Crown Estate Scotland
Oighreachd a' Chrùin Alba

Public Audit Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Via e-mail: publicaudit.committee@parliament.scot

13 November 2026

Dear members of the Public Audit Committee

SWL committee hearing 5 November 2026 – Follow-up letter to convenor of Public Audit Committee

Thank you for the recent opportunity to provide you with evidence regarding Audit Scotland's report, entitled: 'Management of the ScotWind leasing round: 'How the Scottish Government is using offshore wind funding'.

I promised to write to you, clarifying two points. Firstly, with regards to the advice we sought on the Innovation and Targeted Oil & Gas (INTOG) Leasing round. The question asked of us on 5 November concerned from where we obtained advice on this leasing round and if this was the same source as we obtained advice on the ScotWind Rapid Review. I can confirm that the advice for INTOG came from:

- Ernst & Young (EY) for market analysis, cashflow modelling and award mechanism.
- The Carbon Trust and Xodus worked together to design the award processes (separate for each of Innovation (IN) and Targeted Oil & Gas (TOG)
- Arup provided delivery support for the INTOG process
- Natural Power Consultants Limited undertook a study to provide an analysis of the scale and nature of the opportunity associated with O&G electrification (TOG)

Each of these contracts was procured in accordance with Crown Estate Scotland's standard procurement processes. In summary, the advice sought was from different providers, to address a short-term market opportunity, which was distinct and different to the long-term market opportunity provided by ScotWind.

The second issue which I promised to clarify surrounds the £250,000 payment required to be made by ScotWind developers who fail their Supply Chain Development Statement (SCDS) commitments. I was asked by the Committee whether I believed that this sum was too low, in the context of the scale of the developments. I explained that this sum was not designed to be punitive, but rather it was one in a suite of contractual remedies that could be applied to developers who failed to meet their supply chain commitments. Mr Brown MSP questioned the point of the payment if it was not intended to be punitive, and I undertook to provide further explanation in writing.

This matter was given substantial consideration at the time of designing the leasing round and was the subject of legal advice on the nature and purpose of contractual remedies. It is a principle of Scots law that the purpose of financial remedies for breach of contract

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should be restorative rather than punitive – their purpose should be to compensate the innocent party rather than punish the defaulting party. Any clause which is clearly designed to punish, may be at risk of challenge and could be unenforceable.

Accordingly, the advice received by Crown Estate Scotland was to carefully balance proportionate financial remedies and alternative contractual sanctions, which together allow developers the flexibility to develop their approaches with time, whilst providing Crown Estate Scotland with adequate assurance as to the delivery of their commitments.

By adopting this approach, it was felt that the combination of financial remedy, loss of non-refundable option fee, sunk costs, and an inability to enter into lease, provided the most robust contractual position.

The Auditor General's recommendation that these contractual remedies should be strengthened in future leasing rounds is, however, accepted by Crown Estate Scotland and I confirm that we will continue to develop our approach to supply chain commitments for future leasing rounds.

Yours sincerely



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