SUPPLEMENTARY SUBMISSION FROM THE CROWN ESTATE

I am writing following the Scotland Bill Committee’s evidence session on 20th September. As requested, we are submitting separately some comments and clarifications on the Official Report.

There is one clarification, however, that I believe raises a serious issue. Mr Davidson, The Director of Energy at Highlands & Islands Enterprise, made reference to the Strategic Environmental Assessment (SEA) in relation to the offshore wind energy programme in Scottish Territorial Waters (STW) that may have misled the Committee. Mr Davidson’s statement can be found in column 191 of the Official Report and an extract is provided below:

The Convener: I have a final question for Mr Davidson. As a Marine Scotland will give evidence in the next panel of witnesses I wondered whether he had any views on how marine development and renewable energy could be better integrated.

Calum Davidson: I have one observation. I will touch on Scottish Territorial Waters and Round 3 of offshore wind farm leasing. We have built up issues. The Crown Estate went ahead and offered a number of sites for lease in advance of Strategic Environmental Assessment, which was then carried out by Marine Scotland. That is a bit like giving planning consent before doing the local plan. We then had a problem in the number of those consented sites in which a number of companies have invested significantly in carrying out seabed surveys were not recommended for lease under a strategic environmental assessment. I am thinking particularly of sites around Kintyre and Dumfries and Galloway. To me, that is a classic example of how the wrong approach has been taken. A single integrated approach to Marine Scotland would be a much more satisfactory way of proceeding.

In fact, The Crown Estate did not offer any sites for lease – we offered exclusive rights to develop specific sites to developers that may then be converted into lease options in the first case and then full leases only if the respective developments had complied with the full regulatory process including the grant of consents by the Scottish Government. A more serious matter, however, is how it came about that The Crown Estate undertook this unconventional approach. I have set out the history of the issue below. We also wrote to the Scottish Government on 4th February 2011 reminding them of the history and I assume that the Director of Energy at Highlands & Islands Enterprise would have been advised of this given that many of the offshore wind sites are in the Highlands & Islands Enterprise area.

In complying with the EU Directive for Strategic Environmental Assessment (SEA), where it is likely that development activity leads to a plan or program, our preferred practice is to undertake an invitation to tender process following the completion of the SEA by the competent authority. This enables interested parties to be consulted and to have their views included and gives developers an indication of the most acceptable locations for offshore wind farms in advance of making bids. This was
the approach we took with the Northern Ireland Executive in the programme proposed for Northern Ireland waters.

We recommended such an approach to the Scottish Executive (now the Scottish Government) for STW back in 2007 and this was accepted. However they had a change of mind later that year and decided not to undertake an SEA. It is The Crown Estate’s practice to operate with the grain of government policy and although recommending against undertaking a leasing process in STW in advance of the SEA, we acceded to the Scottish Government’s request to proceed by providing developers with conditional exclusive rights to develop particular sites. This exclusivity agreement allowed developers the rights to develop particular sites at their own risk in order to progress with their sites only, but no further rights leading to leases for the respective sites. These exclusivity agreements where to be enacted until the post adoption statement was accepted under the SEA process. It was only after this point that The Crown Estate would proceed to provide developers with lease options which in turn may lead to an executed lease on the provision that specified conditions had been satisfied.

I have set out the timeline below which will help you understand the discussions that took place on the SEA. The email trail between April 2007 and November 2007 describes the background to the approach to the STW leasing round adopted by the Crown Estate.

16th April 2007: Email from the Scottish Executive to stakeholders, including the Crown Estate, advising that the Scottish Executive was about to invite bids to undertake the SEA for STW. This included written advice to Ministers that was approved by them. The written advice made reference to the fact that the Crown Estate did not wish to launch a leasing round until the SEA was complete.

8th August 2007: Email from the Scottish Executive to the DTI and the Crown Estate apologising for the delay in commencing with the SEA and confirming that the SEA proposal was being put to Ministers following the Scottish Parliament election and change of administration.

7th and 8th November 2007: Exchange of emails between the Scottish Government, BERR and the Crown Estate. In the exchange the following points were made:

1. BERR offered to undertake the offshore wind SEA for the whole UKCS commencing early 2008. This was declined by the Scottish Government for STW.

2. The Scottish Government indicated they had no plans to undertake an offshore wind SEA for STW as they believed there was very limited scope for development in STW.

3. The Scottish Government asked the Crown Estate to deal with individual applications or run a small competition for leases in STW on the basis that they would not be undertaking an SEA.
4. The Crown Estate proceeded as requested by the Scottish Government. This, despite our favoured option being that an SEA be completed for STW first or that STW be incorporated in the R3 zonal approach.

This material was sent to Marine Scotland on 4th February 2011 to ensure that they were aware of the history in the run up to the completion of the SEA process a few months ago. Our concern was that the late completion of the SEA would damage the prospects for offshore wind development in STW. You may wish to obtain any further information from the Scottish Government and DECC as there may have been correspondence between them not involving the Crown Estate. In the meantime, I would be happy to send you copies of the emails and Ministerial advice referred to but would require to obtain the permission of the Scottish Government and DECC. You may wish to approach them yourself for this information.

I was surprised at the comments attributed to Mr Davidson and disappointed that the record was not corrected in the evidence given by Marine Scotland. There was an implication in Mr Davidson’s evidence that undertaking the leasing round before the SEA incurred unnecessary expense on the part of the developers. While that may or may not be the case, the leasing round was organised following the Scottish Government’s email of 8th November 2007. In light of Mr Davidson’s comments, we shall have to advise the developers of the background.

The Crown Estate
3 October 2011