Implementing the Smith Agreement - The UK Government’s Draft Legislative Clauses

Introduction

Scottish Renewables’ submission to the Smith Commission focussed on how changes in certain areas of the formation, delivery and regulation of energy policy could deliver greater coordination and accountability across the nations of the UK, and support Scotland’s renewable energy sector in its contribution to energy security, employment, investment and the reduction of carbon emissions.

The Smith Commission Agreement

Scottish Renewables’ submission to the Smith Commission¹ focussed on the following seven headline areas:

1. A Single Energy Market
2. Joined-Up Energy Policy and Decision Making
3. A More Accountable Regulator
4. A Better Connected Scotland
5. A Devolved Approach to Community Involvement
6. Marine Energy Finance
7. The Crown Estate

The Smith Commission’s report² made a number of recommendations related to three main areas of Scottish Renewables’ submission: Joined-Up Energy Policy and Decision Making; A More Accountable Regulator and The Crown Estate.

In these areas, the Smith Commission agreement recommended the following:

41. There will be a formal consultative role for the Scottish Government and the Scottish Parliament in designing renewables incentives and the strategic priorities set out in the Energy Strategy and Policy Statement to which OFGEM must have due regard. OFGEM will also lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before, committees of the Scottish Parliament.

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

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

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

Scottish Renewables broadly welcomed these recommendations when they were published. However, echoing our earlier submission, we also called for further detail of how the devolution of the Crown Estate will work in practice to ensure Scotland continues with the development of wind, wave and tidal power around our coasts.

UK Government Command Paper and draft clauses

The UK Government’s Command Paper, Scotland in the United Kingdom: An enduring settlement, sought to implement the Smith Commission’s recommendations and had a number of sections that looked at Scottish Renewables’ areas of interest.

These sections were contained in 5.4.2 through to 5.4.4 and 5.5.1 through to 5.5.11, with further detail laid out in the draft clauses 23, 40 and 42 in Annex A of the Command Paper.

Renewable electricity incentive schemes: consultation

Scottish Renewables broadly welcomes the provisions in the UK Government’s Command Paper on Scottish Government involvement in the establishment or amendment of any renewable incentive scheme. However, there are some issues we would like to see amended or clarified.

We believe Clause 40 should apply to more than just renewable electricity and also include renewable heat. For instance, amendments to the domestic, and non-domestic, Renewable Heat Incentive (RHI) should also be consulted on with the Scottish Government in the same manner as amendments to Contracts for Difference (CfD) for electricity generation.

Further, we believe that clarification on what would constitute “amendments that are of a minor, technical or administrative nature” (Clause 40), where the Secretary of State is not required to consult Scottish Ministers, is necessary to provide both clarity between governments and certainty for the renewables sector.

Gas and Electricity Markets Authority

Scottish Renewables welcomes the fact that Ofgem will be obligated to send its reports and accounts to Scottish Ministers and that these will then be laid before Parliament. We also welcome the commitment “that Ofgem will appear before committees of the Scottish Parliament on Scottish issues” (5.4.4).

However, we are disappointed that the Smith Commission recommendation for the Scottish Government to have a formal consultative role in setting Ofgem’s Energy Strategy and Policy Statement (SPS) has not been included in the draft clauses of the Command Paper.

While we recognise that there is already a consultation mechanism for the Scottish Government to feed into the SPS, we do not believe it adequately reflects the disproportionate amount of renewable

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3. [http://utilityweek.co.uk/news smith-commission-recommends greater-energy-powers-for-scotland/1077422#.VPlhGPmsWVM](http://utilityweek.co.uk/news smith-commission-recommends greater-energy-powers-for-scotland/1077422#.VPlhGPmsWVM)


electricity that Scotland generates, nor has it been sufficient to reflect particular issues of Scottish interest, like transmission charging or island grid connections.

Crown Estate

The Command Paper provides “for the management and revenue of Crown Estate assets in Scotland to be transferred to the Scottish Parliament, for management responsibility to be further devolved within Scotland” (5.5.1)

While Scottish Renewables understands the case for greater local ownership and sharing of revenues, we would again emphasise that strategic oversight of our offshore assets would best be achieved by a Scotland-wide body which could ensure continued investment in the growth of offshore renewables, and a consistent leasing process for developments.

We would, therefore, echo the concerns expressed by some developers that dividing the administrative control of Scotland’s seabed by Local Authority area for large-scale infrastructure projects, like an offshore windfarm, would lead to additional administrative burden. We believe this would put Scotland at considerable competitive disadvantage to other parts of the UK.

In addition, Scottish Renewables is also seeking clarity from the UK Government around:

- Whether the New Manager will have management responsibility of the seabed up to 200 nautical miles, and exactly what management responsibility entails.
- What restrictions will be placed upon the New Manager to ensure that “consumers across GB should be protected from any excessive rents for energy infrastructure” (5.5.10).
- How the Memorandum of Understanding (MoU) between the UK and Scottish Governments will effect national energy infrastructure, such as electricity cabling
- The timeframe surrounding the transfer of powers to the New Manager

In advance of the Crown Estate being transferred to the Scottish Government, Scottish Renewables is also seeking further detail from the Scottish Government as to how it intends:

- The New Manager to be funded
- The organisation will operate within Scottish Government, and any potential conflicts of interest with other parts or responsibilities of government, such as consenting
- To design the remit and role of the organisation in order to undertake either similar, or different, tasks as the current arrangements
- To implement the recommendation that “management responsibility to be further devolved within Scotland” (5.5.1)
- To ensure the transfer does not adversely impact on current lease agreements with offshore renewable energy developers

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http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/General%20Documents/Moray_Offshore_Renewables_evidence.pdf