

SCOTLAND BILL CLAUSE 31
DRAFT CROWN ESTATE OUTLINE TRANSFER SCHEME
(for Committee 6 July 2015)

Introduction

1. Clause 31 of the Scotland Bill delivers the Crown Estate aspects of the Smith Commission Agreement. Clause 31 provides for the management functions relating to the Crown Estate in Scotland to be transferred to an executive body - the Scottish Ministers (or a person nominated by them). The income from the Scottish assets will go to the Scottish Consolidated Fund. The ability to legislate in relation to the management of the Crown Estate assets in Scotland is conferred on the Scottish Parliament.
2. Clause 31 inserts new section 90B (the Crown Estate) into the Scotland Act 1998. This section enables the Treasury to make a scheme transferring responsibility for the management of the Crown Estate's assets in Scotland to the Scottish Ministers. The scheme must be agreed with the Scottish Ministers, and a draft of the scheme must be laid before and approved by a resolution of each House of Parliament before the scheme can be made.
3. The Crown Estate Commissioners currently manage (among other things) those assets and pay the net income from them to the UK Consolidated Fund. The scheme will transfer the management of those assets to a transferee, who will be the Scottish Ministers or a person nominated by them).
4. Clause 31(11) of the Scotland Bill amends section 1(2) of the Civil List Act 1952 so that income from those assets will be paid into the Scottish Consolidated Fund once the scheme comes into force.
5. The functions which are to transfer under the scheme are referred to in new section 90B as "the existing Scottish functions of the Crown Estate Commissioners". Those functions are defined in new section 90B(2) and (3). Because the scheme will only transfer management functions, it will not change the fact that the underlying assets belong to the Monarch in right of the Crown.
6. Following the transfer, legislative competence over the transferee's management functions and the income it generates will pass to the Scottish Parliament.
7. The scheme will also include-
 - provision ensuring that the employment of persons in Crown employment is not adversely affected by the transfer;
 - such provision as the Treasury consider necessary or expedient in relation to defence or national security, telecommunications, oil and gas, and the interests of consumers in relation to electricity networks (new section 90B(8)); and
 - consequential amendments to primary and secondary legislation.

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8. This note explains the likely content of the scheme in more detail.

Content of the scheme

9. In summary, it is proposed that the scheme will contain the following-

- A transfer date.
- The identity of the transferee.
- A statement of the assets which the Treasury considers are relevant to the transfer.
- The designated rights and liabilities of the Commissioners which will transfer under the scheme.
- Provision to secure that the employment of any person in Crown employment is not adversely affected by the transfer.
- Protections for UK-wide critical national infrastructure.
- Other provisions necessary to facilitate an effective and efficient transfer.
- Consequential amendments to primary and secondary legislation.

10. Each is considered further below.

Transfer date and identity of the transferee

11. The scheme will specify a transfer date. This is the date on which the existing Scottish functions (as defined in new section 90B((2) and (3)) together with the rights and liabilities of the Commissioners designated by the scheme will transfer and vest in the transferee, who will be specified in the scheme. Because the scheme is subject to the usual draft affirmative procedure before both Houses of Parliament, this date is likely to be specified by reference to the date when the scheme is made by the Treasury.

Statement of the property, rights and interests whose management will transfer under the scheme

12. Although the management functions will transfer by virtue of new section 90B(11), under new section 90B(5) the Treasury can specify which assets it considers are relevant to the transfer.

13. In order to be transparent about the subject matter of the management functions which are transferring, the Treasury intends to use this power. As much detail as possible will be provided, but the statement will necessarily be non-exhaustive

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and to some extent it will use generic language. We anticipate that this information will be included in a Schedule to the scheme.

Designated rights and liabilities

14. Under new section 90B(6) the scheme must provide for the transfer to the transferee of such rights and liabilities of the Commissioners as are designated by the scheme.

15. The intention is to use this power to transfer to the transferee rights and liabilities of the Commissioners associated with the management functions being transferred. The rights and liabilities designated for this purpose will be as informative as possible although some generic wording will be necessary to ensure everything appropriate is transferred. Again, we anticipate that this information will be provided in a Schedule to the scheme.

Employment protection

16. As required by new section 90B(7), the scheme will include provision to ensure that the employment of Crown Estate staff is not adversely affected by the transfer. The detailed protections are still being considered, but the intention is to model the protections on those in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246). Key provisions will include the following-

- Provision that the transfer will not terminate any contract of employment or service agreement.
- Provision that any contract or agreement shall have effect on and after the transfer as if originally made between the transferee and the relevant employee.
- Provision ensuring continuity of employment notwithstanding the transfer of employment.
- Protections against dismissal and the variation of contracts where the sole or principal reason for the dismissal or variation is the transfer.
- Protections for pension rights.
- Before the transfer occurs an ability for employees to object to any transfer of their contract or agreement.

Protections for UK-wide critical infrastructure

17. New section 90B(8) enables the Treasury to include in the scheme such provision as it thinks necessary or expedient in relation to defence or national security, telecommunications, oil and gas, and the interests of consumers in

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relation to electricity networks. The detailed protections are still being considered, but the types of protection which are likely are as follows-

- In order to be assured that defence and national security activities can be undertaken as may be required in the UK interest, the Secretary of State for Defence will need a power to direct any future manager about the exercise of the management functions transferred by the scheme. The scheme will specify the scope of this power and any procedural requirements associated with its exercise.
- In relation to the protection of access to land for telecommunications purposes, provision will be made to ensure that tidal lands and waters within paragraph 11 of the Electronic Communications Code ('the Code')¹ are treated consistently in Scotland and the rest of the UK. Currently, if the land or waters in question are subject to a Crown interest which is managed by the Crown Estate Commissioners, the rights under paragraph 11 of the Code are only exercisable with the Commissioners' agreement. Any disputes about payments to the Commissioners are determined by the Valuation Office Agency ('VOA'). After the transfer, the agreement of the transferee will be required under the Code in relation to those Crown interests which are managed by the transferee. In particular, the scheme will require any disputes about payments to the transferee to be determined by the VOA.
- For the protection of oil and gas infrastructure and electricity transmission assets, it is intended that HMT be provided with a power to cap – (i) the rents charged by any future manager for oil and gas pipeline transit rights, and (ii) the charge for use of the sea bed for electricity transmission assets. This power would be employed as a 'backstop' in the event that HMT determines that the charges set are inconsistent, arbitrary or excessive. Such a determination would be made with reference to market conditions and comparable charging regimes.

Other provisions

18. There are a number of other provisions which are necessary to facilitate the effective transfer of the functions. In particular, we anticipate including provision in respect of the following matters-

- Provision to ensure the continuity of functions. In essence, we need to ensure-
 - that any actions of the Crown Estate Commissioners before the transfer are treated on and after the transfer as actions of the transferee, and

¹ The Code is set out in Schedule 2 to the Telecommunications Act 1984.

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- that anything which before the transfer is in the process of being done by the Commissioners can on and after the transfer be continued by the transferee.
- Provisions describing the mechanics to be used to ensure there is accounting clarity as to the financial aspects of the transfer; in particular, the payment post-transfer of specific income into the Scottish Consolidated Fund.
- If necessary, provision to ensure that the transfer does not give rise to unintended tax consequences.

Consequential amendments

19. The scheme will include consequential amendments to primary and secondary legislation. For example, in some cases functions are given to the Crown Estate Commissioners as a result of their management role in relation to the Crown Estate. After the transfer those functions should be exercised by the transferee insofar as they are relevant to the transferee's management functions under the scheme. The scheme will include consequential amendments of this type in a Schedule.