SUBMISSION FROM HIGHLAND COUNCIL

NON-FINANCIAL PROVISIONS - THE CROWN ESTATE IN SCOTLAND

1.0 Introduction

In its response (January 2011) to the Committee’s earlier call for evidence Highland Council set out its position on Clause 18 of the Scotland Bill where it proposed a Scottish Crown Estate Commissioner. The Council also set out its view that the only way to ensure improved accountability and that direct benefits are delivered to Scottish communities is through fully devolving the management, administration and revenues of the Crown Estate in Scotland to Scottish Ministers in the first instance.

Highland Council now welcomes the opportunity to make a further submission to the Scotland Bill Committee on this important issue.


2.0 The case for change

In its earlier submission, Highland Council outlined its view that there is a compelling case for the administration and revenues of the Crown property, rights and interests that make up the Crown Estate in Scotland to be devolved, in the first instance, to the Scottish Parliament and the Scottish Government.

Highland Council is equally firmly of the view that there should then be a second stage of devolution in which responsibility for the administration and revenues of some of those Crown property, rights and interests is devolved from the Scottish Government to local authorities and communities.

The detailed case for the devolution of the CEC’s responsibilities is set out in the CERWG report and since it was published in 2007, a sequence of parliamentary inquiries at Westminster and Holyrood have borne out that there are major issues to address over the CEC’s operations in Scotland.

The conspicuous lack of accountability in Scotland over the CEC’s operations here is well documented in those inquiry reports. They have also focused attention on the role of the Secretary of State for Scotland as the Minister responsible for the CEC’s operations in Scotland and the limited capacity of the Scotland Office to fulfil that role in an adequate ongoing way.
Evidence from the Scottish Government, local authorities and others has also highlighted the difficulties of dealing with the CEC, whose management responsibilities in Scotland involve matters which are in all other respects devolved.

Over 96% of the CEC’s business in the rest of the UK involves dealing with a different set of Crown rights in a different public policy environment. As the various inquiry reports illustrate, the CEC’s approach as an organisation continues to be ‘out of place’ in a devolved Scotland. The interpretation of the CEC’s statutory remit in narrow financial terms is also at odds with some of the CEC’s responsibilities in Scotland.

Evidence also confirms that there is no financial case for the CEC continuing to operate in Scotland, whether in terms of capital or revenue.

The CEC and the Secretary of State for Scotland have emphasised, for example, that a key benefit of the CEC operating in Scotland is that the CEC can draw on the wider financial resources of the UK wide Crown Estate to invest in Scotland. However, as the Scottish Affairs Committee has confirmed, the CEC have taken a net outflow of capital from Scotland of over £50m during the last five years for re-investment in the rest of the UK. While the size of that outflow was largely due to the purchase and sale of one property in Edinburgh, the figures in the CERWG report also demonstrate that there has been no history of net capital investment in Scotland by the CEC.

The Crown Estate in Scotland accounts for less than 4% of the capital value of the UK wide Crown Estate and Scotland has also always produced a very small part of the CEC’s UK wide surplus revenue - traditionally 5% and less than 4% in the last two years (£9.9m in 2010-11). The small size of the annual contribution from Scotland as a percentage of the net surplus revenue transferred to the Treasury Consolidated Fund by the CEC, has lead the CEC to suggest that devolving the CEC’s responsibilities in Scotland to Scotland could save the Treasury money. The CEC have expressed this, for example, in the following terms:-

“It is important to recognise that the revenue that comes into the Crown Estate from Scotland is almost entirely passed on to the Chancellor and then through the Barnett formula, there is a return to Scotland at a level which exceeds, in percentage terms, the money coming from Scotland.” (Holyrood Magazine, 2007)

Highland Council consider that it is an historical anomaly that the CEC continue to operate in Scotland and that, as a relatively straightforward matter of good governance and the public interest, the CEC’s responsibilities in Scotland should be devolved to the Scottish Parliament and thereafter, and as appropriate, to local authority level.

3.0 CEC’s Responsibilities

The CEC’s responsibilities in Scotland consist of managing each of the Scottish Crown property, rights and interests that make up the Crown Estate in Scotland. These are listed 1-13 in the attached Scottish Government table and more detail on each can be found in the CERWG report.
Highland Council is of the view that each of the components of the Crown Estate should be considered individually. Their varied nature means that the factors involved in each case are different, as is the most appropriate future for each if devolved. As the Committee will be aware, responsibility for the administration and revenues of individual Scottish Crown property rights can be devolved separately without necessarily devolving all of them at the same time.

Only the three main marine rights (foreshore, territorial seabed, continental shelf area) and the modern acquisitions generate significant revenue. The rest are minor and archaic property, rights and interests which are also considered non-economic or not economically significant by the CEC.

Highland Council believes that, at the very least, the Scotland Bill should modernise the composition of the Crown Estate in Scotland by devolving responsibility for each of these minor Scottish Crown property, rights and interests to the Scottish Parliament. The future of each can then be dealt with as appropriate, for example, as outlined for each in the CERWG report.

These transfers of responsibility for the minor rights would bring immediate improvements in Scotland. They would also be in line with the CEC’s own policy aim of concentrating on its ‘core businesses’ and with the Treasury Select Committee’s recommendation that as part of that, the CEC should seek to transfer non-economic and historic Crown interests to other appropriate bodies.

As stated, Highland Council believes that responsibility for the remaining main Crown property rights and interests managed by the CEC should also be devolved. The focus of Highland Council’s interest is the future management of the three main marine rights, as explained in the following section.

The other main component is the relatively small number of modern acquisitions. These are managed as commercial investments by the CEC and Highland Council considers that, while respecting the interests of the tenants and communities involved in the four rural estates, the Scottish Government would gradually dispose of these commercial properties to re-invest in the development of the marine renewables sector and other initiatives of benefit in Scotland.

4.0 Marine Rights

Issues over the CEC’s operations in Scotland predominantly result from their involvement in Scotland’s marine environment. This means that they are largely Highlands and Islands issues, as the region accounts for over 80% of Scotland’s foreshore, harbours, islands, associated territorial seabed and other marine attributes.

Highland Council believes that responsibility for the administration and revenues of the remaining Crown foreshore in Scotland should be devolved to the Scottish Parliament.
and then transferred to each local authority where Crown foreshore occurs. The Council refers the Committee to section 15 of the CERWG report, where the logic of these transfers is set out.

This change would mean that any net revenue from managing Crown foreshore will benefit the area where that revenue is generated, rather than being removed from the local economy by the CEC. A particularly important benefit would also be the immediate scope to reduce inappropriately high rents charged by the CEC for public interest and local community uses of the public foreshore.

Regarding Crown rights over Scotland’s seabed and adjoining continental shelf area, Highland Council believes responsibility for the administration of these should be devolved to the Scottish Government and arrangements put in place by the Scottish Government for net revenue from these areas to be shared between national, regional and local levels.

The CERWG report (section 16) and submissions from the Scottish Government, this Council and others set out the case for Scotland being responsible for the management of its own marine Crown property rights. This would bring immediate benefits by enabling a more efficient and straightforward integrated system for licensing and leasing marine developments, as exists in other European maritime countries.

The change would greatly assist the development of the marine renewables sector in Scotland and this would also be greatly helped by removing the complication of the CEC being involved in the work by the Scottish Government, its enterprise agencies, local authorities and others in promoting the sector. The Scottish Government has already committed itself to equalling and exceeding the CEC’s projected £20m of capital investment in Scotland over the next five years. That amount is also very small compared to the amounts already being invested to develop the sector by the Scottish Government, this Council and others in Scotland.

Highland Council is of the view that all public sector and community harbour authorities should have control over the administration and revenues of the seabed within their immediate statutory harbour area. More generally, there would be a chance to re-set the pattern of charges made by the CEC, so that the re-investment and the distribution of financial benefits for each sector of marine use support local, regional and national policies in Scotland.

The Council welcomed recognition by the UK Government through its Coastal Communities grant scheme, of the principle that revenue raised from the Crown’s marine rights should be returned to the region where it was raised. However, the Council believes all the revenues raised from the rights which make up the Crown Estate in Scotland should remain in Scotland and their new distribution settled through the consultations proposed by the Scottish Government in their June paper.
Highland Council has already agreed its policy for the distribution of revenue benefits from marine renewable energy developments between coastal communities and the wider Highland area, as well as the principles governing the distribution between coastal communities. The Council has also identified the main types of re-investment of revenues to support economic and community development in its area and has recently drafted a Community Benefits Policy statement for consultation.

Highland Council
9th September 2011
Ancient Possessions

1. Ownership of the seabed (excluding hydrocarbons) within Scotland’s territorial seas out to the 12 nautical mile limit, where this has not been granted out.
2. Rights over the continental shelf to minerals (excluding hydrocarbons) and sedentary species from Scotland’s territorial seas to 200 nautical mile limit.
3. Ownership of Scotland’s foreshore where this has not been granted out and excluding areas under udal tenure.
4. The right to all naturally occurring mussels in Scotland’s territorial seas where this has not been granted out.
5. The right to all naturally occurring oysters in Scotland’s territorial seas where this has not been granted out.
6. (a) The right to all coastal salmon fishing within Scotland’s territorial seas where this has not been granted out.
   (b) The right to all salmon fishing in rivers and lochs in Scotland where this has not been granted out and excluding areas under udal tenure.
7. The right to mine naturally occurring gold and silver in Scotland.
8. Ownership of 5 ha of West Princes Street Gardens, Edinburgh, including the Castlebanks.

Modern Acquisitions

10. (a) Ownership of five rural properties:-
    Glenlivet (Banff) 23000 ha (purchased by Commissioners of Crown Lands in 1937)
    Fochabers (Moray) 4800 ha (purchased by Commissioners of Crown Lands in 1937)
    Applegirth (Dumfries) 7004 ha (purchased by CEC in 1963 & subsequent years)
    Whitehill (Midothian) 1366 ha (purchased by CEC in 1969 & subsequent years)
    Old Mills Farm (Stirling) 47 ha (purchased by CEC in 1972; linked to King’s Park (no.9))
    (b) Ownership of one urban property in Edinburgh:-
        39/41 George Street (+Thistle St Lane) 1929+222 sq.ms. office/retail (purchases CEC 1995)
    (c) Involvement in joint property partnerships:-
        Fort Kinnaird Retail Park (Edinburgh) - 50% ownership through Gibraltar Ltd Partnership
    (d) Ownership of coastal properties (excluding harbours & related property):-
        Rhu Marina (Firth of Clyde) (purchased by CEC in 2007-08)

Other Rights & Dues

11. Title reservations: minerals rights and other rights reserved by the Crown over former Crown lands, including Edinburgh Castle and other prominent sites.
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<td>12. <strong>heritable revenues:</strong> feu duties &amp; surplus teinds still due to Crown over former Crown lands.</td>
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<td>13. <strong>other income:</strong> The right of the Crown to income if the one site in Scotland transferred to government ownership under the Forestry (Transfer of Woods) Act 1923, is sold.</td>
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