

**PE1637/F**

Minister for Business, Innovation and Energy submission of 30 January 2018

Thank you for inviting Scottish Ministers to respond to the Committee's four queries in the PE1637: Ship-To-Ship Oil Transfers And Trust Port Accountability petition. I apologise that it was not possible to get this to you for the 26th January and hope this has not caused any inconvenience to members of the Committee. Please see below my response as Minister for Business, Innovation and Energy to the questions you have raised.

Your question: What the role of agencies, such as SEPA, SNH and Marine Scotland, is in relation to ship-to-ship transfer licence applications?

My answer: Marine Scotland is not an agency. It is a Directorate of the Scottish Government. The Scottish Government does not have any powers in relation to ship-to-ship transfer licence applications due to the provisions of The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010.

Neither Scottish Government nor SEPA are named under Section 2 of The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010, as amended, as consultation bodies, and as such have no official role on this matter. This is despite this legislation having been introduced via the UK Parliament in response to pressure from Scottish Ministers.

Section 2 of The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010, as amended, does define Scottish Natural Heritage as a consultation body providing nature conservation advice in Scottish waters on applications for ship to ship oil transfer licences. Schedule 2 of those Regulations require the UK Government's Secretary of State for Transport, as the responsible Minister, to have regard to any representation made by a consultation body when reaching a licence decision.

Your question: What changes to the process would help the Scottish Government inform the decision in relation to ship-to-ship transfer licence applications?

My answer: Scottish Ministers, myself included, have requested on a number of occasions for powers relating to ship to ship oil transfer licence applications under The Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010, as amended, to be devolved to Scottish Ministers. Failing this, the process could be improved if the Secretary of State for Transport were to name the Scottish Ministers as a formal consultation body under Section 2 of the Merchant Shipping (Ship to Ship) Regulations 2010.

Your question: What submissions have been made to the UK Government on the licensing process?

My answer: Scottish Ministers have requested on four separate occasions for these powers to be devolved, or at the least for the Secretary of State for Transport to name the Scottish Ministers as a formal consultation body under Section 2 of the Merchant Shipping (Ship to Ship) Regulations 2010. The UK Government has committed to a full review of the Regulations, and as a devolved administration Scottish Ministers expect to be consulted formally on such matters, given our obvious interests in terms of the stewardship of our much valued marine environment .

Your question: With regards to trust port governance the Scottish Government response confirms that trust ports are their own judge and jury. Boards of trustees are self-appointed by the trust port and there is no independent oversight or accountability to Scottish Ministers or any other public authority. The Scottish Government Guidelines for Modern Trust Ports are not enforceable in law bringing a lack of governance and ministerial accountability.

My answer: Scottish Ministers expect Trust Ports to operate with reference to the guidance and our experience is that Trust Ports across Scotland take this into account. However, the primary requirement is for ports to comply with their own local legislation that sets out their powers and responsibilities. Any party who feels the port is operating outwith it's legislation should raise this with the Port in the first instance, but ultimately has the option to take this to the courts. Anyone considering court action is advised to take independent legal advice.

Your question: We are not convinced that all trust ports operate as described. For example, the creation of the Port of Cromarty Firth Services Company Ltd is potentially an avenue for profits to be diverted away from CFPA stakeholders. No attempt has been made to demonstrate that this arrangement has benefited, or can benefit, stakeholders.

My answer: I would reiterate the point that Trust Ports operate under their own local legislation and are bound by their constitution as noted. With specific regard to setting up of subsidiaries or to enter into Joint Ventures, it is for individual Trust Ports to consider whether or not it has the powers to enter into such an arrangement. Any arrangements for JVs would normally set out how profits are distributed, usually based on the share of ownership of the business/investment in question.

I trust this addresses the questions raised by the Committee and that the information contained is useful to the Committee in its deliberations.