develop projects, and then it was up to you to take it through the planning system. For round 3, which is the next big phase of projects due to come in and is far bigger capacity, they are taking a far more active role in helping developers develop their projects, because they have seen developers run into barriers and issues. They can help to unblock many of those issues. They are investing capital in projects with us and the rest of the industry in round 3, and they are opening doors in terms of speaking to other Government Departments where there are common issues on which we can all work towards common solutions.

Q540 Chair: As to international comparisons, is there an equivalent in, say, Germany and Spain in terms of ownership of the sea bed?

Andrew Jamieson: There must be, but I am not an expert on that.

Q541 Chair: You are not familiar with that. Presumably, there would be some expertise in your company somewhere. Given that we have spent all this time discussing the Crown Estate and their relationship to the sea bed and how people then relate to that, obviously, if you as a company have experience of other jurisdictions where there are other arrangements, that would perhaps be helpful to us.

Andrew Jamieson: I am sure that, if you have further questions other colleagues can answer, we can certainly take them forward for you. I do not have direct experience of how those other countries have initiated their marine interests, although I highlight that we were part of a contingent that went from the

UK to France with the Crown Estate to explain how things were done in the UK, as they were beginning to formulate how they would roll forward their offshore ambitions, which they are now beginning to do.

Q542 Chair: Therefore, similarly, you would not have any knowledge of Iberdrola's involvement with coastal communities for the development of marine.

Andrew Jamieson: No, but the projects are far more advanced in the UK than they are anywhere else that we are developing around Europe.

Gareth Williams: In relation to marine energy wave and tidal, certainly, comments we have had from our members in the wave and tidal sector are that the Crown Estate have a world-leading position when it comes to leasing. Those companies that are now looking at opportunities in the northern and southern hemispheres are speaking to Governments about replicating that strategy in those particular countries. That is a clear strategy which the Crown Estate have developed and bears out what Andrew said in relation to the position in which the UK now finds itself.

Q543 Chair: That would tie in with the evidence we have already had about the Crown Estate having developed a great deal of technical expertise in the area. That is the point you are covering, is it not? But none of that really relates to the issues we discussed earlier about control, participation and local involvement, does it?

Gareth Williams: It does to an extent. I suppose that, if it ain't broke, is there a need to fix it? That is a message that has come back from members in relation to offshore wind. Ernst & Young's report suggests that the UK is regarded as the most attractive location for investment in the world. We also have a world-leading position in wave and tidal. In terms of priorities we have to ask ourselves whether we should be focusing on continuing that approach, making sure we get it right and maximising the economic and social benefits, or do we look at the structures and risk changes that might disrupt our position?

Q544 Chair: That is helpful in terms of raising the economic and social benefits. A whole string of witnesses have given evidence indicating just how unhappy they are in their relationship with the Crown Estate, which do not seem to consult them about anything at all and produce decisions that impact local communities without any involvement, consultation and awareness, and they fail to maximise local economic input in these provisions. The experience of your companies or members is one thing, but most of the evidence we have had indicates that the locals are not nearly as happy as you are. Surely, this is something you have encountered or been aware of.

Gareth Williams: Certainly, from local authority membership some of that feeling has been conveyed. We know there are very strong feelings in parts of the highlands and islands in particular about those issues. I suppose we come back to the question of where the economy is just now. It is in a difficult place. We know that the public sector will be cutting back, and public sector jobs are particularly important in those

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regions. As a nation we are looking to rebalance towards investment and exports, and the sectors we might highlight in those areas, such as renewables, agriculture and tourism and the role that the ports play in those, are looking globally. The companies in those sectors are saying to us that they are relatively happy with the position as it stands with the Crown Estate. That is not to say it is perfect, but improvements have been made over the last few years. Our view is that the focus should be on getting it right for the economy.

Q545 Chair: The Crown Estate have been riding roughshod over local communities for years, so the interests of the economy and those of SCDI are generally in favour of that continuing. Is that a fair summary of your position?

Gareth Williams: No. We would like to see more community input. The issue of communication, which was highlighted earlier, is something we have heard at the same time. But you know better than I that the priority for people at present is jobs and economic growth, and that is likely to continue for the foreseeable future. These are industries that are ready to invest in those areas, and there will not be too many of them given the opportunities. We think that capitalising on those opportunities and having the right framework for that has to be part of it.

Q546 Chair: To follow that argument before we come to the point Alan is going to ask about, are you saying that, in the view of SCDI, changing the governance structure to give local people or communities, or local authorities, a greater involvement in this process would almost automatically result in fewer jobs being generated and the process being unduly delayed?

Gareth Williams: There are risks in changing structures, particularly when we know in relation to renewables that we have a world-leading position. At the same time, this is not an industry which will happen automatically; it is one that we have to make happen by getting it right on various aspects, including the leasing of the sea bed. There are risks. We hear from sectors such as ports and aquaculture that they have concerns about powers being passed to local authorities in those areas and what it would mean in terms of time scales and plans for their own investment.

Andrew Jamieson: To illustrate it by example, I tend to agree with your point that there are things the Crown Estate could do to improve; indeed, we have said that in our written evidence to the Committee. Having regard to the way we do projects, if you take onshore wind as an example, we look to engage with stakeholders of any description as early as possible when we are formulating an idea for a project. We will approach the statutory consultees before we have even got to the formal stage of scoping. We will take an informal sounding to bed down the scoping part of the planning exercise. What would they prefer to see in the scope and not out of it, and, indeed, what major issues do they see in the project going forward? We have from time to time changed the direction of our own projects.

We will then engage with the general public as early as we can. We find that the early engagement processes inform us as early as possible of issues that are likely to arise with the project, and we can solve them as early as possible in the project. It also gives those with whom you are engaging the confidence that you are someone with whom to do business and you listen to what they are saying. We have genuinely changed plans, and indeed dropped them, on the basis of feedback that we have had from some projects.

When we moved into the marine or offshore wind environment we have the same issues. We want to engage with those bodies or the general public as early in the process as possible. I think the Crown Estate have found themselves tied a wee bit in that they have been trying to manage numerous projects at the same time and then taken them into the public domain. That has been slightly frustrating for us and no doubt for the locals who then experience it.

When we announced the Argyll Array project, which was the Tiree Array project discussed during the previous session of the Committee, we pressed very hard for us to go to the island and speak to those communities as early as possible, and we did it just before the Crown Estate made their announcement.

Q547 Chair: When you say “just before”, it was the day before

Andrew Jamieson: It was a maximum of 24 hours, yes. We would have preferred a much longer period, clearly. We have heard about how they have run the Pentland process, which is for marine projects—for wave and tidal projects. We have direct experience of the locals not being as fully informed as they might be by the Crown. Yes, I hear of those issues, but for the offshore wind industry, which is in its infancy, globally there are not many projects out there, let alone in the UK. For the marine wave and tidal sector, it is not even in its infancy; it is embryonic; largely, all that exists are test devices. It is very helpful to have a central body that has full sight over what is going on in the industry and can do its utmost to enable it to overcome barriers and progress. Admittedly, there are some deficiencies in its engagement and communications style, but there are many positives for this industry in having a central agency like that. For our industry to succeed, it will take all the pulling power of the entire industry, the statutory consultees, the general public, local authorities and Governments north and south to make it happen, because the barriers in front of us are there.

Q548 Chair: I understand that. Is there any reason why that centre of excellence possessed by the Crown Estate could not be moved to be almost a subsidiary of either Marine Scotland or some other structure so that issues relating to control and so on are then handled by somebody else? I very much take the point—we have had evidence from a number of people about this—that the Crown Estate have a considerable degree of expertise which we would not want to see broken up and lost, but you will also have heard in the previous session that the way it behaves leaves a great deal to be desired, and there is an understandable and genuine desire by local people,

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groups and organisations to have more of a say. That will require some sort of structural change. Surely, it is possible to have these blended together by some sort of reshuffle that does not lose the baby with the bathwater.

Andrew Jamieson: I do not necessarily hold that opinion. There are advantages as well as disadvantages in having a landowner with a separate regulatory or consenting body. For onshore wind we have that. Landowners can be private or public, and then the Government Departments will be the consenting bodies, if not the local authorities. Likewise, for offshore, the Crown Estate are the landowner and Marine Scotland will be the consenting body. Blending the two together would probably present other problems of distinction somewhere down the line in the planning processes. Therefore, there are advantages in having them separate. I do not see why the Crown Estate, given they have done so well in learning the lessons of what they did not do to help along the industrial community, could not also do more to help along further the public and community aspects. It is not for me to say that that whole organisation needs to be changed and merged with some other organisation, because any other organisation would have either those or other deficiencies.

Chair: That is helpful.

Q549 Mr Reid: Gareth, in your written evidence you noted the possibility of incorporating local procurement conditions into sea bed leases. Maybe you would explain to us how that would work.

Gareth Williams: My understanding is that at present there is a real difficulty generally in procurement processes about reflecting local economic impact, and both the Scottish Government and the UK Government are arguing within the EU that that position should change and there should be an element of scoring within procurement.

Q550 Mr Reid: Under current EU rules is it possible for a company like ScottishPower to specify local contractors?

Gareth Williams: I do not know the ins and outs in relation to offshore renewables. I am talking generally about the system and whether local economic impact can be taken into account. In relation to that, we recognise that it will not be possible for it to be at the same scale for every project. For some projects there will be greater opportunities to involve the local supply chain; for others in more remote locations, for example, that might not exist. Again, there might be an issue about specifying too clearly what that benefit should be in terms of the local supply chain. It may be the commitment would be there to stimulate over a longer period opportunities for local supply chains. If we are talking about a new industry, the developer may make a commitment to work with companies in that area so that they will be servicing the project for a longer term.

Q551 Mr Reid: Is this a condition that you think the planning authority should be writing into the grant of

planning permission, or should it be a voluntary arrangement with the applicant?

Gareth Williams: I think we would need to see what the European Union decides in terms of EU policy in that particular area. There should be scope for that to be recognised in the award of all approvals, but there will be a range of criteria taken into account; it will not simply be local economic benefit. It would be a factor to be scored, and obviously a judgment would need to be made about what was appropriate for that particular project.

Q552 Mr Reid: Turning to Andrew, what is ScottishPower's view on insisting that, let's say, subcontractors award contracts locally? What is the company's policy on that?

Andrew Jamieson: I think that companies employing best practice should be doing that already. For example, we ran a "Meet the Developer Day" in Moffat on Monday of this week for a major onshore wind project in Dumfries. We have put out the tender for what we call tier 1 contracts, which would be the turbines, infrastructure and all the civil works. We have not yet awarded those contracts. When we award those contracts, an element will be how well they have done on local content; so we are specifying it ourselves. We had a "Meet the Developer Day" for local suppliers to come along and engage with us, and anyone else who might have been there on the tier 1 side, to find out how they can participate. There are ways and means to encourage that today, and we can stimulate that. In the past we have worked with the enterprise agencies to try to make that happen.

I have a slight reservation if it is over-prescribed in the planning conditions to the extent that developers like us cannot make it happen. For example, it would be great to say, "You can have this consent provided you build a factory that makes turbines." I cannot wave a magic wand to make that happen. That is an industry thing, and that was what I was referring to in terms of what the Crown, Governments and industry are doing to try to make all of that happen. If we are too over-prescriptive in all of that, there is a danger of creating an unlevel playing field and investors will start to go to the easier projects where those conditions do not exist. However, it is a slight concern. The wording of how we do those things could be brought about; it just needs to be done with the right balance to make sure that the expectations of what the developers will do with it are not so onerous that they could not actually do projects. I think we would be doing ourselves a disservice to the objective of trying to meet renewable targets and the potential for Scotland to do so.

Q553 Mr Reid: But, in principle, at the planning stage you would be willing to enter into some agreement with the planning authority.

Andrew Jamieson: It has been done before; it was done onshore in SPP6—planning guidance 6—in terms of the expectations of local content. The industry was adamant with Ministers at the time, "Don't expect, because you have that clause in the planning guidance, that we will suddenly come up with a factory." There is a lot more to it than that in

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terms of creating the right economic conditions for somebody to invest in those types of facilities. But using local services is something which people can easily tap into. We have a lot more to do. This comes back to what the funds that the Crown Estate generate will be used for in terms of making sure we have the right skills, training and employment for local people and local services to participate in the renewable sector. There is a national as well as local need for that type of training and service.

Q554 Mr Reid: You referred to the Argyll Array earlier. I am sure you can understand the concerns on Tiree about the impact on the island. It is in my constituency. My reading of the views of the islanders at the moment is that, as far as the majority are concerned, the jury is still out on whether or not they will support the planning application. What they are really looking for from you as developer is to explain to them what the impact and the economic benefits to the island will be. Is that something you are planning to do before it goes to the planning stage?

Andrew Jamieson: Absolutely. We have been engaging very thoroughly with the trust on Tiree and with Argyll and Bute Council. Argyll and Bute Council has the ABRA initiative and other strategic plans in terms of what they are looking for in the development of renewable energy in that area. We have been engaging very heavily since the announcement was made that this project was in the offing. We have to do a lot of survey and environmental work, and indeed social economic work, to understand what the best design of that project is. There are huge engineering challenges. There is no grid, the water is very deep, the sea bed conditions are very hard rock, and the wave heights are very high. We have lots of technical issues to overcome, all of which feed into how you build that project and then service it. We are in discussion with both the Tiree trust and the local authority on what impact in terms of benefit to the island there could be in regard to employment. In turn, what knock-on effect would that have on housing requirements and infrastructure support? I hope that, if you speak to Argyll and Bute Council, they will agree we are in the thick of those discussions to try to resolve some of those issues, because they have to be looked at strategically.

Q555 Mr Reid: In your submission you said that benefit from the revenue that the Crown Estate collect should go to the local community. You did not seem to put in your submission anything about the developer making a financial contribution to the local community from the profits. Is that omission deliberate, or do you think the developer should be making a contribution?

Andrew Jamieson: First and foremost, I would like to see this industry get employment. Scotland missed the opportunity of developing technology with onshore wind in the 1980s. The Scandinavians took it because they created the market for it; for a long time they were world leaders in selling turbines. We have huge potential in Scotland for employment in jobs that we do not have in onshore wind or any other sector of

renewables. I am working with colleagues at an industry level and with Governments north and south to try to bring manufacturers to Scotland, or indeed the UK, to build the supply chain so that we have the construction capacity for these projects. But we also have to look more locally at the servicing and maintenance of these projects over 20 to 25 years or longer. That means skills, training and educational support. Not all of that will be found very locally. The island of Tiree does not have a college, so clearly it will be Argyll or somewhere else on the mainland. First and foremost, developers need to look at how they can benefit the economy from maximising the number of jobs—to me, that is the priority—and the skills and training. That is not to say financial gains cannot be made by other communities at some point once all of that has been sorted out, but it is a very different case from what we have experienced in onshore wind because we have not been able to bring the same degree of employment prospects. This is now a huge opportunity for us.

Q556 Mr Reid: In your project on the Sound of Islay you have an agreement with the Islay Energy Trust. Can you explain what that agreement is and what benefits there will be to the island from it?

Andrew Jamieson: It is as much part of our engagement process and understanding of the local needs and issues with that trust. I think that over a period of five years we are supporting and paying the salary of a local development officer, a chap called Andy Macdonald. He acts as our eyes and ears on the island; likewise, he is able to explain to people the project, which is an array of 10 underwater turbines that we are looking to deploy in the middle of the decade. Andy is able to engage with fishermen, the harbour master and others that could provide services to this project. He can also reassure them about some of the myths that might otherwise have developed about the project stopping their business. It has been a very good relationship for us in terms of being able to inform the community. Likewise, the community has been able to express its opinions very directly back to us. It is a very constructive relationship in taking that energy project forward. We would hope that island would benefit directly from the energy there, particularly when you also have such a prominent and world-leading whisky industry on the island.

Q557 Mr Reid: Do you have any other suggestions for how developers could involve coastal communities in local schemes?

Andrew Jamieson: Lots of projects are very different and so are the coastal communities. I think developers should get out there and engage as much as they can. I note that we have been talking a lot about the Tiree project. It is a very unique circumstance. You have an island right next to a potentially very big project. You have projects on the east coast of Scotland. Some of them, like those on the Firth of Forth, have very different community aspects. What is right and wrong for employment and what are the benefits from the project need to be explored very deeply and locally. All the developers have a direct role in doing that.

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ScottishPower Renewables are not perfect at it, but we do a lot to try to get the best learning we can.

Q558 Mr Reid: Are the Crown Estate a help or inhibitor in terms of your community engagement?

Andrew Jamieson: It is neutral to slightly positive. They are not an inhibitor but they are not as proactive in doing community work as they are in looking at some of the more environmental aspects of planning processes, or the required engineering solutions to certain things for projects.

Q559 Chair: I want to return to SCDI and the question of procurement. We need some assistance about what is and is not reasonable in terms of EU rules and allowing this and that. I suspect that a lot of developers and companies hide behind European procurement rules when they do not necessarily need to. Is there an idiot's guide to what can be pursued in terms of employing a certain number of local apprentices and all the rest of it? My understanding was that, if you were saying everybody who bid for this had to undertake to take on 20 local apprentices, as long as it applied to everybody, that was entirely acceptable under EU legislation, but lots of others try to wriggle out of it.

Gareth Williams: My present understanding is that it is very much slanted towards cost and efficiency in terms of public procurement. I am talking generally rather than in relation to any specific sector. The Scottish and UK Governments are trying to persuade Europe to change its rules in that particular area towards more local economic benefit, which would then enable you to look at where people were being employed. I am not talking about renewables, but there have been well-publicised examples of contracts in the Western Isles in relation to construction going to firms outwith Scotland who were bringing in people and stationing them essentially offshore. In the future, if there was greater focus on local benefits, that situation might change.

Q560 Iain McKenzie: Gareth, you mentioned earlier the possibility of incorporating local procurement conditions. I think we should focus on the possibility. Under EU procurement legislation, in the tendering process it would be possible but not absolutely guaranteed. I imagine that, when you go to the weighting of these particular contracts, cost and quality are the main two factors. Slanting the terms and conditions may be challengeable. If you went down that road and it was challenged, what impact do you think it would have on this fledgling industry?

Gareth Williams: The last thing you would want would be leases being awarded to one company based on a bid and it was challenged by another company on the basis that it was not competent under EU law. Obviously, that would slow up the investment.

Q561 Iain McKenzie: You spoke earlier about time scales. Would that have a dramatic impact on those time scales? You were talking about getting the industry up and running and developed.

Gareth Williams: Potentially. If European rules allowed that to be taken into account and those in this

country were sure that what they were implementing was watertight and was not likely to be challenged, and that was widely understood by the industry, I am not sure it would have any impact on time scales. Presumably, it would arise if there was scope for disagreements in the process, but I am not aware of what the exact regulations are in this area. I would have to go away and think about that.

Q562 Iain McKenzie: Currently, there is a standstill period in the procurement process where I imagine that would be reviewed.

Gareth Williams: Yes.

Q563 Mr Reid: Do these rules apply only to public authorities? The reason I ask is that, certainly in the case of the Tiree project, the suggestion was that ScottishPower would build a base in Tiree to service the offshore wind farm. If, say, ScottishPower came forward and said they would do this, would these rules apply to them or only to public authorities?

Gareth Williams: My understanding is that the EU rules would apply to public authorities. It is the public procurement processes that are governed by it.

Mr Reid: They do not apply to a private company like ScottishPower.

Iain McKenzie: I think they do.

Chair: If a public authority is letting something to ScottishPower, my understanding is that the rules apply, but, if ScottishPower wished to prioritise, say, local employment over some other factors, they would be free to do so.

David Mowat: I believe if it is a procurement over a certain size it would have to be open to anybody who wanted to bid.

Iain McKenzie: There is a threshold over which you have to pass. If you cross that and it is challenged, it can take almost two years to resolve it through the courts.

Chair: Even if it is a private company letting it.

Iain McKenzie: Yes.

Chair: This is a discussion for another report. We will see you back here next week when we will do that.

Q564 Iain McKenzie: Turning to sea bed revenues, can you explain the arrangements for the rent which the Crown Estate Commissioners collect from the marine renewable installations? Does this rent increase as profits increase?

Andrew Jamieson: As I understand it, it is a fixed pounds per megawatt-hour, or a percentage of revenues; in other words, if the wind farm does better, the Crown Estate would get more out of it. It is very similar to what happens in many onshore land rental arrangements. The Crown Estate will get a fee from us on signing the lease arrangement for the Tiree project, which is a one-off arrangement, and once we go to construction or go into operation they will get a small fee from the revenues based on pounds per megawatt-hour. The more efficient the wind farm, the more money the Crown Estate will make out of it, as will we. That is the incentive. You want a more efficient wind farm, and that is why we are going to offshore as well.

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Q565 Iain McKenzie: What is the current level of rates paid to the Crown Estate per unit of electricity?

Andrew Jamieson: What are they proposing?

Q566 Iain McKenzie: What is the rate you are paying currently?

Andrew Jamieson: It is less than £1 per megawatt-hour.

Q567 Iain McKenzie: How much less than £1?

Andrew Jamieson: I think it is just over 10p less; it is in the 80s.

Q568 David Mowat: Can you remind us how much you get from the feed-in tariff in terms of offshore wind?

Andrew Jamieson: The revenues that flow will depend on the incentive mechanism that applies at the time. Certainly, by the time the Argyll Array project comes on we will be into a new incentive mechanism, but as of today you would be getting two ROCs. That is about £80 per megawatt-hour, plus the price of wholesale electricity, so it is about £130 per megawatt-hour, roughly.

Q569 David Mowat: A megawatt-hour.

Andrew Jamieson: Yes. You can turn that into £1.30 per kilowatt-hour.

Q570 David Mowat: I thought the solar feed-in tariff was £40 per kilowatt-hour.

Andrew Jamieson: Yes.¹

Q571 David Mowat: I thought offshore wind was less than that but similar. I am surprised because electricity only costs £8 per kilowatt-hour; that is what consumers pay. You must be getting more than that.

Andrew Jamieson: No. The mechanism we have in today's offshore world is that you get two ROCs plus the price of what we call brown power, which is the wholesale price of electricity. A ROC currently trades at about £40 per megawatt-hour. Therefore, it is £80 altogether, plus the price of electricity, which is currently about £50. That support is due to reduce from 2015–16 onwards.

Q572 Lindsay Roy: In your submissions, you suggest that the Crown Estate marine revenues in Scotland should contribute both to a national fund to be used for appropriate reinvestment and to the local communities most affected by developments. Is that a fair reflection of your views?

Gareth Williams: It certainly is our view.

Q573 Lindsay Roy: How would that be best administered?

Gareth Williams: We suggested in our submission that we could see the case for devolution of the national revenues to the Scottish Parliament for reinvestment particularly in low-carbon infrastructure, whether that is skills or other areas. In relation to communities, we acknowledge the caveats in terms of how you would define them in relation to particular

projects that are well offshore. We supported that it should be communities directly affected rather than a wider area, and that might be in relation to the projects themselves, the associated infrastructure or the construction of those projects.

Q574 Lindsay Roy: Whether it is retained at Westminster or devolved, do you agree that there should be a 50/50 split between local communities and the Government? Is that the line you would take?

Gareth Williams: I would not want to make an arbitrary split. These are judgments others will make. From our point of view, we are keen that, broadly, it should be reinvested back into the low-carbon economy at national and community level, but we also acknowledge that, particularly at national level, it will be a long time before significant revenues are generated.

Q575 Lindsay Roy: Andrew, am I right that you agree in principle with the Big Lottery Fund as a way of distributing the money?

Andrew Jamieson: We simply said that in principle it looked like a body that could apply a general set of rules as to who should receive the funding. There is never an easy answer to this. When speaking to you, I have stressed the need to take this industry forward, capitalise on it and get jobs on the ground, essentially, so that we have a long-lasting industry. That needs support, and where the funds are to come from for it needs to be explored. I agree that communities should gain from having an offshore wind industry. Whether it is employment or cash is another question.

Q576 Lindsay Roy: Therefore, in the present economic climate it should be as quickly as possible because of employment opportunities.

Andrew Jamieson: Absolutely, yes. But the question of how to disburse funds, for example, is a highly complex one. If you take our project at Tiree, which we have discussed at length today, that is very near development. It is simple to identify that Tiree should get something out of a project. Other projects are far more difficult. I mentioned ones in the Firth of Forth. How you would define communities there is a very different thing.

Q577 Lindsay Roy: Establishing the criteria is a big challenge.

Andrew Jamieson: It is a very different question. We also have a much bigger project in East Anglia, which is 7,200 MW versus 1,800 MW for Argyll, but infrastructure in that part of south-eastern England is already there, so the impacts and benefits of that project are a completely different consideration.

If we look at our experience in dealing with community benefits versus the cash alternative for onshore projects, a witness in the previous session said that there had been different examples and some worked well and some less well. Sometimes the local authority takes all of the money; sometimes it is the community council that gets all the money. The local authority might be the most knowledgeable body to disburse it, but you may have real difficulty getting hold of it.

¹ Note by witness: "I qualified this by saying that I am not an expert in solar tariffs."

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Q578 Lindsay Roy: Sometimes it is apprenticeships in local communities.

Andrew Jamieson: Quite. You also have community councils that have more money than they know what to do with if they have a number of projects. None of these are easy. Argyll and Bute Council take these funds and put them into a model that splits the funding to local uses within a certain radius of a project, but the wider funds will go to the wider local authorities. They apply a 60/40 split. That is onshore. What should happen offshore, as I mentioned to Mr Reid, is for discussion with that council as we see what is appropriate going forward.

Q579 Lindsay Roy: Gareth, I think I am right in saying that SCDI believe that the revenues raised in Scotland should stay in Scotland. Is that the case? If so, why?

Gareth Williams: That is the general view among our membership. There are issues about financial accountability of the Parliament which has seen revenues devolved. There are issues about how the industry itself is being developed. Clearly, there is a strong lead from the Scottish Government across a range of issues, such as skills, port and harbour developments and so on. We would see sense in aligning the revenues for reinvestment within Scotland with that work that is already under way.

Q580 Lindsay Roy: What is the case for retaining the management of those resources in London or is there a case?

Gareth Williams: We have not made that particular case. As I understand it, the Crown Estate are able to borrow based on the value of their wider estate and then invest that money within Scotland. If you are talking about things like subsea cables and so on, clearly the projects that will be enabled by that will not be generating revenues that allow you to invest in a cable; it will have to be up-front investment, so you will have to find that from elsewhere. I suppose that is one argument, but it is not one we have made.

Andrew Jamieson: We deal as much with the Crown Estate in Edinburgh as we do with it in London. There is a significant presence in Edinburgh. Indeed, for some projects the Crown Estate have put one of their officers into our offices specifically to deal with them.

Q581 Lindsay Roy: But the broad administration and management remain in London.

Andrew Jamieson: Yes.

Q582 Lindsay Roy: How can you ensure transparency and accountability in relation to how the resources are used? Is there a mechanism whereby you can define what is going to Scotland, because at the present time, I think it is very difficult to do so?

Gareth Williams: We have certainly suggested there should be more transparency about what is raised and spent in Scotland. This inquiry has probably been helpful in pushing that forward. I know that the Crown Estate have an annual report for Scotland which has figures within it. I would imagine it is about developing that further.

Andrew Jamieson: I cannot see why we would not be able to learn what the Crown Estate's revenues were from Scottish offshore marine projects.

Q583 Lindsay Roy: If the management and administration of the Crown Estate were devolved to Scotland, what implications would that have for ScottishPower Renewables?

Andrew Jamieson: I do not hold a particular view on the devolution of management. There is a huge advantage in our being able to deal with a one-stop shop in the form of the Crown Estate. It is one thing to look at projects around the UK, but you have stakeholders like the shipping industry that move all round the UK and it helps to have a landlord that knows the issues of all the projects being planned. To us that aspect is important.

Q584 Lindsay Roy: You would not have that if it was controlled by the Scottish Parliament or a quango or quasi-governmental organisation.

Andrew Jamieson: I do not hold any particular view. I can only cite the advantages that have come to the industry thus far of having the Crown Estate run the way that it is.

Q585 Lindsay Roy: As a UK-wide organisation.

Andrew Jamieson: Equally, they have a strong focus on developing the Scottish offshore wind and marine renewable sector. Marine renewables, being wave and tidal, are predominantly Scottish, and they have placed huge emphasis on driving that forward very hard.

Q586 Chair: You referred to the gains of having a one-stop shop. You heard our earlier discussion about strategic planning powers possibly being given to Marine Scotland and they would have that function, but surely there would have to be local involvement in tactical planning with somebody like a local authority or an equivalent. That happens at the moment, does it not? Therefore, breaking up responsibilities to some extent for that local management would not cause you any major problems, would it? I am trying to identify what it is we could do that would make local people happy and would not at the same time cause you major difficulties.

Andrew Jamieson: Off the top of my head, I cannot say "huge", but I would need to give a little more thought to that. The question is whether functions are replicated throughout Scotland that give the industry difficulty in having to deal with the same issues. If decision making is down to local authorities, then we are dealing with a number of bodies as opposed to one central body. If it was a Scottish Government-run agency, that might well tick the box. I would need to unpick that a little more and explore it.

Q587 Chair: A lot would depend on what functions the local authority had in terms of approval. You can understand the locals being unhappy about a sudden announcement that such and such will happen on their doorstep. You do consult, you say, locally. Therefore, if it was the local authority with whom you consulted

on some of these elements within an overall strategic plan, you would still be able to retain many of the contacts with the shipping industry and so on which would be dealt with on a national level, while at the same time having some sort of input from the locals.

Andrew Jamieson: There are always advantages. A centralised model works at certain levels of efficiency, but there are inefficiencies when you get down to local levels.

Q588 Chair: That is right.

Andrew Jamieson: Equally, if you go to the extreme where everything is local, no national strategy is being driven. It is always a matter of finding the right balance across all of that. I think local authorities should be fully involved in the evolution. In the previous session Mr Roy asked what the strategy was for development. I do think that is where the local authorities are involved. I would have thought they had been in the past; they must have been. I am sorry; I am confusing it with onshore stuff many years ago. Engagement in consultation with local authorities could answer many of these issues. If that has not been happening, that will add to frustrations when plans or intentions are suddenly announced.

Q589 Chair: That is right. What I am struggling to identify are those things which, from your perspective, would have to be retained centrally, or what elements of the centre of expertise should be retained in a central function and what could be handed down—what can go and what has to stay. We will have to make some sort of recommendations on this. We could make it all delightfully vague and leave it to somebody else to sort out, but we would prefer to try, if possible, to identify the sort of things that should be kept centrally and those that could be passed down locally.

Andrew Jamieson: There are quite a few planning issues that affect the entire industry on which the Crown Estate are helping. It could be things like how to deal with the shipping, fishing and aviation sectors, because wind turbines interfere with radars. The Crown Estate are spending money either on doing survey work with developers to help them with projects or, at an industry level, are providing solutions to some of these common issues. I do not know that that is a role for local authorities to sort out. There are certain aspects of the Crown Estate's present duties that they did not do before. They kept everything at arm's length and acted purely as a landowner. Now they have become far more proactively involved and engaged, so for the industry it has been a huge benefit. I would not like to see those benefits diluted at all.

Q590 Chair: The Crown Estate as developer have been helpful.

Andrew Jamieson: Yes.

Q591 David Mowat: In terms of what is devolved, another point is that at the moment the whole subsidy structure to make these things viable is centrally administered, is it not?

Andrew Jamieson: Yes.

Q592 David Mowat: Clearly, if that was ever devolved, it might change matters, but, in regard to your liaison with DECC and how all of that works, that is done uniformly across the whole country in terms of the whole viability of the project.

Andrew Jamieson: The Scottish Government have some discretion within the framework, so they can adjust things under the renewables obligation. When DECC brings out a consultation on the renewables obligation, the Scottish Government bring one out shortly thereafter, and they do not always propose exactly the same thing.

Q593 David Mowat: So you get different tariff structures.

Andrew Jamieson: You can do and you have done in the past for wave and tidal devices where the Scottish Government have sought to provide greater support than at UK level.

Q594 David Mowat: How does that work for bills subsequently? Does it just go on bills in Scotland or on bills across the UK?

Andrew Jamieson: It goes on bills throughout the UK, but, with respect, the imbalance is a very small part of the whole energy billing system, because to date we are talking only about experimental projects.

Q595 Iain McKenzie: The level of capital investment planned by the Crown Estate in Scotland over the next five years is an average of £4 million per year. How does that compare with the amount that has been invested in marine renewables by the Scottish Government, its development agencies and local authorities?

Andrew Jamieson: Forgive me for asking for clarification. Does "marine" mean offshore wind? It cannot mean offshore wind.

Q596 Iain McKenzie: I would not think it does; it means wave and tide.

Andrew Jamieson: I think it means wave and tidal device work. It is a useful sum to have invested. Each device has cost significantly more than that to date. This is very embryonic technology. We are starting it on a curve here, and we would expect to see the cost come down with experience. It does not compare today. It does not mean to say that in the very near future it would not be a reasonable amount to invest, but I would always encourage more to be invested to take forward that industry, because this is Scotland's true and real chance of having a renewable sector where the managerial benefits of the design sit within Scotland and it is something we can then export around the globe, in the same way that the Danes took onshore wind technology in the 1980s and capitalised on that.

Gareth Williams: In terms of marine renewables, the companies we have spoken to saw a particular role for the Crown Estate in addressing industry-wide challenges. Often, the technology companies are very small and at this stage are operating in a very high-risk industry. I am highlighting R and D on components, moorings, foundations and also investment in environmental data as areas where the

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Crown Estate have played a useful role, and could play a more useful one, in the next few years.

Q597 Iain McKenzie: How would you assess the Crown Estate's response to devolution, and how do you think it has integrated with the Scottish Government and its development agencies and local authorities?

Gareth Williams: Our view is that over the last few years dialogue has improved with the memorandums of understanding that have been developed. I understand that those are now being taken forward with the Scottish Government and also, potentially, local authorities. Although the Crown Estate have invested significantly in their Edinburgh office in recent years and have in it a level of expertise that has been very useful, particularly to the marine energy and offshore wind industries, we regret that there is no longer a principal officer for Scotland with the remit to engage more with civic organisations and the Parliament. We would be supportive of the reintroduction of that sort of position at senior level within the Crown Estate.

Andrew Jamieson: I do not have a position on where they are with devolution, and I guess that is a debate between themselves and the Scottish Government. I

cannot think of anything at industry level where the Crown Estate have not enacted well enough, although I am sure people in the Scottish Government would contradict me, to further the agenda for the renewables sector, be it marine, as in wave and tidal, or offshore wind. The Crown Estate have been pressing very hard for that, and that is fully aligned with what the Scottish Government seek to do. From that perspective, I have seen only a very constructive input and dialogue from the Crown Estate vis-à-vis the Scottish Government.

Q598 Chair: As I said to the previous witnesses, do you have any answers you have already prepared to questions we have not put or any additional points you want to raise with us that we have not covered?

Andrew Jamieson: Frankly, no. My main point is that we are trying to build this industry, and the more support we can have to take it forward the better. The Crown Estate have done very well thus far. That is not to say they are perfect; no one is. The industry provides a potential for Scotland and the UK, but it must be given support to maintain the momentum on investor confidence.

Gareth Williams: I have nothing to add, Chair.

Chair: Thank you very much for coming along.

Monday 12 December 2011

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Iain McKenzie
Graeme Morrice

Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Linda Rosborough**, Acting Director, Marine Scotland, and **David Wilson**, Director of Energy and Climate Change, gave evidence.

Q599 Chair: I welcome you both to this meeting of the Scottish Affairs Committee. We are investigating the role of the Crown Estate in Scotland. Sorry about the nature of the room, but we did not quite intend to have you so far away. I think the microphones are mainly for recording purposes, so they are not necessarily projecting as well.

Linda Rosborough: All right. We have to shout, is that the message?

Q600 Chair: Yes, I think that is helpful. Could you introduce yourselves, tell us who you are, what your roles are, and then if you can just tell us about the main responsibilities of Marine Scotland.

Linda Rosborough: My name is Linda Rosborough. I am the interim Director of Marine Scotland, and Marine Scotland is a delivery-focused directorate of the Scottish Government. We are a core part of the Scottish Government rather than an NDPB or an agency.

David Wilson: I am David Wilson. I am Director of Energy and Climate Change in the Scottish Government, so we are another directorate of the Scottish Government. For my sins, I used to be Director of Fisheries and was involved in the initiation of Marine Scotland some years ago.

Q601 Chair: Could you tell us about the main responsibilities of Marine Scotland and how the establishment of Marine Scotland changes the environment in terms of management of the environment, the structural environment, how that has changed the management of the natural environment.

Linda Rosborough: Marine Scotland has been formed to bring together a sort of centre of gravity to provide for integrated management of the sea. It has been created by bringing together two separate agencies along with core Scottish Government. The driver for this is not unique to Scotland; it has happened elsewhere in the UK and it is happening across Europe. It is the recognition that for us to make good use of our marine assets and also to manage the sea properly we need to integrate the way in which the sea is managed.

Underpinning that has been the creation of new powers in relation to integrated management, and those have been enacted through legislation both from the Scottish Parliament and in the Westminster Parliament. These provide for an integrated system of marine licensing, bringing together what had been a rather fragmented system previously, and also for

marine planning. For the first time you have the possibility of plan-led development in the sea.

Beyond that, we also have a big push towards better environmental management and a marine strategy framework directive that has been enacted at European level, and that requires Member States to achieve Good Environmental Status in their seas by 2020, so there is also a driver for good environmental management. All these things come together in the responsibilities of Marine Scotland.

Q602 Chair: David, do you want to add to that?

David Wilson: Nothing in particular other than to perhaps emphasise that in my directorate I cover all energy consents for onshore wind farms, power stations and things under section 36 of the Energy Act. One of the aspects of the setting up of Marine Scotland was that we decided very clearly that in future all decisions on the consenting of offshore wind farms, wave and tidal devices, as of about a year, 18 months ago, would be taken forward by Marine Scotland. We have worked very closely with them, ensuring the expertise on the onshore side has been transferred to take forward on the offshore side, and we work very closely with Marine Scotland on those issues.

Q603 Chair: Could I clarify with you the nature of the subjects with which you have dealings with the Crown Estate?

Linda Rosborough: We are involved in the production of plans in relation to where developments should go for the future. We have been involved in the strategic environmental assessment of our offshore wind plan. We have been involved in where marine energy development should go, and we are involved in the consenting process, the actual licensing of the applications as they come forward. Because of the fact that so much of the engagement of the Scottish Government is with the Crown Estate, I personally have been responsible for bringing together the overall Scottish Government policy in relation to Crown Estate matters. The paper, for example, that the Scottish Government produced was one in which my team and I were involved, working with others across the Scottish Government but which we have led.

Q604 Chair: I am not sure whether or not people sitting behind you can hear what you are saying. No. Short of speaking backwards, maybe you could speak up a bit so that people behind can hear.

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Linda Rosborough: Sorry. I will try.

Chair: Can I ask about the nature of the relationships in a sense, because the drawing up of the plan is presumably then entirely your responsibility and you tell the Crown Estate what plans you have drawn up?

Linda Rosborough: We try to work in a very integrated way. It is not just a simple matter of you get in a dark room and you draw the plan. You work with stakeholders; that is an intrinsic part of the planning process. We have a Marine Strategy Forum, which brings together all the key interests in the marine environment in Scotland, and the Crown Estate is represented on that forum, along with CoSLA, along with the Scottish Fishermen's Federation, along with environmental NGOs, Scottish Renewables Forum and many other bodies. We have strategic conversations with a wide range of people in Scotland about the direction that we are going in, and we also engage with stakeholders in detail about the content of plans.

We have also worked particularly closely with the Crown Estate in detailed aspects of planning because they have a very useful marine planning tool called MaRS. We have worked with them in order to use that tool. They built it for a slightly different purpose. They built it largely so that they would be enabled to assess the best use from their perspective of different parts of the seabed. The data has been contributed to across the public sector and I think there was a fairly substantial investment in that tool. We have, with their agreement, worked with them to apply that tool and use that in the way in which we have gone about looking for strategic possibilities in terms of offshore wind and marine energy.

Q605 Chair: Just to follow up two aspects of that. The responsibility for the plan, after dialogue with stakeholders, remains entirely with you; is that correct? Secondly, do you have full access to the MaRS information and any other information that the Crown Estate hold?

Linda Rosborough: Yes. We have full access and have an agreement with them on our access to that information, yes. The plan itself is a statutory product and there are processes laid down that we have to follow in the two pieces of legislation that I referred to that provide for the creation of a marine plan. We also in Scotland have a provision that is not shared elsewhere and is not part of the legislation that governs 12 to 200 nautical miles, but that provides for the delegation of marine planning powers to local partnerships. There are specific requirements in the legislation about the composition of those partnerships. That provides the planning framework for Scotland going forward, a high level national marine plan incorporating elements prepared under the Westminster legislation, 12 to 200, and the Scottish legislation, 0 to 12, supplemented by Scottish marine regions that will have marine planning partnerships formed of local public authorities and local stakeholders. They will have delegated marine planning responsibilities within the framework of the national plan. All this happens within the context of a UK Marine Policy Statement, which has been agreed at UK level between all administrations within the

UK, which sets out in broad brush terms the overall objectives for the marine area around the UK.

Q606 Chair: That is helpful. Do you want to add anything?

David Wilson: Just maybe one point. My interests and my responsibilities are narrower, focusing particularly on energy and, perhaps of most relevance here, on the promotion of offshore renewables, offshore wind, wave and tidal. In taking that forward, the Crown Estate are clearly very important players in terms of the wider community, whether it is developers, stakeholders and others, and we work with them very closely as part of those responsibilities.

Q607 Chair: Is there an established pattern of meetings between yourselves and the Crown Estate? In addition, is there an established pattern of meetings between the Crown Estate and Scottish Government Ministers?

Linda Rosborough: Meetings take place frequently between Scottish Government Ministers and the Crown Estate, and that has been the pattern for some time. We do have regular meetings with the Crown Estate on a host of different areas. There are a lot of working groups on different aspects of the marine and energy landscape and the Crown Estate are involved in all the key groups. We in turn have had observer status until fairly recently on the Crown Estate liaison group for Scotland and that has recently been changed to full membership.

Q608 Chair: How would you describe the relationship between yourselves and the Crown Estate?

Linda Rosborough: I think we have good working relationships.

Q609 Chair: Everything is fine, then?

Linda Rosborough: No, there is a constitutional issue in terms of the nature of the role that they do. The arrangement by which management of the seabed and other elements of the land administered by the Crown Estate are decided upon by a body at arm's length from Scotland on a UK basis causes a gap in terms of accountability and engagement and a disconnect, and there has been a longstanding unhappiness about that. You will have had lots of evidence of that from many of the people that you have spoken to, and these feelings are very strongly held in Scotland.

Q610 Chair: I think we understand the politics, as it were, and political feelings with a small "p", but in terms of the existing structural arrangements I want to clarify whether or not they are as good as can be expected in the circumstances and that the sharing of information and everything that could be done is being done to make sure that within the existing framework the two organisations are working together harmoniously.

David Wilson: Can I suggest that I give you my perspective, again focusing on the energy side? My feeling is it is business critical for us, and I suspect it is for the Crown Estate as well, to have as strong working relationships as we possibly can,

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notwithstanding the fundamental disagreements that exist at political level. We have to work with the Crown Estate and for good or ill they have to work with us for them to be successful. Therefore, we make it work. Could it be better? It is evolving. I am sure it could be better still, but in general we make it work because we all act professionally to do so.

Q611 Lindsay Roy: How could it be made better?

David Wilson: I think there have been examples, and there has been an evolution of a process over the last year to 18 months, where I suspect there were circumstances where perhaps we did things that the Crown Estate would rather that we had engaged them a bit more in and vice versa, and we have addressed that as far as possible over time. There have been perhaps particular examples of decisions that the Crown Estate have taken that we would have preferred them to take otherwise. We have had discussions with them. Sometimes they have changed their mind; sometimes they have not. That is the dialogue that I think you would expect to happen. Again, our feeling is we make it work as well as it can within the existing arrangements, but fundamentally our view, the Ministers' view, is that the relationship and the outcomes that could be achieved would be significantly more effective for Scotland and for coastal communities and for renewables if there was a change in the constitutional arrangements.

Q612 Lindsay Roy: Right, but in essence in terms of the working relationships, any disconnect that was there before is diminishing?

David Wilson: It is improving. It is on that improving trend. I would not say everything is perfect, it rarely is in those circumstances, but it is certainly significantly better than, for example, it was 18 months ago.

Q613 Lindsay Roy: But where are the points of tension?

David Wilson: There inevitably are areas of tension when you get into territory that encroaches on the wider political disagreements that currently exist. You will be aware that the Scottish Government made a case back in June for change. There are inevitably parts of our relationship with the Crown Estate that encroach on that debate and sometimes that causes tensions. You would expect that to happen.

Q614 Chair: Give me an example. I understand the abstraction but give me a practical example of where there is a difficulty.

David Wilson: I would say a practical difficulty or issue that I think we feel quite importantly about is the issue of a memorandum of understanding. There has been, I think, a suggestion for some time that the Crown Estate should sign or should agree a memorandum of understanding with us and with other bodies. There is a risk that were a memorandum of understanding to be signed it might suggest to people that that will do then, that is a sufficient change in the arrangements and, therefore, that might lead to people feeling that everything is acceptable in the relationship. That might make it less likely for us to

sign a memorandum of understanding, but we are very keen and on a number of aspects we have codified relationships and happily in that case.

Q615 Chair: Sorry, I hear what you are saying. I did actually ask you about whether or not there were real difficulties that were caused by the existing arrangements. I understand the point about memorandum of understanding just in terms of the politics of it, but in terms of the practicalities on the ground what difficulties are caused by the existing arrangements?

David Wilson: Well, I think that has been a difficulty because it has led to some disagreements in public or some concerns being raised that we are perhaps not as engaged as we should be or that perhaps the Crown Estate are more willing to support Government policies than they appear to be. Clearly, that is causing an issue and we are working through that as best we can.

Linda Rosborough: Other issues are, for example, the Crown Estate as the landlord does quite a lot of functions. If you look at some of the things that they do, for example they have the planning tool, so they are setting up to be planners to some extent. While we use their tool they will also be using their tool, so they will have a different view. In relation to their enabling actions, they produce a lot of material, guidance, for example, on marine mammals. They are helping the process but they are also getting into territory that is a little unusual from a landlord's point of view. We do find that in practice, as developers are developing their schemes and bringing them forward and looking to bring them forward as consents, they come across problems. There can be issues in terms of connections between different developments and knock-on implications from one to another. Whose responsibility is it to take some leadership and help to solve the problems? If there are problems in terms of access to data or developers not being keen to share data with each other, whose responsibility is it to try and sort that out? In some cases, we find that people might go to the Crown Estate with problems, in some cases they will come to us as the regulator with problems. That can lead to confusion and there is a lack of clarity as to who has the overall responsibility in trying to resolve these issues. The Crown Estate will have mechanisms and we will have mechanisms. As David said, we try to work these through and work them out, but the nature of the structures, the nature of the rule, is such that it leads to complications. Generally in Scotland, because of the political priority of renewable development across the whole of the public sector there is a huge energy on this issue. Our Enterprise Agencies, David as Director of Energy and his team, are very focused on supply chains, on grid connections, on making the whole machinery of government work. In many cases, the role that the Crown Estate will be doing, that DECC will be asking them to do, will be a different role from what the Scottish Government will be looking for them to do. The Crown Estate is organised on a UK basis and prefers to have its procedures consistent across the UK. We come across that quite a lot. They do not and have not had up until now a separate operating

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division for Scotland. They removed that, so there has not been the consistency of engagement at a senior level of people with the real authority to make decisions for Scotland. In policy terms and in organisational terms Scotland is different and, because of the high priority that we attach to this, this can lead to dysfunction and attempts sometimes by the Crown Estate at first blush to encourage and to look to Scotland to conform with the position elsewhere in the UK rather than being prepared to adapt to the different policy context and organisational context in Scotland.

Q616 Lindsay Roy: You said earlier there was a UK Marine Planning Statement. I was not aware of that. Is it not robust enough? Does this not take account of the possible differences between Scotland and the rest of the UK?

Linda Rosborough: The UK statement is about the high level objectives that we are all trying to achieve.

Q617 Lindsay Roy: Were these agreed with the Scottish Government?

Linda Rosborough: Indeed, yes. The UK Government and all the devolved administrations agreed to the UK Marine Policy Statement.

Q618 Lindsay Roy: So it is the steps beyond that that are missing?

Linda Rosborough: I was talking more about organisational matters rather than policy objectives.

David Wilson: Can I perhaps raise one issue? It is very important to emphasise that the UK Policy Statement is a joint document between the four administrations across the UK as opposed to a UK Government document. It is something that is developed and agreed on all sides. That document provides a steer, a direction to all organisations that have responsibilities for the marine environment somehow defined. That is why I think Scottish Ministers were very keen to be part of that process and that has given a framework.

Q619 Lindsay Roy: But from what you are saying it does not clarify responsibilities for particular actions?

David Wilson: Well, in that case, while it is UK wide by all the four devolved administrations, for example, the Crown Estate is a UK-wide organisation that formally and constitutionally reports only into the UK Government, which perhaps does not quite fit with the developments of all four nations agreeing the overall marine plan.

Q620 Jim McGovern: Chair, can I just ask what are the four devolved administrations?

David Wilson: Sorry, the three devolved administrations and the UK Government is what I mean by the four. Clearly the UK Government is slightly different in status, but that is what I meant by the four.

Q621 Chair: There are developments being conducted by Scottish Power but Scottish Power ultimately responds to Spain, Spanish headquarters. The fact that the Crown Estate is physically based in

London, has its headquarters there, does not automatically leap to your attention, does it?

David Wilson: I am not sure if I entirely follow the analogy. I was just making the point that increasingly marine responsibilities take place within a devolved construct. Marine management is overwhelmingly devolved and the responsibility of Scottish Ministers but not the Crown Estate.

Q622 Chair: That is right, I understand why you want to constantly give us the political line. We appreciate that; we understand that fine. What we are trying to do is move on beyond that and just identify where there are practical difficulties. Let me clarify before I ask Graeme to come in. In terms of the memorandum of understanding, which as I understand what you were saying to us you were unwilling to sign up to lest it be seen as causing any difficulties in terms of your greater objectives, effectively, though, you should be able to get all the terms that would be in a memorandum of understanding agreed by dialogue between yourselves and the Crown Estate surely?

David Wilson: What Scottish Ministers are seeking to work towards is the ability to provide strategic policy guidance to a successor organisation—

Q623 Chair: No, I understand all that. I understand the politics of it fine. What I am asking you, though, is are there any practical difficulties that have not been overcome as a result of not having complete control over the Crown Estate in Scotland?

David Wilson: I think we have given you some examples. We could give you some more examples of areas that we have had to negotiate and discuss in some detail with the Crown Estate in order to communicate to them what Scottish Ministers would like to see happen and we think is in the best interests of Scotland.

Q624 Chair: I think it would be helpful if you did give us a list of those examples, then, in writing after the Committee.

David Wilson: We will happily do so.

Chair: I am not quite clear whether or not at the moment some of the difficulties that you are having you would have with any landowner, as it were, who had ownership of the seabed, whether or not their functions are almost irredeemably in conflict with yourselves, because they obviously have a vested interest. They would want to pursue their interests irrespective of whether or not their headquarters are in London, even though I appreciate that you have made that point here several times and that has registered, but we understood that already. Can you help us with whether or not there are disputes or disagreements or tensions that do not arise simply because they are pursuing a different vested interest and that are actually tied in with the whole nature of the operation of the Crown Estate as such?

Linda Rosborough: I think one of the very strong arguments that comes across from many sources in Scotland is the fact that the nature of the arrangement within which the Crown Estate Commissioners operate is to maximise the financial revenues and benefit. They do not have a wider community

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development or economic development perspective, and because that is their main driver that governs how they approach the whole issue of the management of the landlord's role of the seabed. That is a constraint from the point of view of those who look to see the benefits of the prospective new industry in the waters around Scotland benefit Scotland's communities. The Scottish Government is very much looking for the decisions about the management of the seabed to be made in Scotland so that Scottish communities can get the benefit. At the moment, the way in which the decisions are taken in which there is not accountability in Scotland and despite the fact that the property that the Crown Estate manage relates so strongly to devolved responsibilities, there is not that engagement and opportunity for Scottish Ministers to provide any detailed strategic direction.

Chair: I think we understand that. We have heard this point on several occasions.

Q625 Graeme Morrice: I am listening with great interest to what you have been saying and particularly the kind of relationship between yourselves and the Crown Estate. It would appear that what you were saying latterly there, Linda, was that the Crown Estate seem to be putting commercialism before "community benefit". It has been suggested by some that the Crown Estate sometimes acts in an insular manner, that it is not wholly inclusive when it comes to engaging with other key stakeholders. I am just wondering how you would respond to that charge.

Linda Rosborough: Well, it may be the nature of the operation that they do, but certainly in how we go about our business we do a lot of engagement across Scotland. Generally, the Crown Estate tends to be rather nervous of commercial confidentiality issues, and that seems to lead them into a place in which they are very reluctant to engage, often with ourselves or beyond, about matters that are coming forward. That can lead to people being surprised by developments coming forward and, therefore, things can start off on quite a negative foot. I think that is unfortunate. In Marine Scotland we work quite hard to build relationships with people at a local level across Scotland, and that has not been the practice of the Crown Estate hitherto in the nature of many of the issues that we have been involved in. That seems to have come across in terms of how then people react to decisions as they come out.

Q626 Graeme Morrice: Would you suggest there is maybe a kind of democratic deficit in terms of the whole issue of local accountability?

Linda Rosborough: It seems intrinsic to the way in which the Crown Estate has been set up that it has been designed to be at arm's length from Ministers. For example, there has been a lot of concern about an alleged moratorium in the Pentland Firth and that has been the subject of a lot of discussion and uncertainty. There is a lack of clarity about who made the decision and how and who is accountable for that. Things have moved on. There was quite a lot of fuss made about it and we are now in a much better position on that. But in contrast with a more normal part of

Government, my perception is there would have been greater accountability on that issue earlier.

David Wilson: Can I follow that up just to record that the issue around the moratorium in the Pentland Firth was an area of disagreement. It is an area that I think has to a large extent been satisfactorily resolved, consistent with what we said earlier that we addressed the points and things have moved on.

Could I just make the point there are two separate issues here. There is accountability to which Minister or to the Scottish Parliament or the UK Parliament, and I am not going to repeat the points we have already said on that. There is also the nature of the criteria and the decision-making framework within which the Crown Estate act. I noted Roger Bright in his evidence to you back in June said that the Crown Estate works within a commercial mandate, seeks a commercial return on them, but in doing so wishes to act as a good corporate citizen delivering business objectives in the wider public interest. I think our concern, which is not a Scottish accountability issue, is that that is a very difficult set of issues to weigh up by a body that is a public body. Our feeling is that that is a public policy issue that should be part of a public policy process as opposed to an arm's length organisation acting under a commercial mandate. The sort of practical issues that Linda has raised is that that often raises concerns among stakeholder communities on precisely what is the nature of the business that they are dealing with.

In saying all of that, I am not criticising in any way the professionalism of what the Crown Estate do or the effectiveness of what they do, but under the terms of the legislation they have a difficult task to pull off of being commercial while working in the public interest all at the same time.

Q627 Chair: Yes, sorry, feel free to criticise them if you like. You don't need to hold back or anything like that. If you have something to say we would much rather have it out in the open.

David Wilson: I have some friends behind me.

Chair: Well, maybe you were friends when you started but—

Q628 Lindsay Roy: Your contention, therefore, is they are more exclusive than inclusive and that is not only Scottish Government Ministers and the Scottish Government but it is about local government and local communities as well. Would that be a fair summary?

David Wilson: I think the Crown Estate need to work very hard to maintain the stakeholder relationships. They generally do that well. All I am saying is that they have a difficult job to do given the nature of the legislation they are working under.

Q629 Lindsay Roy: Have you noticed any improvement over the last couple of years in terms of engagement and communication?

David Wilson: I think our sense would be that in terms of the Crown Estate's engagement within Scotland it dipped perhaps five, eight, 10 years ago but it has clearly substantially improved over the last 18 months, couple of years.

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Q630 Lindsay Roy: Do you have some evidence to support that?

David Wilson: I think the nature of the engagement, the commitment that they have shown to interaction with us and with other bodies; clearly there has been an improvement.

Q631 Jim McGovern: The Scottish Affairs Select Committee have visited Orkney, Shetland, Caithness, Tyree, Barra, Stornaway, and wherever we have spoken to people about the Crown Estate Commission they have said there has been little or no communication, no consultation and, in the case of Orkney, the Orkney Fishermen's Association said that the first they knew about the Crown Estate Commission looking to use wind turbines offshore in the area was when the Crown Estate Commission announced it in the press. They had no prior consultation. When you say that consultation has improved, what must it have been like before that?

David Wilson: I can't speak for the Orkney Fishermen's Association. The evidence I have is that things have improved, but I am sure they would say themselves that they need to keep working at it and I am sure they are.

Linda Rosborough: I think I have certainly picked up that in relation to, say, ports and harbours they feel that engagement is better now than it used to be; perhaps some of the more traditional people that Crown Estate Commissioners have worked with. I think the problems come particularly as development moves into newer areas. The Crown Estate Commissioners have not had experience of working with these other newer groups who have an influence. I think that is where particularly the problems have come more recently.

Q632 Mr Reid: The Scottish Government's paper suggested that if the Crown Estate Commissioners were devolved then Marine Scotland would become responsible for managing seabed leases. Can you tell us what you see as the benefits or why you feel you could do the job better than the Crown Estate has done it?

Linda Rosborough: I think what is very important is that the paper says that what needs to happen is firstly that the reservation in the Scotland Act is removed so that the Crown Estate Commissioners come within the responsibility of the Scottish Parliament and then there is a process of debate within Scotland as to what should happen for the future. On the particular issue of Marine Scotland and leases, the thinking here is that if you look around in other countries generally there is not that same difference between the management of the seabed in terms of the lease and also the licence. There is also a movement, in many other countries as well as this one, to try and simplify processes and that by bringing some processes together and providing for greater integration this would be advantageous in terms of bureaucracy and clarity of process and transparency and accountability.

Q633 Mr Reid: Do you see a conflict if the landlord and the regulator are the same department?

Linda Rosborough: There certainly are issues in terms of ensuring that no regulator should benefit financially from the decisions that they make, and that would need to be part of any such scheme. This does seem to be taken account of in other places, so I do not think there is a particular problem there. I think also that we are quite used within Government to having functions that have a separation. For example, we have functions that we carry out in relation to compliance where they are quite separated from our licensing functions and we follow due process in those separate functions. That is quite normal within Government that you have processes that have an integrity of process about them and that are followed through in that way.

Q634 Mr Reid: If a community, for example, objected to an offshore wind farm and they discovered that the department that was promoting it and would benefit financially from it was also the department that would be determining the planning application, I think that community would feel that they were not going to get a fair hearing. How would you get around that problem?

Linda Rosborough: That is why I said right from the start that there would be no financial benefit. That would not come to Marine Scotland.

Q635 Mr Reid: I understood from the Scottish Government paper that Marine Scotland would be the landlord. Are you saying that understanding is wrong?

Linda Rosborough: Marine Scotland would be placed in order to administer the leases. If you look at, for example, how DECC administer the oil and gas industry, we do not have the Crown Estate separately from DECC. We have a regulatory process that involves both regulation in terms of the environmental side and access to the asset. It is perfectly possible within one organisation to have both roles. What you would not do is allow that bit of Scottish Government to have itself a financial benefit resulting from that. That would have to be safeguarded in the process, and again that would be quite normal in terms of the way in which government accounting works.

Q636 Mr Reid: In the recent round that we have had whereby off the coast various power companies have been allocated the right to—I can't remember the exact phrase, but they have been allocated certain areas of the sea to put forward planning applications for. What role did you play in the process before the announcements were made that certain parts of the sea were allocated to certain power companies?

Linda Rosborough: Are we talking about the offshore wind?

Mr Reid: Yes, the offshore. You have the Argyll Array with Scottish Power; you have the Kintyre Array with Scottish and Southern, that round. What role did you play in the process before those announcements were made?

Linda Rosborough: Marine Scotland did not play a role in the provisional leasehold arrangements with the Crown Estate. The sites were announced before Marine Scotland was involved.

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Q637 Mr Reid: You had no role whatsoever before that announcement?

Linda Rosborough: Marine Scotland then prepared a plan for offshore wind upon which we had extensive consultation and a strategic environmental assessment. That resulted in the decisions that were taken by Ministers in March of this year and that resulted in some sites being dropped from that plan and others following through and being incorporated into the plan.

Q638 Mr Reid: Originally it went into the public domain that those areas had been allocated to certain power companies. Were you not involved in any way whatsoever in the discussions before those initial announcements?

Linda Rosborough: Marine Scotland was not but—

David Wilson: There is quite a long history to all of this.

Q639 Mr Reid: Was a different Scottish Government agency involved?

David Wilson: That would be when the Energy Director or the Business and Energy Director at the time was responsible for offshore consenting issues, before it transferred, prior to Marine Scotland's legislation.

Q640 Mr Reid: Right. So the predecessor agency within the Scottish Government was involved?

David Wilson: We were involved in a particular way. There is quite a long history to this. I am more than happy to go into it.

Mr Reid: Well, not too long, please.

Chair: Life is short.

Q641 Mr Reid: Can you tell me briefly what your role was?

David Wilson: Perhaps the key lesson and the basis for which we ideally work is to learn the lessons perhaps from onshore wind and the lessons from good practice, which is ideally you have a process to set a strategic environmental assessment. In other words, seek to identify where are the good sites economically, environmentally and socially to take forward offshore wind. Then the process for developers to identify the detail of what they want to do and for the Crown Estate to work with them to enable leases should act within that overall framework.

In the circumstances of the Scottish Territorial Waters leasing round that led to the 10 projects that you referred to earlier, there was not a strategic environmental assessment done and that was subject to many discussions between the Crown Estate and ourselves. The view that was taken in 2005 through 2007 was that the scale or the level of interest in offshore wind developments was very modest at that time and probably, in our view, did not justify a large-scale strategic environmental assessment process to provide that overview. If you don't think you are going to have many projects, then why do a big strategic process to enable that? We took the view around about that time not to do a strategic environmental assessment and the Crown Estate took forward their leasing process without that overall

assessment. In hindsight, was that the best thing to do at the time? I think everybody thought so. In hindsight, given the very significant level of interest that has actually turned out on offshore wind in Scotland, then the overall process probably would have been better with a strategic environmental assessment. We all learned. Everything is different in hindsight, but in an ideal world you set an SEA, then you develop the more detailed processes.

Q642 Mr Reid: Am I right in saying that if the Crown Estate had not driven this process forward we would not be as far forward as we are at the moment?

David Wilson: I think you could read a lot into that statement.

Mr Reid: Well, a yes or no answer will do fine.

Chair: Yes or no will do fine.

David Wilson: No, I don't think I can give a yes or no answer. We were keen for the Crown Estate to take forward a process of leasing and we encouraged them to do so.

Q643 Mr Reid: But your assessment at the time, though, was that the demand from the power companies was not there?

David Wilson: That was the collective assessment and I think the Crown Estate felt that at the time. I know the industry was certainly saying that at the time, and the industry representatives. Once the Crown Estate initiated that process what became clear was there was actually a very significant level of interest.

Q644 Mr Reid: It seems to me that without a landlord wanting to drive the process forward you as regulator would have—it seems to me if you had been responsible for the Crown Estate as well as your current responsibilities then nothing would have happened and we would not be so far ahead.

David Wilson: I do not think that is a reasonable interpretation of history at all.

Q645 Mr Reid: Why not?

David Wilson: I think the sense was that there was some interest. All I have said, and all that I think we said at the time, was that there may not be sufficient interest to justify a full-scale strategic environmental assessment, not that there may not be some projects coming forward. I think the history, both the pre-2007 Government and certainly the post-2007 administration in Scotland, has been driving forward the renewables agenda probably more actively than anyone would expect of a Government. We were seeking to do that. The only issue we are talking about here was what was the necessary process around environmental assessment.

Q646 Mr Reid: But you said that you judged that the demand from the power companies—

David Wilson: I think that was the collective view in and around that time, but if there were project developers to come forward we were keen for them to come forward and we were actively monitoring the situation to see that was happening. What clearly happened during 2007–08 was that the industry was beginning to change its view. I would not agree with

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a proposition that that was entirely due to the Crown Estate, which I think was the implication of your question. Circumstances were evolving and changing.

Q647 Mr Reid: Where I was coming from was that it was not necessarily the Crown Estate. Where I was coming from was that without a landlord's interest in maximising profit it seems to me that things would not have happened. Now, that landlord could have been a local authority, it could have been another agency of the Scottish Government. It does not have to be the Crown Estate. But the impression I have is that without a landlord's function separate from the regulator's function that the drive would not have been there.

David Wilson: Perhaps the response on the onshore wind, my experience of my team who deal with consents for onshore wind farms, we are very keen not to interpret our role as a group of people that consent to projects that come forward, whether they are good or bad projects. Our role is to facilitate and initiate good projects in the right place at the right time with community endorsement. It is as much a deployment and a facilitation of good projects function rather than an inhibitor of bad projects function, as sometimes it is seen as. That can be done as part of a regulatory framework. It certainly can be done by any amount of different arrangements for the landlord arrangement, and I am sure it would happen in future under the proposals that the Scottish Government has proposed.

Q648 Lindsay Roy: Can I just be clear? Are you saying that the insights that you had were compatible and congruent with the insights of the Crown Estate into the potential for development at that time?

David Wilson: My reading of the papers that I have seen was that I do not think there was any particular difference of view about developer interest. I accept, and I am very happy to share any documentation with you, that the Crown Estate were quite keen for a strategic environmental assessment to happen. They thought that that would fit with their processes better, even if it did withhold the timetable of any particular projects coming up.

Q649 Lindsay Roy: I think that documentation would be helpful from an evidence base point of view.

Chair: Yes, that would be helpful.

David Wilson: I am happy to share that.

Q650 Iain McKenzie: I am just a bit confused about the chicken and egg scenario here when you say an overall strategic assessment was only developed when demand drove that. I am wondering if it was not round the other way. You said demand drove the strategic assessment. Why didn't you set up a strategic assessment and then drive the demand based on that assessment? Do you see where I am getting?

David Wilson: The primary purpose—and maybe Linda will correct me if I am wrong on this—of a strategic environmental assessment is to provide a broad steer on where projects should and should not go and provide a national view on balancing up the economic, environmental and social views.

Q651 Iain McKenzie: But you did not do that. You did not do that.

David Wilson: That was not initiated back from 2005, 2006, when the legislation, I think, was coming into act. What we have now substantially done as part of the processes put in place following the Marine Act that was taken forward in 2008–09, is put in place the procedures that are now in the *Blue Seas-Green Energy* document. All of these processes are now fully in place and are driving forwards the agenda in Scotland, which has identified where the best sites should be, has ruled out some of the sites that came through the leasing round process as not compatible with a strategic environmental assessment, and is likewise providing the framework for going forward and providing a steer to the Crown Estate for the work that they are currently engaged on, which is to develop a further leasing round in Scottish Territorial Waters. Inevitably, it takes time to put in place those processes, but we now have, what I think we perhaps modestly would like to call it, outstanding legislation and implementation tools to take forward that process.

Linda Rosborough: In advance of the wind strategic environmental assessment, we did carry out a marine energy strategic environmental assessment and that was done before this one. We worked on the marine energy SEA first because that was seen at that stage to be where Scotland had its key opportunities. That provided the framework for the work that has been subsequently done in relation to promoting marine energy, and then the wind came as the next step.

Q652 Chair: Before we go on to some more detailed questions, can I go back, Linda, to a point you made earlier. You seem to be saying that the view of the Scottish Government, as in the document that you produced, was that you want the role of the Crown Estate devolved to the Scottish Parliament and then you will decide what to do with all the functions.

Linda Rosborough: Yes.

Q653 Chair: At the moment it is a completely blank page, is it?

Linda Rosborough: Well, it is not completely blank. We have put quite a lot in the paper about the sorts of territory, but what is clear is that this is a hugely complicated area and there are very many strong interests and a lot of people's livelihoods are at stake.

Q654 Chair: Fine. No, I just wanted to be clear whether or not there actually was a plan about a second stage, as it were, beyond the idea of devolving it to the Scottish Parliament. We will maybe draw out some of the threads as we go on to the next set of questions, if we could.

Linda Rosborough: The key message of the paper and also the key message from our consultation was that this needs to be the subject of a lot of debate and discussion within Scotland and ultimately the Scottish Parliament should decide about how the Crown Estate in Scotland is administered in future.

Chair: No, I understand that. Maybe just come in, Alan, if you could to question 4, then, if you do not mind, having disconcerted you.

Mr Reid: That is another way of calling me to speak.

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Chair: That is right.

David Wilson: Are we fortunate we are a further distance away, then?

Chair: No, we have a staff. I do not always have to do it myself.

Q655 Mr Reid: The Scottish Government's paper on the Crown Estate proposes that Marine Scotland would become responsible for the seabed and that this would allow the rents currently charged by the Crown Estate Commissioners for use of the seabed and ports and harbours to be reviewed. Could you perhaps expand on what your thoughts are of what the policy would be if you were responsible for the seabed and ports and harbours?

Linda Rosborough: Yes. I think again this is one of these areas where there was a long history of unhappiness by ports and harbours about the way in which rents and rent levels were set. Things have improved, as I mentioned already, a bit recently and my ports and harbours team are getting more positive feedback on the relationship. What the Scottish Government would want to ensure going forward is that there was full transparency and clarification about how arrangements went and also the speed. There have been problems in terms of the speed with which if harbours are wishing to make developments some of these issues can be resolved in terms of whether they can acquire the seabed or not and there have been problems associated with that. The clear message we are getting from ports and harbours is the desire for greater clarity, greater transparency and a real focus in terms of how things are addressed going forward. The Scottish Government will be putting in place such arrangements.

Q656 Mr Reid: Does the Scottish Government have a view on whether or not local authorities or harbour trusts should control the seabed in their port or harbour?

Linda Rosborough: Again, you will have encountered views on this issue that are quite strongly held. If you speak to local authorities and if you speak to ports and harbours they will often have very strong opinions and generally are not shy about saying them. This is one of these areas where I think there does need to be a lot more discussion and debate. Clearly, if a port or another developer can acquire an asset such as the seabed, that can be a huge advantage in terms of the development opportunities. Equally well, there may be other interests or other issues that relate to that and, therefore, I think there needed to be a very thorough looking at the issues before such decisions were made.

Q657 Mr Reid: Am I right in saying that there is no policy yet but if this issue was devolved you would develop a policy? Is that a fair summary?

Linda Rosborough: Yes. There needs to be a full debate. The Crown Estate has existed in its present form for a long period of time. These issues have not been reviewed and looked at seriously for some time. The policy landscape has changed hugely and I think there does need to be a look at the holdings and—

Q658 Chair: That is right, but the question of what should happen or what changes might happen to the Crown Estate has been under discussion for a little while now. I am disappointed to hear that you seem to have no view at all on whether or not trust harbours or local authority harbours or the local authority in the case of their harbours would actually get control of their harbour area. You have no view at all. You are just saying to us this should be the subject of consultation.

Linda Rosborough: I think it is not just a matter of trust harbours but other harbours as well, and at the moment I do not have a list of which harbours the Crown Estate owns the seabed for, which again is an area of transparency that we would be looking to see a bit more information.

Q659 Chair: Have you asked?

Linda Rosborough: I have asked for that, yes.

Q660 Chair: The Crown Estate have not given it to you?

Linda Rosborough: No.

Chair: Right, that is helpful.

Q661 Jim McGovern: You have done the research but you have not had any response?

Linda Rosborough: No.

Q662 Chair: Sorry, I thought earlier on we were discussing about the Crown Estate making available to you all their information.

Linda Rosborough: I am saying we have a lot more information than we have had, but certainly they have concerns in terms of the Data Protection Act and such things in relation to their ownership of land and people.

Chair: I think it would be helpful if you let us have a copy of the notes that you sent to them asking for this information, and we will obviously pursue that with the Crown Estate in due course and we will clarify why that information was not provided.

Q663 Mr Reid: If the Crown Estate were to be devolved, what would be the main options that would be considered for the future ownership or management of Crown Estate foreshore?

Linda Rosborough: Again, I take you back to my previous answer that this is a matter for the Scottish Parliament. Foreshore issues are complicated. There has been a Law Commission review of the law on this looking at increased access and rights that people have over the foreshore. This is the sort of territory that would be considered once this was devolved to the Scottish Parliament.

Q664 Mr Reid: It sounds to me that the Scottish Government is saying that they want the Crown Estate Commissioners devolved but have not given any great thought as to how it would be managed after that. Is that a fair statement?

Linda Rosborough: No, it is not at all a fair statement. The paper sets out quite clearly that what would happen in the first instance is that if the reservation was removed some increased

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accountability would be put in place for a transitional period pending which the Scottish Government would bring forward proposals for legislation and there would be wide-scale debate about those proposals in Scotland. That is the process that would be put in place. I think that that is an entirely reasonable approach.

Q665 Chair: Well, you are asking for power over the Crown Estate in Scotland to be devolved without having any idea at the moment about what you would actually do with those powers and responsibilities. The position seems to me almost entirely vacuous. We were next going to ask you whether or not you would favour community landowners, where there has been community land buyout, having control over adjacent foreshore, but presumably you are not able to tell me that because that is something that would be the subject of consultation.

Linda Rosborough: The Scottish Government has very clear policies on community empowerment, community development, and very clear policies on safeguarding the role of local authorities and respecting that, and would approach the issue of the future of the administration of the Crown in Scotland based on those policies.

Q666 Chair: Sorry, is that a yes or a no, then? I think there is a consensus emerging among people on the Committee that we would be very keen to see community land ownership extended to the foreshore. At the moment, as far as I can see, we are not clear whether or not the Scottish Government supports that because you have not done any of the consultation or thinking about that. Is that correct?

Linda Rosborough: The Scottish Government has been quite clear that the whole reason why we are looking for the devolution of the Crown Estate is so that communities can benefit, and therefore the Scottish Government will be looking to ensure that that is exactly how things are taken forward. But this is a complicated matter that will not be resolved by a simple couple of paragraphs in a document, and needs to be worked on in detail with the key participants, and the Scottish Government is committed to such a process. However, we have set—

Q667 Chair: You sound like the Crown Estate. We are trying to get some straight answers. Let me just come back to this. If we were in favour and we were saying to you, “Look, we are quite keen to devolve this to you on the understanding that you would then give control over the foreshore in areas where there have been community land buyouts. Do you agree?” you can’t give us a yes or no. You can’t even tell us whether or not that would then be one of the subjects of consultation.

Linda Rosborough: It certainly would be the subject of consultation, as I have said, that communities—

Q668 Chair: Can you tell us what else would be the subject of consultation then? I asked you specifically earlier on whether or not you had a clear idea about how you were going to progress this, and you indicated that no, you did not, but there would be a

consultation. So if you are clear that that would be one of the options, what other options would there be in this area?

Linda Rosborough: Scottish Ministers will decide what they bring forward for their consultation when they bring forward their consultation.

Q669 Chair: I hope they will decide it before they brought it forward. But, again, you do sound like the Crown Estate in the sense of, “We will only tell you when we have made up our mind completely.” Surely there has been some thinking about what the options for the control of the foreshore would be. You are asking for us to recommend that it should be devolved in order that you can consult, but presumably you must have given some thought to what you would consult about.

Linda Rosborough: The Crown Estate in Scotland consists of a very wide range of assets.

Q670 Chair: That is right, and I am asking you about one of them just now, about the foreshore.

Linda Rosborough: I am saying that the Scottish Government will bring forward its proposals on the foreshore and other aspects of the Crown Estate holdings when it brings those forward and—

Q671 Chair: Is this a “don’t know”? When I go canvassing, there is a difference between don’t know and won’t tell. I am not clear whether or not at the moment your answer is a don’t know or you just simply won’t tell us. Is this going to be an option, yes or no?

Linda Rosborough: You are trying to invite me to say something that I am not—

Chair: I am inviting you.

Linda Rosborough:—in a position to say, which is the content of a forthcoming consultation, in the event that the UK Government chooses to accept the recommendation in relation to the devolution of the Crown Estate. The paper that we have put forward sets out in some detail what the aspirations and expectations of the Scottish Government are in terms of the future use of the Crown Estate, and makes it clear that communities benefiting is core to the thinking for the future.

Q672 Chair: But very seldom do we ever have anybody in front of us who says, “Our intention is that this should make things worse for the community”, so almost everybody says their intention is that the community would benefit. What we are asking is for clarification as to whether or not one particular option that we have identified would be part of that. Basically, I think the Scottish Government position is that they are asking us to buy a pig in a poke, to recommend devolution of the Crown Estate to the Scottish Government without having any idea whatsoever what direction the Scottish Government then move in. That is a fair assessment, isn’t it?

Linda Rosborough: The position of the Scottish Government is that the Scottish Parliament and the people of Scotland should determine what happens in relation to the Crown Estate in Scotland.

Chair: Yes, indeed.

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Q673 Jim McGovern: Perhaps in my naivety I thought that we were hearing evidence from witnesses who were non-political, but are you here speaking on behalf of the Separatist Scottish Executive? It sounds very much like it to me.

Linda Rosborough: I am a civil servant working for the Scottish Government.

Jim McGovern: Scottish Executive. There is no such thing as a Scottish Government.

Q674 Mr Reid: Are there any drafts of consultation papers currently in existence on this subject?

Linda Rosborough: No.

Q675 Chair: So there has been no work done at all about what the subject consultation might be?

Linda Rosborough: There are no drafts in existence. I answered the question.

Chair: No, I understand that.

Q676 Lindsay Roy: Why would that be the case?

Linda Rosborough: Sorry?

Lindsay Roy: Given the centrality of this to the Scottish Government's case, why would it not be the case there was some initial drafting and preparation?

David Wilson: If I may, because I think the focus of our attention has been on setting out the case, which was clearly done back in June, for the devolution of those powers. As of yet, there have been some meetings with the UK Government, but I don't think there has been any response to that process.

Q677 Lindsay Roy: We are six months down the road from that.

David Wilson: We haven't had a response from the UK Government, and the focus has been, as Linda has rightly said, making a case for the devolution of those powers to enable the Scottish Parliament and Scottish Ministers to then consult and decide on how they would utilise those powers, which is what you would expect under the devolution arrangements within the UK.

Q678 Lindsay Roy: But you are also aware of the work of this Committee and thrust and focus of it.

David Wilson: We have contributed to that Committee and we are engaged with you on that.

Linda Rosborough: There is also very active dialogue going on within the Scottish Parliament in relation to the *Scotland Bill* and the proposed amendments, which is also taking evidence and which is also considering these issues.

Q679 Mr Reid: If the Crown Estate were to be devolved, is there a presumption that there will be further devolution of control of the seabed to local authorities, local communities, or would controlling the seabed centrally from Edinburgh be one of the options?

Linda Rosborough: The paper suggests that one of the issues would include promotion of local asset ownership options and that comes from—

Q680 Mr Reid: Would controlling the seabed centrally from Edinburgh be one of the options in the consultation or is that ruled out?

Linda Rosborough: Sorry, I am not following your question.

Mr Reid: In the consultation that would happen on devolution, should devolution happen, would control of all the seabed remaining centrally in Edinburgh be one of the options or is that ruled out?

Linda Rosborough: The paper, as I said, sets out both proposals in relation to streamlining in relation to leasing involving Marine Scotland, but also includes options such as local asset ownership options and there is—

Q681 Mr Reid: Is central control ruled out, yes or no? The entire ownership of the seabed remaining with the Scottish Government, is that ruled out?

Linda Rosborough: I have already said that there is no draft consultation document and I have already said that the—

Mr Reid: All right, so the answer is no.

Linda Rosborough: I am not saying yes or no. I am saying that no decision has been made.

Q682 Chair: No, but you have just said to us that giving control of it down to a local area is something that would be considered, because it is in the document.

Linda Rosborough: Yes, indeed.

Chair: So there are some strands of what your policy options might be which are decided already, and others that are not.

Linda Rosborough: Which are, as you say, included in the document.

Chair: Okay, that is fine.

Q683 Iain McKenzie: You will be aware that CEC provide no information on the costs of their marine operations in Scotland, and therefore the level of actual surplus is unknown. The Scottish Government paper proposes using surplus marine revenues from seabed leases to reinvest in marine renewables and coastal community benefits. How would the size of the surplus be determined in terms of the types of cost that the Scottish Government would be deducting?

Linda Rosborough: As we move towards devolution of the Crown Estate in Scotland, there will need to be a lot of work done in terms of identifying all the key issues, including much better understanding of exactly what you are talking about, the financial arrangements, the staffing, the administration, the workload, the details of the work that the Crown Estate Commissioners do, and the scope for how that could be managed differently in Scotland, including the arrangements whereby staff might be moved to a different structure or there might be cross-border management arrangements going forward. That would take us exactly to the territory that you are talking about—identifying what the underpinning administrative costs are associated with running the organisation in its current form, how far those relate to their Scottish interests and how far there can be any reasonable separation of the work in relation to Scotland and the work elsewhere. That would be a

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key part of the next phase of the work that would have to be done.

Q684 Iain McKenzie: So with the differing structures, would the emphasis be on to increase surplus there or pick up what you have and further develop as you go?

Linda Rosborough: Our ideal would be to carry out the work more efficiently, if that were possible. That is not always possible when you bring bodies together, but that would be the ideal. Certainly the existing arrangement would be the starting point.

Q685 Jim McGovern: The Scottish Executive carried out a consultation that ended earlier this year on securing the benefits of Scotland's next energy revolution. What were the main findings?

Linda Rosborough: I have a copy here somewhere. There was general agreement that Scotland should benefit from renewable energy and wider efforts towards economic and community sustainability as part of that. There were recurrent themes about local ownership of natural assets and links to broader issues of community control of resources. There was general support for reform of the administration of the Crown Estate Commissioners operations within Scotland and improving transparency and accountability to the people of Scotland. There was a general agreement that Crown Estate revenue should be retained in Scotland. Most of the people supported the Future Generations Fund idea within the paper and so on.

Q686 Chair: And so on?

Linda Rosborough: Well, I can go on. Sorry, I thought perhaps I had talked enough.

Chair: We have plenty of time. Go on.

Linda Rosborough: I thought we were over your time already.

Chair: No, no, we are enjoying ourselves so much that we are prepared to listen to you longer. Go on. Just the headings, just for the record.

Linda Rosborough: People were looking for local skills, improved infrastructure, energy conservation, bringing benefits to both communities and developers. People were looking for long-term sustainable community projects, giving benefits from renewables. Some people were saying, "Why are renewables expected to offer a community benefit in ways that other industries aren't?" Generally, people were looking for communities to be more involved and empowered. There are some wider issues about the natural resources of Scotland and who had the rights to those benefits and the role of social justice in terms of the distribution of impacts and benefits. There were some issues from the industry, from what I can remember, in terms of looking for stability and wanting to be sure about the appropriateness of revenue streams coming through from them.

Q687 Jim McGovern: Can I clarify then whether or not the Scottish Government accepts all those recommendations that have come forward and whether or not they would inform any consultation on the Crown Estate that might take place if it was devolved?

Linda Rosborough: Yes. The purpose of the consultation is informing our future thinking and that is very much where we are. The nature of the policies that the Scottish Government is following is supporting community empowerment, community development as key to how we are operating and the policies that we are following.

Chair: Right, okay. I don't want to go back over a number of other areas where we were seeking clarification from you and did not get it. Are you happy with that, Jim?

Q688 Jim McGovern: Yes. Well, further to that, the UK Government has said that with its Coastal Communities Fund, coastal communities should benefit from 50% of total marine revenues, not just surplus revenues. Would the Scottish Executive equal that commitment?

Linda Rosborough: The Scottish Government, of course, would like to see all the revenues coming to Scotland and not just 50%.

Q689 Jim McGovern: Sorry, you didn't specifically say coastal communities though. This is a different issue. It is about how much is retained in the immediate area, and the proposal from the UK Government relating to the big lottery as a distributor is that 50% should go to coastal communities. Now, we are not clear and would seek clarification from yourselves as to whether or not the Scottish Government would match that and say that 50% of the revenues, not the surplus but the revenues, would go to coastal communities. We understand the point about you wanting all the money to come to Scotland, but whether or not you have a policy in terms of the proportion that would go to coastal communities.

Linda Rosborough: The Scottish Government has yet to see the details of this scheme that has been proposed and I think there are quite a lot of issues underpinning it that are of some complexity. Define coastal, define community. These are not simple and straightforward issues and I think it takes us back to my previous question. The Scottish Government is looking to have that debate within Scotland and to bring forward proposals to the Scottish Parliament, but certainly we have made clear in the document that was prepared earlier that the communities would benefit by a proportion and that there would be some sort of national fund of the other proportion. So looking for that sort of balance is very much where the Scottish Government is coming from.

Q690 Chair: Well, that is right. We have taken evidence from a number of groups and organisations. I think it was Scrabster where the people said that they didn't want all the power going from London to Holyrood and they certainly didn't want it all going to Inverness; they wanted it all to come to Scrabster. Has the Scottish Government given any thought to the way in which any surpluses or revenues generated would be divided between the immediate coastal communities, say the local authorities and the central pot or, again, is that something about which there has not thought been given?

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Linda Rosborough: I take issue with “no thought been given” because it was the Scottish Government that produced the consultation document last autumn that started this whole debate, securing the benefits from this new renewables opportunity. It is the Scottish Government that has been promoting that communities should benefit.

Q691 Chair: To be fair, this came up through Calman and has then generated—this has been running for a while.

Mr Reid: Yes, it has been running for decades.

Chair: Absolutely. Do you have any concrete proposals then as to how the division would take place or, again, is this something that would just simply be the subject of consultation without having any clear idea at the moment about what you would be consulting about?

Linda Rosborough: The paper I think is quite clear and sets out what—

Chair: Which paper?

Linda Rosborough: The paper that we produced in June.

Chair: Yes, we have seen that one.

Linda Rosborough: Which you have seen?

Chair: No, we have seen that.

Linda Rosborough: That sets out that there would be community benefits delivered through the creation of a fund for future generations and how the fund would be used and it talks about the mechanisms, which includes the promotion of local asset ownerships, community funds and investment in education and training, particularly for young people. It also talks about linking the Crown Estate revenues with released fossil fuel levy monies in relation to investment in the renewables sector, which is the other proposal for the surplus revenues.

Q692 Chair: Well, that is right. I did notice that you were suggesting several different buckets into which this money generated could go without giving any clear idea as to what the proportions between them would be. People in politics quite often try to spend the same money several times over when you are seeking support, but what I am looking for now is some sort of guidance as to what is in the Scottish Government’s mind about the proportions. That is why we specifically referred to the 50% that the UK Government has suggested would go to coastal communities through the lottery.

Linda Rosborough: The paper is quite clear that a proportion is to be used for community benefits around Scotland’s shores.

Q693 Chair: Right. What sort of proportion was that?

Linda Rosborough: The paper is saying, “A proportion for community benefit around Scotland’s shores and a proportion for surplus revenues”.

Q694 Chair: Yes. What sort of proportion?

Linda Rosborough: It doesn’t say which proportion.

Q695 Chair: I mean, .001 is a proportion. The UK Government has suggested 50% would go to the

coastal communities. Is the Scottish Government willing to match that?

Linda Rosborough: The Scottish Government believes that this issue should be settled by the Scottish Parliament and proposals should come forward from the Scottish Government to the Scottish Parliament, but it is clear that it sees communities around Scotland’s shores benefiting as being the key driver for its aspiration for the devolution of the Crown Estate. That is clear from this document and it is clear from other policy statements given by this Government.

Chair: But you can’t give me a figure at all.

Q696 Lindsay Roy: Can I ask, just on a slightly different tangent, if the Scottish Government were to gain control of the seabed, would the revenue from the seabed be used to replace the current subsidy provided to install and operate wind turbines?

David Wilson: Can I play back the question? Would it be used to replace the current renewables obligation funding?

Lindsay Roy: The subsidies, I think.

David Wilson: We wouldn’t expect it to. We would expect it to be additional support over and above the support through the renewables obligation. It would not replace it.

Q697 Chair: Okay, I think that covers most of the points. Are there any observation that you want to make to us? Usually the question I ask at this point is: are there any answers you had prepared for questions that we haven’t asked?

Can I just seek clarification? You are speaking, as I understand it, on behalf of the Scottish Government relating to all of the Crown Estate.

Linda Rosborough: Yes.

Chair: Can I just clarify what your view is in terms of the urban properties and the farms?

Linda Rosborough: I think similar issues apply. There would be an initial period in which things would stay as they are, pending this broader discussion. The other property of the Crown Estate, some of it is quite archaic, so there are some rights in relation to oysters and suchlike that probably need to be reviewed. In relation to the rural property and some of the historic property, there may be scope to look at other possibilities for managing it in a way that is better fitted to the nature of that property. The Scottish Government is already a major manager of property in relation to the crofting counties, and we obviously also have the Forestry Commission who report directly to Scottish Ministers in relation to Scottish property. So there are already arrangements.

Q698 Chair: Can I just press you slightly on the question of the urban estate? It seemed to us in previous discussions that the urban estate arose simply because of the Crown Estate’s role as a property developer throughout the whole of the UK. There was nothing intrinsically Scottish about some of the urban properties that they had and there was no clear reason under the devolution settlement why the Crown Estate should be stopped from continuing to invest as a property company throughout the United Kingdom as

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a whole. Is that an issue with which you would disagree?

Linda Rosborough: I think I have to think that one through, but it is certainly the case that the Crown Estate has been disinvesting in urban property in Scotland in recent years, and that has been quite marked, and the historic tradition in Scotland hasn't been equivalent to that elsewhere in the UK of having a substantial portfolio of urban property. I am also struck by the fact that the Norwegian oil fund has been buying some property that the Crown Estate have been selling in London as an investment. This is the fund that has been—I am just sort of thinking through—

Q699 Chair: But surely you shouldn't need to think it through while sitting in a Select Committee hearing. The Scottish Government have asked for the whole of the Crown Estate to be devolved, including the urban property. Are you saying nobody has thought of it at all?

Linda Rosborough: Sorry, I was thinking—

David Wilson: Thinking through the question.

Linda Rosborough:—through the question, because it wasn't one I had prepared. I was also thinking about, yes, the Scottish Government has asked for the whole of the property. The question I thought you were asking was in a future arrangement would the Crown Estate be precluded from investing in property in Scotland, and I was thinking about the Norwegian oil fund investing in property in London and how you would draw up the legal context. So I think the question is slightly more complicated, but certainly the Scottish Government is looking for the devolution of all the property that is within the Crown Estate's remit at the moment and not just the seabed.

Q700 Chair: Okay. Can I just pursue that point about the urban property. One of the things that had been suggested to us is that there are things that are of much greater importance to a devolved Scotland, such as the seabed or the foreshore, than say the issue of urban property, and that splitting up the Crown Estate in such a way that the urban property portfolio remains run from London and they were then free to invest throughout the UK is not something that the Scottish Government would want particularly to die in a ditch over. I wondered whether or not that was a position that you accepted, or whether or not in principle you just say everything that is in Scotland has to be devolved?

Linda Rosborough: I certainly can't speak for Ministers in terms of dying in ditches, but I think one of the issues that we haven't talked about is the Crown Estate has plans for investment in renewables going forward, and part of the argument that the Crown Estate has for their continuation is about the ability to bring in investment from other parts of the UK. The Scottish Government would certainly be looking to look at the sort of fair share for Scotland as a whole, looking across the Crown Estate's assets, taking account of past sales and future asset plans and looking for a fair overall position, taking account of all those disparate factors, and that I think takes us to some—

Q701 Chair: Under separation there would be some sort of divvy-up, to use a technical term. I understand that, but we are not in that position at the moment. Okay, I think it is clear to us that perhaps this matter has not been investigated as thoroughly as some of the others, I think it is fair to say. Sorry, Mr Wilson.

David Wilson: No, I was simply going to say that the complete change in circumstances that the offshore renewables agenda has made has been the focus of consideration of devolution of the Crown Estate but, as I think you already know very clearly, the proposal is quite emphatically for the whole of the Crown Estate's activities to be devolved.

Q702 Chair: Right. I just wanted to establish that there was no justification that you brought forward at all for the devolution of the urban estate, or indeed of the farms, as far as I can see.

David Wilson: Our focus in the discussions has been on the offshore renewables side, but Ministers are very clear that their proposal is for the whole responsibility for—

Q703 Chair: No, I understand that. They just haven't given any justification for the other aspects.

David Wilson: We could have a detailed discussion.

Chair: Then we are flying in a circle.

Q704 Mr Reid: When we spoke to tenant farmers' representatives, they told us that a significant number of the tenant farmers on the Crown Estate, landed estates, had applications to buy submitted under the Land Reform Act but, of course, because the Crown Estate never sells these estates, they can never realise the aspiration to buy. Should these estates be transferred to the Scottish Government, is there any Scottish Government policy in place that would allow the tenant farmers to buy without waiting for the estate to go on the market?

Linda Rosborough: Not at the moment, because the Scottish Government doesn't have, but it is certainly the sort of territory that would be part of this discussion. As you know, this is something that, in terms of policy, the Scottish Government is very enthusiastic about.

David Wilson: I think that is something we could give you a note on, particularly in the context of the experience of the Scottish Government as a landowner of its own assets and what it has done itself when it already has some assets. So we can give you a note.

Q705 Chair: Can you just clarify for us, though, if the Crown Estate's farms were transferred from the UK Crown Estate to the Scottish Government, would that trigger the right to buy?

Linda Rosborough: I think you need a lawyer to answer that question.

Q706 Chair: But surely you must have considered this.

Linda Rosborough: I haven't at the moment, no.

Q707 Chair: Well, surely the Scottish Government must have considered this.

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David Wilson: That is something that would have to be looked at as part of—

Q708 Chair: But wait, do I have this right? You are asking for the farms to be devolved without having considered at all whether or not that process would give the tenant farmers the right to buy?

Linda Rosborough: No, not at all. The amendment that we are proposing to the Scotland Act would not give tenant farmers the right to buy.

Q709 Chair: So you have checked this?

Linda Rosborough: Yes. What I thought we are talking about is a further stage—

Q710 Chair: Right, fine. Sorry, I asked you earlier on whether or not you had checked this and I got the

impression that you were saying that you didn't know, but you do know.

Linda Rosborough: I was talking about something different.

Chair: Right. Any other points that you want to raise with us? Colleagues?

David Wilson: No, thank you.

Chair: Okay. Thank you very much for coming along.

David Wilson: Thank you.

Chair: We will adjourn for a moment. Can people at the back hear properly or would people prefer to have the seats moved to the side? The staff will move seats then if you want to do that so that people can—

Examination of Witnesses

Witnesses: **Gareth Baird**, Scottish Commissioner for the Crown Estate, **Rob Hastings**, Director of the Marine Estate, **Tom Mallows**, Consents and External Relations Manager, and **Alasdair Rankin**, Head of New Business Development in the Marine Estate, gave evidence.

Q711 Chair: Thanks for coming along to see us today. As you heard earlier on, we are here to conduct an examination of the Crown Estate. I wonder if I could start, Mr Baird, by asking you to introduce yourself and your colleagues, for the record, and just give us an indication of their responsibilities.

Gareth Baird: Certainly, Chairman. My name is Gareth Baird. I am the Scottish Commissioner for the Crown Estate. On my immediate left is Rob Hastings, who is Director of the Marine Estate. Further to the left is Alasdair Rankin who is Head of Marine Business Development, and on my right is Tom Mallows who is the Consents Manager with responsibility for external relations, policy and planning in the Marine Estate.

Q712 Chair: Thank you very much. Mr Baird, in your role as a Commissioner, as a part-time appointment, could you clarify for us how much time you spend on that and the nature of your remuneration?

Gareth Baird: Certainly. Recently obviously the workload has increased a wee bit, not just because of the various committees but also because we are changing the management structure in Scotland. My salary is just shy of £26,000 and I think I spend a good 20% of my working time involved with the Crown Estate.

Q713 Chair: Of the amount of time—20%, say one day a week—that you spend then on Crown Estate business, how much of that is exclusively Scottish and how much is UK-wide?

Gareth Baird: I am up at the Bells Brae office in Edinburgh a lot speaking to colleagues in the Edinburgh office, whom you met today. I also have a lot of visits in Scotland. I have been a Commissioner now for two years and particularly over the first year I engaged in a lot of visits to try and learn more about

parts of the Crown Estate of which I had little knowledge. I attend nine or 10 board meetings down in London, in Regent Street, in New Burlington Place, and then we have a board away day once a year—which is a contradiction in terms as it is two days—and this year that was in Kent looking at marine renewable wind farms and next September that will be here in Edinburgh.

Q714 Chair: Is it fair to say that 20% of the time is spent in a UK-wide remit and the balance, the 80% of your 20% working week, is spent on exclusively Scottish matters?

Gareth Baird: I think that would be a fair assessment.

Q715 Chair: Right, okay. I wonder if you could maybe give us an indication of what you see as being your responsibilities in Scotland.

Gareth Baird: We see the Crown Estate effectively as a trust managing all the nation's assets within the United Kingdom, or at least the ones we are given responsibility for, and as Scottish Commissioner I am one of those trustees and obviously with a particular interest in Scotland. My role on the board is to make sure that Scottish conditions and considerations are taken into account when the board makes its decisions, and recently there have been several discussions about that. I chair the Scottish Management Board. That is a sub-committee of the main board that meets four times a year to make sure that the executive and management teams within the Crown Estate or organisation are very well briefed and aware of matters in Scotland.

I also chair the Scottish Liaison Group where we have 21 members, our stakeholders. I am delighted to say that the Scottish Government, represented by Marine Scotland, have come on as a full member of that liaison group. Just recently my role has been enhanced. We have been getting, as an organisation,

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some very clear messages about more accountability and transparency and communication within Scotland and so, if you like, I act as an ambassador within Scotland.

Over the past two months we have met with the First Minister and three Cabinet Secretaries. We have met the leader of the Liberal Democrat Party in Scotland and we have met two Labour MSPs. It is our intention in the new year—when our new chief executive, Alison Nimmo, is appointed—to crank up the number of those meetings. Alison will obviously want to meet with the First Minister and several of the Cabinet, and indeed the leaders of the other parties, and also get as wide dissemination of knowledge about the Crown Estate through Scottish Parliament as we can.

I would like to say to you, for the record, how pleased we were to see you at Bells Brae this morning. We are actively encouraging MSPs of all parties to come down to Bells Brae where you would see a lot of the activities of an extremely technical nature and to further educate politicians about exactly how we go about our work and the expertise that is there.

Q716 Chair: Can I clarify with you whether or not you have any delegated authority for anything in Scotland?

Gareth Baird: No. We very much, as you know, work as a United Kingdom body. You say delegated authority. It is our intention over the next six months that we will share our business planning with the Scottish Government, and indeed with our Scottish Liaison Group, our stakeholders, just to make sure that we are working with the grain of Government and what I see as properly carried out business.

I would like to say that our team has consistent and continual engagement with business and communities and that continual communication will come into the building up of the business plans. This is not something that is going to be produced overnight; this is just a development surrounding the needs of all the stakeholder organisations.

Q717 Chair: We will come on to some of those points in a moment but to clarify that you have no delegated authority—I was going to say for anything but you know what I mean. In a sense, it is not as if there are any matters in Scotland for which you solely are responsible; everything in Scotland all has to be agreed by the main board.

Gareth Baird: Well, I will make some decisions, not at the high level strategic level but I would look to discuss this with my fellow board members, just as they discuss issues that have been decided upon in Regent Street or a retail park or indeed in the devolved administrations of Wales and Northern Ireland.

Q718 Chair: Clause 22 of the Scotland Bill it is proposed would make the Scottish Commissioner a statutory appointment, as you will be aware.

Gareth Baird: Yes.

Chair: What difference do you think that would make to the position in practical terms?

Gareth Baird: In practical terms I don't think an awful lot and we welcome that clause in the Bill.

Q719 Jim McGovern: When giving evidence to the Committee in June, Roger Bright stated that the Crown Estate is accountable to the Treasury and not the Scotland Office. Do you have any regular reporting arrangements with the Scotland Office and, if not, what is the process for discussion between the Crown Estate Commission and the Scotland Office?

Gareth Baird: We have a lot of reporting to the Scotland Office; indeed we have met the Scotland Office 10 times since the May election. As we have consistently said, we seek to work with the grain of Government, whether that is Westminster or Holyrood.

Q720 Chair: When you say you have met the Scotland Office 10 times, is that the Secretary of State for Scotland, the Shadow Secretary—

Gareth Baird: I think we will have met the Secretary of State for Scotland at least half a dozen times within that, at least six out of those 10 times.

Q721 Chair: When you say meet, I meet people at weddings, I meet them at funerals, I meet them at openings and closings. Have these been formal meetings as such?

Gareth Baird: Yes, both at Dover House and at—

Q722 Jim McGovern: Can I just say that I think Tom was at that meeting and it was Tom that gave the evidence about regular meetings with the Secretary of State or at least the Scotland Office. Maybe you would be better placed to answer that question.

Tom Mallows: I would just reinforce what Gareth said. We have regular meetings with the Scotland Office to discuss our business, both official and at ministerial level. I believe that there have been at least five formal meetings since the current Secretary of State for Scotland came into his role, but we would be happy to follow that up to provide the detail of that. We keep the Scotland Office apprised of our business activities in Scotland and it is important to bear in mind the framework of the Act, which places the primary duty for managing the Crown Estate with the board, with Gareth and his board colleagues. So that is where the primary responsibilities lie.

Q723 Iain McKenzie: On the formal aspect of these meetings, who initiates the meetings? Is it the Scotland Office or is it yourself? Are they plugged into the calendar on a regular basis now, or is it just when either one of you feels that you need a meeting you call a meeting?

Gareth Baird: They would take place on a fairly regular basis in any case. Obviously with the activity of the Scottish Affairs Committee and the call from the Scottish Government to devolve the Crown Estate there has been more discussion.

Q724 Chair: There is not a set monthly meeting, six-weekly meeting?

Gareth Baird: No, no.

Chair: It is just an as and when and can be initiated by either side?

Gareth Baird: Indeed, and has been.

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Q725 Jim McGovern: In the Crown Estate Act 1961 it is the Secretary of State for Scotland who has the power of discretion over your operations in Scotland. Does that not in some way make you formally accountable to the Secretary of State for Scotland and do you appreciate that and do you agree with that?

Gareth Baird: Very much so.

Jim McGovern: That was a short answer.

Gareth Baird: I do agree and it does make us accountable to him.

Q726 Chair: His having the power of direction has been likened to us as the nuclear option. He has never had to use that at all. Maybe you could just clarify for us how this process, up to the power of direction, actually works. Is it nods and winks? Is it, "I would very much like you to do this," or is it more subtle than that?

Gareth Baird: In the first instance, I think if we are doing our job properly and communicating properly, doing our job properly on the ground and communicating properly with the Secretary of State for Scotland, that power of direction should never need to be used, and to be honest we have had a very constructive relationship with him. The Crown Estate is a business and we are trying to make sure that Scotland's natural assets and otherwise work as hard as they can and that is the basis we go forward on.

Q727 Chair: Would it be fair for us to assume that you have met the Secretary of State and his colleagues in the Scotland Office more in the last, say, couple of years than in the previous decade and that the close working together is a relatively recent development?

Gareth Baird: I really couldn't comment on that, Chairman. I have no knowledge of that.

Q728 Chair: Can I ask whether or not any of your colleagues can give us some historical references?

Rob Hastings: It is probably a fair reflection to say that engagement with the Scotland Office has been more intense over the last year or 18 months than previously and it is largely to do with some of the matters arising as discussions, as the one we are having here, are being debated.

Q729 Lindsay Roy: Gareth, in fact what I think you are saying is that as a body you have been more proactive and you have taken on, deliberately, an ambassadorial role and, on a personal basis, you have heightened the profile of the Commissioner. It was said there was a strong emphasis on transparency and accountability and you have highlighted that just now. Can you tell us what progress has been made on these points and what your further objectives are to enhance transparency and accountability? Where are we now and where are we going?

Gareth Baird: Right. We have had a lot more contact with Ministers in the Scottish Government, which we absolutely welcome. We have listened very closely to critical comments from people who have appeared in front of your Committee and we are looking at those to see what we can repair, what we can explain better and how we would drive that communication progress

of transparency and accountability, if you like, out in the wider reaches of Scotland.

As far as making sure that our business plan is aligned with that of the Scottish Government, and of the UK Government, obviously with our business plan there has been a history of communication with the Treasury. If you like, that is a given. But from next March we will be making sure that our business plan is aligned with both the Scottish Government and our stakeholder organisations. We see that as key. It is the proper way to do business.

Q730 Lindsay Roy: That is very helpful. In politics and in other spheres of life you often hear fine rhetoric but it doesn't translate into action. You have given us one example. Are there any other dividends that have accrued and what are the key things you are trying to do to improve upon the current situation?

Gareth Baird: I made reference to a meeting with the First Minister that we had in September, where Roger Bright, Rob Hastings, Tom Mallows and I met with him. Out of that we think is coming an MOU on energy sites. I should have said, I beg your pardon, Fergus Ewing attended that meeting. Rob is going on to Fergus Ewing's working party for energy and has already attended a meeting there. That is the marine energy protocol, I beg your pardon.

We are working very closely with Marine Scotland to design the new statutory marine planning system, so this wide-based marine planning to try and get past some of the tensions that you have spoken about to us today. So, in other words, everybody is in the loop, everybody knows what is happening and, other than business confidentialities, there will be much increased transparency in the whole process.

The other part of it that I should mention is that in April we will bring our coastal and rural teams together, because there is a natural fit there, and we think that that will again help lift the level of engagement with some of these communities that are quite distant and difficult to get to grips with.

Q731 Lindsay Roy: What challenges are you facing in agreeing a memorandum of understanding? We heard earlier there were some issues around that.

Gareth Baird: I wonder if I could put this over to Tom, please, because he has very much been discussing this.

Tom Mallows: Yes. You heard the position that we were faced with when we first offered to enter into an MOU to clarify exactly the issues that you heard about: whose role is what. That is precisely what the MOU was designed to do. We have MOUs with the Welsh Assembly Government, with the Marine Management Organisation down south of the border, which says marine planning goes here, leasing and licensing goes there. It fits in a box; there is no duplication, no crossover.

At the meeting with the First Minister in September he very pleasingly, to our ears, agreed that we should proceed with developing some sort of protocol around working relationships. We did also meet John Swinney, the Scottish Finance Secretary, shortly after that who also asked for something along those lines. So in that respect the action is now back with us and

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the Scottish Government and Marine Scotland to take forward the mechanics of that protocol. In that sense we are very pleased to take it forward.

Q732 Lindsay Roy: Where are we on the protocol and the MOU? Is it well developed?

Tom Mallows: We offered heads of terms around a protocol and MOU, as it was at the time, some time last year. I think it was about a year ago, yes. So we have those heads of terms on the table already.

Q733 Lindsay Roy: But no agreement or—

Tom Mallows: No, but we now have the go ahead to try and seek agreement with the Scottish Government. You would be aware that we tried to do a similar thing first off as a pilot with the Highlands and Islands local authorities as well. We have a meeting tomorrow with the Highland Council to try and progress that and we had had very constructive dialogue with the Orkney Council to get that back on the running as well because that is another way, down at the next level, of making sure that what we do is clearer and how we do it with these local authorities is much clearer.

Q734 Chair: I got the impression from listening to the representatives of the Scottish Government earlier on that their enthusiasm for the way in which you are presently working was less than total and that they were somewhat critical of your co-operation, or lack of, with them and it particularly came to a head on the question of sharing of information. Do you have any observations to make about that?

Rob Hastings: We work very closely with the Scottish Government right now and have done for some time and there are some specific things that we are focused on delivering against, such as renewable energy and these sorts of things. There are a number of topical issues that are driving the discussion and then there are a number of other things that are maybe quite historic and that need quite a lot more detailed thought about how to deal with.

So, I am a little surprised to hear that they are having difficulties with us in terms of communicating, because from our point of view we thought we had a very strong and clear line of relationship with the Scottish Government at the operational level. Clearly there is a significant amount of activity that we have to deal with on a day-to-day basis, dealing with all the activities we have going on right now.

I guess that there is maybe some frustrations there, as you may have heard, about those issues that we are not really empowered to deal with, which are maybe more to do with constitutional or political issues about how to address the various responsibilities that we have. We tend to try and put those aside to make sure that we can progress on with the purely operational issues that we need to get done. That is our mandate, that is what we are there to do and we are entirely focused to do that.

What we have done is we have given them full access to all our data and information management systems, including our spatial planning system, which I think they have had some fairly good use of. We try to provide them with all the information that they ask for but I am a little surprised that they had been frustrated

by some bits of information, which I heard a little earlier. I am not clear about what that is. We can certainly take it away and find out what that was. That is a genuine surprise to us. One thing is that we do have an awful lot of data. We have something like around about 5,000 tenancy agreements in Scotland, so giving precise information about that can be sometimes a little bit difficult if it is not well described.

Q735 Chair: Before I let my colleagues in, just picking up on this issue about the lack of a change of data, they did seem quite explicit about there being something in particular—I forget what it was now—that they had wanted from you and that you were not providing to them. They are going to give us a copy of the correspondence. If you have such good relationships with them, how can that happen?

Rob Hastings: Again, Chairman, we are a little surprised by that. It may be quite specific information they are looking for, which we would have to dig out of our database and management information system and create a report that would be of value to them. So we probably need to get more detail on that. Tom, do you have anything?

Tom Mallows: It is probably worth commenting on that specific point around harbours. My understanding had been that we had given them the information. If we haven't it would be an oversight and it would be due to the nature of perhaps having multiple leases on that. You can't just say, "Which one lease does all the harbours?" You have maybe multiple leases, so if it is an oversight—

Q736 Chair: Fine. They are going to let us have a copy of the correspondence and once we have seen that we will then clarify with you whether or not this has been a misunderstanding. But even if there is a misunderstanding you would have thought that there would have been a mechanism there by which these things can be ironed out.

Tom Mallows: I think it must be an oversight.

Chair: It shouldn't have come to this sort of level, should it, really?

Tom Mallows: Yes. No, I agree.

Lindsay Roy: You should be aware of it directly rather than finding out indirectly at a meeting here.

Tom Mallows: Yes. I would just reinforce, the MaRS tool has cost the Crown Estate a great deal of money to put together and we have given it completely openly and in fact we have continued to work hard to get a collaboration agreement—which we have recently signed as well, we have recently agreed as well with the Scottish Government—about how it is used, just to make sure this issue of landowner versus regulators is clear in the use of that. So the intent is there.

Chair: I don't want to labour that one too long but the worry for us is whether or not that is indicative or just an isolated example.

Q737 Lindsay Roy: Just to take things further, do you agree that the financial tables you provided to the Committee show that the Crown Estate has raised more capital by disposing of assets in Scotland since

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devolution than the Crown Estate has invested in Scotland?

Rob Hastings: It depends on what time period that you are looking at.

Lindsay Roy: I am talking about recently.

Rob Hastings: Yes. If you looked at the previous year we have invested £4 million in Scotland. If you looked at the four years prior to that there was a disinvestment of £52 million. If you looked previous to that there was a net investment of £49 million. So it depends on which timeframe you are looking at as to what investment we have and it probably would maybe help if I explained why there are those movements.

The Crown Estate operates a UK-wide portfolio of assets. It is quite important for us that we have an amount of liquidity in some of those assets; that is we can buy and sell those assets easily in order for us to be able to achieve a primary objective of ours, which is to get capital growth. The Crown Estate in itself is prohibited from borrowing, so in order for us to be able to raise capital to invest in new activities we have to raise that money through, effectively, capital growth on our existing capital asset base. So, in order to create that growth we need to transact our assets and so, in terms of those sorts of positions you are seeing for Scotland, that is not something that is particularly unique to Scotland. If you looked at the UK portfolio as a whole, you would see capital flows moving all around the UK—Scotland, Wales, Northern Ireland, England—and the objective there is to move our position on capital asset ownership into places where we can expect to see the highest rate of capital growth. It is by those transactions that we can generate capital to then invest. For example, over the next three or four years we will be spending £20 million on developing renewable energy projects just in Scotland. Now, that is new business for us. There isn't an existing asset base we can leverage off here, so we have to create that capital investment there from somewhere, and it comes through this transactional activity.

Q738 Lindsay Roy: Are you saying that a compensatory element, if you look at investment in Scotland overall, over a fairly lengthy period of time, it is a deliberate approach—

Rob Hastings: Within our corporate investment strategy it is not geographic-specific, it is sectoral-specific. We have a balanced risk portfolio where we have certain positions in, say, retail parks, certain positions in office blocks and certain positions in farms, so, it is not a geographic spread. Scotland in itself would not feature as a territorial area that we would be transacting those assets. We would look to transact, say, urban properties around the UK and Scotland may or may not feature in that over any particular timeframe. Equally, we may be transacting on some rural properties and Scotland may or may not feature in that.

Q739 Lindsay Roy: You will understand in Scotland there is what we would call politics of grievance. The table, I hope you agree, also shows the amount you have invested in Scotland over the same period has

been a lower proportion of your overall investment each year than Scotland's share of the capital value to the Crown Estate. Why is that?

Rob Hastings: That is largely to reflect where the opportunity for achieving enhanced value is.

Q740 Lindsay Roy: So there are fewer opportunities to enhance value in Scotland?

Rob Hastings: It depends on the timeframe you are discussing, because—

Q741 Lindsay Roy: It is over the last 10 years.

Rob Hastings: Okay. So now if you are looking forward, project forward, what we do see is big opportunity, if you like, to invest and support the development of renewable energy in Scotland, because that is where there is opportunity for us. In a way it is probably right that we should invest in those areas because that is where we can see some real opportunity to contribute to the delivery of that because we can facilitate and enable the market itself to invest in that. Why would you spend £20 million in developing offshore wind in Scotland? Because by us putting that £20 million there we can leverage in 10 times or 20 times that from the market by the market coming in and developing and investing alongside us in wind farms in Scotland.

Q742 Lindsay Roy: This is again about optimising rather than maximising profit. I think that is the way that people would—

Rob Hastings: It is enhancing it. It is not necessarily maximising. It is enhancing our total asset portfolio value with another big caveat, which is it has to be subject to good management so it has to be a sustainable portfolio in the same sense.

Q743 Chair: Can I be clear, then, the figures that we have indicate that since devolution, over the last decade, you have sold more in Scotland than you have invested, but you are saying to us that because of the pattern of investment then over the next 10 years that position is likely to reverse?

Rob Hastings: Certainly we have significant plans for investment in Scotland in the next five years in these specific areas, renewable energy particularly.

Q744 Chair: I can't remember whether or not we have seen that. Is that in your business plan or—

Rob Hastings: If you haven't we can certainly provide that, but it is a fairly public statement of what our intention is. We are co-investing with developers in offshore wind right now and those co-investments are contracted, so we have a number of parties involved with two big zones in Scotland whereby we have an agreement to invest alongside them.

Q745 Chair: I understand. The point that has been made to us, which seems to be a not unreasonable one, is that since devolution you have effectively disinvested, in capital terms, in Scotland, because what you have sold is larger than the amount that you have invested. I can understand that within the framework but what I think you are now saying to us is that in the next 10 years you envisage that it will

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be the other way around. What I am saying to you is can you prove it in terms of either business plans or published information, something other than just simply assertion? How can you show us that? Will you write to us?

Rob Hastings: Yes, we can provide you with some information about that, which is projected out over the next three years. We don't have firm investment plans much beyond that but certainly we can give you some information on that timeframe.

Q746 Chair: Fine. This is clearly one of the important points that the Crown Estate have made to us about the need to have a UK-wide look at the question of renewables, because you are then able to invest from your capital resources throughout the United Kingdom as a whole. But rather than just simply having assertion, I think it would be fair to have some figures and an indication of how firm these commitments are before we make our recommendations and report.

Rob Hastings: I will happily provide those to you.

Q747 Graeme Morrice: I wanted to touch on the revenue side of things, but before I do that could I maybe go back a little bit, just spend a few seconds if you don't mind, on this issue that was raised prior to Mr Roy raising his question on capital finance, the one that was raised in earlier evidence from Marine Scotland with regards to seeking information on property assets that you hold. I wanted to ask what I think is a fundamental question. On the basis that these are kind of publicly owned assets that you obviously manage, is there not something that is available publicly anyhow through the web, through databases that are made publicly available? I would have thought that because you are a public agency all the property holdings that you have, which are owned by the state, should be known to everybody who lives within the state.

Alasdair Rankin: The way that the information would be disclosed is very different. Whereas with an urban estate you can essentially provide a list of addresses that set out the location and the size of a unit, in Scotland with the Marine Estate there is circa 5,000 miles of coastline, there are 150 islands that are inhabited and uninhabited, so we can't exactly give a list, an Excel spreadsheet, that sets out the individual asset ownerships and where they are. What we have tended to do is have a geospatial plan that sets out essentially a map of Scotland and what is Crown and non-Crown around the coastline. That is a far easier way to graphically disclose what is in our ownership and what isn't in our ownership.

Tom Mallows: We have provided that to the Committee already.

Alasdair Rankin: That has been provided. I think what I am trying to say is we have given a list of terrestrial assets, which is essentially a list of, let's say, addresses, and on the Marine Estate I believe that we have provided a map of Crown and non-Crown assets.

Q748 Graeme Morrice: So you are clear, in effect, about what you own, and that information is publicly

available. Anybody who wishes to access that information can readily get hold of it.

Alasdair Rankin: Absolutely, yes.

Q749 Chair: Let me be absolutely clear then, there should be nobody coming to us saying, "There is information about the Crown Estate's holdings that I am unable to clarify"?

Graeme Morrice: I think that was the point I was trying to make, Chair.

Tom Mallows: There are two caveats to that. First of all there may be detail about some commercial relationships we have on leases that may not always be publicly available, so some detail around that ownership.

Q750 Chair: Sorry, what does that mean? If I point at a bit of ground, I would be able to find out in your records whether or not you have that. I might not be able to access the nature of the contract but any one particular piece of ground I would be able to identify that either you had it or you had it in partnership with somebody else.

Tom Mallows: Yes, with one caveat.

Chair: So, nobody should be writing to us saying, "They are keeping things hidden in terms of what they own and how they are developing things"?

Q751 Graeme Morrice: What is the caveat?

Tom Mallows: In response to the second question first, if anyone is writing to you about that then we would want to hear about it because we would want to make that information public. The reasons that that might happen are that there are assets—my understanding of it and I hope I have my understanding correct—that the Crown Estate has rights to that have yet to be contested, salmon fishing, various other things. I would need to check precisely the list of them, but we have provided this to you. So there may be cases where a contesting of the ownership would have to be gone through in order to say whether those Crown rights are Crown rights.

Q752 Chair: You are assuming that they are unless you are challenged?

Tom Mallows: Yes.

Rob Hastings: I was just going to add that, unlike terrestrial property a lot of the Marine Estate does not have a registered title as such. It is a defined area where a default ownership would be determined to be the Crown. They are those areas where it may well be at some stage that there could be an ownership challenge, there could be a valid reason why it should be in somebody else's ownership. They are quite rare, perhaps very rare situations, but there is that potential to happen. That is just the nature of the historical rights the Crown Estate has had over centuries of its operation.

Q753 Mr Reid: Continuing the theme of transparency, you were talking about transparency with Ministers and with Governments but I want to ask you about transparency with local communities. I will give an example of the island of Tyree, which is in my constituency. As you know there is the massive

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Argyll Array proposed offshore. The community were taken by surprise when the announcement was made that that area had been allocated to Scottish Power and they were surprised that discussions had been going on for a very long time and they had not been involved. Even Scottish Power, in evidence to us, said they were embarrassed that they were not able to make that information public to the islanders. What is your response to that and why was that information kept quiet for so long?

Rob Hastings: This particular issue I think relates to the Scottish Territorial Waters programme that we were undertaking and you will have heard something about the complication we had with regard to the strategic environmental assessment process that we would normally undertake with the Government from the earlier evidence session that you heard.

In terms of the process of communication, imagine the Crown Estate has a particular role, which is a slice of that process. Normally what would happen is that in a programme like the Scottish Territorial Waters offshore wind farm programme there would be a strategic environmental assessment undertaken. During that process there would be extensive consultation, potentially with the stakeholder group you are describing, and that would give them an understanding of what the ambition was but also it would give them some input into that process where they could define what would be perceived to be permissible activity in terms of wind farm development within a particular geographic area. That was not undertaken here because the Scottish Government did not feel that the programme that we were going to launch was going to be big enough or subscribed sufficiently to drive the need to undertake that.

The next step, as it turned out, was that we invited the market to come forward with proposals as to what would their ambitions be in terms of specific wind farm developments in that area, and that was broadly and widely communicated by ourselves. It is a mandatory requirement.

Q754 Mr Reid: It was known that companies were being invited to make suggestions but the specific sites weren't known.

Rob Hastings: At that time the specific sites had not been identified. The call to the market was, was there anybody interested in developing wind farms in this broad geographic area and, if there were, could they submit their proposals to us with some details of the specifics of the site. So the site itself would have been chosen or identified by the developer not ourselves. Of course, once we are into that process itself it is a competitive process because potentially you could have more than one developer pursuing ambitions on the same location.

Q755 Mr Reid: Did more than one developer suggest the Argyll Array?

Rob Hastings: We had 20 proposals come through.

Q756 Mr Reid: For that particular site, the Argyll Array site?

Rob Hastings: I can't say whether or not there was some specific overlap on that, but there certainly was overlap on other sites. In fact the 20 proposals were effectively whittled down to the five—

Tom Mallows: No, 10.

Rob Hastings: The 10, but there are now five developments in process. The 20 led to 10 successful bids and five of those have been carried forward as they stand. So there is an attrition there anyway and that attrition is partly based on the fact that there may be some complications with regards to the potential for that site to be developed, for example some reaction from local communities. But when we are in that process there is a degree of confidentiality required, which is a requirement on us through the statutory requirements that come from, for example, the EU procurement directives.

Q757 Mr Reid: But the company itself was wanting to go public and they say it was you who stopped them.

Rob Hastings: The difficulty they would have had is if they had gone public they would have been in breach of the EU directives. It would not have been our breach, it would have been theirs. So, it wasn't the Crown Estate that was—

Q758 Mr Reid: What EU directive?

Rob Hastings: The EU directive on procurement, competition.

Q759 Mr Reid: So, if the company goes public they are in breach of the directive?

Rob Hastings: The directive is about fair competition. An example of how this stuff goes wrong is that if another company was competing with this company, Scottish Power, and that other company—

Q760 Mr Reid: Was there another company?

Rob Hastings: This is a hypothetical situation I am proposing here, but this is—

Q761 Mr Reid: I want to ask about this particular situation. Was there another company?

Rob Hastings: I don't know that there was.

Tom Mallows: There were as part of the leasing round. Maybe not for the same site, but we had to manage the whole process.

Rob Hastings: There were 20 companies competing for effectively what became five sites. Whether they were exactly the same sites is not clear. As soon as that happens, of course, the competition directives kick in and the reason they exist is, for example, if one company was to provide public information that gave them a competitive advantage over another company that other company could be materially affected. In some cases that could be a stock market listed company and the Stock Exchange would have something to say about that. That is the straightforward sort of—

Q762 Chair: Are you saying to us, then, in these circumstances that local people are so low down the pecking order that they only get told about something once it is finalised?

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Rob Hastings: Not at all, really, because what we need to do through that process is get to what is the definition of the proposition that we can then take to the public, because what is not clear up to that point in time is is there a proposition at all. The fact that we have asked the market to present the proposals to us and the fact that we are considering them does not necessarily mean that we would even proceed with them or whether even the—

Q763 Chair: That is right, but why shouldn't local people just be told that there is the possibility of something happening out there?

Rob Hastings: When we get to that point where we get out of the confidentiality, on the very day that the leases or the agreement for leases, the option agreements, were awarded we went public with it. We went straight to the public domain.

Q764 Chair: Once it was signed you told people, that is right, and people locally, certainly when they met us, gave us the impression that they felt that was a fait accompli, that it had been done, nobody had discussed it with them at all. The Crown Estate had signed this with some big company and they were just helpless bystanders off their own coast. You can understand why they are not happy.

Rob Hastings: We can, and it is a common problem with development and it is the chicken and egg problem, which is when do you tell somebody and how much do you tell them and how sure are you about what you are telling them?

Q765 Chair: Well that is right, but you have solved that by not telling anybody anything until you have got to the conclusion.

Rob Hastings: It is not the conclusion. What we have arrived at is a point where a developer has decided to take the risk to proceed with the process of the development, which includes consulting with the community and all the other work that has to happen, and at any time that development can get terminated. So there is nothing concluded at that point. We have not taken any of the statutory rights away from anybody, we have no powers to do that anyway, and what kicks in then is the regulatory process. It is a democratic process of determining whether or not a development would be acceptable in a specific location. That is something that is outside of our control, as I said. It normally sits with the regulator and the developer puts their planning application through the process and through that process is an extensive amount of consultation and dialogue.

In saying all that, what we could do is probably be more pre-emptive about what the likely reaction from the stakeholder community could be. The challenge we have in this particular area is that an offshore wind farm in Tyree has never been done before, and in fact an offshore wind farm in Scottish Territorial Waters has never been done before, and it is a case of trying to get as ahead of it as best we can and, fallible as we are, to make sure that we have tried to cover off as much of the stakeholder interests as we can. But this is all new, never been done before, and we are trying to work as hard as we can to get there, and the same

would be true for the regulator. Marine Scotland has only just been established. They are pedalling very hard now to try and understand what they need to do in their function as a regulator.

Q766 Chair: Coming back to the question of transparency though, you have in a sense got form, haven't you? When the fish farms were being developed people were telling us about the fact that fish farms would suddenly appear without any discussion with people locally at all and you just did it in conjunction with the developer of the fish farm. The whole thrust of your behaviour seems to be about telling people as little as possible for as long as possible and that causes an enormous amount of resentment, which we have had to bear the brunt of until we explain to people that we won't be taking any of the blame, you will be glad to hear. But your behaviour does seem to have been outrageous.

Rob Hastings: I think it is always going to be a challenge for us to make sure that we can consult with our stakeholder interests as much as we can. The duty and responsibility that sits with us also sits with our developer partners and it sits with the regulator and the regulatory system, which does include local councils whereby, for example, in a fish farm consent application the local council would be a statutory consultee and it is—

Chair: They would now, but they didn't use to be.

Rob Hastings: They didn't use to.

Mr Reid: They didn't use to be a statutory consultee.

Chair: That is now, but in the past before the local authority had that power you went ahead and did it without consulting anybody, which is the form that you have and the image that everybody has of you.

Q767 Mr Reid: Mr Hastings was saying that it was a European directive that meant that this had to remain secret. Perhaps you could write to us with details of the European directive and why it forced you to keep this secret. My final question is, will things be better in the future?

Rob Hastings: We are always planning to do better, that is for sure. That is our business model. We recognise we can always improve and we have big plans—

Q768 Mr Reid: So in the future you will consult at an earlier stage?

Chair: Surely you can't consult at an earlier stage because if a European directive is tying your hands then you can't possibly do anything other than what you are doing at the moment?

Rob Hastings: I think what we could have done with the Scottish Territorial Waters—and when I say “we” I'm talking about the broadest possible “we” here in Scotland—is undertaken the regulatory process a little more judiciously. In other words, we could have avoided some of the issues we have now currently found if the SEA had been undertaken in the right way at the right time.

Q769 Mr Reid: That was the Scottish Government's decision not to do that.

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Rob Hastings: I guess you could argue that we should have made it clearer to them, but we did try.

Q770 Lindsay Roy: Gareth, you spoke earlier this morning about the baggage that is being carried and it has not been helpful. What can you do to remove that baggage, to try and clear the air and ensure that things are done with people and not to people?

Gareth Baird: Well, I have to say that going round I haven't encountered too much of that baggage yet, thank goodness, but I may have been directed to the best places. But I have been among the fish farmers and all these guys as well and I am not encountering—and certainly on the rural side, I am a tenant farmer myself so I would challenge anybody to find a landlord as sympathetic to their tenants as the Crown Estate is and indeed a landlord who will invest with their tenants and offer tenancies to young farmers. They are very progressive. So, in the sensitive areas we are looking at how we engage with these coastal communities in particular over the next two or three months. That is very much work in progress and we are taking cognisance of the comments that have come here. We are going to have to up our game in this and we need to short-circuit some of the opportunities for this tension to arise. I come back to my initial point, it is bad business and the Crown Estate is there to maximise the country's assets.

Q771 Lindsay Roy: To take an example, one of the worst examples that we heard of was in Shetland where they wanted to deepen the harbour for cruise liners to come in and they were charged for deepening the harbour. They were also charged for dumping the waste that was removed from the area. That seems incomprehensible.

Alasdair Rankin: I think on a specific issue like that the starting position is that we use independent surveyors and valuers to assess what the proposition is and if they believe that the works will enhance the value of the operation of the business, the port operation, so their revenue will increase from the works that they are intending to carry out, there is a residual value that is set against that that invariably manifests itself as a rent.

In terms of the materials that are extracted, there tends to be two different charges. If it is a straight maintenance dredge there is a nominal charge but ports and harbours sometimes will carry out a maintenance dredge, store the materials and use the aggregates for onshore development or even marine development, port development, and there tends to be a straight comparison of the price that they would have had to have paid for construction aggregates onshore to that which they have extracted if they are beneficially using the aggregates. The charge that the Crown Estate would invariably ask for would be a significant discount to the aggregate charge onshore. So it is about what value is created from the works.

Q772 Chair: Sorry, let me just be clear about that. I think the version we got was that they were enhancing the role of the harbour by deepening it so they were charged to take the aggregate out, even though that was going to make the harbour better, and then,

because they had to get rid of the aggregate, they were charged for dumping it somewhere else. So you got them both ways in terms of charging them when they were taking steps to enhance the harbour facility. You can see how that does not seem to be as helpful as it might be to people who are trying to develop the harbour. It looks there as if all you are interested in is taking money off them.

Alasdair Rankin: I suppose our starting position is that the Crown Estate has a statutory duty to maintain and enhance the value of the estate, so if a tenant, an operation, a business, has a proposition where they are looking to invest in the Marine Estate to enhance the value of it so they get a value from it, but essentially the public purse would also obtain a value from it, the valuers will go off and work out what that value is.

Q773 Chair: The point I think that was being made to me just now is that the Shetland Trust Port—I think, wasn't it—was publicly owned. So the public were going to get benefit from this anyway but then you decided to charge them twice as well to make sure that you got a share of the public benefit.

Alasdair Rankin: That is our statutory duty.

Rob Hastings: I could add to that there is a standard charging mechanism that applies UK-wide and it is important that those charging mechanisms are maintained, otherwise there would seem to be preferential treatment in various parts of the UK as a consequence of that. What I would add, though, is that in any proposal like this it is in the Crown Estate's interests to see that proposal succeed. There is no reason why we would not want it to succeed. So we would be prepared to enter into a discussion with them to get to that point of getting a successful proposition. The reality is that that specific proposal you are referring to couldn't quite get to the next step and it wasn't because of our charges. It was because they had other financial constraints in terms of making that project work. If they were to proceed on with that project we would be very open to discussion with them as to how we could help them in whatever way we could to make it work.

Q774 Lindsay Roy: They did it. They actually dredged this area.

Rob Hastings: You are right. I am thinking about a different project altogether, sorry.

Chair: Could we maybe just come to the question of revenue?

Q775 Graeme Morrice: All right, turning back to the question I was going to ask originally. Thank you for the indulgence earlier, Chair. See what it led to? The table that you provided on your revenues in Scotland shows that the gross surplus revenue from your operations was nearly £10 million; it was £9.9 million in 2010–11. However, the notes provided with the table make clear a range of other costs would have to be deducted to give a figure for the actual surplus from your operations in Scotland. What are the main items among those other costs?

Rob Hastings: Those costs relate to indirect costs, which are largely to do with administration and management. But they will include things such as

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commercial management, technical support, which includes detailed technical support for things like renewable energy but could also include things like science and detailed support for the aquaculture industry. It would include the financial control administration, such as the accounting function, managing the leases themselves, IT—we have a pretty huge amount invested into our GIS—and HR of course as well, because we employ staff up here of the nature of about 45 people.

Q776 Graeme Morrice: While the Crown Estate no longer keeps separate accounts for its operations in Scotland, it would be very helpful to have a clear idea what your actual surplus might have been in 2010–11. What do you think your estimate of that is?

Rob Hastings: It is not something that we actually calculate, I have to say, so I can't give you an answer now. In terms of getting to that number, it is a very difficult thing for us to do because of the way we operate the organisation. It is a matrix operation where we have people supporting activities up in Scotland from London, and the other way around. We have people in Scotland in our Edinburgh office supporting people who are in other parts of the country.

Q777 Chair: I do understand the complexities but, as one of my colleagues mentioned earlier on, in Scotland there is the politics of grievance. If a surplus of £9.9 million has been identified as being abstracted and there is an indefinable sum that should be diverted from that in order to make out what the Scottish balance was, you can understand why grievance would be maximised. It would be helpful if you were able to give us—if not necessarily now then at a later stage—some sort of ballpark figure as to what the appropriate deductions for all these central services and facilities might be so that we can see what the net surplus in Scotland might be.

Alasdair Rankin: It is not currently done. If that is a definite request coming forward from the Committee, we would probably need to speak to Treasury to seek their guidance on how we would do that. It is a UK business, so we do not apportion certain central corporate costs, as have just been described, to the Scottish business. If that is a formal request—

Q778 Chair: I think we would want something back from you. Not necessarily to the 17th decimal point, but if you could give it to us to the nearest £100,000, just as an indication. I have no idea at the moment from what you have said whether or not the entire £9.9 million would be eaten up by all the additional costs or whether it is only £200,000.

Alasdair Rankin: I appreciate that.

Chair: As I said before, in terms of the politics of grievance you have to give us some indication of what the reality of the figure might be.

Alasdair Rankin: Yes.

Gareth Baird: Chairman, can we come back to you on that. Obviously it is going to mean splitting out Northern Ireland and Wales as well so it is a fair exercise.

Chair: That is why I am saying to the nearest amount. You can understand why we need to have this and, of

course, presumably if you had separate Scottish accounts there would be some way of cross-charging. We are not asking you to undertake all of that, but it would be helpful if we had some sort of indication as to what the level is.

Q779 Graeme Morrice: Who audits you?

Alasdair Rankin: The NAO.

Chair: They are a good lot. I am sure they will be able to do it in half an afternoon. A man and a boy in an afternoon will be able to work that out from the NAO, I would have thought, easily enough.

Q780 Iain McKenzie: In the UK context, in your evidence you note that Scotland benefits from the Crown Estate's operations here. Are there significant benefits to the rest of the UK from you still operating in Scotland and, if so, what do you consider them to be?

Gareth Baird: The benefits are that there are economies of scale because it is being operated as a whole United Kingdom business. That is in the four home countries. As Rob said earlier on, it is enabling us to identify capital to put into areas where we see growth. That can come from any part of the UK and it can go to any part of the UK. We are spreading our expertise right across the business. I would say that the main one is unquestionably this benefit of scale, because of the expertise that we are able to engage. On energy specifically, Rob?

Rob Hastings: Energy is a pretty topical thing, and you could perhaps argue that there have been others preceding this one. If you took what the energy thing in the UK is right now, it is largely to do with investment and new generation assets, which are generally renewable energy. That quite quickly, in UK terms, takes you to offshore wind, onshore wind, of course, and potentially, in the near future, wave and tidal energy. If you look at the UK as a whole, right now where we stand, offshore wind in Wales and England is progressing quite fast. That is largely because you have access to relatively shallow water locations close to shore where there is a significant resource. The next step in this one—which is why the Scottish Government in particular is so interested in offshore wind—is to develop the Scottish area for offshore wind, and that requires the next generation in technology to achieve that. There is a natural progression from where we are right now to that next step. That is a great pipeline story for an investor. For an investor in this technology you want to hear that, so that is where they want to be.

When you look at the UK as a whole, it is an excellent proposition to an international market to say, "Come and invest in the UK in renewable energy". Ernst & Young do a quarterly report on an attractiveness for investment indice in renewable energy, and the UK—since we have been pursuing particularly the more aggressive Round 3 Scottish Territorial Waters programmes—has escalated to be the most attractive place in the world to invest in offshore wind. Whether the UK could hold that position if Scotland was not part of it is not clear. There is an example here where the UK as a whole represents a market that is of much

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more interest to global investment than it would be in its separate parts.

The next example you could use in practical terms is what would it mean to have two separate markets here. There are some real difficulties that are immediately introduced. For example, does that mean that Scotland would be in competition with England and Wales? Or does it mean that if you have to connect wind farms between the north of the UK to the south of the UK you have to get into different regimes for each part of that connection, whether it is Scottish or English or Welsh? All the complications that would bring would suggest to me that investors would think again about getting involved in that because that is just too complicated. There is an argument to say here that operating in the UK as a whole, certainly in terms of our business where we go about working our estate, the Marine Estate, we consider the UK as a whole and we can go through a process of optimising the value of the Marine Estate by looking at the UK as a whole and being able to plan our activities across that geographic space.

There are a number of pretty sound reasons why you would want to hold the UK as a single entity in terms of undertaking these sorts of activities.

Q781 Lindsay Roy: Do you have a strategic plan for the management of the UK seabed?

Rob Hastings: We don't specifically have a plan for the management of the seabed. What we do have on the Marine Estate is a business strategy, which is more sectoral based, that is it looks at specific technologies and how those technologies or applications of technologies can work on the seabed with each other in a way that is going to optimise the value of the whole of the estate. We do go through a process. In fact, why we invested so heavily in our spatial information management system—the MaRS tool that we talked about—was because we needed a tool to be able to go through an extraordinarily complex process of looking at what are the interactions between different types of activities, what are the relative values of those activities, and how likely are you to be able to undertake those activities in specific locations, bearing in mind all the issues, whether it is community, environment or economic. We are constantly looking at that.

Q782 Lindsay Roy: Would it be fair to say that you have no strategic plan for the management of the seabed across the UK, but what you have done is prioritised certain sectors for development?

Rob Hastings: Yes, within a strategic framework for the business. We have set out a vision as to where we want to be and a direction that we have set out to achieve, and as we go through delivering that strategic objective we slot into place these development activities, pretty much as you just described.

Q783 Lindsay Roy: You have also, understandably, said you wanted to work with the grain of Government policy. Have there been any circumstances where that has not been possible, where you have had to work against the grain of Government policy?

Rob Hastings: We have not had any material instance of that happening. It is a little bit the opposite. Offshore renewable energy is largely driven by policy instruments. The UK as a whole and the Scottish Government have some ambitions as to how much capacity they would like for the UK. That is of interest to us because that is going to be potential business for us in the future. We try to work with Government to help them identify what those policy options are and it is more than just working with the grain, it is actually working together to try and deliver what is obviously needed.

Q784 Lindsay Roy: Is it easy to work together with the UK Government and the Scottish Government to implement a policy framework?

Rob Hastings: It is—

Lindsay Roy: Challenging?

Rob Hastings: We have been working this space in terms of renewable energy, for example, for the last 10 years. It has been progressively easier to work with the UK Government. More recently—as we just talked about—over the last few years we have been working very well now with the Scottish Government to try to achieve the same thing. In fact, right now we have a process in play, which is to look at how we can extend offshore wind. The Scottish Government has an ambition to increase its offshore wind potential; we are working with them right now to see how we can achieve that.

Q785 Chair: We did get the impression from the discussions earlier on that there was a fair bit of tension there, almost the concept of having two cooks in the one kitchen. It was not quite as harmonious as you are suggesting now, surely?

Rob Hastings: There are always these communication-type challenges.

Chair: To be fair, I think it is a bit more than communication.

Rob Hastings: I don't think that there is anything we have seen that is log jamming a process here. I think that there is certainly information to be exchanged. We need to understand more about what the ambition is, which is formulating as we talk almost, and we need to be able to understand what potential we have within our estate to deliver that ambition. It is a process that the Scottish Government may like us to work quicker to provide the information, and we would like more specific information from them. There are always those sorts of tensions. I genuinely don't think that there is anything in there that is preventing progress, that we have been a party to.

Tom Mallows: I was just going to add to that. You heard before about the hierarchies, the tiers of planning around the UK. We have this UK Marine Policy statement that all the Governments have signed up to. In Scotland there is the Marine Scotland Act, there is already a pre-consultation draft of the National Marine Plan, which is a statutory plan, and then sitting underneath that will be these—they are still to be defined—marine planning partnerships, these regional marine plans, which I know Alan has been involved with over the years in his area. Some

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pilots in the Sound of Mull, for example, have come through. The same thing will happen in England.

The onshore analogy is that has always been there, the onshore planning process has always been there. The Crown Estate has worked incredibly successfully—in Regent Street with Westminster Council, in rural with all the local authorities—and we are going to do the same thing, so we are absolutely committed to finding the best way to work within these processes. In fact, they represent a great opportunity for us to make best use of the mechanisms that all Governments have said we need to try and find a better way of managing the competing interests in the seas. We need marine planning. The Crown Estate is going to be subject to that. Nothing will go ahead that is not consented by the Scottish Government, that is subject to these plans that will be material considerations. We will work with them and fulfil our role as we do on land.

Q786 Lindsay Roy: Can I change tack slightly. In the communities we visited there was certainly a view that optimising the dividend for the Crown Estate is the ultimate priority. I think you said that is part of the statute of the way in which you have to operate and that is of benefit to local communities. As far as I can gather, the Crown Estate Act of 1961 requires you to obtain the best consideration that can be gained from each lease or sale, but it also says having regard to all the circumstances of the case. Does that not give you scope to lower some of the charges in some situations where that would assist other public policies or different communities?

Rob Hastings: Good question. There are maybe two parts to the answer to that. The first one is the purely commercial one, which is that we have a statutory duty that is to show best value, best consideration. That is not the only story we have. The other part of that, part of the Act if you like, is that we also have to show good management. So it is enhancing the value of our estate subject to good management. What we are quite concerned about is how do we show good management? It is a very generic term. What we have interpreted it to be is, “How do we sustainably manage our estate?” As soon as you do that, accept that as a definition, we have to be concerned about the community that we are working in. We have to be concerned about who we are dealing with, and that community or business environment has to be sustainable otherwise we do not have a business. Particularly when there are slightly more challenging situations around more fragile communities, say in the coastal communities and so on, we have to be very clear in our minds as to what the implications are of us entering into a commercial agreement with that party, and are we protecting them in a sustainable way. The first thing we have to do is we have to be able to show that we have extracted best value, or we have enhanced the estate. We also have to show that we have shown good management. What we have done with that is we have set out ourselves a sustainability indexing process and in that sustainability indexing process we have identified some key criteria that need to be satisfied. For example, one of the criteria is that the ecosystem integrity has to be protected over the long term; one of the criteria is to mitigate the impact

of climate change; another criterion is to promote and support a dynamic and sustainable marine economy.

Q787 Lindsay Roy: That is within a local base?

Rob Hastings: That is right. In terms of the proposition, it is considered that it is enhanced. So in this case, if it was a remote community it was a local base. We have something like 20 of these indicators that I have just described. We have spent a huge amount of time and effort trying to identify what indicators we should be using, which are representative to deal with the kinds of issues we are talking about, and how to measure them. What we have set ourselves is a business objective, which we can share with you, it is in our business plan. We certainly have to pursue best value, which is all about maximising our financial return, but we also look to measure the sustainability index. What you get is a two-by-two, which says that you want to be increasing your financial return as much as you can, but you also have to be increasing your sustainability as much as you can.

At this point in time we have measured ourselves and we have baselined this and we have said that we are around about two-thirds of where we want to be, which is both in terms of financial return and our sustainability. That is something that we can happily share. It is a fairly sophisticated process; it has to be by definition, I am afraid.

Q788 Lindsay Roy: So you are trying to move towards greater flexibility?

Rob Hastings: Yes. I think of that saying, “Are we protecting the business environment that we are party to?” If we are not we can’t demonstrably show that we are enhancing the value of the estate.

Q789 Chair: Yes, but people don’t have that impression, you see. Do you accept that people do think that you are just about maximising your income?

Alasdair Rankin: We are not an economic development agency. Scotland has two premier economic development agencies that use hundreds of millions of taxpayers’ money on community projects. Our starting point is that we set financial targets with Treasury at the beginning of every financial year. It goes to our board; that is signed off. If we were in a position where we were handing out money with no commercial return hand over fist to local communities, we would not reach those targets.

Q790 Chair: To be fair, I don’t think they are just talking about handing over chunks of money. It is a question of trying to develop things in a way that does not maximise your short-term gain and helps the community develop in particular circumstances. I am afraid the impression is that you are all about short-term gain.

Alasdair Rankin: We have been acutely aware of that criticism for the last three to four years in Scotland. The unique nature of coastal communities in Scotland needs some more responsive management style by us. We are confident that the projects that we have undertaken with local coastal communities in Scotland have produced significant benefits. We have invested

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over £7 million in Scottish coastal communities over the last three or four years and we have some pretty significant success stories. It is a two-way process as well. The community also needs to engage with us, we need to engage with them. Where that has happened it has been very successful.

Q791 Lindsay Roy: Can you highlight some information where there have been success stories, and in particular success stories emanating from the community as well as from your own perspective?

Alasdair Rankin: We have been in close discussions with the community of Tarbet on Loch Fyne for the best part of three, three and a half years. We have invested just under £750,000 in a local marina facility there. We did not quite appreciate the other spinoff benefits that project would have within the community itself, and we are constantly getting very positive feedback from members of the community that it has reinvigorated the creation of—

Chair: I am conscious that some of my colleagues have to go for a plane. I could be here until 9 pm tonight, but some of my colleagues have a plane to catch. Maybe I could ask Alan to move on to the next section.

Q792 Mr Reid: Back in June, we asked your chief executive about the inclusion of local procurement conditions in some of your seabed leases. He said that was something that could be looked at but he said there might be practical difficulties. Could you tell us what those difficulties are and what progress you have made since June in that regard? I will give an example. If the Argyll Array was to go ahead, would you be able to write into the contract with Scottish Power for the lease that some of the work, say the servicing of the wind farm, had to be carried out from Tyree?

Rob Hastings: Maybe I will start off and Tom has some detail here. Fundamentally, our legal advice right now would tell us that it would not be lawful to write that requirement into the contracts.

Q793 Mr Reid: Is this the EU again?

Rob Hastings: Yes, it is.

Chair: The EU are a bad lot really, aren't they? A bit like a bad boy did it and ran away. I think there is an extent to which we possibly think that you are hiding behind that.

Tom Mallows: We did write to you about this, and we explained it in writing. That was dated 30 June.

Gareth Baird: I think we took counsel's opinion on it.

Tom Mallows: We did, so we are not just hiding behind it; it is a real thing. The point is it is a very complex area and that is why we followed it up in writing.

Q794 Chair: Did you ask the counsel if there is a way to get around this? Did you ask them, "Can you confirm for us that you can't do this?" Very often the answer you get from a lawyer depends on the question you ask them and which direction you wish to move.

Tom Mallows: Clearly we would not share the detail.

Rob Hastings: We have done that to the best of our ability. The answer we will get from counsel is that,

"It is our view that it would not be lawful, but that is something that would need to be tested if you were to challenge it". The risk that we would face in challenging that would be to—that this could be challenged could consequently mean that an entire programme could stall off the back of it because that requirement would be in the contracts. The development agreements that we have, for example on Round 3, constitute something like 30 gigawatts of offshore wind farm development. The bottom line position is that our counsel is strongly advising us not to do it because they perceive it to be unlawful.

Q795 Mr Reid: Is the local procurement contract something you would like to do if it was lawful?

Rob Hastings: Absolutely. That would be a bull's eye for us in terms of our—

Tom Mallows: On that, this is not something that we are passive on. We are proactive in terms of trying to make sure that the local supply chain understands exactly where the opportunities lie. I think last time I mentioned the careers brochure that we created for offshore wind in terms of the skills. We have done the same thing with wave and tidal up in the Pentland Firth, where we have set out a very snappily titled description of how the projects will be built and what that does is—

Q796 Mr Reid: I will try and ask some quick questions if you could oblige with some quick answers. Many of our witnesses have expressed a desire for local communities to have a direct involvement with the developers, for example a partnership arrangement. Is that something that you would be interested in pursuing?

Rob Hastings: It is actually something we are discussing right now. It has some challenges to it, but that is something that, where there is a willingness on all the parties, including the developers, we would be quite happy to pursue.

Tom Mallows: I will give an example if I may. One of the wave and tidal leases we have issued was to a community development company, so that is a good example of how we are progressing that.

Q797 Mr Reid: You are responsible for about 50% of Scotland's foreshore, most of that in the Highlands and Islands. As I am sure you are aware, local communities feel that you are remote and based in London or Edinburgh. Can you tell us what the benefit is of you managing these foreshores from London or Edinburgh rather than local communities or local authorities managing them themselves? What benefits do you think you bring?

Gareth Baird: In the first place I would dispute that we are a remote London property company. You have been to the office today, you have seen the level of expertise and investment in there, and within this consideration at the moment we are looking at getting more of our people round more of the periphery of Scotland. We understand we need to do that.

Q798 Mr Reid: The chap who was managing moorings and helped to smooth out a dispute in a small coastal village in the Highlands no doubt did

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that job very well but would he not do the job better if he was, say, employed by Highland Council and based locally? Would he not have a better feel for the local situation if that was the case?

Gareth Baird: I don't think so. We have that expertise here and we are going to increase that level of resource there. We want to get to these problems quicker and sort them out and have more of our own people in these—

Q799 Mr Reid: So you are going to devolve your management to local offices then, rather than here in Edinburgh?

Gareth Baird: That is certainly under consideration.

Q800 Chair: Just coming back to that, one of the alternatives put to us is that the foreshore should simply be managed by the local authority and that there is nothing that the Crown Estate particularly bring to the party, apart from some technical expertise that could be relocated somewhere else. Does that seem fair?

Alasdair Rankin: We see the overall fragmentation of the coastal estate as being a negative. We see the overall cohesion of it in Scotland as having a benefit. We are acutely aware of the local authority debate. From our calculation there are 23 Scottish councils whose geographical remit abut on to the coastal estate. That is 23 coastal departments that would need to be set up. Would they all have the same policies in-house? Would there be a cohesive one-stop shop?

Q801 Chair: Does there need to be?

Mr Reid: Why does that need to be a Scotland-wide policy? Why can't moorings policies be set locally?

Rob Hastings: This is something we are actively looking into. We have not worked any of this out and we would have to do it through quite extensive consultation with the local communities because they will clearly have vested interest as well as the councils. Is there the potential for us passing through a mandate to them to be able to perform a function that is effectively us on the ground there? Exactly how we could do that, how it would work, that all needs to be worked out and that is something we are considering how to go about. Clearly, there will be an awful lot of consultation required there. That is something we are giving deep thought to at the moment.

Tom Mallows: One element of that is already happening under another framework, and we are going to make best use of that, and that is the marine planning partnerships, whatever the local marine planning regime looks like. That will be the point at which decisions are made as to what goes where.

Q802 Mr Reid: We also saw the unit that was backing up the salmon farming industry. Why does that unit need to be based with yourselves? Why could the industry not carry out that work itself or could it not be operated by, say, Highlands and Islands Enterprise?

Alasdair Rankin: What better experience do they have? We have been at the forefront of aquaculture since its inception 30 years ago, so we have a lot of

the information, a lot of the data, a lot of the management experience. Who else is better qualified?

Tom Mallows: It is important to note that it is for Government to decide precisely how they want us to function. We function the way we are told to function at the moment under the terms of the Act.

Mr Reid: We are inviting you to justify—

Tom Mallows: I appreciate that. I am just caveating what we are saying by making sure that we do what we are asked in that context.

Q803 Chair: As you said earlier on when we saw you this morning, there is a recognition that you have an enormous amount of technical expertise and a huge amount of intellectual property. We want to make sure that we don't lose the baby with the bathwater. There is an unhappiness about the way in which you behave, your lack of accountability and all that whole package of issues, of which I am sure you are aware.

I wonder if I could just come back to a point that we raised at the very beginning in terms of the whole grouping of responsibilities that you have. One of them relates to native oysters and mussels. I am presuming that you are not going to fight to the death to retain that sort of responsibility. Similarly, I don't see how your responsibility over the urban estate and the rural estate adds very much to the work that you do in the seaside, the maritime estate. If those were split up and responsibilities allocated in different directions, would that make a considerable difference to the way in which they are operated? I can see how HR functions and payroll functions and so on get divided in these circumstances, but it does seem to us from the discussions we have had that the urban estate and the agricultural estate are completely different from the maritime side and could quite easily be dealt with in an entirely different way.

Gareth Baird: If I could go on the rural side, Chairman, obviously the big driver, the big cash cow in the Crown Estate is Regent Street and all that property. That gives us opportunities in rural and we are actively looking at purchasing assets throughout the United Kingdom in the rural estate.

Q804 Chair: If rural and urban were hived off, say they were dealt with by a UK property development and rural development company and so on but the whole of the maritime side was devolved, what would be the disadvantages of that?

Rob Hastings: Not trying to deflect the question at all, but in terms of the way we are constituted, our portfolio is as it is, which includes marine, rural and urban.

Chair: That is right but we are discussing change.

Rob Hastings: So in contemplating how we operate right now, there is a distinct benefit in having that portfolio as a whole, which is that we have a different risk profile in investment in marine to rural and to urban. In terms of how we shape our returns and how we, for example, extract capital growth, we actually lever off each of these things and we have this portfolio that requires this range of risks and returns across the portfolio. It works very well, it is a very successful property business really. It is quite difficult to dissect that and say this can still function. It is not

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something that we contemplate at all. It is not within our gift to do so anyway.

Chair: No, but it is within ours to recommend, which is why we are considering it.

Rob Hastings: All I can say is that the portfolio operates extremely well as it does with the distribution of risk and return profiles.

Q805 Chair: I am conscious of just raising this with you at the last minute. Perhaps you might want to reflect on that and tell us maybe in writing if there are any particular reasons that have not come up, for example why the urban and rural estate should not be separated off and perhaps continue to be run centrally, while the maritime side is, say, devolved, with some of it being given right down to local authorities or community land groups, with the oysters presumably being hived off to somebody else to deal with since part of your portfolio has not included the oysters and the risk profile there. Does that seem reasonable to you?

Rob Hastings: Yes, we will certainly respond to you on that.

Q806 Chair: That will be helpful. Before we dash, again, as I said to the others, are there any answers you had prepared to questions that we have not asked, any points in particular that you want to raise with us?

Rob Hastings: Did you say you had until 9.00pm?

Chair: I do. I am perfectly happy. We have had a number of informal meetings with you as well, so I think most of the issues that we wanted to raise with you, those that are not necessarily on the record here, have been discussed privately elsewhere, but just in case there was anything you wanted to put on the record?

Gareth Baird: In the main, I think we have covered everything Chairman, really. Everything has been covered today. I would like to reiterate my thanks to you and your Committee for coming down to Bells Brae today. I hope that gave you an insight and I can assure you we will be actively inviting members of both Governments to come and see what we are doing on the ground. Thank you for that.

Chair: Thank you very much.

Wednesday 14 December 2011

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Graeme Morrice
David Mowat

Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Right Hon Michael Moore MP**, Secretary of State for Scotland, **Right Hon David Mundell MP**, Parliamentary Under-Secretary of State for Scotland, **Miss Chloe Smith MP**, Economic Secretary to the Treasury, **Paula Diggle**, Treasury Officer of Accounts, and **Alisdair McIntosh**, Director of the Scotland Office.

Q807 Chair: Can I welcome you all to this meeting of the Scottish Affairs Committee, particularly Minister Smith, as this is the first time you have been here? I understand that Ministers have to leave within the hour, so it would be appreciated if answers were condensed. From my time on the Public Accounts Committee, I remember how lots of officials used to speak for hours as a means of killing time. We would prefer not to have that. Can I ask first whether the Government are willing to contemplate any changes in the operation of the Crown Estate? Or is the Government's intention simply to defend the status quo?

Miss Smith: The Treasury is the Crown Estate sponsor, so I am the Minister who keeps in regular contact with reference, when necessary, to the Chancellor in relation to the Crown Estate. If I may answer and open up the word "devolution", which no doubt my colleagues will come to in the course of the session, the intention would be for the Crown Estate to remain a UK-wide organisation.

Q808 Chair: Without any changes?

Miss Smith: I would refer to the work that has been done on the Scotland Bill, which formalises the position of the Commissioner. Otherwise, yes, I believe that would be the case.

Q809 Chair: Could I just ask for clarification from Michael and Chloe about your respective responsibilities for the Crown Estate, since we have heard from people in various locations about the difficulties of having two ministerial teams involved in some way or another?

Michael Moore: As Chloe has rightly said, the Treasury is the sponsor Department; she is the responsible Minister in the Treasury for oversight of the Crown Estate. The Scotland Office has a locus by virtue of the 1961 Act, which includes the power of direction for the Chancellor of the Exchequer and the Secretary of State. Custom and practice has been that the Scotland Office, or its predecessor the Scottish Office, had almost no involvement whatsoever.

The power of direction has been regarded as a power to be held in reserve, often described as the nuclear option, should the Crown Estate Commissioners in their oversight not be looking after the Crown Estate appropriately. It has never been used and my sense, after 18 months of engagement with the Crown Estate, is that it would be used only in extremis. That is not to

say that the Scotland Office, because of the significant interest the Crown Estate has in Scotland, should not be engaged. That is certainly something I have sought to do in the past 18 months. We work together; I worked with Chloe's predecessor Justine Greening; and our officials work closely all the time.

I would say that having two Departments involved, rather than offering some difficulty, is a good, positive sign of constructive engagement. Out of that, we have seen in the past 18 months a higher degree of involvement from me than any of my predecessors. We have also begun to see, through the Treasury and our own work, things such as the Coastal Communities Fund coming forward and we have the Scotland Bill provisions. As I have previously said to the Committee, we were obviously interested to hear your findings about how things would develop. As Chloe said, notwithstanding the Scottish Government's view on devolving the Crown Estate, we have yet to be persuaded on that. We think it should remain a UK-wide body.

Q810 Lindsay Roy: Michael, why has custom and practice changed? As Secretary of State, how regularly do you meet representatives of the Crown Estate, and what has been the nature of the discussions?

Michael Moore: I arrived in office with the concerns of many of my colleagues, including Mr Reid, from Highlands and Islands communities in particular, saying that they felt that the Crown Estate was not responsive enough; that on some good pragmatic areas, such as the sale of sea bed for ports and so on, there had been little progress historically. I thought that, given that the Secretary of State for Scotland is named in the Act, it was my duty to show at least a bit of interest. On the specific point of how often we have met, I think it is now five formal meetings. There are other informal contacts. As it happens, the Crown Estate Commissioner for Scotland, Gareth Baird, is a constituent of mine, and I meet him in other circumstances as a result. Our officials meet regularly, both with Treasury colleagues and with the Crown Estate.

Q811 Lindsay Roy: What have been the key beneficial outcomes of these meetings?

Michael Moore: I hope that we have been able to encourage the Crown Estate and see it develop its accountability in Scotland and its willingness to

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engage. My judgment on this—I think it is one that it would accept—is that some of the communities around the coast in particular have been critical of the accessibility and transparency of the organisation. There has been a need to develop the way in which the Crown Estate engages with the Scottish Government, although that is a two-way process—it requires the Scottish Government to engage too, but I think we have seen progress on that as well. I think it has also helped to inform the major development of the past 18 months, namely the Coastal Communities Fund, which we will be able to produce further details on and make a proper announcement from Chloe and colleagues in, I hope, the very near future.

Q812 Lindsay Roy: Can we be clear, for the record, that you do not consider devolution of the responsibilities of the Crown Estate Commission to the Scottish Parliament to be the most appropriate way forward to improve transparency and accountability in Scotland?

Michael Moore: If the objectives are to improve accountability and transparency, we can improve. We have made progress on the governance of the Crown Estate. I am happy for Chloe and colleagues to talk about the measures.

Q813 Lindsay Roy: When you say “we,” who do you mean by that?

Michael Moore: I mean the Government. We are listening, however, and that is why the evidence that you are taking and the views that you come to in your report, as I said right at the outset when you said you were going to do it, will be an important part of that process. If you were to come up with a vastly different perspective on that, obviously we would need to look at that very carefully, but for the reasons that I think have been set out in evidence to you from the Crown Estate directly, this is a UK-wide organisation that takes advantage of the different parts of the UK in terms of what it can offer as investment vehicles and returns from those. It is learning. It has to be more responsive and open to our scrutiny, and I hope that you concur that that is now becoming the case.

Q814 Chair: Could I come back to the question of ministerial responsibilities and the extent to which you, jointly with Chloe, have complete control over the Crown Estate, as distinct from the Scotland Office? Also, the Crown Estate was a body created by Parliament: to what extent should it be responsible to Parliament, rather than simply being responsible to the Government?

Miss Smith: If I may turn to a point within your question, the Treasury does not have complete control over the Crown Estate. The Crown Estate, as the rest of your question underlines, has a governance structure of its own. The Treasury, I would say, is its liaison point within Government, but it does not have control over it in that sense. However, between the two offices, it is the Treasury which is in the lead rather than the Scotland Office—that is true.

On the second part of your question on accountability to Parliament or the Government, to back up what has

already been referred to, it has been established under statute—the 1961 Act. It certainly lays accounts in Parliament, so it is clearly accountable in that sense to Parliament. It runs itself—the Secretary of State has already referred to this—as a very professional investment organisation, for sound reasons in that sense, and, of course, it runs its affairs on behalf of the monarch, so there are further limits between what the Government could do constitutionally, but I believe it is accountable to Parliament through its accounts and through the link with the Treasury.

Q815 Chair: When was the last time there was a debate about the Crown Estate and its accounts in Parliament?

Miss Smith: I am afraid I can’t answer that, but perhaps my official can.

Paula Diggle: First of all, there was a Treasury Committee hearing at the beginning of last year, and there were a couple of PAC hearings about 20 years ago.

Chair: Twenty years ago—that’s what I thought.

Paula Diggle: Before my time, I’m afraid, so I can’t give an exact date.

Michael Moore: And your inquiry now.

Miss Smith: Indeed.

Q816 David Mowat: To follow on from that, you described the Treasury’s role in relation to the Crown Estate—would you say it is roughly analogous to a shareholder role and that the Treasury acts as the shareholder in terms of the Crown Estate?

Miss Smith: I couldn’t confirm that, because, of course, there isn’t a financial transaction in that sense.

Q817 David Mowat: No, I mean analogous in the sense of so far as you have a governance role over it.

Paula Diggle: Perhaps I can clarify. The Queen owns the property of the Crown Estate and she owns it by right of her place as the monarch. However, the Government, under the statute of 1961 and indeed under the Civil List Act 1952, get the revenue of the Crown Estate. That is how it works.

Q818 David Mowat: Let me ask the question a simpler way then. I was just trying to get at to whom they are accountable. Who would actually act if the operations bit was very poor? Who would do something?

Paula Diggle: If something was going wrong, the Treasury would see it as its duty to put things right.

Q819 David Mowat: To that extent, you act as the shareholders then?

Paula Diggle: We are its sponsor, and we act in such a way as we hope that anything will never go wrong, because we keep in close touch.

Q820 David Mowat: Well, we all hope nothing goes wrong, but occasionally in life things do, don’t they?

Paula Diggle: Of course. If something were to go wrong, we would be the backstop, yes.

Miss Smith: If I could return to what has already been referred to, that—in the nuclear option—would

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amount to the power of direction to ensure that the Crown Estate and its Commissioners adhere to its own statutory footing.

Q821 Chair: It was made clear to us that it was really the Treasury, because the chief executive of the Crown Estate told us, “Formally we have to be accountable to the Treasury. We can’t be formally accountable to two masters.” That tends rather to suggest that he listens to the Secretary of Scotland as a courtesy, rather than anything else. Is that fair?

Michael Moore: I think we have more than courteous encounters, but I have never ducked the fact that this is primarily a Treasury responsibility. As I say, I am showing more interest and involvement in the Crown Estate than was the case with my predecessors and I think we have developed a good model for that, but I would not seek to challenge the view that the Treasury is the lead Department.

Q822 Chair: Could I just follow that up? Your predecessors would seem then to have been negligent in dealing with the Crown Estate—

Michael Moore: Well, I—

Chair: Can I just finish the point? As we have travelled around Scotland, we have heard a host of horror stories about the way in which the Crown Estate has behaved without any consideration, discussion or consultation with local communities. If you are saying that this situation has improved under you, then presumably that is an implied criticism of your predecessors, who presumably allowed the Crown Estate to get on with it without dealing with them.

Michael Moore: I am not in the business of apportioning blame or criticism; I am simply pointing out—because you, as the Select Committee, are concerned to see this—that the Scotland Office is engaged with the Crown Estate. I am very aware of the criticisms that have been made as part of your inquiry, but also more generally. As I said in my earlier remarks, part of the reason why I took an interest in this from the outset was that I was very familiar with what colleagues, particularly in the Highlands and Islands, felt about the role of the Crown Estate. This is a process that has to continue to develop. I am not going to claim today that we have reached the right balance in terms of engagement and accountability to local communities.

Q823 Lindsay Roy: You will appreciate, Michael, that in many of our witness statements people have said they feel disfranchised, and that things are done to them and not with them. Have you taken that up directly with the Crown Estate Commission and the Crown Estate Commissioner in Scotland?

Michael Moore: Apologies. The start of the question was whether I have taken—

Lindsay Roy: Have you taken these things up—that people are disfranchised and that things are done to them and not with them, so they often find out as an afterthought?

Michael Moore: You have already been able to put the specifics that you have encountered in the inquiry

to the Crown Estate, and it can see the evidence and I would expect it to respond to that, but the general issue has been central to the types of discussion I have had with the chief executive, Roger Bright, and the commissioners over the past 18 months. They, too, recognise that they have not necessarily always done the right things. That is why they have been looking to get memorandums of understanding with the Highland council and others, and to establish proper protocols with the Scottish Government and with the Committees of the Scottish Parliament—so that there can be more interaction, and they can hear the criticisms and learn to work to avoid those being repeated.

Q824 Lindsay Roy: What about at the level beneath that with local government and local communities, because they are the ones who have complained most vociferously?

Michael Moore: We will be interested to look at what the report from you says, and if there needs to be another level of engagement beyond what they already do or are contemplating, that is something we would obviously want to reflect on, but I am not trying to downplay the concerns that people express.

Q825 Lindsay Roy: You are aware of the issue?

Michael Moore: Yes.

Q826 Chair: Would it be fair to say that one of the beneficial by-products of Calman is that much more attention is now being paid to the Crown Estate? It was not until a host of submissions came to Calman about the Crown Estate that this whole issue moved considerably up the agenda. Is that fair? Was the Scotland Office starting to engage more with the Crown Estate before all this correspondence came in about Calman?

Michael Moore: The Calman process predates my time as Secretary of State and I am sure my predecessors will be happy to supply information if that were needed. As I have said, I am not criticising any of them or suggesting that things went badly under their watch—far from it. The point is that Calman drew some attention to this. Interestingly, the recommendations were fairly limited, but we have reflected the central point, which is that there should be a Scottish commissioner, which is recognising Scotland’s particular place in the Crown Estate’s portfolio.

Q827 Chair: Could I turn to Chloe for a moment? Do the discussions between the Treasury and the Crown Estate go beyond the questions of finance? Do you discuss with it the question of its accountability in the relationships with local communities or are you only following the money?

Miss Smith: It is fair to say that the Treasury has its priority in following the money. I would also build on my previous statement to say that we also take an interest in the Crown Estate’s strategy. We would expect it to discuss that with us. There are also major initiatives, such as, for example, some that we will no doubt discuss later under the Coastal Communities

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Fund. Do I go into further detail with the Crown Estate beyond that? No, for the reason that I have set out already, which is that it has its own operation.

Q828 Chair: Can I be clear that the main Government Department that deals with the Crown Estate has been pursuing issues relating to finance and has not really engaged with the Crown Estate on its work with local communities and the way it interacts with them and anything like that?

Miss Smith: No, I wouldn't say that. As I say, we take a clear interest in its strategy and its major initiatives. Under those headings, we absolutely take an interest in its accountability, as would Parliament as well.

Q829 Chair: So if there is criticism of the lack of accountability and contact between the Crown Estate and local people, the Treasury will bear a share of that responsibility?

Miss Smith: We would take an interest in the debate.

Q830 Chair: But if blame is being allocated, because of the high-handed way in which the Crown Estate has dealt with local communities, you would accept that the Treasury is partly responsible for that, since you have discussed this with it.

Miss Smith: I reiterate that the Treasury is the sponsor of the department and so takes an interest in both its accounts and its strategy. We expect it to respond to such local points, as I believe it has.

Q831 Lindsay Roy: You said that you take an interest. How robust is that interrogation of its planning and its strategy?

Paula Diggle: Perhaps I could take this. We have two formal sessions each year, in which we look first at the forward year's budget and secondly at its strategy on a three-year view. We look at all aspects of it, not just the financial side, although that is very important to us. We also look at its broader credibility in the marketplace generally.

Lindsay Roy: Can you instance any recommendations that you have made to the Crown Estate to change its approach and its strategy?

Paula Diggle: It is never, or hardly ever, a question of formal questions. It is more usually a question of talking something through and deciding a line that makes sense. It is influence and nudging, if you like, but it works.

Q832 Lindsay Roy: Has it made a difference?

Paula Diggle: Yes, it has.

Q833 Lindsay Roy: Can you give me an instance?

Paula Diggle: I do not think that I could, I'm afraid, because some of this is confidential stuff that relates to commercial decisions.

Q834 Lindsay Roy: So in the area of commercial work, you feel that you have made a difference, but you cannot reveal the details, because of confidentiality.

Paula Diggle: I do not think that I can, I am sorry, but I assure you that it is a robust exchange.

Miss Smith: Mr Roy, if I may come back in on that question to add a couple of further details, I am clearly a relatively new Minister, so you would expect my engagement with the Crown Estate to have been two months' worth, if you put it like that, which—

Q835 Lindsay Roy: Telescoped.

Miss Smith: A running start, as with so many things. Within that time I have met the Crown Estate and intend to carry on doing so. My predecessor, of course, held regular meetings with the Crown Estate. Also, I will add that the Secretary of State for Scotland and myself will be opening up what you could call a positive new set of meetings in the new year onwards with the Crown Estate jointly, in which we will be able to discuss issues such as this, as well as the oversight we have already made clear to the Committee.

Q836 Chair: Can I just follow up the point that Ms Diggle made? The impression that we have from meeting local communities is that the Crown Estate has been for a long time essentially a top-down, secretive organisation which did things to people. Did the Treasury ever intervene with it at all in regard to how it was dealing with local communities and the total lack of consultation? For example, in the case of the introduction of fish farms, local communities suddenly found that the Crown Estate had decided things, did you involve yourselves at all in that?

Paula Diggle: Well, the Treasury certainly kept in close touch with the Crown Estate, but you have to remember that for many years it chose to fly below the radar. It did not want to have a high profile. It wanted to just get on with its business in a straightforward commercial fashion. We have engaged with it, for example on the matter of residential housing. If you remember, that was a big issue at the Treasury Select Committee at the beginning of last year—it became a matter of public interest—and we were concerned that that should proceed in a way that was—

Chair: No, no. Not immediately recently.

Paula Diggle: I am afraid, I cannot tell you about fish farms.

Q837 Chair: You are here as the accounting officer on behalf of the Department to tell us about what happened, not only from your own experience in your time here, but also that of your predecessors.

Paula Diggle: What I can tell you is that I know that the Crown Estate have taken great trouble to try to be generous to their tenants. For example, they pay for research into fish farming. They genuinely try to foster that particular industry, in the interest not just of the tenants but of local employment and so on.

Q838 David Mowat: I was reflecting that perhaps the issue that we have here is that the sponsoring Department, as you call it, is the Treasury, which by its nature has a primary interest in financial matters, I guess. Some of the questions that we are getting relate to the fact that the Crown Estate is still a public body, and that there is some evidence that its interactions

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with the public are not always satisfactory. That slightly begs the question whether that is partly due to the fact that the Treasury, as a sponsoring Department, has a primary interest in finance. That was the driver behind that observation.

I want to ask a couple of questions on finance. I am interested in how accountable, even in the narrow financial sense, the Crown Estate really are. How do you judge whether they are good or not, compared to equivalent organisations? They have a huge amount of assets—it is a big, big organisation. I understand that you have these six-monthly reviews. Have you ever said, “This is completely inadequate; for what you are doing and all the other things, your returns should be”—let us say—“20% more”?

Paula Diggle: Under our guidance, they actually judge themselves. They actually publish their results compared to various independent indices.

David Mowat: Yes, I know that.

Paula Diggle: And they actually come out rather well against those.

Q839 David Mowat: That’s right, but when you judge yourself that is often the case.

Paula Diggle: These are indices that other people draw up. I don’t think it’s just a straightforward self-assessment. If it were, I would be as nervous as you are, but I genuinely think that these are independent indices, which have some weight and can be trusted.

Q840 David Mowat: Okay. I will move on. I would just make the point that it is a very important issue whether they are really accountable to anybody; otherwise you have effectively got a revenue-earning quango which just becomes self-perpetuating and self-satisfying.

Since 2002 there are no accounts for Scotland. I think that is right, isn’t it? That was due to the way you chose to organise yourselves. Again, that becomes an issue in the context of devolution and all the rest of it. I think 3% or 4% of the revenue of the Crown Estate is in Scotland, and yet in some aspects—in terms of renewables and all of that—it is very important to the development of aspects of Scotland. Is the Scottish aspect under-managed because of the way that you are not structured around Scotland any more?

Miss Smith: Let me answer some of that and refer to Paula for further detail if that is required. I think it is fair to say that the Crown Estate is a UK-wide organisation, as we have already suggested, so there isn’t such a thing as “Crown Estate Scotland” on a logo or anything like that, but it has been possible to say what has arisen from the holdings in Scotland. You have cited one figure and you could also cite the figure that suggests that the growth surplus is £9.9 million from those activities in Scotland. It is possible to get to that level of detail without it being a Scottish organisation. It is a matter of technicality as to whether that amounts to it being an account for Scotland—I will ask Paula to address that.

On the accountability question for Scotland, I would note that, of the board of Commissioners, you have made the point yourself that there is a 3% proportion

for Scotland, as it were, against the rest of the UK. Of course, one eighth of the board looks at Scotland against the rest of the UK’s interest in the Crown Estate. I would say that that is a very positive proportion in terms of the accountability given over to Scottish affairs. Would you like Paula to go into more detail?

Q841 David Mowat: No, that is useful. To summarise that, your judgment is that Scotland is not under-represented and that, actually, it is over-represented in terms of the governance.

Miss Smith: My judgment is that it is well represented.

Q842 David Mowat: You have asked the NAO to look at the Scottish figures—why is that?

Miss Smith: That is correct. It is responsible for the Crown Estate’s audit, so I think it is appropriate to do so.

Q843 David Mowat: So you have specifically asked it to look at the extraction of the Scottish figures—you quoted £9.9 million—just to validate that.

Miss Smith: To be clear, I understand that there is an option resting with the Comptroller and Auditor General to carry out studies, if he thinks it is worth doing so, to investigate value-for-money, but yes, I would regard it as perfectly legitimate to do so.

Q844 David Mowat: As you say, the Crown Estate is managed across the whole UK now. A feature of that is that there have been a lot more capital disposals than capital investment in Scotland over the past decade. I suppose the attitude to that would be that that is just the way the operational decisions were made at the time.

Miss Smith: I think you would also want to look at that decision over a number of years. It is managed as a UK-wide portfolio, so there are parts that go up and parts that go down over time and over places. You would need to add time into that.

Q845 Chair: What time period do you think we should look at?

Miss Smith: May I ask Paula to answer that, if we are going backwards through the accounts?

Paula Diggle: We have figures for the past 12 years, which we gave to the Scottish Parliament and we are happy for you to have them, too.

Q846 Chair: Fine. What do they show?

Paula Diggle: I’m sorry, but I don’t have them with me. They show that there has been ebb and flow of investment, exactly as the Minister describes.

Q847 Chair: What is the overall impression—has it ebbed more than it’s flowed?

Paula Diggle: I think it’s probably slightly more investment into Scotland. I can certainly corroborate that the Crown Estate spends a lot of time thinking about renewable energy prospects, and it is very concerned that that particular area of its business

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should flourish and has been taking its own risks in actually investing in that.

Q848 David Mowat: I have one more question, and then Graeme wants to come in. If the Crown Estate were devolved to Scotland—that is what some people think should happen—given that the Scottish percentage of it is something like 3% or 4%, my understanding is that that would be of disbenefit to Scotland in terms of how the Barnett consequential work, because they would give it something more like 10%. Am I right?

Miss Smith: The basic point there being that the proceeds from the Crown Estate go into the UK consolidated fund, which is then shared back out, as you say, according to Barnett, and to the other devolved Administrations.

Q849 David Mowat: Yes, and the result of that is that, if it were devolved, there would be a net loss to Scotland in terms of cash.

Miss Smith: That is certainly possible.

Michael Moore: Yes, if you did it crudely on the basis of the current state of the investment portfolio, but, if I may say so, I think that what might lie behind the portfolio management of the Crown Estate is that, over time, it will move from investments in residential or commercial property into the marine renewables estate. Scotland will have had less investment over recent times than other parts of the United Kingdom, but, going forward, the marine renewables estate stands to have significant investment, but that is done on a UK basis and to maximise the impact of that around the whole of the United Kingdom. I would be very surprised if, in a few years' time, successor Committees, or indeed this very one, looked at and examined this and did not see significant additional investment in Scotland.

Q850 David Mowat: That answer implies that the 3% or 4%, which is the current figure, will increase to 10% or 12% and then it will reverse.

Michael Moore: Indeed. I think there is a big argument for saying that, as a UK, there is more access to investment firepower than there might be in a separate devolved arrangement.

Q851 David Mowat: I will finish on this. It strikes me that that is a very important answer, because, in a sense, what you have just said is that the materiality of Scotland in the total Crown Estate is, in your judgment, going to increase significantly in the next few years.

Michael Moore: I would anticipate that. Again, the Crown Estate themselves manage the portfolio, but given our anticipation of how marine renewables will develop, I absolutely agree with you.

Chair: To come back to the point that Paula Diggle made, the figures that we got from the Crown Estate indicated that it had taken £10.6 million more out of Scotland than it had invested over the last 12-year period. I understand your point about that changing in the future, but that has happened.

Q852 Graeme Morrice: We were discussing the finances with Crown Estate on Monday when we were taking evidence from them in Edinburgh, and we noted that the actual surplus from the Crown Estate's operations in Scotland was significantly less than the £9.9 million that was reported in their accounts. We also note that the Treasury has announced that it will be giving £3.9 million back to Scotland through the new Coastal Communities Fund. What is the net benefit to the UK Treasury from the Crown Estate's operation in Scotland?

Miss Smith: I believe that is £10 million of a total of £231 million in 2010–11.

Paula Diggle: It is actually £10 million as part of £264 million, gross-on-gross. That is the gross comparison. We do not have a net profit figure for Scotland.

Q853 Chair: I think the point that we discussed on Monday was that the net profit figures would be considerably less—

Paula Diggle: They would.

Q854 Chair: Given that all the overheads and all the central charges and so on would still have to be deducted, it is really quite a misleading figure to have the £9.9 million as being a profit made in Scotland since it is in fact much less than that.

Michael Moore: It is a gross surplus. Again, it comes down to the fact that the Crown Estate is managed as a United Kingdom entity with all the overheads and so on. One could do a series of allocations of those costs out to different parts of the UK if one chose but, as long as we understand gross surpluses and net surpluses and how they are applied around the UK, you are right.

Q855 Chair: There is a culture of grievance in some parts of Scotland, and therefore—

Michael Moore: I cannot think what you are referring to.

Q856 Chair: I am sure that you can work that out for yourself. I would have thought it is necessary in these circumstances to clarify what the—

Michael Moore: I think it is an important distinction to make. This is a gross surplus. There are other central costs that are borne on behalf of the whole of the UK through to Scotland.

Q857 Chair: We have asked the Crown Estate to give us an estimate of what they believe the actual figure is once all these central costs are deducted. Therefore, if you speak to them in the near future, perhaps you could hurry them up to get us those figures sooner rather than later.

Miss Smith: I am happy to make that request.

Q858 Graeme Morrice: We did indeed ask that question, but what, in general terms, do you think are the main benefits to the UK of the Crown Estate operating in Scotland?

Miss Smith: If I can offer an initial view of that, then I think it returns to the need to have a well-managed

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Crown Estate overall, which is the point that we have been making this morning. I think it returns to the themes of local engagement that we have been talking about. I think we have laid out a number of ways in which we hope that is due to improve, and we have contributed to putting in place a number of mechanisms that will do that.

Furthermore, looking ahead to future generations, marine assets have been mentioned, and there is clearly a need to have those well managed for the financial good of the United Kingdom and, within that, through the mechanisms that we have laid out for Scotland. I would also then make a point about our heritage. Much of the Crown Estate includes things that are pleasant for people to be around. That is a much more informal benefit.

Michael Moore: Chloe has set out the key issues. I think that Scotland, as part of the United Kingdom, has offered the Crown Estate investment opportunities through its traditional routes—whether that was in the rural estates or in urban property portfolios—and it clearly now offers a disproportionate potential benefit through marine renewables. Again, by managing it on a UK-wide basis and by being sensitive to the issues in Scotland, I think we can maximise the impact that the Crown Estate has and the revenues that it returns.

Q859 Lindsay Roy: Minister, to the best of your knowledge, does the Crown Estate have a strategic plan for the development of the sea bed?

Miss Smith: I believe it does; I have not seen it. May I refer to my official on that note?

Paula Diggle: Yes, the Crown Estate is very interested and concerned to make best use of its sea-bed resources. It has let three rounds of wind energy leases and a fourth is in preparation, I believe. It is also contributing to the experiment in the Pentland Firth in wave power. It hopes to help the expert developers exploit those two fields. It is looking for sensible opportunities in the way it does so. In the third round, it was careful to ensure that the people who were successful in bidding for leases intended to use them, because the early leases had not all been taken up. It is concerned that the intended development should take place.

Q860 Lindsay Roy: Did they have a strategic plan for the development of the whole of the UK sea bed?

Paula Diggle: Yes, the Scottish part of it is part of the whole UK strategic plan for the sea bed around the UK.

Q861 Lindsay Roy: That conflicts with the evidence we had from the Crown Estate.

Chair: Yes.

Paula Diggle: I am sorry; I am puzzled by that.

Q862 Chair: They told us that they did not have a plan for the management of the sea bed. They had a corporate plan for the maximising of income from it.

Paula Diggle: Perhaps that is what I am talking about. I know that they think very carefully about how they use the resources at their disposal.

Q863 Chair: You can understand why this takes us to the core. There is a distinction between having a plan for maximising income and having a plan for management thereof. That goes to the kernel of the Crown Estate. On a number of occasions they have told us that they cannot really take account of community needs, because the rules under which they operate from the Treasury are all about maximising surplus—admittedly over the longer term—but they are not a charitable organisation. Then commercial confidentiality comes into it. They cannot tell us anything about what they are doing.

Paula Diggle: These aren't just Treasury rules drawn up on a whim. They are actually in statute, and statute says that they must make a profit and act commercially.

Q864 Chair: No, I think it says a bit more than that. It has been interpreted in a way, and presumably endorsed by the Treasury, that allows them to say that they do not want or need to take account of community needs, because they have a burden placed on them of maximising revenue, admittedly over the long term, and therefore there are investments they can make and so on. However, all of it relates to maximising revenue, so they tell us repeatedly that unless it is involved in maximising revenue they cannot take account of local needs, comments, observations, or the need for local employment, unless it directly affects their bottom line. That is clearly an unsatisfactory position.

Paula Diggle: Can I clarify what they can do? What they do is to use their resources where it makes sense to further the benefits of the local population, insofar as it relates to the land that they let. They cannot take account of wider public-good benefits in the wider area. That is just not something they are able to do under their statute.

Q865 Chair: That's right. So the question of generating local employment is not something they take into account unless it is to their benefit.

Paula Diggle: Or to the benefit of the property that they manage.

Chair: That's right, benefit the property.

Miss Smith: If I may, I think the Government's interest in that is clearly for a broader economic purpose. Some of these details were no doubt gone through when considering the Sovereign Grant Act, for example, about how that benefits the UK purse. The work of the Crown Estate comes into the UK purse which, as we have discussed, then goes back out to communities. I don't see that as a negative thing, per se. That is clearly something that the Treasury would wish them to succeed at for everyone's benefit. We would also wish, on a softer note, for them to engage as far as possible within their statute and the extra measures we have been discussing this morning.

Q866 Chair: The issue for us and local communities has been, as you put it, on this softer note. I think that there is a view that the Crown Estate emphasises unduly the maximisation of revenue—which is what

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they are encouraged to do by the Treasury—without having adequate regard to their position as a major landowner and developer and the impact that has on local communities, fishermen, consultation and the like. That has caused an enormous amount of discontent and unhappiness, of which, no doubt, you are aware, which has essentially triggered this investigation and all the correspondence that came in to Calman.

Q867 Fiona Bruce: Can you tell me, Ministers, what discussions you have had with the Scottish Government following the publication of their position paper in June? Have they outlined to you what management or policy decisions they might do differently if the Crown Estate were devolved?

Michael Moore: The Scottish Government submitted this as part of their six proposals for changing the Scotland Bill and we have had a series of meetings with Ministers at which the proposals have been discussed in the round. It is fair to say that, in the course of that, they have not specified any greater detail about how they would envisage managing or running the Crown Estate were it devolved beyond their proposal for its devolution, which is in the public domain.

Q868 Fiona Bruce: Have you any evidence that local interest would be better represented if the Crown Estate were devolved?

Michael Moore: Not on the basis of what has been proposed to us. We have, of course, some clear statements of intent, but no detail on the way in which it would be managed or run. I think that is clear from the submission.

Q869 Fiona Bruce: Could any steps be taken, including legislation at Westminster, to ensure that, in the event of devolution, the rights and revenues of the Crown Estate would not be centralised—perhaps in Edinburgh? That concern has been raised with us.

Michael Moore: There are currently no proposals from the UK Government to devolve the Crown Estate. Were we to receive additional information that might persuade us to do otherwise, we would share it in the public domain. That has not come forward as yet and, for the reasons that we have been setting out, we think this works as a UK institution, subject to the changes that we are introducing and closer engagement.

As Chloe said, from the new year, we will be holding formal meetings on the Crown Estate to look at what to do in Scotland, and engagement with communities will be part of that process. I share your concern that if we devolved this, we would need robust mechanisms to ensure that we did not simply replace the criticisms that you are hearing as you go round Scotland at the moment with a set of criticisms focused on Edinburgh.

Q870 Chair: When we asked representatives from Marine Scotland, who were representing the Scottish Government, about whether they had any proposals for the urban estate or rural, agricultural estates if they

were devolved, they simply said that they would consult about that. That seemed to us to be entirely vacuous. Is there any evidence that they have proposals of any sort to do anything different from that which is being done at the moment with the urban or the agricultural estates?

Michael Moore: Your evidence on Monday was the latest statement from representatives of the Scottish Government, which represents their state of play, so, no, we do not have the detail. As you may recall, in considering all the proposals for devolution, we have said that the starting point is that any request has to be based on a detailed, evidenced case that will maintain the consensus, or establish a consensus, with political parties and others, and that it will not be detrimental either to Scotland or to the rest of the United Kingdom. So far, we are not really even getting past that first bit of the detail.

David Mundell: I have had a number of discussions with the Scottish Government about the Crown Estate. I think it is fair to characterise their position as about criticism of the current situation, but nothing substantive has been put forward about how they would manage it. They just feel they should, in very simple terms.

Chair: Okay, they've seen it, so they want it. I think we understand that.

David Mundell: Fiona Bruce makes a very important point, which those of us who represent rural Scotland—including my own constituency—have a very large Crown Estate interest in. Centralising something in Edinburgh is no more attractive than the perception that it is centralised in London.

Q871 Chair: I have often thought that people in Edinburgh are a bad lot, but we will leave that aside. I have been rebuked and told that we should be referring to Holyrood, rather than Edinburgh in general. Would you clarify whether you have had any discussions with the Highlands and Islands local authorities? They have come forward with some fairly positive plans about how some functions of the Crown Estate could be devolved beyond Holyrood, should responsibilities be passed to the Scottish Parliament.

David Mundell: I have met Western Isles council, Orkney Islands council and Shetland Islands council in relation to specific issues. Clearly, they wish the Crown Estate to be more responsive to their specific needs, particularly in relation to issues surrounding renewable energy and the operation of port and marine facilities. My impression from those discussions is that they are looking for the Crown Estate to be more responsive in their interaction. The Secretary of State has already referred to moving forward with the memorandum of understanding, but I did not form the impression that they thought that, simply by the Crown Estate being devolved to the Scottish Government, that would change the position automatically.

Q872 Mr Reid: In your evidence, you said that the UK Government have no plans to devolve the Crown Estate to the Scottish Parliament, but what about devolving powers to local authorities, harbour trusts

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or community groups, let us say, that have bought their island? Are there any plans, while the Crown Estate remains a UK public body, to devolve power to organisations like that?

Miss Smith: If I may answer from a Treasury perspective, I do not believe there have been formalised plans or proposals made or discussed. Talking from general principles, it would be positive to see such engagement, as we have already described here this morning, but I have not, in my short tenure, seen such plans. May I clarify with Paula whether she has?

Paula Diggle: The Crown Estate has some arrangements in some coastal areas where the harbour authority acts as a head lessee and sub-lets. It is possible that that could be extended, but it is a matter of local negotiation for each case. Is that what you are talking about?

Q873 Mr Reid: Yes, that is right. I will just give an example that we picked up on in evidence where things do not appear to be working very well. On Tiree, an area of the sea bed off the island has been allocated to ScottishPower. The islanders first heard about that when it was officially announced, after there had been a long period of secret negotiations between the Crown Estate, ScottishPower and Marine Scotland. In evidence, even ScottishPower said that they were a bit embarrassed by all the secrecy—they had wanted to make the discussions public—but it was the Crown Estate that told them they could not. I am sure it must be a source of embarrassment that a Spanish-owned power company wants to engage with local people, but a UK public body is telling them they cannot. I am sure you regard that as unsatisfactory, so I wonder what plans there are to improve local engagement.

Paula Diggle: Perhaps I can speculate about what that could be about. I think the use of the sea bed was probably in the most recent round of letting. This was a competition, and they had to be very fair under European law about the way in which they did the competition. The Crown Estate thought very carefully about how it told local people about what was going on, and its legal advice was that it was actually rather restricted in what it could tell them.

Q874 Mr Reid: The Crown Estate went to the EU as well. I have heard the EU blamed for a lot of things.

Chair: Quite rightly.

Mr Reid: Are you saying that it is illegal for local groups like islanders in Tiree to be informed at an early stage that all these negotiations are going on about the use of the sea bed off their island?

Paula Diggle: We would have to look at the detail if you want us to go into that.

Mr Reid: Will you do that and get back to us?

Q875 Chair: This is a key point. I do not doubt that the Crown Estate thought carefully about it, then decided to keep it a secret. The fact that they thought carefully and then decided to keep it a secret, if anything, makes it worse. That is a bias against sharing knowledge with people. The fact that there

was a competition taking place about a site off the coast of Tiree surely could have been told to local people without prejudicing the competition itself.

Paula Diggle: But that was public knowledge. It was a public competition.

Mr Reid: No.

Q876 Chair: No. It was public knowledge that there was a competition going on in Scottish waters somewhere, but it was not public knowledge that this site off Tiree was the site that was being discussed.

Paula Diggle: I am really puzzled by that. I will have to look into this.

Chair: So will the local people.

Miss Smith: If I may sum that up to the extent I that am able as the Minister responsible—I have had to refer to my officials because the episode occurred before my time, but we would be happy to look into any outstanding details if that helps the Committee—in the context of the points that we have made this morning across the piece about the desire to engage further with the Crown Estate in the new year between our two Offices, I am sure we can pick up the points you have just made, Mr Chairman.

Q877 Chair: We consistently seem to have the pattern that the Crown Estate and the Treasury are willing to yield only when pressed to do so. They are not proactive at all in seeking to engage, and they constantly hide behind either statute or, in this case, the EU, and unnecessarily so. Can I just take us back to the question of planning? We met Marine Scotland, which told us that it was developing plans for the sea bed. I am not quite clear how the Crown Estate meshed its plans with those of Marine Scotland. It seems that potentially there is an issue when you have two public bodies both drawing up plans for the same area of ground where there is potential for conflict. There is a strong argument for a democratically accountable body to have responsibility, rather than an undemocratic, unaccountable one.

Miss Smith: I would not describe the Crown Estate as unaccountable. It presents its accounts to Parliament, which is a definition of accountability that I would certainly uphold. In relation to Marine Scotland, I understand that you questioned the Crown Estate about that on Monday, and it promised to return to you with correspondence that will help the Committee in its inquiry. I would be happy to raise these issues with the Crown Estate in the new year when we move on to our meetings.

Michael Moore: On the broader point about the Scottish Government agency Marine Scotland interacting with the Crown Estate, that is clearly something that has to work. An entirely legitimate issue is being raised, and, in fairness, the Crown Estate has sought to engage with Marine Scotland, and professionally it is doing so all the time. How that is overseen, either here or in the Scottish Parliament or Scottish Government, is an issue that certainly in the Scottish context has not developed as far as perhaps it might. That is certainly something that we will reflect on from your points and the evidence that you have been taking, and we will look to see how we

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improve that. The accountability beyond the accounts is clearly important.

Chair: Absolutely. It is key.

Q878 David Mowat: Can I just ask a follow-up about that? It strikes me that the issue is that at the moment the Treasury has the role in Government, so ought there, therefore, to be a formal role for other Government Departments, given the sensitivity of a lot of what the Crown Estate does? It does not sound to me as though that currently exists. For example, your Department would clearly have a more formal role in Scotland.

Michael Moore: You will clearly form a view as a Committee, and we will be interested to see that, on how the Government's oversight and accountability works. The decision we have taken to have Treasury and Scotland Office Ministers and the Crown Estate meeting twice yearly to consider how they are operating in Scotland is an important development. It is an informal arrangement between Ministers, but it is publicly acknowledged as such. I would hope that that would be sufficiently robust to give you the comfort that a greater degree of interest is being taken.

Q879 David Mowat: Your judgment as Secretary of State would be that you do not feel as though you need a more formal role, then?

Michael Moore: As things stand, no, because I think we have been able to demonstrate a greater level of engagement and cross-departmental working in recent times. I am not suggesting for a minute that we are the sole purveyors of wisdom, however, and clearly the Committee will have a view on that too.

Miss Smith: If I may contribute to that question, clearly the Treasury's role in relation to the Crown Estate requires working with other Departments. I wish to place on record the fact that, of course, it is not only the Scottish Office, but the other nations and relationships with their devolved Governments. For example, Department for Communities and Local Government: there are a multitude of relationships that are relevant to different parts, which the Treasury endeavours to manage informally.

Q880 David Mowat: As an example—I am thinking on the hoof—the Crown Estate could be administered by a governance board of representatives from a number of Government Departments, including the Scotland Office and the Treasury.

Paula Diggle: I don't think statute would let that happen, sadly.

The Crown Estate seeks to operate with the grain of Government. It talks to all the relevant Government Departments, exactly as the Minister said, one of which is DECC, so it is always in tune with what energy requirements are.

Q881 Chair: Before we move on to revenues, can I just come back to control? Alan raised a very interesting point about local harbour trusts and community land organisations wanting to have some say. A great deal of the thrust of calls for the Scottish Parliament to have control over the Crown Estate in

Scotland has arisen because people want to have control over the foreshore of the local area and the immediately adjacent coastline.

Are you willing to entertain other ways in which local people and local groups can have control over the foreshore—local authorities, community land buy-outs, trust harbours and the like—or is the only way that we can pursue the question of decentralisation handing everything to the Scottish Parliament so that it can have further consultation about further decentralisation? Is there a decentralisation that will come directly from yourselves?

Miss Smith: I would say no, it is not within the Treasury's powers to hand those out from where we are at present.

Q882 Chair: So whose power is it?

Miss Smith: I was going on to say that, of course, the Crown Estate will do what it is permitted to do by statute, as Paula has referred to throughout. Politically, the UK Government would seek, as we have said, to retain the Crown Estate as a UK-wide organisation, but would, by all means, be open to proposals made and would consider them carefully.

Michael Moore: There are specific instances in recent times. I am thinking of Lerwick and Scrabster where, historically, the right to buy or the ability to buy had been one that was kept in cold storage and the Crown Estate would allow extensions to harbours and charge extra rent for that extension, which didn't go down particularly well. There has been a welcome, more pragmatic and responsive approach to that, and those are two examples of it.

The question that needs to be balanced is between the local concerns, as manifested in those particular examples—Alan Reid gave the further example of Tiree; I know you will have countless others—on the one hand, and the broader portfolio management responsibilities of the Crown Estate. In terms of whether, piecemeal or in a managed fashion, you would ever contemplate passing over the ownership to these local communities—

Q883 Chair: What about control, and not necessarily ownership? I understand the distinction between ownership and control.

Michael Moore: Unless we have a radical change over the remit in terms of revenue responsibilities and so on, control is closely related to that revenue potential. Is there a model somewhere in between, which allows the Crown Estate to be more responsive and take account of what is happening in local communities, and what the advantages are? That is basically what your inquiry is focused on, and rightly so. I hope that we have given very strong indications of where we want to explore.

Q884 Chair: This comes back to the dichotomy between revenue maximisation on the one hand and public good on the other, where the Treasury and the Crown Estate seem on some occasions to pursue a very narrowly focused revenue maximisation. The particular example that Lindsay has quoted in a number of situations was Lerwick harbour, where the

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Crown Estate, if I remember correctly, charged the harbour board to dredge materials from the harbour in order to improve it, then charged them to dump the materials that they dredged out somewhere else, thereby taking money off them twice, while the good organisation was actually improving the harbour.

Q885 Lindsay Roy: Indeed. That was to allow cruise liners to come in to bring dividends to the local economy.

Q886 Chair: That doesn't seem to me to be the work of an organisation that has a broad public good perspective, as I am sure you understand, but we look forward to hearing from you in due course, once we recommend changes.

Q887 Mr Reid: The Coastal Communities Fund was widely welcomed by local groups, but there is concern that the distribution body is the national lottery, which is seen as remote. Also, local groups have experience of applying to the lottery and they say it is a huge amount of effort and that they often get knocked back. First, why was the lottery chosen and, secondly, what are you as a Government going to do to ensure that decisions are taken at a local level, rather than centrally in London?

Miss Smith: There were two key reasons that the Big Lottery Fund was chosen from a process, as you would expect: first, it has a record for delivering with as little bureaucracy as possible in the work that it has done—I am happy to go into some examples which we think have been very positive—and, secondly, it is one of the few organisations that has a UK-wide reach, which is consistent with what we have been saying about that being our desire for the Crown Estate. We are aware of the concerns raised, no doubt about that, but it is important to have that capacity within an organisation. We are aware of some good examples of programmes where it has strongly invested in communities and demonstrated its willingness to do so. I fully hope that it hears what has been said and responds with due sensitivity.

Q888 Mr Reid: One example that was given to us of good practice during evidence was that of the Scottish Land Fund, which was in operation in the last decade under the auspices of the Big Lottery Fund, but the actual decisions for the Highlands and Islands were subcontracted to Highlands and Islands Enterprise. Is that a type of model that could be looked at?

Michael Moore: In the design of the detail, the Treasury hopes that it will be able to make announcements in the not-to-distant future, as all these different models need to be looked at. It is helpful to have that highlighted to us.

Q889 Chair: I think that it is fair to say that we have had quite a lot of criticism of this idea. We welcome the decision that quite a lot of the money would go back into local areas. That is very welcome and we have not heard anyone criticise that. There is haggling over the amounts and so on, because no matter what you provide, people will want more of that. I

understand that, but I think that there is a feeling that the lottery is too complex, that it is run by people who are not necessarily representative of the local communities, to put it generously, and that it puts organisations applying in competition with each other. The main point is that there is no form of democratic accountability on the decisions on priorities. You, Michael, are democratically accountable. I think many of the people that we have met would much rather Michael had the money to spend.

Michael Moore: That is the one of the more generous points that you have made, Mr Chairman. It must really be pretty bad. I appreciate the point that you made. In terms of accountability, successive Governments have taken the view that the lottery works in a certain way. It sets out clear criteria and that, again, will be the measure for this allocation across the United Kingdom. There are different committees that work to look at these awards. Clearly, in the design of this, we need to take account of that point, but on the last point that you made, about bidding, it will inevitably have to be on a bid basis, because, as you said, there is a finite pot.

Q890 Chair: Who then decides between them? It is much better to have someone who has a degree of democratic accountability, rather than some gang of the great and the good, who are responsible to nobody. That is the worry. Have you considered having either an amalgam of the local authorities covering the Crown Estates and foreshores, or Highlands and Islands Enterprise together with the local communities doing it? The view that we have heard is that they very much welcome the fact that the money is going back in. They are unhappy, overwhelmingly, if not unanimously, about the mechanism. They want some degree of local accountability and control. It seems that you are missing a potential success here, because the Crown Estate and the Treasury are seen to be unduly remote. If there is an opportunity to see some of the benefits flowing by a mechanism that people can understand, it would be sensible to take it.

Miss Smith: I see that. If I may, I will make a few comments and ask Paula to supply further detail on what else came in through this process. I just want to make a couple of points about the Big Lottery Fund. It is not remote; it has a dedicated Scotland committee, which the Secretary of State just began to refer to; it has accountability, because it will be contracted to distribute funds linked to what I have been describing all morning as a democratically accountable body, the Crown Estate; it will use local advisory panels; and, crucially, Mr Davidson, I believe it has a large office in Glasgow, which might be of interest to you and others around the table.

Q891 Chair: We don't get much money from it.

Miss Smith: I would not want to take employment from people in your constituency.

Q892 Chair: It gives money to private schools but not to local authority schools in my area, for example, which is why I am unhappy about how these things operate.

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Miss Smith: I could not possibly comment on whether you would wish people to be in employment in Glasgow. May I ask Paula to come in on this point?

Paula Diggle: I cannot add to that, I am sorry. That is as far as we can go right now until the next policy statement.

Q893 David Mowat: I know we are out of time, but this is just an observation. This fund, which is 50% of the marine fund, is a hugely beneficial idea for Scotland. If anybody loses out in this it is the rest of the UK, because marine is two thirds of the total Crown Estate income in Scotland. In terms of our previous discussion, giving 50% of that—about £4 million—back to Scotland means that the Crown Estate presumably makes very little out of Scotland. I wonder whether that £4 million is entirely fair to the rest of the country.

Miss Smith: To put figures to that, if it would help, based on the Crown Estate's marine revenues in 2010–11 the overall fund in 2012 will be worth £23.7 million. You are absolutely right to point to a figure of £4 million for Scotland. That will be broken down as £1.85 million to the Highlands and Islands, and £2.05 million to the rest of Scotland.

Q894 David Mowat: What I am really saying is that as a proportion of the Crown Estate's operations that is, in a way, a big rebate to Scotland. The rest of the country does not get such a rebate because it is done just on marine, which is massively beneficial to Scotland.

Miss Smith: I would certainly hope the whole operation—

David Mowat: It is a very good-news thing for Scotland. We are where we are, but I would just make that point.

Q895 Fiona Bruce: Could you give us some relevant examples from today of where the Big Lottery Fund is demonstrating local knowledge in terms of coastal communities?

Miss Smith: Certainly. I will start with examples where it is operating in Scotland and focused on communities, and we will go on to the coastal aspects. I am aware of three that I think would be worth the Committee taking an interest in. The first is entitled

Growing Community Assets, which seeks to push ownership of assets to communities; the second is Life Transitions, which seeks to support people through projects that help them at key times of change in their own lives and their communities' lives; and the third is entitled Supporting 21st Century Life. Those are three that the Committee may wish to look into in more detail. As we have been saying throughout, the fund has experience around the UK in coastal and non-coastal areas, and it fully expects to dedicate itself to what we are asking it to do here.

Q896 Chair: You could perhaps give us details of those people—of the great and the good who are going to disburse this money—and a note indicating what experience they have got in the areas that are being looked at.

Michael Moore: There will be an announcement to Parliament as soon as possible, and the detail will be furnished as part of that.

Q897 Chair: That would be helpful. We are drawing matters to a close, because we have held you nine minutes beyond your allotted span. Are there any answers you had prepared for questions that we have not asked, or things you want to get off your chest? Mr McIntosh, you have played an absolute blinder so far.

Michael Moore: I think we have had a fair opportunity to reflect on the issues you are finding as a Committee, and we look forward to your report. If there is any further information that we can provide to you, we will be happy to do so. Otherwise, thank you very much for this opportunity.

Q898 Chair: The final point I want to make is to Miss Smith, and it relates to the Crown Estate's rule about maximising revenue. Can you have a look to see whether that could be interpreted in a wider, more generous, more publicly responsible way, rather than the relatively narrowly focused income maximisation way in which the Crown Estate has been interpreting it up to now? It would be constructive and helpful if we thought that potential change was there.

Miss Smith: I would be happy to do so.

Chair: Okay. Thank you very much for coming along.

Written evidence

Written evidence submitted by The Crown Estate

The Scottish Affairs Committee is inquiring into concerns and issues which have been raised in relation to the administration of The Crown Estate in Scotland. This paper seeks to address these.

1. OUR APPROACH TO BUSINESS

1.1 The Crown Estate operates within a mandate set by Parliament, to increase the value of assets essentially held in trust over the long term and to deliver a return on those assets; in other words to make a sustainable profit, consistent with good management.

1.2 Last year, the House of Commons Treasury Sub Committee recognised that “as a commercial organisation, the Crown Estate Commissioners run a very successful business operation”. In addition, like every other responsible business, The Crown Estate acts as a good corporate citizen. We adopt high standards of corporate governance. We are a responsible asset manager. We always want to be seen as good people to do business with. This is how we believe that we deliver on our Parliamentary mandate.

1.3 However, in operating our business, we always seek to work with the grain of government, both at UK level and within the devolved nations. This is reflected in comments which have been made by Alex Salmond, First Minister, referring to the Pentland Firth and Orkney Waters wave and tidal round when he said: “The potential of the Pentland Firth is quite staggering and The Crown Estate will play a crucial part in enabling developers to take the next step”, and that: “The Crown Estate is to be congratulated for playing its part in making Scotland the green energy capital of Europe”.

2. THE MANAGEMENT AND ADMINISTRATION OF THE CROWN ESTATE

2.1 The assets managed by The Crown Estate are the property of the monarch “in right of the Crown”. The Crown Estate Act 1961 however confers all the rights of ownership on the Crown Estate Commissioners, enabling them to buy, sell and manage those assets as they judge appropriate, in pursuit of their mandate.

2.2 The Crown Estate has a main Board of eight commissioners which includes:

- the non-executive Chairman, Sir Stuart Hampson, formerly Chairman of John Lewis Partnership;
- the Scottish Commissioner, Gareth Baird, a tenant farmer who has been involved in farming co-operatives in Scotland over many years; he is also Director of Scotland Food and Drink and of the Royal Highland and Agricultural Society of Scotland; and
- the Chief Executive, Roger Bright.

Board members are all appointed in accordance with the Office of the Commissioners for Public Appointments (OCPA) Code of Practice.

2.3 The Scottish Commissioner has specific responsibility to ensure that the Board is fully aware of and gives proper consideration to Scottish interests. The Board also includes non-executives with specialist expertise in the energy industry.

2.4 In Scotland, the management structure comprises the Scottish Committee, chaired by the Scottish Commissioner and the Scottish Leadership Team, based in Edinburgh. In the last five years, the total number of employees in Scotland has increased to 35, up 27%, largely as a consequence of the planned expansion of offshore renewable energy.

2.5 The total property value of The Crown Estate on 31 March 2011 was £6.7 billion (provisional and unaudited) of which £220.4 million (3.2%) was in Scotland. The total gross profit (gross revenue surplus) was £264.3 million (provisional and unaudited) of which £9.9 million (3.7%) was attributable to Scotland.

3. THE PUBLIC INTEREST

3.1 In performing its statutory duty, The Crown Estate has, over the last 10 years, delivered a total surplus of £1.9 billion to the UK Exchequer. This has been for the benefit of the UK public as a whole.

3.2 In addition, we believe that our business operations in Scotland, and the way The Crown Estate conducts its business, benefit the wider public. Directly and indirectly, consistent with our commercial mandate, we have been able to contribute to investment in new industries, job creation, support for small businesses, farming and food production, nature and heritage conservation and tourism.

3.3 The Crown Estate, in conducting its business, behaves as a good corporate citizen and in this way we believe that we provide benefit to the public. However, we are governed by obligations laid down by Act of Parliament. The Chief Executive, as Accounting Officer, has a duty to ensure that all expenditure is applied for the purposes of the Act and only for those purposes, which means that all our actions have to benefit The Crown Estate. The 1961 Act places no requirement on The Crown Estate to operate in the broader “public interest”. Nevertheless, The Crown Estate believes that in pursuit of its statutory mandate, it can and does

operate to the benefit of the communities and areas where it has assets under management, including in Scotland.

4. THE ADVANTAGES FOR SCOTLAND OF THE CROWN ESTATE'S BUSINESS MODEL

4.1 We operate our business on a UK-wide basis, not only because The Crown Estate is constituted to do so but because it makes economic and operational sense.

4.2 The Crown Estate is an investor in Scotland. Its UK-wide remit enables us to use capital generated from outside Scotland to invest in Scotland. So capital released from our assets in central London, for example, has enabled us to support and invest in the Scottish Government's ambitions for renewable energy in Scotland—an advantage acknowledged by the Calman Commission.

4.3 The Crown Estate's UK-wide remit has other advantages for the offshore renewable sector in Scotland. It provides a uniform framework and a single point of contact for potential international and UK investors. It also provides critical mass which has made possible the establishment of a significant body of technical expertise which is available to support the development of offshore renewable energy in Scotland. All this has helped place the UK top of the international league table as the most attractive location for global investment in offshore wind (Ernst & Young, November 2010).

5. WAYS IN WHICH THE CROWN ESTATE IS CONTRIBUTING TO THE SCOTTISH ECONOMY AND ITS LEGACY

5.1 In the marine estate, we have provided significant investment in offshore renewables in support of the Scottish Government's policy and are set to invest some £20 million over the next five years. Comparing this with likely future returns, our best estimate is that revenues from offshore renewables in Scottish Territorial Waters (0–12nm) and in adjacent UK waters (12–200nm) would be around £250,000 per year for the next five years, before offshore wind farms are fully completed. Looking ahead to 2020, any forecast is highly speculative: estimates of the potential income from offshore renewables in Scotland range between £10–50 million, depending on circumstances.

5.2 In addition, as a result of The Crown Estate's activity, often in collaboration with others:

- Scotland is the world leader in wave and tidal development, through the Pentland Firth and Orkney Waters leasing round and further wave and tidal leasing rounds to support the Scottish Government's Saltire prize.
- Scottish businesses are being promoted with international developers in offshore renewables through a series of supply chain events coordinated by The Crown Estate.
- The Inchcape offshore wind farm site has been secured following the dissolution of the previous consortium, through a £1 million investment by The Crown Estate in the early development activity which the remaining consortium partner was unable to fund.
- Local enterprise and tourism have been encouraged through investments in shore side and marine facilities: for example, at Tarbert (where our investment in sailing pontoons and the harbour area has attracted investment in a yacht chandlery, local hotel and restaurants); at Rhu (where we have installed a new floating breakwater); at Tobermory (where we have invested and continue to invest in pontoons); and at Wick (where we have invested in the marina which has also acted as a catalyst for shops, homes and businesses).
- Scotland has developed a successful aquaculture industry. The Crown Estate's contribution includes a £200,000 annual research budget to help fund work that will help aquaculture maintain its key role in Scotland's economy.

5.3 We are also in discussion with several local authorities about a number of projects such as providing the project funding for moorings in Oban and Tobermory town harbours.

5.4 On the rural estate we:

- are supporting and encouraging investment and diversification by our tenants;
- were one of the first landowners in Scotland to adopt the new forms of modern tenancy and promote full farming units on the open market, allowing the next generation of young farmers to emerge and secure the future of the sector;
- are co-investing with our tenants so their businesses can benefit from low carbon technologies and reduce their carbon emissions;
- are proposing to invest jointly with Moray Council and Cairngorms National Park to create a Glenlivet mountain bike facility; and
- are providing new and enhanced visitor and walker attractions on our estates for walkers, cyclists and riders.

6. THE CROWN ESTATE'S RELATIONS WITH GOVERNMENT

The UK Government and Parliament

6.1 The objectives of the Crown Estate Act 1961 were to establish “a new board of trustees, subject to Parliamentary control but with a substantial measure of independence” to manage the estate (Eve Report). This arose following the Crichton Down affair where the possibility of undue Ministerial interference in the Crown Estate’s affairs had led to a Ministerial resignation. Parliament therefore established The Crown Estate so that it was “not a government department in the sense of an organ of executive government” but at arms’ length from government.

6.2 Under the Crown Estate Act 1961, The Crown Estate is formally accountable to Parliament. It reports to the Treasury on its strategy, financial targets and significant initiatives; the Treasury does not, however, get involved in the detailed business decisions of The Crown Estate nor does it seek to micro-manage its operations. The 1961 Act conferred on the Chancellor of the Exchequer and the Secretary of State for Scotland a power of direction to be exercised consistent with the Commissioners’ powers and duties set out in the Act. This has never been exercised.

6.3 Since the present Government took office we have had a number of meetings both with the Economic Secretary, Justine Greening and with the Secretary of State for Scotland, Michael Moore. We also meet regularly with officials from the Treasury and the Scotland Office.

6.4 In 2010, The Crown Estate appeared before the House of Commons Treasury Sub Committee to report upon its management and the recommendations directed to The Crown Estate have all been acted upon.

6.5 Prior to that, in 1982 and in 1988, The Crown Estate appeared before the Public Accounts Committee. In 1982 it appeared, in order to report upon its management, systems and performance, which it then reviewed. In 1988 it appeared again before the Public Accounts Committee, following which it was reported that considerable progress had been made in modernising The Crown Estate since 1982, but there remained a weakness in that there was an absence of financial targets. As a result, a framework for setting financial targets was put in place.

The Scottish Government and Scottish Parliament

6.6 In the period since devolution, The Crown Estate has strengthened its relationships with the Scottish Government and Scottish Parliament through:

- regular meetings and contact with Scottish Government ministers, officials and MSPs;
- appearances before committees of the Scottish Parliament;
- the publication of an annual Scotland Report; and
- an annual event at Holyrood for Scottish Government Ministers, MSPs and business partners of The Crown Estate operating in Scotland, held by the Chairman, Scottish Commissioner and Chief Executive.

6.7 The Crown Estate has for some time wanted to strengthen still further its working relationships with the Scottish Government and Scottish Parliament. The Crown Estate therefore:

- wrote to the First Minister offering—in addition to the meetings which take place on business projects—to meet the Scottish Government on an annual basis specifically to report on the preceding year, our future plans and our long-term strategy;
- offered to enter into a Memorandum of Understanding with the Scottish Government;
- offered to meet two of the Committees of the Scottish Parliament on an annual basis to report on its activities, plans and long-term strategy; and
- sought a joint commitment with the Scottish Government for the development of Scottish Ports and Harbours, of the kind we have with DECC and the Welsh Assembly Government.

Local government and communities

6.8 The Crown Estate works closely with local government and other bodies. We:

- have established a Scottish Liaison Group. This comprises 21 organisations, including CoSLA, who have an interest in The Crown Estate’s business in Scotland. This is chaired by the Scottish Commissioner, Gareth Baird;
- are developing a Memorandum of Understanding with the Highland & Islands local authorities to align our activities and investment opportunities for coastal communities;
- have established the Lower Spey Forum (including Moray Council Spey Board);
- set up and are members of the Clyde Moorings Committee, a voluntary body which manages boat moorings;
- have encouraged and facilitated over 50 Mooring Associations around Scotland, giving coastal communities greater management over their local waters;

- have helped fund and participated in the Scottish Government’s “Scottish Sustainable Marine Environment Initiative” (SSMEI) which is a series of marine spatial planning pilot projects;
- are working with Scottish Natural Heritage and neighbouring landowners in improving SSSI conditions in line with government targets; and
- are pioneering new land management approaches with National Parks, Scottish Natural Heritage and Forestry Commission Scotland.

7. EXECUTIVE SUMMARY

The Crown Estate has a commercial mandate set by Parliament. It is constituted as a UK-wide body, accountable to Parliament but at arms’ length from Government. Our UK-wide basis enables us to bring capital and expert resources to support the development of Scottish government policies, and we remain committed to doing so. We always seek to work with the grain of government policy, not only at a UK level but also within the devolved nations. Devolution is a continuing process and we are committed to continuing to play our part in it.

June 2011

Written evidence submitted by the West Highland Anchorages and Moorings Association

COMMENTARY ON THE CROWN ESTATE CONSULTATION

This note is written by the Secretary of the West Highland Anchorages and Moorings Association (WHAM) as a submission to the consultation on the role and function of The Crown Estate in Scotland.

1. Our involvement with The Crown Estate (CE) has existed since the formation of WHAM in 1985. It is inevitable in present circumstances that we are deeply involved with CE on the day to day business of operating moorings associations around our mainland coasts and islands. After all they do own the sea bed and we must have dealings with them. Relationships with CE could be simply workmanlike and they probably were in the early years. However, there is in WHAM a realisation that WHAM and CE share a common purpose insofar as the sound organisation of moorings associations is beneficial to both parties. For our part we have always found CE to be very good listeners when we have disagreed with them and very willing to work towards a mutually beneficial outcome. When we have realised that we have not succeeded in persuading them of our point of view we have been able invariably to recognise each others position and accept that.

The fact that they own the sea bed could have made them arrogant and indifferent. Our experience is quite the opposite and we have no doubt they serve a very useful purpose in Scotland.

2. Our Association does not want to be drawn into the question of whether they should own the sea bed. They presently do and we are very satisfied with our relationship with them.

3. From our necessary contact with local authority we would venture the opinion that it would be many years, if ever, before we could attain a similar relationship with such a body. When fish farms were ceded to LA’s to administer, the results were unedifying.

CE is professional and is an effective administration of the sea bed in Scotland.

4. The question asked of their role in investment in Scotland is puzzling. Perhaps it is not appreciated outside marine circles how much quiet assistance CE gives around the coast. WHAM is aware of much modest (and sometimes very substantial) help given with minimal fuss to our members and others round the coast. The astonishingly effective transformation of Tobermory Harbour for marine tourists is a case in point but there are other less noticeable instances where modest funds have been injected -sometimes as grants as opposed to loans-to great effect. We would hold the view that they should continue in this way. However, they may well be open to criticism that they do not publicise this work to best effect. As an aside we cannot conceive of a LA operating in this way and certainly not in the present climate!

5. We cannot comment on the management structure except to say that its present modus operandi appears cost effective and well suited to our , perhaps, specialised needs.

6. On the question of how CE could best act in the public interest in Scotland we would submit that they are doing so now from our standpoint. Their marine officers are widely recognised as very effective agents in solving local disagreements and are acutely aware of events and potential opportunities in the marine environment.

June 2011

Written evidence submitted by Tobermory Harbour Association

A history of working with the Crown Estate, paragraphs 1 to 5 and an observation for the future, from the Chair, paragraph 6.

1. From 1985, when the first Mooring Agreements were signed with the Crown Estate, commercial and leisure boat owners have benefited. Granting local Mooring Associations the right to lay and maintain moorings on the seabed, devolved responsibility to the community and brought order to an industry which was evolving fast, in a totally unregulated manner, across the west coast of Scotland.

2. In the 1990's an evolving partnership with the Crown Estate was used by the Tobermory Harbour Association (THA) to deliver the first new infrastructure in Tobermory Harbour since the Mishnish Pier was completed in 1862. The Partnership included Strathclyde Regional Council, Argyll and Bute Council and the H.I.D.B. The Project to deliver "facilities for all" reclaimed the seabed at Ledaig and provided a much needed; car park, bus park, boat park, slip, a peoples promenade and sympathetic landscaping. All these facilities encouraged new investment from the private sector; a pub, new restaurants, a new garage and a new distillery visitor centre. In turn the whole town and the Island of Mull benefited.

3. In 1998 the THA supported by the Crown Estate and the local Enterprise Company relaid all the moorings in the harbour on an agreed grid. Doubling the number of local boats that could be accommodated. A Fairway was now marked and approved to provide safe passage for fishing boats, day or night and a free and safe, mooring area created, a condition of the Crown Estate approval.

4. From 2002 the THA has further gained by working within a business partnership with the Crown Estate to deliver new pontoons to encourage visitors afloat. Visitors who now spend over one million pounds every year in Tobermory. The Crown Estate provided the finance for two multi berth pontoons. This is a developing commercial sector which Banks are reluctant to fund. The Crown Estate also helped by partly grant aiding new facilities ashore to provide toilets, showers, and a laundry for our visitors afloat.

5. From the early 1980's the Crown Estate have quietly and with very few staff brought order to a rapidly evolving marine leisure industry which has delivered massive benefits to our coastal communities. This took place during a period when traditional marine industries and especially fishing, were rapidly declining. Facilities are now being developed, Loch Aline is a new example, which will deliver our vision of steeping stone ports of refuge where yachts will await weather windows to sail west and bring benefits to even more remote communities on other islands and peninsulas.

6. I am in total support of a Scottish Crown Estate. A Scottish Crown Estate that delivers directly to Scotland and plays a full and continuing role in regulating the seabed and working with local Mooring Associations. I am extremely apprehensive when I read that these powers should be devolved to the local authority.

June 2011

Written evidence submitted by Community Land Scotland

Community Land Scotland is the national membership organisation representing the interests of community landowners throughout Scotland. The present members of Community Land Scotland represent the combined interests of people living on almost 500,000 acres of rural Scotland. Many of these communities are either coastal or on an island.

Our vision is that, "by 2025 community landownership will be held up as the best model of sustainable community regeneration and shall be widely supported by Government and its agencies through long term, stable and accessible mechanisms enabling purchase and development of the assets."

The aims of Community Land Scotland are:

- To promote and represent the interests of community landowners across Scotland at all levels of local and national government and its agencies.
- To promote the benefits of community landownership and to proactively encourage new landowners.
- To collaborate with all other relevant membership and support organisations to ensure appropriate support services are provided to community landowners, in particular access to, and uptake of existing services.
- To facilitate networking and mutual support amongst community landowners.

1. EXECUTIVE SUMMARY

- 1.1 We believe that revenue benefits accruing from the marine resource should flow to coastal communities as a matter of right.
- 1.2 We are concerned that the interests of local communities are not being taken in to account with regard to the development of offshore renewable energy. We consider this to be a priority area for consideration by the Scottish Affairs Committee.

- 1.3 It is important that the revenue raised adjacent to and within communities is returned to those communities for re-investment.
- 1.4 We do not consider the present operation and management of the Crown Estate in Scotland to be the best structure to allow for proper governance, accountability, openness and transparency.
- 1.5 We consider there is great potential for community involvement in the ownership and management of much of the Crown Estate's rural estate in Scotland.

We welcome the opportunity to respond to your inquiry into the Crown Estate in Scotland, and will be happy to meet with you and your Scottish Affairs Committee colleagues as part of your evidence gathering process. This will give us the opportunity to expand on the above points.

2. OFFSHORE RENEWABLE ENERGY DEVELOPMENT

Community Land Scotland regards the inshore waters and seabed as integral to the economic well-being of coastal communities. The economies of these communities are greatly dependent on key sectors such as fishing, aquaculture, marine tourism, and shipping for their sustainability. The day to day lives of the residents of these coastal communities are closely entwined with the waters which surround them. It is on this basis that we believe that revenue benefits accruing from the marine resource should flow to coastal communities as a matter of right. We consider that the mechanism by which this happens to be a secondary consideration.

Where renewable energy developments take place onshore, it is now recognised that the affected community, as of right, has a share in development value. If the same interest was recognised in respect of the seabed, then coastal communities would benefit as of right from one of their primary natural assets. We consider that your Committee requires to address the paradox that a community looking at a relatively small windfarm on land will, particularly if it owns the land, be entitled to substantial benefits, whereas, the same community could be looking at a ten times larger windfarm a few miles offshore and getting absolutely nothing by way of benefits.

We consider the Crown Estate Commissioner's role with regard to the development of offshore renewable energy to be an issue which requires to be addressed as a top priority. We feel that the interests of local communities are currently being marginalised or ignored, and it is important that procedures are put in place to ensure that there is a requirement to take regard of the community interest when assigning offshore leases.

3. COMMUNITY INVESTMENT

We believe it to be an important principle that revenue raised within communities is returned to those communities for re-investment. Should any revised arrangements for the administration and management of the Crown Estate in Scotland result in those powers being devolved to the Scottish Parliament, then it will be important that revenues are further devolved to locally based organisations who are fully aware of community and economic development needs and priorities.

4. GOVERNANCE

There would appear to be a complete lack of accountability in Scotland over the Crown Estate Commissioner's management of the diverse and extensive Scottish resources which it administers. The Crown Estate Commissioners are unelected, and they have discontinued their management of the Scottish part of the estate as a distinct unit.

5. RURAL ESTATE

We consider there is great potential for community involvement in the ownership and management of much of the Crown Estate's rural estate in Scotland. We should like to see procedures put in place to allow those communities resident on these estates to explore the feasibility of community land ownership where there is a desire to do so.

If those communities wish to pursue their interest in land ownership further, then we believe they should be allowed to take forward their plans in a similar way to the procedures as set out in the "Crofting Community Right to Buy" under part 3 of the Land Reform (Scotland) Act 2003, ie the right to buy can be exercised at any time.

6. SPECIFIC FEEDBACK FROM OUR MEMBERS

Some of the particular concerns and suggestions about the current operation of the Crown Estate in Scotland which have been fed back to us by Community Land Scotland members include:

- 6.1 Revenues raised in local communities are mostly transferred out with the areas where those funds are generated. This would particularly appear to be the case with regard to the aquaculture industry, where significant income has been levied in remote rural and island communities, but, re-investment has been modest in comparison.

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- 6.2 The limited re-investment in local communities appears to be largely targeted at promoting the Crown Estate's own public relations, or promoting future revenue streams, rather than sustainable investment in local communities.
 - 6.3 Communities feel that they do not have a say in how the Crown Estate manages its resources. There appears to be a lack of transparency and openness in the operation of the Crown Estate, and little interaction or consultation with local communities on development issues.
 - 6.4 A situation has arisen where the Crown Estate has negotiated a lease for a marine renewable energy project, when the adjacent community landowner has been unaware of any of these discussions. As these developments require land based access, the community landowners have then been faced with a fait accompli situation, when a more consultative and inclusive approach would have led to a better outcome for all parties.
 - 6.5 Crown Estate charges can inhibit development in some of the most remote and fragile communities.
 - 6.6 It is important that revision to the operation of the Crown Estate in Scotland are undertaken at the earliest opportunity. There is a danger that delay will mean that some of Scotland's most fragile communities will lose the chance to benefit from current development opportunities.

We shall be pleased to provide any further information and explanations in support of this response.

June 2011

Written evidence submitted by Andy Wightman

EXECUTIVE SUMMARY

1. This inquiry provides the opportunity to improve the governance of the Crown rights in Scotland that comprise the Crown Estate. I argue that the nature of these property rights, the limited role played by the Crown Estate Commissioners (CEC) in the management of these rights, the new responsibilities of Marine Scotland, the ongoing debate about further powers for the Scottish Parliament, and straightforward logic all suggest that the CEC should no longer have any role in the administration of the Crown Estate. My preferred option in order to do this is to amend the Crown Estate Act 1961 to the effect that it does not apply to Scotland. Alternatively, straightforward amendments could be made to the Scotland Bill.

INTRODUCTION

2. I am independent self-employed researcher on land rights in Scotland and elsewhere. I am the author of a recent book on land rights in Scotland, *The Poor Had No Lawyers*.¹ In recent years I have taken a growing interest in the question of Crown property rights in Scotland and how they are defined and administered. In 2010 I submitted written evidence to the House of Commons Treasury Committee's inquiry into the management of the Crown Estate, to the Scotland Bill committee of the Scottish Parliament and to your own committee earlier in 2011.

BACKGROUND

3. Crown property rights in Scotland comprise a wide range of property rights and interests.² The property rights themselves are defined by Scotland's law of property. They are thus distinct and separate from those of the English Crown. Responsibility for the property rights themselves is devolved and it is within the competence of the Scottish Parliament to legislate to amend or abolish any of them.³

¹ *The Poor Had No Lawyers*, Birlinn, Edinburgh 2010

² See *The Crown Estate in Scotland—New Opportunities for Public Benefits*. Report of the Crown Estate Review Working Group, Highland Council, 2007 for a full and detailed analysis of the Crown Estate in Scotland. Available at www.andywightman.com/docs/CERWG-FinalReport12.06.pdf

³ Scotland Act 1998, Schedule 5, section 3(1). See also Report on Law of the Foreshore and Sea Bed, Scottish Law Commission No. 190, 2003 para 1.14 (where footnote 34 is incorrect and should read Sch 5, para 3(1))

Fig 1

ADMINISTRATION OF SCOTTISH CROWN PROPERTY RIGHTS	
<i>Scottish Crown Property Rights and Interests</i>	
<i>Scottish Government</i>	<i>Crown Estate Commissioners</i>
Rights of navigation, sea fishing	Seabed
Rights of use over foreshore	Portions of the foreshore
Treasure trove	Gold & silver
Larger whales	Salmon, mussels, oysters
Edinburgh & Stirling Castle & others*	3 urban and 5 rural properties
Rockall	
Bona vacantia (ownerless property)	
Ultimus haeres (ultimate heir)	

* title to 26 ancient possessions was transferred from the Crown in Scotland to the Secretary of State for Scotland and subsequently Scottish Ministers in 1999

4. Scottish Crown property rights are managed and administered by the Scottish Government, with the exception of the rights which make up the “Crown Estate”, which have been administered by the CEC and its predecessors in London since the responsibility was transferred in 1832 (See Fig 1).

5. Thus a key question over the future of the property rights that comprise the Crown Estate relates to the logic and desirability of the current distribution of authority over these rights and accountability for their stewardship. In particular, given the extensive powers of the Scottish Parliament over, for example, the management of the marine environment through Marine Scotland in terms of planning and strategic management, does it any longer make sense for the property rights to be administered by a separate body in London?

6. In response to your first question “*do the CEC serve a useful purpose in Scotland?*”, I would answer that they merely administer some of the totality of Crown property rights in Scotland. These rights are Scottish public rights in law and the Scottish Parliament has legislative authority over them. It is unclear to me what useful role is played by the CEC in such circumstances.

7. I submit to the Committee that the powers of administration that were transferred south in 1832 should return to Scotland. This will mean that the property rights which make up the Crown Estate in Scotland can be administered and managed as part of an integrated and holistic approach to natural resource management and can deliver enhanced public benefits (for example, by providing trust ports and harbours with full control of the seabed within the harbour—something they currently lack).

8. “*What should be the role of the CEC investing in Scotland?*” I don’t have any problem with any organisation investing in Scotland and the CEC are welcome to do so if they wish. I do not agree, however, that they should at the same time be administering the Crown property rights that comprise the Crown Estate.

9. “*What is the legacy of the CEC in Scotland?*” The CEC merely administers property rights, manages some land and extracts rents. It will be remembered as an absentee landlord acting as a private landlord over Scottish public land with no accountability to the Scottish people.

10. “*Are the current management, administration and accountability arrangements of the CEC appropriate?*” No is the short answer. All other public land (Scottish Water, Forestry Commission, Agricultural and Crofting Estates etc.) is administered by public bodies that are accountable to the Scottish Parliament and under the democratic control of the Scottish Parliament. Times have changed since 1832 and since 1999. For proper accountability and administration, ALL crown rights should be brought together under the full control of the Scottish Parliament. This is a straightforward question of good governance.

11. “*How could the CEC best act in the public interest in Scotland?*” It could do so by no longer having any role in the administration of the Scottish public Crown rights that comprise the Crown Estate in Scotland.

RECOMMENDATIONS

13. For decades there has been discontent over the unaccountable and distant powers of the CEC over Scotland’s Crown lands. A decade into the Scottish Parliament, there is no conceivable logic in continuing with an arrangement that splits the administration of Scotland’s Crown rights between two separate bodies in two separate legal jurisdictions. There is nothing to be gained and many opportunities to be lost by having the CEC as a power broker and deal-maker over the development of marine renewable energy, the ability of harbours to plan their future and other matters within the competence of the Scottish Parliament.

14. The sensible thing to do with this anomalous position is to use this historic opportunity to bring the responsibility for the management and revenues of all Scotland’s Crown property rights together in one place

in Scotland under the full jurisdiction of the Scottish Parliament. Further discussion can then take place about what part of the Scottish Government and/or local government should administer the various rights.

June 2011

Written evidence submitted by Plockton Harbour Community Interest Company

The Company has been dealing with the Crown Estate for the past 14 years in connection with our management of the Moorings and Pontoons in Plockton Harbour. During this time we have found them to be very fair and easy to deal with and have established a good working relationship with their Marine Officers.

The Company sees no reason to change the way the Crown Estate operates.

June 2011

Written evidence submitted by the Highland Council

1.0 INTRODUCTION

Highland Council has long campaigned for reform of the Crown Estate in Scotland. The Council led the Crown Estate Review Working Group (CERWG), which included the Highland and Islands local authorities, HIE and COSLA (as observer). For a full and authoritative account of the Crown Estate in Scotland, the Council directs the Scottish Affairs Committee to the previously supplied CERWG report of 2007, titled: *“The Crown Estate in Scotland—New Opportunities for Public Benefit”*. Highland Council remains fully supportive of the findings of this report; that there should be a properly constituted review of the Crown Estate in Scotland. It is worth noting that the findings of the CERWG have also been endorsed by Government and enjoy cross party support in Scotland.

As a contribution to their respective enquiries the Council has previously provided evidence on the Crown Estate in Scotland to the Scottish Parliament Rural Affairs and Environment Committee, the Calman Commission on Scottish Devolution and the UK Parliament Treasury Select Committee. Evidence provided to these inquiries is available on request.

The Highland Council supported the recommendations of the Treasury Select Committee, particularly where it referred to the need for greater partnership in the marine environment, management arrangements in Scotland, the need for clarity on the public benefits delivered by the Crown Estate and that a future Government should commission a wide ranging review of the management of the Crown Estate. However the Council could not support the recommendation of the Calman Commission on the Crown Estate in Scotland or the currently proposed amendments to the Scotland Act. Both are considered very weak and likely to result in very little additional benefits for Scotland.

2.0 MANAGEMENT AND GOVERNANCE OF THE CE IN SCOTLAND

Highland Council believes that the management of the Crown Estate in Scotland should be devolved to the Scottish Parliament in the first instance and from there to the appropriate level in national and local government. In the present circumstances the management and governance of the CE in Scotland is not sufficiently responsive to delivering Scottish public policy objectives.

3.0 ROLE AND MANDATE OF THE CEC

Highland Council believes that the role of the Crown Estate Commissioners is too rigidly interpreted where the duty to maintain and enhance the capital value of the estate and its revenue income is concerned. Consequently too little emphasis is given to the duty to observe the principles of good management. More emphasis on the principles of good management and Scottish public policy objectives would, in the marine environment for example, allow the CE to focus more on local community needs, the delivery of wider community benefits, (including procurement agreements, support for training programmes), and to ensure that both are embedded as part of the negotiations undertaken with developers seeking to secure exclusivity agreements.

4.0 INTERACTION BETWEEN THE CEC AND UK, DEVOLVED AND LOCAL GOVERNMENT

Highland Council is unable to comment on interactions between the CEC and the UK Government. The Council is aware of the duty on Commissioners to report annually to the UK Parliament and HM The Queen but has little knowledge of wider reporting beyond that set out in the 1961 Act. No similar duty exists to report to the Scottish Parliament and if the Crown Estate in Scotland was devolved, such a duty should be established. The Council is aware that the CEC has offered to meet with the Scottish Parliament but not that any formal meetings have taken place. The Council is also aware that representatives of the CEC liaise with Marine Scotland on matters linked to the development of marine renewable energy projects.

Where the Council is most concerned is with the lack of transparency regarding marine renewable energy negotiations and the allocation of exclusivity agreements. These are conducted without the knowledge of the Council, which often only hears that agreements have been reached when an article appears in the newspaper. This, despite the important role the local authority will play in licensing developments and in preparing the local economy to meet the demands of the developing marine energy sector. Highland Council has asked that the CEC provide notice of upcoming development proposals and that the Council be involved in the negotiations leading to exclusivity agreements. To date no progress has been made on either request.

Highland Council and partner H&I local authorities have been working on a draft Memorandum of Understanding (MoU) with the CEC. Discussions on the MoU have faltered around the issue of securing direct community benefit in addition to the indirect benefits that should accrue to the Highlands and Islands as a result of the developing marine energy sector. Point 3.0 above and the interpretation of the Act refer in this context. The Council is aware that the Scottish Government has also begun work on a MoU with the CEC but to date is unaware of any progress having been made.

The Council responded comprehensively to the recent Scottish Government consultation seeking views on how to secure the benefits of Scotland's next energy revolution. The response sets out how the Highland Council considers the CEC can help deliver greater public benefit in Scotland. A copy of the Council's response, which includes details of a potentially large regional community benefit fund supported by income from the Crown Estate, can be made available to the Committee on request.

5.0 QUESTIONS OF PARTICULAR INTEREST TO THE COMMITTEE

Do the CEC serve a useful purpose in Scotland?

Highland Council believes that, as currently set up, the CEC is unable to deliver adequately for Scotland. If the purpose of the CEC is restricted to raising revenue for the UK Treasury then it can be considered useful. However, if it is accepted that their role is also to support community development, be transparent, and that this should be carried out in partnership with other public sector bodies in Scotland then its usefulness is at best very limited.

As established by the CERWG in 2007, a properly constituted review of the role and management of the Crown Estate in Scotland would significantly improve its usefulness in Scotland. A review should also seek to remove difficulties where the CEC can be considered to "get in the way" of project development (eg in harbour areas).

What should be the role of the CEC in investing in Scotland?

The CEC role should be to support the delivery of public policy objectives in Scotland, in equal partnership with other Scottish public sector organisations.

What is the legacy of the CEC in Scotland?

The Crown Estate Commission is a public sector organisation managing public assets for the benefit of the public. Yet the organisation is based in London with no decentralisation and completely driven by commercial objectives.

The result is limited transparency or commitment to partnership with other public sector organisations delivering public policy and wider benefits within Scotland.

For example in the case of harbour authorities we have a public sector organisation investing in key public community assets on completely commercial grounds, which then results in substantially increased rents. In many cases European and other public sector funds have been involved in projects.

Another example from the early days of aquaculture sees large areas of seabed leased for up to 100 years for £75, to the aquaculture industry with no consultation with the local community.

Highland Council does not wish to see a similar approach to the development of the marine renewable energy sector.

It is worth noting that similar arrangements following the transfer of Crown assets in the Channel Islands and the Isle of Man to London based management in the 1830s have since been reversed.

Are the current management, administration and accountability arrangements of the CEC appropriate?

No. The Committee is referred to the points made at sections 1.0–4.0 above.

The UK Government remains committed to the devolution process and together with the CEC and Scottish Government could respond at three main levels to improve accountability and benefits in Scotland:

- *within existing structures*: for example, by establishing a Scottish Advisory Committee, reporting to the Scottish Parliament and developing Scottish policies tailored to Scottish circumstances for each of the different components of the Estate;

- *partial devolution*: for example, by re-structuring along similar lines to the Forestry Commission so that the CEC in Scotland is a distinct operation which acts as part of the Scottish Government and manages the Crown Estate in Scotland to help deliver Scottish Government priorities;
- *full devolution*: by UK legislation (Scotland Act) returning to Scotland the administration and revenues of some or all of the property, rights and interests of the Crown in Scotland which are currently managed as part of the Crown Estate by the Crown Estate Commissioners.

How could the CEC best act in the public interest in Scotland?

A properly constituted review of the role and management of the CE in Scotland would establish the best way forward for Scotland. What must come out of such a review are circumstances supporting:

- Partnership (in the true sense of the word) with other Scottish public sector organisations.
- Transparency in all activities.
- Accountability in Scotland and to the Scottish Parliament.
- Commitment to delivery of the wider public policy agenda.
- Change of focus away from purely commercial objectives.
- Engagement on local community needs and delivering direct benefits.

The Crown Estate Commission should be subject to the same degree of scrutiny as other public sector organisations in defining the public sector landscape in Scotland for the future.

June 2011

Written evidence submitted by Comhairle nan Eilean Siar (Western Isles Council)

1. Do the Crown Estate Commissioners serve a useful purpose in Scotland?

1.1 Comhairle nan Eilean Siar recognises the wider portfolio of The Crown Estate in respect of: the Urban Estate; the Marine Estate; the Rural Estate; and, Windsor Estate. The Comhairle's primary concern is in relation to the way in which The Crown Estate's Marine Estate is currently administered and the impact this is having on maritime communities in Scotland. It should be noted that all net surplus revenue from the operation of the Marine Estate in Scotland bypasses the local community and goes to the UK Treasury for general Government expenditure.

1.2 In 2005–06, Crown Estate revenues from Scotland were £14 million and, each year, over 80% of Scottish Crown Estate revenue is net surplus that goes to the UK Treasury. Under the Scotland Act, 1998, Crown Estate administration of Crown Property rights in Scotland, which are owned by the Crown in Scotland under Scots Law, was reserved to the UK Parliament. Ministerial responsibility for The Crown Estate in Scotland lies with the Secretary of State for Scotland in Westminster and Scottish Ministers have no direct influence over Crown Estate operations in Scotland. Comhairle nan Eilean Siar finds this arrangement unacceptable.

1.3 Devolution presented an opportunity to re-focus the way in which Crown property rights are managed in Scotland to benefit local communities but this opportunity was missed. The Crown Estate's response to Devolution was to close its Scottish headquarters and to move management of Crown properties in Scotland to its London office. The property rights of the Crown in Scotland are now managed, by sector, from London in common with the wider UK estate. This move has lessened the accountability of The Crown Estate in Scotland and further limits local benefits from its management of Crown property rights in Scotland.

1.4 The Forestry Commission, which has strong historical links with The Crown Estate, managed its response to Devolution quite differently. At Devolution, Forestry Commission Scotland was established, accountable to the Scottish Government and acting as a Department of the Scottish Government. Scotland's national forestry estate is now managed to deliver Scottish Government objectives which support the wellbeing of Scotland's communities.

1.5 The Comhairle therefore contends that, as currently constituted, the Crown Estate Commission serves little useful purpose in Scotland and the benefits of Crown rights administration could be more effectively managed in Scotland with real accountability to local communities.

2. What is/should be the role of the Crown Estate Commission in investing in Scotland?

2.1 In the case of onshore wind, there is a clear route to community involvement and benefit through lease payments for the land on which turbines are situated. This ensures a direct linkage to the communities who own the land and host the development. These revenues go directly into the host community, creating much needed employment and regenerating fragile micro-economies. In the case of the Isle of Lewis, the potential existed for a community benefit package of £20 million per annum from onshore wind. Funding at this level is truly transformational for struggling communities.

2.2 Where marine renewable energy development takes place in the coastal waters of these same communities, the principle should be the same. The community hosting the developments should enjoy a

significant share of lease revenues while allowing for the viability and sustainability of the commercial operation. Under existing arrangements, host communities receive no share of lease income but may receive a discretionary benefit payment from developers. This is, however, presently assessed as unlikely given the current state of the technology. For the Comhairle, it is unacceptable that lease revenue from Hebridean waters bypass the community on its way to the Treasury in London.

2.3 The Comhairle does, however, accept that marine energy technology is still in the development phase and that deployment costs are high. It further accepts that Crown Estate revenues from marine leases are currently a fraction of equivalent land lease values for onshore wind due to the fragility of the marine industry. However, this sector is scheduled to grow exponentially over the period 2015 to 2050 with Gigawatts of generation proposed for the seas around the Outer Hebrides. Unless the current, archaic lease model is changed now, The Crown Estate, and not the local community, stand to benefit from unprecedented levels of lease income while host communities miss out on the economic benefit of these transformational developments.

2.4 The Comhairle welcomes the current commitment of The Crown Estate to reinvest a proportion of lease income into a technology development fund but is concerned that the relative proportion of this investment will shrink as the returns on marine renewable energy grow. There is the clear danger that The Crown Estate will retain a fixed rate of lease income investment in this fund but that the growing margin from spiralling lease charges will bypass the host community and go directly to the Treasury. The Crown Estate talks about an “Enabling Fund” for marine renewables but the Comhairle has seen little evidence of its effective deployment. Indeed, only two weeks ago, The Crown Estate refused a seabed lease application West of Hebrides for Pelamis Wave Power, a vigorous and innovative marine energy developer with well developed plans which would have benefitted the Outer Hebrides significantly in terms of fabrication jobs, research work and wider supply chain benefits. The Comhairle is concerned that it was excluded from The Crown Estate’s assessment process for its own waters and discovered leasing determinations through the press.

2.5 It is simply unacceptable for The Crown Estate to control the Outer Hebrides seabed and all its revenues from London as marine energy around these islands grows into a multi-billion pound industry.

2.6 At a time of economic hardship and inexorable decline in the traditional industries of these islands, the Local Authority (as representative of the local community) must be permitted to play a more active role in the management of its coastal waters and must receive a corresponding share of the benefit from these waters. With the best wave resource in Europe, these islands are well placed to reap the benefits and apply them to the regeneration of fragile communities.

3. What is the legacy of the Crown Estate Commission in Scotland?

3.1 The Crown Estate Commission, as presently constituted, is an archaic and retrogressive influence on the Marine Estate in Scotland. With all marine energy lease revenue bypassing the local community on its way to the UK Treasury in London, there is no discernible Crown Estate legacy in Scotland. While The Crown Estate has granted seabed leases to some developers, the concept of community benefit is conspicuously absent.

3.2 With no investment in local communities, there is no legacy from The Crown Estate. The total exclusion of local parties from the lease assessment process and a culture of secrecy which leaves local parties discovering lease determinations through the press mean that local communities feel excluded from the management of the marine resource around their coasts. Historically, Hebridean communities have felt that the seas around them belong to the community as they have laboured to make a living from this harsh environment. The Comhairle is clear that, while wider management of the Marine Estate in Scotland could devolve to Scottish Ministers to enhance accountability, the administration of revenues from coastal waters should be a matter for the host Local Authority.

3.3 The Crown Estate’s archaic business model ignores local accountability and, as the marine renewable energy industry develops, this model will compound inequalities and deprive local communities of significant amounts of development funding. To build a tangible legacy from the marine environment, control of seabed leases must be transferred from The Crown Estate to Scottish Ministers with the full involvement of the host Local Authority and control of lease revenues must be transferred to local parties.

4. Are the current management, administration and accountability arrangements of the Crown Estate Commission appropriate?

4.1 For all the reasons outlined above, the current management, administration and accountability arrangements of the Crown Estate Commission are clearly not appropriate. Current management of the Scottish Marine Estate is remote and disinterested from local imperatives. The culture of secrecy within The Crown Estate, legitimised by spurious “commercial confidentiality” claims, and the reluctance to involve the local community in decision making means there is no transparency or accountability in Crown Estate decisions and leaves the local community feeling totally excluded from determining its own destiny.

4.2 The Comhairle strongly urges the devolution of Marine Estate management to Scottish Ministers to enhance accountability and transparency. Administration of lease revenue from local deployments should be transferred to the host Local Authority who, in consultation with—and accountable to—the local community, is best placed to maximise the benefit from the marine renewable energy revolution.

4.3 The Comhairle does not support the creation of a generic “Scotland Fund” from marine energy lease revenue as experience has shown that such generic funds quickly gravitate to the Central Belt of Scotland and application to economic problems far removed from the challenges facing fragile communities in remote maritime communities. The Comhairle strongly contends that marine energy lease revenue should stay local, and be controlled locally, within the community hosting the development in question. For once, there is a happy coincidence between significant economic opportunity and economic fragility.

5. *How could the Crown Estate Commission best act in the public interest of Scotland?*

5.1 As currently constituted, the Crown Estate Commission cannot act in the best interests of Scotland. The organisation is London centric with scant regard for the rural communities of Scotland. The Crown Estate has been characterised locally as nothing more than a prestigious rent collector. To affect the sort of change required to benefit Scotland’s rural communities, Crown Estate management of the Marine Estate must be dismantled and subjected to substantial devolution.

5.2 The Comhairle recommends that management of the Marine Estate in Scotland be devolved to Scottish Ministers and that the administration of specific revenues from marine energy (and aquaculture) deployments be transferred to the host Local Authority who are best placed, in consultation with the local community, to apply these revenues for local benefit. While the Crown Estate Commission remains in its current structure, the benefits to Scotland from marine renewable energy will remain negligent and contentious.

June 2011

Written evidence submitted by Scottish Council for Development and Industry (SCDI)

THE CROWN ESTATE IN SCOTLAND

1. SCDI is an independent membership network that strengthens Scotland’s competitiveness by influencing Government policies to encourage sustainable economic prosperity. SCDI’s membership includes businesses, trades unions, local authorities, educational institutions, the voluntary sector and faith groups.

2. SCDI has an established track record of undertaking research and analysis. Our policy and issues work is based on a combination of qualitative and quantitative research that utilises our existing membership base, access to industry and business experts from across Scotland supported by desk based analysis.

3. SCDI organised business seminars for members, in conjunction with the Scottish Government, in Inverness and Aberdeen earlier this year to input into its recent consultation on *Securing the Benefits of Scotland’s Next Energy Revolution*, and arranged a recent event in Dingwall for members in the Highlands and Islands where the speaker was the Chairman of The Crown Estate, Sir Stuart Hampson.

EXECUTIVE SUMMARY

- SCDI members have differing views on whether there is a need to reform the legal framework within which the Crown Estate Commissioners operate. Feedback from business in a range of sectors suggests that they are, broadly, content with the improvements which have been made in their relationships with the Crown Estate and—so far as increasing sustainable economic growth is concerned—they do not believe that a strong case for change has been made.
- SCDI appreciates that there can be real community concern about accountability.
- The question of reform of the legal framework for the Crown Estate may be considered separately from the question of retention of its Scottish revenues. SCDI would support retention of this revenue stream in Scotland, whether or not the legal framework in which the Crown Estate Commissioners operate changes.
- The Crown Estate should continue to strengthen its presence in Scotland and its partnerships, nationally, regionally, locally and with leading industries. SCDI has suggested that it might consider reinstating a “principal officer for Scotland”.
- The public interest in Scotland would be best served by The Crown Estate maximising its support for sustainable economic growth and employment.
- For Scotland to benefit from the opportunities which would be created by the development of its renewable and low carbon energy sources its immediate priority must be offering the support and long-term stability which investors and developers are looking for in a highly competitive, yet relatively immature industry.
- The most significant way of enabling communities to benefit is through a strong local supply chain, and the Crown Estate, the enterprise agencies and partners should continue their work and consider new ways to encourage this to develop.
- SCDI supports the principle of a capturing a share of the value of developing offshore renewable energy and Carbon Capture Storage to create a long-term legacy for Scotland. But this must be no disincentive to investment in Scotland.

Do the Crown Estate Commissioners serve a useful purpose in Scotland?

4. The most useful purpose for the assets which are managed by the Crown Estate in Scotland is in maximising investment and creating employment opportunities, particularly in key growth sectors such as renewable energy and food and drink.

5. Feedback from a range of sectors suggests that they, generally, consider that, in recent years, The Crown Estate has been a positive enabler for sustainable economic growth. Examples cited include the simplification of leases for the aquaculture sector and the development of technical expertise and preparatory environmental studies to support and reduce the risks for the marine renewables industry. In the debate around the usefulness of existing or alternative structures, ensuring that the legal framework has a fully functioning and positive approach to leasing the seabed for sustainable economic development must be a key priority.

What is/should be the role of the CEC in investing in Scotland?

6. The Crown Estate has a unique role and states two main objectives of benefiting the UK taxpayer by remitting surplus revenues to the Treasury, and investing in and managing its estate to grow its value and financial contribution. Its broad property portfolio and wide role mean it a key player in encouraging sustainable economic prosperity for local communities and the nation as a whole. SCDI is keen that it continues to enhance its partnership work to enable and nurture productive commercial opportunities and the economic benefits for communities.

7. The Crown Estate is investing significant funding in key sectors of the Scottish economy, especially for rural Scotland, for example in research for aquaculture, forestry, tourism/marine leisure infrastructure, and to support rural tenants. The highest priority for economic, employment and environmental benefit is investment in Scotland's low carbon energy sector. The immediate focus has to be on attracting and minimising risks for investors, and to date, the Crown Estate has committed to invest more than £100 million to deliver the Round 3 offshore wind developments to the consent stage. The Crown Estate is also investing in the skills infrastructure for these offshore projects by offering bursaries of up to £3,600 to students who want to take a marine renewable energy master degree.

8. Looking to the future, The Crown Estate has committed to £123 million over the next 10 years from its UK-wide portfolio, mainly property, for future investment in the initial stages of the offshore renewable energy programmes. With tidal and wave schemes, it is providing an enabling actions fund of £5.6 million to help see the projects through to consent. SCDI understands that, in total, The Crown Estate is committed to investing some £20 million over the next five years to support the growth of the offshore renewables sector in Scotland, while its best estimate is that the revenues from offshore wind around Scotland and adjacent UK waters will be about £250,000 per year for the next five years. There would appear to be a risk of a near-term reduction in the revenues available for investment in Scotland if The Crown Estate's revenues and expenditure were to be fully devolved. Forecasts for offshore wind revenues thereafter are said to be variable, with a mid-range estimated scenario delivering £29.5 million per annum.

9. The question of reform of the legal framework for the Crown Estate may be considered separately from the question of retention of its Scottish revenues. SCDI would support retention of this revenue stream in Scotland, whether or not the legal framework in which the Crown Estate Commissioners operate changes.

10. SCDI believes that there may be scope to gain even greater community benefit from The Crown Estate's investment. For example, it may be possible, particularly following the European Union's ongoing review of procurement rules, to structure leases in such a way which promotes more local business content. It may also be possible to consider linking community benefit statements to marine licensing of offshore renewable energy and Carbon Capture and Storage projects, if the existing separation of licensing and marine planning is maintained.

What is the legacy of the CEC in Scotland?

11. The Crown Estate has supported the development of a number of traditional and new industries which have grown in value and provide vital jobs for local people and income for communities, especially as public sector employment is expected to fall. However, it is recognised that some businesses and communities have strongly differing views on its legacy. SCDI believes that The Crown Estate is clearly working to provide a legacy for future generations through its investment in industries, communities and people, particularly in relation to the economic, employment and environmental benefits of offshore green energy developments.

Are the current management, administration and accountability arrangements of the CEC appropriate?

12. SCDI members have differing views on whether there is a need to reform the legal framework within which the Crown Estate Commissioners operate. This is an issue which is of interest to a range of important industries for Scotland. Feedback from business in a range of sectors suggests that they are, broadly, content with the improvements which have been made in their relationships with The Crown Estate and—so far as increasing sustainable economic growth is concerned—they do not believe that a strong case for change has been made. SCDI appreciates that there can be real community concern about accountability.

13. It is widely recognised that The Crown Estate has improved its accountability in Scotland in the last five years. It now publishes an annual Scottish Report which is presented to the Scottish Parliament and its Edinburgh office has strengthened communication with MSPs, local authorities, industry and organisations such as SCDI. The office has also established a Scottish Industry Liaison Committee.

14. It would be helpful if there was greater clarity and transparency about the Crown Estates accounts—revenues, profits and investments—in Scotland. The Crown Estate has said that the size of the surplus revenue delivered to HM Treasury for the year to 31 March 2010 was £210 million of which under £9 million was generated in Scotland. In its recent consultation, the Scottish Government quotes a figure of £13 million for The Crown Estate’s revenues in Scotland for 2009–10.

15. As economic opportunities grow, the pace of delivery speeds up and the need for close relationships increases, The Crown Estate must continue to strengthen its presence in Scotland and its partnerships, nationally, regionally, locally and with leading industries. SCDI has suggested that The Crown Estate might consider reinstating a “principal officer for Scotland” to head up the organisation and act as the main point of contact for the Scottish Government and key stakeholders.

16. It would be worth considering whether the administration of The Crown Estate in Scotland could include an Advisory Group on community benefit. The Crown Estate and local authorities could draw up joint community benefit action plans.

How could the CEC best act in the public interest in Scotland?

17. The public interest in Scotland would be best served by The Crown Estate maximising its support for sustainable economic growth and employment in local communities and the nation as a whole. SCDI believes that the low carbon economy and internationalisation will be the greatest opportunities for Scotland. It is therefore especially important that The Crown Estate enables key sectors such as renewable energy, food and drink, and tourism to achieve their growth targets. Given the opportunities for growth in renewable energy, aquaculture and ports, The Crown Estate should have a role in resolving any conflicts for marine space.

18. For Scotland to benefit from the opportunities which would be created by the development of its renewable and low carbon energy sources its immediate priority is its global competitiveness in attracting the significant and sustained investment amounting to billions of pounds which this development will require. At current costs, the 10GW of awarded capacity for offshore wind development in Scotland are estimated to involve some £30 billion to deliver completed projects over the next ten years and beyond. The Crown Estate’s recent publication *Wave and Tidal Energy in the Pentland Firth and Orkney Waters* showed by 2020 about £4 billion could be invested in manufacturing devices, moorings, cabling and off-shore sub-stations, and that a further £2 billion could go into installation. Beyond installation, there will be a need for the ongoing operation and maintenance of up to 1,600 devices, requiring an estimated £100 million a year.

19. Scotland’s resources and the UK’s existing regulatory incentives have created a world leader of an offshore wind market in the UK, but developments will not simply happen. Scotland and the UK must continue to offer the support and long-term stability which investors and developers are looking for in a highly competitive, yet relatively immature industry, market its comparative advantages globally, and identify sources of public and private funding for investment in infrastructure, facilities, engineering and technical skills, the supply chain and research and development. Economic diversification, inward investment, a globally successful supply chain and new jobs in installation and operations are the greatest potential benefits. The most significant way of enabling communities to benefit from the transition to a low carbon economy is through a strong local supply chain, and The Crown Estate, Scotland’s enterprise agencies and partners should continue their work and consider new ways to encourage this.

20. SCDI supports the principle of a capturing a share of the value of developing offshore renewable energy and Carbon Capture Storage to create a long-term legacy for Scotland. This was a recommendation of our *Blueprint for Scotland*. One lesson from oil funds is that to maximise the benefits of these revenues, they should be targeted and not spread too thinly, and they should mainly be used to support long-term, sustainable economic and community development.

21. The emerging offshore low carbon energy sector will, at best, be marginally profitable initially and requires significant public investment and subsidy. Sustaining high levels of investment and continuing to secure its benefits by maintaining an attractive market for development must be the over-riding priority in considering options for revenue generation. There must be no disincentive to investment in Scotland, which would reduce the economic and employment benefits and make it harder for Scotland to achieve its climate change targets.

Written evidence submitted by RSPB Scotland

SUMMARY

RSPB Scotland is part of the RSPB, supported by nearly 90,000 members in Scotland. This submission has been prepared by RSPB Scotland based on our experience of working with the Scottish Parliament, Scottish Government and the Crown Estate (CE) in Scotland. Our work covers a wide range of issues relevant to the CE in Scotland, including leasing land from the CE as part of our nature reserves and engaging in agriculture, forestry, marine, and energy policy issues. We believe that:

- Some form of administrative body to administer the Crown Estate in Scotland is required. This does not necessarily need to be the current Crown Estate Commissioners (CEC) model, but it is important that conflicts of interest are avoided and essential that the conservation and enhancement of biodiversity is integral to amended arrangements or any new system.
- It is appropriate that the CEC invests in the sustainable development of renewable energy in Scotland, to help tackle climate change.
- Whatever administrative arrangements are adopted, the CEC could be more actively involved in reinvesting revenues into Scotland's natural heritage assets and should take on a more strategic role in coordinating and delivering environmental enhancement projects and research.
- We fully support the concept of Scotland's publicly owned assets being managed more transparently, accountably and in support of Scotland's policy objectives. There is not necessarily any reason why this could not be achieved under current arrangements. However, it seems appropriate to periodically review arrangements, particularly in the context of changing administrative arrangements elsewhere in Scotland and the UK, and changing pressures from development activity on the CE.

BACKGROUND

The RSPB in Scotland

1. RSPB Scotland is part of the RSPB, the UK organisation which speaks out for birds and wildlife, tackles the problems that threaten our environment and promotes the conservation of wild birds and their habitats. We are a charity supported by nearly 90,000 members in Scotland, based in coastal and rural areas and towns and cities. Together with our partners in Birdlife International, we have expertise in conservation and sustainability issues within Scotland, the UK, Europe and globally.

2. Our work covers a wide range of issues including planning, climate change, energy, water, agriculture and marine issues. We have practical experience of managing land and coast for conservation, farming, forestry and other enterprises and we undertake scientific and social research to underpin our policy analysis and advocacy.

3. We work with the CE in Scotland, particularly on their rural and marine estates, to deliver benefits for birds and other wildlife. RSPB Scotland leases over 3,000 hectares of land and coast from the CE as part of our nature reserves. We also work closely with others who have an interest on the operation of the CE, including the agriculture, forestry and renewable energy industries, and with marine-based industries.

Renewable energy

4. RSPB Scotland supports efforts to increase renewable energy generation, in addition to demand reduction and energy efficiency, and welcome the Scottish Government target to generate 100% of Scotland's demand for electricity from renewable sources by 2020. Significantly increasing renewable energy production will be essential if we are to minimise the damaging effects climate change will have on birds and other wildlife across the world. However, developments must be located and designed to avoid damaging our most important wildlife sites. Inappropriately designed and/or sited developments cause serious and irreparable harm to biodiversity, and damage the public image of the industry.

5. Significant new renewables capacity will come from the marine environment. The CE will therefore have a critical role to play in ensuring this is delivered sustainably. However, Scotland's seas are also of outstanding international importance. They are home to half of Scotland's biodiversity and 45% of the EU's breeding seabirds, as well as a huge variety of other species, from basking sharks to rare coldwater corals. Climate-induced reductions in food availability during the breeding season are already causing declines in populations of some seabird species in Scotland. This further highlights the urgent need to develop low carbon energy, while ensuring that human activities do not undermine the resilience of ecosystems under increasing stress from climate change.

COMMENTS ON SPECIFIC QUESTIONS POSED BY THE COMMITTEE

Do the CEC serve a useful purpose in Scotland?

6. It is essential that a suitable body exists to administer what is, effectively, the public property in Scotland currently administered by the CE. This does not necessarily need to be the current model of the CE. The current CE model has some positives for conservation, with its core value of stewardship and a responsibility

to maintain and enhance the value of the estate and its income over the long term. However, the role of the CE in achieving sustainable development should be improved and alternative models could equally be developed to deliver similar or improved outcomes.

7. The conservation and enhancement of biodiversity, including reinvestment of revenues from the estate, must be an integral part of any amended arrangements.

8. The existence of a body that is at least “arms-length” from government is also useful in reducing the potential for conflict of interest, such as where the developer is also the decision maker.

What is the legacy of the CEC in Scotland?

9. RSPB Scotland has a good, professional working relationship with the CE but we have no other comment to make in response to this question.

What is/should be the role of the CEC in investing in Scotland?

How could the CEC best act in the public interest in Scotland?

10. There is huge and increasing pressure on the natural environment from anthropogenic activity. Much of the built development associated with renewables is necessary, in the public interest, to tackle climate change. It is therefore appropriate that the CE be actively involved in the sustainable development of renewable energy. However, renewable development can also directly impact on the natural environment through resource use, habitat loss and displacement of species.

11. In the onshore environment, mitigating the impacts of renewables development is sometimes relatively straightforward. For example, developers can contribute to the delivery of simple habitat enhancement measures on neighbouring land. It is not as straightforward offshore, as feasible enhancement measures close to development sites can be much harder to identify and deliver. However, the common factor of having a body such as the Crown Estate, with a common interest in all offshore marine renewables developments, means that there is scope for the Crown Estate to act strategically to coordinate and deliver effective mitigation in the wider marine and coastal environment.

12. There is extensive debate about how local communities could benefit from the development of offshore renewables. We welcomed the recent commitment by the Scottish Government⁴ to the principle that “*the people see some return on the exploitation of our natural assets*”. We agree. RSPB Scotland represents a community of interest in our near 90,000 members, spread across Scotland, who have an interest in conservation and enhancement of the natural environment. It is vital that returns from the exploitation of Scotland’s natural resources should first be focussed on delivering for the environment from which these natural assets are derived. Not least, this is because the environment is valued by people,⁵ and therefore its damage would undermine monetary return.

13. RSPB Scotland strongly supports the concept of communities gaining tangible benefits from the sustainable development of our natural resources. We believe that one of the ways communities across Scotland could benefit in the long term would be to use the financial benefits from exploitation of the CE to protect and enhance Scotland’s wider environment. This would deliver benefits in the public interest, for Scotland’s communities in the most inclusive sense, country wide.

14. One example of this would be support for projects identifying habitat conservation needs for seabirds and/or other habitats or species groups. Half of all Scotland’s wildlife is found around our coasts, so communities situated there will benefit economically from the growing popularity of marine wildlife watching, as well as enjoying the cultural, educational, community regeneration and health benefits of living in a well preserved natural environment.⁶ Seabirds alone attract millions of pounds in tourism revenue to our coastal communities.⁷ An independent survey at RSPB’s Mull of Galloway reserve, in a part of Scotland where much of the local economy depends on tourism, found that over 70% of respondents cited seeing seabirds as either their main reason or one of the reasons for visiting the area.⁸

15. Revenue generated from the CE should be used for a myriad of positive conservation outcomes, delivering significant “public goods”. For example, the threat of some invasive non-native species (INNS), considered to be the second greatest threat to biodiversity worldwide after habitat destruction,⁹ could be dealt with, bringing a broad range of benefits to both biodiversity and communities. Seabirds are especially vulnerable to the impact of INNS—burrow and ground-nesting species are heavily impacted by rats and mink, which can decimate entire populations. Scotland has a significant responsibility in global seabird conservation terms, with internationally-important populations, including the world’s largest Manx shearwater colony on

⁴ <http://www.scotland.gov.uk/Publications/2010/11/26094907/2>

⁵ Wellbeing through wildlife in the EU (RSPB/Birdlife International 2007) http://www.birdlife.org/eu/pdfs/Wellbeing_EU_final_version_2mb.pdf

⁶ Wellbeing through wildlife in the EU (RSPB/Birdlife International 2007) p3

⁷ Watched like never before: the local economic benefits of spectacular bird species (RSPB 2006) www.rspb.org.uk/images/watchedlikeneverbefore_tcm9-133081.pdf

⁸ The Local Value of Seabirds: estimating spending by visitors to RSPB coastal reserves (RSPB 2010) www.rspb.org.uk/Images/localvalue seabirds_tcm9-258550.pdf

⁹ CBD Invasive Alien Species Introduction www.biodiv.org/programmes/cross-cutting/alien/default.aspx

Rum. Given the threats faced by these populations (climate change, overfishing and increasing at-sea development among others), building in resilience is crucial, and invasive ground predator eradication offers a proven, tangible opportunity to do this. Using revenue from marine development to remove rats from islands around Scotland and restore seabird populations would reflect our responsibility for good stewardship of these populations, and would be of considerable benefit to Scottish biodiversity more broadly.

16. Another example of the type of positive planning for the natural environment that the CE could contribute to is the Central Scotland Green Network (CSGN). The CSGN was designated as a national development in the Scottish Government's second National Planning Framework (NPF2) in recognition of the importance of delivering a better natural environment to help Scotland compete economically at European and global scales. RSPB Scotland already leases an area of foreshore from the Crown Estate as part of our Skinflats reserve in Central Scotland. This reserve is at the heart of the CSGN. Our experience from elsewhere in the UK and Europe has shown that investing in habitat creation and associated interpretation, access and education facilities can help drive regeneration and provide economic benefits to an area.¹⁰ We hope to work with the CE to identify similar opportunities elsewhere in Scotland.

17. In addition to investing in a range of habitat creation and enhancement projects, there must also be rapid and significant investment in marine science to inform decision making on marine renewables. We must ensure that our understanding of the environmental effects of marine renewables keeps up with, and is seen as integral to, development of the technology. The Crown Estate has made some good progress on coordinating this at a UK level through COWRIE¹¹ and the Strategic Ornithological Support Services group, but much more needs to be done.

Are the current management, administration and accountability arrangements of the CEC appropriate?

18. We fully support the concept of Scotland's publically owned assets being managed more transparently, accountably and in support of Scotland's policy objectives. There is not necessarily any reason why this could not be achieved under current arrangements. However, it seems appropriate to periodically review arrangements, particularly in the context of changing administrative arrangements elsewhere in Scotland and the UK, and changing pressures from development activity, etc on the Crown Estate. We also understand why some stakeholders may feel that the CEC should work in a more transparent and locally accountable manner, offering wider societal benefits, and we watch with interest development of the provision in the Scotland Bill for the new post of Scottish Crown Estate Commissioner.

June 2011

Written evidence submitted by Highlands and Islands Enterprise (HIE)

INTRODUCTION

1. Highlands and Islands Enterprise (HIE) welcomes the opportunity to respond to the Scottish Affairs Committee Inquiry into the Crown Estate in Scotland. HIE is the economic and community development agency for an area covering more than half of Scotland's land mass, stretching from Shetland in the north to the southern tip of Argyll, and includes almost 100 inhabited islands. Our purpose is to generate sustainable economic growth in every part of the Highlands and Islands.

BACKGROUND

2. HIE's response to this consultation is set in the context our Operating Plan 2011–14 and the four priorities contained therein, as follows:

- Supporting businesses and social enterprises to shape and realise their growth aspirations,
- Strengthening communities and fragile areas,
- Develop key sectors, particularly distinctive regional opportunities (including renewable energy), and
- Creating the conditions for a competitive and low carbon region.

3. The Crown Estate Commissioners (CEC) role in Scotland impacts on all our priorities, and it is worth noting that the Highlands and Islands and HIE have a long history of working with and through the CEC. The region has half the entire length of Britain's coastline, the vast bulk of aquaculture production and half the total number of ports and harbours in Britain, as well as the majority of the UK's wave and tidal resource, and the best off-shore wind resource.

4. Of particular interest to HIE and in the context of this review, is the unprecedented opportunity presented by the renewable energy revolution in Scotland, and in particular the offshore renewable opportunity. The recent commitment to increase Scotland's renewable electricity target to 100% of demand by 2020 has further heightened HIE's efforts in this regard, recognising the potential for realising economic growth, community resilience and cohesion throughout the region. The enviable natural resources in terms of wave, wind and tidal,

¹⁰ Nature and Sustainable Growth (RSPB, 2009) http://www.rspb.org.uk/Images/NatureandSustainableGrowth1_tcm9-191730.pdf

¹¹ <http://www.offshorewind.co.uk/Pages/COWRIE/>

provides a distinct competitive advantage upon which HIE is keen to build and sustain vibrant economic growth.

RELATIONSHIP WITH THE CROWN ESTATE COMMISSIONERS

5. Historically HIE has engaged with the CEC in Scotland in three specific areas; firstly as the provider of seabed leases for the aquaculture industry in the waters of the Highlands and Islands, secondly as a rural landowner, and thirdly in their role as administrator of the Scottish seabed in the context of off-shore marine renewables. In our wider community development work we also interact with the CEC in foreshore use, small harbours, pontoons and marine leisure.

6. In aquaculture, HIE and its predecessor the HIDB, were key players in the early stage development of the industry. We worked closely with the CEC in all areas of aquaculture, but as both an economic and community development agency HIE has found the CEC's primary focus on the maximisation of income from rents, their strong commercial focus, and limited reinvestment can mitigate against wider community benefit.

7. The CEC own a number of rural properties in Scotland, two in the HIE area. Bought on the open market in the 20th century by the CEC, HIE's predecessor the HIDB worked closely with the CEC, through a staff secondment, in best practice agriculture, tourism and rural development projects based on CEC properties. In our experience the CEC's land based properties are well managed.

8. In the area of renewables the CEC have facilitated significant opportunities in the offshore renewables market with the advent of Rounds 1, 2, 2.5 and 3, and Scottish Territorial Waters for offshore wind and in the Pentland Firth and Orkney Waters Commercial scale marine energy leasing round. Further, CEC have worked closely with Scottish Government to deliver leasing rounds to support the Saltire Prize. Combined, these leasing rounds have resulted in a potential offshore market in excess of 45GW for the UK—representing the world's largest offshore market. In pursuit of the delivery of these leasing rounds CEC have sought to work with relevant regional development agencies and in the case of Scottish leasing programmes, has worked closely with the Scottish Government, Highlands and Islands Enterprise, and our sister agency in the South of Scotland, Scottish Enterprise.

9. In respect of the Pentland Firth and Orkney Waters leasing round, CEC are members of a Co-ordination Committee, chaired by HIE, and co-chair the Delivery Group along with Scottish Government. These groups work to identify barriers to development and to consider and develop solutions. CEC have, in our opinion, been effective in developing highly professional teams, securing competent individuals, and undertaking professional due diligence in their leasing programmes. However, their traditional "modus operandi", particularly when dealing with commercial interests, and internal processes which can lack transparency have on occasion affected quality partnership working.

THE ROLE OF THE CROWN ESTATE COMMISSIONERS

10. The most prominent issues relating to the CEC in Scotland, and within the Highlands and Islands, are with the CEC's approach to managing Scotland's seabed and foreshore, and their primary focus on maximising revenue from offshore developments with limited re-investment in Scotland. That there is particular potential for the management of the seabed and foreshore to contribute far greater benefits to the region's communities is indisputable, and in 2006, HIE was a member of the the Crown Estate working Group (CEWG), along with COSLA and the six local authorities that cover the Highlands and Islands, that strongly recommended that:

11. The Secretary of state for Scotland and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown Estate in Scotland contribute more fully to the delivery of the Scottish Governments policies and the well being of the people of Scotland. (Ref—CERWG final report Dec 2006)

12. As part of HIE's activities to growing the economy and communities of the Highlands and Islands, HIE has been at the forefront of utilising an asset-based community development approach. This has involved assisting in the acquisition and development of income-generating assets such as land and property, and in designing and implementing the Land Reform Act. However, the legislative and administrative framework overseeing the area's significant marine-based assets has remained largely unchanged in a devolved Scotland, and is increasingly appearing anomalous.

Do the CEC serve a useful purpose in Scotland?

13. The CEC administer Crown property rights in Scotland, a range of rights which the Scottish Parliament has legislative authority over. In both administering these rights, and undertaking activities aimed at maximising the commercial return of these rights, there appears to be a conflict of interest for the CEC.

What is/should be the role of the CEC in investing in Scotland?

14. Investment in Scotland is welcome, but it is clear that there is a conflict between the administration of Crown rights and investments in the assets that comprise those rights. Furthermore it is difficult to see any

logical reason why the CEC would invest further in rural estates in Scotland, unless it is on purely commercial ground, and increase returns to the treasury.

What is the legacy of the CEC in Scotland?

15. In its role as the historical controller of the sea bed, the CEC has made a useful contribution to the development of key industries in the waters around the Highlands and Islands. However its focus on asset maximisation has meant that the potential for wider community benefit, and full public accountability have not been met.

Are the current management, administration and accountability arrangements of the CEC appropriate?

16. All other public land in Scotland is administered by public bodies that are directly accountable to the Scottish Parliament. For the best governance of the Scottish public estate all Crown rights should be brought under the full control of the Scottish Parliament. The model of the Forestry Commission in Scotland, operating as part of the Scottish Government and delivering Scottish Government objectives is worthy of note.

How could the CEC best act in the public interest in Scotland?

17. HIE remains of the view that a modification of the relationship between the Scottish Parliament and the CEC, the only public body to benefit directly at present from off-shore renewable energy developments, is now necessary. This would make it more accountable to the devolved Scottish Government for the management of its Scottish Estate. It would then be for the Scottish Government, working with local authorities and local communities to design mechanisms to ensure that the revenues raised from the developments in Scottish waters are re-invested for community and business benefit in Scotland. The current progress of the Scotland Bill through Westminster may provide an opportunity for this legislative change. However, in recognising that legislative change would be required, HIE would stress that the process needs to be swift and transition seamless, so not to halt or delay further leasing rounds or adversely affect industry confidence.

18. In conclusion, we firmly believe that the exploitation of the off-shore energy resource around our coastlines, in particular, offers an unprecedented opportunity for communities across the Highlands and Islands, including many in the more remote and fragile areas of our region, to share in the benefits of this green energy revolution. From a HIE viewpoint, we consider that the most tangible benefits of these developments for our region will be realised by the creation of sustainable well-paid employment in the research, design, manufacturing, operation and maintenance supply chains required to service offshore wind wave and tidal developments, creating a industry sector which will be embedded within the Highlands and Islands for generations to come.

19. Yet in order to achieve this, decisions need to be made in local areas regarding large scale infrastructure investments with resulting impacts on communities. Local accountability and a locally orientated consultative process is critical, yet the Crown Estate as currently constituted does not have a legitimate role in this regard, whilst the Scottish Government, their agency Marine Scotland and Local Authorities around the Highlands and Islands do.

20. HIE worked well with the CEC in taking this fledgling industry to its current stage, however, in order to fully realise this opportunity, strategic control of Scottish seabed resources most appropriately fits with the Scottish Government.

21. As ever, we would be happy to discuss any aspect of our above response in more detail with your officials.

June 2011

Written evidence submitted by the Scottish Council for Voluntary Organisations (SCVO)

SUMMARY

- Management and administration of the Crown Estate in Scotland should be devolved from the Crown Estate Commissioners to the Scottish Parliament.
- All surpluses from the Crown Estate in Scotland, that under the current system would normally be passed to the Treasury, should be allocated specifically for community benefit in Scotland.
- SCVO supports reform of the existing relationship between the Crown Estate Commissioners and the people and government of Scotland in a way which will maximise benefit to Scottish communities.

ABOUT US

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 137,000 paid staff and approximately 1.2 million volunteers. The sector manages an income of £4.4 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1300 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector—our 1,300 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes;
- our governance and membership structures are democratic and accountable—with an elected board and policy committee from the sector, we are managed by the sector, for the sector; and
- brings together organisations and networks connecting across the whole of Scotland.

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change. Our policy is determined by a policy committee elected by our members.¹²

Further details about SCVO can be found at www.scvo.org.uk.

OUR RESPONSE

SCVO welcomes the opportunity to respond to this consultation and would like to contribute to the following questions:

Do the Crown Estate Commissioners serve a useful purpose in Scotland?

1. SCVO recognises the commitment of the Crown Estate Commissioners to Scotland and welcomes their work towards sustainability as well as the introduction of a community investment policy. However to ensure maximum benefit to the people of Scotland, we believe that management and administration of the Crown Estate in Scotland should be devolved from the Crown Estate Commissioners to the Scottish Parliament. This transfer of powers would bring responsibilities and decision making for the Crown Estate closer to those communities affected by their decisions. Local governance would also bring a better understanding of the particular needs and problems that occur in Scotland. Under this arrangement, responsibility could be transferred from an unelected body to more democratic and accountable structures. This increased accountability would give the people and communities of Scotland a greater say in the activities and future use of the Crown Estate.

What is/should be the role of the Crown Estate Commissioners in investing in Scotland?

2. SCVO would like to see revenues generated from the Crown Estate invested directly in the communities of Scotland. The property rights and interests administered by the Crown Estate are increasingly important because of the development of marine renewable energy projects. Under the current setup where revenue is transferred to the treasury, there is no possibility of direct community benefit from these developments equivalent to that which is now expected from land-based renewable energy projects.

3. SCVO supports the view that revenues resulting from the exploitation of Scotland's publicly held land and territorial waters currently administered by the Crown Estate, including revenues from renewable energy generation and carbon capture and storage services, should benefit Scotland's people and communities. We recognise the opportunities which investment in large-scale off-shore developments present. Consequently, we believe that in Scotland, all Crown Estate surpluses that under the current system would normally be passed to the Treasury, should be allocated specifically for community benefit in Scotland. If this was accepted then the mechanism or channel for this would need to be subject to full and proper consultation.

Are the current management, administration and accountability arrangements of the Crown Estate Commissioners appropriate?

4. As stated above (1), SCVO believes that the current management, administration and accountability arrangements are not appropriate and that those powers should be devolved from the Crown Estate Commissioners to the Scottish Parliament.

How could the Crown Estate Commissioners best act in the public interest in Scotland?

5. SCVO supports reform of the existing relationship between the Crown Estate Commissioners and the people and government of Scotland in a way which will maximise benefit to Scottish communities.

CONCLUSION

In Scotland:

- Management and administration of the Crown Estate in Scotland should be devolved from the Crown Estate Commissioners to the Scottish Parliament.

¹² SCVO's Policy Committee has 24 members elected by SCVO's member organisations who then co-opt up to eight more members primarily to reflect fields of interest which are not otherwise represented. It also includes two ex officio members, the SCVO Convener and Vice Convener.

- All surpluses from the Crown Estate in Scotland, that under the current system would normally be passed to the Treasury, should be allocated specifically for community benefit in Scotland.
- SCVO supports reform of the existing relationship between the Crown Estate Commissioners and the people and government of Scotland in a way which will maximise benefit to Scottish communities.

REFERENCES

Scottish Voluntary Sector Statistics 2010, SCVO

www.scvo.org.uk/evidencelibrary/Home/ReadResearchItem.aspx?f=asc&rid=1078

June 2011

Written evidence submitted by the Scottish Boating Alliance (SBA)

1. Scottish Boating Alliance (SBA) promotes recreational boating and the leisure marine and marine tourism industries on behalf of British Marine Federation Scotland, RYA Scotland, Scottish Inland Waterways users, British Waterways Scotland, Scottish Canoe Association, Sail Scotland and Scottish Sea Anglers by informing and advising Governments and local and public authorities as requested and required. The activities covered by those organisations the SBA represents contribute in the region of £270–300 million per annum to the Scottish economy.

2. In the marine environment, the boating community interacts with the Crown Estate's Commissioners (CEC) who own and manage much of the Scottish coast line and navigable waters. What is critical to the boating community is that these are managed in a competent and cost effective way. The SBA is less concerned with the management structure and more with the outcomes from whatever structure is in place.

3. The issues raised in this Consultation have a bearing on how the marine resources used by those the SBA represent are managed and to that extent we have an interest in any changes which might be made to that management or to the revenue available for the further development of resources used by our sector.

4. Our experience in recent years of the CEC interaction with those we represent has been satisfactory. The officers of CEC have shown an understanding of the needs and priorities of our sector and have worked to identify projects where they can add value to the economic worth to Scotland of our sector. CEC have invested in ports, harbour infrastructures, marinas and moorings all to the benefit of leisure marine participants and the industry that supports them, and have evidenced a practical understanding at all levels of how to manage the marine resources under their stewardship. Our understanding is that the CEC have a statutory duty to maximise their assets having regard to good management.

5. The Consultation asks for comment on the legal framework within which the CEC operate. We would submit, in the light of our experience, that to change the current legal structure could be detrimental to the efficient management of the marine resources for which CEC are responsible and possibly to the interests of our sector. This is an entirely separate issue from how the revenue received by CEC from Scotland's marine resources is applied.

6. We assume, without having any detailed knowledge of the statutory structure in which CEC are required to operate, that it would be possible for an adjustment in the current regime to be negotiated with HM Treasury to ring-fence profit identified as having been made by CEC from Scottish marine resources and for this profit to be paid back to the Scottish Government, so that any increase in revenue stream would be available for further marine developments in Scotland. We would support any mechanism which utilised increased revenue from Scottish marine resources for the long term benefit of coastal communities in Scotland and had regard to the interests we represent.

EXECUTIVE SUMMARY

The SBA considers that currently the marine resources in Scotland are managed in a way that is satisfactory from the point of view of recreational boaters.

The SBA would welcome a structure that meant the income received by CEC from Scottish marine resources is applied in full for the benefit of Scotland's coastal communities.

June 2011

Written evidence submitted by the Scottish Salmon Producers Organisation

INTRODUCTION

On behalf of Scotland's salmon farmers in mainland Scotland, Orkney, Shetland and the Western Isles, the Scottish Salmon Producers' Organisation (SSPO) is pleased to submit evidence to the Scottish Affairs Committee's Inquiry into the Crown Estate in Scotland. We would also be happy to provide oral evidence if, in the event, the Committee felt that would be helpful to their considerations.

The salmon farming industry is a major contributor to the Scottish economy and a key player in Scotland's world-renowned food industry. It accounts for approaching 40%, by value, of Scottish food exports and, allowing for its overall economic impact, is worth approaching one billion pounds to the Scottish economy. The industry is centred on the west and north-west mainland coast and the islands where the high quality of the marine environment is essential to the industry's successful operation. Scottish Farmed Salmon has been awarded EU PGI status, marking its quality and distinctive origins.

The salmon farming industry operates under a comprehensive framework of planning and regulatory controls, which includes statutory responsibilities of Local Authorities, Marine Scotland, SEPA, SNH, the Food Standards Agency and others. Additionally, all SSPO members operate under the Code of Good Practice for Scottish Finfish Aquaculture. The Code, and its related independently audited farm management scheme, forms an important component of the industry's safeguarding of the marine environment on which successful salmon growing depends, and goes well beyond statutory requirements. SSPO members are responsible for more than 95% of all salmon produced in Scotland; thus, virtually all salmon production in Scotland is quality assured against a standard of industry good practice in farm and environmental management.

The Crown Estate is the landlord for all marine fish farms in Scotland and also for some freshwater farms, for smolt production, which are located on Crown Estate lands.

GENERAL COMMENTS

SSPO has no party political affiliations or connections: it is established as a voluntary producer organisation under EU regulations. Its main role is in representing the industry on political, regulatory, media and technical matters in Scotland, the UK, the EU and internationally. It is at the centre of salmon farming's industry-wide initiatives and public communication, acting as a source of information, a strong industry voice and a focus through which industry leadership and objectives can be channelled.

Salmon farming has an intrinsic commitment to environmental, economic and social, sustainability; since it regards these as key elements in its development and future growth. The sector actively safeguards the freshwater and marine environments in which its fish are grown; it promotes economic development in the areas where it is located; and it provides local employment, as well as wider community support through its corporate responsibility programmes. It will thus be understood that the SSPO, acting on behalf of its membership, takes a broad view of the industry's sphere of interest, and is actively engaged in food and environmental matters, as well as with those that have economic and social implications.

SSPO is also in a unique position in that it has regular dealings, from an industry standpoint, with a very wide range of government departments, government agencies, local authorities and other bodies, including The Crown Estate.

SPECIFIC COMMENTS ON THE CROWN ESTATE

Historical Perspectives

The culture of salmon eggs to produce alevins, parr and fry for stocking rivers and lochs was pioneered in Scotland in the 1870's. However, it was not until 1971 that the technology was developed to transfer salmon smolts into sea pens and on-grow them to mature harvestable salmon. This heralded the start of the Scottish farmed salmon industry, although it was not until 1980 that the first official national farm production yields were recorded. Thereafter, the industry has developed progressively to its present day output of about 145,000 tonnes per annum, which is planned to be increased by 50% by 2020.

Throughout the whole early period of the development of the salmon industry, up to 2006, the Crown Estate was both the industry's landlord and planning development authority. It was highly instrumental, along with Highlands and Islands Enterprise (previously the Highlands and Islands Development Board), in promoting and supporting the creation of a "new Scottish rural industry".

It would not be unrealistic to claim that the present Scottish farmed salmon industry would not exist in its present form and scale without the commitment and support of The Crown Estate.

More Recent Development

With the advent of Scottish Devolution and the establishment of the Scottish Parliament in 1999, there has been a major realignment of the governance arrangement in most areas of public policy in Scotland. As a consequence, most policy and regulatory matters which are of relevance to aquaculture now focus at either the EU or Scotland level (rather than GB or UK) and this is reflected in SSPO's work. As a consequence, there

have been a number of adjustments in industry/government arrangements, most notable of which has been the establishment of a UK Aquaculture Forum—a joint industry/government group to facilitate liaison and coordination between England, Wales, Northern Ireland and Scotland, particularly in respect of EU developments.

In Scotland, the salmon industry has also seen a progressive move from the situation where the Crown Estate acted as a marine Planning Development Authority to an Interim Scheme, where Crown Estate planning approvals were made in consultation with Local Authorities, to a situation where the fish farm development planning has been brought under the Town and Country Planning Act and Planning Development brought under the powers of the Local Authorities. Thus, since 2007, The Crown Estate's role has been primarily that of landlord.

Current Operations

In light of the various changes that have occurred The Crown Estate has made a number of adjustments in its operations to reflect its need to increase its accountability to Scottish stakeholders. These have included the introduction of an Industry Liaison Group, covering all industries with which The Crown Estate has an engagement. SSPO is a member of this group, and we regard that as useful and helpful.

More generally, we have regular contact with The Crown Estate on a range of matters of common interest; these include both industry matters and wider public policy or statutory considerations. In all our dealings, we find The Crown Estate well organised, responsive and professional in its approach and administration. It also remains supportive of the development of aquaculture and maintains good contact with industry stakeholders both through its general level of engagement and through specific events, such as the Scottish Marine Aquaculture Awards, for which it is the main sponsor and organiser.

It will be apparent from this that SSPO is generally content with the organisational operation of The Crown Estate. However, our members naturally will always wish to see a fair and equitable system of rents that does not add unreasonable cost burdens on their businesses (this has a particular issue for island communities, where local economies depend heavily on marine resources). Likewise, whilst The Crown Estate will naturally wish to see the aquaculture industry meet its targets for growth, and the industry would wish to see revenue gained from its activities invested back into Scotland to help achieve its broader strategic objectives.

Impact of Devolution

The process of devolution and the powers vested in the Scottish Parliament through the Scotland Act have led to a critical analysis of the governance and accountability arrangements that best serve the people of Scotland, with particular emphasis on how that affects the Scottish economy. This has led to an active and ongoing Scottish debate about the governance arrangements for The Crown Estate.

The SSPO has no politically inspired view on this matter. However, simply on the basis of our analysis and experience, we believe that there would be significant benefits to the aquaculture industry and The Crown Estate from a more apparent linkage between marine developments in Scotland and a “visible” income stream into the Scottish Economy. We are also aware that in Local Authorities areas in which aquaculture has been developed, there is significant support not only for the Scottish Parliament to have more authority over the Crown Estate, but for the planning functions transferred from Crown Estate to Local Authorities be supported by additional resources from aquaculture lease income.

Thus, given that many other UK public bodies have been restructured to reflect the realities of Scottish devolution, we can find no argument against the case for The Crown Estate being accountable to the people of Scotland through the Scottish Parliament. Moreover, on balance, we take the view that such realignment would be appropriate and would have advantages both to the aquaculture industry and The Crown Estate.

June 2011

Written evidence submitted by the Scottish Government

CONTEXT AND OVERVIEW

All of Scotland's sea bed, most of Scotland's foreshore and some other public assets are managed by a body that is not accountable to the Scottish Parliament: the Crown Estate Commissioners (CEC). The revenues from their management flow out of Scotland to HM Treasury. This is an anachronistic arrangement out of step with devolution and it is preventing the optimal management of Scotland's marine assets.

Scotland is a maritime nation. It has almost 500,000 square kilometres of sea, six times its land area.¹³ It has 118 inhabited islands. The Scottish sea area is over 60% of the UK sea area. The maritime economy is relatively much more important than in other parts of the UK and offers some of Scotland's best opportunities for growth.

¹³ Fully devolved competence beyond 12 miles is limited to fishing

With as much as a quarter of Europe’s offshore wind and tidal energy potential and an estimated 10% of its capacity for wave power, Scotland can become a green energy powerhouse. Scotland has 206 GW of practical offshore renewable energy resource, almost 40% of the total resource for the UK. Harnessing just a third of this potential could meet Scotland’s electricity needs seven times over by 2050, with a net value, in terms of sales, of £14 billion. Furthermore, the North Sea offshore of Scotland has the largest offshore CO2 storage capacity in the EU.

The current arrangements for managing Scotland’s natural marine assets have resonances of feudal times. Through leases, dues and fees set remotely, the CEC tax development of the seabed and pass the profit to HM Treasury. The CEC also has the right to sell parts of the Crown Estate, including the seabed, without reference to the views of the Scottish Parliament, the Scottish Government or the Scottish people.

There is a better way to manage Scotland’s natural assets in the public interest, a modern approach that brings decision-making closer to the people and would be of benefit to the nation, especially to the many remote and island communities in Scotland whose livelihood and future depends on the sea.

This briefing note sets out the composition of the Crown Estate in Scotland and the case for reform. It explains how the Crown Estate should be better managed and sets out proposals for change. This would be hugely significant for Scotland, as we work to make the most of our vast offshore energy potential and bring new jobs and opportunities across our nation, as part of a renewables reindustrialisation of Scotland, and democratise the management of the seabed.

THE CROWN ESTATE IN SCOTLAND

The property, rights and interests of the Crown managed by the CEC are known collectively as the Crown Estate. The property, rights and interests that make up the Crown Estate in Scotland are legally distinct from those in the rest of the UK, and the ancient possessions came separately from the Scottish Crown.

Contrary to popular belief the Crown Estate is not the Sovereign’s private estate, and nor do the Crown Estate Commissioners own it. CEC administers the rights of ownership under the Crown Estate Act 1961. Other arrangements for administering the Crown Estate have existed in the past and are perfectly possible today.

The Crown Estate Commissioners was first constituted by the Crown Estate Act in 1956. The origin was the transfer by legislation in the 1830s of the administration and revenues of some of Scotland’s Crown property rights to the CECs’ predecessors, the Commissioners of Crown Lands. The Secretary of State for Scotland was, prior to 1956, the Commissioner for Scotland.

The CEC is a UK public body responsible to HM Treasury. It is required to administer the UK-wide Crown Estate on a commercial basis and has no broader remit in relation to delivery of wider public policy. The CECs’ responsibilities in Scotland are set out in detail in Annex A and include: Scotland’s territorial seabed out to 12 nautical miles; almost half of the foreshore; and assets unique to Scotland such as rights to salmon fishing, wild oysters and mussels and culturally important sites including the King’s Park at Stirling and part of Princes Street Gardens in Edinburgh. CEC also has responsibility for leasing the seabed for renewable energy and carbon storage out to 200 nautical miles.

The CECs’ UK wide surplus revenues are transferred to the UK Treasury on an annual basis (£210 million in 2009–10). The Crown Estate in Scotland accounts for less than c.5% of both the CECs’ annual revenue and the capital value of the Crown Estate. This relatively low Scottish percentage is because the greater part of the value and revenue of the Crown Estate is commercial property in England.

Table 1

CURRENT REVENUE POSITION OF THE CROWN ESTATE IN SCOTLAND

<i>2009–10</i>	<i>UK (£ million)</i>	<i>Scotland (£ million)</i>
Value of holdings	5989	183.5 (3.1%)
Revenue generated	299.7	13.1 (4.4%)
Gross surplus	246.8	9.1 (3.7%)
Surplus returned to Treasury	210	Est 4% (exact figures not available)

The administration and revenues of the Crown Estate in Scotland are reserved (although the Scottish Parliament can legislate over the extent and nature of Crown property rights). The CEC is not accountable to Scottish Ministers nor the Scottish Parliament; this is a particular anomaly as the CECs’ activities relate to devolved responsibilities notably marine planning and management, economic development, renewable energy policy and ports and harbours. A unique feature of the administration of the Scottish Crown Estate is that the Secretary of State for Scotland has a specific power of direction. This was intended to safeguard public interest considerations in Scotland but has never been used.

Since devolution, the CEC has acted to reduce its accountability in Scotland. In 2002 it stopped treating Scotland as a separate management unit and keeping Scottish accounts. Now all of the CECs' policies and programmes are developed and delivered on a UK basis. There is therefore very limited scope for consideration of whether a different approach within Scotland is desirable or necessary.

The CEC approach to awarding leases is based on a narrow remit of maximising economic return. It is a product of their constitutional position, more appropriate for conventional commercial property and clearly inappropriate for the management of Scotland's marine natural assets. Significantly the CEC do not have an economic development remit. It is a matter of wider community interest that things should be done differently.

SUPPORT FOR REFORM

There is longstanding concern about the current arrangements and a groundswell of opinion across Scotland for change. There is cross party support in the Scottish Parliament for reform and on 2 June 2011 the Parliament passed a motion supporting devolution of the Crown Estate to the Scottish Parliament to ensure that Scotland's natural assets are managed in Scotland for the benefit of all of Scotland's people.

A number of high-profile and authoritative reports published in recent years have criticised CECs' management of the Crown Estate in Scotland. These include the Crown Estate Review Working Group's report in 2007, the Calman Commission report in 2009 and the Treasury Select Committee's inquiry in 2010.

Earlier this year a wide range of individuals and organisations provided a considerable volume of evidence to the Scottish Parliament's Scotland Bill Committee and Westminster's Scottish Affairs Committee calling for the Scotland Bill to be used to bring about devolution. The Scottish Government's recent public consultation on maximising community benefit from renewable energy projects sought views on this key issue: the majority of respondents answering the questions on the Crown Estate agreed that the revenues should stay in Scotland and supported reform to improve transparency and accountability to the people of Scotland.

PROPOSAL

Devolved control over the management and revenues of the Crown Estate in Scotland is essential to maximise the benefit from our significant marine resources. Devolution would allow us to realise the seabed's full economic potential, helping create thousands of additional jobs across Scotland and supporting the transition to a low carbon economy.

DELIVERING DEVOLUTION OF THE CROWN ESTATE

The Scottish Crown Estate can be brought within the remit of the Scottish Parliament by amending the Scotland Bill that is currently being considered by the UK Parliament. This can be achieved by removing the current Scotland Act reservations on its management and revenues:

“in Part 1 of Schedule 5 to the Scotland Act 1998 (c.46), omit paragraphs 2(3) and 3(3)(a).”

In addition the definition of Scotland in the Act should be amended to fully devolve all competence for devolved matters out to 200 nautical miles. Devolving full legislative competence to the Scottish Parliament would allow for streamlined management of Scotland's marine area and proper accountability. (Crown Estate devolution would also allow modernisation of the management of the disparate Scottish assets which include parts of Princes Street Gardens in Edinburgh and several large rural estates.)

MAKING BETTER USE OF CROWN ESTATE REVENUES

The revenues arising from the management of the Crown Estate in Scotland would be transparently reinvested in promoting sustainable development and supporting relevant rural and island and coastal communities. The details of the arrangements would be the subject of further consultation and Parliamentary approval, but the Scottish Government's view is that it would be appropriate for a proportion of the surplus revenues to be invested in the development of Scotland's offshore renewables sector and a proportion to be used for community benefit around Scotland's shores.

We would seek to take forward proposals to deliver community benefit through the creation of a Fund for Future Generations, allowing a proportion of the substantial anticipated future revenues from offshore energy to be invested for the long-term providing both financial security and economic opportunity. Income from this fund would support a range of projects designed to deliver flourishing communities around Scotland's shores and would ensure the people of Scotland directly benefit from our natural resources. Potential mechanisms for community benefit could include promotion of local asset ownership options or community funds and investment in education and training, particularly for young people.

We would seek to link together investment from Crown Estate revenues with released Fossil Fuel levy monies which currently sit at nearly £200 million. In the short term the Scottish Government would ensure

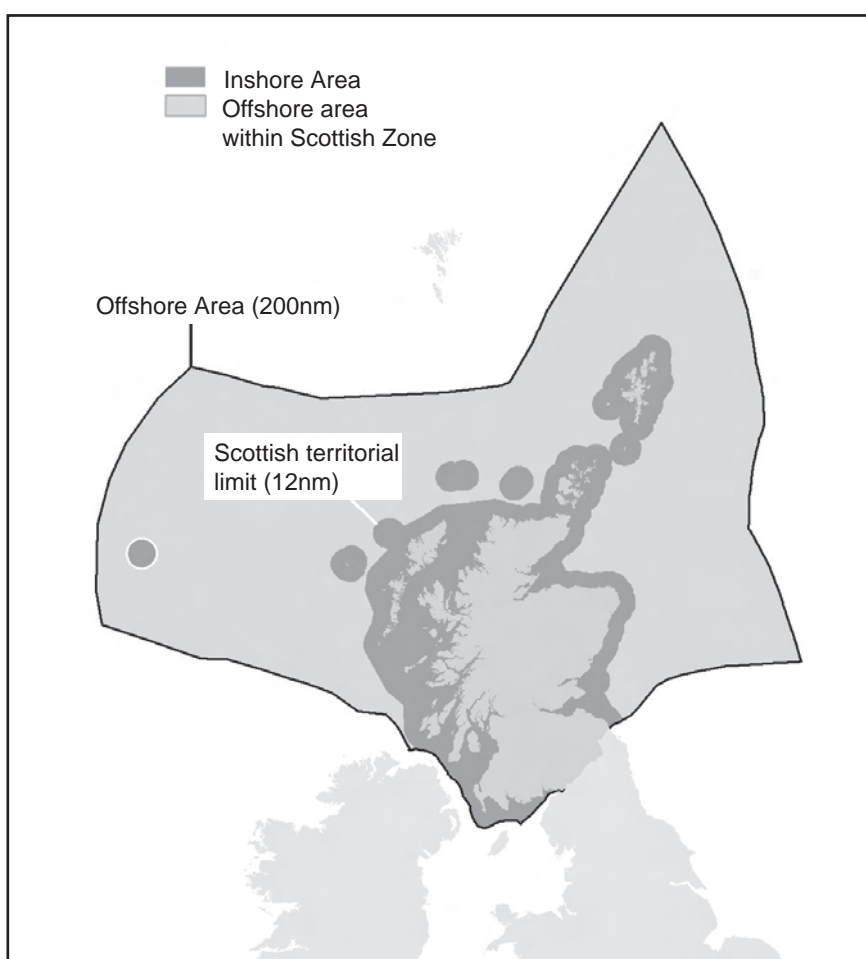
that investment in Scotland’s renewables sector by the CEC was matched under new arrangements. The release of funds from the Fossil Fuel Levy would allow us to increase the level of investment. These revenues would be used for a range of purpose to help expand Scotland’s low energy sector, such as:

- Investment in skills development for the renewables sector.
- Investing in the supply chain base.
- Providing capital loans for community renewable projects.

In addition to ensuring investment is maintained, the work undertaken by the CEC to support renewables development, for example the work undertaken in conjunction with Marine Scotland on bird surveys, would be continued and where possible accelerated.

MORE EFFICIENT AND EFFECTIVE MANAGEMENT OF OUR NATURAL RESOURCES

The Scottish Government would deliver streamlined, transparent and accountable arrangements for the management of the Crown Estate in Scotland. The detailed arrangements would be subject to public consultation and discussion.



Marine Scotland is already the licensing body for many marine developments and is well-placed to manage the marine estate. This would mean a streamlined approach to the development of renewables. A single body would be involved in the development of, and planning for, marine renewables, rather than the current situation with two bodies in two different jurisdictions, operating under different policies. This would give greater certainty to investors.

Leasing responsibilities would give Marine Scotland an enhanced range of levers to deliver both upstream and downstream benefits from renewables projects in terms of manufacturing and maintenance investment and jobs. Leasing is a key lever for mitigation of social and economic impacts, a vital tool in encouraging public acceptance of individual projects and the industry as a whole.

There would also be benefits to the management of the aquaculture industry, with further potential for streamlining bureaucracy and more sustainable management, similar to arrangements in Norway—our closest competitor.

The processes by which the CEC sets port rents and re-charges legal fees to them as lessees would benefit from reform, with the focus on accountability and alignment of policies and operations in line with maximising Scotland's ports potential.

Given the relatively small sums of money involved, the variability of revenues, past sales of assets and future investment plans, the Scottish Government believes that this should be taken forward on a no detriment basis and will negotiate on a block grant adjustment.

There would be no impact on oil and gas leases or revenues while those matters remain reserved. A separate provision of the Scotland Act 1998 reserves oil and gas exploration and production, both onshore and offshore.

CHANGING THE ADMINISTRATION OF THE CROWN ESTATE IN SCOTLAND

Following agreement that the CEC will devolve its responsibilities and powers in Scotland, the changes to the administration of the Crown Estate in Scotland would be introduced in phases as follows:

Phase 1 Pending implementation of the legislation to devolve the CEC's responsibilities and powers in Scotland, a range of interim changes to the CEC's operations will be introduced to improve accountability, transparency and policy alignment, including a separate Scottish operating division.

Phase 2 When the Scottish Government becomes responsible for the Crown property rights currently managed by the CEC (and following a wide public and stakeholder consultation during the transition period) the Government will bring forward proposals to involve local authorities and communities in decisions about marine resources.

In determining the most appropriate arrangements, the focus would be on ensuring optimal management of public assets, with a far broader remit and purpose than is currently achieved. Management arrangements would be tailored to meet specific Scottish needs and aspirations, including:

- Alignment with and directly contributing to Scottish Government purpose and objectives;
- A broad, inclusive focus which reaches beyond revenue maximisation to wider economic development and promotion of public interest;
- Use of revenues to deliver direct benefits to Scotland at a national and local level;
- Contribution to Scotland's unique climate change targets;
- Responsive to Scottish Parliament, Scottish Government and public expectations of transparency, accountability and participation; and
- Reduction of bureaucracy and duplication of public resources.

CONCLUSION

Scotland's seabed and marine natural resources are a vital part of its economy and its greatest opportunity for growth. It is right that Scotland should be able to manage these assets both as a matter of natural justice and to have the best opportunity of delivering the growth in off-shore renewable energy sought by both the UK Government and the Scottish Government. Present arrangements, with decisions being taken by a remote unaccountable body are clearly unacceptable and have been a source of friction in Scotland for decades. If not resolved this issue will hamper future growth and alienate affected communities.

This paper has proposed how change could be made and set out the intermediate steps which would be taken. This is a matter of great importance in Scotland, which has very little implication for the UK Government.

Annex A

CROWN PROPERTY, RIGHTS AND INTERESTS IN SCOTLAND MANAGED BY THE CROWN ESTATE COMMISSIONERS

ANCIENT POSSESSIONS

- Ownership of the seabed (excluding hydrocarbons) within Scotland's territorial seas out to the 12 nautical mile limit, where this has not been granted out.
- Rights over the continental shelf to minerals (excluding hydrocarbons) and sedentary species from Scotland's territorial seas to 200 nautical mile limit including recent claims of rights on renewables and carbon sequestration.
- Ownership of Scotland's foreshore where this has not been granted out and excluding areas under udal tenure.
- The right to all naturally occurring mussels in Scotland's territorial seas where this has not been granted out.
- The right to all naturally occurring oysters in Scotland's territorial seas where this has not been granted out.
- The right to all coastal salmon fishing within Scotland's territorial seas where this has not been granted out.

- The right to all salmon fishing in rivers and lochs in Scotland where this has not been granted out and excluding areas under udal tenure.
- The right to mine naturally occurring gold and silver in Scotland.
- Ownership of 5 ha of West Princes Street Gardens, Edinburgh, including the Castlebanks.
- Ownership of Kings Park, Stirling.

MODERN ACQUISITIONS

- ownership of five rural properties:
 - Glenlivet (Moray)
 - Fochabers (Moray)
 - Applegirth (Dumfries and Galloway)
 - Whitehill (Midlothian)
 - Old Mills Farm (Stirling)
- ownership of one urban property in Edinburgh (39/41 George Street);
- involvement in joint property partnerships (50% ownership of Fort Kinnaird Retail Park in Edinburgh through Gibraltar Ltd Partnership; and
- ownership of coastal properties (excluding harbour and related property) (Rhu Marina, Firth of Clyde).

OTHER RIGHTS & DUES

- Title reservations: minerals rights and other rights reserved by the Crown over former Crown lands, including Edinburgh Castle and other prominent sites.
- Heritable revenues: feu duties & surplus teinds still due to Crown over former Crown lands.
- Other income: The right of the Crown to income if the one site in Scotland transferred to government ownership under the Forestry (Transfer of Woods) Act 1923, is sold.

June 2011

Written evidence submitted by Orkney Fisheries Association (OFA)

The Crown Estate Commissioners announced last year (March) the leasing of large areas of seabed predominantly on the West Coast of Orkney.

No consultation or discussion took place with fisherman prior to this announcement despite the area encompassing key lobster and crab fishing grounds.

Commercial confidentiality with developers was cited as the reason for secrecy however the significant commercial significance of the fishing industry was not recognised as an important factor.

Tardily the CEC attempted to engage with fishing interests however demonstrated very poor public relations ability and a corporate attitude of arrogance towards local fishing interests.

It remains that if the unilateral disposal of large areas of the sea to renewable interests goes ahead, the impact on (non subsidised) Orkney fisherman and the inter-related processing and factory jobs will be devastating.

Enshrined in the legal duties of the Crown Estate is the duty to uphold the right to fish.

The CEC operate as a feudal entity with the attitudes that append to that. They are wholly unaccountable and non-transparent.

Fishermen provide no income to the Crown Estate so are dispensable to them.

The commercial motive to maximise revenue for the Crown is in conflict with upholding the right to fish.

The commercial motive to maximise income for the Crown estates is driving a modern day clearance of fishermen from the sea in much the same way as the Duke of Sutherland cleared his tenants for sheep.

June 2011

Supplementary written evidence submitted by The Crown Estate

SCOTTISH AFFAIRS HEARING: WEDNESDAY 8 JUNE 2011

For the record, I am writing to you to ensure that there is no misunderstanding concerning one part of the evidence which I gave to your Committee on Wednesday 8 June, 2011.

When I appeared before you, I explained that, although we had made a formal offer to the First Minister to meet him on an annual basis, there had not been any positive response to this offer. According to reports in the Scottish media, the First Minister seemed to suggest that, because there are many meetings between The Crown Estate and the Scottish Government, I might have misled the Committee.

I felt I therefore ought to write to confirm that what I told the Committee was correct. The First Minister is, of course, right that we do often meet the Scottish Government in the course of our day-to-day business dealings. But what we were offering the First Minister in our letter of 8 July 2009, was something in addition to those meetings: namely, a commitment to meet him every year so that we could report on the year past, our immediate plans ahead, and consult on our longer-term strategy including how best we work with local authorities in Scotland where we have interests.

I would not want any Member of your Committee to think that I had in any way misled them. I would therefore be grateful if you would bring this letter to their attention. I would also, of course, be content for this letter to be placed on public record.

As a courtesy, I am sending a copy of this letter to the First Minister of Scotland, the Secretary of State for Scotland and to Sir Nicholas Macpherson at Treasury.

Roger Bright CB

June 2011

Additional written evidence submitted by The Crown Estate

**A NOTE ON THE RESTRICTIONS AFFECTING THE CROWN ESTATE AS A PUBLIC AUTHORITY
IN TERMS OF REQUIREMENTS FOR LEASING**

The Crown Estate would identify several legal areas where, by virtue of being a public authority, it might be constrained in the terms on which it may grant leases, as compared with a private sector organisation:

1. It is constrained by its statutory remit, for example, to obtain best consideration (section 3(1) of the Crown Estate Act), and not to grant any lease for more than 150 years (section 3(2)).
2. As an emanation of the state, within the meaning of EU law, The Crown Estate is obliged to apply the principles of transparency and non-discrimination which are generally known as the Treaty Obligations. An example is in relation to procurement, which can include the granting of leases. Leases granted on terms which discriminated in some way between potential tenants in the market could fall foul of the Treaty Obligations.
3. Competition law, at both European and domestic level, prohibits price fixing (which can include lease rents) by either a cartel of landlords, or by one landlord negotiating with a collective of tenants such as a trade association. It also prohibits abuse of a monopoly position. These restrictions apply to organisations in both the public and private sectors. However, with the Crown being a monopoly owner of seabed, the Crown would abuse its position if it imposed lease conditions in seabed leases which a balanced market would not accept.
4. There are a number of pieces of domestic legislation, such as the Human Rights Act 1998, which impose obligations specific to public authorities, although these in general are unlikely to impact on the granting of leases.

CLAUSES FAVOURING LOCAL EMPLOYMENT

At the hearing before the Scottish Affairs Committee on 8 June 2011, Tom Mallows referred to The Crown Estate being a public authority subject to state aid regulations. By way of explanation, it is probably not state aid rules in the technical sense of financial support which could be at risk of breach, so much as the wider public authority duties regarding non-discrimination under EU directives, as mentioned at 2 above. It should be added:

- such clauses could potentially have a negative effect on value and as such breach obligations under The Crown Estate Act;
- they could give rise to discrimination under the Equality Act and could amount to a breach of the EU Articles on Free Movement of Labour (Treaty on the Functioning of the European Union (formerly the Treaty of Rome)); and

- although such conditions may not be unusual as between a business operator, for example a developer and a local community, and indeed they are not uncommon as a planning condition for development, they would be unusual as between a landlord and a tenant who was the operator of a business. As unusual lease terms not directly relevant to the relationship of landlord and tenant, there may be some doubt whether the Scottish courts would be prepared to enforce them under Scots law and their value would therefore be questionable.

All that said, The Crown Estate is keen to work with the grain of government, and if it was asked by government at national or local level to consider the inclusion of clauses favouring local employment, it would give the matter full consideration.

MANAGEMENT OF WEST COAST MOORINGS

Scotland has some of the best sailing and cruising waters in Europe and demand for mooring and anchorage space is high. With over 5,500 licensed moorings across the whole of Scotland, The Crown Estate has the lead role in managing the provision of mooring space for the Scottish boating community.

Navigation in coastal waters is a public right, including casting an anchor while in the course of navigation. The laying of a permanent mooring or other equipment to hold a vessel, however, requires consent of the landowner. This position is clear in law and the legal rules governing the laying of boat moorings apply to all landowners, not just the Crown.

A private mooring licence from The Crown Estate gives an individual the legal right to lay a mooring on Crown seabed in a particular location to the exclusion of others; that right has a value and The Crown Estate charges a modest fee to reflect this, with the revenues returning to HMT.

To manage the provision of moorings, we have a licensing system in place and staff dedicated to helping coastal communities make the most of this limited resource. P-J Korbelt and Rob Adam are Marine Officers for The Crown Estate. Based in Argyll and Wester Ross respectively, they work with a wide range of marine users and stakeholders in the north and west of Scotland where the majority of moorings are found. We also maintain close links with other bodies with an interest in moorings such as the Scottish Government, Northern Lighthouse Board, RYA Scotland, Clyde Moorings Committee and the West Highland Anchorages and Moorings Association (WHAM).

The cost of a mooring licence for an individual mooring from The Crown Estate is £80 per year, and this can be reduced even further where mooring owners join together to form a Moorings Association. There are currently over 50 Moorings Associations across Scotland and they provide a degree of local management in mooring areas. Once established, a Moorings Association is given a lease for an area of seabed enabling it to manage the moorings in its specific area. Moorings Associations are suitable for groups of moorings and provide a degree of security as pressure on areas traditionally occupied by moorings increases. In return for setting up an Association each member pays a reduced fee of £40 per year.

The licence scheme ensures that we are able to manage seabed activities taking all marine users into account. Specifically, licensed mooring owners' interests are taken into account when new developments or proposals come along for the same area of water.

The benefit of having a licence from The Crown Estate was evident with events in Glenuig Bay. A local businessman made application for several moorings in the bay and local boat owners, who had resisted taking a licence in the past, realised they had no basis for having their moorings and were at risk of being displaced. The Crown Estate brokered a solution between the parties and assisted in the setting up of a new Mooring Association allowing the local community to manage their local waters for the benefit of the community and visitors alike.

The licensing scheme also ensures that recognised anchorages are kept free from moorings, allowing visiting boats to anchor safely in poor weather conditions.

In addition, we reinvest in the leisure sailing industry, such as our investment in pontoons and moorings at Tarbert, Tobermory, Wick and Ullapool Harbours. We have also helped fund the "Welcome Anchorages" publication (available on our website at http://www.thecrownestate.co.uk/moorings_scotland) and our Marine Communities Fund has, amongst others, funded improvements to moorings in Portree, helped the Skye community of Stein bring a slipway back into use, cleared a popular anchorage at Puillodhbhainn and contributed towards the new competition slipway at Largs Marina.

Furthermore, we have been working with Comhairle nan Eilean Siar to encourage the formation of Moorings Associations around the Western Isles. The Comhairle are the statutory Harbour Authority out with Stornoway and they have been keen to regulate activities within their waters. We established the first Western Isles Mooring Association at Leverburgh last year and we have been in discussions with them (alongside the Comhairle) regarding a small grant towards a drying plinth which would enable them to carry out maintenance on their boats. In addition, the forming of the Association has been the springboard for other ideas such as installing pontoons for visitors.

RYA Scotland has been helping a proposed Association at Miavaig in drawing up a constitution for their group. The Crown Estate is responsible for the seabed in this area. The licensing scheme has the full support of the Comhairle, RYA, and WHAM.

THE LANDGIRLS MEMORIAL AT FOCHABERS

In 2010 The Crown Estate was approached by NFU Scotland, who were seeking a suitable site for a memorial to commemorate the landgirls of World War II. With the support of one of the farming tenants on The Crown Estate's Fochabers Estate, an area of unproductive land in the corner of that tenant's farm comprising 0.1 ha. is being released from the tenancy to provide a site.

The Crown Estate's contribution is time volunteered by Crown Estate employees. A small reduction in the farm rent is being negotiated, expected to be of the order of £50pa. The land remains in Crown Estate ownership and no direct funding for the project has been provided by The Crown Estate.

The Crown Estate's contribution is therefore very small. The business case is based on its stewardship which facilitates a project to attract visitors to the area and thereby potentially improve The Crown Estate's asset value in the area in the long term.

Planning consent for the memorial is in course of being obtained by NFU Scotland, and it hopes to erect it later in the summer.

ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

Q: *The numbers of candidates for the role of the Scottish Commissioner?*

A: There were 67 applicants in 2009 for the position of Scottish Commissioner.

June 2011

Written evidence submitted by Rt Hon Alex Salmond MSP, First Minister of Scotland

I write in connection to the evidence provided to the Scottish Affairs Committee on 8 June by the Crown Estate Commissioners (CEC), and Mr Bright's subsequent letter to you of 10 June. I want to correct the potential misinterpretation regarding the level of strategic engagement between Scottish Government Ministers and the Crown Estate Commissioners. I am concerned that some of Mr Bright's and Mr Mallows' evidence is somewhat misleading and incomplete, and that a similarly partial picture has been given to the Royal Household.

In the period from 2008–10 there were no less than 11 separate meetings at Ministerial level; I append an illustrative list. You will note that these have involved Ministers from a variety of portfolios including aquaculture, marine renewables, nature conservation and offshore wind farms.

I have personally been involved in half of these engagements. This reflects the importance the Scottish Government attaches to the good management of Scotland's marine and rural areas. Beyond these specific meetings there has also been engagement at various award ceremonies and extensive contact at official level, with meetings taking place on an almost weekly basis.

All meetings involving Scottish Ministers and officials take place in the wider context of the Scottish Government's priorities and objectives for Scotland, and provide ample space for discussion of strategic issues. It would hardly be appropriate to restrict discussions of these matters to an annual meeting.

It is not clear to me why Mr Bright and Mr Mallows wished to give a contrary impression to your Committee except to point out that it was unlikely to be inadvertent since the same misleading impression was given to a member of the Royal Household.

I hope this letter provides clarity on this issue and look forward to engaging with the Committee's ongoing enquiry. I am writing in similar terms to the members of the SAC and as a courtesy I am sending a copy of this letter to Roger Bright.

SCOTTISH GOVERNMENT MINISTERIAL MEETINGS WITH CEC

Richard Lochhead—Gareth Baird	16 December 2010	Strategic Engagement; Community benefit; offshore wind.
Alex Salmond—Dermot Grimson	2 December 2010	Offshore wind developers briefing
Alex Salmond—Roger Bright	16 February 2010	Announcement of marine energy projects in Pentland Firth
Alex Salmond—CEC Officials	5 March 2010	Meeting
Alex Salmond—Gareth Baird	8 January 2010	Renewables announcement
Alex Salmond—Rob Hastings	4 November 2009	Saltire Prize and Marine (Scotland) Bill
Roseanna Cunningham—CEC Officials	8 September 2009	Rural policy and marine issues

Jim Mather—Rob Hastings	19 August 2009	Marine Renewables
Jim Mather—Rob Hastings	18 November 2009	Renewables
Mike Russell—Ian Grant	17 June 2008	SG—CEC engagement
Mike Russell—Ian Grant	25 March 2008	SG—CEC engagement

June 2011

Written evidence submitted by Orkney Islands Council

ORKNEY ISLANDS COUNCIL'S INTEREST IN THE OPERATION OF THE CROWN ESTATE

Orkney has three areas of interaction with The Crown Estate; fish farming, port and harbour development and marine renewables.

The last of these has recently been of considerable concern in relation to the operation of The Crown Estate in Scotland given the impact that decisions to lease, or not lease, areas in Orkney waters will have on the local communities and economy of Orkney.

1. EXISTING ECONOMIC ACTIVITY AND CONTRIBUTION TO THE DEVELOPMENT OF MARINE RENEWABLES

(a) Orkney has had research and development activity in marine resources and renewable energy for 21 years with the ICIT campus for Heriot Watt being based in Stromness and generating various spinout businesses over the decades that now play a key role in the Orkney economy. These knowledge based companies provide graduate and post graduate level employment and export high value consultancy services which helps to balance an economy otherwise dependent on primary production, food processing, crafts, tourism and declining oil activity.

(b) In addition, EMEC has now been operating on Orkney for six years testing full size and now scale devices and Orkney is well established as a leading centre of research and development for an industry that has yet to prove the underlying technology. This testing activity has also built up a local supply chain in support as well as bringing in specialist contractors and vessels that all contribute to the local economy. EMEC berths are likely to be at full capacity by next year. 150 people are employed in the marine renewables sector and support services.

2. INTEGRATION OF EXISTING ACTIVITY WITH THE CROWN ESTATE LEASING PROCESS

(a) The Crown Estate announced the lease option sites for PFOW in March 2010 which was welcomed as recognition of the particularly valuable resources around Orkney in terms of wave and tidal stream energy.

(b) Unfortunately local consultation was not undertaken in advance of this and it has gradually emerged, with some difficulties in obtaining clarification, that as part of this leasing process, the entire Pentland Firth and Orkney Waters area has been designated by TCE a "Strategic Area" and has been specifically excluded from all subsequent leasing rounds.

(c) Developers are therefore being encouraged to apply for demonstration leases anywhere in the UK apart from Orkney. All the leading technologies with lease options in Orkney bar one have now secured demonstration leases elsewhere for their initial arrays.

(d) Whilst it is understandable that The Crown Estate wish to maximise the long term value of sites in the best resource area, this ringfencing of PFOW is clearly not in the interests of the local economy which will see a hiatus in activity or in the interests of device developers looking for continuity from their activities on EMEC test sites.

(e) Under TCE's current statutory obligation to concentrate solely on the revenue they return to the Treasury and increasing the value of the estate they manage, there is a clear potential for conflict with the interests of the local community. Any alignment of interests is a happy co-incidence rather than by design and there is at the moment no mechanism for resolution of such conflicts. As Roger Bright states in his evidence to the Inquiry: "TCE very consciously seeks to act in the interests of tenants, the communities where they operate and various stakeholders *provided that we can be satisfied that there is a clear business benefit.*"

(f) Discussions around a potential MOU with Local Authorities and representation on the groups such as the Pentland Firth and Orkney Waters Co-ordination Committee have not provided any substantive solution. In part because the Crown Estate is not resourced to undertake the work required.

3. CONCLUSION

(a) The Crown Estate is clearly not in a position under their current remit, to take into account economic development objectives or under any obligation to conduct meaningful consultation with local communities prior to announcing their plans for seabed use and allocations. We strongly believe that this should change.

(b) The role or mandate that Orkney Islands Council would expect for any body administrating monopoly rights to the sea bed is the following:

(i) *Leasing process requirements*

1. Wider objectives for leasing than rental returns alone need to be considered.
2. Transparency of process.
3. Local involvement and consultation in advance of leasing rounds in order to accommodate the interests of other sea users and stakeholders, preferably with a significant local presence for the administrating body.
4. Accountability in terms of wider economic development objectives and local interests including community benefit.

(ii) *Distribution of revenues*

1. Transparency.
2. Significant proportion of funds applied locally.
3. Priority of applications for funds:
 - (a) From the outset:
 - (i) education and skills;
 - (ii) enabling infrastructure; and
 - (iii) business capital for development of local supply chain.
 - (b) From the (later) profitable phase of any seabed related industry:
 - (i) alleviation of local fuel poverty; and
 - (ii) cultural activities.

June 2011

Written evidence submitted by Scotrenewables Tidal Power Ltd.

I would like to thank the Scottish Affairs Committee for their recent visit to see the Scotrenewables prototype tidal turbine at Hatston Pier in Orkney. The visit provided us with a valuable opportunity to air and discuss our views on one of the most important issues we need to overcome in order to progress our tidal turbine concept to a commercial reality. The issue in question is the Crown Estate's decision to declare a moratorium on the announcement of further demonstrator seabed leases in the Pentland Firth and Orkney Waters area.

Scotrenewables Tidal Power Ltd was founded in Orkney in 2002 and now employs 15 full-time staff, the majority of which, including the company's founder, are Orcadian. In addition to this all testing of the Scotrenewables Tidal Turbine concept to date, including open sea-trials of a 1/5th scale and more recently the SR250 full-scale prototype, have been undertaken in Orkney waters. Design work has now begun on Scotrenewables' next generation device—a target 2MW rated power commercial scale device to be completed mid 2013. Despite the incontrovertible links mentioned above, due to the Crown Estate moratorium, we now find ourselves in the absurd situation of having to test our next generation device outside of Orkney either elsewhere in the UK or further afield.

In 2009 Scotrenewables submitted an application to the Crown Estate for a commercial development of up to 30MW at a site at Lashy Sound on the west coast of Eday. While the application was well received the bid ultimately failed due to the £25 million bond requirement stipulated by the Crown Estate. While we understand that the bond requirement has subsequently fallen to the more attainable, although not insignificant, sum of £10 million the Crown Estate moratorium now blocks our path to a commercial deployment in Orkney waters. Furthermore, the Crown Estate Round 1 announcement made no provision for more realistic intermediate scale commercial demonstrator projects such as the proposed Scotrenewables Lashy Sound development and rather focused on a relatively small number of larger scale projects in the 100's of MW that are likely to be several years from becoming a commercial reality.

With this in mind we would urge the Scottish Affairs Committee to consider our case when conducting their upcoming inquiry into the activities of the Crown Estate in Scotland.

June 2011

Written evidence submitted by Scottish Renewables

Scottish Renewables is Scotland's leading renewables trade body. We represent over 320 organisations involved in renewable energy in Scotland. Further information on our work and membership can be found on our website www.scottishrenewables.com.

Scottish Renewables' written evidence is concise and sets out the principles of the renewable energy industry in Scotland's expectations of the administration of The Crown Estate in Scotland.

1. Scottish Renewables' response to the Scottish Affairs Committee's inquiry into The Crown Estate in Scotland is based on ensuring that the renewable energy industry receives the best level of support possible, regardless of whether it is administered and accountable under the existing arrangements or potentially devolved in part or whole to the Scottish Parliament or local government.
2. Scottish Renewables notes that The Crown Estate has invested substantially in offshore renewable energy to date, providing match-funding of option fees to develop "enabling actions" to support the industry's development. Any changes that may be brought forward must ensure that such investment in the industry continues at the same or greater level.
3. The industry would expect the stewardship of the Scottish seabed to ensure that:
 - (a) The momentum and drive of the industry continues to move forward at a pace that encourages sustainable growth,
 - (b) There is collaboration in the sector, specifically into non-site specific projects and that project findings are shared within industry,
 - (c) Scotland is promoted as a world leader in offshore wind and marine energy development, and encourages further inward investment,
 - (d) A fair and accessible opportunity is available for all sizes of companies to secure a "lease" of an area of the seabed, and
 - (e) There is adequate resourcing with skilled experienced staff across the bodies responsible for leasing, licensing, regulatory and statutory duties.
4. The Crown Estate and the Scottish Government have both worked closely with the renewable energy industry to bring forward ambitious plans for both offshore wind and wave and tidal sites, with ambitions for almost 10GW of offshore wind and 1.6GW of marine energy.
5. The industry's priority is to ensure that we have the right arrangements in place to allow our members to make the necessary investment to take these plans through to development, and to support the opening up of new sites around our coastline.
6. However, we see clear merit in ensuring that future lease revenues from renewable energy projects more clearly benefit communities across Scotland, and we will be working with our members, ministers and The Crown Estate to assess how this can best be achieved.

June 2011

Written evidence submitted by Victor Thomas

I wish to contribute to the inquiry as a private individual and interested member of a local community affected by the Crown Estates taxation regime.

Firstly I believe the Crown Estates to be a real burden to the maritime business community and their efforts trying to provide jobs and income to such marginalized or peripheral areas. I also believe that the Crown Estates existence is unnecessary and my contribution to this inquiry could save a lot of money & wasted time. I also believe that the seabed around our Scottish islands should not be subject to Westminster taxation when the Inland Revenue already get their taxes from the businesses anyway.

By disbanding the Crown Estates the UK will save everything associated with this and the businesses paying the seabed rents would record a higher profit and subsequently more taxes to the Inland Revenue, with the added bonus of reduced bureaucracy which we all could do with buckets of.

Here in the Shetland & Orkney Islands we have Udal Law which gives the common man rights to the foreshore & out into the sea, for a distance. This has been ignored by the Crown Estates/Westminster for many years, making the Crown Estates taxation here in the isles arguably an illegal tax.

If the Committee is not of a mind to consider getting rid of this obnoxious quango, the taxes stolen from our businesses in the form of seabed rents, should all be returned to the islands to assist & bolster our coastal zone economy. The management of our coastal zone can quite easily be done in the local planning system as it was previously under the ZCC Act 1974.

This is one of many English imposed regulatory/taxation issues that is rolling Scotland every closer to independence and whilst I welcome full independence for Scotland as soon as possible, those unionists amongst you should examine & consider why folk in many parts of Scotland are beginning to see how our shackles to

the EU & Westminster regulations and red tape are choking us to death and turning Scottish people towards the SNP.

August 2011

Written evidence submitted by Lerwick Port Authority

I refer to the useful visit of the Scottish Affairs Committee to Shetland in June and their inquiry into the Crown Estate in Scotland.

I am sorry that it has taken some to send a note of our port's view on this matter.

In common with other Scottish ports that are members of the British Ports Association, we do not see any benefit in devolving the Crown Estate in Scotland to political control.

It is an aspiration for many Scottish ports to have the seabed within harbour limits in the control of the harbour authority. If this is what is proposed, it would no doubt be welcomed by many.

However, if the intention is to devolve the seabed to some other Scottish landlord, one can only assume that a landlord/tenant relationship would remain for ports and that the successor organisation would wish to maximise the value of its estate. There does not appear to be an economic driver for change as ports are generally able to reach agreement with the Crown Estate through lease negotiations and there is no reason to believe that a Scottish landlord would offer anything different.

Of particular concern to ports is any distortion of the market place that may be caused if different landlords controlled the seabed across the UK. In particular where ports normally compete commercially there is concern that investment of any revenues generated by seabed leases should not be allocated to projects that would distort the sensitive marketplace.

August 2011

Written evidence submitted by Rt Hon Alex Salmond MSP, First Minister of Scotland

Thank you for your letter of 6 July regarding the significant strategic engagement between Scottish Government Ministers and the Crown Estate Commissioners. I am happy to provide the additional information you have requested.

Firstly, I would like to welcome the Committee's widened call for evidence on how local communities should benefit from Crown Estate revenues. The Scottish Government has a longstanding interest in these issues. In addition to the extensive engagement with Crown Estate Commissioners, the Scottish Government recently published a paper highlighting its proposals for reform, which is enclosed. The paper highlights the shortcomings of the current, outdated, management arrangements of the Crown Estate and proposes the creation of a new model which better reflects the modern policy landscape.

The Committee will be aware of the UK Government's proposal, announced on 22 July, for a new Coastal Communities Fund which will see monies equivalent to 50% of the revenues from the Crown Estate in Scotland's marine portfolio returned to local communities. While the Scottish Government welcomes the UK Government's recognition that local communities should realise benefits, the proposal falls far short of what is required.

Crucially, the UK Government's plan for a Coastal Communities Fund does not address the fundamental and longstanding concerns held by many in Scotland about the lack of accountability and transparency in the current arrangements for administration of the Crown Estate, and the inflexible and outdated management principles. There is a growing consensus that current arrangements for management of the Crown Estate in Scotland are antiquated and in need of significant reform. There is cross party support in the Scottish Parliament for change, and the May elections confirm our mandate. It is therefore timely to consider how the Crown Estate should be managed in a post devolution UK.

The Scottish Government looks forward to contributing to the Committee's inquiry and I am happy to provide additional information on the engagement between Scottish Ministers and the Crown Estate Commissioners, as you have requested. I append a table which provides more detail. In asking officials to investigate and provide further information, they identified two additional engagements—on 9 June 2011 and 19 June 2009. They also identified the following administrative errors in the illustrative list included with my letter of 22 June: a duplicate entry arising from the fact that a meeting held in 2008 between Mike Russell and Ian Grant was one rescheduled from March to June that year; my participation in the announcement of successful developers in the Pentland Firth & Orkney Waters took place on 16 March 2010, not 16 February 2010; and the 5 March 2010 entry was described as a meeting when it was in fact a pre-recording of a video message at the Crown Estate Commissioners' request.

I trust the attached table clarifies the level of strategic engagement between Scottish Ministers and the Crown Estate Commissioners, including the commitment to work in partnership to deliver the Scottish Government's wider agenda, notably to progress our renewable energy objectives.

SCOTTISH GOVERNMENT MINISTERIAL MEETINGS/EVENTS WITH CROWN ESTATE COMMISSIONERS

9 June 2011	CEC invitation to Aquaculture Awards	Stewart Stevenson, Minister for Environment & Climate Change	Minister gave keynote speech and presented awards.
16 December 2010	CEC request for meeting to discuss Crown Estate in Scotland	Richard Lochhead, Cabinet Secretary for Rural Affairs & Environment; Gareth Baird, Scottish Commissioner Tom Mallows, CEC Alan Laidlaw, CEC	<ul style="list-style-type: none"> — role of Scottish Commissioner — strategic engagement between SG and CEC; — Scottish Government position on management & revenues of Crown Estate—update on CEC activities in Scotland, including offshore renewables & Carbon Capture & Storage.
02 December 2010	First Minister hosted summit with key representatives of offshore wind industry	Alex Salmond, First Minister, Dermot Grimson—CE. Representatives from Offshore Wind Industry (list of organisations appended).	Summit at which First Minister discussed Scottish Government priorities and action on offshore wind policy. First Minister outlined key achievements and future developments.
16 March 2010	CEC invitation to FM to participate in simultaneous announcement of successful bidders in the world's first commercial leasing round for wave and tidal energy in Pentland Firth and Orkney Waters Strategic area. CEC also asked FM to contribute to their pre-recorded video to accompany online press release.	Alex Salmond, First Minister; Rob Hastings, CEC. Representatives from Orkney Islands Council, Scottish Power Renewables, Aquamarine, Openhydro, MCT, Pelamis Wave Power and SSE Renewables.	Announcement of the developers who were successful in obtaining exclusive rights to develop wave and tidal energy projects in the Pentland Firth and Orkney Waters leasing round. Also to highlight potential arising from the leasing round and to continue to highlight Scotland's contribution to the UK and European renewable energy targets.
08 January 2010	CEC invitation to FM to participate in Round 3 Developers Announcement	Alex Salmond, First Minister; Gareth Baird, Scottish Crown Estate Commissioner; Martin Simpson, Tom Mallows, Emma Beeby, Ian Colldwell, CEC; representatives from SeaEnergy Renewables, EDP Renewables, SSE & Fluor Ltd.	Pre-recorded press release posted on SG and Crown Estate website. First Minister met with Mr Baird and developers ahead of announcement the two successful consortia to develop offshore wind in two Scottish zones (total of nine zones overall in the UK). A concurrent announcement involving the Prime Minister took place in Exeter.
03 December 2009	CEC invitation to Jim Mather to Green Energy Awards at the CEC table.	Jim Mather, Minister for Enterprise, Energy & Tourism; Dermot Grimson—CEC; Tavish Scott MSP, Peter Peacock MSP; representatives from VP Shell Europe, WWF Scotland, ITI Energy, SEPA & RSPB.	Minister attended as audience member at award ceremony & dinner. Stakeholder engagement.
18 November 2009	Meeting to discuss renewable energy policy.	Jim Mather, Minister for Enterprise, Energy & Tourism; Rob Hastings, Dermot Grimson—CEC	<ul style="list-style-type: none"> — East coast transmission network study;—marine renewable opportunities in Scotland following Pentland Firth & Orkney Waters project; — Co2 capture & storage opportunities;—marine biomass potential in Scotland.

4 November 2009	<p>FM requested meeting with CEC to discuss additional marine leasing round/s to accommodate Saltire Prize competitors from across the world seeking to deploy in Scottish waters.</p> <p>CEC request for meeting to discuss issues of mutual interest</p>	<p>Alex Salmond, First Minister Rob Hastings, Dermot Grimson—CEC.</p> <p>Rosanna Cunningham, Minister for Environment Ian Grant, Scottish Commissioner & CEC Chair</p>	<ul style="list-style-type: none"> — development of an additional and essential marine renewables leasing round to support the Saltire Prize competition in Scottish waters; — future roles and responsibilities of SG and CE in the context of Scotland's marine bill. — overview of management of Crown Estate in Scotland; — rural estate: carbon management, new entrants, affordable housing. — marine estate: Scottish Marine Bill, engagement with Marine Scotland; Pyroloxis project. — CEC eligibility for funding from the Scottish Rural Development Programme. — Pentland Firth leasing round, —STW Offshore Wind and Round 3—offshore transmission.
19 August 2009	<p>CEC request for meeting to discuss renewable energy issues</p>	<p>Jim Mather, Minister for Enterprise, Energy & Tourism Rob Hastings—CEC</p>	<p>Minister gave keynote speech and presented awards.</p>
19 June 2009	<p>CEC invitation to Aquaculture Awards</p>	<p>Roseanna Cunningham, Minister for Environment; Alex Adrian, CEC; Aquaculture Industry representatives.</p>	<p>CEC approach to management of Crown Estate in Scotland.</p>
17 June 2008 (meeting rescheduled from 25 March 2008)	<p>Minister requested meeting to discuss management of Crown Estate in Scotland and partnership working between Scottish Government and CEC</p>	<p>Ian Grant—Scottish Commissioner & Chair of CEC; Alan Laidlaw, Alistair Rankin Rob Hastings, CEC.</p>	<ul style="list-style-type: none"> — opportunities for joint working in relation to Scottish Government priorities for Scotland;—CEC investment in Scotland — marine legislation — offshore renewable energy — Crown Estate stakeholder liaison group.

August 2011

Further written evidence submitted by Orkney Fisheries Association

Do the CEC serve a useful purpose in Scotland?

The CEC only serves to bleed income from industry in Scotland and acts in an arrogant manner towards indigenous long term users of the sea such as the fishing industry. Its corporate ethos, if that is what it can be called, of feudal top down management, serves only to cause division among users of the sea as it blatantly and greedily seeks favour with those from whom it can best gain income. Fair and equitable use of the sea and a holistic view of the sea as a provider of food employment and stability for local communities does not figure in the CEC's current modus operandi.

What is/should be the role of the CEC in investing in Scotland?

CEC should be egalitarian and transparent should be managed and run in Scotland by Scottish representatives who do not take excessive salaries or bonuses for their work. It should not be run at a distance from the source of its revenue income. The CEC should not act as an additional financial burden to developing or current industry in Scotland. It should not be obsessed with making money from its asset but should recognise the sea and sea bed as a common resource held in trust for the people of the land and from which fishermen and their communities have since time immemorial drawn a sustainable living. It should not skew its preferential perspective to place industries from which it can draw rents above those such as fishing who do not.

What is the legacy of the CEC in Scotland?

The legacy of the CEC is bad relations with the fishing industry in particular where they have been tossed aside without consultation or recognition of their massive socio-economic value to Scotland, by CEC unilaterally granting options for lease to a series of renewables companies from whom they hope to gain large profits and where the fishermen stand to lose access to substantial traditional fishing grounds. The CEC is badly out of touch with the ethos of a progressive and modern Scotland and combines arrogance and patronising attitudes attributable only to the like of a colonial or feudal landlord.

Are the current management, administration and accountability arrangements of the CEC appropriate?

The management is remote with foot-soldiers dispatched to the outer reaches (Orkney) who display poor knowledge of the place and an arrogance endemic to their organisation. They were apparently unable to provide proper publicity for meetings and could speak on local radio, nor did anyone in the CEC press office "have the time" to provide an interview on CEC proposals to develop renewables West of Orkney. Administration failed to make contact with key players such as Orkney Fisheries Association (fairly simple given email) on a matter of such high importance to the fishing industry locally and OFA were left to eventually be passed a handout. There is no accountability or recourse to account for the crown estates. They have the reputation that they do exactly as they want and ride rough shod over local communities. CEC are presently financing a seabed survey of Orkney Waters Costa Head to Neban Point and again, no prior consultation took place with local fishing interests over an area that is heavily creel'd in the summer and which will make any survey particularly tricky. The survey company phoned up out of the blue expecting OFA and OFS would inform fishermen of this project commencing within weeks. This is unacceptable.

How could the CEC best act in the public interest in Scotland?

By changing their attitude and their perceptions of Scotland and small communities and recognising that there is a huge amount of residual knowledge and experience in rural communities. By recognising that they are the servant of the people and not a quasi private company operating in their own self interest. By adopting an attitude towards development that acknowledges the enduring place of fishing as the backbone of local communities, and assisting to enhance the profile of fishing, make it an attractive, stable, safe and progressive industry for the future and use any revenues it gets to underpin its traditional place. CEC should recognise that it should not bleed local communities and displace indigenous industry but enable them.

The Committee would welcome further submissions and in particular, would like to invite submissions specifically related to the following questions:

How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?

The CEC should recognise the different social and employment priorities of Scotland and the large coastal based community (much larger in size than England) Indigenous land and sea based industries should be prioritised in a coastal nation with many islands. Service industries can only exist on the back of primary industry. Funds accrued from the sea should underpin the continuance of sea-based industry namely fishing, and aid should be constructed in such a way that it avoids the restrictions of "state aid" restrictions ie be managed by local trusts or non govt organisations.

At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?

Scottish Government devolved to local Sea Benefit Trusts (with non govt status to avoid state aid regulation) or something similar that can offer assistance to rebuild primary industries through local fisheries, processing, added value, and support industries.

What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?

Elected Sea Benefit Trusts with ngo status facilitated by Scottish Government. A revaluation of the industrial priorities of Scotland to factor primary industry in as the bedrock of all other industry. Fishing should be a major corner stone of this policy. The irony of service industries such as tourism is that tourists come to view the working culture of other nations (Scotland's landscape created by crofters and farmers, its "picturesque" fishing villages the residue of a depleted fishing industry). Where there is no working culture left tourism becomes a hollow fakery of constructed amusements and venues. Reinvigorating primary industries such as fishing will engender spin offs in processing onshore jobs, maintenance and return a working culture to popular visitor destinations.

August 2011

Supplementary written evidence submitted by Comhairle nan Eilean Siar (Western Isles Council)

(a) How revenues raised by The Crown Estate Commissioners in Scotland could best be used for the benefit of local communities in Scotland?

The Outer Hebrides stand on the cusp of a economic revolution made possible by the deployment of the renewable energy sector and in particular by the placing of marine energy devices in the waters around the Hebrides—waters which contain the best wave and offshore wind resource in Europe. The islands stand ready to capitalise on a comparative advantage in the form of the Arnish Fabrication Facility which, properly resourced, can become a national centre for the fabrication of marine renewable energy devices. Similarly, with adequate resourcing, Lews Castle College University of the Highlands and Islands has the capacity to develop into a real centre of excellence for marine energy research. This capacity has already been evidenced by the "Hebridean Marine Energy Future" knowledge exchange project which the College has led in collaboration with key industry players.

Lease revenues from marine energy deployments around the islands could be applied, in the first instance, to support this industry/academia base through planned investment. This will create jobs in fabrication but also skilled research jobs which will attract island graduates back to their home island. The Comhairle views investment in these sectors as the foundation for sustainable economic growth and a growth in confidence which will be reflected in other growth areas such as Harris Tweed and the local food and drink sector.

Beyond this foundational investment in key sectors, the existing Western Isles Development Trust model could be used as a basis for wider disbursement of lease revenues. Western Isles Development Trust was established to ensure that the community benefit from onshore wind developments is spread across the entire island community and not simply focused on the landowners hosting developments. Western Isles Development Trust's Business Plan identifies key areas where community benefit or lease income can be invested (for example energy efficiency, environmental mitigation, Gaelic language and Hebridean culture) and contains a detailed technical process for disbursing funds in line with pre-determined criteria.

(b) At what level might those revenues be best administered: UK Treasury, Scottish Government or Local Authority level?

The current model of administering marine estate revenues through HM Treasury has not provided any tangible benefits for the Outer Hebrides and is not supported by the Comhairle.

The Comhairle contends that the optimal solution to the current Crown Estate inequity is for marine revenues to be administered at Local Authority level, either by the Local Authority itself or by an elected community trust in the fashion of Western Isles Development Trust. This will ensure that these revenues go to the communities most in need who, coincidentally, have to live with any disbenefit associated with hosting these developments. Funds will then be directed into structural support for growth industries with real local accountability and in line with the strategic requirements and imperatives of the particular community.

The administration of funds from Edinburgh may result in a Scotland wide fund or similar which could potentially see funds diverted to non-coastal communities. There would be little benefit in this to communities hosting developments. From the Comhairle's perspective the host community and peripheral coastal communities have to be the key beneficiary and as such funds would be best administered at the Local Authority level.

(c) *What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?*

As noted above, lease charges in the Local Authority area could be payable direct to the Local Authority and ringfenced to a specific fund whose object is to deliver the outcomes of a Marine Energy Development Business Plan which has been the subject of extensive community wide consultation. Funding decisions could be made by Elected Members if the Local Authority is selected as the management vehicle. Another alternative may be a wholly elected Community Trust which operates under a similar Business Plan. Different community and economic sectors could be represented on the Board of this Trust, as is already the case with Western Isles Development Trust, and the key objective would be the sustainable development of economic and academic sectors relevant to renewable energy. The Outer Hebrides have substantial experience with both models and are ready to run with Marine Estate revenues as and when they are devolved to local parties.

Additional income of this scale will have a transformational impact on the declining economy of the Outer Hebrides. There is no other conceivable development sector which could deliver anything near the scale of benefit anticipated from marine renewables for the Outer Hebrides. Capture of these revenues is a generational opportunity for the Outer Hebrides and in the view of the Comhairle it will be essential that associated revenues are managed locally through a transparent and accountable framework.

FOOTNOTE

The recent announcement by the UK Treasury of a Communities Fund, resourced from 50% of Marine Estate lease income, is a welcome first step but falls far short of local aspirations for Crown Estate reform. Comhairle nan Eilean Siar contends that 100% of Marine Estate lease income should go directly to the affected communities, to be administered by the Local Authority or some other elected Community Trust. The UK Treasury's announcement signals a welcome concession by Government of the principle that Marine Estate lease income should remain in local communities. However, 50% is not enough and administration of the proposed Communities Fund by the Big Lottery Fund is strongly opposed by the Comhairle as it disenfranchises host communities, dilutes the benefit, rewards communities who do not suffer the disbenefit of deployment and creates a needless dislocation between deployments and the communities hosting them.

August 2011

Written evidence submitted by the Islay Energy Trust

1. *Executive Summary*

1.1 The community-owned Islay Energy Trust presents options for investing potential Crown Estate revenues of over £200 million per annum from offshore renewable energy in local projects which will yield sustainable benefits to coastal communities. IET believes a significant proportion of such funds should be administered and distributed locally, with the remainder going to a national fund.

2. *Background*

2.1 As part of its review of the operations of the Crown Estate in Scotland, the Committee has invited submissions specifically related to the following questions:

- “How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?”
- At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?
- What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?”

3. *Introduction*

3.1 The Islay Energy Trust (IET) is a community-owned charitable company whose objectives are to develop renewable energy projects for the benefit of the community and to reduce Islay's carbon footprint. The Trust will distribute dividends from projects to local voluntary and charitable organisations in line with criteria agreed with the community. IET is currently developing wind, hydro and solar PV projects on the island, and has a joint development agreement with ScottishPower Renewables for the 10MW Tidal Energy Project in the Sound of Islay which received consent from the Scottish Government in March 2011.

3.2 The seas around Islay contain some of the main tidal, wave and offshore wind energy resource areas in the UK, and IET wishes to participate with project developers in exploiting these resources so as to maximise socio-economic benefits to the local community.

4. *Community versus National Perspective*

4.1 The views expressed in this submission represent those of a typical island community. Whilst the regional and national contexts are obviously important, local communities often feel their voices are not “heard”, and this submission is unashamedly community-biased. Notwithstanding that, IET acknowledges two important principles: 1) inland communities will also have some entitlement to the benefits from the exploitation of what is a national resource; and 2) the proportion of revenues from projects paid in lieu of Crown Estate rentals should not be at a level which compromises the commercial viability of projects.

4.2 The questions posed by the Committee for consideration do not include an option for local administration and distribution of the funds. IET believes this is an important omission. The view on Islay is that a large proportion, if not all, of the Crown Estate revenues generated from exploitation of local resources should be available for distribution and use locally. Revenues which go to local and national government will be absorbed into the general revenue pot and local spending will not be recognisable. Also, the Treasury proposal for a Lottery-administered Coastal Communities Fund is unlikely to acknowledge the prior claim of communities affected directly by offshore developments.

5. *How large are potential revenues?*

5.1 Whilst the Committee’s study may be concerned with principles, it is important to have some idea of the scale of revenues involved. A *Valuation of the UK Offshore Renewable Energy Resource* (The Offshore Valuation Group Study; May 2010) suggested that Scotland has a potential 206 GW of tidal, wave and offshore wind resources. If one-third of this potential is realised (68 GW), and with average load factor of 35%, annual yield of electricity would be 2.08 TWh. Assuming Crown Estate offshore leases yield around £1/MWh, potential annual revenues from Crown Estate leases could total over £200 million, of which some £10–20 million may result from current projects, *viz.* the Scottish Territorial Waters round for offshore wind and the Pentland Firth wave and tidal concessions.

5.2 Locally around Islay, Jura and Colonsay (all attached to the same electricity grid spur), the long-term potential yield from wind, wave and tidal could be around £4 million per annum.

6. *How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?*

6.1 IET believes it is important that such revenues are used for investments in projects that fully engage the local community and that will yield sustainable benefits, rather than substitute for existing statutory programmes.

6.2 On Islay—designated a fragile economy by HIE—the community would like to see provision of energy efficiency measures and renewable energy equipment to alleviate fuel poverty, support for local renewable energy and micro-generation schemes, support for small businesses, schemes to help young people, eg post-school training, apprenticeships etc., which would be part of a package of job/career creation on the island, better quality affordable housing, assistance with provision of local care for vulnerable people, etc. What the community “would like to see” will be best achieved if the community itself determines its priorities and the management of the revenue stream.

7. *At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?*

7.1 In so far as Crown Estate revenues represent “rent” for use of local land (or sea-bed in the case of coastal communities), assets, infrastructure, resources etc, the major portion should be spent locally. The view of many communities is that revenues accruing to national and local governments get “lost” in the overall provision of statutory obligations, and direct benefits to affected communities are impossible to identify, unless the money is specifically ring-fenced. If local people are responsible for investing in as well as operating local projects, this will contribute to greater community cohesion and enrichment than the alternative top-down approach.

7.2 Locally established and elected community or development trusts would be suitable vehicles for distributing such revenues.

8. *What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?*

8.1 As mentioned above, IET would like to see a major part of, if not all, the revenues being administered locally, with the possibility of a cap on maximum revenues with the surplus going to a national fund. Various options are described below.

8.2 HM Treasury have announced that 50% of Crown Estate’s rent from seabed activities would be made available to “support economic development of coastal communities”. The current sum involved for the Scottish Highlands and Islands is estimated to be £1.85 million p.a. The scheme will be administered by the Big Lottery as a new “Coastal Communities Fund”, and will be open for business in April 2012. Further details, eg for

applications etc. will be published later. Whilst this scheme has superficial attractions, there is no suggestion that communities affected by offshore developments will be given priority, the Lottery application process is already complex and its criteria for awards have been criticised for failing to take into account local factors.

8.3 The Scottish Government's position is that there should be a phased devolution of control of Crown Estate properties to the Scottish Parliament. In particular, it wishes "local communities to benefit from the development of offshore renewables by the creation of a Fund for Future Generations enabling a share of the anticipated future revenues from offshore energy to be invested for the benefit of the people." This appears to be a national fund rather than local. However, full details are not yet available. IET's comments above about local distribution and use are relevant in this context.

8.4 The Crown Estate could allocate areas of the sea directly to the proximate communities in the form of a head lease. The communities would then agree (within some guidelines) terms with developers and receive lease payments directly. It would be necessary to agree on a cap on the level of return to the proximate community, with the surplus going into a general Scotland-wide fund.

8.5 Lease payments received by Crown Estate from developers/operators could be divided X% to local communities and Y% to the relevant local authority (the Argyll and Bute Council voluntary "Concordat" with some onshore wind developers has X=60% and Y=40%). This may be what the Crown Estate had in mind in their Memorandum of Understanding which has been discussed with local authorities.

9. Additional remarks

9.1 Local communities could/should be given legal rights to become investors in proximate developments, either as JV partners or via tolling/leasing model proposed in IET's shortly-to-be-published study into a Community Investment Fund. The underlying premise is that enabling local communities to take a financial stake in such projects adds value for all parties: for communities, "dividends" from projects yield socio-economic benefits; for developers, shareholder value is maintained, even enhanced; and for both, a sense of "ownership" and/or participation increases local support, and thereby facilitates the consenting process.

9.2 The term "community benefit" as used in relation to land-based wind farms is becoming devalued, and should be replaced by "social or community investment" (see *Why "Social or Community Investment" should replace "Community Benefit"*; Islay Energy Trust, June 2010, attached). This is not directly relevant to the issue of Crown Estate revenues, but the word "benefit" has associations with a handout culture which is not conducive to the sort of partnership working that adds value (para 9.1 above) and to the creation of sustainable local businesses.

August 2011

Written evidence submitted by the Scottish Islands Federation (SIF)

SIF RESPONSES TO THE CEC CONSULTATION

With 80% of Scotland's foreshore in the Highlands and Islands, The Scottish Islands Federation takes a great interest in the question of the CEC's dealings with seabed and foreshore rights, as it believes that the way the CEC presently operates is not conducive to the development of a sustainable economy in the Scottish islands.

(1) *Do the CEC serve a useful purpose in Scotland?*

The CEC serves a purpose in that they administer rights to the sea-bed and the foreshore in the absence of any other body, and avoids many of the problems that could be created if these rights were owned by a collection of large and small private owners.

However, as the CEC operates as a London-based investment company, we do not believe that the CEC administer those rights for the benefit of the Scottish nation and its coastal and island communities and we believe that its role should be taken over by a Scottish body that could play a crucial role in the sustainable development of coastal areas, particularly by helping to regulate and protect the Scottish Marine environment.

(2) *What should be the role of the CEC in investing in Scotland?*

- To date, the CEC has had too narrow a focus on getting financial benefit from marine development in order to increase revenue for the UK treasury.
- There should be no financial gain for companies which are registered in tax havens such as salmon farming companies, even though they appear to be Scottish companies.
- Regarding the use of mooring associations to collect rent, a different approach should be introduced to increase local participation and capacity building.
- Regarding public harbours, it is wrong to see revenue move away from the area where it is generated. It should mainly be invested in the community in which it is generated.

- Any financial gain from the CEC should be reinvested to help support policies from the Scottish Government that benefit Scottish coastal and island communities in the first instance and Scottish people generally.

(3) What is the Legacy of the CEC in Scotland?

In the context of devolution, the legacy of CEC in Scotland appears to refer to a peculiarly English way of managing Crown estate that has no roots in Scottish history. For instance the CEC appears to act in the management of its rural assets as a private landlord rather than considering the interest of the nation. Therefore SIF concurs with the conclusions of the 2006 CEWRG Report that these rural estates should be managed in a way that delivers greater public benefits.

For coastal salmon fishing, we believe that the feudal aspects of this right have no place in modern Scotland, and that the rights to the 48 Salmon fishing stations should be devolved to the Scottish Executive to enable the protection of wild salmon as part of their policies, more control by coastal communities themselves and greater public access to fishing.

For foreshore rights, the CEC appears to look at maximising its own revenue without regard to the wider implications for coastal and island communities in each area, as their modus operandi is through agents who have a narrow financial focus through revenue incentive fees and little understanding of local issues.

The ownership of the foreshore is a case in point, as the CEC does not seem to recognise the difference between ownership and management in the context of devolution. With public harbours, there is a distinct contradiction between public and community benefit and the focus of CEC on capturing their development value and transferring it out of the area. One possible solution would be to create a Scottish organisation to deal with the foreshore like the Forestry Commission deals with the Scottish Forestry assets.

(4) Are the current management, administration and accountability arrangements of the CEC appropriate?

SIF does not believe that the current arrangements are appropriate.

- According to their present constitution, the CEC is required to manage the Crown property on a commercial basis.
- There is no mention of any benefit that would accrue to the Scottish people. In fact, since devolution, the CEC has reduced accountability in Scotland. In 2002 the CEC stopped treating Scotland as a separate management unit. This has made very difficult to estimate how much revenue they should legally return to the Scottish people.
- The CEC does not have a requirement to manage the marine resources holistically for their enhancement and protection.
- Current CEC staff only have a very basic knowledge of the importance of the projects they are working on in Scotland with regard to local benefit or the due consideration required to protect the environment from further irreversible damage.
- This form of management is clearly inappropriate for the long term management of Scotland's marine natural assets and does not take into account any effect such management would take on the Scottish Coastal communities concerned.
- SIF's position on the issue is that marine resources need to be managed for the benefit of the nation and its communities, in particular the coastal communities concerned, without detriment to the marine environment, and ways that will effectively protect them for future generations.
- To this end, SIF suggests that the role of the CEC in Scotland should be fully devolved to a task-specific group which would include appropriately qualified independent advisers.

(5) How could the CEC best act in the public interest in Scotland?

- The CEC would best act in the public interest of Scotland if they handed over control of the seabed to the Scottish Government as part of their responsibility over the Marine environment, and responsibilities for the foreshore to the local authorities and communities in each area, with associated mechanisms for public consultation and transparency.
- They could also act in the public interest in Scotland by sharing all their knowledge on prospective developments which have been discussed so far with any newly formed independent thinking Scottish management team when they hand over the property rights.

(6) How could revenues raised by the CEC in Scotland be best used for the benefit of local communities in Scotland?

- Such revenues should be used to maximise opportunities for environmentally sustainable harbour and marine recreation infrastructure, so that coastal communities can maximise their economic opportunities.

- These revenues should also be used to help the fishing industry convert to a more sustainable mode of operation, one that would not contribute to increasing stock depletion, and to investigate the setting up of sustainable, organic, low impact fish and shellfish farms.
- These revenues should also be used to implement seabed protection in No Take Zone and Marine Protected Areas.

(7) At what level might those revenues be best administered UK treasury, Scottish Government, or Local authority level?

Clause 18 of the Scotland Bill proposes that there be a Scottish Commissioner appointed by the Chancellor of the Exchequer in London. There is no proposal on the question of the Power of direction.

SIF believes that the responsibility for the management and revenues of all Scotland's crown property rights must first be brought together in one place in Scotland, away from the CEC and under the full jurisdiction of the Scottish parliament.

Once that has been done, further detailed discussions can take place about which parts of the Scottish Government and/or local government has the expert capacity and particular knowledge of the type of project which should be encouraged to bring maximum and sustainable development within Scotland, and so be in a position to administer the rights for Scottish Community benefit.

- The power of direction exists to enable the Secretary of State for Scotland to direct the CEC over matters in Scotland; however he has never used this power and has very little to do with the day-to-day governance of Crown rights. He apparently has neither the experience nor staff capacity to take a view on how such a power should be deployed or to draw conclusions about desirable outcomes.
- Marine Scotland: through Marine Scotland, the Scottish Government has extensive powers over the marine environment. One great advantage would be that the Scottish Government can finally protect the seabed from damaging practices such as the grossly damaging and unsustainable fishing method of mobile bottom trawling.
- However, when one of our committee attended a conference entitled "Scotland's Maritime Future" in Linlithgow in February 2011, Marine Scotland were strongly criticised by many of the Maritime developers for continually establishing unnecessary barriers or red-tape which discourages investment for new harbour facilities and infrastructure to enable an increase in distribution of Scottish supplies and produce.
- Thus we cannot see that Marine Scotland is in a position to manage Crown Estate rights unless it completely changes direction since as an organisation, or otherwise, they do not seem to be able to take the reins and act for a sustainable future, certainly with regard to fishing.

(8) Who else could we have to manage the Scottish Crown Property rights?

- SIF would support the establishment of a completely new organisation, whose members are independent, appropriately knowledgeable, ethical, technically educated and have a holistic, environmentally-aware approach to marine resources development.
- Co-operation with all stake-holders and transparency of consultation would need to be at the heart of any new CEC organisation/task group.
- To this end, their work would need to be evidence-based with inclusion of oral evidence transcripts, written submissions, responses to questionnaire and feedback from engagement events, following the code of good practice implemented by Sir Kenneth Calman on his work on Scottish Devolution.
- The protection as well as the use of marine resources should be at the core of any new CEC taskforce.
- Protection of the sea-bed would need to include protection from unsustainable fishing methods such as "mobile bottom trawling".
- Such protection would best be done through implementation of a three mile Marine Protected Area (MPA) around the entire Scottish coastline by re-enacting the law as it was prior to 1984.
- By only allowing licensed sustainable fishing by local communities, a three mile MPA would protect the economic and environmental sustainability of Scottish Coastal communities, and island communities in particular.
- This would help implement the special consideration required to support sustainability of sparsely populated areas as stated in Article 175 of the Lisbon Treaty.
- To date, an increasing number of organisations supporting sustainable fishing have acknowledged this as the type management of inshore waters which will provide maximum long term benefit to coastal communities. (See SIFT, Sustainable Inshore Fisheries Trust).
- Protection of the sea-bed would also need to include careful planning consideration for deep-sea Fish Farms, which to all intent and purposes are in fact a form of privatisation of the seabed, even though the sea bed belongs to the Scottish people and should not be leased without their consideration.

- With 80% of fish farms in Scotland actually Norwegian or non-UK based, there is little benefit to the Scottish nation in establishing more deep sea fish farm which may seriously affect the ecology of the sea-bed and further contribute to sand-eel stock depletion.
- Whilst the OSPAR Convention, to which the UK is a party, spells out the duty to “take the necessary measures to protect and conserve the ecosystem and the biological diversity of the maritime area, and to restore, where practicable, marine areas which have been adversely affected” (Annexe 5, Article 2), there is as yet no programme or measure relating to the management of fisheries. This needs to be addressed by ensuring that independent advisors from environmental non-government organisation are on the board of the CEC taskforce, such as for instance advisors from the COAST, the Community of Arran Seabed Trust,(www.arrancoast.com) the Scottish independent environmental NGO, which initiated the first and ONLY “No Take Zone” in Scotland which is successfully restoring the integrity of the Arran seabed.

(9) *What processes might be put in place for the distribution and allocation of those revenues in order to secure the maximum benefit for the people of Scotland?*

There could be a grant allocation system similar to the Lottery’s AWA where communities and local authorities could bid for funds for sustainable development initiatives, in particular to support sustainable fishing projects, with indicators devised following the sustainable development criteria set for sparsely populated areas combined also with Scottish government development priorities.

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August 2011

Written evidence submitted by the Community of Arran Seabed Trust

1. *Executive Summary*

COAST (Community of Arran Seabed Trust) recommends that the CEC Scotland estate is not devolved to the Scottish Government until it can demonstrate its ability to manage marine resources on behalf of all stakeholders. COAST is concerned that the poor reputation for even-handedness on the part of Marine Scotland makes it unfit to take on a substantial landholding. The interest of COAST is primarily in the marine estate and in this paper makes suggestions as to how the CE in Scotland can be more accountable to the marine stakeholder communities. These often small marine stakeholders, which are neither part of the power base in Edinburgh, nor multinationals, nor others, who wield power and money in Scotland, must be heard. Their interests for long term strategic sustainability in social and environmental as well as economic terms must be considered.

Distributing funds from the CEC Scotland estate should be via a Scotland Foundation with trustees from Scottish communities.

2. *Introduction*

Arran is one of the largest and most accessible islands off the west of Scotland. COAST is neither pro-independence for Scotland nor pro-the status quo of the Union. It is neither aligned to nor supports any political party in Scotland. The community campaigned long and hard to protect the maerl beds in Lamlash Bay from destructive mobile seabed trawling for *Nephrops* (prawns) and dredging for scallops so the bay would have a

chance to return to a healthy benthic ecosystem, which would benefit the adjacent marine environment. The 67 mile coastline of Arran is an important recreational tourism asset. Arran attracts people from all over the UK and abroad, and there is certainly potential to increase visit numbers and the economic benefits to the island through conservation of the marine environment. Sea angling, a shadow of its former popularity and a once important income generator in the 1980s, could return, along with regenerated biodiversity, sustainable seabed ecosystems and white fishery stock. The community lobbied successfully against a proposal to develop a huge fish farm in 2008, which would have discharged over 200 tonnes of waste food and faeces into the sea near Lamlash Bay during every fish cycle of 22 months, thereby defeating the very objective of regeneration. For further information on COAST's activities see: www.arrancoast.com

3. Do the CEC serve a useful purpose in Scotland?

- Yes, with a strong strategic vision and attitude, in the management of Crown Estate in Scotland, particularly in the marine estate. This is where COAST, as a marine community stakeholder, is concerned.
- Data, papers, scientific studies and information have been freely supplied with courtesy and speed.
- CE benefits from drawing on UK expertise, especially in the marine environment with their experience of Inshore Fisheries and Conservation Authorities.
- COAST agrees with the Calman report which did not consider that legislative competence over the administration of the Crown Estate in Scotland should be devolved.
- The discussion paper by Marine Scotland which was produced during the debate in the Scottish Parliament in June 2011 makes the case for devolving full legislative competence to the Scottish Parliament which would allow for streamlined management of Scotland's marine area. This paper stated: "Marine Scotland is already the licensing body for many marine developments and is well placed to manage the marine estate". Many in Scotland's marine stakeholder communities would disagree; they can only see inadequate management of fisheries and restorative measures for seabed ecosystems. So far little action has been taken by Marine Scotland to integrate the needs of the broader community in marine management, instead it has tended to side with a few chosen industries; it styles itself as an honest broker, but by its actions has shown itself to be a hugely political creature. One good example of this approach is the creation by Marine Scotland of the Clyde Inshore Fisheries Group to help develop its inshore fisheries policy on the Clyde. This organisation comprises solely fishermen engaged in some of the most controversial and destructive fishing practices used by any UK vessels, many of whom do not come from the Clyde. Yet the Clyde IFG has no representatives from fishermen deploying more sustainable techniques, no sea anglers and no community representatives. It resonates with cronyism and built in conflicts of interest. It is no wonder the Clyde fishery is a shadow of its former self. With Marine Scotland sponsoring such an arrangement it is difficult to give credibility to its claims of competence.
- While Marine Scotland may have some experience in licensing and policy, they have absolutely no experience (beyond managing their own offices) in land ownership and management and are therefore uniquely unqualified to take on the responsibility of management of a vast estate. Any representative from the property management team of a local authority department or a custodial body such as the National Trust for Scotland will confirm that licensing and the creation of policy and the active management of an estate are worlds apart. Marine Scotland would need to build from scratch a management team in this area, just to be in the same starting position as CEC. This contrasts unfavourably with the CEC which is an organisation which is made up largely of RICS accredited surveyors and completely understands their role as a land owner. Marine Scotland would then also find itself in a position of conflict of interests as it sought to licence activities on properties which it also owned. This would necessitate the creation of a sub-department with Marine Scotland which was at arm's length to its licensing function. Regardless of the constitutional hurdles (which themselves are not-inconsequential) creating a land-ownership directorate within Marine Scotland is going to be time-consuming and expensive, and there is a grave question whether these changes would represent value for money for the tax payer—when it would be much simpler to make CEC more accountable in Scotland to its local communities.

4. What should be the role of CEC in investing in Scotland?

- Long term sustainable businesses and communities; economically, socially and environmentally. It is important that CEC continue to see sustainability in those three dimensions, not just short term economic gain for the UK Treasury.
- CEC must remain independent of political alliances, key developers, multinational businesses etc. Safeguarding SSSI and pristine environments must be an important part of their duty of care. They appear to do this professionally. The recent loss of an SSSI due to the planning decision of the Scottish government planning directorate gives cause for concern for the future of legally protected areas.

The pressure from the Scottish Government, especially in the marine estate is for short term economic political gain. The power brokers appear to mostly exclude marine community stakeholders, such as the Isle

of Arran community, in key consultations on the future. The Scottish government has shown it lacks the political will to protect the marine environment and its foreshore or put in place restorative measures for fisheries for the long term social and environmental benefits, particularly for marine community stakeholders, of which COAST is one in the Clyde. The failure of the Scottish Government to implement meaningful marine protected areas despite ample scientific evidence of their benefits and international commitments shows a desire within Marine Scotland to cave in to the short term desires of some of the well-connected within the fishing industry rather than operate with a long-term responsible attitude. If the current Scottish Government wishes to have more jurisdiction of our inshore waters it must be able to demonstrate its ability to manage them sustainably and in the interests of all coastal stakeholders in the first place, something it is failing to do so far.

5. *What is the legacy of the CEC in Scotland?*

This is a difficult question to answer since the CEC still exists but it should be:

- Safeguarding some prime sites and inshore seabed by holding areas in trust for the people so they cannot be sold, only leased.
- Adding a tier of independence in marine decision making. Without that there is a fear that fish farms, renewables etc would be buying rather than leasing the seabed, and privatising important marine sites for ever.

6. *Are the current management, administration and accountability arrangements of the CEC appropriate?*

- The estate needs better management, which is accountable to local stakeholders, not different management.
- Leases of the seabed, for example for fish farms, should be time limited. The present 10–12 year leases should not be extended too far, and a great deal of care should be taken when these are sold. We are concerned that fish farms have a history of pollution and it should be very clear that fish farmers should make sure that the seabed is reinstated at the end of the lease and should have the resources to do so; the clean-up should not boomerang back onto the tax payer.
- More responsive management and interaction with stakeholder communities especially in marine decision making. Whilst helpful in answering queries, more work needs to be done. Too much power has been centred in Edinburgh and London. In recent history, in our view, too much emphasis on generating income from seabed leases, for example finfish farmers and other major business groups etc, which are often at odds with the much longer term strategic needs of marine communities.
- Thrust must not just be about financial income but a balance between community needs and financial returns. The recent decision to plough back money into marine communities goes some way to ensuring CEC becomes more responsive to all the marine stakeholders not just those with power and money!
- Similarly CEC can add influence when poor decisions could be made about marine infrastructure and represent the wider interests of the people of Scotland.
- As a marine community group we have little confidence in Marine Scotland's ability to protect, restore and encourage sustainability of the marine environment. It formed Inshore Fisheries Groups, allowed powerful lobby groups to dictate policy for the marine environment, and to date has failed to implement the marine protected areas much needed to reinvigorate our waters, an example of which is Lamlash Bay, proposed in 2008 when the No Take Zone was implemented.

7. *How could the CEC best act in the public interest of Scotland?*

In the marine estate:

- Safeguard the coastal and inshore seabed from any privatisation.
- Be a guardian of the seabed in the interests of all marine community stakeholders, not just the multinational companies, or influential developers in for short term profits.
- Ensure any marine inshore development has an independently assessed Environmental Impact Assessment.
- Consult with marine community stakeholders as well as local authorities when planning permission for a marine development is sought.
- Be prepared to remove a lease from any group that disregards the terms of the lease—for example with finfish farms not cleaning up their industrial waste from both the seabed and shorelines.

8. *How revenues raised by CEC in Scotland could best be used for the benefit of local communities in Scotland?*

- In dealing with the marine estate: support local marine community stakeholders through grants to enable them to be involved in decision making, education and strategies for their area.
- Support marine research, especially in the effects of seabed developments over the longer term.

- With the increase in marine recreation, encourage sea angling, and facilities to enable this to happen. Previously a big part of tourism in the west of Scotland, especially the Clyde. Now almost extinct due to over fishing and poor fishery management policies.
- Encourage marine yachting tourism, working with Local Authorities to improve yachting infrastructure from pontoons, breakwaters, shore showers, fuel bunkering, rubbish disposal and even shore toilet facilities.

9. *At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?*

The profits of the Crown Estate are currently paid to the tax payer via the consolidated funds of HM Treasury. Whether such funds are distributed elsewhere in the UK administrative structure is a question of politics. The COAST position is that, however such funds are administered coastal communities should be properly compensated for the commercial operations which generate the income usually to the detriment of local landscapes and habitats.

We are also concerned that the costs and implications of any change to the administration are borne in mind before changing the system fundamentally; an over-stretched local authority may have as little ability to administer the Crown Estate as a centralised bureaucracy

10. *What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?*

- Form a Scotland CEC Foundation with representatives from across Scotland as Trustees, drawing on coastal community expertise as well as more established representatives. Chaired by the Scottish CEC. CEC Scotland should represent the people of Scotland.
- Invite requests for funds on a yearly basis, dealt with the Trustees of the Foundation, with additional expertise as required assessing fund requests.
- Create guidelines for the stewardship aspect of the CEC's responsibility so that more creative use can be made of the seabed and foreshore, which does not translate necessarily to profit maximisation but secures community benefit.

September 2011

Further written evidence submitted by The Crown Estate

The Crown Estate provided evidence to the Scottish Affairs Committee following its first call for evidence in June 2011. We note that the Committee has asked for further submissions in relation to the following points:

1. How revenues raised by The Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?
2. At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?
3. What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?

It would be inappropriate for us to comment on these questions as they are a matter for government and not for The Crown Estate. Indeed, the benefit to coastal communities from marine revenues has been the subject of discussion in recent weeks following the UK Government's announcement on their Coastal Communities Fund.

Nonetheless, we would be happy to provide any factual information you may require on these questions. The real benefit to communities from offshore renewables will lie in the provision of sustainable jobs and skills into the future. We are working with government around the UK to ensure activities are aligned in this respect.

As part of our Marine Communities Fund, The Crown Estate provides funding for coastal and marine community initiatives that further good management of the marine estate. This includes:

- Practical projects, including "fishing for litter" schemes, marine archaeological investigations, restoration of redundant buildings as coastal lookouts, renovation of slipways, installation of new pontoons/moorings, and habitat creation initiatives.
- Provision of environmental information and interpretation such as information panels, codes of conduct, good practice guides, and publications.
- Education and applied research related specifically to the management of Crown Estate property and the local community, and support of seminars aimed at raising public awareness of offshore renewable energy.

This is complemented by programmes which benefit communities on our Scottish rural estates, ranging from supporting tourism to improving recreational facilities.

September 2011

Written evidence submitted by Kenneth J Hutchison

I write regarding the Scottish Affairs Committee's invitation for representations on the role of the Crown Estate in Scotland, with particular reference to the deployment of dividends arising from offshore renewable development off the coast of Scotland.

1. Firstly, and most importantly, it is clear that the present state of affairs is untenable. Money raised in Scotland by the Crown Estate—as a semi-autonomous, non-governmental body administering Crown lands—should be passed to the Scottish Government as the national legislative body with legal competence over most aspects of the Estate's operations here. Handing profits comprehensively to the UK Treasury is an anachronism. To put this in blunter terms, profits from the Crown Estate's operations in England do not come directly to Holyrood's budget, so there is no good reason why the opposite should be true.
2. Secondly, the suggestion that only coastal communities should benefit from the proceeds of offshore renewables generation is divisive. What it will do is create pockets of wealth and prosperity along the coast, much as happened in Aberdeen when the oil began to flow, while the rest of the country struggles. Alternatively, if the proceeds are passed lock, stock and barrel to local authorities, this will simply accentuate the divide in Scotland between wealthy and poor council areas, a divide which will be most starkly illustrated by the contrast between local authorities with extensive coastlines and those without. By hyper-localising the distribution of profits from what could turn into a renewables bonanza, we risk making exactly the same mistakes which were made with the oil industry.
3. The most logical solution is that the Scottish Parliament be allocated full control of any revenues accruing from the Crown Estate in Scotland. A percentage of the profits—higher than 50%—should be saved and invested after the manner of the Norwegian Oil Fund, with the remainder fed into the Scottish Government's general budget. While flexibility is always handy, there should be an emphasis in investing in the nation's infrastructure which, despite forty years of oil wealth, remains desperately underdeveloped everywhere north of the Forth: including Aberdeen.

CONCLUSION

To conclude, we in Scotland have a great opportunity ahead of us to make the most of what could turn out to be one of our nation's most impressive natural resources. I, for one, have no desire to see a repeat of the monstrous waste of the North Sea oil-wealth which has transpired over the past 40 years. The benefits remain confined effectively to one city—Aberdeen—while vast swathes of the nation have missed out. North Sea oil will have come and gone, and we will have relatively little to show for it. I am genuinely hard pressed to think of another nation where so much oil wealth has achieved so little for the population at large.

Tax money from North Sea oil has been spent badly, with no long term planning made. Despite four decades of oil wealth, Scotland still hosts some of Western Europe's most deprived cityscapes and poorest road systems. Just two hundred miles across the North Sea is an example of a nation which has invested the dividends of her natural bounty wisely, and will—as a result—never be forced to face many of the financial uncertainties we have had—and will have to in future. Norway's sovereign wealth fund is a lesson which has been available for years to those who had the power to make it a reality here; but to no avail.

Whether offshore renewable development turns out to be a massive money spinner or not, the time is right for the Scottish Parliament to assume responsibility for Crown Estate profits in Scotland, before another generation misses out on nature's gifts to the people of this country.

September 2011

Further written evidence submitted by Scottish Council for Development and Industry (SCDI)

FURTHER VIEWS ON COMMUNITY DIVIDENDS

1. SCDI is an independent membership network that strengthens Scotland's competitiveness by influencing Government policies to encourage sustainable economic prosperity. SCDI's membership includes businesses, trades unions, local authorities, educational institutions, the voluntary sector and faith groups.

2. As stated in SCDI's response to the Committee's first call for evidence, the greatest potential prize for Scotland and its communities is in maximising investment and job opportunities in key sectors such as energy and aquaculture. The legal framework needs to have a fully functioning and positive approach to leasing the seabed for economic development, irrespective of structures. In relation to offshore renewable energy, Government must continue to offer the support and long-term stability which investors and developers are looking for in a highly competitive, yet relatively immature industry. Economic diversification, inward

investment, a globally successful supply chain and new, skilled and well-paid jobs in installation and operations are the greatest potential benefits.

3. Again as previously stated, feedback from business in a range of sectors suggests that they are, broadly, content with the improvements which have been made in their relationships with the Crown Estate and, so far as the priority of increasing sustainable economic growth is concerned, they do not believe that a strong case for change in the legal framework has been made. This may be considered separately from the question of retention of its Scottish revenues.

4. This response reiterates SCDI's comments on the Scottish Government's consultation on *Securing the Benefits of Scotland's Next Energy Revolution*.

How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?

5. SCDI supports the retention of this revenue stream in Scotland, whether or not the legal framework in which the Crown Estate Commissioners operate changes.

6. SCDI supports the principle of a capturing a share of the value of developing offshore renewable energy and Carbon Capture Storage to create a long-term legacy for Scotland. This was a recommendation of our *Blueprint for Scotland*. The emerging offshore low carbon energy sector will, at best, be marginally profitable initially and requires significant public investment and support. Over the course of the next decades, the offshore low carbon energy sector will move towards greater levels of profitability and more substantial benefits can be safely secured. At this time, the allocation of revenues will be mainly a signal of intent.

7. At a national level, SCDI welcomed the Scottish Government's proposal to create a long-term legacy through an investment fund for low carbon infrastructure, including skills infrastructure, the supply chain base and technological innovation.

8. One of the lessons from the Norwegian and the international oil funds highlighted is that to maximise the benefits of these revenues, they should be targeted and not spread too thinly. They should, generally, be used to support long-term, sustainable economic and community development and not to fund general public services. If the revenues become relied on to top up budgets, there is a risk that the cost of offshore leases would be increased to cover shortfalls and, as a result, disincentivise investment and job creation by industry. The use of these revenues should be genuinely additional to core funding from government.

9. There is a need to take cognisance of whether other countries which are competing for investment in offshore renewable energy are proposing to create similar funds. Scotland and the UK are currently ranked very highly as attractive locations. In seeking over the course of the next decades to secure a share of the profitability of the low carbon sector, the Scottish Government must be careful not to disincentivise investment in Scotland, which would reduce the economic and employment benefits for Scotland, make it harder to achieve Scotland's climate change targets and limit any economic and financial benefits.

10. In the case of offshore renewable energy and Carbon Capture and Storage, there is a difficulty in defining which local communities are impacted and should benefit. SCDI would support the view that those directly impacted through construction, proximity and/or visually should have some community benefit. In keeping with the national level, SCDI believes that energy generation and efficiency schemes (including community ownership of stakes in renewable energy developments) should be high priorities for the use of these revenues.

At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?

11. SCDI supports the retention of this revenue stream in Scotland and this implies that the revenues should be administered at Scottish and local/community levels. Maximising the benefits is our over-riding priority rather than structures.

What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?

12. Clarity and transparency about the Crown Estates accounts—revenues, profits and investments—in Scotland will help to inform decisions on how to maximise the benefits for the people of Scotland. The Crown Estate's plans to invest substantially in offshore renewable energy need to be compared with the funding which would be available for the Scottish Government to invest if the Crown Estate's revenues and expenditure in Scotland were to be fully devolved, to understand whether there is a risk of any near-term reduction in investment.

13. It would be worth considering whether the administration of the Crown Estate in Scotland could include an Advisory Group on community benefit. The Crown Office and local authorities could draw up joint community benefit action plans.

14. In SCDI's view, the investment of those revenues should be particularly targeted at activity which would not otherwise be supported. Renewable energy generators are already making significant investments in some

areas of low carbon energy and there is a risk that if an excessive share of any profits from offshore energy developments is sought this will reduce their ability to do so. There are a number of complex issues which need to be considered, such as the areas of low carbon infrastructure, the supply chain base and technological innovation where Government investment would be additional to utility companies; whether it would be the same utility companies which would often, in effect, be bidding for a share of their own revenues; and the implications of renewable energy generators being required to provide investment for commercialisation of technology, for example wave and tidal energy, which may be in competition with their own or their partners' device(s). Revenues from ports should not be used to subsidise renewable energy related developments at competitor ports, as this would be unfair and likely to infringe EU state aid rules.

September 2011

Written evidence submitted by Scottish Power Limited and ScottishPower Renewable Energy Limited

INTRODUCTION

1. This evidence is provided on behalf of Scottish Power Limited (a major UK energy supply, networks and generation business), and ScottishPower Renewable Energy Limited (a leading renewable developer in the UK). Both companies are subsidiaries of Iberdrola S.A. and references to "ScottishPower" and "we" are to either or both companies as the context requires.

2. Scottish Power Limited is an energy business that provides electricity transmission and distribution services to more than three million customers, supplies some five million electricity and gas services to homes and businesses across Great Britain (GB), and operates electricity generation, gas storage facilities and associated energy management activities in the UK. ScottishPower Renewable Energy Limited is part of Iberdrola's Renewables business, which is the largest developer of renewables globally.

3. This memorandum provides a summary of our views on the Crown Estate community dividends, as well as the wider management and governance of the Crown Estate in Scotland.

4. ScottishPower's interests in the Crown Estate portfolio in Scotland extend to our offshore wind, marine and tidal activity, our grid connection and subsea cable activity as well as the subsea pipeline and carbon dioxide storage associated with our proposed Carbon Capture and Storage (CCS) consortium project at Longannet Power Station.

COMMUNITY DIVIDENDS

5. We are generally supportive of the UK Government's decision to allocate 50% of the Crown Estate's marine revenues in Scotland to coastal communities. We believe it is important that local communities who are directly impacted by marine developments have a share of the financial benefits in order that in these circumstances, these communities can see a tangible benefit to the development taking place.

6. However, in our view, coastal communities need not be the sole beneficiaries of this funding. We believe that some of these funds could be used to provide socio-economic benefits for the entire country. By funding much needed low carbon skills development and education, such as college and university courses and technical and skills training programmes, as well as employment opportunities such as apprenticeships and graduate programmes, we believe these revenues could contribute to the creation of Scotland's low carbon economy as whole.

7. With this in mind, whilst we agree in principle with the Big Lottery Fund being used as a vehicle to recycle funds from developers to community groups, we would ask that consideration be given to other funding vehicles, to ensure monies are distributed and invested more widely, allowing us to capitalise on the potential for Scotland's natural assets and realise long term benefits for our people and for the Scottish Economy. Whatever vehicle is used, it will be important to ensure that the funds are then easily accessed.

8. Finally, we would like to see the allocation of revenue from the Crown Estate for socio-economic benefit in Scotland being replicated on a national basis, in order to support the growth of the green economy in England and Wales.

MANAGEMENT AND GOVERNANCE

9. We recognise and welcome the increasingly proactive approach of the Crown Estate in assisting in the development of offshore wind in particular. However, we believe there remains a role for the Crown Estate to work to strengthen their relationship with Local Authorities and Government. It is important that their role is clearly understood by all parties and that their actions and intentions are transparent.

September 2011

Further written evidence submitted by Highlands and Islands Enterprise (HIE)

1. Highlands Islands Enterprise is grateful for the opportunity to submit a further responses to the additional questions raised by the Scottish Affairs Committee (SAC) regarding revenues from the Crown Estate in Scotland.

BACKGROUND

2. Highlands and Islands Enterprise (HIE) is the economic and community development agency for an area covering more than half of Scotland's land mass, stretching from Shetland in the north to the southern tip of Argyll, and includes almost 100 inhabited islands. Our purpose is to generate sustainable economic growth in every part of the Highlands and Islands.

3. HIE has set out its views on the Crown Estate, and role of the Crown Estate Commissioners (CEC) in two recent documents, namely, in February 2011, a response to the Scottish Government's consultation document "Securing the Benefits of Scotland's Next Energy Revolution", and, in June 2011 the response to SAC's initial request for evidence. In the latter, HIE's position was summarised thus:

4. *"HIE remains of the view that a modification of the relationship between the Scottish Parliament and the CEC, the only public body to benefit directly at present from off-shore renewable energy developments, is now necessary. This would make it more accountable to the devolved Scottish Government for the management of its Scottish Estate. It would then be for the Scottish Government, working with local authorities and local communities to design mechanisms to ensure that the revenues raised from the developments in Scottish waters are re-invested for community and business benefit in Scotland.*

5. *....we firmly believe that the exploitation of the off-shore energy resource around our coastlines, in particular, offers an unprecedented opportunity for communities across the Highlands and Islands, including many in the more remote and fragile areas of our region, to share in the benefits of this green energy revolution. From a HIE viewpoint, we consider that the most tangible benefits of these developments for our region will be realised by the creation of sustainable well-paid employment in the research, design, manufacturing, operation and maintenance supply chains required to service offshore wind wave and tidal developments, creating a industry sector which will be embedded within the Highlands and Islands for generations to come".*

6. The current revenue generated by the CEC in Scotland is approximately £12 million, two thirds of which come from the marine estate. In addition to this, there are occasional capital receipts following the sale of properties etc, and this amounted to £3.4 m in 2010–11.

7. With the growth of marine renewables in particular, the revenue from the marine estate is set to grow considerably over the next few years, though not perhaps to the "bonanza" levels that some observers predict. For this to happen, technology has to progress beyond the experimental and feasibility stages, and significant private and public financial investment will have to be made. Significant growth in the revenue flows from the renewables element of the marine estate is liable, therefore, to be some time away.

8. It is important to distinguish the revenue derived from the Crown Estate from other "community benefit funds" which may be generated from onshore and offshore commercial renewable projects. This response focuses solely on the former.

SAC'S SPECIFIC REVENUE QUESTIONS

9. HIE recognises the need for further clarification regarding the distribution of revenues from the Crown Estate with respect to:

- the regionalised breakdown of income and expenditure;
- the effects of the Barnett formula on distribution of revenues directed through the UK Treasury; and
- the effects of the current and future development of renewable energy industry (and in particular the marine sector) on revenues and how this will be regionalised.

10. Additionally, some clarity on the costs associated with managing the Crown Estate in Scotland would be useful in discussions regarding any devolution of management or distribution of revenues.

Q1. How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?

11. All revenues raised by the CEC should be invested in projects which offer a long term legacy and not simply short term benefit. This could be focussed on two main areas:

- Investment in renewables industry infrastructure, eg:
 - creating employment by encouraging inward investment to relocate manufacturing for technology companies involved in the industry;
 - developing local commercial infrastructure, particularly harbours, to support the service industry; and
 - supporting the expansion of training for the sector through investment in UHI.

- Investment in local community infrastructure, eg:
 - community renewables projects to help meet the SG targets of 500MW for community renewables by 2020 thereby providing income for community groups to reinvest in local development under the community's own control;
 - investment in energy efficiency measures, both through local businesses and through community infrastructure such as the insulation of housing to address the challenge of fuel poverty;
 - establish a community land fund to assist communities to acquire and manage land and property assets for long term benefit. Such funding could come from both the CE's marine and the land estates, and in the latter, community and/or tenant buyouts could be considered;
 - community broadband infrastructure especially in remote communities; and
 - an element of this could be an initiative linked to retaining local young people, possibly through the establishment of local graduate placement schemes.

Q2. At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?

12. In previous submissions on this subject, HIE has suggested that the revenues be devolved first to the Scottish Government and then to the more local level. The general principles and higher level framework design might best be delivered at the national level, through Marine Scotland.

13. Investment in renewables and community infrastructure would be best administered at the local level eg community land and renewables projects, energy efficiency initiatives, small scale harbour infrastructure.

Q3. What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?

14. Two general principles should guide decision making and the distribution of revenues:

- Devolve the process as close as possible to communities most effected by developments.
- Use existing structures where possible, rather than creating new ones.

15. Given HIE's regional remit, covering both economic and community development, and its experience of assessing investment applications using a locally based decentralised delivery mechanism, we would be happy to consider a role in the distribution and allocation of CEC revenues in the Highlands and Islands.

COASTAL COMMUNITIES FUND

16. Since SAC issued its request for further responses to its questions on the use and administration of revenues from the Crown Estate, the UK Government has announced the formation of a Coastal Communities Fund to be financed by the Treasury from the CEC's revenue from its marine activities each year. For each country of the UK, the funds available will be the equivalent of 50% of the revenues raised by the CEC from the marine estate in those areas, with separate funding for England, Wales, Northern Ireland, the Highlands and Islands and the rest of Scotland. This will give a fund of £1.9 million for 2012–13 for the HIE area.

17. It is proposed that these funds will be dispersed through a grant scheme operated by the BIG Lottery, and while details have still to be finalised, the fund will “welcome innovative bids from charities, businesses, social enterprises and local organisations, which support the economic development of the community.”

18. As outlined above, given HIE's specific and unique role in both economic and social development in the Highlands and Islands, allied with our extensive experience in delivering support direct to the most remote and fragile communities, we see no need for the additional overhead of a new grant scheme for our region delivered by an external body for what is a relatively modest sum. To that end, we would suggest that HIE could have a role in delivering this fund, whilst ensuring the unique nature of the fund and its specific objectives are met.

19. In summary:

- (1) HIE supports the Scottish Government in its position regarding reform of how the Crown Estate in Scotland is managed; firstly, to devolve management to the SG of all CEC interests in Scotland; and secondly, to manage these interests within existing departments of the SG.
- (2) HIE also supports any revision of the distribution of profits to include the investments in the coastal community programme (as outlined below) and to increase investment in Scotland's renewables programme.
- (3) We also support the involvement of coastal communities, harbour trusts, etc, in a move to further devolve both the management of Crown Estate properties and the re-investment of the profits.
- (4) We would also suggest that “land based” revenue of the Estate, most of which originates in the Highlands and Islands should be included in the funds to be invested in long lasting renewables and community infrastructural projects.

We hope that this response is useful to the Committee and would be happy to provide clarification or further information as required.

September 2011

Further written evidence submitted by Scottish Council for Voluntary Organisations (SCVO)

SUMMARY

- A full public consultation is required on priorities for disbursement of Crown Estate revenues with individuals and communities able to have their say.
- Any criteria for distribution of revenues should be broad enough in scope to include the diversity of projects that may be required by local communities.
- Responsibility for administration of revenues from the Crown Estate in Scotland should be devolved from the Crown Estate Commissioners to the Scottish Parliament.
- An independent national fund should be established with all revenues from the Crown Estate in Scotland.

ABOUT US

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 137,000 paid staff and approximately 1.2 million volunteers. The sector manages an income of £4.4 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1300 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector—our 1300 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes;
- our governance and membership structures are democratic and accountable—with an elected board and policy committee from the sector, we are managed by the sector, for the sector; and
- brings together organisations and networks connecting across the whole of Scotland.

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change. Our policy is determined by a policy committee elected by our members.¹⁴

Further details about SCVO can be found at www.scvo.org.uk.

OUR RESPONSE

SCVO welcomes the opportunity to respond to this consultation and would like to contribute to the following questions:

How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?

1. SCVO believes that prior to setting any criteria for community benefit from Crown Estate revenues there must be a full public consultation on the issue with measures in place to ensure individuals and communities have a say. Our view is that to ensure revenues are disbursed appropriately, there should be flexibility in the type of support available to communities. The criteria for distribution of revenues should be broad enough in scope to cover the diverse projects that may be required in local communities. This will allow communities to prioritise projects that deliver the most benefit to their local area.

At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?

2. As stated in our previous submission SCVO believes that the management and administration of the Crown Estate in Scotland should be devolved from the Crown Estate Commissioners to the Scottish Parliament. It is our view that this level of administration would provide the scrutiny and accountability required as well as offering a practical level for distribution of funding that would be of most benefit to the people of Scotland.

¹⁴ SCVO's Policy Committee has 24 members elected by SCVO's member organisations who then co-opt up to eight more members primarily to reflect fields of interest which are not otherwise represented. It also includes two ex officio members, the SCVO Convener and Vice Convener.

What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland?

3. SCVO would like to see all the revenues generated by the Crown Estate in Scotland remain in Scotland for the benefit of its people and communities.

4. SCVO recommends the establishment of an independent national fund in Scotland with revenues from the Crown Estate. The fund would award funding based on the priorities set following the consultation stated above (1). To ensure that communities and local groups are able to access the fund a proportion of the funding should be allocated for third sector groups with appropriate scales of funding award developed.

5. SCVO believes that revenues generated within a community should return to that community. However, where the revenue generated exceeds a level appropriate for the scale of that community, revenue should flow into a national fund for distribution to other areas. This is particularly relevant for large renewable energy projects. SCVO believes that revenues generated by the natural resources of Scotland should be used for the benefit of all people in Scotland. In instances where revenue is generated from offshore renewable projects, and once any negative impacts of the development have been mitigated, those revenues should flow into the national fund and be made available to communities across Scotland.

CONCLUSION

- A full public consultation is required on priorities for disbursement of Crown Estate revenue with individuals and communities able to have their say.
- Any criteria for distribution of revenues should be broad enough in scope to meet the diversity of projects that may be required by local communities.
- Responsibility for administration of revenues from the Crown Estate in Scotland should be devolved from the Crown Estate Commissioners to the Scottish Parliament.
- An independent national fund should be established with all revenues from the Crown Estate in Scotland.

REFERENCES

Scottish Voluntary Sector Statistics 2010, SCVO

www.scvo.org.uk/evidencelibrary/Home/ReadResearchItem.aspx?f=asc&rid=1078

September 2011

Further written evidence submitted by The Highland Council

1.0 INTRODUCTION

In its response to the Committee's earlier call for evidence Highland Council set out its position on the management, role and governance arrangements surrounding the Crown Estate in Scotland. The Council also set out its views on the interactions between the CEC and UK, devolved and local government, and addressed the specific questions asked by the Committee.

Highland Council now welcomes the opportunity to make a further submission in response to the additional questions posted on the Committee's website in July.

Again the Council refers the Scottish Affairs Committee to the Crown Estate Review Working Group (CERWG) report of 2007, titled: *"The Crown Estate in Scotland—New Opportunities for Public Benefit"*. The report and annexes sets out clearly the issues and opportunities that exist via reform.

Highland Council has recently drafted community benefit policy, which it will consult upon shortly. The following draws on Council policy in this area and is intended to supplement the evidence already provided on the Crown Estate in Scotland.

2.0 THE CASE FOR CHANGE

In its first submission, Highland Council outlined its view that there is a compelling case for the administration and revenues of the Crown property, rights and interests that make up the Crown Estate in Scotland to be devolved, in the first instance, to the Scottish Parliament and the Scottish Government.

Highland Council is equally firmly of the view that there should then be a second stage of devolution in which responsibility for the administration and revenues of some of those Crown property, rights and interests is devolved from the Scottish Government to local authorities and communities.

The detailed case for the devolution of the CEC's responsibilities is set out in the CERWG report and since it was published in 2007, a sequence of parliamentary inquiries at Westminster and Holyrood have borne out that there are major issues to address over the CEC's operations in Scotland.

The conspicuous lack of accountability in Scotland over the CEC's operations here is well documented in those inquiry reports. They have also focused attention on the role of the Secretary of State for Scotland as the Minister responsible for the CEC's operations in Scotland and the limited capacity of the Scotland Office to fulfil that role in an adequate ongoing way.

Evidence from the Scottish Government, local authorities and others has also highlighted the difficulties of dealing with the CEC, whose management responsibilities in Scotland involve matters which are in all other respects devolved.

Over 96% of the CEC's business in the rest of the UK involves dealing with a different set of Crown rights in a different public policy environment. As the various inquiry reports illustrate, the CEC's approach as an organisation continues to be "out of place" in a devolved Scotland. The interpretation of the CEC's statutory remit in narrow financial terms is also at odds with some of the CEC's responsibilities in Scotland.

Evidence also confirms that there is no financial case for the CEC continuing to operate in Scotland, whether in terms of capital or revenue.

The CEC and the Secretary of State for Scotland have emphasised, for example, that a key benefit of the CEC operating in Scotland is that the CEC can draw on the wider financial resources of the UK wide Crown Estate to invest in Scotland. However, as the Scottish Affairs Committee has confirmed, the CEC have taken a net outflow of capital from Scotland of over £50m during the last five years for re-investment in the rest of the UK. While the size of that outflow was largely due to the purchase and sale of one property in Edinburgh, the figures in the CERWG report also demonstrate that there has been no history of net capital investment in Scotland by the CEC.

Highland Council consider that it is an historical anomaly that the CEC continue to operate in Scotland and that, as a relatively straightforward matter of good governance and the public interest, the CEC's responsibilities in Scotland should be devolved to the Scottish Parliament and thereafter, and as appropriate, to local authority level.

3.0 CEC'S RESPONSIBILITIES

The CEC's responsibilities in Scotland consist of managing each of the Scottish Crown property, rights and interests that make up the Crown Estate in Scotland. These are listed 1–13 in the attached Scottish Government table and more detail on each can be found in the CERWG report.

Highland Council recommends that the Committee considers each of the components of the Crown Estate individually. Their nature means that the factors involved in each case are different, as is the most appropriate future for each if devolved. As the Committee will be aware, responsibility for the administration and revenues of individual Scottish Crown property rights can be devolved separately without necessarily devolving all of them at the same time.

Only the three main marine rights (foreshore, territorial seabed, continental shelf area) and the modern acquisitions generate significant revenue. The rest are minor and archaic property, rights and interests which are also considered non-economic or not economically significant by the CEC.

4.0 MARINE RIGHTS

Issues over the CEC's operations in Scotland predominantly result from their involvement in Scotland's marine environment. This means that they are largely Highlands and Islands issues, as the region accounts for over 80% of Scotland's foreshore, harbours, islands, associated territorial seabed and other marine attributes.

Highland Council believes that responsibility for the administration and revenues of the remaining *Crown foreshore* in Scotland should be devolved to the Scottish Parliament and then transferred to each local authority where Crown foreshore occurs. The Council refers the Committee to section 15 of the CERWG report, where the logic of these transfers is set out.

This change would mean that any net revenue from managing Crown foreshore will benefit the area where that revenue is generated, rather than being removed from the local economy by the CEC. A particularly important benefit would also be the immediate scope to reduce inappropriately high rents charged by the CEC for public interest and local community uses of the public foreshore.

Regarding Crown rights over *Scotland's seabed and adjoining continental shelf area*, Highland Council believes responsibility for the administration of these should be devolved to the Scottish Government and arrangements put in place by the Scottish Government for net revenue from these areas to be shared between national, regional and local levels.

The CERWG report (section 16) and submissions from the Scottish Government, this Council and others set out the case for Scotland being responsible for the management of its own marine Crown property rights. This would bring immediate benefits by enabling a more efficient and straightforward integrated system for licensing and leasing marine developments, which exists in other European maritime countries.

The change would greatly assist the development of the marine renewables sector in Scotland and this would also be greatly helped by removing the complication of the CEC being involved in the work by the Scottish Government, its enterprise agencies, local authorities and others in promoting the sector. The Scottish Government has already committed itself to equalling and exceeding the CEC's projected £20 million of capital investment in Scotland over the next five years. That amount is also very small compared to the amounts already being invested to develop the sector by the Scottish Government, this Council and others in Scotland.

Highland Council considers that, as part of the changes, all public sector and community harbour authorities should have control over the administration and revenues of the seabed within their immediate statutory harbour area. More generally, there would be a chance to re-set the pattern of charges made by the CEC, so that the re-investment and the distribution of financial benefits for each sector of marine use support local, regional and national policies in Scotland.

The Council welcomed recognition by the UK Government through its Coastal Communities grant scheme, of the principle that revenue raised from the Crown's marine rights should be returned to the region where it was raised. However, the Council believes all the revenues raised from the rights which make up the Crown Estate in Scotland should remain in Scotland and their new distribution settled through the consultations proposed by the Scottish Government in their June paper.

5.0 ADDITIONAL QUESTIONS POSED BY THE SCOTTISH AFFAIRS COMMITTEE

5.1 *How can revenues raised by the Crown Estate Commissioners in Scotland be best used for the benefit of local communities?*

Generally a very good start could be made via the alignment of the role of the Crown Estate in Scotland with current public policy context in Scotland.

More specifically, revenues raised via the Crown Estate in Scotland could be used at local community and regional level to support:

- Business and community projects (including provision of harbour facilities and other infrastructure, broadband etc);
- Skills development, training and scholarships;
- Supply chain developments;
- Alternative and renewable energy research and projects;
- Energy generation and efficiency schemes (including community ownership of stakes in renewable energy developments);
- Community ownership or control of other assets and land reform.

5.2 *At what level might those revenues be best administered: UK Treasury, Scottish Government or local authority level?*

Sections 3.0 and 4.0 refer.

Below the initial devolution to Scottish Ministers, Highland Council views further devolution of revenues from the Crown Estate in Scotland to the regional (local authority) and local community level is essential to ensuring that maximum benefits are delivered where revenues are generated. Devolution of resource management and revenue generation below Scottish Ministers to local authorities should be implemented quickly and in an agreed manner.

5.3 *What processes might be put in place for the distribution and allocation of those revenues, in order to maximise benefits for the people of Scotland?*

Highland Council wishes community benefit contributions to be delivered at coastal community and Pan Highland level, perhaps via a Highland Community Development Trust or other Strategic Partnership (involving the local authority, HIE and the business community), which would be tasked with the management and distribution of community benefit funds within the Highlands. Disbursements could be made following the LEADER principles.

The Council has agreed a two tier approach to the disbursement of community benefit funding arising from offshore renewable energy developments which would include opportunities for communities to participate at the following levels:

- Coastal Community (20%).
- Pan Highland (80%).
- Allocation at these rates would operate above £100,000, below which all funds would go to the local community.

Community benefit payments should be made on the basis of annual production rather than on the basis of one off establishment payments, although there should be flexibility for communities to choose other payment methods based on the projected performance of the development and their stake in it. Community benefit funding should support the type of opportunities set out at 5.1 above.

The principles which should govern the level of payment to communities and how resources should be allocated between coastal communities have also been agreed by the Council. Principles of disbursement should include for example:

- Proximity to development;
- Visual Impacts;
- Construction impacts;
- Community use of the development site;
- Number of residents; and
- Projected efficiency, performance of development and the community stake involved.

Community development plans led by individual local authorities should be the basis on which the allocation of community benefit funding is managed.

Scottish Government Working List (8.9.10)

THE CROWN PROPERTY, RIGHTS AND INTERESTS IN SCOTLAND WHICH ARE MANAGED BY THE CROWN ESTATE COMMISSIONERS

ANCIENT POSSESSIONS

1. Ownership of the *seabed* (excluding hydrocarbons) within Scotland's territorial seas out to the 12 nautical mile limit, where this has not been granted out.
2. Rights over the *continental shelf* to minerals (excluding hydrocarbons) and sedentary species from Scotland's territorial seas to 200 nautical mile limit.
3. Ownership of Scotland's *foreshore* where this has not been granted out and excluding areas under udal tenure.
4. The right to all *naturally occurring mussels* in Scotland's territorial seas where this has not been granted out.
5. The right to all *naturally occurring oysters* in Scotland's territorial seas where this has not been granted out.
6. (a) The right to all *coastal salmon fishing* within Scotland's territorial seas where this has not been granted out.
6. (b) The right to all *salmon fishing in rivers and lochs* in Scotland where this has not been granted out and excluding areas under udal tenure.
7. The right to mine naturally occurring *gold and silver* in Scotland.
8. Ownership of 5 ha of *West Princes Street Gardens*, Edinburgh, including the Castlebanks.
9. Ownership of the historic *Kings Park*, Stirling (136 ha).

MODERN ACQUISITIONS

10. (a) ownership of five *rural properties*:

Glenlivet (Banff)	23,000 ha	(purchased by Commissioners of Crown Lands in 1937)
Fochabers (Moray)	4,800 ha	(purchased by Commissioners of Crown Lands in 1937)
Applegirth (Dumfries)	7,004 ha	(purchased by CEC in 1963 & subsequent years)
Whitehill (Midlothian)	1,366 ha	(purchased by CEC in 1969 & subsequent years)
Old Mills Farm (Stirling)	47 ha	(purchased by CEC in 1972; linked to King's Park (no.9))

10. (b) ownership of one *urban property* in Edinburgh:

39/41 George Street (+Thistle St Lane) 1929+222 sq.ms. office/retail (purchases CEC 1995)

10. (c) involvement in *joint property partnerships*:

Fort Kinnaird Retail Park (Edinburgh)—50% ownership through Gibraltar Ltd Partnership

10. (d) ownership of *coastal properties* (excluding harbours & related property):

Rhu Marina (Firth of Clyde) (purchased by CEC in 2007–08)

OTHER RIGHTS & DUES

11. *title reservations*: minerals rights and other rights reserved by the Crown over former Crown lands, including Edinburgh Castle and other prominent sites.

12. *heritable revenues*: feu duties & surplus teinds still due to Crown over former Crown lands.

13. *other income*: The right of the Crown to income if the one site in Scotland transferred to government ownership under the Forestry (Transfer of Woods) Act 1923, is sold.

September 2011

Written evidence submitted by Jenny Meade

1. *Do the CEC serve a useful purpose in Scotland?*

No, apart from the fact that they have all the Crown Property records. We would need to ensure that ALL details are passed on to any independent subsequent managing organisation.

2. *What should be the role of the CEC in investing in Scotland?*

—as above, if they were to continue with current responsibility they would need to share information about prospective projects in full detail with subsequent independent managing organisation (ie, No financial links with companies involved, or politicians) All involved companies to be paying UK tax!

Investing in Scotland must involve widely accepted skill training, progressive work patterns, and affordable housing particularly for islanders to facilitate re-establishment of ports and related infrastructure, self-sufficiency with regard to food, water, and a range of energy production from natural resources. Affordable housing is a possibility if reclaimed land resources avoid the private landlords who control Britain at present.

3. *What is the Legacy of the CEC in Scotland?*

Don't really know, is it important in the light of recommendations to move forward as suggested in the Calman Commission.

4. *Are the current management, administration and accountability arrangements of the CEC appropriate?*

No. Since Devolution the CEC has reduced accountability in Scotland. In 2002 the CEC stopped treating Scotland as a separate management unit. Very handy as they knew one day the Scottish Government would catch up with them. Of course by that time it would be difficult to estimate how much revenue they should legally return to the Scottish people. Current CEC staff only have a very basic knowledge of the importance of the projects they are working on in Scotland with regard to local benefit and due consideration to protect the environment from further irreversible damage.

An example of the ridiculous is the MCT plan to install four SeaGen tidal energy units in the narrows between Skye and the Scottish mainland by 2014. The project would cost £40 million—which “could potentially provide enough electricity for 8,000 homes”? There may be further discussion about community benefit, but that aside are the Government still in possession of basic mathematical skills? Wouldn't it be more economical to give each household a £10k solar hot water system, plus a £10K solar PV system, plus a £10k wind turbine, then it could perhaps reduce the energy bill for those homes to 8,000 x 30,000 which totals £240,000.

The Scottish people would appreciate a complete breakdown of the budget.

The process of all development must enhance Scotland's self-sufficiency and sustainability in every aspect.

5. *How could the CEC best act in the public interest in Scotland?*

As above by sharing all their knowledge on prospective developments which have been discussed so far with a newly formed independent thinking Scottish management team when they hand over the property rights. With full devolution of rights the Scottish Government must realise that action is needed NOW to appoint a team to adopt the management of Crown estate property rights.

Perhaps the CEC could be part of a new management team but with due consideration of a sustainable environment. They should be able to contribute without financial gain as they have already inappropriately adopted much unaccounted Scottish revenue.

6. *How could revenues raised by the CEC in Scotland be best used for the benefit of local communities in Scotland?*

I don't feel that the CEC are in a position to act in the best interest of Scotland unless their constitution is altered to incorporate the appropriate special requirements. Their recent announcement that half the revenues from the Crown Estate Marine resource will go to coastal communities was welcomed by the leader of The Highland Council, Councillor Michael Foxley, but how can they come up with a spurious figure like that? Do they refer to 50% of the revenues which they have already taken, or are they predicting an exploitation of Scottish waters to excess in the future in order to retain a good income without bounds for themselves?

7. *At what level might those revenues be best administered UK treasury, Scottish Government, or Local authority level?*

Clause 18 of the Scotland Bill proposes that there be a Scottish Commissioner appointed by the Chancellor of the Exchequer in London. There is no proposal on the question of the Power of direction.

Firstly we must bring the responsibility for the management and revenues of all Scotland's crown property rights together in one place in Scotland, away from the CEC.

Once that has been done further detailed discussions can then take place about which part of the Scottish Government and/or local government, plus newly appointed independent experts approved by the Scottish People, has the expert capacity and particular knowledge of the type of project which should be encouraged to bring maximum and sustainable development of Scotland, and so be in a position to administer the rights for Scottish Community benefit.

The power of direction exists to enable the Secretary of State for Scotland to direct the CEC over matters in Scotland, however he has apparently never used this power and has very little to do with the day-to-day governance of Crown rights. He apparently has neither the experience nor staff capacity take a view on how such a power should be deployed or to conclude detail of desirable results.

The Scottish Government however are currently deeply involved in management of Crown Property Rights, and through Marine Scotland has extensive powers over the marine environment. Marine Scotland however have around 700 staff who are mainly involved with collecting and publishing scientific data to prove that fish stocks are depleted which takes some believing when the fact couldn't be more obvious to the people of Scotland, particularly those with life long experience of fishing. Perhaps marine Scotland need more autonomy to use their knowledge and experience for common good, rather than the Government holding them down in an attempt to prove that there is still a Scottish fish industry.

One huge advantage may be that the Scottish Government can finally protect the seabed from the grossly damaging unsustainable fishing method of mobile bottom trawling, if they have the courage to stand up to the Inshore Fisheries Group who tend to be a illogically vociferous group who don't yet realise that their day is over, and they need to rethink their future work patterns. The seabed needs to be allowed to recover so that it may shelter immature fish whilst they take around six years to mature into breeding stock for future generations of not only a multiplicity of marine species, but to re-establish a valuable high quality human food to include protein, minerals, and essential fatty acids. George Lyon MEP seems to think that this shortage of protein can be substituted by importing more Soya which I find impossible to believe, see "Tragedy and Hype—The Third International Soy Symposium" as reported in Nexus May 2000.

This is a major consideration for healthy human survival as the population continues to exponentially increase (self destruction being the limiting factor) without guidance from the Government as to the seriousness of the situation.

David Attenborough informed the public through one of his TV programmes that the population today is three times that of fifty years ago. We all know there is a serious shortage of food throughout the world now so if the population continues to expand the human race is well on the way to self destruction. Immediate protection of the coastal seabed could be manifested by reverting to the law and situation before 1984 when the three mile limit was revoked.

When I attended "Scotland's Maritime Future" conference, Linlithgow in February 2011 for which I have written a report, Marine Scotland were criticised by many of the Maritime developers for continually establishing unnecessary barriers or red-tape which discourages investment for new harbour facilities and infrastructure to enable an increase in distribution of Scottish supplies and produce. The potential developers and speakers at the conference had great respect for the environment but suggested that investment in Scotland is too risky.

Thus I cannot see that Marine Scotland is in a position to manage Crown Estate rights unless it completely changes direction away from frantically trying to prove the obvious. As an organisation, or otherwise, they don't seem to be able to take the reins and act for a sustainable future certainly with regard to fishing. (Linda Rosborough of Marine Scotland I believe suggested that they didn't have enough data on the small fishing vessels present in Scottish waters).

If the sea-bed is not protected Scotland has no future for its own food, eco-tourism such as boating, diving, and the previously huge contributor to the economy of recreational fishing. “The Economic Impact of Recreational Sea Angling in Scotland”, funded and published by Marine Scotland showed that the Clyde was losing out on a potential £12 million pounds per year due to lack of fish in the Clyde!

Unpublished raw data also revealed that Arran alone is now losing approx. £2 million in lost revenue per year.

Perhaps Marine Scotland are fully aware of the unsustainable state of Scottish seas but are constantly antagonised by Mr. Salmond and the Environment minister who seem to be blind to reality in their futile attempt to mislead the rest of the world into believing that there is still a substantial Scottish fish industry with the help of the IFG’s (most of us I’m sure have seen the films; *The Age of Stupid*, and *The End of the Line*). The Clyde IFG is supposed to represent the Clyde estuary. The constitution of the CIFG’s seems to be Exclusive to mobile non-sustainable fishermen. Sustainable fishing supporters are not able to join their organisation due to the unacceptable and inappropriate constitution. Perhaps that the Government is continually ill-advised. See www.forargyll.com “Caveat emptor: Clyde Inshore Fisheries Group consultations” posted 26 July 2011.

BBC News Scotland 14 August 2011–08–19—Sea surveys to reveal Scotland’s marine secrets. Richard Lochhead, Cabinet Secretary for Rural Affairs states: “Scotland’s seas provide rich marine habitats and a stunning array of biodiversity”.

It’s a pity that he may not be fit enough to dive and follow the path of a bottom trawler!!

We trust our Scottish Politicians have seen the Panorama footage of the seabed in the only No Take Zone in Lamlash Bay off the isle of Arran where comparative film of a trawled area runs alongside an area within the NTZ which is very slowly re-establishing its biodiversity.

See BBC Panorama’s; “The price of Britain’s disappearing wildlife” 30 August 2010. Included in the programme is an account of “Ecological Meltdown” by Prof. Callum Roberts of York University, and author of “The Unnatural History of the Sea”.

Alex Salmond recently said “Our waters are home to some of the world’s most precious wildlife, including internationally important species, therefore it’s critical that we further our knowledge as much as we can”. An expensive and ambitious survey is currently being carried out. So we spend another few million pounds to prove that fish stocks are hugely depleted—it would be much more economical and so easy to reinstate a three mile limit to protect what’s left!!

If Mr Salmond is courageously dishonest in this matter, can he be trusted to initiate Crown Estate management when considering the enormous potential for inappropriate relationships to be offered by potential energy developers.

Local Authorities on the whole do not have the appropriate local knowledge and experience, nor desire to communicate with, or benefit the ordinary people in the street. Some are tied up in a false universe where everything is extortionately priced in accordance with their own high salaries and unsustainable pensions. This is perhaps a generalisation based upon my limited and perhaps biased local knowledge as there are obviously many members of local authorities who would like to give of their best to the benefit of the general public, who of course they actually work for.

Conclusion, or not?

Who else could manage the Scottish Crown Property rights?

I would support the establishment of a completely new organisation whose members are all independent, appropriately knowledgeable, ethical, technically educated and have great respect for an holistic environmentally-aware approach to development.

The organisation would need to pledge to conduct transparent consultation with knowledgeable concerned community members in accordance with a message from the Chairman of the Commission on Scottish devolution, Sir Kenneth Calman whom we would like to see involved. The complete evidence of consultation would clearly record and recognise the importance of community engagement as summarised in Sir Kenneth Calman’s message 15 June 2009 following the report of the “Commission on Scottish Devolution”.

8. What processes might be put in place for the distribution and allocation of those revenues in order to secure the maximum benefit for the people of Scotland?

A grant allocation system similar to the Lottery’s AWA, with special consideration for sparsely populated areas according to Article 175 of the Lisbon Treaty would be most appropriate.

Property rights should be brought under jurisdiction of Scottish Government, who could then set up a new independent (ie, not funded or sponsored, or influenced by any other government body or industry) organisation as above, but ensuring that local communities are consulted before developments are planned to maximise

utilisation of local knowledge, participation and benefit. (To enable so called “Third Sector” involvement participants should at least have their expenses paid for voluntary work.)

September 2011

Further supplementary written evidence submitted by The Crown Estate

RESPONSE TO REQUEST FOR FURTHER INFORMATION IN LETTER DATED 13 JULY 2011 FROM MR IAN DAVIDSON MP, CHAIR OF THE SCOTTISH AFFAIRS COMMITTEE

Annexes C to T, referred to below, are not printed with this response. They can be made available by the Committee on request.

The capital value attributed to The Crown Estate in Scotland and the capital value of The Crown Estate in the rest of the UK, in each of the last financial years, 1999–2000 to 2010–11. The capital value of The Crown Estate in Scotland as a percentage of the overall total of the UK wide Crown Estate in each year. Whether there are any capital assets in Scotland that are not included in the table and their value.

1.1 The capital value (being the valuation of property) attributed to The Crown Estate in Scotland compared to the UK as a whole and by activity, was as shown on the attached schedule (annex A) in each of the last financial years, 1999–2000 to 2010–11. The schedule shows for each year the value of the Scottish estate by activity and as a proportion of The Crown Estate in total.

1.2 Concerning the question of whether there are any capital assets in Scotland not included in the table please note that all assets are valued in accordance with the accounting policy set out in note 2a of the main Crown Estate accounts. Properties are valued by independent external valuers at each balance sheet date and valuations are carried out in accordance with the Appraisal and Valuation Standards (Red Book) of the Royal Institution of Chartered Surveyors.

- With regard to marine and mineral assets these are valued only where an entry has occurred, or where an interest is expected to provide either a revenue cash flow or capital receipt within the foreseeable future.
- Offshore wind farms have been valued using a Special Assumption (as defined in the Red Book) that all sites where an option has been granted or a site allocated by The Crown Estate within Round 1, Round 2, Round 3 and Scottish Territorial Waters of the wind farm tender process are included even if the option is yet to be exercised and an Agreement for Lease is yet to be signed.
- At the 31 March 2011 the proposals to develop the individual zones making up Round 3 were at a very early stage. Whilst The Crown Estate had granted exclusivity to individual developers, no reciprocal binding commitment existed and in some cases the detail of development in each zone was not finalised. Hence there is a considerable risk attached to individual Zones that they may not produce income as projected. The valuation of the Round 3 wind farms based on a hypothetical sale price has been prepared on a “portfolio” basis, that is on the assumption that The Crown Estate’s interest in all the Zones would be sold as a single entity in order to spread the risk. As a result the valuation shown in the main Crown Estate accounts cannot be split between individual Zones and no individual value can be provided for the Round 3 wind farms located off the coast of Scotland. As such the figures for property value and capital investment shown in annex A exclude any allocation of costs or value in respect of Round 3.
- The wind farms forming part of a separate group which are planned to be built within Scottish Territorial Waters have also been valued on a similar “portfolio” basis, because currently there is a risk that the income from any individual wind farm may be delayed or reduced. A purchaser of the portfolio would be able to spread the risk compared to the buyer of a single wind farm interest. Annex A does include the valuation and capital investment for the wind farms to be included within Scottish Territorial Waters.
- Mineral bearing land, including marine dredged aggregates, is valued on the basis of market value.

Thus even though The Crown Estate manages and has rights to the foreshore and seabed and out to the Continental Shelf value is only included under the circumstances outlined above.

1.3 Assets which are not revenue producing are not given a capital value in The Crown Estate’s accounts. They include:

- Areas of the foreshore and seabed which are not the subject of any lease or dealing.
- Other areas of ancient possession which are not let.
- Natural oysters and mussels.
- Salmon fishings.
- Gold and silver.
- Minerals and rights reserved out of previous land sales.

1.4 The accounts of The Crown Estate are audited by the National Audit Office and have always carried an unqualified audit certificate. The valuation methodology used by The Crown Estate is consistent with the principles of International Financial Reporting Standards (IFRS) and other property companies.

1. *A breakdown of the annual capital value of The Crown Estate in Scotland by activity (1999–2011)*

1.1 See annex A attached and 1.1 above.

2. *A breakdown, by main assets, for the composition of the Marine Estate in Scotland in 2010–11*

2.1 Annex A also provides a breakdown by main assets of the marine estate in Scotland for 2010–11.

3. *A breakdown of capital investment and receipts in Scotland, for each year from 1999–2000 to 2010–11. Whether there are any capital investments/receipts in or related to Scotland that do not show in the Scotland account, and identify the main acquisitions/disposals in any year*

3.1 Annex A attached breaks down the capital investment and receipts in Scotland from 1999–2000 to 2010–11 and indicates the main acquisitions and disposals. They do not include the investment in the limited partnership which owns Fort Kinnaird, described at 8.10 below. Otherwise, there are no capital investments/receipts in or related to Scotland that do not show in the Scotland account.

4. *A table of The Crown Estate’s annual revenue in Scotland, so that it covers the 10 years 2001–02 to 2010–11 and preferably also includes the years 1999–2000 and 2000–01. Table to be based on “revenue by activity” as in The Crown Estate’s Scotland Reports. (The revenue is described in The Crown Estate’s Scotland Report as “Revenue recognised in revenue account (excluding service charge income)”. Note any income from or related to Scotland that might not be “recognised”, and about what is meant by “service charge income”)*

4.1 Annex B attached shows revenue for Scotland for each of the years requested. It also shows the income distinguished between rents and royalties, premiums, produce and other income (see 7 below). It does not include revenue received through the limited partnership which owns Fort Kinnaird.

4.2 Income was described in the Scotland accounts as “revenue recognised in the revenue account (excluding service charge income)” to be consistent with the terminology used in the main Crown Estate accounts. The term used in the main accounts indicates that the income is shown or “recognised” in the income column as opposed to the capital column in the main accounts. There is no “unrecognised” income in the Scotland accounts.

4.3 Service charge income again follows from the main accounts. There is no service charge income received in Scotland. The basis of preparation of the figures is the same as is produced for the main Crown Estate accounts using the same accounting policies.

4.4 Service charges are the means that enable the sharing of costs of common services in properties between more than one occupier. These costs typically encompass soft services (such as cleaning and security), hard services (for example lifts, M & E), insurance and utilities. The service charge account is run on a “not for profit, not for loss” basis and is administered for a fee by a managing agent. The recovery of service charge costs (if permitted by the lease) is invoiced to the tenant. It is this recovery that is shown as service charge income.

5. *A note on the basis of the figures which are produced for Scotland (given that The Crown Estate does not keep separate accounts for its operations in Scotland)*

5.1 The basis of preparation of the figures is the same as is produced for the main Crown Estate accounts using the same accounting policies:

- Gross surplus is calculated for the Scottish estates by taking into account direct costs relating to those estates. Thus gross surplus represents revenue less direct costs (including for example managing agent fees, void costs, rent review fees).
- There has been no allocation of centrally incurred overhead costs to Scotland. The figures quoted exclude costs of IS (IT), HR, Communications, Finance and accommodation.
- The income figures for Scotland are produced by extracting income relating to Scottish estates from the financial records.
- Each estate is allocated the appropriate county and country code within the rental records. The Scottish figures are produced by extracting the details relating to Scotland.
- Valuations are prepared for each property and are summarised by estate. They have then been summarised into those that relate to Scotland.

6. *A more comprehensive note of the revenue activities in each of The Crown Estate's Urban, Rural and Marine Estates in Scotland, for example, distinguishing between rents and other distinct income sources*

6.1 See annex B attached and 5.1 above.

7. *A consolidated account of each of the Ancient Possessions and Modern Acquisitions that make up The Crown Estate in Scotland, including:*

7.1 *Territorial seabed and the Continental Shelf*

A map of Scotland's territorial sea bed area showing the location of offshore renewable activity linked to a key listing the different sites and types of agreements.

Annex C shows Renewable Energy activity within Territorial Limits.

An account of the other activities managed by The Crown Estate, including the numbers of leases or other agreements for the different types of uses of the sea bed.

In this response we deal with seabed and foreshore activities together, as our management records do not categorise them separately, and a significant number of foreshore dealings involve elements of seabed, and vice versa.

It should be noted that the precise numbers of dealings vary continually, and numbers should be treated as approximate as at the date of issue.

Territorial seabed and foreshore agreements

- 10 Offshore cables (telecoms and power)
- 19 Offshore pipelines
- 13 Small scale cables
- 10 Small scale pipelines
- 5 Bridge crossings
- 374 Commercial development
- 122 Private development
- 119 Commercial moorings
- 673 Leisure moorings
- 68 Maintenance dredging
- 5 Intake pipes
- 27 Marina and similar (eg pontoons)
- 611 Outfalls
- 17 Regulating leases with commercial parties
- 50 Regulating leases with statutory bodies

Aquaculture

There are approximately 582 leases covering 862 sites, including some experimental sites.

A map and account of use activity on the continental shelf area.

Annex D shows offshore activity 12nm–200nm.

(Note: the area and rights exercised beyond 12 nm are not technically part of Scotland under the Scotland Act 1998; nor are they Ancient Possessions or Modern Acquisitions in the normal sense. They belong to the UK by virtue of the UN Convention on the Law of the Sea and are managed for domestic purposes by The Crown Estate by virtue of the Continental Shelf Act 1964 and the Energy Acts 2004 and 2008).

7.2 *Foreshore*

A map of Scotland indicating the lengths of Crown or mainly Crown foreshore.

There is a presumption that foreshore is part of The Crown Estate unless either a) the Crown has disposed of it; or b) third parties have successfully claimed ownership through prescriptive possession. Attached at Annexes E and F are maps showing the extent of foreshore shown in our records to have been sold, and the extent successfully claimed by third parties. Save as regards Orkney and Shetland, all foreshore not shown on these two maps is considered to be part of The Crown Estate.

It is however possible that there are, in relation to the foreshore, third party ownership rights of which the Crown is not aware, which have arisen under the Prescription & Limitation (Scotland) Act 1973.

As regards Orkney and Shetland, Udal Law generally applies, displacing the presumption that foreshore belongs to the Crown. However, The Crown Estate may deal with foreshore in areas where Udal Law has been renounced.

The great majority of the territorial seabed still forms part of The Crown Estate. In terms of geographical area, non-Crown seabed is de minimis. The most significant disposal of seabed was at Leith in the 1930s.

An account of The Crown Estate's foreshore activity in terms of, for example, the numbers of leases or other agreements for the various different types of uses of the foreshore.

See 8.1 above.

7.3 Mussels/Oysters

A note of the areas where the Crown does not own the right to naturally occurring mussels/oysters and of areas where the right has been leased out, and a description of the extent of The Crown Estate's involvement in managing these rights.

Naturally occurring oysters and mussels in Scottish Territorial Waters form part of The Crown Estate except as follows:

- In Loch Ryan in Dumfries and Galloway, Crown rights to oysters and mussels were disposed of in the early 18th century. They are operated today by Rossmore Oysters Limited.
- The Crown Estate's records since 1900 show that third parties have successfully claimed ownership of oysters and mussels near to Montrose, Angus; within parts of the River Eden, St Andrews; in Loch Snizort Beag, Isle of Skye; and at the head of Loch Torridon, Wester Ross.

There are no current leases from The Crown Estate of naturally occurring oysters or mussels, and no income is derived from them. The Crown Estate plays no active part in managing them.

8.4 Salmon fishing (not forming part of the rural estates)

An updated version of Table 10 on page 156 of the CERWG Report, with the entries in parts (i) and (ii) of the table numbered as a key to their approximate locations on a map of Scotland.

It is not practicable for reasons of size to send a map locating the numbered file references, but such is available.

An account of the number of freshwater beats and the number let, including the number let to public angling associations, to update the information on page 155 of the CERWG Report.

Except those associated with the purchases of Fochabers, Glenlivet & Applegirth Estates the Scottish Salmon Fishings form part of the *regalia minora*, in respect of which the presumption is that ownership across Scotland remains with the Crown.

It is possible that third party ownership claims might exist in relation to salmon fishings, of which the Crown is not aware, which have arisen under the Prescription & Limitation (Scotland) Act 1973.

There are many stretches of rivers where the migratory fishing rights have been granted away by the Sovereign over past centuries. These have not been comprehensively investigated, being characteristically of low value, and are accordingly not captured on our GIS system. They involve small stretches across a large number of rivers. For these reasons, it would not be practicable to attempt to show Crown-owned salmon fishings definitively on any map or series of maps. (The map of river locations referred to above is not a definitive map but only indicative.)

There are currently 139 tenancies of river salmon fishings, outwith the agricultural estates. Of these 69 are let to local angling associations. Numerically this represents over 49% but will involve a larger proportion of available water as a good number of these lets cover entire rivers from source to sea, and their tributaries.

An account of the coastal fishing rights to update the information in the text on page 156 of the CERWG Report.

There are no longer any coastal netting stations let by The Crown Estate and none are actively fished. Since the late 1980's The Crown Estate has supported a policy of conservation by retaining coastal netting areas in-hand and unlet. Payments of District Fishery Board assessments are still charged on some of these remaining 44 coastal fishings through which further contributions are made by The Crown Estate to the conservation of wild salmon stocks. Annex N and O show a list of these rights together with their geographical locations and their spread across local authority areas.

8.5 Gold and silver

A map of Scotland that indicates those parts of Scotland where the Crown does not own the rights to gold and silver.

Annex P.

An account of the number and types of any mining leases, exploration licences and related arrangements granted by The Crown Estate.

Gold and silver are Mines Royal, which in most cases belong to the Crown and are managed by The Crown Estate. The Crown Estate's permission is needed to take away Crown gold in any form. The plan at annex P shows the areas where Mines Royal have been successfully proven no longer to be in Crown ownership with detail listed in the table below:

<i>Mines Royal entry</i>	<i>Local Authority</i>
64–28–1 Pitgaveny Estate verified non-Crown Mines Royal	Moray
64–50–8 Inverary Estate verified non-Crown Mines Royal	Argyll & Bute
64–55–6 Knapdale and Castleton verified non-Crown Mines Royal	Argyll & Bute
64–78–3 Hopetoun Estate Mines Royal verified non-Crown Mines Royal	South Lanarkshire
64–00–12 Duke of Sutherland Mines Royal verified non-Crown Mines Royal	Highland

There are currently three Mines Royal Option agreements with three separate commercial companies. There are no current mining leases in Scotland although should planning application for proposals at Cononish be successful we expect this to change.

8.6 Princes Street Gardens

A map that shows the area managed by The Crown Estate and a description of the property and any lease arrangements.

The area of West Princes Street Gardens which forms part of The Crown Estate is shown coloured pink on the plan at annex Q. Annex R is a copy of an agreement dated 28 December 1818 by which rights of occupancy were granted by the Crown. The 1818 agreement does not contain any plan but the land in question is believed to approximate to what is shown coloured pink on our plan. The rights of occupancy are now held by Edinburgh City Council, who are understood to own the rest of West Princes Street Gardens. The annual rent of £32 referred to in the 1818 agreement has not been paid for some years.

The land coloured pink on the plan also includes some land South of Johnston Terrace which is held by the Council from the Crown on what is thought to be the same basis as West Princes Street Gardens.

8.7 King's Park

A map that shows the area of the historic Royal Park managed by The Crown Estate and a description of the property and any lease arrangements.

Annex S is a plan showing the extent of the King's Park lands at Stirling distinguishing the various lettings by separate colour. The following table explains the different types of letting involved.

	<i>King's Park Farm Lands</i>	<i>Stirling Golf Course</i>	<i>1 & 2 Kings Park cottages and 8 & 10 Homesteads.</i>	<i>Land at King's Park and Gowanhill</i>
Type of tenancy	Agricultural—1 year SLDT	Commercial	Residential Short Assured Tenancies	Commercial

8.8 Rural Estates

An updated version of Table 9(b) on page 149 of the CERWG Report and including the year of acquisition or main acquisition of each estate.

Table 9(b)

THE CROWN ESTATE IN SCOTLAND—RURAL ESTATES CURRENTLY HELD

	<i>Glenlivet</i>	<i>Fochabers</i>	<i>Applegirth</i>	<i>Whitehill</i>	<i>Stirling</i>
Area hectares	23,067	4,600	6,890	1,366	183
Agricultural land	19,410	4,408	6,211	1,151	94
Area of Forestry	3,657	192	679	215	–
Agricultural tenancies	84	84	46	9	1
Residential tenancies	14	44	45	9	4
Commercial quarrying/ mining	1	2	2	2	–
Salmon Fishings tenancies within estates	3	3	1	0	–
Date of Purchase	1937	1937	1963–70 largest extents	1969	1974 [Old Mills]

Further information about the extent of the salmon fishing and the nature of commercial quarrying/mining on the various estates.

SALMON FISHERIES WITHIN THE RURAL ESTATES

<i>Estate</i>	<i>Name of Fishings</i>	<i>Let to</i>
Fochabers	Spey—Brae water rod fishings 1 & 2	Private individual
Fochabers	Spey Brown Trout fishings	Private individual
Fochabers	Spey—Beats 2 & 3 Lower water fishings	Local Angling Association
Glenlivet	River Avon	Local Angling Association
Glenlivet	River Livet	Local Angling Association
Glenlivet	Rivers Livet and Avon & The Gordon Fishings	Local Angling Association
Glenlivet	River Livet at Blairfindy—River Avon at Deskie	Private Individual
Glenlivet	River Avon	Local Angling Association
Applegirth	River Annan	Local Angling Association

MINING/QUARRYING WITHIN THE RURAL ESTATES

<i>Estate</i>	<i>Material</i>	<i>Letting arrangement</i>	<i>Area</i>
Applegirth	Corncockle quarry	Sandstone block	Lease expiring 2017 4.78 ha
Applegirth	Nether Murthat quarry	Sand & gravel	Lease expiring 2022 34.75ha
Fochabers	Spey bay Quarry	Sand & gravel	Lease expiring 2012 7.73ha [renewal in negotiation]
Fochabers	Nether Dallachy landfill	Waste disposal with sub let electricity generation from landfill gas	Lease expiring 2026 31.36ha
Glenlivet	Faemussach	Peat collection	Lease expiring 2022 19ha
Whitehill	Upper Dalhousie	Sand & Gravel	Lease expiring 2029 17.25ha
Whitehill	Newbigging/Shewington	Opencast coal	Lease expiring 2012 148.48ha

8.9 *Urban property*

A description of the property listed including the year of acquisition and any lease arrangements.

(i) 39/41 George Street Edinburgh is a mixed retail/office building purchased in 1995. It is let in parts to a number of tenants for terms of between five and 15 years from 2009 onwards; in addition the substation is let for 60 years from 1994. The car park and some parts of the offices are vacant.

(ii) West Princes Street Gardens is dealt with at 8.6 above.

(iii) Fort Kinnaird is dealt with at 8.10 below.

8.10 *Joint ventures*

A description of the property interests in Fort Kinnaird that forms part of The Crown Estate in Scotland, including the year of its acquisition and the wider arrangement of which it is part.

Fort Kinnaird, Edinburgh, is a shopping park owned by the Gibraltar Limited Partnership, an English limited partnership, whose partners include The Crown Estate as a limited partner. It is a 50/50 joint venture arrangement with Hercules Unit Trust, which is 38.56% owned by The British Land Company PLC. The partnership also owns two other retail parks, in Cheltenham and Leamington Spa. These and Fort Kinnaird were acquired by the partnership when it was formed in 2007 and are together held by its general partner on trust for the limited partners. The partnership’s property portfolio is managed by British Land. The Crown Estate owns a 50% share in the partnership’s beneficial interest in the pool of partnership assets, including Fort Kinnaird.

8.11 *Coastal properties*

A description of the Rhu Marina and the other assets resulting from The Crown Estate’s capital investment in ports and harbours with the years of acquisition.

The Crown Estate in Scotland has and will continue to monitor the marina and leisure-boating market to develop strategic partnerships or to make targeted investments, in particular to exploit marriage value from existing assets and holdings. The Crown Estate is also investigating the potential for direct commercial investment and/or the creation of investment structures to attract and support private/public investment activity into the development of a “superport” or a cluster of ports in Scotland, to encourage the development of the renewable energy supply chain in Scotland. The table at annex T sets out past, present and future investment activity across the Scottish Coastal Estate.

ANNEX A—Capital Value, Capital Investment and Receipts

ANNEX B—Revenue

NOT PRINTED

ANNEX C—Renewable Energy within Territorial Limits map

ANNEX D—Offshore Activity 12–200nm map

ANNEX E—Non-Crown Foreshore map

ANNEX F—Sales of Foreshore map

ANNEX G—Sale of Leith Seabed map

ANNEX H, I, J, K, L—Mussels/Oysters maps

ANNEX M—List of Salmon Rivers

ANNEX N, O—Coastal Salmon Fishings maps

ANNEX P—Non-Crown Gold and Silver Rights map

ANNEX Q—West Princes Street Gardens map

ANNEX R—West Princes Street Gardens 1818 Agreement

ANNEX S—King’s Park map

ANNEX T—Coastal properties—Past, Present and Future Investment Activity

Annex A

SCOTTISH AFFAIRS COMMITTEE—REQUEST FOR INFORMATION

Items 1, 2, 3 and 4 of request for information

Year	1999–2000	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Capital value (property value)												
Cables/pipelines	4,509	4,774	6,834	8,581	14,006	15,507	15,340	16,512	16,990	17,000	18,228	17,113
Coastal	15,439	15,162	16,122	10,554	10,974	12,949	14,362	14,911	16,989	19,225	19,958	22,536
Dredging	13	282	273	202	183	159	135	112	112	525	647	648
Aquaculture	13,500	14,500	11,000	13,000	11,300	9,009	10,750	11,555	10,800	10,902	11,274	12,226
Renewables									2,209	3,250	3,726	24,072
Total marine	33,461	34,718	34,229	32,337	36,463	37,624	40,587	43,090	47,100	50,902	53,833	76,595
Agricultural	31,986	33,460	35,277	39,691	39,101	42,517	50,669	58,993	72,115	81,769	89,526	89,040
Minerals	286	433	357	445	992	1,372	1,187	1,107	2,122	2,343	2,936	2,557
Forestry	3,028	2,985	3,089	3,113	3,122	3,334	4,381	5,276	7,482	7,412	8,900	9,863
Residential	2,592	2,957	3,593	4,589	5,634	6,224	7,469	9,807	13,201	18,098	16,528	16,250
Total rural	37,892	39,835	42,316	47,838	48,849	53,447	63,706	75,183	94,920	109,622	117,890	117,710
Total urban	65,962	91,400	89,625	88,250	90,900	95,250	111,200	112,500	96,200	72,000	11,800	12,750
Owner occupied	1,787	1,907	1,915	1,975	155	225	395	230	240	186	140	140
Total Scotland	139,102	167,860	168,085	170,400	176,367	186,546	215,888	231,003	238,460	232,710	183,663	207,195
Total TCE (incl owner occupied)	3,433,612	3,870,938	4,032,640	4,067,438	4,408,872	4,812,024	5,685,395	6,572,448	6,584,360	5,725,776	5,988,781	6,703,289
<i>Percentage Scotland/TCE</i>	4.05%	4.34%	4.17%	4.19%	4.00%	3.88%	3.80%	3.51%	3.62%	4.06%	3.07%	3.09%
Capital investment and receipts												
Capital investment—Scotland	25,560 ¹	37,600 ²	1,901	2,057	1,233	1,652	1,523	1,245	2,922	7,400 ⁶	4,200	7,400
Capital receipts—Scotland	785	8,915 ³	1,928	5,726 ⁴	9,923 ⁵	1,399	810	1,243	1,903	900	68,400 ⁷	3,400
Total TCE capital investment	73,751	206,658	57,302	44,152	63,656	104,666	199,678	185,688	258,116	306,768	394,400	571,000

Year	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
<i>Total TCE capital receipts</i>	63,645	113,217	42,278	29,323	63,757	166,718	139,694	417,829	328,831	231,490	419,000	406,100
<i>Percentage Scotland/TCE investment</i>	34.66%	18.19%	3.32%	4.66%	1.94%	1.58%	0.76%	0.67%	1.13%	2.41%	1.06%	1.30%
<i>Percentage Scotland/TCE receipts</i>	1.23%	7.87%	4.56%	19.53%	15.56%	0.84%	0.58%	0.30%	0.58%	0.39%	16.32%	0.84%
Capital investment by estate												
Rural	1,398	1,178	1,124	1,991	1,179	1,652	1,471	1,235	2,362	2,000	1,900	2,000
Urban	24,162	36,422	777	66	54		50	10	-116	700	700	1,000
Marine							2		676	5,400	1,600	4,400
Total	25,560	37,600	1,901	2,057	1,233	1,652	1,523	1,245	2,922	7,400	4,200	7,400
Capital receipts by estate												
Rural	757	1,836	389	885	7,137	1,195	751	834	1,859	900	1,400	1,700
Urban		6,981		4,825	2,750					65,700		
Marine	28	98	1,539	16	36	204	59	409	44	1,300	1,300	1,700
Total	785	8,915	1,928	5,726	9,923	1,399	810	1,243	1,903	900	68,400	3,400

Major acquisitions and sales

1. Forward funding and purchase of Princes Exchange
2. Further expenditure on Princes Exchange
3. Sale of Gallery of Modern Art, Edinburgh and Drummond Moore quarry
4. Sale of Blythswood Square, Glasgow
5. Sale of Charlotte Square, Edinburgh and Whitehill (Hopefield development site)
6. Acquisition of Rhu Marina
7. Sale of Princes Street and Princes Exchange, Edinburgh
8. Improvements at Rhu marina (£1.4 million), wave and tidal (£1.5 million) and STW (£1.3 million)

Annex B

SCOTTISH AFFAIRS COMMITTEE—REQUEST FOR INFORMATION

	1999–2000	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Gross revenue												
Cables/pipelines	0	0	0	0	1,238	1,189	1,405	1,296	1,591	1,824	1,780	2,030
Coastal	2,563	2,561	2,989	2,695	1,619	1,666	1,978	2,023	1,985	2,323	2,309	2,729
Dredging	0	0	46	21	19	19	77	19	19	62	63	100
Aquaculture	2,889	2,980	2,519	1,196	1,338	2,743	2,187	814	1,825	4,040	2,324	2,517
Renewables	0	0	0	0	0	0	0	0	0	0	366	474
Total marine	5,452	5,541	5,554	3,912	4,214	5,617	5,647	4,152	5,420	8,249	6,842	7,850
Agricultural	1,861	1,878	1,721	1,899	2,052	2,044	2,118	2,070	2,261	2,216	1,882	1,881
Minerals	59	129	64	94	78	278	457	723	331	711	995	768
Forestry	399	612	448	482	352	401	337	123	209	237	171	175
Residential	0	0	0	0	0	0	0	0	0	446	480	520
Total rural	2,319	2,619	2,233	2,475	2,482	2,723	2,912	2,916	2,801	3,610	3,528	3,344
Total urban	4,002	5,437	5,473	5,730	5,573	5,653	5,613	5,683	5,708	5,711	2,782	716
Total Scotland	11,773	13,597	13,260	12,117	12,269	13,993	14,172	12,751	13,929	17,570	13,152	11,910
Total TCE	187,202	204,885	223,537	230,039	237,779	245,443	252,341	262,160	264,802	285,849	299,726	306,798
Percentage Scotland/TCE	6.29%	6.64%	5.93%	5.27%	5.16%	5.70%	5.62%	4.86%	5.26%	6.15%	4.39%	3.88%

By income type	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Gross revenue												
Rent & Royalties	5,428	5,518	5,538	3,884	4,199	5,591	5,625	4,124	5,403	7,399	6,821	7,841
Premiums	5	5	0	0	0	0	0	0	0	0	0	0
Produce	0	0	0	0	0	0	0	0	0	0	0	0
Other	19	18	16	28	15	26	22	28	17	850	21	9
Total marine	5,452	5,541	5,554	3,912	4,214	5,617	5,647	4,152	5,420	8,249	6,842	7,850
Rent & Royalties	1,907	1,999	1,831	1,987	2,087	2,332	2,612	2,777	2,471	2,615	3,333	3,159
Premiums	0	0	7	8	0	0	0	0	0	0	0	0
Produce	400	585	379	474	344	394	313	127	279	236	134	149
Other	12	35	16	6	51	-3	-13	12	51	759	61	36
Total rural	2,319	2,619	2,233	2,475	2,482	2,723	2,912	2,916	2,801	3,610	3,528	3,344
Total urban	4,002	5,437	5,473	5,730	5,573	5,653	5,613	5,683	5,708	5,711	2,782	716
(Rent & royalties only)												
Total Scotland	11,773	13,597	13,260	12,117	12,269	13,993	14,172	12,751	13,929	17,570	13,152	11,910

August 2011

Written evidence submitted by No Tiree Array

EXECUTIVE SUMMARY

No Tiree Array's difficulty is that whilst No Tiree Array support the concept of a Community Dividend, No Tiree Array is deeply suspicious of the political motive. Notwithstanding, Community Dividends derived from the exploitation of any Crown Estate asset should be distributed to the proximate community to the exploited Crown Estate asset.

INTRODUCTION

No Tiree Array refers the Scottish Affairs Committee to the Crown Estate website and the Crown Estate's statement as to its vision namely:

Our vision is to be the UK's most respected property business because of the way in which we manage this portfolio of assets on behalf of the nation. We conduct business in line with our core values of commercialism, integrity and stewardship.

Definition of Integrity

Acting with integrity in all our dealings, we work closely alongside tenants, communities, businesses, governments, and local authorities, as we strive to deliver our vision of being the UK's most respected property business.

We want our customers and communities to have confidence in us, to believe that the hallmark of The Crown Estate is "Trust". That is how we attract the best customers, and how we are able to work with the best partners. It is also why integrity—our second core value—goes to the heart of how we do business.

Definition of Stewardship

Stewardship is deeply engrained in our culture; because of our history and because of our heritage, we act at all times as good stewards of the properties we manage. We strive for the best standards of management: in our parkland and gardens; in our farmland and our forestry; in the marine environment; and in our buildings and streetscapes.

So our commercial approach is tempered with a clear recognition of our stewardship responsibilities.

People rightly expect that we will always seek to do the right thing for the long-term wellbeing of the assets we manage, which are in many cases part of the nation's heritage and fabric and as well as being profitable, they also benefit our tenants, the community that lives and works there and the country as a whole by promoting the UK as an international destination and attracting tourists.

Pursuing good environmental practice, making sure that our activities in the communities in which we operate are handled sensitively, and taking a sustainable, long term view in our actions: it is through our actions that we demonstrate our commitment to stewardship

SUBMISSION

With regard to this submission, which specifically arises from The Crown Estate's lease to Scottish Power Renewables to develop Tiree (Argyll) Array, if consented, then The Crown Estate needs to be aware that the outcome of any development of the proposed wind farm may not be to the long-term benefit of the proximate island community ie Tiree, and consequently may be out with The Crown Estate's stated core values of commercialism, integrity and stewardship.

(1) We consider the Crown Estates issue to be political gesturing rather than hard economics notwithstanding the considerable sums involved.

(2) We are quite content with the political gesturing and wish the Scottish Executive every success. We agree that the seabed should be under the control of the Scottish People through their Parliament. However if you interface that with the current Executive's stance on renewables then we have a problem. We would seek control of the seabed to meet 3 primary objectives (1) conservation and amenity (2) achieve sustainable fisheries and (3) sustainable economic development. All 3 to have parity and not one at the expense of the other.

(3) We consider the draft proposals to recycle the funds back into investment projects deeply flawed.

(4) We are of the view that the concept of defining those (maritime) areas which would qualify and those (non maritime) areas which would not qualify completely misses the point.

(5) Scotland is a small country and is part of a relatively small island. Income from the seabed should be available to all, but any Crown Estate income from the seabed's exploitation should be primarily distributed for the benefit of the proximate community, and its stakeholders, to any such seabed exploitation. To clarify; as Tiree is the proximate community to the Tiree (Argyll) Array, as currently proposed, then The Crown

Estate's nett income from its lease to any developer should be distributed primarily for the benefit to, and for, *all stakeholders in the Tiree Community*.

(6) The draft proposals regarding application procedures for financial assistance anticipate yet another level of administration, probably another quango, bidding wars, complex forms and unnecessary up front costs for local organisations. It is time (and this is an opportunity) for this model to be abandoned and a more user friendly procedure identified and adopted.

(7) In the first instance funds should be distributed to the relevant Local Authority with the funds specifically for the benefit to the proximate community to be ring fenced from within the initial distribution to that local authority. Thereafter the funds to the proximate community to be distributed to a body which represents *all stakeholders in the proximate community* for distribution/use in accordance with criteria, and vetting standards, laid down by an appropriate national body. In addition, consideration must be given in any distribution to its use to minimise the loss of business and income, from those activities that may go into decline, as a result of exploitation of the seabed.

(8) The Scottish Affairs Committee has to be left in no doubt that no amount of financial bribery will compensate for the miss use and destruction of the marine environment and as such UK and Scottish Government cannot abuse the distribution of such a dividend from any commercialisation of the seabed by "buying off" public concerns with obvious "carrots" of grants and loans for "good" causes.

The definition of "good" being within the gift of petty officials.

(9) With regard to the specific questions of the Scottish Affairs Committee re Crown Estate.

Do the Crown Estate Commissioners serve a useful purpose in Scotland? *In the main ... YES.*

What is/should be the role of the Crown Estate Commissioners in investing in Scotland? *To achieve balance between (1) conservation and amenity with (2) sustainable economic development.*

What is the legacy of the Crown Estate Commissioners in Scotland? *Unclear.*

Are the current management, administration and accountability arrangements of the Crown Estate Commissioners appropriate? *Management and administration OK but accountability NO.*

How could the Crown Estate Commissioners best act in the public interest in Scotland? *Be accountable to the Scottish Government.*

(10) With regard to specific questions of Scottish Affairs Committee related to:

- How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland? *As per 7 above.*
- At what level might those revenues be best administered: *In the first instance by Scottish Government to the appropriate local authority, thereafter to the proximate community in accordance with 7 above.*
- What processes might be put in place for the distribution and allocation of those revenues, in order to secure the maximum benefit for the people of Scotland. *A public consultation to derive such processes. The public consultation to be conducted through an independent body. The members of any such body to be appointed jointly by Scottish Government and the CE. The chairperson to be appointed by the members of the independent body.*

October 2011

Supplementary written evidence submitted by Argyll and Bute Council

At the inquiry session on Monday 31 October in the City Chambers, Glasgow, Argyll and Bute Council, via Cllr Walsh the Leader of the Council, was specifically asked for further information relating to two matters, namely had the Council provided financial support to Tobermory Harbour Association and why did the Council not provide financial support to the Oban Bay/Harbour project. Please find below detailed information which I hope will provide the necessary information to the Committee relative to these two points.

In addition to these two questions the Chair of the Committee, during the Tiree visit, asked if more information could be provided relative to the process by which the Argyll Array site selection was made. We contacted Scottish Power Renewables relative to this matter and attach at Annex A, a short briefing from them relative to the site selection process which I hope will provide sufficient information however again if there is anything further on this matter that I can assist with please do not hesitate to contact me.

TOBERMORY

The development of the pontoons in Tobermory commenced in circa 2004 and the project has evolved over a number of years with additional legs being added during 2007 and 2008. I can confirm that there was no funding support provided from the Council to the Tobermory Harbour Trust

With regard to the development of the Tobermory Harbour Building approx. £50k was given by the Council and this funded the toilets.

OBAN BAY/HARBOUR PROJECT

The Oban Bay/Harbour project forms part of Argyll and Bute Council's ambitious and forward looking CHORD Programme which seeks to regenerate the waterfront towns of Campbeltown, Helensburgh, Oban, Rothesay and Dunoon.

The outline business cases (OBC) for all CHORD towns were presented and approved by the Council in November 2008 following extensive public consultation.

The Oban OBC contained four projects designed to improve access to the town centre and enhance Oban's ability to grow:

- Project 1—Oban Development Road.
- Project 2—Dunbeg Corridor.
- Project 3—Waterfront Areas for Action.
- Project 4—Oban Bay Yacht Haven.

In April 2009, the Oban CHORD Project Board agreed to prioritise Project 4. The Council carried out a full business case (FBC) of the berthing proposal from the community group Oban Bay Marine (OBM) in terms of financial, technical and operational viability, which revealed that the project was not viable. A revised proposal was also assessed and again proved to be unviable, and in August 2010, the Oban CHORD Project Board and the CHORD Programme Management Board agreed not to proceed any further with this project. The project was unviable for a number of reasons, including: there was a significant funding gap in relation to the capital costs; the projected income was deemed unrealistic based on analysis of the projected occupancy levels (ie the proposed facility would be commercially unviable); there were a number of significant technical and operational challenges that had the potential to impact on the viability of the scheme.

The Council continues to liaise with OBM regarding their plans to ensure that they are considered as we progress the CHORD programme in Oban.

In addition to this information the Committee also requested that the Council go away and work up the details as to how the devolution of the Crown Estate assets would operate in Scotland and the role of the Local Authority in this. The Council is in no doubt that there is a requirement for the devolution of the CE assets however the details as to how this would be administered on the ground would require to be developed with our other colleagues in the Highlands and Islands using the convenors/convention and also through COSLA. We would be happy to facilitate this; however the timeline is unclear at this moment and it is unclear as to how this would fit with the Inquiry timelines.

Annex A

ARGYLL ARRAY OFFSHORE WIND FARM PROJECT SITE SELECTION

THE CROWN ESTATE—SCOTTISH TERRITORIAL WATERS LEASING ROUND

In 2007 the Scottish Government asked The Crown Estate to undertake a leasing round for offshore wind in Scottish Territorial Waters (STW).¹⁵ The Crown Estate asked developers to come forward with proposals for offshore windfarms anywhere in the STW area. In February 2009 The Crown Estate announced 10 "exclusivity agreements" for offshore windfarm sites, including the Argyll Array, which had been successful under this process.

SCOTTISHPOWER RENEWABLES—SITE SELECTION EXERCISE

An extensive site selection exercise was carried out by ScottishPower Renewables in 2008. This exercise aimed to identify potential sites for the location of an offshore windfarm around the coast of Scotland. The following constraints were considered:

- Technical (wind resource, grid, ground conditions, water depth, accessibility, size of site).
- Environmental (habitats, species and seabed profile including bathymetry).
- Commercial (including fishing, shipping and recreation).
- Economics.
- Policy.

Consultation

During this site selection exercise a range of external organisations were consulted, namely: Scottish Natural Heritage, Fisheries Research Services (now Marine Scotland), Ministry of Defence (MOD), Royal Society for the Protection of Birds (RSPB), and National Air Traffic Services (NATS). Information and comments received from the consultees were considered during the site selection process.

¹⁵ <http://www.scotland.gov.uk/News/Releases/2011/03/18133308>

Alternatives

Based on the above site selection exercise a range of locations, including the Argyll Array site and a number of sites on the east coast of Scotland, were selected as areas presenting sound opportunities for offshore renewable energy development. ScottishPower Renewables bid for these sites in The Crown Estate's STW round of seabed leasing,¹⁶ and through this process was awarded an exclusivity agreement for investigating the Argyll Array site.

The Argyll Array site is considered as having excellent potential for offshore wind development and was selected for a number of reasons, including the following:

- Extremely large area at low water depths.
- Short distance to shore.
- High potential energy yield.
- Absence of environmental designations.
- Potential grid connection availability.

The area of sea immediately north of Tiree has been suggested by certain local Tiree stakeholders as being preferable to the current site for windfarm development. ScottishPower Renewables did consider this area and ruled it out due to several issues which cumulatively would leave a small windfarm site. The project needs to be large enough to facilitate economies of scale which make it economically viable. As a result, even if an area to the north of Tiree had been proposed as part of the project, SPR would still have required a relatively large site to the west of Tiree. It was decided not to pursue a site which would encompass both the north and west of the island.

The concerns which reduced the available area to the north included, water depth, proximity to shore, a scheduled ferry route, and aviation constraints. SPR also had concerns with birds migrating north/south, which may have been affected by turbines along the north side of the island. Finally SPR bore in mind the fact that fixed gear fishing has been shown to be very successful within constructed windfarms. Though a full Environmental Impact Assessment is yet to be conducted, we do not think there will be any long term effect by an operational Argyll Array windfarm on the Tiree fishery.

ENVIRONMENTAL ASSESSMENT

In 2011 the Scottish Government published a Strategic Environmental Assessment of the 10 sites awarded by The Crown Estate. As a result of this work, the Scottish Government removed two of the 10 sites (the Wigtown Bay and Solway Firth projects) from the national plan for offshore wind energy. Argyll Array remains part of the national plan for offshore wind energy.

In 2013, ScottishPower Renewables intends to apply to Marine Scotland for permission to build the Argyll Array windfarm. The application will include an in-depth Environmental Impact Assessment report. This report will contain detailed analysis of all the potential impacts of the project on the human, biological and physical environment. This information will be taken into consideration by Scottish Ministers when deciding whether to permit the project to proceed.

November 2011

Supplementary written evidence submitted by Community of Arran Seabed Trust

COMMUNITY OF ARRAN SEABED TRUST GAVE ORAL EVIDENCE TO THE SCOTTISH AFFAIRS COMMITTEE ON 23 NOVEMBER 2011

1. It is clearly Marine Scotland and not Crown Estate that has let down communities in the monitoring of inshore waters. Whilst CE is the legal manager of the leases of the seabed, it is Marine Scotland whose duty it is to care for the marine environment. Marine Scotland has shown poor stewardship.

2. Islands have distinct management issues compared to the mainland, including communication issues (distance and cost), a sense of isolation from centres of power and influence.

3. The importance of the statics as a group of inshore fishermen is neglected, and needs a much higher profile at the centres of power. The mobile sector is overrepresented at those seats of power and has undue influence on the policy on all marine matters in Scotland, whether it is quotas, protected areas and research.

4. Privatisation of the fisheries is going on and must be reversed. Similarly privatisation of the seabed must be averted. The territorial marine waters and seabed are held in trust for all the society not just the few.

5. It is clear from that Scottish Select Committee meeting listening to participants that the wider agenda of more devolution and towards independence is being pursued. The Crown Estate issues are a stalking horse... or sop... to give some, but not all, more power.

¹⁶ The Crown Estate "Windfarms in Scottish Waters" Accessed at: <http://www.thecrownestate.co.uk/scottish-offshore-wind>

6. The participants appeared to be after the “pot of gold”. COAST was the only one not making a direct bid for some of the money. I think they are all set up for disappointment. There is not a clear way forward for distributing CE funds, so there is a sense of setting up groups for disappointment. This of course could be a strategy for creating more discontent with Westminster. The marine communities wanting the funds for themselves forget those, whether a mile from the sea or far from the sea, which are also indirectly affected or impacted by marine development ...heavy lorries on roads etc.

7. There was a lack of recognition that Crown Estate is good on process, and experienced in marine management. It felt at times just an opportunity to throw bricks at the Crown Estate in Scotland, and by implication Westminster.

8. IFCA in England and Wales are much better than IFGs in Scotland as there is a wider participation including communities and consultations.

9. Clarification of the dialogue between Phil Thomas and myself re. EIAs and the disease at St Molios fish farm:

- Environmental Impact Assessments (EIAs) are required in the planning process *now*, a responsibility which is vested in local authority. There are many salmon farms, which were set up before more recent planning finfish farm EIA requirements and St Molios is one of those. At the renewal of the lease, overdue at St Molios by two years, in theory an EIA will be required. It is one of the complaints of communities that small biomass fish farms are requesting to increase biomass on the same sites and there is no requirement for an EIA for this enlargement.
- Since the Scottish Select Affairs meeting I have spoken to the Marine Science Fish Health Inspectorate in Aberdeen. It was confirmed that St Molios had a severe outbreak of Amoebic Gill Disease (AGD). It is a disease, caused by an imbalance of host, pathogen (in this case several species of Amoeba) and environment. There is the concentration effect of biomass and the ease of cross infection, another factor that was not discussed in the exchange. It is a “naturally occurring event” in as much as tuberculosis in humans is a naturally occurring event when pathogen (in that case a bacterium), host, in this case human beings, often in large numbers, and environment (insanitary conditions, close proximity of people and people already susceptible due to overcrowding, poor diets etc). The claim about it being a naturally occurring event is a good example of obfuscation by the industry. The fact is that over concentration of animal populations magnifies the infection risk often beyond the ability of humans to control.

Thank you for the opportunity to be involved, to be listened to. As a small community lead organisation that was important.

November 2011

Written evidence submitted by Patrick Stewart Marine Legislation Consultant to the Scottish Fishermen’s Federation

INTRODUCTION

1. I am Patrick Loudon McLain Stewart, MBE, WS, of Campbeltown, Argyll. I am retained by the Scottish Fishermen’s Federation (SFF) as a consultant in relation to the implications to the Scottish fishing industry of policy and legislation in the sphere of the marine environment. This remit includes examining the role of the Crown Estate (TCE) insofar as it impinges on the interests and activities of the Scottish fishing industry.

2. I have been a consultant to the SFF in these matters since 2009. From 1970 until 2009 I was assistant to and then Secretary of the Clyde Fishermen’s Association (CFA). In that role I had much contact with TCE in its capacity as landlord of the Scottish seabed and planner in relation to the location of marine fish farms.

THE CROWN ESTATE AND MARINE AQUACULTURE

3. The history of the early days of TCE involvement in leasing sites for marine aquaculture was more than adequately explained by Professor Phil Thomas when giving evidence to the Committee on 23 November. I shall not rehearse it here.

4. It soon became evident that the leasing of sites for fish farms was, following the installation of fish farming equipment, going to become a major inconvenience for inshore commercial fishermen. Our first difficulty was to get the CFA on a list of consultees in connection with the consenting process. There were, and are, two processes. One is the obtaining of statutory consents from Marine Scotland, which includes, of course, its predecessors. The second is the obtaining of a lease from TCE. When eventually the CFA was taken seriously, its opinion for both processes was sought by the predecessor of Marine Scotland.

5. It soon became clear that objection is made to the predecessor of Marine Scotland were not being adequately represented to TCE. Accordingly the CFA in making a serious objection ensured that it was sent directly to TCE.

6. Examination of a long series of decisions taken by TCE revealed that no weight was given to objections on by fishing interests. Accordingly the CFA took a decision to engage directly with TCE. Its initial position was that its duty under the Crown Estate Act 1961, to maximise the value of the Estate, required it to ignore objections made on either social or economic grounds.

7. The CFA decided that as it received no protection from government in these matters that it would challenge TCE directly. At that stage no emphasis was placed on the duty of TCE to guarantee the common law rights of fishing and navigation. The argument was based solely on the duty of a planner to act reasonably. In supporting its arguments the CFA undertook not to object as a matter of course but only to object where it had a material ground for objection. It also undertook to explore constructively, with the proposed operator and TCE mitigation measures.

8. Substantial progress was made with TCE in the early years of the last decade so that by 2005 CFA was satisfied that the process agreed with TCE was working satisfactorily. In matters where a TCE lease was required representations to the predecessor of Marine Scotland were deemed no longer necessary, given that those representations were likely to be ignored.

9. No sooner had the satisfactory position been reached than the then responsible Minister Lord Sewell ordained that the planning power of TCE had to be removed from it and, in the name of democracy, passed to local authorities.

10. The experience of the writer has led him to conclude that this change has not work well in the interests of either the fishing industry or marine aquaculture. The reasons are complex but arise from the ignorance of both officials and councillors of the dynamics of the marine environment. Unfortunately, there is much evidence to support this conclusion. It is a deep disappointment that for political reasons, the Scottish Government prolong the agony by allowing, by provision in the Marine (Scotland) Act 2010, local authorities to choose to continue planning for marine aquaculture using terrestrial Town & Country Planning processes while all other marine activity will be subject to a Marine Plan.

THE CROWN ESTATE AND OFFSHORE RENEWABLES

11. In 2010, the writer became aware that TCE had granted exclusive development rights in parts of the Scottish Territorial Waters. He made enquiry of TCE, which confirmed that the information was not only correct but that TCE had not thought of consulting with the Scottish fishing industry and intended to grant leases if consent for the development was obtained from Marine Scotland. This came as a considerable shock given the flagship policy of the Scottish Government not only to encourage the establishment of marine renewables but to subsidise the developers to do so.

12. Initial remonstrations to TCE were dismissed. The corporate memory of the arrangements come to in respect of marine aquaculture planning had evaporated. The writer advised SFF that another approach to protect the interests of fishermen had to be adopted as both the consenter (Marine Scotland) and the owner (TCE) were likely to be unsympathetic to claims of economic loss and social dislocation.

13. The writer was aware of recent litigation in England where fishermen had received protection against an attempt by TCE to build structures over mussel beds. He decided to follow this and became interested in the possibility of persuading TCE that it had a duty to fishermen to protect their common law right to fish, and to fishermen and all navigators to the common law right to navigation.

14. Early representations to TCE that it had a conflict of interest between its duty under the 1961 Act and its duty to protect the common law rights was rejected on the basis that the 1961 Act duty overrode all other duties. Having dispensed with that argument after further representation, TCE suggested that the duty to protect those rights in Scotland fell to the Lord Advocate. It is true that the Lord Advocate has a duty to represent the interest of those who claim that their right has been infringed but that does not detract from the duty of TCE to ensure that its decisions do not interfere, in any material way, with the rights. Indeed any action by the Lord Advocate would be against TCE for its failure to ensure that the rights were protected.

15. There is much legal uncertainty about the extent of the duty but it does appear clear that the right is infringed if it is materially affected. Thus if a marine renewable project results in displacement, or more particularly, elimination of fishing activity, then the right to fish, and possibly the right of navigation, has been infringed.

16. The SFF has no wish to litigate with TCE to prove the extent to which TCE has a duty and how it might discharge that duty. It would prefer to follow the process which was successfully arrived at in relation to marine aquaculture planning. Recent discussions with TCE make SFF believe that it may be possible to have constructive discussions on that basis although the stakes, in terms of amount of rental, for TCE is obviously much higher than it is in marine aquaculture leases.

THE ENFORCEMENT OF THE PUBLIC RIGHTS

17. In March 2003 the Scottish Law Commission published a report on the Law of the Foreshore and Sea Bed. One of its recommendations was that the common law rights should be converted to statutory rights and that their defence should be removed from TCE and given to local authorities.

18. While SFF has no position on the proposal to convert the rights to statutory rights, it would be firmly opposed to the assignation of the defence of those rights to local authorities. The reasons are founded in the failure of local authorities to understand the marine environment as evidenced by their handling of the marine aquaculture planning process. More fundamentally, however, it is inevitable that each local authority will have a different view as to its duty and to the enforcement of the rights. Given the number of coastal local authorities in Scotland it is likely the chaos would soon erupt particularly amongst those who are subject to or might benefit from the rights. TCE is one authority and is responsible for the enforcement of the right in all of Scottish territorial waters. It can have only one policy and one procedure. There is no benefit in spawning whole new bureaucracies, provided the present enforcer observes its legal duty to protect the rights.

MARINE (SCOTLAND) ACT 2010

19. It has been suggested to SFF that its concerns about engaging TCE in the protection of the right to fish are too sophisticated. Ample provision exists, it is further suggested, under the Act to protect fishing against the consenting of conflicting marine structures. This is not the view of the SFF. Indeed it may also be the view of Marine Scotland given that a letter from the writer requesting a meeting to discuss what those protections might be, to Marine Scotland, has gone unanswered, in spite of many reminders, for about six months.

20. The granting of the consent under the Act follows the processes of earlier Acts. While objection can be made in relation to navigation, there is no basis for an objection based on the loss of an ability to fish. The threat to fishing is enhanced by the planning policy of the Scottish Government which gives a presumption in favour of the establishment of marine renewable structures. The Committee will not be unaware of the strength of the Government's determination to establish 100% energy generation from renewable sources by 2020. No matter the expressed support given by that Government for the Scottish fishing industry, it is clear that it has a conflict of interest if the activities of the renewables sector and that of the fishing industry threatened to collide. It is not known how that conflict can be resolved. The TCE conflict-of-interest kidneys duty to maximise the value of the Estate and to defend the Public Rights can be resolved by adopting the process proposed by SFF.

EVIDENCE TO THE COMMITTEE ON 23 NOVEMBER 2011

21. During the hearing, Fiona Matheson, Secretary of the Orkney Fisheries Association (OFA), gave evidence. That evidence was strongly critical of TCE. It may be deduced from certain of the statements above, that the writer has sympathy with that criticism. The writer is doing what he can to educate TCE not to repeat its mistakes. However the fisheries liaison officer referred to is based in the London office of TCE and has a background in English fisheries. This may have contributed to what clearly is a lack of understanding of the way in which the Scottish fishing industry is organised. It is hoped that TCE will shortly put this right because its attitude to Scottish fishing has been seen, not without justification, to be arrogant and dismissive.

22. The discussion, in Committee, however then went on to enquire why OFA could be so unaware of the role and activities of TCE in Scotland. Question 395 from the Chair was rhetorical and was expressed as "Whether or not they have met with Bertie Armstrong, it would appear that that does not mean that word has been transmitted to the Orkney Fisheries Association." The writer cannot answer for the Chief Executive of SFF. He must do that himself. What however I can say is that during my consultancy the writer has reported fully to all Associations, including OFA, in membership of SFF of his meetings with TCE and the consequences for the Scottish fishing industry of its policies and attitude. This includes a full discussion of the effect of the Public Rights. The Chair was therefore wrong to conclude that OFA has not been communicated with, by SFF, on this critical, for the Scottish fishing industry, matter.

23. Finally I would like to support Professor Phil Thomas in his evidence in relation to the TCE Scottish Liaison Group. It is more than a talking shop. Decisions are taken and are implemented. For example its Chair directed at its last meeting on 30 November that the concerns of the SFF in relation to the grant of leases to offshore renewables developers must be addressed. These discussions have started and are positive.

December 2011

Written evidence submitted by Lorna Elliott

I would like to draw the committee's attention to the work of LEADER in Scotland and to suggest that you consider adopting the LEADER method for the dispersal of Crown Estate funds to communities.

LEADER has a bottom up approach to rural development with an ethos of local decision making partnership working, innovation and local solutions to local issues. The methodology has been developed over many years and currently 95% of rural Scotland is covered by 20 Local Action Groups (LAGs) each delivering local development strategies drawn up by the LAG and tailored to meet the needs of their particular area as part of the wider Scotland Rural Development Programme. Individual strategies within a broader framework gives a flexibility which enables local need to be accommodated while also providing a strategic direction.

Each LAG has its own budget which is used to deliver the local development strategy by awarding grants to projects that will contribute to the delivery of the strategy and by directly commissioning project activity.

The budget is held locally and decisions are made by the LAG members. Each LAG has a lead partner (local authorities in all but one where the lead partner is a national park) which takes on responsibility for the financial management of grants awarded by the LAG. There are clear processes and systems in place which are subject to audit scrutiny on a regular basis to ensure transparency in decision making and financial regularity.

At least 50% of the LAG membership must come from community organisations with the other members coming from public sector agencies such as the local authorities, HIE, SNH, Visit Scotland, private sector representation such as business associations and individuals working within the local action group area. This gives local accountability and ensures that a wide range of views from the local community are included in the decision making process.

Advantages of adopting the LEADER approach would include decision making at a level which is close to the communities affected, a flexibility which takes into account local needs and access to an existing network of LAGs experienced in working with local communities and running grant giving programmes.

Turning to another matter related to the dispersal of the Crown Estate funds, it is likely that there will be a need for a small central administrative office to coordinate the overall programme and I would like to suggest that rather than opting for the usual city based locations, you consider basing the office in a rural town instead.

Although I am currently employed as a LEADER Project coordinator, I am making this submission as an individual and the views expressed are personal opinion only.

December 2011

Written evidence jointly submitted by Highlands & Islands Local Authorities

SUMMARY

This paper provides an indicative model and illustrative principles for the management of revenues from seabed and foreshore leases at a regional and local level following reform of the administration of the Crown Estate in Scotland. The approach proposed in this document seeks to ensure that communities which host marine developments are the key beneficiaries of deployments and are placed at the heart of decision-making in regard to future investments in their local areas. The structures set out in this report are designed primarily in support of this community aspiration whilst also ensuring strategic coherence at a regional and national level. The allocation criteria will ensure that funding provides true additionality and safeguard against substitution of public funding.

BACKGROUND

1. The case for reform of the Crown Estate in Scotland is clear. The removal of significant lease revenues to the UK Treasury and the absence of a local management role for coastal areas in the Highlands and Islands bypassing some of the UK's most fragile communities, has long been a source of frustration in these communities.

2. While current lease revenues from aquaculture developments, harbour dues, foreshore and mooring activities and the embryonic marine renewable energy industry are significant, they are set to increase exponentially as marine renewable energy technology reaches maturity. The Highlands and Islands are home to some of the best marine renewable energy resources in Europe and lease revenues from these deployments could have a transformational impact on coastal communities.

3. For the first time, the location of choice for a new transformational industry is within and around some of the most fragile communities in the UK. Loss of significant revenue from a growing marine sector is depriving these communities of making best-use of their own resources, thereby compromising the ability of these communities to regenerate themselves.

4. The proposed structure is based around local decision-making/investment (Area Coastal Partnerships), regional policy formation (Regional Coastal Partnership) and National Interest developments (UK or Scottish Government). This structure will make communities which host marine developments the key beneficiaries of deployments whilst simultaneously supporting national infrastructure developments and ensuring strategic coherence at regional level.

5. In terms of Crown Estate revenue distribution, it is proposed that approximately 20% is retained at either UK or Scottish Government level, with the remaining 80% split between a Regional Challenge Fund and the local Area Coastal Partnership Fund. The proportional split of these allocations would be for further discussion/consideration.

NATIONAL INTEREST DEVELOPMENTS AND REGIONAL/LOCAL DEVELOPMENTS

6. This proposal draws a distinction between NATIONAL INTEREST developments and REGIONAL and LOCAL developments around the Highlands and Islands.

7. NATIONAL INTEREST developments comprise items of infrastructure which will deliver national priorities or are deployments of such a scale that they represent a significant national impact. To allow the Highlands and Islands to make an appropriate contribution to these areas of NATIONAL INTEREST it is proposed that around 20% of lease incomes generated in the Highlands and Islands are retained for National developments.

8. These retained revenues should be ring-fenced for NATIONAL INTEREST investment as they relate to the waters around the Highlands and Islands. This type of NATIONAL INTEREST development may include investments such as inter-regional grid infrastructure; issues surrounding strategic marine spatial planning and licensing (eg survey and research), or marine safety initiatives such as the provision of Emergency Towing Vessels etc.

9. The majority of present lease revenues should be retained within the Highlands and Islands in order to support REGIONAL and LOCAL development activity. It is proposed that lease revenues be allocated, via the Regional Coastal Partnership, to the relevant Regional and Area Coastal Funds.

REGIONAL COASTAL PARTNERSHIP

10. The Local Authorities of the Highlands and Islands propose that a REGIONAL COASTAL PARTNERSHIP be established to undertake the Marine Estate management function of The Crown Estate. This Regional Coastal Partnership will comprise representation from The Highland Council, Shetland Islands Council, Orkney Islands Council, Comhairle nan Eilean Siar, Moray Council, Argyll & Bute Council and Highlands and Islands Enterprise.

11. The function of the Regional Coastal Partnership will be to administer and manage the Marine Estate in the Highlands and Islands in a sustainable manner. The Regional Partnership will take a strategic role in the development and management of the marine estate for the benefit of local communities. The Regional Coastal Partnership will develop a Strategic Development Plan for the entire Marine Estate around the Highlands and Islands with full involvement of stakeholders such as inshore fishermen, aquaculture, navigational interests etc. As part of this exercise, they will produce criteria for the disbursement of lease revenues across the Highlands and Islands region. In doing so the Regional Partnership will consider and balance competing interests in the marine environment. Criteria developed by the Regional Partnership will also be applied by the Area Coastal Partnerships when they consider the allocation of resources within their own communities. An Operational Plan will also be developed on issues such as governance and partner, community and stakeholder involvement.

AREA COASTAL PARTNERSHIPS

12. Sitting below the Regional Coastal Partnership will be six AREA COASTAL PARTNERSHIPS, each comprising a partner Local Authority geographical area—Highland, Shetland Islands, Orkney Islands, the Outer Hebrides, Moray and Argyll & Bute.

13. These Area Coastal Partnerships will identify and promote investment opportunities which will stabilise and grow local coastal communities and will also disburse lease revenue funding into these communities in accordance with the strategic criteria set out by the Regional Coastal Partnership.

14. As part of the requirement to reflect local community aspirations the interests of land owned by communities, such as Eigg, Gigha and South Uist, should be reflected in the funding allocation formula and it is envisaged that Community Land Scotland would be one of the key stakeholders involved in the Area Partnerships.

ALLOCATION OF LEASE REVENUES

15. The National Strategic Fund should be disbursed in line with the proposed guidance outlined in paragraph 8 above.

16. The remaining share of lease revenues would be retained by the Regional Coastal Partnership for distribution to: i) a Regional Coastal Challenge Fund; and, ii) the Area Coastal Partnership Fund for the host area. This would include the revenues presently anticipated to be delivered via the National Lottery. The remits of the Regional Coastal Challenge Fund and the Area Coastal Partnership Funds can be summarised as follows:

THE REGIONAL COASTAL CHALLENGE FUND

17. The purpose of the Regional Coastal Challenge Fund is to provide a challenge fund for strategic, pan-Highlands and Islands projects. By splitting lease revenues between the Regional Coastal Challenge Fund and the host Area Coastal Partnership Fund, the Regional Coastal Partnership will ensure that all six Local Authority areas in the Highlands and Islands benefit appropriately from the development of marine renewable energy, regardless of the presence of deployments in their area.

18. This approach will seek to ensure a significant level of cohesion and solidarity across the Highlands and Islands.

THE AREA COASTAL PARTNERSHIP FUND

19. The Area Coastal Partnership will disburse funding in accordance with a Business Investment Plan according to the criteria set out by the Regional Coastal Partnership and developed in consultation with and agreed by the local community, and local stakeholders.

20. Each Business/Investment Plan will differ from each area depending upon community priorities. The following headings may offer a number of potential investment areas which may be prioritised in each locality:

- research support;
- supply chain development;
- Apprenticeships in Renewable Energy technologies;
- environmental mitigation (for shore-side Renewable Energy developments);
- Energy Efficiency and Fuel Poverty reduction measures;
- support for local fisheries;
- Smart Grid and off-Grid electricity storage systems, including district heat;
- local Energy Supply Company support; and
- Climate Change mitigation.

HARBOURS AND PORTS

21. It is recommended that consideration be given to exempting public sector Harbour Authorities and Trust Ports throughout the Highlands and Islands, as far as possible, from the above arrangements in respect of Harbour Dues formerly paid to The Crown Estate. These Harbour Dues should be retained by the relevant Harbour Authority or Trust Port for re-investment into Harbour or Port infrastructure.

APPENDIX 1
BREAKDOWN ON CALCULATION OF CROWN ESTATE REVENUES

The Treasury has indicated that the Coastal Community Fund available in the Highlands and Islands will amount to £1.85 million from 1 April 2012. The fund is likely to increase as renewable energy development in the marine environment becomes established. The fund is based on 50% of the gross revenue arising from the Marine Estate in the Highlands and Islands (£3.7 million). However we believe this to be a serious underestimate of the revenue generated via the Marine Estate. Income from fish farming alone is estimated below. In any case we wish to see 100% of the revenue generated in the Highlands and Islands available for re-investment in the Highlands and Islands.

(a)	Fish Farming (Westerns Isles)	£0.6m
(b)	Fish Farming (Orkney)	tbc
(c)	Fish Farming (Shetland)	£1.5m
(d)	Fish Farming (Highland)	£0.9m
(e)	Fish Farming (Argyll and Bute)	£0.7m

The overall total for marine revenue in the Highlands and Islands could be around £6 million (this would include fees from moorings, harbours and marine energy).

APPENDIX 2
CROWN ESTATE INVESTMENT

Crown Estate £4 million–5 million per annum last five years and £5 million per annum for the next five years on development of Renewables.

The combined capital/revenue marine and renewable investment of local authorities and Highlands and Islands Enterprise is estimated as:

Highlands and Islands Enterprise	£28.7m
Argyll and Bute	£4m
Comhairle nan Eilean Siar	£0.5m
The Highland Council	£5.4m
The Moray Council	***
Orkney Islands Council	15.0m
Shetland Islands Council	0.5m

Written evidence submitted by Duncan MacPherson

LAND RECLAMATION, EAST LOCH TARBERT, ISLE OF HARRIS

From 2000 to 2006 I was employed as Development Officer for Harris Development Ltd (a community development organisation) and then as Community Co-ordinator for Comhairle nan Eilean Siar. In those jobs I was involved in a working group comprising representatives of HDL, Highlands & Islands Enterprise, CnES and the Harris Tweed Authority which was seeking to create approximately 1ha of development land in the village of Tarbert, Harris for a Harris Tweed Centre and other developments.

The work necessarily involved building on the foreshore and therefore the Crown Estate had to be dealt with along with the private landowners the North Harris Estate and the Bays of Harris Estate. Both of the private estates were willing to sell the required land at District Valuer's valuation and the respective pieces of land were purchased before work started in 2003. The Crown Estate refused to sell however, offering instead a long lease. The situation was further complicated by the fact that there was already an existing lease along the edge of the site to Comhairle nan Eilean Siar which had been granted for the creation of the road to the ferry terminal some years previously. Therefore part of this lease had to be transferred to HIE. The lease was not finalised by the time the project was ready to start in 2003 but the Crown Estate agreed that work could start and the land was created by 2004. When I left CnES employment in October 2006 the lease had still not been formally agreed.

The refusal of the crown estate to sell the land creates a complex situation for any future developer in that they cannot hold title outright to any part of the site that was formerly foreshore. Leasehold may be common in other parts of the UK but it is not common in the Western Isles and therefore the added legal complexity is liable to put off some developers. Business margins are very tight in our poor economic environment and therefore any continued rent to the Crown Estate will inevitably have an impact on profitability which cannot be for the future good of the area. One can understand the Crown Estate not necessarily wanting to sell rights to the seabed but I can see no justification in continuing to insist on a lease to an area which is no longer part of the sea.

While developing the scheme Tighean Innse Gall (the local housing development agency) expressed an interest in developing part of the site for social housing for the North Harris Housing Association. They planned to build four to six units as a block of flats at one edge of the site. The Crown Estate were approached to see if this would be acceptable: Initially they did not think it would be possible but said that they would consider it further. Approximately three years later they said that it could be done but by this time the available funding had gone and the opportunity was lost.¹⁷

The above example raises some important issues. In this case the Crown Estate has slowed down and prevented much-needed development in a local community. It is difficult to see any justification for the Crown Estate having such power; or for it to exercise that power in the way that it did. It cannot be acceptable that a body based so far away can dictate to a local community whether or not it can have houses on a particular piece of ground. Nor should it be acceptable for the granting of the lease to have taken so long (notwithstanding the complex nature of the local issues). The most charitable explanation is that in the overall scheme of things 1ha of ground in East Loch Tarbert was not sufficiently important for the Crown estate to give it a high priority. If that is the case the best solution is to transfer these assets to community control where communities can make decisions on when it is appropriate to release land and to do so as quickly as possible.

DRINISIADER PIER

Another group with which I had some involvement was the Bays of Harris Association. This group was set up to take forward projects identified as part of the *Iomairt Aig An Oir (Initiative at the Edge)* programme which was directed and funded by the Scottish Executive. One of the projects it took forward was the building of a pier at Drinisiader. The Association registered the pier with the Crown Estate and agreed a rental in the region of £70/year with three yearly rent reviews. As the 3rd anniversary was approaching the community group received a letter from the Crown Estate's legal representatives proposing that the rent rise by a small amount which was roughly in line with inflation. The group members were happy with the proposal so did not bother to reply to the letter. This resulted in a second letter asking the group to respond to the first letter. Having replied they received a 3rd letter confirming the agreement.

Although not aware of any specific rates that the legal firm were charging it is difficult to see there being much change left for the Crown Estate from three years' worth of rent, far less from the minor increase agreed after the legal costs had been settled. The net result would appear to be that the Crown Estate were presiding over a system that transferred money from poor community groups to a somewhat less poor legal firm.

This raises a wider and somewhat more important point: In 21st century Scotland how can we justify a system of foreshore/seabed management that extracts rents from (very often) poor coastal communities whilst putting nothing back into their local economies through direct or even indirect employment? Funds recently established to put some money back into these same communities do not address the inherent inequity at the

¹⁷ Source: Stewart Wilson (now Chief Executive of TIG)

core of the system. In fact the need to create these funds points to the very fact that there is something very wrong in the way that Crown assets are held, managed and exercised.

December 2011

Additional written evidence submitted by Highlands and Islands Enterprise

In 2006 we co-sponsored a research study and report with the 6 local authorities in the Highlands and Islands area, on the role of the Crown Estate Commissioners in our area (“The Crown Estate in Scotland”—New Opportunities for Public Benefits). In that report we concluded that the time was right for a review of the role in our area, given the existence of the Scottish Parliament and the importance of marine assets in particular to the Highlands and Islands economy.

We have submitted written evidence to your Committee and appeared with the local authorities at your hearing in Glasgow on 31 October. HIE staff have also given evidence at other sessions and have accompanied and supported the Committee on visits to Shetland and the Hebrides.

We have been in discussions with the local authorities about further written evidence which they have submitted to you. While we are in agreement with most of the high-level recommendations in that letter, we have concluded, that as a non-departmental public body directly funded by the Scottish Government, it would not be appropriate at this time to be a co-signatory of their letter as their response refers to specific roles and responsibilities of local authorities.

However, we support the conclusion that greater devolution of Crown Estate responsibilities and revenues generated from the Crown Estate in Scotland should be devolved to the Scottish Parliament and that, following this, further devolution of responsibilities should be made to local organisations involved in economic and community development. We believe that the revenues derived from the management of the marine estate in particular should be used for the benefit of those communities and decisions relating to investment should be made as local as possible. We have considerable experience of assisting local communities to acquire and manage land-based assets and believe that given public sector and other advice and support, these types of organisations would manage the marine estate and its revenues well for the long-term sustainability of what are often fragile communities.

There are a variety of delivery models. Given our region-wide remit for economic and community development, and with the benefit of knowledge which comes from our decentralised delivery system, Highlands & Islands Enterprise would be in a strong position to administer funds both at the strategic and local levels and we would welcome the opportunity to be part of local partnerships, with local authorities and others, to achieve these important outcomes.

December 2011

Supplementary written evidence submitted by Chloe Smith, Economic Secretary to the Treasury

Following your Committee’s hearing on 14 December 2011 I undertook to write to you with some further detail on three issues; the Crown Estate’s net profits in Scotland; the lease of the seabed offshore of Tiree; and the Crown Estate’s statutory duties.

NET PROFITS IN SCOTLAND

The Committee was interested in having a figure for the Crown Estate’s net profits in Scotland. As I explained, no reliable figure can be provided as the Crown Estate does not manage its Scottish property through a separate business unit.

However, the Crown Estate has attempted to apportion its costs using reasonable assumptions about how the business Operated in 2010–11. Using these assumptions, the Crown Estate’s net profit on its Scottish activities in that year was £5.7 million, ie, some 2.5% of net profits for the UK as a whole.

In providing this figure I must stress that it is of limited utility, and is likely to represent more of a judgement than hard information. As the scale and allocation of costs relating to the Crown Estate’s Scottish activities vary from year to year it would be difficult to come to reliable conclusions on this basis.

TIREE

Alan Reid was concerned that the lease of seabed offshore of Tiree surprised people on the island. In letting these leases I understand that the Crown Estate was constrained by EU competition law which requires confidentiality about bids to ensure equality of treatment among bidders and prevent discrimination.

The Crown Estate’s legal advice is that its monopoly interest in the seabed makes this confidentiality essential. It must award leases solely on the merits of the bidders’ proposals, and cannot for example discuss one bidder’s proposals with another.

However, the Crown Estate did advertise its general invitation for bids to lease the offshore Scotland seabed. Once bids were received, ten bidders were given exclusivity agreements pending the findings of the Scottish government's Strategic Environmental Assessment (SEA). As part of this assessment process the Scottish government consulted interested parties, including the general public. It was only when the SEA showed which sites were satisfactory that it was possible to finalise negotiations with the exclusive bidders.

It may also be helpful for the Committee to be aware that, with Argyll and Bute Council and Highlands and Islands Enterprise, the Crown Estate is funding a pilot project to assess the impact on the community on Tiree. This entails significant community consultation.

THE CROWN ESTATE'S STATUTORY DUTIES

Finally, you also asked me to consider how far it would be proper for the Crown Estate to take into account the wider public interest in making its commercial decisions.

The foundation of the Crown Estate's statutory duties is section 1(3) of the Crown Estate Act 1961, which requires the Crown Estate "to maintain and enhance [the Estates] value and the return obtained from it, but with due regard to the requirements of good management." Section 3(1) explains one aspect of this provision by requiring "best consideration in money or money's worth" in all leases and disposals. These overriding duties are clearly demanding.

They are modified to some extent, as we explained at the hearing, by the permissions in section 4 under which the Crown Estate may take account of a range of other issues in carrying out its property transactions. These issues are all closely related to improving the Estate or the welfare of those who live and work on its properties.

They do not include wider public interests, for example those of people not connected to the Crown Estate's properties. Nor is there scope for the Crown Estate to take account of broader issues such as energy policy, local employment prospects or wildlife sustainability—except in so far as they relate directly to improving the Crown Estate or the welfare of its tenants and employees.

The Crown Estate already uses these powers where it can. For instance it has developed harbours and jetties; financed research into disease control in fish farms; and most recently supported the pilot project on wave power in the Pentland Firth. And it always seeks to meet high professional standards in all its business, including for instance maintaining woodlands for future forestry activity and developing properties to sustainable environmental standards. This how it interprets the requirement for good management in section 1 of the Act.

I believe the Crown Estate makes proper use of these powers. The Crown Estate is not a fund designed to invest public funds to secure government policy objectives. It cannot go further and support broader aims whether local, economic or environmental—because it would act *ultra vires* if it did so.

I hope this material will be useful to the Committee.

January 2012

Supplementary written evidence submitted by Community Land Scotland

Further to the recent evidence I gave to your Committee on the Crown Estate on behalf of Community Land Scotland, I said I would come back to you with some further thoughts on key issues that the Committee raised with me.

It seemed evident from the evidence session, and the questions, that Members felt relatively comfortable with the idea that we have been advancing that there are now a number of really strong community land-owning bodies which would be perfectly capable of managing foreshore and immediate surrounding waters which adjoin their land holdings. Indeed, some, by virtue of the particular arrangements of purchase and rights attaching to the land, already successfully manage such interests and deal with such matters as coastal erosion, local piers, jetties and harbours, pontoons, shell fish leases and the like. Where there is no such properly constituted community land owning body, the management interests should fall to the local authority until such time as a community body may emerge and be able to assume management interests alongside their land based interests.

We have noted that Highlands and Islands Enterprise in their supplementary submission support the view that many communities have capacity for effective local management. We hope your Committee will be able to reflect support for the issues here in their final report, and we would very much welcome that.

The matters that are more challenging to define with ease, as your Committee rightly probed, relate to seabed leases, sometimes for projects of real scale, and sometimes well offshore. We have reflected on the issues further. The complexities are very real and apparent, given the nature of our coastline—deeply intruding and narrow inlets to the coastal land; peninsula; islands of different sizes, off islands, and between inshore islands and the open sea; clusters of islands; and so on. This makes any simple rules to govern potential arrangements elusive.

We do not feel able to resolve all the issues by a straightforward formula, given the almost infinite variety of island and mainland coastal circumstances. However, we are clear that, in any given circumstance, a negotiation will be needed to determine management interests and potential revenue flows and sharing. In any such arrangements, properly constituted community land owning bodies should be part of that negotiation with, most likely, local authorities and, on occasion, the Scottish Government or the relevant government agency. The principle should be to seek to achieve the most local level of management of resources. Where no properly constituted community body yet exists, the local authority would seem best placed to take responsibility, though there may be some developments of such scale that they extend beyond the interests of any one local authority, and will be of Scottish wide significance. We do not believe it is our place to suggest to the local authorities what arrangements they should come to, and we note they have made a further submission to you which sets out their thinking. You will also be aware of evidence Councillor Michael Foxley gave to the Scottish Parliament Committee looking at the issue of the Crown Estate in relation to the Scotland Bill, and where he set out his support for community bodies having real control, alongside, for example, Trust Ports. We welcome Councillor Foxley's recognition of the role and modern day importance of community land owning bodies.

We hope the Committee's findings will recognise the role properly constituted community land owning bodies could now play in managing what have hitherto been resources managed by the Crown Estate, and using those more dynamically and sustainably, as part of opening up greater economic opportunity for local communities.

We intend to do more work on the detail of how arrangements to resolve the more offshore sea bed issues mentioned above could work in detail, but that work will not be completed for some time and certainly not before your committee reports.

We will be happy to participate further with the Committee in any way we reasonably can, as the discussions to promote very necessary reforms to the Crown Estate advance.

December 2011

Further supplementary written evidence submitted by The Crown Estate

There were a number of points which we agreed to follow up further to our appearance before the Scottish Affairs Committee on 12 December 2011. This additional information is set out below. I am sorry that this has been delayed over the intervening Christmas and New Year holiday period.

Meetings with the Secretary of State since the UK election (Q722)

1. We have had the following meetings with the Secretary of State for Scotland since the UK election:
 - 23 June 2010: attended by Roger Bright, Chief Executive, Sir Stuart Hampson, Chairman and Gareth Baird, Scottish Commissioner;
 - 22 November 2010: attended by Roger Bright and Gareth Baird;
 - 3 February 2011: attended by Roger Bright, Vivienne King, Legal Director and Tom Mallows, Consents and External Relations Manager, Marine;
 - 10 March 2011: attended by Roger Bright, Gareth Baird, Dermot Grimson, Head of External Relations Policy & Planning and Tom Mallows;
 - 7 October 2011: attended by Alasdair Rankin, Head of Marine Business Development; and
 - 6 December 2011: attended by Roger Bright and Vivienne King.

We also have a meeting with the Secretary of State and the Economic Secretary to the Treasury, planned for 18 January with our Chairman, Stuart Hampson and our new Chief Executive, Alison Nimmo, which I will also be attending.

Correspondence re assets list provided to the Scottish Government (Q735)

2. We sent a list of Scottish assets to the Scottish Government on 24 December 2010. We have had ongoing discussion with Marine Scotland around other meetings about how to improve information sharing, and we have explained that the presumption that The Crown Estate has ownership rights to seabed in the absence of a successful third party claim makes it difficult to provide a definitive map. Should it be helpful to the Committee, as regards ports and harbours, please see the list below, compiled as per ownership records at 14 December 2011.

<i>North East</i>	<i>South East</i>	<i>South West</i>	<i>Highlands & Islands</i>
Buckie	Arbroath	Ardrishaig	Ardveinish
Burghead	Berwick	Ardrossan	Callanish
Cullen	Braefoot	Ayr	Cromarty Firth
Fraserburgh	Burntisland	Barcaldine	Gairloch
Gourdon	Eyemouth	Cairnryan	Helmsdale

<i>North East</i>	<i>South East</i>	<i>South West</i>	<i>Highlands & Islands</i>
Lossiemouth	Grangemouth	Campeltown	Invergordon
Peterhead	Hound Point	Dunoon	Kinlochbervie
Portknockie	Montrose	Fairlie	Kirkwall
Stonehaven	Perth	Girvan	Kishorn
	Rosyth	Greenock	Kyle of Lochalsh
	St Monans	Hunterston	Lerwick
		Kirkcudbright	Leverburgh
		Oban	Lochinver
		Rothesay	Lochmaddy
		Stranraer	Mallaig
			Portree
			Scalloway
			Scapa Flow
			Scrabster
			Stornoway
			Stromness
			Sullom Voe
			Uig
			Ullapool
			Wick

Capital investment of £20 million in offshore renewables in Scotland (Q737, 741 & 745)

3. At the Committee hearing on 12 December, Rob Hastings mentioned spending £20m on developing renewable energy projects in Scotland over the next 3–4 years. (These are offshore renewable projects of all kinds, not only offshore wind farms as implied a little later in the discussion).

Actual spend

In the period of four financial years up to 31 March 2012, we will have expended £12.5 million, as indicated in the centre column below.

	<i>Actual Spend 2008–09 to 2011–12 (inc. forecast for 4 months to March 2012)</i>	<i>Committed Spend</i>
R3 Wind Farms	£7.0m	£8.6m
Wave & tidal programme—Pentland Firth and Saltire Prize	£4.5m	£2.1m
Scottish Territorial Waters	£1.0m	tbc
TOTAL	£12.5m	£10.7m

Committed spend (see right-hand column above)

In addition, we are committed to additional capital investment, conditional on operators proceeding with their existing projects. If they do not proceed to an agreed stage of a given project, we will not make the investment. If they do proceed—a matter entirely within their control rather than ours—we are committed to make the investment. On this basis £8.6 million is committed to Round 3 wind farms and £2.1 million to the wave and tidal programme; a total of £10.7 million. Budget spend profiles are not yet completed for Scottish Territorial Waters wind farms, but they will increase this £10.7 million still further.

The total current commitment is therefore in excess of **£23.2 million**.

If there is more information you would like on this, please let us know.

Statement on Tiree and Confidentiality (Q753, 755, 757 & 767)

4. EU competition law requires that the tender process we have adopted for the award of offshore leases to interested developers should be based on the principles of non-discrimination and equality of treatment. This approach has been adopted, on independent legal advice, because of our monopoly interest in the seabed.

This means that:

- (I) The Crown Estate has an obligation to base its decision as to which developers should be awarded a lease, purely on the merits and strengths of the proposals put forward by each bidder and not on any other extraneous considerations.
- (II) Equally, The Crown Estate is required to ensure a level-playing field among bidders in the tender processes which it runs. In practice this includes our being required to maintain strict confidentiality

throughout that process. This obligation is therefore not consistent with disclosing or discussing the particular plans put forward by bidders with any other party, including for example the areas to which such plans relate.

I do stress though that this does not mean that the process for the award of the Agreements for Lease for offshore wind farm development in Scotland lacked any consultation with the public. The process for the award of Agreements for Lease in Scottish Territorial Waters was as follows:

- (A) In 2007, we were receiving strong indications from developers that there was appetite for leasing in Scottish Territorial Waters. We approached the Scottish Government and reported this, asking the Scottish Government to carry out a Strategic Environmental Assessment (SEA), ahead of an award round. The Scottish Government did not however consider there was sufficient potential in offshore wind in Scotland to warrant an SEA and asked The Crown Estate to proceed with a small reactive round, ie reacting to developers' requests for sites.
- (B) The Crown Estate did that and as requested by the Scottish Government the invitation for bids from developers was for any location in Scottish Territorial Waters, not specific sites or zones. This matches the case in Round 3 and in NI Waters. As required by EU competition law, this invitation was publicly advertised.
- (C) In 2008 we received 23 submissions for specific sites selected by developers. Bids were submitted for offshore Tiree and other sites but the process of scrutinising the bids had to be confidential given both EU competition rules and the developers' wish for commercial confidentiality.
- (D) We awarded Exclusivity Agreements to 10 preferred bidders once we had assessed the bids on the basis of their merits and we publicised the names of the bidders. Exclusivity Agreements were a step we introduced in order to get bidders secured into the potential for sites but without committing to award sites; which we were unable to do before an SEA was completed by the Scottish Government.
- (E) These Exclusivity Agreements made it clear that an Agreement for Lease would only be granted if the findings of a Scottish Government SEA for the subject area, was satisfactory. Some communities such as Tiree and in the Solway Firth had the impression that we imposed the sites on their communities without consulting. In reality, at the point of granting Exclusivity Agreements, there was no certainty for developers that they would be given any site to develop. In addition, until that point, we were tied into confidentiality obligations which prevented us publicising the bid process.
- (F) The 23 submissions we received clarified for the Scottish Government the level of interest in offshore wind so that they appreciated the need for an SEA. Two years later (March 2010) the Scottish Government undertook the required SEA into the proposed offshore wind farm developments in Scottish Territorial Waters. An integral part of the Scottish Government SEA process (as it is with any SEA process) was consultation with a number of interested parties, including the public.
- (G) Once the SEA was completed (and the findings satisfactory) negotiations for Agreements for Lease started and Agreements were subsequently granted to preferred bidders. Agreements for Lease for offshore wind schemes could not be granted to a number of bidders where the findings of the SEA were not satisfactory.
- (H) It was therefore only at the point of the grant of Agreements for Lease that there was certainty over the sites to be taken forward to the consenting process by which point the Scottish Government had completed the consultation process.

Tiree is currently the subject of a pilot project which The Crown Estate, Argyll & Bute Council and Highlands & Islands Enterprise are jointly funding. This is looking at the impacts of the Appropriate Assessment (that is, the project-specific environmental assessment) on the local community through a scenario mapping approach. This work is due to be completed and be reported on early in 2012. It has involved extensive community engagement.

To support the legal advice we took on confidentiality, I set out below relevant Articles from EU Directive 2004/18/EC:

— ARTICLE 2

Principles of awarding contracts

Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

— ARTICLE 6

Confidentiality

Without prejudice to the provisions of this Directive, in particular those concerning the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 35(4) and 41, and in accordance with the national law to which the contracting authority is subject, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential; such information includes, in particular, technical or trade secrets and the confidential aspects of tenders.

— ARTICLE 42

Rules applicable to communication

Communication and the exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved, and that the contracting authorities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.

Shetland (Lerwick Port Authority) dredging charges (Q771)

5. Lerwick Port Authority (LPA) proposed to undertake a capital dredge and use most of the dredged material to reclaim Crown seabed at Lerwick to expand the port operation. The proposed dredged material came from a channel deepening project.

Negotiations were ongoing since 2005 and we had, in principle, consented to the dredge provided all other consents were obtained. LPA dredged a total of 568,819 cubic metres (m³) of Crown seabed. Part of the dredged material ie 112,291 m³, was dumped at sea. The dredge charge for this was £0.084 per m³ (indexed to 2009): 112,291 x (£0.084p x 213.4/211.4) = **£9,521.68**. This is a one off charge if the proposed capital dredging is for navigational purposes, to provide an improved navigational channel and subsequent revenue opportunities to the port. This is common practice followed by port owners who pay seabed/riverbed owners to improve channels and create subsequent business opportunities.

The remaining dredged material was used beneficially to expand the size of the port operation at Lerwick and the rate offered was £1 per m³ minus a 37% discount, a total of 63p per m³. The rate was also the dry, compacted volume and not the normal dredged volumes. This rate was agreed with the CEO of LPA, Sandra Laurenson's predecessor (Alan Wishart). 456,528 m³ was beneficially used and the royalty charge for this was £0.63 per m³ (indexed to 2009): 456,528 x (£0.63 x 213.4/211.4) = **£290,333.67**.

Therefore, the total royalty payment = **£299,855.35** and this was paid on 11 November 2009.

As a comparison, a dredge at Montrose in 1999 was charged at 90p per m³ and in the Forth at Dalmeny in 1998 was charged at 90p per m³. The rate for land sourced material would have been considerably more expensive, estimated at the time to be around £8 per m³.

Net revenue in Scotland (Q777 & 778)

6. There is no reliable figure that can be quoted since The Crown Estate does not manage its Scottish property through a separate business unit. However, apportioning costs using reasonable assumptions about how the business operated in 2010–11, the Estate's net profit on its Scottish activities in that year was £5.7 million, ie some 2.5% of net profits for the UK as a whole.

Our strategic plan for management of the seabed (Q781)

7. The Crown Estate has a marine estate business strategy which takes the business through to 2015 and sets out The Crown Estate's future role and actions and how to extract the full potential value. The strategy divides the marine estate into nine business sectors and adopts four strategic directions to guide a consistent approach across all nine sectors—see attached leaflet that is circulated to stakeholders and sits on our website.

The Crown Estate does not think of its strategy as a strategy for use of the seabed, but rather as an overarching strategy for managing the nine business uses taking place on its seabed. Rob Hastings, in replying to the Committee that there was no strategy for managing the seabed, was thinking of the strategies for managing the nine business uses on the seabed, as opposed to any single strategy.

“Any particular reasons that have not come up, for example why the urban and rural estate should not be separated off and perhaps continue to be run centrally, while the maritime side is, say, devolved ...” (Q805)

8. We have no further response to this other than has already been provided. As you know, our view is that matters involving devolution of any part of The Crown Estate are not for us to comment on.

If you require any further information on any of these matters, please let me know.

January 2012

Written evidence submitted by Councillor Michael Foxley Leader of the Council's Administration, The Highland Council

The joint submission from the six local authorities of the Highlands and Islands in response to the Committee's inquiry into the Crown Estate was submitted on 14 December. In the covering email you were informed that the Highland Council had yet to formally approve the submission and that you would receive information on any changes or additions that arose following the Council's discussion of the response.

I am pleased to be able to confirm that the Council approved the submission and expressed unanimous support for the principle that Crown Estate management and revenues should be devolved at a national, regional and local level, with the majority of funds disbursed locally.

In addition, there was agreement that the Council should ask the Committee to consider the feasibility of introducing a framework or mechanism which would allow some of the monies arising from harbour dues previously paid to the Crown Estate (see paragraph 21), to be redistributed to local communities in recognition of the disruption that a local harbours and ports can cause to these communities.

January 2012

Supplementary written evidence submitted by Linda Rosborough, Interim Director of Marine Scotland

I refer to the Committee's evidence session held on 12 December 2011 on its inquiry on the Crown Estate in Scotland during which David Wilson and I gave evidence on behalf of the Scottish Government (SG).

We were both very grateful for the opportunity to give evidence to the Committee and we hope that the attached information further assists the Committee's consideration.

Annexes A cover the specific questions you asked at the Committee hearing to which we agreed to provide additional information.

Supporting documents enclosed:

Annex A: Summary of supplementary evidence.

Annex B: Correspondence between SG and CEC—Offshore Wind Sites.¹⁸

Annex C: SG request to CEC for Information on Ports and Harbours leases.¹⁹

Annex D: CEC response to SG and Supplementary Property Schedule.²⁰

Please let me know if the Committee has any further questions as your deliberations continue.

Annex A

SUPPLEMENTARY EVIDENCE TO COMMITTEE HEARING OF 12 DECEMBER 2011

Q623: Are there any practical difficulties that have not been overcome as a result of not having complete control over the Crown Estate in Scotland?

The changes proposed by Scottish Government would produce improvements over the management of the Crown Estate in Scotland. Examples of the issues which could be overcome by the Scottish Governments' proposals are summarised below.

Alignment

Devolved control would enable seabed leasing to be aligned with the Scottish Government's purpose and objectives; not only for renewable energy generation but associated infrastructure, local economic development, economic recovery and jobs. Leasing is potentially important for mitigation of social and economic impacts, and contributor to encouraging public acceptance of individual projects and the industry as a whole.

The CEC approach to awarding leases based on the narrow remit of maximising economic return is inflexible and acts against Scotland's best interests. Control of management of Crown Estate in Scotland could enable the social and local economic impacts of projects to be mitigated, promoting community buy-in and support. The overall public benefit from the provision of key infrastructure rather than revenue maximisation could be given more weight.

The Scottish Government has the lead strategic role in the development of renewable energy in Scotland, including economic development and marine planning responsibilities. CEC are not obliged to work in partnership with Scottish economic development bodies. A recent concern had been whether there was a "moratorium" on leasing in the Pentland Firth and Orkney Waters.

¹⁸ Annex B not printed.

¹⁹ Annex C not printed.

²⁰ Annex D not printed.

Management of Scotland's territorial seabed and continental shelf rights by a separate UK body is out of line with the recent flow of powers in the marine environment away from UK Government and towards Scottish Government. It is a duplication of public effort and expense that there are two bodies responsible for the permissions to lease and licence an offshore development. It is administratively cumbersome and potentially confusing for developers (who may be more used to the arrangements in other countries where one body is responsible for issuing leases and licenses).

In contrast with other bodies, since devolution the CEC have acted to reduce their accountability in Scotland and scope for alignment with public policy in Scotland. In 2002 the CEC stopped treating Scotland as a separate management unit of the Crown Estate and integrated their operations in Scotland into those in the rest of the UK: Scotland is not dealt with as a distinct part of the CECs' operations and there is less opportunity to develop and implement a Scottish focus or genuine engagement.

Modernisation

The assets administered by the Crown Estate Commissioners include unique holdings of the Scottish Crown including salmon fisheries and shellfish, mineral rights and other matters. In some cases these property rights could be reviewed or even extinguished as essentially archaic in character. In other cases the property relates to historic assets and might best be administered in association with related property by those best placed to do so. Many communities have aspirations to have more involvement in managing their natural assets and arrangements to ensure this is possible would be part of the debate. The Government seek to develop options in collaboration with stakeholders and those who have an interest in the range of Crown Estate property in Scotland.

Q649: *Documentation of evidence to support decision taken regarding the need for full Strategic Environmental Assessment for offshore wind sites—rounds 1 & 2*

A record of the discussions between Scottish Government officials and Crown Estate Commissioners regarding developer interest and SEA requirement for offshore wind development in 2005 is separately attached at *Annex B*.²¹

Q662: *Scottish Government request to Crown Estate Commissioners for information*

In October 2010, Scottish Government requested an updated property schedule and specifically: a list of the ports and harbours which Crown Estate own the seabed for.

A summary of these communications between SG and CEC are set out below:

October 2010, Annex C sets out the detailed request sent to CEC.²²

October 2010, Annex D sets out CEC response and includes the supplementary version of their property schedule referred to in the response.²³

January 2011, the Scottish Government engage further with the CEC to seek a complete response to the initial request.

July 2011, at a meeting between SG and CEC officials, SG query the incomplete response to the previous requests for information about the ports and harbours under lease agreement with CEC.

July 2011, CEC agree to clarify additional information to that already provided in 2010. CEC provide a link to the property schedule on CEC website and advised that the supplementary schedule (originally provided) further explained the Crown Estate rights in Scotland.

Ultimately, the Scottish Government did not receive a complete response to its initial request nor did it receive a comprehensive list of Scottish Crown Estate assets until the Crown Estate Commissioners were asked to provide this additional evidence by the Scottish Affairs Committee in August 2011. The additional evidence submitted to the Committee does not include a list of the ports and harbours which CE own seabed for.

January 2012

²¹ Annex B not printed.

²² Annex C not printed.

²³ Annex D not printed.

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