DEVOLUTION (FURTHER POWERS) COMMITTEE

AGENDA

28th Meeting, 2015 (Session 4)

Thursday 19 November 2015

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

2. **Crown Estate Transfer Scheme and Memorandum of Understanding:** The Committee will consider correspondence from HM Treasury.

3. **Update on proposals for inter-parliamentary co-operation on parliamentary scrutiny of inter-governmental relations in the UK:** The Committee will consider a paper from the Clerk.

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Clerk to the Devolution (Further Powers) Committee
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The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

**Agenda Item 2**

Note by the clerk  
Draft Crown Estate Transfer Scheme

**Agenda Item 3**

PRIVATE PAPER

DFP/S4/15/28/1  
DFP/S4/15/28/2  
DFP/S4/15/28/3 (P)
Purpose

1. Members will recall that it is the intention of the UK Government to devolve those aspects of the Crown Estate outlined in the Scotland Bill via a transfer scheme and associated memorandum of understanding (MoU) between the UK Government and the Scottish Government.

2. HM Treasury has provided the Committee with a copy of the draft transfer scheme and draft MoU; see Annexe.

Action/recommendation

3. Members are invited to discuss the draft transfer scheme and draft MoU. Furthermore, it is suggested that:

   • Members may wish to send the information to the Rural Affairs, Climate Change and Environment Committee with a view to asking this committee if it has any comment it wishes to make on these documents at this stage;

   • Members agree to ask SPICe and the Office of the Solicitor to the Scottish Parliament to review these documents and provide comments to this Committee with a view to a further discussion at a later date (alongside any response received from the Rural Affairs, Climate Change and Environment Committee).

Clerking Team
November 2015
Draft MoU

DRAFT Memorandum of Understanding
between the UK Government and the Scottish Government
following the devolution of the Crown Estate in Scotland

1. This Memorandum of Understanding (MoU) is made between the UK Government and the Scottish Government following the devolution of the management of the Crown Estate in Scotland. It is a statement of political intent and should not be interpreted as a binding agreement. It does not create any legal obligations, rather it is a guide to normal working practices between the parties, each of which agrees to abide by the provisions and obligations set out below, as far as practicable.

2. In accordance with the Smith Commission Agreement, this MoU establishes a framework of cooperation following the transfer, on DATE 2016, to [the Scottish Ministers] of the existing Scottish functions of the Crown Estate Commissioners (‘the Commissioners’), that is, the Commissioners’ functions immediately before the transfer in relation to Crown Estate property, rights or interests in land in Scotland, and rights in relation to the Scottish zone (“the Scottish Assets”). In this MoU functions exercised after the transfer by the [Scottish Ministers] or any other person in relation to the Scottish assets are referred to as “Scottish functions”.

3. Good working relationships between officials of the Scottish Government and the UK Government are vital to the public interest and the effectiveness of Government across the United Kingdom. The UK Ministers and the Scottish Ministers will cooperate to the fullest possible extent to achieve the aims set out in this MoU.

4. This MoU sets out the role of each party, and explains how they will work together to support the devolution of the Commissioners’ functions in relation to the Scottish assets and to ensure that such devolution is not detrimental to UK-wide critical national infrastructure. It includes provision for resolution of any disputes between the parties.

5. The division of responsibilities is underpinned by the following key principles:

- A shared understanding by all parties of their responsibilities, including the obligations set out in The Crown Estate Transfer Scheme 2016;
- A duty to cooperate to support the transfer of functions;
- Ownership of the Scottish assets remains with the Crown;
- Managers of the Scottish assets must maintain an estate in land;
- Respect for the areas reserved to the UK Government that affect the Scottish functions and Scottish assets – telecommunications, energy, defence and national security interests;
- Appreciation of the impact of actions undertaken by the UK Government in the national interest upon the Scottish functions and Scottish assets;
- Regular information and data exchange between all parties.
Responsibilities of UK Government

6. The UK Government will inform and consult with the Scottish Government as appropriate, in a timely manner about any activities that it might undertake that would impact upon the Scottish functions and / or the Scottish assets.

7. The UK Government will share such data and information with the Scottish Government as is necessary to ensure the successful transfer of functions and management of the Scottish assets.

8. The defence reservation in the Scotland Act 1998 remains unchanged. All matters relating to the defence of the United Kingdom remain the direct responsibility of the UK Government.

9. The UK Government Ministry of Defence (MoD) utilises a number of the Scottish assets. MoD will negotiate in good faith and endeavour to agree with the Scottish Government (or other manager) the arrangements for such use. Where it is not possible to reach such agreement, the Crown Estate Transfer Scheme 2016 provides for the Secretary of State for Defence to exercise certain powers in relation to rights over the Scottish assets.

10. Responsibility for the management of defence and national security interests, telecommunications and energy interests will remain with the UK Government as reserved matters.

Responsibilities of Scottish Government

11. Following the transfer of the Scottish functions to [the Scottish Ministers] they will have responsibility for managing the Scottish assets on behalf of the Crown.

12. The Scottish Government will undertake the Scottish functions, and manage the Scottish assets, in such a way that is not to the detriment of UK-wide critical national infrastructure.

13. The Scottish Government will consult the UK Government, the Commissioners and other interested parties, as appropriate, on any proposals, policies or programmes that could impact the Scottish functions or the Scottish assets or their utilisation and affect UK-wide critical national infrastructure, in particular to identify any potential conflicts of use (e.g. between offshore oil & gas versus offshore renewables use).

14. The Scottish Government shall take into account the need for the unimpeded conduct of the defence of the UK, and the requirements and responsibilities of the Secretary of State for Defence and the Armed Forces, when undertaking the Scottish functions and managing the Scottish assets.

15. The Scottish Government will negotiate in good faith and endeavour to agree with the MoD concerning arrangements for use of the Scottish assets by the MoD.
16. Should there be further devolution of the Scottish functions within Scotland to new managers, the Scottish Government will:

- ensure that any such new managers undertake to abide by the obligations set out in this MoU that are relevant to the functions and assets they manage, and
- facilitate any communications between the new managers and the UK Government, as required.

Mutual responsibilities of UK and Scottish Governments

17. Both Governments will as necessary share data and information in a timely manner to facilitate the successful management of the Scottish assets. Each Government will wish to ensure that the information it supplies to others is subject to appropriate safeguards in order to avoid prejudicing its interests. Each accepts that, in certain circumstances, a duty of confidence may arise and will, between themselves, respect requirements of confidentiality and of national security.

18. Both Governments will liaise with each other, as appropriate, in respect of relevant correspondence, legislation, Parliamentary Questions, Debates, Committees and other such issues.

19. Both Governments commit to consult with and provide advance notification to each other in sufficient time for relevant proposals etc to be examined and comments and representations made as appropriate.

20. Both Governments commit to make the most efficient use possible of the seabed in Scotland, while respecting any reserved interests.

Provisions for dispute resolution

21. The process for resolution of any disputes that arise between the parties (other than in relation to the matters covered in the annexes hereto) is as set out in the Memorandum of Understanding and Supplementary Agreements (Devolution MoU) entered into between the UK and devolved administrations dated October 2013 (and any subsequent updates thereto).

22. In accordance with the Devolution MoU, all efforts should be made to resolve differences informally and at working level if possible. Where this fails, the issue should be brought to the attention of more senior officials, including, members of the Joint Ministerial Committee (JMC) officials’ framework. If no agreement is reached at official level, Ministers should make every effort to resolve the problem in a timely manner.

23. The Secretary of State for Scotland or his/ her officials should always be made aware of any dispute that threatens to be incapable of informal resolution, and involved in relevant discussions. Where discussions involving the parties do not achieve the agreement of the parties, the Secretary of State or officials may by agreement convene further talks between the parties at ministerial or official level.
24. Differences about financial issues should generally be first discussed bilaterally with the Treasury.

25. Where the preceding steps have not resolved a difference, either of the parties may formally refer it to the JMC secretariat, so that steps can be taken to resolve it through the JMC process, as set out in the Devolution MoU.

**Review of this Memorandum of Understanding**

26. There will be a review of this Memorandum of Understanding after [2] years of operation, or earlier if two or more of the parties agree the need to review certain provisions.
ANNEX 1: Defence Use and Occupation of the Scottish assets of the Crown Estate

1. The Scottish assets of the Crown Estate support critical defence operations and capabilities in land, air and marine environments. As well as deploying the armed forces to and from operations, the assets are used to support important capabilities such as: test and evaluation, military training, required infrastructure and installations, transit requirements, and the surveillance of potential threats to the UK’s offshore interests and support to the nuclear deterrent.

2. The use of the Scottish assets by the Ministry of Defence (MoD) is supported by:

   - formal property agreements for infrastructure, built assets, land holdings, navigation and communication assets; and
   - long established custom and practice for offshore, inshore and internal waters Danger and Exercise Areas supporting: test and evaluation ranges, acoustic and magnetic underwater ranges, amphibious exercises, the training, operation and deployment of all naval and submarine platforms and the training, operation and deployment for all Air platforms (rotary and fixed wing); and
   - occupation by custom and practice of Old Land Revenue Property forming part of the hereditary possessions of the Crown which have been occupied for so long as they are required for any Government purposes.

3. As such the Crown Estate Commissioners and the MoD have a long standing and professional relationship which the parties aim to replicate, reinforce and sustain between the MoD and the manager to enable mutually beneficial outcomes.

4. The Transfer Scheme provides certain protections for defence and/or national security in relation to the occupation and/or use of the Scottish assets to protect UK’s defence operations and capabilities or national security interests now and in the future.

5. However, the intention of the Secretary of State is that, wherever possible, any renewals or changes in the use and/or occupation by the MoD of the Scottish assets are made following negotiation and agreement between all parties affected. Wherever reasonably practicable, the MOD will seek to de-conflict and/or integrate with the objectives and policies of the manager and other users. The protections provided for in the Transfer Scheme will be used only as a last resort when all other avenues for agreement have been exhausted.

6. The protections will not override the requirement for the Secretary of State to gain all other necessary statutory consents to develop or use these assets.

Renewal of Existing Rights

7. Where the MoD enjoys rights over the Scottish assets (be that at the time of transfer or subsequently granted by the manager or acquired pursuant to the terms of the Transfer Scheme), and the Secretary of State determines that continued use of the assets is required beyond the expiry or other termination point of the legal arrangement in force, the manager may be required to grant a renewal of those rights to the Secretary of State.
8. Where rights were granted for a specific term which is due to expire, the Secretary of State will notify the Manager in writing at the earliest opportunity that a renewal of the rights is required. The Secretary of State will endeavour to give at least 12 months’ notice of the need to renew the right.

9. Where rights were granted that may be terminated on the occurrence of a specified event or where the manager may terminate the right, the Secretary of State will notify the manager in writing, as soon as practicable after the relevant event or termination by the manager, of the need to renew the right.

10. Under the Transfer Scheme, the manager is required to grant the requested renewal. The Secretary of State and the manager subsequently may agree to vary the terms of the new agreement.

11. No compensation will be payable to a third party for loss of opportunity to compete for the use of the assets when the original MoD lease or agreement expired.

12. Each party will be responsible for paying their own costs associated with the renewal of existing rights.

Grant of New Rights

13. Where the Secretary of State identifies a requirement for new rights in, on or over the Scottish assets, that the MoD does not currently utilise, the Secretary of State will notify the manager in writing, with the outline of the requirement and a request to open negotiations.

14. The manager is to consider the application of the Secretary of State alongside that of any third party, including an existing user whose agreement is about to expire. The MoD will participate in any consultation process and state its case for the grant of the new rights at the market rate and for an appropriate term.

15. Each party will be responsible for paying their own costs associated with the preparation of the new agreement.

16. If the manager refuses to grant a right to the Secretary of State, the Secretary of State will determine whether there is an overriding public interest that means that the assets should be utilised by the MoD. If it is assessed that such an overriding public interest does exist, the Secretary of State may give notice to the manager that, under the Transfer Scheme, the rights must be granted.

Acquisition of Third Party Rights

17. There may be circumstances where the Secretary of State identifies that there are Scottish assets required for defence purposes that are already being used and/or occupied by a third party and that third party’s rights are not about to expire.

18. In such circumstances, the Secretary of State will notify the manager and third party in writing that the assets are required for defence purposes. The Secretary of
State shall endeavour to give at least 12 months’ notice of the requirement and request to open
negotiations for the third party’s rights to be assigned or sold to the Secretary of State.

19. If a third party or the manager refuses to assign or sell the required rights to the Secretary of
State, and the Secretary of State is of the view that for reasons of defence or national security
there is an overriding public interest that the rights be so assigned or sold, the Secretary of State
may, under the Transfer Scheme, give notice that the rights are to be so assigned or sold.

20. The Secretary of State will pay all reasonable costs and fees associated with the preparation of
the new agreement, including those of the existing user to be ousted.

Grant of New Rights to Third Parties

21. This protection arises where the manager is asked by a third party to grant, vary or transfer a
right or agree to a policy or plan that involves such (a “proposal”).

22. If in the manager’s reasonable assessment such a proposal could have an adverse impact upon
defence operations or capabilities, the manager must notify the Secretary of State of that
proposal.

23. In making the assessment of the potential impact of the proposal on defence operations or
capabilities, the manager will have regard to the “relevant data” supplied and kept up-to-date by
the MoD to inform such assessments. “Relevant data” means unclassified digital information
detailing MoD’s spatial areas of use and occupation.

24. No compensation will be payable if the Secretary of State issues a direction requiring the
proposal to be amended.

Use of Scottish assets by the Manager

25. This protection arises where the manager proposes to exercise a new right or vary the existing
exercise of a right.

26. If in the manager’s reasonable assessment such a proposal is likely to affect any defence
operations or capabilities, the manager must notify the Secretary of State of that proposal.

27. In making the assessment of the potential impact of the proposal on defence operations or
capabilities, the manager will have regard to the “relevant data” supplied and kept up-to-date by
the MoD to inform such assessments. “Relevant data” means unclassified digital information
detailing MoD’s spatial areas of use and occupation.

28. No compensation will be payable if the Secretary of State issues a direction requiring the
proposal to be amended.
ANNEX 2: Procedure in relation to Pipeline Payments as set out in The Crown Estate Transfer Scheme 2016

1. When a person notifies the Treasury in writing of their objection to a payment required by the Scottish Government (or other manager) in connection with offshore pipelines transporting oil and gas across the foreshore or the Scottish zone, the process set out below will normally be followed, although the Treasury will consider each notification on a case-by-case basis.

2. In considering if a charge is ‘excessive’, the factors which the Treasury may take into account include, but are not limited to, the following:

   a. charges for equivalent offshore pipelines;
   b. rentals for onshore pipelines (wayleaves);
   c. the views of appropriate organisations such as the Valuation Office Agency or the Royal Institute of Chartered Surveyors;
   d. changes in the Retail Prices Index or similar, in relation to proposed increases in payments;
   e. the diameter of the pipeline;
   f. the length of the pipeline;
   g. discounting of monopoly value;
   h. impact upon project economics of the operator;
   i. the sterilisation of the seabed or foreshore where specific, identified resources are impacted;
   j. the reasoned views of the pipeline operator as to the appropriate amount; and
   k. the reasoned views of the manager as to the appropriate amount.

3. If the Treasury considers that the payment is excessive, the Treasury will make a determination of the maximum amount for the payment, and in so doing, the factors which the Treasury may take into account include, but are not limited to those set out in paragraph 2.

4. The Treasury may appoint a person, to act on behalf of Treasury, to make a determination of the maximum amount for the payment. In making their determination, the factors which that person may take into account include, but are not limited to, those set out in paragraph 2.
ANNEX 3: Procedure in relation to Electricity Infrastructure Payments as set out in The Crown Estate Transfer Scheme 2016

1. The Transfer Scheme requires the Scottish Government (or other manager) to notify the Treasury when they intend to introduce or increase rents payable (known under the Transfer Scheme as “payments”) pursuant to certain agreements for use of the Scottish seabed for certain electricity infrastructure. There are some limited exceptions to this requirement.

2. Provided the Treasury does not give a notice of objection, as described in the Transfer Scheme, within three months of being notified of the proposed payment, then the Scottish Government (or other manager) may require such payments to be made.

3. If the Treasury considers that the proposed payment is potentially materially higher than the payment which would be required by the Commissioners for the grant of equivalent rights in, under or over any part of the seabed around England and Wales, and that there is no reasonable justification for the level of the proposed payment, the Treasury will write to the Scottish Government (or other manager) within one month of receipt of notice of the proposed payment, notifying that the process outlined below will be followed:

   a. In the first instance, the Treasury and the Scottish Government (or other manager) will enter into bilateral discussions to clarify the situation and seek to resolve the apparent disparity in payments.
   b. If bilateral discussions do not lead to an agreed outcome within one month of the notification from the Treasury, the issue is to be referred to an independent arbitrator, the selection of which is to be agreed by both parties.
   c. If the parties fail to agree on the selection of an arbitrator then the Treasury will request the Valuation Office Agency to perform this function.
   d. The arbitrator shall consult the Commissioners and the Gas and Electricity Markets Authority and take into consideration the payments in place at that time for England and Wales and any reasonable cost differences.
   e. The arbitrator shall make a recommendation for a maximum amount for the proposed payment that can be charged (a cap), to ensure that there is no material disparity in payments charged as between the seabed of England and Wales and the seabed of Scotland, which cannot be justified by reasonable cost differences.
   f. The arbitrator’s recommendation is to be adhered to until it is agreed by the Treasury and the Scottish Government (or other manager) that the following conditions have been met:
      i. Payments in England and Wales have risen above the cap; or
      ii. More than 6 months have passed since the cap was recommended, or upheld, and costs incurred by the Scottish Government (or other manager) have risen materially.
   g. Where the Treasury considers that the arbitrator’s recommendation does not adequately correct the discrepancy between the payments, or where no recommendation has been made by the arbitrator before the end of three months of the Treasury receiving a notification from the Scottish Government (or other manager), then the Treasury reserves the right to use the powers described in the Transfer Scheme to determine a maximum amount of the payment that the manager is able to impose.

4. In the event that the Treasury determines a maximum amount for a payment pursuant to the Transfer Scheme, the parties agree that this determination is to be adhered to until it is agreed by the Treasury and the Scottish Government (or other manager) that the following conditions have been met:

   i. payments in England and Wales have risen above the maximum amount; or
ii. more than 6 months have passed since the maximum amount was determined, or upheld, and costs incurred by the Scottish Government (or other manager) have risen materially.

See paper DFP/S4/15/28/2
The Crown Estate Transfer Scheme 2016

Made - - - - 2016

Coming into force - - in accordance with paragraph 1(2)

The Treasury, with the agreement of the Scottish Ministers, make the following Scheme in exercise of the powers conferred by section 90B of the Scotland Act 1998(a).

A draft of this Scheme was laid before Parliament in accordance with paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998(b) and approved by resolution of each House of Parliament.

Citation and commencement

1.—(1) This Scheme may be cited as the Crown Estate Transfer Scheme 2016.
(2) This Scheme comes into force on the day after the day on which it is made.

Interpretation

2. In this Scheme—
   “the 1998 Act” means the Scotland Act 1998;
   “designated liabilities” means the liabilities specified in Schedule 2;
   “designated rights” means the rights specified in Schedule 2;
   “manager” means—
   (a) the transferee, and
   (b) any other person who exercises any functions relating to the Scottish assets which were previously exercised by the transferee;
   “relevant matters” means—
   (a) in relation to any period before the transfer date, the existing Scottish functions,
   (b) in relation to any period on and after the transfer date, the manager’s functions relating to the Scottish assets,

(a) 1998 c.46. Section 90B was inserted into the Scotland Act 1998 by section 31(1) of the Scotland Act 2016 (c.).
(b) Paragraph 1(2) of Schedule 7 was amended by section 31(3) of the Scotland Act 2016.
(c) the Scottish assets, and
(d) the designated rights and designated liabilities;

“Scottish assets” means any property, rights and interests to which the existing Scottish functions relate;

“Scottish coastal waters” means those parts of Scotland which are in the territorial sea;

“Scottish foreshore” means the land owned by Her Majesty which—

(a) in Orkney and Shetland lies between the mean high water springs and the lowest ebb tide, and
(b) in the rest of Scotland lies between the mean high and low water springs; and

“transferee” means the persons to whom the Scottish functions are transferred by paragraph 3 of this Scheme.

Transfer date and transferee

3. This Scheme transfers the existing Scottish functions to the Scottish Ministers on the day on which it comes into force.

Scottish assets

4. Schedule 1 (Scottish assets) specifies the property, rights and interests that appear to the Treasury to be the Scottish assets.

Designated rights and designated liabilities

5. The rights and liabilities specified in Schedule 2 (designated rights and designated liabilities) transfer to the transferee on the transfer date.

Protection of employment

6. Schedule 3 (protection of employment) makes provision to ensure that the employment of any person in Crown employment is not adversely affected by the transfer.

Protection of UK-wide interests

7. Schedule 4 (protection of UK-wide interests) makes such provision as the Treasury consider necessary or expedient for the purposes of paragraphs (a) to (d) of section 90B(8) of the 1998 Act.

Consequential amendments

8. Schedule 5 (consequential amendments) contains amendments to enactments which are consequential to this Scheme.

Statements of account and audit

9.—(1) In relation to the relevant matters and for the period starting on 1st April 2016 and ending immediately before the transfer date, the Commissioners must prepare in such form as the Treasury may direct—

(a) a statement of income account, and
(b) a statement of capital account.

(2) The Commissioners must send the statements to the Comptroller and Auditor General no later than 1 month after the transfer date.

(3) The Comptroller and Auditor General must—

(a) examine and certify the statements,
(b) issue a report, and
(c) send the statements and the report to the Commissioners and the transferee.


Treatment of certain receipts: receipts relating to the relevant matters only

10.—(1) This paragraph applies to any sums—
(a) which are received by the Commissioners or the manager on and after the transfer date, and
(b) which consist solely of amounts which relate to any of the relevant matters.

(2) If the sums are mentioned in the audited statements, the sums must be dealt with in accordance with any applicable treatment specified in those statements.

(3) If the sums are not mentioned in the audited statements or if no applicable treatment is specified in those statements—
(a) the Commissioners must transfer to the manager any sums which relate to any period on and after the transfer date,
(b) the manager must transfer to the Commissioners any sums which relate to any period before the transfer date, and
(c) otherwise the recipient may retain the sums.

(4) If the recipient fails to comply with sub-paragraph (2), (3)(a) or (3)(b), the person to whom the sums are owed may recover those sums as a civil debt.

(5) In this paragraph, “audited statements” means the statements mentioned in paragraph 9(1) as certified by the Comptroller and Auditor General under paragraph 9(3).

(6) For the purposes of this paragraph sums are “mentioned” in the audited statements if—
(a) they are expressly referred to in those statements, or
(b) they fall within a description which is expressly referred to.

Treatment of certain receipts: receipts relating to the relevant matters and the Crown Estate

11.—(1) This paragraph applies to any sums—
(a) which are received by the Commissioners or the manager on and after the transfer date; and
(b) which include both—
(i) amounts relating to any of the relevant matters, and
(ii) amounts relating to any Crown Estate assets or any other rights and liabilities of the Commissioners.

(2) The recipient must apportion the sums as between—
(a) the Scottish assets and the designated rights and designated liabilities, and
(b) the Crown Estate assets and the rights and liabilities of the Commissioners.

(3) After any apportionment under sub-paragraph (2)—
(a) the Scottish sums must be dealt with in accordance with paragraph 10(2) and (3); and
(b) the Crown Estate sums must be—
(i) retained by the Commissioners, or
(ii) transferred to the Commissioners if the manager is the recipient.

(4) If the manager fails to comply with sub-paragraph (3)(b)(ii), the Commissioners may recover the sums as a civil debt.

(5) In this paragraph—
“Crown Estate assets” means any property, rights and interests which form part of the Crown Estate;

“Crown Estate sums” means the sums which are properly apportioned in accordance with sub-paragraph (2)(b); and

“Scottish sums” means the sums which are properly apportioned in accordance with sub-paragraph (2)(a).

Requirement to take reasonable steps to secure the payment of certain sums

12.—(1) This paragraph applies where—

(a) a sum is due to be paid to the manager and on receipt the manager would be required to transfer the sum to the Commissioners under either paragraph 10 or 11, or

(b) a sum is due to be paid to the Commissioners and on receipt the Commissioners would be required to transfer the sum to the manager under either of those paragraphs.

(2) The person to whom the sum is due must take such reasonable steps as are necessary to secure the payment of that sum.

Sums paid in error to the manager

13.—(1) This paragraph applies where a sum which is due to the Commissioners is paid in error to the manager.

(2) As soon as reasonably practicable, the manager must transfer the sum to the Commissioners.

(3) If the manager fails to comply with sub-paragraph (1), the Commissioners may recover the sum as a civil debt.

Supplementary

14.—(1) Anything (including legal proceedings) which as at the transfer date is in the process of being done by or in relation to the Commissioners may, so far as it relates to any of the relevant matters, be continued by or in relation to the transferee.

(2) Anything done (or having effect as if done) by or in relation to the Commissioners in connection with any of the relevant matters has effect on and after the transfer date as if done by or in relation to the transferee.

(3) Subject to any provision made in Schedule 5, any enactment or instrument passed or made before the transfer date has effect, so far as is necessary for the purposes of or in consequence of any of the relevant matters, as if references to (and references which are to be read as references to) the Commissioners were references to the manager.

(4) Notwithstanding any provision to the contrary in any instrument, sub-paragraphs (1) to (3) and paragraph 5 shall not—

(a) require any additional formality in order to have full effect;

(b) give rise to any requirement for consent, authorisation, or permission; or

(c) trigger any option, right of variation, right of forfeiture, right of termination, right of pre-emption, right to first refusal, right to payment, right to demand payment or any other benefit.

(5) This Scheme does not affect the validity of anything done (or having effect as if done) by or in relation to the Commissioners before the transfer date.

(6) In this paragraph, “instrument” includes Royal Charters, Royal Warrants, Orders in Council, Letters Patent, judgments, decrees, orders, rules, regulations, schemes, bye-laws, awards, licences, authorisations, consents, approvals, contracts and other agreements, memoranda and articles of association, certificates, deeds and other documents.
Publicity

15. No later than 1 month after the transfer date, the transferee must publish notice of the transfer in the Edinburgh Gazette and the London Gazette in such form as the transferee considers appropriate.

Date Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Interpretation

1. In this Schedule, with the exception of paragraph 17, any reference to property, rights and land is a reference to property, rights and land owned by Her Majesty.

Rural Estate

2. The Whitehill estate in the County of Midlothian.
3. The Glenlivet estate in the County of Moray.
4. The Applegirth estate in the County of Dumfries and Galloway.
5. The Fochabers estate in the county of Moray.
6. 1 and 2 Kings Park Cottages, Stirling.
7. 10 the Homesteads, Stirling.

Commercial estate

8. The land known as 39 to 41 George Street, Edinburgh.
9. The lock-up garage at 3 and 5 West Thistle Street Lane, Edinburgh.
10. The car parking spaces to the rear of 37, 39 and 41 Fredrick Street, Edinburgh.
11. The land at Rhu Marina.

Seabed etc.

12. The land forming the seabed of Scottish coastal waters.
13. The rights in the Scottish zone of—
   (a) unloading gas to installations and pipelines,
   (b) storing gas for any purpose and recovering stored gas,
   (c) producing energy from wind or water, and
   (d) exploration in connection with any of those functions.
14. The right in the Scottish zone of exploiting the seabed and its subsoil other than for hydrocarbons.
15. The land—
   (a) in Orkney and Shetland, which lies between the mean high water springs and the lowest ebb tide;
(b) in the rest of Scotland, which lies between the mean high and low water springs.

**Other property, rights and interests**

16. All rights—
   (a) of fishing for salmon in rivers and Scottish coastal waters,
   (b) to naturally occurring gold and silver,
   (c) to reserved mineral rights.

17. Any other property, rights and interests—
   (a) which are held by the Commissioners on behalf of the Crown; and
   (b) to which paragraphs (a) or (b) of section 90B(2) of the 1998 Act apply.

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**SCHEDULE 2**

**Paragraph 5**

**Designated Rights and Designated Liabilities**

**Interpretation**

1. In this Schedule—
   “historic Scottish assets” means any property, rights or interests (excluding any limited partnership rights) in land in Scotland—
   (a) which once formed part of the Crown Estate, but
   (b) which immediately before the transfer date are not Scottish assets;

   “limited partnership rights” means—
   (a) any property, rights or interests held by a limited partnership registered under the Limited Partnerships Act 1907, and
   (b) any property, rights or interests in, or in a member of, a partner in such a limited partnership; and

   “real property” means real property which forms part of the Scottish assets.

2. In this Schedule, a reference to a right or a liability—
   (a) is a reference to a right or liability—
       (i) which has arisen or otherwise exists immediately before the transfer date, or
       (ii) which arises or otherwise comes into existence on or after the transfer date, but in respect of—
           (aa) any act or omission of or in relation to the Commissioners, or
           (bb) any act or omission in relation to the Scottish functions or the Scottish assets, before that date; and
   (b) does not include a reference to a right or a liability for which separate provision is made by Schedule 3 (protection of employment).

**Designated rights**

3. Any rights of the Commissioners which apply solely to, or are capable of exercise solely in connection with—
(a) the existing Scottish functions, or
(b) any of the Scottish assets.

4. Any rights of the Commissioners in relation to moveable property which—
   (a) is customarily situated on or within the boundaries of any real property, and
   (b) used in connection with any of the Scottish assets,
whether or not that property is so situated immediately before the transfer date.

5. Any rights in intellectual property which have—
   (a) arisen,
   (b) been acquired, or
   (c) been customarily used,
solely in connection with any of the Scottish assets.

6. Any rights of the Commissioners in connection with historic Scottish assets.

7. Notwithstanding any application of paragraphs 3 to 6, the following rights are not specified
   by this Schedule—
   (a) [To be completed].

Designated liabilities

8. Any liabilities of the Commissioners in connection with—
   (a) the exercise of the existing Scottish functions,
   (b) any of the Scottish assets;
   (c) the designated rights, or
   (d) any acts ancillary or preparatory to the making of this Scheme.

9. Any liabilities of the Commissioners in connection with historic Scottish assets.

SCHEDULE 3

Paragraph 6

Protection of Employment

Interpretation

1. In this Schedule—
   “the 1996 Act” means the Employment Rights Act 1996(a);
   “contract” means any agreement which determines the terms and conditions of a person’s
   employment or service;
   “employee” means a person who is included in the personnel schedule;
   “occupational pension scheme” means an occupational pension scheme within the meaning of
   the Pension Schemes Act 1993(b); and
   “personnel schedule” means the document “[insert title]” dated [insert date], a copy of which
   has been deposited at Her Majesty’s Treasury(c).

(a) 1996 c.18.
(b) 1993 c.48.
(c) The document is available for inspection at the following address; The Treasury, 1 Horse Guards Road, London SW1A 2HQ.
Transfer of employment rights and liabilities

2. Except where an objection is made under paragraph 5, on the transfer date—
   (a) an employee’s contract with the Commissioners transfers to the transferee; and
   (b) all the Commissioners’ rights, powers, duties and liabilities under or in connection
       with the contract transfer to the transferee.

3. On and after the transfer date, a contract mentioned in paragraph 2 has effect as if originally
   made between the transferee and the employee.

4. Any act or omission before the transfer date, of or in relation to the Commissioners in respect
   of a contract mentioned in paragraph 2, is deemed to have been an act or omission of or in relation
   to the transferee.

Objections to transfer

5. If before the transfer date an employee informs the Commissioners or the transferee in writing
   that the employee objects to becoming employed by the transferee, paragraphs 2 to 4 do not
   operate to transfer the employee’s contract and the rights, powers, duties and liabilities under or in
   connection with it.

6. Where an employee so objects, the employee’s contract terminates on the transfer date and, subject
   to paragraphs 11 and 12, the employee is not to be treated for any other purpose as having
   been dismissed by the Commissioners.

7. Where the transfer involves or would involve a substantial change in working conditions to
   the detriment of an employee, the employee may treat his contract as having been terminated, and
   he shall be treated for any purpose as having been dismissed by the transferee.

Variation of contract

8. Any purported variation of a contract—
   (a) by the Commissioners before the transfer date, or
   (b) by the transferee on or after the transfer date,
   is void if the sole or principal reason for the variation is the transfer.

9. Paragraph 8 does not prevent a variation of a contract if—
   (a) the sole or principal reason for the variation is an economic, technical or organisational
       reason entailing changes in the workforce and the employee agrees to that variation; or
   (b) the terms of that contract permit such a variation.

10. Paragraph 9 does not affect any rule of law as to whether a contract is effectively varied.

Protection against dismissal

11. If an employee is dismissed—
    (a) by the Commissioners before the transfer date, or
    (b) by the transferee on or after the transfer date,
    the employee is to be treated as unfairly dismissed for the purposes of Part 10 of the 1996 Act
    (unfair dismissal) if the sole or principal reason for the dismissal is the transfer.

12. Paragraph 11 does not apply—
    (a) if the sole or principal reason for the dismissal is an economic, technical or
        organisational reason entailing changes in the workforce; or
(b) if the application of section 94 of the 1996 Act to the dismissal of the employee is
excluded by or under any provision of—
(i) the 1996 Act,
(ii) the Employment Tribunals Act 1996(a), or
(iii) the Trade Union and Labour Relations (Consolidation) Act 1992(b).

Pensions

13. Paragraph 2 does not apply to—
(a) so much of a contract as relates to an occupational pension scheme; or
(b) any rights, powers, duties or liabilities which relate to such a scheme and which
arise—
(i) under or in connection with a contract, or
(ii) otherwise in connection with the employee's employment or service.

14. For the purposes of paragraph 13, any provisions of an occupational pension scheme which
do not relate to benefits for old age, invalidity or survivors must not be treated as part of the
pension scheme.

15. An employee is not entitled to bring a claim against the Commissioners for breach of
contract or constructive unfair dismissal under section 95(1)(c) of the 1996 Act arising out of any
loss or reduction in the employee’s rights under an occupational pension scheme in consequence
of the transfer.

16. In relation to each employee whose contract is transferred under paragraph 2, the transferee
must—
(a) no later than 1 month after the transfer date, offer the employee the option of joining
an appropriate pension scheme with effect from the transfer date; or
(b) if section 3(2) (automatic enrolment) of the Pensions Act 2008(c) applies in relation to
the employee, ensure that the automatic enrolment scheme available to the employee in
accordance with that section is an appropriate pension scheme.

17. In paragraph 16, “appropriate pension scheme” means a scheme which, in the view of the
Government Actuary’s Department, provides pension benefits to the employee which are no less
favourable than the pension benefits which were provided, or were available, to the employee
before the transfer as a consequence of the employee’s contract with the Commissioners.

18. In considering whether a pension scheme meets the requirements of paragraph 17, the
Government Actuary’s Department must take into account—
(a) all rights and benefits which were available to the employee before the transfer date—
(i) under or in connection with the employee’s contract with the Commissioners, or
(ii) otherwise in connection with that person's employment or service with the
Commissioners; and
(b) all rights and benefits which are available to the employee on and after the transfer
date—
(i) under or in connection with the employee’s contract with the transferee, or
(ii) otherwise in connection with that person's employment or service with the transferee.

(a) 1996 c.17.
(b) 1992 c.52.
(c) 2008 c.30.
19. The transfer of the existing Scottish functions to the Scottish Ministers is not a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006(a); and accordingly this Schedule rather than those Regulations applies to that transfer.

SCHEDULE 4

PART 1

Protections for defence and national security

Interpretation

1.—(1) In this Part—
“market value”, in relation to a right, means the best consideration in money or money’s worth which can reasonably be obtained for the right, having regard to all the circumstances of the case but ignoring for that purpose any element of monopoly value which may exist;

“right” means—
(a) in relation to a person other than the manager, any lease, licence or other estate or interest of that person conveyed or granted by the manager in, under or over any part of Scotland or the Scottish zone, and
(b) in relation to the manager—
(i) the use by or on behalf of the manager of any part of the Scottish assets, or
(ii) the exercise by or on behalf of the manager of any right or interest in, under or over any part of the Scottish assets;

“Secretary of State” means the Secretary of State for Defence.

(2) In this Part, with the exception of the definition of “right” in sub-paragraph (1), any reference to the grant of a right includes a reference to the conveyance of a right.

Renewal of existing rights of the Secretary of State

2.—(1) This paragraph applies to a right of the Secretary of State—
(a) which—
(i) exists immediately before the transfer date, or
(ii) comes into existence on or after the transfer date (including by operation of any provision in this Schedule); and
(b) to which any of the following apply—
(i) the right has been granted for a specific term,
(ii) the right will terminate on the occurrence of a specific event,
(iii) the right may be terminated by the manager.

(2) At any time before, or as soon as practicable after, the relevant event the Secretary of State may give notice to the manager in writing stating—
(a) that the Secretary of State requires the right to be renewed,
(b) the date on which the right is to begin, and
(c) the term for which the right is to be granted.

(3) Where notice is given under sub-paragraph (2), a right is deemed to be granted by the manager to the Secretary of State on the same terms and conditions as the existing right but subject to the following modifications—
   (a) the right begins on the date specified in the notice,
   (b) the right is granted for the term specified in the notice,
   (c) notwithstanding any provision to the contrary in relation to the existing right, the right will not terminate otherwise than on expiry of the term mentioned in paragraph (b), and
   (d) the Secretary of State must pay market value for the right.

(4) Sub-paragraph (3) is subject to any alternative agreement which the manager and the Secretary of State may reach.

(5) In this paragraph—
   “the existing right” means the right mentioned in sub-paragraph (2)(a); and
   “relevant event” means—
   (a) in relation to a right mentioned in sub-paragraph (1)(b)(i), the expiry of the term for which the right was granted,
   (b) in relation to a right mentioned in paragraph (1)(b)(ii), the occurrence of the event which will terminate the right, and
   (c) in relation to a right mentioned in paragraph (1)(b)(iii), the termination of the right by the manager.

Grant of new rights to the Secretary of State

3.—(1) This paragraph applies where—
   (a) the manager refuses to grant a right to the Secretary of State; and
   (b) the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being granted to the Secretary of State.

(2) The Secretary of State may give notice to the manager in writing stating—
   (a) that the Secretary of State requires the right to be granted;
   (b) the Secretary of State’s reasons for requiring the right to be granted; and
   (c) the terms and conditions on which the right is to be granted, including—
      (i) the date on which the right is to begin (which must not be any less than 1 month after the day on which the notice is given), and
      (ii) the term for which the right is to be granted.

(3) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (2)(b) not being made public—
   (a) the Secretary of State must state that view in the notice, and
   (b) sub-paragraph (2)(b) does not apply.

(4) The terms and conditions mentioned in sub-paragraph (2)(c) must provide that the Secretary of State is to pay market value for the right.

(5) Where notice is given under sub-paragraph (2), a right is deemed to be granted by the manager on the terms and conditions specified in the notice.

(6) Sub-paragraph (5) is subject to any alternative agreement which the manager and the Secretary of State may reach.
Acquisition of third party rights by the Secretary of State

4. (1) This paragraph applies where—

(a) a person refuses to assign or sell any right to the Secretary of State at market value; and

(b) the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being so assigned or sold.

(2) The Secretary of State may give notice to the person in writing stating—

(a) that the Secretary of State requires the right to be assigned or sold;

(b) the Secretary of State’s reasons for requiring the right to be so assigned or sold; and

(c) the terms and conditions on which the right is to be assigned or sold, including the date on which the assignment or sale is to occur (which must not be any less than 1 month after the day on which the notice is given).

(3) If the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the reasons mentioned in sub-paragraph (2)(b) not being made public—

(a) the Secretary of State must state that view in the notice, and

(b) sub-paragraph (2)(b) does not apply.

(4) The terms and conditions mentioned in sub-paragraph (2)(c) must provide that the Secretary of State is to pay market value for the right.

(5) Where notice is given under sub-paragraph (2), the right is deemed to be assigned or sold by the person on the terms and conditions specified in the notice.

(6) Sub-paragraph (5) is subject to any alternative agreement which the person and the Secretary of State may reach.

Grant of new rights to third parties

5. (1) This paragraph applies where the manager is asked to do any of the following—

(a) to grant a right to a person,

(b) to vary a right of a person,

(c) to agree to the transfer of a right from one person to another,

(d) to agree to any plan or policy which would involve any of the matters in paragraphs (a) to (c).

(2) If the manager considers that the request is likely to affect any defence operations or capabilities, the manager must notify the Secretary of State in writing of the request before responding to that request.

(3) In making the consideration under sub-paragraph (2), the manager must have regard to any information which the Secretary of State has provided to the manager about defence operations and capabilities.

(4) No later than 30 days after the day on which the Secretary of State is notified under sub-paragraph (2)—

(a) the Secretary of State may inform the manager in writing of the effects which the Secretary of State considers the request will have on defence operations or capabilities; or

(b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the matters in paragraph (a) not being made public, the Secretary of State may inform the manager in writing—

(i) of that view, and

(ii) (where relevant) of the Secretary of State’s opposition to the request.

(5) The manager—
(a) must have regard to any duly-made representation from the Secretary of State; and
(b) unless the manager proposes to reject the request, must notify the Secretary of State in writing of its proposed decision.

(6) After notifying the Secretary of State under sub-paragraph (5)(b), the manager must not make the decision until the manager receives—
(a) a direction under sub-paragraph (8),
(b) a notice under paragraph 7(5)(b)(i), or
(c) confirmation in writing that the Secretary of State has no objection to the proposed decision.

(7) Sub-paragraph (8) applies if the Secretary of State—
(a) receives a notification under sub-paragraph (5)(b); and
(b) is of the view that, for reasons of defence or national security, there is an overriding public interest in the manager’s proposed decision being amended.

(8) The Secretary of State may direct the manager in writing to make its decision in accordance with the terms of the direction.

(9) Any direction under sub-paragraph (8)—
(a) must state the Secretary of State’s reasons for making the direction; or
(b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in those reasons not being made public, must state that view.

(10) The manager must comply with any direction made under sub-paragraph (8).

(11) Sub-paragraph (10) is subject to any alternative agreement which the manager and the Secretary of State may reach and accordingly the Secretary of State may withdraw or vary any direction made under sub-paragraph (8).

(12) In this paragraph, a “duly-made representation” means a representation made in accordance with sub-paragraph (4).

Use of Scottish assets by the manager

6.—(1) This paragraph applies where the manager proposes to do any of the following—
(a) to exercise a new right,
(b) to vary the existing exercise of a right,
(c) to agree to any plan or policy which would involve any of the matters in paragraphs (a) or (b).

(2) If the manager considers that the proposal is likely to affect any defence operations or capabilities, the manager must notify the Secretary of State in writing of the proposal before starting to implement that proposal.

(3) In making the consideration under sub-paragraph (2), the manager must have regard to any information which the Secretary of State has provided to the manager about defence operations and capabilities.

(4) No later than 30 days after the day on which the Secretary of State is notified under sub-paragraph (2)—
(a) the Secretary of State may inform the manager in writing of the effects which the Secretary of State considers the proposal will have on defence operations or capabilities; or
(b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the matters in paragraph (a) not being made public, the Secretary of State may inform the manager in writing—
(i) of that view, and
(ii) (where relevant) of the Secretary of State’s opposition to the proposal.

(5) The manager—
(a) must have regard to any duly-made representation from the Secretary of State; and
(b) unless the manager decides to abandon the proposal, must notify the Secretary of State in writing of how it proposes to act.

(6) After notifying the Secretary of State under sub-paragraph (5)(b), the manager must not take any action until the manager receives—
(a) a direction under sub-paragraph (8),
(b) a notice under paragraph 7(5)(b)(ii), or
(c) confirmation in writing that the Secretary of State has no objection to the proposed action.

(7) Sub-paragraph (8) applies if the Secretary of State—
(a) receives a notification under sub-paragraph (5)(b); and
(b) is of the view that, for reasons of defence or national security, there is an overriding public interest in the manager’s proposed action being amended.

(8) The Secretary of State may direct the manager in writing to act in accordance with the terms of the direction.

(9) Any direction under sub-paragraph (8)—
(a) must state the Secretary of State’s reasons for making the direction; or
(b) if the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in those reasons not being made public, must state that view.

(10) The manager must comply with any direction made under sub-paragraph (8).

(11) Sub-paragraph (10) is subject to any alternative agreement which the manager and the Secretary of State may reach and accordingly the Secretary of State may withdraw or vary any direction made under sub-paragraph (8).

(12) In this paragraph, a “duly-made representation” means a representation made in accordance with sub-paragraph (4).

Procedure

7.—(1) This paragraph applies where the Secretary of State proposes—
(a) to give notice under paragraph 2(2), 3(2) or 4(2); or
(b) to make a direction under paragraph 5(8) or 6(8).

(2) Before making the relevant decision, the Secretary of State must notify the manager and any relevant person in writing of the decision which the Secretary of State proposes to make.

(3) No later than 30 days after the day on which notification is given under sub-paragraph (2), an interested party may make representations to the Secretary of State giving reasons for those representations.

(4) The Secretary of State must have regard to any duly-made representations.

(5) No later than 60 days after the day on which the last duly-made representation is made, the Secretary of State must—
(a) make the relevant decision; and
(b) (i) if the decision concerns a notice under paragraph 4(2) or a direction under paragraph 5(8), notify the manager and the relevant person in writing of that decision,
(ii) if the decision concerns a direction under paragraph 6(8), notify the manager.

(6) In this paragraph—
“duly-made representation” means a representation made in accordance with sub-paragraph (3);

“interested party means—

(a) the manager, or

(b) a relevant person;

“relevant decision” means a decision—

(a) whether to give notice as mentioned in sub-paragraph (1)(a), or

(b) whether to make a direction as mentioned in sub-paragraph (1)(b); and

“relevant person” means—

(a) in relation to a notice under paragraph 4(2), the person to whom the notice is to be given, and

(b) in relation to a direction under paragraph 5(8), the person whose request is to be determined in accordance with the terms of the direction.

Disagreement

8.—(1) This paragraph applies where—

(a) the Secretary of State is required to pay market value for a right, and

(b) there is a disagreement about the calculation of that market value.

(2) The disagreement must be referred to the Scottish Branch of the Royal Institution of Chartered Surveyors and the parties must comply with the Institution’s determination.

(3) The Institution may charge a fee in respect of its consideration of the disagreement and may apportion the fee between the parties as it considers appropriate

PART 2
Consideration payable under the Electronics Communications Code

Interpretation

9.—(1) In this Part—

“agreement” means an agreement under paragraph 11(2) of the code (appropriate authority agrees in relation to a Crown interest to the exercise of a right conferred under paragraph 11(1) of the code in respect of tidal waters); and

“electronic communications code” has the same meaning as in section 106 of the Communications Act 2003(a).

(2) Terms used in this Part which are also used in the electronic communications code have the same meaning as in the code.

Modifications of the electronic communications code

10. The electronic communications code has effect subject to the modifications in paragraphs 11 and 12.

Consideration payable to the manager in connection with an agreement

11. Any consideration requested by the manager in connection with an agreement in respect of any of the Scottish assets must not exceed the best consideration in money or money’s worth

(a) 1984 c.21.
which can reasonably be obtained, having regard to all the circumstances of the case but ignoring for that purpose any element of monopoly value which may exist.

**Failure to agree consideration: tidal waters**

12.—(1) This paragraph applies where, in connection with an agreement in respect of any of the Scottish assets, the manager and the operator cannot agree the consideration to be paid by the operator to the manager.

(2) The manager or the operator may apply to the Valuation Office of Her Majesty’s Revenue and Customs for a determination of the consideration to be paid.

(3) An application under sub-paragraph (2) must be made in writing and must include—

(a) the proposed terms of the agreement, and

(b) the reasoned evidence of the operator and of the manager as to what each respectively considers should be the appropriate amount of consideration for the agreement.

(4) As soon as reasonably practicable after receiving a duly-made application, the Valuation Office must—

(a) determine the best consideration in money or money’s worth which can reasonably be obtained by the manager, having regard to all the circumstances of the case but ignoring for that purpose any element of monopoly value which may exist; and

(b) notify the manager and the operator in writing of its determination and the reasons for it.

(5) If the agreement mentioned in sub-paragraph (1) (or an agreement in substantially the same form) is concluded following a determination under sub-paragraph (4), the consideration payable by the operator must not be more than the consideration notified under sub-paragraph (4)(b).

(6) The Valuation Office may charge a fee in respect of its consideration of an application under sub-paragraph (4) and may apportion the fee between the manager and the operator as it considers appropriate.

(7) In this paragraph, “duly-made application” means an application which is made in accordance with the requirements in sub-paragraph (3).

**PART 3**

**Pipeline payments**

**Interpretation**

13. In this Part—

“agreement” means an agreement between the manager and a pipeline operator which grants rights to the pipeline operator—

(a) in, under or over any part of the Scottish foreshore, Scottish coastal waters or the Scottish zone, and

(b) in connection with the construction, laying, maintenance or use of a pipeline;

“payment” means—

(a) a payment which is first required on or after the transfer date, or

(b) an increase in a payment which takes effect on or after the transfer date regardless of when the payment was first required;

“petroleum” has the same meaning as in section 1 of the Petroleum Act 1998(a); and

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(a) 1998 c.17.
“pipeline operator” means a person who is, or will be, operating a pipeline for the conveyance of petroleum.

Notification of objection to payment

14.—(1) This paragraph applies where—
(a) the manager proposes to require, or has required, a payment from a pipeline operator in connection with an agreement; and
(b) a person notifies the Treasury in writing of that person’s objection to the payment.

(2) As soon as reasonably practicable after receiving a notification under sub-paragraph (1), the Treasury must notify the manager in writing of the objection.

(3) After receiving a notification under sub-paragraph (2)—
(a) the manager must notify the Treasury in writing of the amount of the payment no later than 1 month after the day on which the Treasury notifies the manager under sub-paragraph (2); and
(b) if the payment (or any part of the payment) has already been required but not yet made, the manager must immediately suspend the payment.

Payment not excessive

15. Unless the Treasury gives notice in accordance with paragraph 16, the manager may require the payment, or any outstanding part of the payment, after the expiration of—
(a) the period of three months beginning on the day on which notification is given under paragraph 14(3)(a), or
(b) such shorter period as the Treasury may allow.

Payment excessive

16. If the Treasury considers that the payment is excessive, the Treasury may give notice in writing to the manager before the expiration of the period mentioned in paragraph 15.

Determination of maximum amount

17. Where the Treasury has given notice in accordance with paragraph 16, the Treasury or a person appointed by the Treasury must determine a maximum amount for the payment.

18. As soon as reasonably practicable after a determination is made under paragraph 17, the Treasury must notify the following persons in writing of the determination—
(a) the manager,
(b) the pipeline operator, and
(c) the person who made the objection (if that person is not the pipeline operator).

19. After receiving a notification under paragraph 18—
(a) if the pipeline operator has already paid more than the maximum amount, as soon as reasonably practicable the manager must refund the excess to the operator; and
(b) otherwise the manager must ensure that the payment does not exceed the maximum amount determined under paragraph 17.

20. If the manager fails to comply with paragraph 19(a), the pipeline operator may recover the excess as a civil debt.
PART 4
Electricity infrastructure payments

Interpretation

21.—(1) In this Part—
“agreement” means an agreement between the manager and a relevant person which grants rights to that person—
(a) in, under or over any part of the Scottish foreshore, Scottish coastal waters or the Scottish zone, and
(b) in connection with the transmission or distribution of electricity, or participation in the operation of an electricity interconnector;
“exclusive economic zone” has the same meaning as in section 41(3) of the Marine Coastal Access Act 2009(a) but does not include any part of the Scottish zone;
“foreshore” means the land owned by Her Majesty which lies between the mean high water and mean low water but does not include any part of Scotland;
“payment” means—
(a) a payment which is first required on or after the transfer date, or
(b) an increase in a payment which takes effect on or after the transfer date regardless of when the payment was first required;
“relevant person” means a person who—
(a) is required to have a licence by virtue of paragraph (b), (bb), or (d) of section 4(1) of the Electricity Act 1989(b), or
(b) would be so required but for an exemption under section 5 of that Act; and
“territorial sea” means the UK territorial sea but does not include any part of Scotland.
(2) Terms used in this Part which are also used in Part 1 of the Electricity Act 1989 have the same meaning as in Part 1 of that Act.

Notification of proposed payment

22. Where the manager proposes to require a payment from a relevant person in connection with an agreement, the manager must notify the Treasury in writing of the proposed payment.

No notice of objection to proposed payment

23. Unless the Treasury gives notice in accordance with paragraph 24(2), the manager may require the payment after the expiration of—
(a) the period of three months beginning on the day on which the notification is given, or
(b) such shorter period as the Treasury may allow.

Notice of objection to proposed payment

24.—(1) Sub-paragraph (2) applies where the Treasury considers—
(a) that the proposed payment is materially higher than the payment which would be required by the Commissioners for the grant of equivalent rights in, under or over any part of the foreshore, the territorial sea or the exclusive economic zone; and

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(a) 2009 c.23.
(b) 1989 c.29; paragraph (bb) of section 4(1) was inserted by section 28(2) of the Utilities Act 2000 (c.27) and paragraphs (b) and (d) of that section were substituted respectively by sections 135(2) and 145(2) of the Energy act 2004 (c.20).
(b) that there is no reasonable justification for the level of the proposed payment.

(2) Before the expiration of the period mentioned in paragraph 23, the Treasury may give notice in writing to the manager that they consider the proposed payment to be excessive.

Determination of maximum payment by the Treasury

25. Where the Treasury have given notice in accordance with paragraph 24(2), the Treasury or a person appointed by the Treasury must determine a maximum amount for the proposed payment.

26. As soon as reasonably practicable after a determination is made under paragraph 25, the Treasury must notify the manager and the relevant person in writing of the determination.

27. The payment required by the manager must not exceed the maximum amount determined under paragraph 25.

Disapplication of paragraph 22

28.—(1) Where either paragraph 29 or 30 applies, the manager is not required to notify the Treasury under paragraph 22.

29. This paragraph applies where the manager—

(a) has agreed a schedule of payments with the Treasury, and

(b) proposes to require a payment from a relevant person in connection with an agreement which is in accordance with that schedule.

30.—(1) This paragraph applies where—

(a) the Treasury or a person appointed by the Treasury has determined a maximum amount under paragraph 25 in connection with an agreement; and

(b) the manager proposes—

(i) to make an agreement with a relevant person on the same terms and conditions as the existing agreement, and

(ii) to require a payment from that person in connection with the agreement which does not exceed the maximum amount.

(2) In sub-paragraph (1)(b)(i), “the existing agreement” means the agreement mentioned in sub-paragraph (1)(a).

Requirement for a valid payment

31. Any payment which is required by the manager from a person in connection with an agreement is void unless it is levied in accordance with paragraph 23, 27, 29 or 30.

SCHEDULE 5

Consequential Amendments

[To be completed]