SUBMISSION FROM THE CROWN ESTATE

The Crown Estate welcomes the Bill and its terms and objectives. The Crown Estate has no difficulty with any of the principles of the Bill. The following comments are not intended to seek alteration to any of the principles or objectives of the Bill but to provide clarity which it is considered is appropriate given the unique nature of some Crown interests and to ensure that unintended consequences do not flow from any lack of clarity.

We appreciate that the below are technical legal matters but they are of practical importance. They have been raised with the Keeper’s office at the earlier Keeper’s consultation process at which the amendments within Sections 42-44 of the Bill had not yet been issued.

Section 42 (3) (a)
The Committee will be aware that under the Crown Estate Act 1961 the Crown Estate Commissioners manage all assets forming the Crown Estate. These assets include interests in land in Scotland forming part of the “regalia”. Regalia” in summary for the purpose of this submission, now comprises all foreshore and seabed along with salmon fishings to which no title has ever been validly granted by the Crown to a 3rd party or validly claimed by a 3rd party by virtue of prescriptive possession. In fact this comprises approximately 50% of foreshore around Scotland and virtually all seabed around Scotland and several areas of salmon fishings.

Where there is no use being made of Crown foreshore, seabed or salmon fishings, there will be no lease or other right granted to any occupier. The Bill requires an applicant under this section to provide evidence that the land in question has not been possessed by the proprietor for 7 continuous years. In the case of dry land that is relatively simple. In the case of salmon fishings, foreshore and seabed which is neither let nor developed, it is unclear how the Crown would evidence its possession. It is not the purpose of the Bill to allow 3rd parties to acquire ownership of large tracts of foreshore, seabed or salmon fishing rights at no consideration simply because there is no current activity taking place. We recommend that there be added at the end of this clause the following for clarification:

“declaring that where in respect of any part of foreshore, the bed of the territorial sea or salmon fishing which is the property of the Crown as owner of the regalia, there shall be a presumption that the Crown has possessed, and continues to possess, all such interests or areas unless it can be expressly shown another party has been in active possession”

Section 42 (4) (c)
The Crown has never granted transfers of title to seabed except some small areas contiguous to foreshore. This is because currently it is not considered competent to register title to seabed in the Land Register of Scotland, hence the provisions in this Bill extending the Land Register to the territorial seabed. So, unlike land based titles we have a unique position of all seabed being virtually within a single ownership. It follows from that, that any attempt to register title to seabed must be inappropriate unless it is derived from a Crown grant. To protect the assets from predatory
attempts to acquire ownership by stealth we recommend the following is added at the end of this clause:

“declaring there shall be a presumption that the proprietor of any part of the territorial seabed is the Crown unless the application contains within it details of a Crown grant of the area to which the application relates”

Section 44 (1)
Section 14 of the 1979 Act (being repealed in this Bill) contains provision for notification to the Crown. However it is clear in specifying that the notice must go to the Crown Estate Commissioners, not simply the Crown, to distinguish it from any other branch of the Crown. In this Bill there are 2 branches of the Crown involved in notices from the Keeper. It will avoid errors in sending to the wrong party if the practice in Section 14 of the 1979 Act is maintained for that reason. This can readily be achieved by adding a new subsection (d) as follows:

“ (d) Where notice is to be given to the Crown, it shall be given to the Crown Estate Commissioners in respect of any land forming part of the regalia and it shall be given to the Queen’s and Lord’s Treasurer’s Remembrancer in respect of any land falling within either bona vacantia or ultimus heares”

Sections 97 -120 – Miscellaneous and General
1 The Bill does not intend to alter any statutory rights to buy created under the Land Reform (Scotland) Act 2003, either by extending or reducing any of them. Seabed was excluded from the statutory rights to buy in 2003 both by design in framing the terms of that Act and also by virtue of seabed being beyond the scope of the Land Register, which is an essential constituent of the statutory right to buy procedures. Foreshore is subject to the statutory right to buy provisions where applicable. Whilst it may be clear to some, others may find it less clear that in extending the Land Register to seabed the existing provisions for the statutory rights to buy are unaffected. If there is uncertainty in the minds of some this could only be clarified by a court. We recommend the matter is put beyond question by adding a new clause somewhere within the Miscellaneous and General Section as follows:

“For the avoidance of doubt nothing in this Act has the effect of extending or restricting any statutory rights to buy under the Land Reform (Scotland) Act 2003 as applicable immediately before the [date of this Act coming into effect][designated date].”

2 The Keeper is empowered under Section 43 (2) to remove the “provisional” element of an entry when the relevant prescriptive period under Section 1 of the Prescription and Limitation (Scotland) Act 1973 has been satisfied. That Section 1 (4) of the 1973 Act provides for the period for prescription of rights to foreshore or salmon fishings against the Crown as owner of the regalia to be 20 years rather than the period of 10 years applicable to other rights. The reason for that is in recognition of the nature and extent of the regalia. The Bill contains no amendment to Section 1(4) of the 1973 Act that we have found. Without such amendment there is an anomaly that salmon fishings and foreshore are subject to 20 years prescriptive claim but seabed would be subject to only 10 years. There
requires to be an amendment we suggest somewhere in the Miscellaneous and General Section by adding a new clause as follows:

3

“Section 1 (4) of the Prescription and Limitation (Scotland) Act 1973 shall be amended by inserting before the word “foreshore” where it appears in line 1 the words “seabed or”

The Crown Estate
20 January 2012