

This document relates to the Scottish Crown Estate Bill (SP Bill 24) as introduced in the Scottish Parliament on 24 January 2018

# Scottish Crown Estate Bill

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## Explanatory notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Scottish Crown Estate Bill, introduced in the Scottish Parliament on 24 January 2018.
2. The following accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 24–FM);
  - a Policy Memorandum (SP Bill 24–PM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 24–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### The Bill

5. The Bill makes provision for changes in the management of the Scottish Crown Estate including the duties on management and charging for the assets. The Bill both provides the mechanism to change the manager of an asset (or part of an asset) and sets out the regulatory framework within which all managers, irrespective of the size of the asset managed, must operate.

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6. The Bill contains 45 sections in 4 Parts, and two schedules:
  - Part 1 changes the name of Crown Estate Scotland (Interim Management).
  - Part 2 sets out definitions and the mechanisms by which the management of the Scottish Crown Estate assets can be changed.
  - Part 3 makes provision about the management of Scottish Crown Estate assets, including provision about managers' powers and duties in relation to the assets and provision about planning, reporting and accounting by managers.
  - Part 4 makes general provision about regulations, ancillary provision, consequential and minor modifications, interpretation, commencement and the short title.
  - Schedule 1 makes modification of certain enactments in light of the change in name of Crown Estate Scotland (Interim Management).
  - Schedule 2 makes consequential and minor modifications of other legislation.
  
7. Explanatory Notes on the various sections of the Bill are below.

## Part 1 – Crown Estate Scotland

8. Crown Estate Scotland (Interim Management) was established by the Crown Estate Scotland (Interim Management) Order 2017 (“the Crown Estate Scotland Order”). Section 1 changes the name of Crown Estate Scotland (Interim Management) to “Crown Estate Scotland”. Section 1 also introduces schedule 1 which amends references to the body in various enactments in consequence of this change in name. Section 43(1) of the Bill defines the “Crown Estate Scotland Order” as meaning the Crown Estate Scotland Order 2017 (S.S.I. 2017/36). That instrument is currently entitled the “Crown Estate Scotland (Interim Management) Order 2017 (S.S.I. 2017/36)” but is renamed by paragraph 9(2) of schedule 1 of the Bill in consequence of the change in the name of Crown Estate Scotland. These notes refer to the body as “Crown Estate Scotland” for ease of reference to the provisions of the Bill.

## Part 2 – Management of Scottish Crown Estate assets

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9. Section 2 sets out the definitions of “Scottish Crown Estate”, “asset” and “manager” for the purposes of the Bill. Definitions of some other terms used in the Bill are set out in section 43.
10. Section 3 confers on the Scottish Ministers the ability to transfer, by regulations, the function of managing a Scottish Crown Estate asset, and rights and liabilities in relation to the asset, to certain persons. The transfer will be effected by regulations, which will be subject to the negative procedure, unless they add to, replace or omit any part of the text of an Act, in which case the regulations would be subject to the affirmative procedure. This means that there will be Parliamentary scrutiny of the process.
11. The list of persons who are eligible to receive a transfer of the function of managing a Scottish Crown Estate asset (and thereby become a “manager”) are set out in section 3(2) (with section 6 defining “community organisation”).
12. As Crown Estate Scotland manages the whole Scottish Crown Estate at present, initial transfers will be from Crown Estate Scotland to other persons. However, in the future, transfers might be from other persons who have since become managers via prior transfers. This also means it will be possible for Crown Estate Scotland to receive a transfer in the future.
13. The list of eligible persons in section 3(2) includes both the Scottish Ministers and Crown Estate Scotland. This ensures that, in the event of poor performance or an original transferee ceasing to exist for whatever reason, the Scottish Ministers can transfer the management of the asset either to themselves or back to Crown Estate Scotland to ensure the continuing management of the asset.
14. Section 3(3) provides that transfer regulations made under subsection (1) may include provision restricting the exercise of the function by the new manager, for instance, restrictions on the transfer of ownership of an asset. Section 3(4) makes provision for securing the management of an asset which has been transferred to a community organisation, in the event that the organisation ceases to exist for any reason, and requiring notification to the Scottish Ministers of any proposed change to the body’s constitution which would result in it no longer being a community organisation for the purposes of the Bill (see section 6). Provision can also be made in regulations under subsection (4) requiring a court or a person specified in the regulations to notify the Scottish Ministers of any

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application which would result in the community organisation ceasing to exist or ceasing to be a community organisation as defined in the Bill. The Scottish Ministers are required under section 3(5) to consult affected persons (and such other persons as they consider appropriate) before effecting transfers by making regulations under section 3(1).

15. Section 3(6) enables regulations under section 3(1) to include provision which modifies primary legislation. This may be necessary, for example, if other legislation requires a person to obtain consent to enter land forming part of the Scottish Crown Estate and it is necessary to modify an enactment to provide that a person other than the manager of a Scottish Crown Estate asset is to grant any necessary consent to access that Crown land.

16. Section 4 provides an alternative means of changing the arrangements for management of a Scottish Crown Estate asset, whereby the Scottish Ministers may direct the existing manager to delegate management to another person. This provides for such a direction to be made to a manager who is Crown Estate Scotland, a local authority or another Scottish public authority. The persons to whom a manager can be directed to delegate the function of managing Scottish Crown Estate assets are a local authority, another Scottish public authority or a community organisation (as defined in section 6). The direction must be set out in writing as required by section 4(4). Before giving a direction, the Scottish Ministers must have obtained the consent of the person to whom the function is to be delegated (section 4(5)). As it is necessary that third parties know the status of the person managing the asset and the extent of their powers, section 4(6) requires the Scottish Ministers to publish notice of any such direction or any revocation of the same. Section 4(7) sets out the information that such a notice must contain. As explained below, the delegation itself is effected by a delegation agreement under section 5. Part of the process of agreeing a delegation agreement is that the Scottish Ministers must agree to the terms and conditions of that agreement (section 5(6)(b)) before the agreement can take effect. Until that consent is given, the Scottish Ministers can revise or revoke a direction given under section 4(1) (section 4(5)(b)).

17. Section 5(1) provides that a manager of a Scottish Crown Estate asset (other than the Scottish Ministers) may delegate the function of managing an asset only if directed to do so under section 4(1). This means that delegations can only take place if the Scottish Ministers so direct, and

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the process for a delegation must follow the process set out in the Bill. Section 5(2) provides that, where the Scottish Ministers are the manager of a Scottish Crown Estate asset, they may delegate the function of managing the asset to Crown Estate Scotland, a local authority, another Scottish public authority or a community organisation. Section 5(3) provides that a delegation by a manager is to be given effect to by way of an agreement which must set out the terms and conditions under which the delegate would manage the asset. Section 5(5) makes provision for restrictions on the delegate's exercise of the management function and also for termination of the agreement. Section 5(6) makes it clear that a delegation cannot take effect unless the Scottish Ministers consent to the terms of the delegation agreement.

18. Section 5(7) sets out the extent to which a delegate is to be treated as a manager of a Scottish Crown Estate asset. Under section 5(7)(a) the default position is that a delegate is to be treated as the manager of the asset, and has all the powers and duties applying to the manager of the asset. This means that a reference to a manager in, for example, section 7 is taken to be a reference to the delegate where a delegate is in place, meaning that the duty under section 7 applies to the delegate. The exception to this is that a delegate is not treated as the manager for the purposes of Part 2 of the Bill i.e. they are not the "manager" for the purposes of sections 2 to 6 and the function of managing the asset cannot be further transferred or delegated from the delegate to another person. Under section 5(7)(b) the function of managing the asset is not exercisable by the manager where a delegate is in place unless the delegation makes provision for that. Section 5(7)(a) and (b) is subject to the terms of the delegation agreement. In a particular case the delegation agreement may, for instance, set out that the manager can still exercise elements of the management function in certain instances or that the manager remains responsible for some aspects of the exercise of the function.

19. Section 6 provides a definition of "community organisation". A "community organisation" is a body corporate (other than a Scottish public authority) which relates to a community and has a written constitution which includes the matters mentioned in subsection (2), which relate to the membership of the body and its aims and purposes. A community organisation can also be a body which is designated as a community organisation for the purposes of this Bill by the Scottish Ministers by regulations. The power in section 6(1)(b) to designate a body as a community organisation for the purposes of this Bill can be used to

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designate a body which would not meet the test set out in subsection (1)(a), as a “community organisation” for the purposes of the Bill. Such regulations are subject to the negative procedure.

## Part 3 – Management of Scottish Crown Estate assets

### Managers’ powers and duties

20. Section 7(1) obliges a manager of a Scottish Crown Estate asset to maintain and seek to enhance its value and revenue. Section 7(2) provides that, in discharging the subsection (1) duty, a manager is able take into account wider socio-economic and environmental benefits.

21. Section 8(1) provides that, within the constraint that ownership of the asset rests with the Crown, managers have the power to do anything the Crown could do as owner. Section 8(3) provides that managers are able to transfer ownership of Scottish Crown Estate assets under their management and to acquire land on behalf of the Crown in the course of management. Under section 8(4), where land is acquired, that land becomes a Scottish Crown Estate asset under the management of the manager that acquired it. “Land” is defined in subsection (7) as including buildings and other structures, land covered with water, and any right or interest in or over land.

22. Section 8(5)(a) provides that the ability of a manager to do anything on behalf of the Crown in respect of the asset that the Crown could do as owner of the asset is subject to restrictions or limitations contained in the Bill or in another enactment relating to Scottish Crown Estate assets. That includes transfer regulations made under section 3 of the Bill which contain provisions of the type mentioned in section 3(3)(a) (see paragraph 14 above). Under section 8(5)(b), a manager is not to be subject to any restriction on its powers that would not restrict the powers of the Crown as owner, which is to disapply any limitation on the powers imposed on a person who is a manager if that person were acting in a capacity other than as a manager of a Scottish Crown Estate asset, such as a local authority. Subsection (6) provides that, where a provision of the Bill, or any provision made under the Bill, requires the consent of the Scottish Ministers for the transfer of ownership of an asset or for an acquisition, if such consent is not obtained the transaction is void. For instance, consent is required for the transfer of ownership of a portion of the seabed under section 10(3).

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23. Section 9(1) provides that when entering into transactions the manager is not subject to any formalities that would apply if Her Majesty were transacting i.e. the manager may enter into a transaction as if the person were acting on behalf of a person other than the Queen. Subsection (2) provides that any document relating to such an asset that is executed by the manager is to be construed and registered as if the manager were acting on behalf of a person other than Her Majesty. Subsection (3) defines “registered” for these purposes, with subsection (4) enabling the Scottish Ministers to modify that definition.

24. Section 10 provides that the Scottish Ministers’ consent is required for the transfer of ownership of a Scottish Crown Estate asset, if the transfer would result in the manager no longer managing any assets or if the transfer relates to the seabed.

25. Section 11 requires a manager to obtain market value when transferring the ownership of an asset or granting a lease or other right in or over a Scottish Crown Estate asset (“a relevant transaction”). Section 11(2) allows managers to exercise discretion to obtain less than market value when it is likely to contribute to the promotion or improvement of specified socio-economic or environmental factors. In deciding whether to exercise this discretion, managers must refer themselves to, consider and take account of the likely effect of making the relevant transaction for less than market value on the overall value of the Scottish Crown Estate (section 11(3)). Subsection (4) disapplies the subsection (1) duty where the transaction is made in pursuance of an obligation enforceable against the Crown or against the manager, or under Part 1 of schedule 4 of the Crown Estate Transfer Scheme 2017 (S.I. 2017/524) (the “Transfer Scheme”). Paragraph 3 of Part 1 of schedule 4 of the Transfer Scheme enables the Secretary of State for Defence to require a manager of an asset to renew a right held by the Secretary of State in the asset. Paragraph 4 of Part 1 of schedule 4 of the Transfer Scheme enables the Secretary of State for Defence to require a manager of an asset to grant the Secretary of State a new right in that asset where the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being granted to the Secretary of State.

26. Section 12(1) defines “market value” which accords with the definition of “market value” (and “market rent”) adopted by the Royal Institution of Chartered Surveyors (RICS) in RICS Valuation - Global Standards 2017

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(“the Red Book”)<sup>1</sup> based on current International Valuation Standards. This contains mandatory rules, best practice guidance and related commentary for all members undertaking valuations. Section 12(4) enables the Scottish Ministers to modify this definition.

27. Section 12(2) provides that where an agreement is made to make a relevant transaction (or consider the making of a relevant transaction) in respect of an asset more than 10 years after the date of the agreement, the asset is to be valued at the time of transaction occurs and not at the time of the initial agreement. Subsection (3) provides that, where the transaction is made in pursuance of Parts 3 or 4 of the Transfer Scheme (in relation to oil or gas pipelines or electricity cables etc.), “market value” has the meaning given in that schedule instead.

28. Section 13 enables the Scottish Ministers to direct a manager (or managers) as to the amount that may be charged (or how that amount is to be calculated) by way of rents for the lease of an asset or in connection with any other agreement for the use of the assets. At present, the calculation of aquaculture rents, for example, is set by a standard formula. For finfish, charges depend on net gutted weight and species, and for shellfish, the calculation is based on species, length of rope and other types of equipment. The provisions in the Bill could be used to enable similar arrangements to be followed in future whereby similar rates are charged for certain type of leases. Where a direction made under section 13(1) applies to the lease, or other agreement for the use, of an asset, section 11 is disapplied (section 13(3)(a)). This is to avoid potential conflict between a manager’s duty under sections 11 and 13. Where a direction is in place, a manager can depart from the direction only with the consent of the Scottish Ministers. If such consent is not obtained the lease or other agreement is void (section 13(3)(b)).

29. Section 14 prohibits managers from leasing or granting another right in or over an asset for more than 150 years unless the manager or the Crown is under an obligation to do so. A potential example is if the Secretary of State for Defence is exercising powers under Part 1 of schedule 4 of the Transfer Scheme such that a manager is required to enter into a lease of, or other right in or over, the asset for a period of more than 150 years.

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<sup>1</sup> <https://www.rics.org/uk/knowledge/professional-guidance/red-book>



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30. Section 15 prohibits a manager from granting a heritable security over a Scottish Crown Estate asset. “Heritable security” is defined in section 43(1) by reference to section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

31. Section 16 makes provision restricting the type of investment that may be made by managers. Managers may invest a sum of money from the manager’s capital account if it is invested in a heritable security in Scotland or in a security over land in the rest of the United Kingdom or in an investment of such other description as the Scottish Ministers may specify in a direction. Managers may invest a sum of money from their capital account or their income account in an interest-bearing account.

32. Section 17 allows managers to make charitable donations out of the manager’s income account (within the meaning of section 26). A “charitable donation” is defined as one made for a charitable purpose (within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005) and which provides public benefit in Scotland (i.e. making a positive difference to the public in Scotland).

33. Section 18 requires managers to exercise their functions in a way that is transparent and accountable and consistent with good governance principles. Section 19 requires managers to exercise their functions in a way that encourages equal opportunities.

### Planning and reporting

34. Section 20 requires the Scottish Ministers to prepare a strategic management plan in respect of the Scottish Crown Estate and sets out the requirements of that plan. The plan is to set out the objectives, priorities and policies in relation to the management of the estate and must include an assessment of how those align with the Scottish Ministers’ other objectives, priorities and policies. It can also include such other information about the Scottish Crown Estate and its management as the Scottish Ministers consider appropriate. The Scottish Ministers are to consult with managers and other persons they consider appropriate in preparing the plan. A copy of the plan is to be laid before the Scottish Parliament and the Scottish Ministers must publish the plan as soon as reasonably practicable after it has been laid. Managers of one or more Scottish Crown Estate assets are to have regard to the strategic management plan when preparing their management plans (see below) and when exercising their management functions. Section 21 requires 5-yearly reviews of the plan. A

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review may either result in a revised plan being prepared (subject to the same consultation, laying and publication requirements) or in the Scottish Ministers laying a statement before the Scottish Parliament that they consider the plan should not be revised. The Scottish Ministers' functions under sections 20 and 21 can be delegated to Crown Estate Scotland by virtue of section 37.

35. Section 22 requires all managers (other than Crown Estate Scotland) to prepare a management plan and specifies what it must cover. Management plans are prospective plans covering a 3 year period. Each plan is to set out the manager's objectives for the period, the activities the manager proposes to undertake during that period in pursuit of the objectives, any risks associated with those activities, outcomes against which the achievement of the objectives may be assessed and how the manager proposes to maintain (and seek to enhance) the value of assets under their management. The plan must also set out whether the manager proposes to dispose of any Scottish Crown Estate assets during that period and, if so, how the manager proposes to use any proceeds of the disposal.

36. Crown Estate Scotland is separately required to prepare a corporate plan, which is similar to a management plan, under article 19 of the Crown Estate Scotland Order. Accordingly, to avoid Crown Estate Scotland having to prepare duplicate reports, subsection 22(4) provides that sections 22 and 23 do not apply to Crown Estate Scotland.

37. Section 23 makes provision for the Scottish Ministers to approve or reject management plans. The approved management plans must be published by the manager as soon as reasonably practicable after it is approved. In recognition that circumstances change, subsection (5) makes provision for revising plans and requires such revision in particular circumstances. Managers may revise plans from time to time at their discretion, and must do so if the function of managing an asset is transferred to or away from them under regulations made under section 3(1) or when the function is delegated to or by them under section 5. A revised plan must be sent to the Scottish Ministers, and the approval and publication process applies to revised plans as it applies to original plans.

38. Section 24 requires managers (other than Crown Estate Scotland) to prepare an annual report on their activities during the year, as managers are to be accountable for the way they exercise the function of managing Scottish Crown Estate assets. Crown Estate Scotland is separately

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required to prepare an annual report under article 18 of the Crown Estate Scotland Order. The matters to be included in the report are set out in subsections (2) to (6) and include an assessment of how the activities have contributed to meeting the manager's objectives as set out in its management plan. The report is also to include a list of any directions given to the manager by the Scottish Ministers or the Secretary of State under the Transfer Scheme during that financial year (subject to the exception set out in subsection (5)). Subsection (7) provides that a manager must complete and send a copy of its annual report to the Scottish Ministers by no later than 3 months after the end of the financial year to which it relates i.e. no later than 30 June each year.

39. Section 25 requires the Scottish Ministers to lay a copy of the annual reports prepared under section 24(1) or article 18(1)(a) of the Crown Estate Scotland Order before the Scottish Parliament. The Scottish Ministers are able to lay copies of individual reports or to lay copies of the reports as part of a consolidated report. As soon as possible after laying copies of the reports, whether individually or consolidated, the Scottish Ministers are required to publish the reports. Managers may publish their own reports only after their report has been laid by the Scottish Ministers before the Scottish Parliament, either as an individual report or as part of a consolidated report. The duty contained in this section for the Scottish Ministers to lay a copy of each annual report before the Scottish Parliament (either individually or as part of a consolidated report) may be delegated to Crown Estate Scotland by virtue of section 37.

### Financial matters

40. As Her Majesty retains ownership of the Scottish Crown Estate in right of the Crown (and the manager does not own the assets), but the revenue from the Scottish Crown Estate is to be paid into the Scottish Consolidated Fund, section 26 requires separate accounts to be kept for income and capital. These accounts must also be kept separate from any other accounts kept by the manager, in any other capacity. In the context of managing the Scottish Crown Estate, the capital account represents those items transferred to the manager at the outset plus any amounts added in subsequent years; it is this amount that is preserved and ownership of which rests with the Crown. The income account represents the revenue that is generated by Scottish Crown Estate assets. The net revenue is paid into the Scottish Consolidated Fund. Keeping the separate accounts enables the manager of a Scottish Crown Estate asset to maintain

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appropriate segregation between categories and readily identify their value at any given time.

41. Section 27 provides the Scottish Ministers with the power to direct other managers to carry money from the income account to the capital account, to be retained in the capital account. At present, the maximum sum that Crown Estate Scotland can carry is 9% of the gross revenue, and that sum is specified in an existing framework agreement. Effectively, it enables the manager to invest in the asset(s) – for example, capital works which maintain and enhance the value of the asset, which is the duty of the manager under section 7 – or to acquire new assets which become part of the Scottish Crown Estate. Subsections (4) and (5) allow managers other than the Scottish Ministers to make other transfers during the financial year. This is expected to be of most use early in a manager’s management to smooth cash flow in-year. Transfers under subsection (4) must be ‘re-paid’ to the income account in accordance with subsection (5). Subsection (6) permits the Scottish Ministers to transfer sums between their income and capital accounts as they consider appropriate.

42. Section 28 makes provision for the treatment of various sums, setting out whether the sum is to be carried to income or capital account. Subsection (1) recognises that some tenants pay a significant sum initially in exchange for an annual peppercorn rent and provides for different accounting for that sum, depending on the length of the underlying lease. Subsections (2) and (3) make provision for the allocation of income from mining interests (reflecting that mining works reduce the value of the mine, which is a capital asset) in accordance with any direction given by the Scottish Ministers about the allocation. Subsection (4) provides that, where the Scottish Ministers are themselves the manager, they can determine the proportions which apply to the allocation under subsections (3) and (4). Subsection (5) requires a manager to make repayments of any loan made by the Scottish Ministers from the account to which the manager carries the sums received under the loan i.e. loans carried to capital account are repaid from the capital account and loans carried to income account are repaid from the income account. The loans referred to here are loans made to managers by the Scottish Ministers under section 30 (see below).

43. Section 29 enables the existing ability of Crown Estate Scotland in the course of its management to cross-subsidise the Scottish Crown Estate to be extended to all managers. This is achieved by enabling a manager to transfer a sum from their income account to the income account of another

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manager, and likewise for capital account. Managers may only make such transfers if directed to do so by the Scottish Ministers. It recognises that not all Scottish Crown Estate assets are capable of generating sufficient revenue to cover the costs of, for example, maintenance. The Scottish Ministers can, therefore, direct a manager with sufficient revenue or capital to transfer sums to another manager where there is a shortfall.

44. Section 30(1) enables the Scottish Ministers to make grants and loans to a manager in connection with the exercise of the manager's functions. Managers are not otherwise able to borrow in connection with their functions (subsection (2)), nor can they grant heritable securities (see section 15)). Section 30 does not apply to Crown Estate Scotland because article 17 of the Crown Estate Scotland Order makes equivalent provision.

45. Section 31 provides that the Scottish Ministers or another manager (with the consent of the Scottish Ministers) can make grants to such persons as the person making the grant considers appropriate for the purpose of covering outlays incurred in making preparations for a transfer or delegation of management of a Scottish Crown Estate asset. The Scottish Ministers or, as the case may be, another manager may impose conditions relating to the grant (or its repayment).

46. Section 32 requires managers to keep proper accounts and records and prepare a statement of accounts in relation to any Scottish Crown Estate asset(s) managed by them, and any money and investments forming part of the Scottish Crown Estate which the manager is holding, in respect of each financial year. Subsection (3) requires managers to prepare a statement of accounts in such form, to include such information, and to be prepared in accordance with such methods or principles as the Scottish Ministers may direct. Subsection (4) requires managers (other than the Scottish Ministers) to send their statements of accounts in respect of each financial year to the Scottish Ministers within 3 months of the end of the financial year to which their statement relates. As with the income and capital accounts (see section 26), subsection (5) requires such accounts and records to be kept and statements prepared separately from any other accounts and records of the manager.

47. Section 33 provides that the Scottish Ministers must prepare a consolidated statement of accounts prepared by each manager of one or more Crown Estate Scotland asset to submit to the Auditor General for Scotland. This function of the Scottish Ministers can be delegated to Crown

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Estate Scotland by virtue of section 37. This common approach takes account of local authorities' own accounts being audited by the Accounts Commission.

### End of management

48. Section 34(1) makes provision for reports to be prepared and sent to the Scottish Ministers when a manager ceases to be a manager during a financial year. Subsection (3) provides that where a manager holds only money or investments forming part of the Scottish Crown Estate, the manager is to be treated for the purpose of Part 3 of the Bill as a manager of Scottish Crown Estate assets for as long as the manager holds that money or investments.

### Ministerial directions

49. Section 35 confers a general power of direction on the Scottish Ministers in relation to the exercise of managers' functions and specifies that directions must be in writing and be published, as must any revocation of such a direction.

50. Section 36 requires managers to have regard to written guidance given by the Scottish Ministers (which will be published), as it is expected that several matters are more appropriately set out in guidance than in legislation. The Scottish Ministers may choose to provide guidance to managers regarding the duty under section 11(1) to obtain market value for the transfer of ownership etc. of a Scottish Crown Estate asset and the discretion to depart from that duty under subsection (2) of that section which also requires managers to have regard to the likely effect of such a departure on the overall value of the Estate as required under subsection (3) of that section.

51. Provision is made in section 37 for the Scottish Ministers to delegate their functions under certain sections of this Bill to Crown Estate Scotland. Such delegation must be in writing. The sections are those relating to the preparation and review of strategic plans (under sections 20 and 21), the laying a publication of annual reports (under section 25) and the preparation and submission for audit of consolidated accounts (under section 33). Subsections (3) and (4) modify how certain sections of the Bill operate when a delegation under section 37 is in place in respect of the Scottish Ministers' functions under section 25(1) and section 33(1). These ensure the legislation works as intended, for instance that annual reports

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are sent by managers to Crown Estate Scotland rather than to the Scottish Ministers.

52. It is expected that, from time to time, the Scottish Ministers may wish to obtain information from, or take the advice of, managers of Scottish Crown Estate assets in respect of the asset or its management. Section 38 obliges managers to provide that information or advice if it is required by the Scottish Ministers.

53. Section 39 allows the Scottish Ministers to undertake research and provide resources to managers (actions which are currently undertaken by Crown Estate Scotland, and which Crown Estate Scotland may continue to undertake). “Resources” could include staff support, support services and capacity building.

## Part 4 – General

54. Section 40 sets out how the Scottish Ministers can make regulations under the Bill, including the procedure by which they are to be scrutinised by the Scottish Parliament. Section 41 gives the Scottish Ministers power to make ancillary provision that is necessary or expedient to make sure the provisions of the Bill work properly.

55. Section 42 introduces schedule 2 which makes minor modifications and modifications in consequence of this Bill.

56. Section 43 sets out definitions of terms used in the Bill. Section 44 deals with the commencement of the Bill and section 45 provides that the short title of the Act is the Scottish Crown Estate Act 2018.

## Schedule 1: Crown Estate Scotland: modification of enactments

57. Schedule 1 amends each of the enactments referred to by changing references from “Crown Estate Scotland (Interim Management)” to “Crown Estate Scotland” in consequence of the renaming of that body by section 1(1) of the Bill. Paragraph 9(2) of schedule 1 changes the name of the Crown Estate Scotland Order (see paragraph 8 of these Notes).

## Schedule 2: consequential and minor modifications

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58. Schedule 2, which is introduced by section 42, makes provision for the amendment of various enactments as a consequence of the provisions of the Act, and makes another minor amendment.

### Paragraph 1 – Scotland Act 2016

59. This paragraph repeals section 36(7) of the Scotland Act 2016 (“the 2016 Act”) which applies (with modifications) the Crown Estate Act 1961 (“the 1961 Act”) to Crown Estate Scotland in the exercise of its functions which transferred from the Crown Estate Commissioners by virtue of the Transfer Scheme. In consequence of the Bill, which makes provision relating to the management of the Scottish Crown Estate and the exercise of the Crown Estate Scotland’s functions, the 1961 Act will not apply in relation to Crown Estate Scotland when this paragraph comes into force.

### Paragraph 2 – The Crown Estate Scotland Order 2017

60. This paragraph amends various provisions of the Crown Estate Scotland Order, principally in consequence of the Bill.

61. Article 8 of the Crown Estate Scotland Order sets out the circumstances in which the Scottish Ministers may remove a member of Crown Estate Scotland, one of which is when a member becomes insolvent. Paragraph 2(2) of this schedule replaces an incorrect reference to a person making a “composition order [with creditors]” with a reference to a person making a “composition or arrangement [with creditors]” (as being insolvent for these purposes).

62. Sub-paragraph (3) amends article 12(2)(b) of the Crown Estate Scotland Order which prevents Crown Estate Scotland from authorising another person from preparing its statements of account. The reference to these statements being prepared under section 2(5) of the 1961 Act is replaced with a reference to those statements being prepared under section 32(1)(b) of the Bill in consequence of the repeal of section 36(7) of the 2016 Act discussed above (in relation to paragraph 1 of this schedule) and the provision in section 32(1)(b) of the Bill requiring Crown Estate Scotland to prepare annual statements of accounts.

63. Sub-paragraph (4) adds a new paragraph (1A) to article 17 of the Crown Estate Scotland Order providing that Crown Estate Scotland may not borrow money other than from the Scottish Ministers for consistency



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with section 30(2) of the Bill (which applies to other managers of Scottish Crown Estate assets, other than the Scottish Ministers themselves).

64. Sub-paragraph (5) amends article 18 of the Crown Estate Scotland Order so that, as amended, it will require Crown Estate Scotland to prepare and send to the Scottish Ministers its annual report no later than 3 months after the end of each financial year, which must set out how its activities during the year have contributed to the objectives set out in its corporate plan which is prepared under article 19 of the Crown Estate Scotland Order (see sub-paragraph (5)(a), (b) and (f)). In addition, article 18(2) of the Crown Estate Order is revoked in consequence of section 25(1) of the Bill, which requires the Scottish Ministers to lay a copy of Crown Estate Scotland's annual report before the Scottish Parliament (see sub-paragraph (5)(c)). Furthermore, article 18(3) of that Order is amended by sub-paragraph (5)(d) to provide that Crown Estate Scotland may publish its annual report but not until a copy of it has been laid by the Scottish Ministers before the Scottish Parliament, noting that under section 25(3) of the Bill the Scottish Ministers must in any event publish a copy of Crown Estate Scotland's annual report after laying it before the Scottish Parliament. Sub-paragraph (5)(e) amends article 18(4)(a) of the Crown Estate Scotland Order so that Crown Estate Scotland must additionally include a list of any directions given by the Scottish Ministers under section 35(1) of the Bill in each of its annual reports, in consequence of that section of the Bill.

65. Sub-paragraph (6) revokes article 20 of the Crown Estate Scotland Order. Article 20, which further modifies the 1961 Act as it applies to Crown Estate Scotland, is spent in consequence of the repeal of section 36(7) of the 2016 Act by paragraph 1 of this schedule.

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# Scottish Crown Estate Bill

## Explanatory notes

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