



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 5 March 2015

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DEVOLUTION (FURTHER POWERS) COMMITTEE

7th Meeting 2015, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

COMMITTEE MEMBERS

*Linda Fabiani (East Kilbride) (SNP)
*Rob Gibson (Caithness, Sutherland and Ross) (SNP)
*Alex Johnstone (North East Scotland) (Con)
*Alison Johnstone (Lothian) (Green)
*Lewis Macdonald (North East Scotland) (Lab)
*Stewart Maxwell (West Scotland) (SNP)
*Mark McDonald (Aberdeen Donside) (SNP)
*Stuart McMillan (West Scotland) (SNP)
*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Gareth Baird (Crown Estate)
Steve Barron (Highland Council)
Angus Campbell (Comhairle nan Eilean Siar)
Dan Finch (EDP Renewables and Moray Offshore Renewables)
Vivienne King (Crown Estate)
Ronnie Quinn (Crown Estate)
Walter Speirs (Muckairn Mussels Ltd)
Andy Wightman

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Devolution (Further Powers) Committee

Thursday 5 March 2015

[The Convener opened the meeting at 09:01]

Decision on Taking Business in Private

The Convener (Bruce Crawford): Good morning, ladies and gentlemen, and welcome to another meeting of the Devolution (Further Powers) Committee. I welcome our witnesses and the people who join us as observers at the back of the room. I am grateful to you for being here.

The first thing that we have to do is make a decision about taking an item in private. I seek members' agreement that agenda item 4 be taken in private. Is that agreed?

Members *indicated agreement.*

Draft Legislative Clauses (Crown Estate)

09:01

The Convener: Agenda item 2 is an evidence-taking session on the draft clauses on the Crown Estate. I warmly welcome the first panel of witnesses. I will rattle through who everyone is. Andy Wightman is an independent writer and researcher on land rights, Walter Speirs is from Muckairn Mussels Ltd and was formerly director of the Scottish Aquaculture Innovation Centre, Dan Finch is the chief executive of Moray Offshore Renewables, Angus Campbell is the leader of Comhairle nan Eilean Siar, and Steve Barron is the chief executive of Highland Council. Thank you very much for coming along to help us with our deliberations.

I will open with a very general question. The Smith commission recommended that

"Responsibility for the management of the Crown Estate's economic assets in Scotland, and the revenue generated from these assets, will be transferred to the Scottish Parliament."

Do you consider that the draft clauses will achieve that aim? Furthermore, how do you see your relationship with the Crown Estate developing in the future in the new environment? Who would like to kick off?

Andy Wightman: I welcome the Smith commission recommendations, but I do not think that, as it is currently drafted, the command paper, "Scotland in the United Kingdom: An enduring settlement", implements the intent of the Smith commission. Given its complexity, it at least has the potential to frustrate what is in my view the fairly simple task of devolving administration and management of the rights in question. That should be a fairly straightforward legislative matter, but because of the way in which the command paper has been drafted, the complex scheme that is proposed could end up as a quagmire.

The Convener: Could you put some meat on the bones of that?

Andy Wightman: The simple point is that Crown property rights are already devolved—they were devolved in the Scotland Act 1998. A number of Crown rights are already managed in Scotland by the Crown Office. We are talking about a bundle of property rights that have been administered by the Crown Estate Commissioners and their predecessors down south since 1832. We are talking about returning to Scotland the power to administer those rights. As I indicated in my submission, that should be a relatively straightforward matter of repealing a couple of sections in the Scotland Act 1998 that, in effect,

reserve management of the Crown Estate; repealing the relevant section of the Scotland Act 2012; repealing a bit of the Crown Estate Act 1961; and amending the Crown Estate Act 1961 to the effect that it would not apply in Scotland.

Those are the main legislative proposals. Beyond that, one needs some kind of memorandum of understanding, or whatever, to ensure that the on-going liability and contractual obligations that the Crown Estate Commissioners have entered into in Scotland are smoothly and capably carried forward once responsibility is devolved.

Dan Finch (EDP Renewables and Moray Offshore Renewables): I am the chief executive officer of a company called EDP Renewables. We are one of the offshore wind developers, but I will try to speak generally rather than just for my own company.

We are the third-largest wind-power developer in the world, and we chose to come to the United Kingdom to develop offshore wind because of the scale of the market; the way the whole process was governed and managed within the UK; and the UK infrastructure.

We saw a couple of benefits immediately. There was a fairly straightforward system of land ownership and control, and sea-bed control, which is—believe me—very complex in some of the regions in which we operate. We broadly welcome the Crown Estate's role in developing and setting up a process that has enabled us and many other major companies to invest in the UK, and in Scotland in particular.

Secondly, we chose to move and set up our base in Scotland because of support, in particular from the Scottish Government, for renewable power. That is still a key factor in why we are here and why we will set up our entire European and world operations base here in Edinburgh.

One of the problems that we have is that, although we broadly agree with the provisions in the proposal, there will still be powers retained by the UK Government; their not being devolved will not facilitate development of wind power in Scotland. Whether those powers are devolved will be entirely up to the Scottish Government and the UK Government, but we need access to the market in the UK as a whole, as the energy market is still fully integrated.

We welcome the assistance that the Crown Estate has given us so far in developing offshore wind and attempting to meet the requirements of UK Government policy, but we propose that the Scottish Government take control of that as far as it can within Scottish waters. Scotland would then have the whole package and would be able to manage land ownership and appropriate contracts

with major developers, including ourselves. That would enable us to deliver energy in the future, which is not the case at present.

Walter Speirs (Muckairn Mussels Ltd): I have been a tenant of the Crown Estate for 30 years as a shellfish farmer. Speaking on behalf of the aquaculture industry, the last thing that we need is another period of uncertainty about who our landlord and/or regulator is.

The last time we had a shift was when planning controls were taken from the Crown Estate and handed over to local authorities in 1999, which took 10 years to be settled. During that period, the aquaculture industry stagnated, and the problems that were caused by that 10-year period of indecision still rumble on through the on-going audit review process of leases that were granted at that time.

I agree that what the Smith commission has proposed is correct in one sense, but it is also hugely complex. There is a simple solution: there is a management job to be done with the estates, and at present that is done very well, in my opinion, by the Crown Estate. The revenues seem to be what is in question, but I see no reason why, through the existing management structure, the revenues cannot be channelled to wherever the Scottish Government decides to put them. That would mean that existing tenants would not have a period of uncertainty in which, in all probability, different regimes would operate in different areas of Scotland.

Going back to 1999, the reason why local authorities sought to have planning controls taken from the Crown Estate was that there was deemed to be a conflict, given that the Crown Estate was both regulator and landlord. If the powers are given over to local authorities again, they will be in the same position as the Crown Estate was in 1999, and which local authorities spoke against at that time.

The best way forward would be the simplest way, which would be to leave the existing management managing the estates, with revenue being given to local authorities or whoever the Scottish Government decides to channel it towards.

The Convener: I am sure that Angus Campbell will have a view on that.

Angus Campbell (Comhairle nan Eilean Siar): I do have a view on that. The our islands, our future campaign was all about getting control of the sea bed and the revenues devolved down to the islands. We very much welcomed the commitment by both Governments to see that happen. We also welcome what the Smith commission explicitly said. The only three local authorities that were mentioned in its report were

those in Orkney, Shetland and the Western Isles. We are keen for that sentiment to be carried through in the legislation that is produced. At the moment, we are not seeing the clarity that we need.

One of the main issues is the need for absolute clarity about what happens with economic activity in the islands. Although I hear what my friend Walter Speirs is saying, I cannot agree with him. The whole system should be much more open and clear. For example, we have had a 40MW development off the west coast of Lewis leased out by the Crown Estate without any involvement of the people who live on the islands or the local authority. We need more clarity. I also think that the need for economic development for the people who live on the islands should be brought much more to the fore. The priority will be to serve their cause rather than any individual organisation.

Particularly in Orkney and Shetland, for the past 30 years we have had experience of dealing with issues up to 12 miles out, and our track record shows that we have done very well. Local authorities deal with many other very large planning issues in a way that is transparent and open. We have the experience and believe that we can do what will be required. It is a simple process; let us not complicate it.

Steve Barron (Highland Council): Highland Council's position is well aligned with that of the island authorities. The council wishes to see Crown Estate revenues directed to local coastal communities and the management of the Crown Estate transferred from the commissioners to the Scottish Parliament and local communities, as appropriate. The council has held a consistent position on that since 2007, when it convened a working group involving partners including the island authorities. That group produced a report noting the opportunities of devolution of the Crown Estate, which was entitled "The Crown Estate in Scotland: New Opportunities for Public Benefits".

The Smith commission report mentions the islands specifically but does not mention Highland Council. That is of concern to us, given the lead role that we have played in establishing and leading the working group and the high relative value of the Highlands in terms of the Crown Estate income. We are concerned that Highland, Moray and Argyll and Bute councils are not mentioned in the report. All the local authorities with Crown Estate assets in their areas should be provided with the opportunity to manage them. Highland Council believes that that is well aligned with other policy directions at present, particularly through the commission for strengthening local democracy and the Community Empowerment (Scotland) Bill. It is really important to support fragile communities and to drive social cohesion

by giving them both the powers and the responsibilities that derive from Crown Estate revenues.

The Convener: Thank you. You have all laid out your pitch pretty well. We will try to get into the nitty-gritty of the subject, although it is quite a big panel. We must try to be as succinct as possible both in questions and answers.

Tavish Scott (Shetland Islands) (LD): Thanks, convener. I wonder whether Mr Barron can clarify Highland Council's ability to take on the new responsibilities. We have heard from one panellist that there is a question whether there is a conflict of interest, and that kind of thing. Mr Campbell addressed that point. Will you give your council's perspective on the various issues that Mr Speirs raised in his opening statement?

Steve Barron: Highland Council is well able to take on the responsibilities and has in-house expertise. We are already working with harbours and we are dealing with marine planning and aquaculture issues perfectly professionally. Taking on the new powers and responsibilities would enhance rather than add to what we do.

Tavish Scott: You do not regard the issue that has been raised as a show-stopper.

Steve Barron: No. I believe that the connection to local communities and the local democratic link with those actions would make things stronger.

Tavish Scott: The Smith agreement mentions island councils or any other local authority area that has marine areas

"or other areas who seek such responsibilities".

Obviously by definition, Highland Council would seek those, but are you aware of whether Argyll and Bute Council wishes devolution of the management and revenues of those areas to it?

09:15

Steve Barron: Informal discussions lead me to believe that Argyll and Bute Council is in a similar position and holds similar views, but I cannot speak for Argyll and Bute Council.

Tavish Scott: Indeed; that is fair.

Mr Campbell made the pitch that I expected him to make; I am pretty familiar with it. I just want to be very clear. You are talking about management and revenue, are you not? You are not just talking about revenue.

Angus Campbell: I am talking about management and revenue. Recycling of that revenue back into the island communities could be the step change in their economies for the future.

Tavish Scott: Can I ask one more question, Mr Crawford?

The Convener: Yes.

Tavish Scott: Mr Speirs made a reasoned argument. I understand, because I was around in 1999 and I well remember all the arguments about the aquaculture industry. I presume that you accept that, particularly in Orkney and Shetland, we have marine spatial planning and have been doing it for a long time. The issues can be resolved. I appreciate that, because of where your business is based, you might be talking about another part of Scotland, but I hope that you accept that. There is an onus on us to resolve the problems but they are not insurmountable. Do you accept that?

Walter Speirs: Putting revenues to one side, the issue is about ownership. There is no argument with revenues. To my recollection, the councils fought hard using the argument that the Crown Estate should not be both regulator and beneficiary. If ownership—if we want to call it that—is given to the councils, they will be in exactly the position that they fought so much against back in 1999. That is history.

The revenue side is correct. I have just one point to make about revenue. The current coastal communities fund is deemed to be private money and is extremely valuable to local projects because it is not public money and does not come under state aid. I am not sure how the flow of money to the coastal communities would continue, given that it might be managed differently.

Tavish Scott: That is a fair point. Thank you.

The Convener: Tavish, thank you for asking your questions so succinctly. I also thank the witnesses for their succinct answers. Let us see whether we can keep that going.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): Convener, there are five points here: regulating what the Crown Estate is in charge of, licensing, planning, revenue raising and revenue spending. What I have heard so far is that the councils want the planning, the revenue raising and the revenue spending.

We have in the Crown Estate the skills in laying out many of the projects that are beginning to show some revenue. How do the witnesses see those skills being deployed? Would that be done centrally, in Marine Scotland or the Government, for example, or would some of those powers and people come to local authorities?

The Convener: Does Angus Campbell want to have a kick at that one?

Angus Campbell: It is very clear to us that the work that the Crown Estate does on the ground

could easily be taken into local authorities. We have the ability to do such things already, so it would be an expansion of that.

A strategic element is involved: we should remember that when we deal with planning issues, for instance, we do so within the context of a national framework, and there is still a strategic reason for the Scottish Government to set a national framework. We are well used to feeding into that system—we take it on board and work through it. For example, on the 50MW split for renewables, there is a level of decision making and tone setting from the Scottish Government, and then we work to that. That gives us the opportunity to feed in local priorities and the economic benefits for our area.

It might not always be the local authority that benefits directly from all those things. There are other levels where they can be taken closer to communities. We have examples of that already and that is how we envisage that it will happen.

Dan Finch: One of our concerns relates to the degree of commercial awareness that the Crown Estate has, and its ability to support some extremely large projects, make commercial decisions and be flexible.

I will give an example. During a major project on the east coast, off Angus, the company that I worked for at the time—a small Scottish developer—got into some difficulty with regard to our major European partner, and the Crown Estate was able to work as a partner along with that development in order to support it with funds and practical support from staff until a new buyer came into that process. That enabled the project to survive and continue, and that project has gone on to be consented—there was the commercial nous and ability to do that.

We completely understand local communities' wishes and requirements, as expressed through their councils, but we have to be aware of the fact that we are competing on a national, if not international, basis with other projects, so the involvement of the Scottish Government in particular is absolutely crucial. The projects that we are talking about require investment of billions of euros. If there are other hurdles to clear, they will make it less and less likely that we will be able to get through and develop projects.

One of the benefits of our being in Scotland is the fact that the consenting process is controlled here. We have recognised that and have worked alongside Marine Scotland and the Scottish Government to develop projects. It has not been easy, I can tell you. One of the downsides of the proposal is the fact that energy policy and control of contracts for difference—CFDs, as they are known—still remain with the UK Government. To

have another layer or another authority that we would be answerable to and potentially have conflicts with in relation to competing projects in the UK and Europe would make things much more complicated for us.

Rob Gibson: I understand that only a quarter of consented offshore wind has contract for difference support. If the Crown estate is devolved, unless there is some relationship with the energy policy that provides the certainty for offshore wind developments, communities could miss out hugely on the revenues that could flow. Indeed, given the higher transmission charges, the UK Government might well not grant contracts for difference in relation to energy policy in our area.

Dan Finch: That is absolutely the case. We are in a process in which we have to spend tens of millions to get through a consenting regime with no certainty whatsoever, even once consent has been gained, that the projects will then be buildable. I can assure the committee that, in the recent CFD round, the projects in Scotland were as economic as others, if not more so. Our project, in particular, was highly competitive and close to the winning bids. What we lack is certainty around the CFD process.

My company operates in 13 or 14 countries around the world. We are used to auction processes and to strong competition—we have no problem with that whatsoever. However, we need strong Government regulation and control of the consenting policy, and there has to be a cohesive policy and delivery group. Having different policy groups and delivery groups, with one Government responsible for one thing and one for another, along with local autonomy with regard to a third stream, makes the situation extremely complicated and means that it is almost impossible to get the projects through.

We have an absolutely fantastic resource in Scotland, but business and the public sector are in danger of getting through a huge amount of expenditure—the Scottish Government has put a lot of effort, time and money into this—without delivering the projects.

The Convener: A lot of people want to ask questions. I would like us to rattle through the issue as fast as possible, or else we will not get to the wide range of other issues.

Duncan McNeil (Greenock and Inverclyde) (Lab): I have found the session very interesting already because of the divergence of views about how we should proceed. A couple of references have been made to the Scottish Government in that regard. I think that there is a contradiction between what Angus Campbell believes the Scottish Government's offer is to the islands—some of them are named specifically—and the

need to have a national focus on the development of the assets.

Do the witnesses have any certainty at this point that the discussions that the Scottish Government and its officials are having with the UK Government are shaping the Smith commission's recommendations into a bill that takes account of your views? Have you had discussions with ministers or officials in which you have been assured about what you believe the Scottish Government's objective is? Have ministers and officials been working alongside you in that respect? If you have had discussions with them, what assurances have you had that they are proceeding on a line that would support your views?

The Convener: Angus Campbell is probably the person to pick that up, because I know that he is involved in the interisland group.

Angus Campbell: The island areas ministerial working group met recently with the new minister for the islands, which we very much welcomed. We challenged the minister on exactly the point that Duncan McNeil has just raised. We have had an assurance that we will now start a piece of work in which we will shape the legislation to deliver what we are seeking. It is very much the expectation of the islands, our future campaign that that will happen.

Duncan McNeil: I have a quick supplementary question. Were you reassured by that discussion that all revenues and assets would devolve to the islands or local government?

Angus Campbell: Being a sceptic, I will wait to see. I will be reassured when I see it in black and white. However, the work that we have done in the ministerial working group has been followed through 100 per cent up to now, so I am very optimistic that that will continue.

Lewis Macdonald (North East Scotland) (Lab): Coming back to some of the energy issues, I hear what Dan Finch says about energy policy, but he will appreciate that the Smith commission did not recommend the devolution of control over energy policy. Given that context and the clauses that are in front of us in relation to the Crown Estate, what would be the optimum way to take matters forward to support renewable energy? We have had discussion around further devolution to local government and around expertise in the Crown Estate in terms of management of the sea bed and the importance of simplicity. Does the arrangement that is set out in the clauses that are before us offer the right way forward for developers to be able to deal effectively with the Crown Estate or its replacements? The question is not only for Dan Finch but for Angus Campbell and perhaps other witnesses.

Dan Finch: In answering that, I will probably reiterate some of what I have already said. I welcome some of the skills that the Crown Estate has demonstrated and its ability to act as more of a commercial-facing organisation, if you like, than I would normally expect from local authorities. I understand what has been said this morning about local authorities having a commercial bent and being able to operate in that way. The Crown Estate's ability to use funds in a particular way has been one of the benefits that it has demonstrated.

I assure the committee that I am not here to talk up the Crown Estate, but it has spent in the region of £100 million in supporting the development of the offshore wind industry. It has diverted those moneys from its revenues or budget, and it has had the ability to invest in technology development, environmental management and a range of research work on how to drive down the cost of energy in the wind sector. It has not done that because it feels that it is a charity or should support us as developers; it has done that because it is trying to support a long-term revenue stream for the UK. It is investing a lot of money in that; in anybody's book, £100 million is a reasonable amount of money. It may be very difficult for individual local authorities to bring such sums together, so there needs to be an element of central management.

Whatever decision you make, the Crown Estate must try to deliver Government policy. In theory, that is what it has been doing so far. That is a crucial factor for us.

Lewis Macdonald: Are you saying that, from your perspective—Angus Campbell might have a different view—a united Crown Estate would be easier to deal with?

Dan Finch: You are trying to put words into my mouth.

Lewis Macdonald: No, I am not; I am trying to draw out your view without favouring the question one way or another.

Dan Finch: I suggest that there should be a common arm, or body, on behalf of the Scottish Government—let us not give it a name—that represents what you want to be delivered in Scotland.

The Convener: I expect that Angus Campbell will have a different perspective on that; I have to move on to other questions, but I will let him respond afterwards.

09:30

Alex Johnstone (North East Scotland) (Con): I am going back to the same subject, so we are okay.

Two witnesses have talked about having a positive experience of the Crown Estate, and we have two witnesses who want to take over the Crown Estate's functions. From what I am hearing, and having spoken to others with an interest in the sea bed and the North Sea, for example, there is a fear of fragmentation, dispersal of expertise, competition for investment and an environment in which there are policy differences between local authorities that could make it difficult to achieve results across boundaries. What can the witnesses say that would allow me to allay those fears?

The Convener: Angus Campbell and Steve Barron are up.

Angus Campbell: I think that I am hearing that the Scottish Government does not have the ability to do what the Crown Estate does in setting the agenda and strategic direction. As Alex Johnstone was speaking, I was thinking that we have seen Pelamis go out of business in the past few months and the Scottish Government has come in and created a body to take that work forward. The biggest barrier to us in renewables has been the fact that the really weird system of consents that has prevented the islands from prospering sits with Westminster.

We have seen policy being led by the Scottish Government and we have worked alongside it. I do not see why there is a fear that that part of the work cannot be done in Scotland. I find that really strange.

Alex Johnstone: Perhaps it can be done within Scotland, but are you suggesting that, as far as the Western Isles is concerned, it should be done within the Western Isles?

Angus Campbell: As I have said before, at the highest strategic level, there is a layer that belongs with the Scottish Government, just as ownership can sit with the Scottish Government. We can go to a level in the islands where developments can be worked through. We have a track record of doing that; for example, in Lewis a 650MW project has gone through the planning process very quickly. If you speak to developers in our area, you will hear them say that all the islands are very reactive to developers' needs. Shetland is seeing some of the biggest oil field extensions anywhere, and those are massive responsibilities for a local authority. However, authorities take those responsibilities on and manage them well.

The Convener: Does Steve Barron agree with that, or does he want to add something?

Steve Barron: I want to add something.

The Convener: Please make it as succinct as you can.

Steve Barron: I agree with all Angus Campbell's points. The blend of expertise and input from national and local government is essential to the future.

At the moment, there is a disconnect between the national interest, commercial interests and local interests. I can give a short example of that. During the recent extremely bad weather in the Highlands, the communities that had suffered the greatest impact from renewables were those that were the last to be reconnected to the grid. We had the shameful situation in which small communities around Loch Ness, which are surrounded by wind farms and the impact of that technology and which have been beleaguered by commercial interests, were without power for seven days.

We need to reconnect local communities to the impact, responsibilities and benefits of decisions that are made. I am not saying that decisions need to be made by small communities; I am saying that they need to have a much greater say in how those decisions are made.

The Convener: Okay. Andy Wightman can reflect on that before we move on to a different subject.

Andy Wightman: I emphasise that the Smith commission and the command paper are not about how the governance of Crown property rights in Scotland is decentralised after devolution—that is a matter for the Scottish Parliament to consider. The Parliament should start to consider the issue now, but it is a subject for formal consideration after devolution. That is partly why I am a bit concerned about the way in which the proposed devolution is to take place and about the scheme, which seems to me to have the potential to pre-empt what the Parliament might decide to do instead of being a fairly straightforward devolution issue.

There is a further complication in that there is a proposal that the Crown Estate Commissioners should continue to have an involvement in Scotland after the rights over which they currently have responsibility are devolved. That seems to me to be both improper and politically very complex.

The Convener: Okay. I think that we will get a bit further into that issue with Mark McDonald's questions. Tavish Scott has a supplementary question.

Tavish Scott: I note in passing that the Smith agreement was very clear about the devolution of powers within Scotland to the island areas.

Mr Finch made a perfectly reasonable point about his industry's concerns. It would be helpful to the committee if he or his industry quantified in

writing the business costs that it is believed would arise as a result of any additional tier of policy.

I highlight that Total is building a £2.5 billion gas terminal in Shetland and it does not have those concerns. It has been able to deal with the United Kingdom Government, the Scottish Government, Marine Scotland and all the other regulatory bodies, including Shetland Islands Council's planning department, without such concerns.

If the costs can be quantified, that is fair enough, but if they cannot be, a lot of what is being said is, frankly, simply assertion.

Dan Finch: We would very much welcome putting written evidence to the committee. I stress that we have had fantastic co-operation from and have worked well with all the local stakeholders, particularly Moray Council and Highland Council, in the projects on which we have worked. The assistance that we have received is absolutely first rate.

I am trying to say that oil and gas are different, as they are completely controlled. There is a completely cohesive oil and gas strategy throughout the UK. A lot of the offshore activity is consented through the Department of Energy and Climate Change, for example. Oil and gas are therefore completely and utterly a different case. They are dealt with in a completely different way.

I stress that it is all very well going through the development processes and spending tens of millions of pounds, but if projects are not built, nobody will benefit whatsoever. The local authorities are spending a lot of time on and putting a lot of effort into trying to get what is needed, as are the local communities, such as Fraserburgh, Buckie and Wick. All the local harbours that will benefit from such projects are doing that. However, we can spend as much time and effort as we like, but nobody will benefit if we do not have a joined-up process. My company and the industry will not benefit, and there will be no jobs. Therefore, we need to get projects through, and they are so large that that is a tough challenge.

The Convener: Thank you very much, gentlemen. We will now move to the slightly different area of transition issues. We will get a bit more into those issues and get things on the record. Would Mark McDonald like to kick off on them?

Mark McDonald (Aberdeen Donside) (SNP): Yes. Certainly Andy Wightman has gone into some depth on his views on the transfer scheme. There is explicit reference to the UK Treasury in the proposed scheme. Given that the Treasury has had involvement in the governance of the Crown estate, is it still appropriate for it to be specifically referenced in the draft clauses?

Andy Wightman: I do not think so. I cannot think of another area of devolved responsibility in which some kind of residual responsibility has been left with institutions in London. If, for example, you are going to devolve the management of Crown property rights, that is what you do; you do not then say that the Crown Estate Commissioners can continue to build up a new Crown estate in Scotland, because that would bring all sorts of consequential issues, such as whether they would continue to have a Crown Estate commissioner with special responsibility for Scotland and whether they would report to this committee. Equally, I do not see what role the Treasury has to play. It should be a straightforward matter of devolution to the Scottish Parliament, and the Scottish Parliament should then decide how it wants to decentralise the assets beyond Edinburgh.

Mark McDonald: Do any of the other witnesses have anything to offer on that specific question?

Dan Finch: I apologise: I think that I have already said what I am about to say, but in another way. Both the Treasury and DECC retain control of the processes by which projects go ahead or do not go ahead. I understand what Mr McDonald said about that not being part of the devolved powers in this case at this time, but I urge that we keep that involvement—I am trying to avoid the word “interference”—to a minimum so that the Scottish Government can deliver what it wants to deliver.

Mark McDonald: The command paper refers to an intention

“to transfer to the Scottish Parliament competence to legislate about the management of the Scottish assets before the transfer scheme.”

However, there is not a great amount of detail about that. Does anyone on the panel have an idea of the reason for that? What might that earlier competence—before the transfer scheme comes into effect—be used for?

Andy Wightman: I am unclear about why that transfer is being proposed. All that we are talking about devolving is the Crown’s property rights and interests. If they are devolved, you have to be in a position to handle the on-going administration and contracts that have already been entered into over pipelines, renewable energy, farm tenancies and all sorts of stuff. There has to be a transition period when the administration of those rights is sorted out here, before the power takes effect. That is not a problem.

However, I am concerned that the matter is being talked about in rather opaque terms at paragraph 5.5.11 in the command paper, because there is some suggestion that the powers will not be transferred until the Parliament has developed

a scheme of decentralisation. That is not necessary to implement the Smith commission recommendations.

We need to ensure that the Scottish ministers will inherit all the duties and functions of the Crown Estate Commissioners immediately, but it is up to Parliament how then to decentralise those functions to local authorities and how to have a scheme to give ports and harbours the right to take ownership of the sea bed and so on. That is a consequential matter.

The committee should assiduously question the Government and other witnesses about what the intent is. I detect the hand of the Crown Estate Commissioners in the framing of the provisions, including the proposal that they should continue to be involved. That is a recipe for chaos.

Mark McDonald: Perhaps in different terms, do you think that what is being suggested—this is what you seem to imply—is putting the cart before the horse? Would the transfer require preparation for the powers before they come and before the detail of what exactly the scheme delivers is known? Would that be difficult to put together?

Andy Wightman: Paragraphs 5.5.8 and 5.5.11 of the command paper contradict each other, so it is difficult to interpret what is meant. I see no need for a scheme. There are issues to sort out regarding defence, national security, on-going commitments, liabilities and all the rest of it. Those are administrative things, which can be addressed in secondary legislation, a memorandum of understanding or whatever is appropriate. However, it is proposed to have them in the bill, whereas all that the bill needs to include is a few legislative amendments, such as the authority to transfer things to the Scottish Parliament.

You are right that a transition is needed. The Scottish ministers need to be ready to take on the responsibilities before the devolution takes effect. However, that process should not be used to preempt what the Parliament might wish to do with the powers.

Mark McDonald: We have just had a section 30 order on votes at the ages of 16 and 17, which was—rightly—done on a fast-track timescale. Could the amendments and alterations that you suggest be done outwith the scope of a single bill and according to a quicker timescale than is envisaged for delivering the Smith proposals?

Andy Wightman: No. The legislative clauses that I included in my written evidence would be in the Scotland bill. However, there might be a case for a section 30 order to grant the Scottish Parliament the power to legislate at an early stage on the administration and management of Crown property rights, so that it can begin the detailed consideration of decentralisation, for example. The

Parliament could discuss that anyway, although it would be outwith its legislative competence. That would be an interesting and possibly useful thing to do.

The Convener: You two have just had an interesting conversation, and I will pick out other views before moving on to supplementary questions. Do any other witnesses wish to reflect on that evidence?

Walter Speirs: On the transition, the last thing that the industry or Crown Estate tenants in the aquaculture sector need is a long, protracted and drawn-out process that does not allow business as usual to carry on. It is important that, whichever decision is made, business as usual for existing tenants and industries is somehow or other allowed to carry on without interruption and uncertainty.

09:45

The Convener: I see Angus Campbell nodding away. Does he want to say something on the record?

Angus Campbell: I agree that it is important that we take a simple approach and do this in such a way that everybody understands what is happening and economic activity is not damaged. We are not looking at another layer; we are looking at moving responsibilities from one place to the other.

The Convener: Does Dan Finch want to come in quickly?

Dan Finch: I echo that. The process should be as simple and timeous as possible. Time moves on. We hope that the next bidding round for the UK CFDs will take place at the end of the summer—that depends on the upcoming election. If the approach is not simple, we will not qualify. If there is any doubt about it, Scottish projects will be disadvantaged again.

The Convener: I will take a few supplementaries now.

Alison Johnstone (Lothian) (Green): My question is to Andy Wightman. You spoke about confusion, conflict and chaos and pointed out that, after the transfer, the Crown Estate will still be able to invest in Scotland. Although there will in effect no longer be a Crown estate, the Crown Estate Commissioners will still be able to acquire land and property, which they would administer and manage. What are your specific concerns about that? Why do you think that it is being allowed to continue?

Andy Wightman: I do not know. There are two broad concerns: one is political and one is legal. I do not understand why, in the same breath, one

would devolve the administration and management, yet a new Crown estate would arise, phoenix-like, from the ashes of the scheme to continue to be administered and managed exactly as it is now.

The important thing to remember is that any property that the Crown Estate Commissioners acquire is not theirs—they own no land. It is all acquired in the name of a third party—the Crown. Any property that they acquire in Scotland is owned by the Crown in Scotland.

That leads me to my next point, which is that the Crown in Scotland is a separate legal entity from the Crown in the rest of the UK—the Treasury Committee's inquiry made that clear. The Scottish Parliament has authority over Crown property rights, for example. The Crown Estate Commissioners could find themselves acquiring land in Scotland and the Scottish Parliament might nationalise those rights.

I just do not understand why responsibility for transport, health and education would be devolved but an organisation outside Scotland would have residual responsibility for continuing to have involvement.

Alison Johnstone: That is fairly clear.

I want to ask about a specific property and onshore interest that seems to have been retained: Fort Kinnaird, which is a property in my region that is held in a limited partnership, half owned by the Crown Estate and half owned by a Jersey-based unit trust. It has been excluded from the proposed transfer. Why might that be the case? You might not know the property—it is like a mega shopping mall on the outskirts of the city. It is probably very profitable. What are your views on that retention?

Andy Wightman: I do not know what to say other than that the position is not straightforward. There might be legal reasons why it is not straightforward to devolve that joint property partnership—I do not know.

Alison Johnstone: Convener, can I ask one more, very short, question?

The Convener: A very short one.

Alison Johnstone: You have suggested a different legislative approach—that sections should be repealed that in effect reserve the Crown Estate. Why do you think we have been presented with an entirely different approach from the one that you advocate?

Andy Wightman: I do not know.

Lewis Macdonald: I am keen to pursue that point, because Andy Wightman said in his introduction that the clauses do not implement Smith. I fail to see the basis for that. What you

have put forward is an alternative way of implementing the agreement. Do you accept that that is fair comment, that there are two different ways of doing this and that the scheme adequately implements the commitments, even if not in the way that you might choose?

Andy Wightman: The problem with the scheme is that it opens up the potential to frustrate Smith's intentions.

Lewis Macdonald: Why is that true?

Andy Wightman: Because the scheme is open to substantial negotiation. It has to be agreed between the Treasury and Scottish ministers, but the straightforward case for devolution would be addressed by a few simple legislative amendments. The public would understand that.

Lewis Macdonald: Is the essence of Smith not the negotiation of devolution from one Government to another?

Andy Wightman: I do not think so. Paragraph 32 of the Smith report makes it clear that the commission wanted to devolve the administration and management of the Crown estate, and any competent legislative process should do that as simply, straightforwardly and transparently as possible.

Lord Smith made it clear at the Scottish Affairs Committee that

"The job we were given was to devolve to Holyrood."

That is the job; it is not to pre-empt anything else that the Scottish Parliament might subsequently do. I fear that the scheme opens up scope for negotiations to take place and complexities to be introduced that in effect tie the Parliament's hands.

Lewis Macdonald: I see five specific points in the proposal in your submission, and then I read:

"There may be a few more consequential amendments".

Is that an acknowledgement that, however this is done, there will have to be a scheme of adjustment in the legislative provisions?

Andy Wightman: The consequential amendments would be to other little acts that refer to the Crown Estate Commissioners. There are such acts all over the place—ports acts and so on—and that is a normal part of legislation. I was not going to trawl through them all.

Lewis Macdonald: I understand that, and I am not asking you to do that, but I presume that Government lawyers will do that when they provide a scheme.

Andy Wightman: But why should there be a scheme? I cannot think of any other process of devolution for which we have invented a scheme to devolve a straightforward matter like the

administration and management of Crown property rights. I simply do not understand why we need that complicated scheme.

Lewis Macdonald: Just a few moments ago, you said that you were concerned about the scheme because it might delay the devolution of authority over the Crown estate until the Scottish Parliament had taken steps to devolve further to local authorities. I think that that fairly summarises what you said.

Andy Wightman: I am not concerned that the scheme would delay devolution; I am concerned that it would pre-empt it by binding the Parliament's hands and making it difficult for Parliament to act of its own free will on what it does with the rights from session to session, because they would already be tied up in statute in the scheme.

Lewis Macdonald: When you talk about what Parliament does with those rights, do you mean devolving them further to local government?

Andy Wightman: I mean decentralising.

Lewis Macdonald: Is that not precisely what Smith talked about?

Andy Wightman: It is quite important to understand what Smith said. In paragraph 33 of the report, Smith said that there will be further devolution, but the command paper should not take any detailed interest in that, because the political parties have signed up to that. In fact, as I pointed out, Lord Smith said:

"The job we were given was to devolve to Holyrood."

In response to question 140 at the Scottish Affairs Committee in December 2014, he said:

"All five—every word that is in here was signed up to by the political parties,"

and he made it clear that when the political parties said "will be", that was an intention.

Lewis Macdonald: Do you accept that the purpose of the clauses is to implement Smith and that Smith wants to devolve to local government?

Andy Wightman: I do not accept that. Lord Smith said:

"The job we were given was to devolve to Holyrood."

Lewis Macdonald: No, the Smith agreement refers to decentralisation to authorities such as the island authorities.

Andy Wightman: Yes, but those arrangements come after devolution to the Parliament. It is a two-stage process.

Lewis Macdonald: We are talking about the proposals for implementing Smith. That is my only point, convener.

The Convener: That is all on the record. We will hear from Stuart McMillan next—unless Linda Fabiani has any questions on this point.

Linda Fabiani (East Kilbride) (SNP): My question is not on this subject, convener; it raises a general issue.

The Convener: I will come back to you later.

Stuart McMillan (West Scotland) (SNP): I have a brief supplementary about the transitional period in relation to devolving to Scotland powers relating to the Crown estate. Could it be argued that a precedent for that was set in what happened when Scottish Canals came into being and British Waterways ceased to have any dealings with canal infrastructure, assets and liabilities in Scotland?

Andy Wightman: The British Waterways Board (Transfer of Functions) Order 2012 provided for a transfer of functions of a cross-border authority, of which there are 30 or 40. The key difference between that and the arrangement under discussion is that canals were already devolved in 1998; what was being devolved in the 2012 order was a cross-border authority's functions.

In the case of the Crown Estate Commissioners, we have a UK-wide body that administers Crown land in Scotland, which is Scottish public land. The management and administration of that land was not devolved in 1998; it was reserved. We are therefore considering a full scheme of devolution, not simply the splitting up of a cross-border authority.

Stuart McMillan: That was helpful.

The Convener: Stuart, while you are on your feet—or while your microphone is on, at least—could you deal with aquaculture as well? I know that you are interested in that, and it would certainly help us to hear from Walter Speirs on the matter.

Stuart McMillan: The Crown Estate has control of the sea bed out to 12 nautical miles, and fish farming operations require a Crown Estate lease. What will be the challenges and opportunities for the aquaculture industry under the proposed new regime?

Walter Speirs: The Scottish Government supports the expansion of aquaculture, which is an important industry in Scotland. As a Crown Estate tenant, I can say that the Crown Estate is a good landlord. I do not think that the aquaculture industry has any issues in relation to that.

The biggest threat to the aquaculture industry would be a period of uncertainty. If we entered a period when we did not quite know who the landlord or the regulator was, that would have a negative impact.

I do not think that the aquaculture industry has any gripes whatsoever with the current management of the assets in Scotland. That is why the best option is to leave the existing structure for managing those assets in place, with the assets being managed on the Scottish Government's behalf instead of the Westminster-based Crown Estate's behalf.

Stuart McMillan: As well as aquaculture, there is the marine tourism situation to consider. This afternoon, the first national marine tourism strategy will be launched in Glasgow. Do you see any potential conflict of interest for local authorities in granting planning permission and letting leases for fish farms and for marine tourism activities?

Walter Speirs: Local authorities already control planning consent. They have the power to consent—or not—to aquaculture development. That will not change. Irrespective of what happens with the revenue from those developments, there will be no change to the power that local authorities have to approve or reject an aquaculture development.

Stuart McMillan: We heard earlier this morning that there is an issue in being the regulator and the beneficiary. Do you see a conflict of interest if the powers are further devolved?

Walter Speirs: There was perceived to be a conflict of interest in 1999, which is why we had the changes then. It is perhaps a perception rather than a reality. However, if someone is the landlord and has the power to consent, there is a perceived conflict of interest. If they granted someone planning permission, that could be to their financial gain. That is a slightly hypothetical argument, but it is the argument that led to the changes in 1999.

The Convener: Without going on too long, do you want to put on the record any particular aquaculture issues?

Walter Speirs: Very quickly, I will go back to the five areas that Mr Gibson highlighted with regard to the Crown Estate. Planning is already under local authorities' control, so that does not need to be changed. Marine Scotland was mentioned, but I say with no disrespect to it that it has its hands full with the marine strategy framework directive and marine legislation, which I think was discussed recently in Parliament. The last thing that we would want is for the workload to be given to a body that is already pretty busy.

Angus Campbell: There are many aquaculture developers in the Western Isles, as aquaculture is a big part of our economy. I think that they would agree that the local authority has been an active partner in the industry's development. We are seeing a change in how that industry works—there is a move from localised, smaller enterprises to bigger ones. It is important that the local benefit

remains and is put back into the system in some way.

I have an issue with the suggestion that there is a problem with local authorities being able to give permission for activities that bring benefit to the area that they represent and with the suggestion that we cannot keep the two things separate. If that concept was applied across the board to all the activities of local government and of the Scottish Government, it would prevent anything from happening. It is not impossible to have an open and fair system.

The Convener: Thank you. Rob Gibson has some questions on land in Highland estates.

Rob Gibson: There is a section on landed estates. Glenlivet estate has 57,000 acres and Fochabers estate has 11,300 acres; there are about 700 leases within those estates. On those landed estates, there seems to be some resistance to the idea of their becoming the responsibility of the local council. Is there a difference between dealing with the offshore issues that we have been talking about and the way in which land might be managed by local authorities?

10:00

Angus Campbell: I do not see a conflict in that. We are in a lucky position in the Western Isles, because 68 per cent of our landmass is already owned by the communities, and that will increase as time goes on. We have a good track record of managing that and one of the important outcomes from it is that the economic activity on that land has improved; it has made a much better economy for people to live and work in. I do not see why that ethos cannot apply to our input on land that is privately owned but may be paying something back to the Crown Estate at the moment.

Rob Gibson: Perhaps the answer for people in Glenlivet and Fochabers is to go for a community buyout. The land would not have to be controlled by a local authority.

Angus Campbell: We have good experience of that, too. We also make it clear that our request for control of assets does not stop at the local authority; there should be ways in which control works its way down into local communities. In the Western Isles, we have the Western Isles Development Trust, which ensures that the benefits of renewables are spread throughout our communities.

Rob Gibson: Andy Wightman wants to come in.

The Convener: Let us hear Steve Barron's perspective from the Highlands as well, and then we will come to Andy Wightman.

Steve Barron: Again, I agree with Angus Campbell. The issue is how we support fragile communities and allow communities to be close to decision making, which enhances social cohesion. The Community Empowerment (Scotland) Bill takes us in that direction and gives us all the means that we need to allow decisions to be made in the best interests of local communities.

The Convener: Andy, do you want to reflect on some of that?

Andy Wightman: I confirm that, of course, the landlord would not change under the scheme, but would remain the Crown. We are talking about who administers the property rights, which is a discussion that should be had; we need to discuss how property rights in the landed estates are administered. That conversation should begin now and the matter should be discussed in Parliament. However, it is a legislative decision that should be made after the powers are devolved.

The Convener: I am unclear about something; perhaps you folk can help me. If you cannot help me, I will ask the witnesses from the Crown Estate later. Three different zones are mentioned in the proposals as far as the sea bed is concerned: the exclusive economic zone, the Scottish zone and the Scottish maritime zone. The phrase "the Scottish zone" is certainly used in the draft clauses. Can anyone explain to me what those different zones are? Are the clauses clear enough to ensure that we all understand exactly what we are talking about?

Andy Wightman: I do not recall which clauses in the command paper relate to zones. Do you have numbers?

The Convener: Draft clause 23 refers to "the Scottish zone" but does not mention the exclusive economic zone, so I am not sure what "the Scottish zone" is.

Andy Wightman: Okay. It is proposed that the property rights and interests that are held by the Crown be devolved. In relation to the sea, those rights and interests fall into two distinct categories: the territorial waters out to 12 miles, which are legally part of Scotland, and the zone out beyond that out to 200 miles, which is the UK continental shelf—the exclusive economic zone—over which the Crown has certain property rights. There are really only two zones. We could add the foreshore, of course, but that is not really the sea.

The Convener: Are you saying that we need clarification of what "the Scottish zone" means? I think that it is something new that has been put into the clauses.

Andy Wightman: I repeat that the best description of the Crown property rights in

Scotland is in figure 9 of the land reform review group's report. One is:

"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".

The second is:

"Rights over the continental shelf"—

that is 12 to 200 nautical miles—

"to minerals (excluding hydrocarbons) and sedentary species from Scotland's territorial seas to 200 nautical mile limit".

Those are the rights.

Dan Finch: I cannot add anything to that.

The Convener: The Crown Estate will have to answer the question, in that case.

Angus, if you are some sort of expert, you can tell us about this.

Angus Campbell: No—I am not an expert and do not have those skills. In all our discussions, the three areas that we talked about were the foreshore, the area out to the 12-mile limit and further out—the continental shelf.

The Convener: I understand that, but the description "the Scottish zone" has been introduced and I had not previously heard of it.

Andy Wightman: There is a question that the committee might wish to address, which is what happens with the area off Berwick that was subject to the Scottish Adjacent Waters Boundaries Order 1999. That is not clear to me in relation to the Crown property rights.

Tavish Scott: The Government nearly fell over that issue, as Linda Fabiani might remember.

Dan Finch: There are some anomalies in treatment and in how the Crown has reacted to developers, depending on whether a project is within the 12-mile limit or outside it. For example, we have different AFLs—agreements for lease—and so on. We would certainly welcome clarification. Because our projects are outwith the 12-mile limit, we pay a different lease premium, which means that for some unknown reason we are constrained competitively compared with projects that are within the 12-mile limit.

The Convener: That is quite interesting. Could you write to us to explain that a bit more? If there are constraints that we can sort out as part of this process and that is the sustainable thing to do, we need to consider that.

Dan Finch: I certainly will.

Linda Fabiani: There is a general issue that I would like the witnesses to comment on. Everyone here knows that the issues that we are discussing

have been talked about for years at Westminster and at Holyrood—for example, by the Scotland Bill Committee. I think that Tavish Scott would agree that we recognised that when we were on the Smith commission, and that we wanted to get the proposals on the Crown Estate right in the initial stages so that they would be right further down the line.

I know that aspirations have built up over the years among people such as the panellists with regard to what they feel could be achieved. Did the Smith agreement meet some of those aspirations? Do you feel that the draft clauses could meet them?

Walter Speirs: As the command paper goes through legal scrutiny, more and more clauses will be added. It will not be a simple process. I reiterate that the key thing will be to leave the customer-facing side of the operation in place while scrutiny happens behind the scenes. That would be of tremendous benefit to people who are tenants and who depend on a working relationship with the Crown Estate.

Dan Finch: EDP Renewables believes that it is up to the Scottish people, not us, to determine what they want. They have spoken about what they want and members are representing them.

We would like to be able to compete and to develop the resources that exist here, which we think are fantastic. We realise that it will not be possible to make things completely simple—the process is bound to be complicated—but we want a level playing field. We will accept whatever the Scottish Government deems to be the right way to proceed, as long as there is a strong and cohesive strategy, as there has always been on energy in Scotland. If the Scottish Government can control as much of that as possible—from the resource to the distribution of power—that will be good for us, as an energy company.

Andy Wightman: The command paper clauses on the Crown Estate open up by saying:

"The Treasury may make a scheme".

To my mind, that is not what the Smith commission that Linda Fabiani served on intended to do; it did not intend to give the Treasury the option of making a scheme. Devolution should happen—it will happen—but that is not what is in the command paper.

Angus Campbell: We do not want an easy solution to be found for the customer-facer at the cost of what our communities have. We are not looking for a short-term fix; we want a system to be put in place that will deliver benefits to our communities for many years. We were pleased that the Smith commission said in paragraph 33 of its report that

“responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland,”

and the Western Isles. That is a significant marker, even if it goes over and above what Smith was charged with doing. As far as outcomes are concerned, we want that to be translated into the legislation that emerges from this process. That is our main point.

On energy generally, the islands would very much back as much control coming back to the Scottish Government as possible, so that we get a simpler system and so that we deliver using some of the fantastic assets that we have.

Steve Barron: That was, indeed, a significant marker. I remind the committee that, although the island authorities were mentioned specifically in the report and there was no mention of the mainland authorities, Moray Council, Highland Council and Argyll and Bute Council also have much to gain.

Linda Fabiani: I think that those councils would be covered by the phrase “or other areas”.

Steve Barron: We hope so.

The Convener: I want to make sure that we are clear on one point. Andy Wightman touched on draft clause 23, which states:

“The Treasury may make a scheme transferring on the transfer date all the existing Scottish functions”.

Do you accept that the clauses are not actually devolving powers over the Crown Estate but are giving the Treasury the power to devolve them? Is that satisfactory? I know Andy Wightman’s view, but I want to hear other people’s.

Dan Finch: You have probably heard my opinion on the matter. It is difficult unless there is one Government controlling the entire delivery of renewables. For example, other structures—

The Convener: My question was more about the process. No one disputes the fact that the clauses try to devolve powers, although perhaps not in the way that everybody would like. The stated process is that the Treasury “may” bring forward a scheme; the clauses themselves do not ensure devolution. I just wondered whether anybody wants to reflect on that specific point.

Angus Campbell: I am sorry, convener, but I have not caught on to that. My understanding is that there will be a process of devolution to the Scottish Government.

The Convener: I will read the sentence again. You might want to reflect on the wording and get back to us on it. Clause 23, which will insert proposed new section 90B of the Scotland Act 1998, states clearly:

“The Treasury may make a scheme transferring on the transfer date all the existing Scottish functions of the Crown Estate Commissioners”.

I want people to be aware of that, as it is an important matter.

Angus Campbell: That is not the spirit of what I thought was intended.

The Convener: That is why I need you to get back to us with your reflections on that point.

I am very grateful for your attendance today. Your evidence has been helpful and has thrown up a lot of issues that we need to consider. I thank you for giving us your time and expertise.

10:12

Meeting suspended.

10:20

On resuming—

The Convener: I welcome our visitors for the second session of evidence taking today, all of whom are from the Crown Estate: Alan Laidlaw, the rural and coastal portfolio manager in Scotland; Gareth Baird, the Crown Estate commissioner for Scotland; Vivienne King, the director of business operations and general counsel; and Ronnie Quinn, the head of ocean energy and energy and infrastructure lead Scotland—that is quite a title, Ronnie.

Gareth will act as a sort of chair for the panel, and will make a short opening statement.

Gareth Baird (Crown Estate): Thank you for giving the Crown Estate the opportunity to provide oral evidence to the committee and for allowing me to make a few opening remarks. I will be brief.

I am one of the Crown Estate Commissioners, which means that I am a member of the main board of the Crown Estate. I am also the Scottish commissioner, appointed to ensure that the board is fully aware of and gives proper consideration to Scottish interests.

I am joined by my colleagues, whom the convener kindly introduced. Alan Laidlaw and Ronnie Quinn form our Scottish leadership team. In her role as general counsel, Vivienne King is leading our work on preparation for Crown Estate devolution.

I would like to place on record my enormous pride in and admiration for the Crown Estate staff in Scotland, who perform great work day in and day out. They are a small team—just 38 people—but the vast knowledge and expertise that they possess means that they punch well above their weight. Whether it is minimising the risks facing

developers in relation to the consenting process for offshore wind, encouraging new entrants to farming, supporting the aquaculture industry or establishing local management agreements, our team has a unique breadth and depth of expertise that has served Scotland well for many years.

I know that the staff will carry those strengths forward into whatever new devolved arrangements are introduced. Indeed, to that end, our team is already working hard to prepare for a smooth and prompt transfer of our Scottish management functions. We will continue to perform strongly up to the handover and beyond, and will do all that we can to minimise uncertainty for our customers, staff and the communities that we work with across Scotland. We are very keen to engage with the Scottish Parliament, Scottish ministers and local government to help to find a pragmatic and workable way of implementing the Scotland Bill provisions relating to the Crown Estate in Scotland.

In closing, I thank you for this opportunity to give evidence to the committee. My colleagues and I will do all that we can to assist you in your deliberations.

The Convener: One thing that I am acutely aware of is that your staff will have issues and concerns about the process that we will go through. I recognise that we have to respect your relationship with them as part of this process.

We had a lot of sectoral questions around the table earlier, but I think that the best thing to do would be to get the issues to do with the devolution arrangements and transition on the record at the beginning, because that is a big issue for the Crown Estate, obviously. After that, we can get into other areas of interest.

Mark McDonald led on that issue earlier, so he can kick off.

Mark McDonald: What role have you had in the discussions around the development and drafting of the clause, and with whom has that involvement been?

Gareth Baird: Just before we kick off on that, I want to mention the positive attitude that the Crown Estate team has taken. The team initiated discussions with Scottish Government teams four days after the announcement of the Smith recommendations.

To give you the detail of that, I will pass you over to Vivienne King.

Vivienne King (Crown Estate): Our involvement has been in informing and providing technical input, because we have the in-depth knowledge and understanding of our portfolio and business. It has been for us to ensure that the Treasury, with which we have been liaising, is

adequately informed to be able to perform the role of Government. We have provided a range of information about the business, such as definitions of the business and information on the Scottish zone, which we have mentioned. That includes information on where our sea bed has an interacting focus with other sectors and bodies such as DECC and the Ministry of Defence. We have been providing that level of information.

It is a complex business and it should not be misunderstood. As a consequence of our knowledge, we can inform the process, just as we are informing the committee today and, indeed, as we have already started to inform Scottish Government officials. We have been talking to my counterpart among Scottish Government officials, Graeme Dickson, as well as Linda Rosborough, David Mallon and others about the issue.

Mark McDonald: In his evidence earlier, which you heard, Andy Wightman told us that there is a much less convoluted method of devolution of the functions of the Crown Estate than what is proposed in the command paper. Do you have a view on the method that he has highlighted? Would you be relaxed with that if it was suggested as an alternative way to devolve the functions?

Vivienne King: I listened to that evidence and I read the written submission to the committee. I am not persuaded that Mr Wightman's proposal would be faster or simpler. It has a real risk of leaving trailing wires. We are looking for absolute clarity on the transfer of the management functions of the Crown Estate so that, from day 1 after transfer, the business, which we have been running successfully, can continue running to that standard and customers understand exactly where they stand with us.

The proposal would not actually implement the transfer, as that is something that would follow, and it does not deal with the enormous amount of detail that is involved in transferring a business such as ours. There is a lot more to it than administration, as my portfolio colleagues can explain to you. Also, the proposal does not deal with the recognised stakeholders in DECC and the MOD. Therefore, I am not convinced that that is the best route. My firm belief is that a statutory transfer scheme is the ideal vehicle. Of course, the matter is being led by the Treasury, but I am supportive of its approach.

In fact, if I were to take off my Crown Estate hat, and were to advise you on the best way of ensuring that this complex business is transferred in the smoothest and most efficient and comprehensive way, I would say that we should get it all done and dealt with up front so that everybody knows what is being transferred. A statutory transfer scheme is a commonly used form of secondary legislation to implement an

outline that is identified in primary legislation where there is just too much detail to be included in that primary legislation. That absolutely fits the model of our business, which is very complex.

The beauty of a statutory transfer scheme is that it will implement the transfer in one step, it will capture all the detail around the business in one place and it is transparent. It will call for input from us, the Scottish Government and other stakeholders, so everybody will have a chance to input to it, and it minimises the uncertainty. It is also a very public process and customers will be clear before the transfer happens about where they will be after it. Essentially, it gets all our ducks in a row before we make the transfer happen.

10:30

Mark McDonald: I appreciate that. You have talked several times about getting the transfer done and dusted but, as things are drafted, even after the transfer of powers and of the administration and management, there will still be potential that the Crown Estate will continue to invest, build up a portfolio and have a role in Scotland. Do you believe that that is appropriate?

Vivienne King: It has been suggested that that is unworkable, but I am not sure why. I do not think that it would create confusion, and there are other Crown bodies in Scotland where we are not managers and we are not involved. We are a successful business and we are consistently beating our market benchmarks. We would simply be one investor alongside others that wish to include Scotland as a place to invest.

The Convener: In effect, that is where we left off in the previous area of discussion, with draft clause 23, which inserts section 90B into the Scotland Act 1998. Would it not also be possible to draw up legislation that said that the Crown Estate function will be devolved from a certain date in the future, and in the meantime a transfer scheme and memorandum of understanding could be drawn up just as adequately as in the clause?

Vivienne King: The transfer scheme will enable everything to be handled in one place and will implement the transfer of management to the Scottish Government. It is a case of organising everything sufficiently up front and then using that as the simple step to implement the transfer.

The Convener: I understand that. I think that everyone accepts that there needs to be an adequate transfer scheme that deals with the complexity and the deep nature of your organisation. However, that could be done at any time after the power is devolved at a given date in the future, with the transfer scheme arrangement being brought into place at the same time.

Vivienne King: But that would create uncertainty for our markets, our customers and our staff, who would not have clarity on precisely where the transfer was going to, and it would not—

The Convener: If a future date were set for when the transfer was going to take place, there would be that certainty.

Vivienne King: My view is that there should be the clarity that is created by having a scheme up front that can be put in place with legislation.

The Convener: Okay.

Lewis Macdonald: A point was raised in the previous evidence session that there is something unusual about the wording

“The Treasury may make a scheme”.

Do you agree that that is unusual, or is that normal language for statutes of this kind?

Vivienne King: You will appreciate that parliamentary counsel draft the statutes, not me. My understanding is that that wording is necessary to empower the Treasury to deliver on the requirements of Smith.

Lewis Macdonald: Is it your view that the Treasury is included in the clauses because it is the Government department to which you are currently accountable?

Vivienne King: It is.

Lewis Macdonald: Thank you.

Tavish Scott: I have a question about the matters that continue to be reserved, such as defence, oil and gas and so on. It is envisaged—Smith certainly envisaged this in the context of Government relationships—that there will be a memorandum of understanding. Have you been asked to give some thought to what that might look like in the context of the issues that will remain reserved to the United Kingdom Government but are within Scottish waters?

Vivienne King: No.

Tavish Scott: But I presume that you have a lot of expertise in dealing with them—or, shall I say, you are involved in how they are being dealt with.

Vivienne King: We would inform the process based on our knowledge, if we were called on to do so by the Treasury. However, defence and oil and gas are very much matters for the respective departments.

Tavish Scott: Have I got this the wrong way round, then? Is it fair to say that, at the moment, you are not terribly involved in those issues?

Vivienne King: It is probably best if I ask my colleague Ronnie Quinn to handle questions about

the running of our business, but I can tell you that, at this point in time, we have not been asked to input into the MOU.

Tavish Scott: I appreciate that.

Ronnie Quinn (Crown Estate): I am afraid that I do not have much to add. We have interactions with DECC, which retains the UK's oil and gas rights, and work with it where we can, particularly on offshore wind renewables projects. We also liaise with the Ministry of Defence on the placement of some resources. Going back to your initial question, I cannot say that I am terribly well sighted on the intention.

Tavish Scott: Thank you.

The Convener: Stuart, is your question on the same area?

Stuart McMillan: Yes, convener. It is just a very brief one.

Have you had any discussions with people in the aquaculture and marine tourism sectors about the proposed transfer of powers with regard to offshore interests?

Alan Laidlaw (Crown Estate): Our office is small and open plan, and most of what I am hearing at the moment is discussion between our team and customers and stakeholders who are seeking clarity and looking to understand what any change might mean for them and their home or farm, if we are talking about a rural context, or their business, their mooring or their lease. A lot of discussion is going on, and it is very mixed. Some people have direct concerns about business decisions being made today that might have a 25-year or lifetime impact, and we must ensure that we continue to make those decisions properly. Others just want to know that the policy and procedures will be similar.

In fact, the question that was raised earlier about clarity over different geographical areas is being asked time and again. People want to know, "What will I get if I do X in this area, and will it be different in another area?" A lot of questions are being asked; indeed, as Mr McMillan will know, there was a discussion at a recent meeting of the cross-party group on recreational boating and marine tourism about the advantages for marine users of looking at the management of these assets and interests strategically to ensure that there is no conflict between aquaculture and marine leisure, that there are no navigation issues and that there is no local conflict. After all, we all know about the current navigation issues at Ardnamurchan.

Quite often, when people look at the sea, they do not realise how many uses a certain area is being put to, and a lot of the discussion is focusing on clarity about what will happen in future and

ensuring that we are still an attractive place to invest in. Mr Finch mentioned that in connection with renewables, but the situation is exactly the same in the aquaculture industry. The producer organisations have made it very clear to us that Scotland as a place to invest is competing with Norway, Chile and other areas to bring this industry to the country, and they want clarity in that respect.

Stuart McMillan: If I may, convener—

The Convener: Is it on the same area?

Stuart McMillan: Yes. A moment ago, Mr Laidlaw, you talked about the possibility of entering into longer-term contracts and what would happen in that respect. What sort of clarity does the Crown Estate need to assure the people at the other end of contracts that those contracts will be maintained and that its services will still be delivered?

Alan Laidlaw: The key point is that our statutory function is to manage the assets in any way that we are set up to manage them. A discussion about devolution is on-going; we are open to that and look forward to making it happen and delivering afterwards but, at the moment, we have to keep up delivery.

I take many decisions on a day-to-day basis about land use, land management and asset management that are 100 per cent aligned with Scottish Government policy on sustainable economic growth, involving local communities, added value and investment in local areas. As long as that continues and we know where we are going, that is fine. I do not want to make a land use decision tomorrow for a period of 25 years only for somebody to say to me that it is wrong. We have the convener of the Rural Affairs, Climate Change and Environment Committee at the meeting, and I do not want him to pull me up in three years' time and say, "Well, that was a silly thing to do." Clarity about the direction of travel would be appreciated to ensure that we are still making correct asset management decisions.

Gareth Baird: I will add to that from a layman's perspective. We had about 23 stakeholders at our most recent Scottish liaison group meeting at Bell's Brae, and the representative from Scottish marine leisure tourism spoke passionately about the momentum that has gathered in that industry in recent years through an aligned approach and a strategic policy for Scottish marine tourism. I was flabbergasted when he said that it is worth more to Scotland plc than golf. However, he felt that the delivery of the strategy was not yet complete and he was concerned about any fragmentation. We have to take a Scottish view of that. He said that the industry is worth more than £300 million to Scotland.

Stuart McMillan: As you will be aware, the next step for that strategy will be launched this afternoon.

The Convener: Well done, Stuart. You have got that on the record

Linda Fabiani: Twice.

The Convener: Linda Fabiani and Rob Gibson have supplementary questions. After that, we will change direction slightly and move on to another area with Alison Johnstone.

Linda Fabiani: My question is about something that Alan Laidlaw said, following on from Vivienne King. The Smith commission report talks about

“Responsibility for the management of the ... economic assets”

being transferred, and the draft clauses talk about the transfer of wholly owned Scottish property assets. In the discussions that you have had with the UK Government—the Treasury, I guess—have you reached an understanding of what that actually means? What does “economic assets” mean and entail?

Vivienne King: The economic assets under Crown Estate management are those that are wholly owned. They are assets that are traded. It is our wholly owned portfolio.

Linda Fabiani: Thank you.

Rob Gibson: We hope that the decisions that you are making will stand and the transition period will be smooth. We would not want you to make decisions and then other people to think that they were wrong. Will you continue to invest during the transition period, given that it might be at least two or three years before we get this sorted out?

Gareth Baird: I ask Alan Laidlaw whether he wants to kick off on that, and then Ronnie Quinn might want to comment.

Alan Laidlaw: The phrase “business as usual” was used earlier, and that is the way in which the team are looking at the matter. We have a statutory function to keep on managing the assets and we have a team who are proud of what they do. They are really good at what they do, and they want to continue to see the good work that they have done—for many years, in some cases—delivered. They are keen that it continues.

Our normal programme of investing in our holdings and looking for new opportunities will continue. It is business as usual in a different context, because we have to be aware of the discussions that we are having with the committee today, what Smith set out and the process that we are going through. We will continue our normal investment programme in that way.

I am sure that Ronnie Quinn would like to update you on his side of the business.

Ronnie Quinn: First, I fervently hope that we do not have a three-year transition period. Specifically for the renewables industry, we do not need or want a prolonged transition period. The more certainty that we can get in this area, the better. Mr Finch spoke about that earlier.

We continue to invest in energy and infrastructure. We are making substantial payments in respect of the MeyGen project, which we entered at the tail end of last year, and we intend to do so for the rest of the year. Those investments are still running and still working and we intend them to continue.

Rob Gibson: How much are those investments from your business in Scotland worth, in gross terms?

Ronnie Quinn: The MeyGen investment is £10 million.

Rob Gibson: There are other offshore investments—

Ronnie Quinn: There are.

Rob Gibson: What do those amount to?

Ronnie Quinn: Referring to the latest annual report, which we have sent out, over the past four years we have invested just over £33 million in Scottish assets. Most of that is on the renewables side.

10:45

Rob Gibson: That is quite a big input in Scotland, given the skills that you bring and the way in which you focus your investment to help with delivery.

You have spoken about offshore renewables. Is the expertise in Scotland, or is it shared with other offices in London? During the transition, what would happen to your approach to helping people to develop in Scotland? Will the skills be transferred?

Ronnie Quinn: It is very much seen, and the estate is managed, on a UK-wide basis just now. I have some UK responsibilities, and other people who work out of Bell’s Brae have some UK responsibilities. Equally, people in the London office do some advisory work on some of the Scottish projects. It is not wholly clear cut.

There are 12 people working out of Bell’s Brae who work in the energy and infrastructure portfolio, but there are many more who work south of the border advising on Scottish projects. Likewise, there are people based at Bell’s Brae who advise on UK projects.

Rob Gibson: That will have to be unscrambled if we are going to have the management of the assets and so on in Scotland.

Ronnie Quinn: That is one of the issues that it is hoped the transfer scheme will address.

Alison Johnstone: As we discussed with the previous panel, there will still be scope for the Crown Estate to invest in Scotland. Why was that provision included? What might that investment look like?

A particular example might be provided by the transfer of the management of rural estates to Scottish ministers one day, and the next day the Crown Estate Commissioners could go out and invest in some other rural estates in Scotland. It seems that we will have devolution of what the Crown Estate is on a certain date and, potentially, you could then be building another Crown Estate portfolio in Scotland, which would also have to be managed. I would like to hear your views on that.

Gareth Baird: We are absolutely clear about the devolution process, and we will do everything that we can to accelerate it and to provide information so that the outcome is best for Scotland.

I have a question to put back to you. At the moment, pre further devolution, the Crown Estate is a £10 billion-asset organisation. As Vivienne King said, our benchmarks in industry are recognised as being either at the top or very near the top. I am not speaking as a Crown Estate commissioner now; I am speaking as a Scot. Why would we in Scotland not want a very big, successfully managed business investing in our country?

It is a business. I fully acknowledge all the emotion that surrounds the Crown Estate and so on, but if you take away—

Alison Johnstone: That response seems to suggest that the Scottish ministers will have responsibility for managing anything that is devolved at a certain date, but the Crown Estate Commissioners can continue to build up a large portfolio in Scotland.

Alan Laidlaw: I do not think that that would be in anyone's thoughts. None of the assets of the sea bed or the coastal areas would be involved. I suspect that it would probably concern areas of business investment into sectors that we are involved in elsewhere—ports and harbours, energy and others. We are discussing schemes with our tenants where they are looking for capital investment. That is alongside our ownership of the foreshore and sea bed. We would be a partner, potentially to help unlock economic activity in key sectors in Scotland.

I was not involved in the drafting of the clauses, but I suspect that they are there so that if, for instance, a large harbour was undergoing an expansion and wanted £30 million of investment, that might be open to the Crown Estate body corporate from the south in the future.

I do not think that it has ever been intended that there would be any replication. Certainly, that has not been the thinking of our team locally.

Alison Johnstone: What are your current investment levels in Scotland? Are they on an upward trajectory? Is there a trend?

Ronnie Quinn: There is an upward trajectory. The last published annual accounts had the capital value at about £267 million, which was up about £30 million from the previous year. The increase was driven largely by the increase in capital valuation of some offshore renewable schemes that had received consent by that stage.

Alison Johnstone: Do you have any planned disposals of assets between now and transfer? If you did, would you have to seek permission from Scottish ministers to dispose of those assets?

Gareth Baird: We do not have any planned disposals.

Alison Johnstone: My final question is on an onshore interest in the region—

The Convener: Alison, before you ask about Fort Kinnaird, I want to be absolutely clear in my mind about what is being said now that you have, quite rightly, gone into the issue.

If the Crown Estate were to make investments in Scotland after devolution, would the receipts that flow from them come to the devolved Government or would they continue to be reserved?

Vivienne King: They would continue to be reserved.

Linda Fabiani: I would like more clarity on that, too. I do not know whether Tavish Scott agrees, but this is brand new to me, compared to all the discussions that we had in the Smith commission.

Are you saying that, in your understanding—as the commercial enterprise that you have presented yourself as—what you currently have will be transferred at the date given in accordance with the transfer scheme, and that from that point on, you are free to start all over again building up a portfolio in Scotland? Can we be very clear on that?

Vivienne King: The investments that the Crown Estate makes are assessed as the opportunities for them arise, and they are made in accordance with our investment strategy.

As I have mentioned, we are a major investor in property in the UK. We like to think that, with Government support, we could continue to be able to invest UK-wide, with the advantages that that brings in terms of employment, skills and so on. That is what sits behind—

Linda Fabiani: You are saying that you have agreed with the UK Government that, with the transfer of what you currently have, the devolution stops there, and following that you carry on as a commercial enterprise, potentially in Scotland.

Vivienne King: Potentially, yes. The command paper makes reference to it being possible for the Crown Estate to make investments in Scotland after the transfer, and they will remain a reserved matter.

Linda Fabiani: Convener, that is absolutely opposed to any understanding that I had when I sat on the Smith commission.

The Convener: That is on the record. I think that it is a bit of a surprise to us, but there we are.

Lewis Macdonald: For clarity on that point, I will ask two questions. First, do the Crown Estate Commissioners currently invest outwith the United Kingdom, or is investment confined to the UK?

Vivienne King: Investment is confined to the UK.

Lewis Macdonald: You would be looking to maintain the Crown Estate Commissioners' ability, subsidiary to the Treasury, to invest across the UK. If the Crown Estate or a successor body to the Crown Estate chose to develop a commercial investment portfolio in Scotland, would there be a logic to having the same arrangement for the devolved Crown Estate, as it would be in Scotland, to invest in England, Wales and Northern Ireland?

Vivienne King: I can speak only for the powers and duties of the Crown Estate under the Crown Estate Act 1961, and not for whatever purpose the Scottish Government might seek to put the management powers that were transferred.

Lewis Macdonald: However, in principle, if the current body is able to invest commercially in property anywhere in the United Kingdom, and that power continued to attach to the Crown Estate Commissioners incorporated under the Treasury, a similar power could be readily available to any devolved successor body.

Vivienne King: I think that that would be a matter of policy for the Government.

The Convener: I am grateful for the clarity that you have already provided, but I seek one more bit of clarification. Has consideration been given to the idea that, after devolution, a share of the return on any investment should come to Scotland and a share of it should remain at the Treasury, or is it

envisaged that all the income that might be derived from that activity will continue to be reserved by the Treasury?

Vivienne King: The Crown Estate would remain a reserved matter.

The Convener: I understand that entirely.

Alison Johnstone: I want to be totally clear. Will we have, in effect, two Crown Estates: one that operates in Scotland and one that is administered by the Crown Estate Commissioners in London?

Vivienne King: Under the Crown Estate Act 1961, the Crown Estate will continue to exist. What happens to the management powers that are transferred to Scotland after devolution will be a matter for the Scottish Government.

Alison Johnstone: Thank you.

The Convener: Alex, do you want to ask a question on cohesion at this stage or would you rather reserve it until later?

Alex Johnstone: I could reserve it until later. However, I have a small point to make on the same subject, because I would like to develop my understanding of it further.

We have talked about investments. Money has been invested by the Crown Estate in projects in Scotland on the basis that it will generate a return. When the devolution process takes place, the revenue that is generated by those projects will become the property of the Scottish Government or the local authority, depending on the schemes that have taken place. Where do those investments fit in this structure? Do you require to get the return on your capital investment before any revenue is redistributed, or do you require the body that is taking over the management of the asset to recompense you for the investment that has been made?

Vivienne King: That is exactly the sort of complex detail that will need to be talked through in working up the statutory transfer scheme. The process of apportioning will require a lot of detailed thought by the finance teams at the Crown Estate and the Scottish Government. You have touched on one of the areas of complexity in the transfer of our management.

Alex Johnstone: Am I right in thinking that, in general terms, there is no prospect of the Crown Estate retaining debt for which it no longer has the right to accrue any return?

Vivienne King: The Crown Estate will not continue to have any involvement in relation to the management that is devolved after the point of devolution.

Alex Johnstone: If you lose the revenue, you will need to get your investment back.

Vivienne King: No, I do not think so.

Alan Laidlaw: I will bring it down to a small level. If we invest tomorrow in a new building on a tenanted unit—let us say that our investment is £100,000, the tenant brings £100,000 and we operate in partnership—and there is then an amendment to the rent of, for argument's sake, £1,000, that £1,000 will stay within whatever body is set up with the Crown Estate in Scotland. There is no expectation of any apportionment of funds or anything like that.

The revenue from investments that we made five years ago flows through our annual accounts—the figure of £13.6 million is given in our submission. We envisage that that £13.6 million plus the £1,000 from the investment that I make next week will all flow into whatever body is created by the Scottish Parliament; there is no expectation that there will be any apportionment or anything like that.

I am trying to simplify the matter. I do not know whether that has helped.

The Convener: I understand that, but that raises another question in my mind. If a project were to develop in a harbour in Scotland, could both the Crown Estate in the UK and the Crown Estate in Scotland invest in that project?

Alan Laidlaw: That is highly unlikely. Having been involved in such decisions, I could not envisage that ever happening.

The Convener: Well, well, well. Alison Johnstone still has a question.

11:00

Alison Johnstone: I would like to understand why a particular property—Fort Kinnaird—in the region that I represent has not been included in the proposed transfer. Does it generate a significant income stream? How much revenue does the Crown Estate receive from it?

Vivienne King: I think that the earlier panel of witnesses mentioned that there were likely to be legal reasons for that. Fort Kinnaird is held in a separate structure. It is not actually a Scottish asset in the Crown Estate's Scottish portfolio; our interest in it is a partnership interest that is held in a mixed-property English limited partnership along with another property in Cheltenham. We do not have a direct interest in the property and do not manage it. We have never included it in the financial statement for Scotland that is contained in our Scotland report. As a result, it is not an economic asset in Scotland as envisaged by Smith.

Alison Johnstone: So that massive shopping mall on the outskirts of Edinburgh does not benefit Scotland economically.

Vivienne King: Our interest in it is not an economic interest in Scotland.

Alison Johnstone: Okay. Do you have no idea at all about the revenue that it generates?

Vivienne King: I believe that the revenue was in the region of £4 million net but, if I could, I would like to provide absolute clarity on that after the meeting.

Alison Johnstone: That would be appreciated.

Tavish Scott: I will—dare I say it?—prolong the questioning about the second Crown estate. I am trying to get the matter crystal clear in my mind. As Linda Fabiani said, at some point, the assets will transfer to the Scottish Government and the Scottish Parliament, but we have learned this morning that it is envisaged that there will be a UK investment body based in London that I presume will be—whatever it is called—the continuing Crown Estate, and which will be able to take investment decisions throughout the United Kingdom, including Scotland. It could invest in whatever portfolio areas it wished to invest in. Is that a fair summary?

Vivienne King: Yes. As we have said, we hope that our investment in Scotland would be as welcome as that of any other responsible investor.

Tavish Scott: Did the Treasury introduce that proposal when it consulted you, as you described at the start of your evidence, or did you suggest it as a sensible way in which you could continue to do business throughout the United Kingdom?

Vivienne King: It was in the mix, as we talked about what it means that Scotland will remain part of the UK and the Crown Estate is empowered to invest in the UK.

Tavish Scott: When you say that it was in the mix, does that mean that it was the Crown Estate's suggestion that you—I do not mean you personally, but the corporate body—would be able to invest throughout the United Kingdom?

Vivienne King: Yes. The Crown Estate would wish to be able to invest throughout the UK. Our role, as I explained, was very much an informing one and the Treasury led the process.

Tavish Scott: I understand that. Thank you.

The Convener: Thank you for clarifying that—that was helpful, Tavish.

On Lewis Macdonald's comment, I acknowledge that it would be great to do that and I understand why it should continue, but would it not also be appropriate for Scotland to get a share of the

future revenue stream? That is the question. We will obviously need to take that up with Treasury officials or the Secretary of State for Scotland; I realise that the matter is not for the current witnesses.

Mark McDonald: I am very interested in the response to Alison Johnstone's question, so I want to explore it a bit further. Mr Laidlaw said that something was not likely, which is not the same as its not being possible, so I want to explore a possible scenario off the back of what Alison Johnstone said. In the intervening period between publication of the command paper and eventual devolution, would anything prevent the Crown Estate from making investments in a model in which the assets are physically located in Scotland but, as a result of accounting measures or legal agreements into which the Crown Estate has entered, are not defined by the Crown Estate as being assets in Scotland, such as Fort Kinnaird, which Ms King mentioned in her response to Alison Johnstone? That is to say that, following devolution of the Crown Estate, there could be a scenario in which investments that have been made in Scotland would not be devolved under that arrangement, as would happen with Fort Kinnaird.

Vivienne King: The Crown Estate's responsibilities under the Crown Estate Act 1961 will continue and we will continue to discharge those up to the point of devolution. Our investment strategy requires investments to be assessed as the opportunities arise, and investments are made in accordance with that strategy. That is how we deliver our Crown Estate Act 1961 duties.

Mark McDonald: But nothing would prevent the Crown Estate from, say, taking a bundle of investments that cross England and Scotland and capturing them within an agreement that exists in England, as is the case with Fort Kinnaird, so that none of them would show on the Crown Estate's books as Scottish assets, as was described for Fort Kinnaird. Those investments would not then come under the terms of what would be devolved. That scenario could play out during the intervening period and affect any investments that are made prior to devolution. Is that accurate?

Gareth Baird: I suppose that the words are accurate, but I can assure you that there is no intention—absolutely none—to muddy the waters at all in the process leading up to devolution of the Crown Estate in Scotland.

Mark McDonald: You will forgive me for saying so, but the situation is already true of Fort Kinnaird, so there is a precedent. I am not familiar with Fort Kinnaird, but those who are tell me that it ought to be quite a lucrative investment. You will forgive me for saying that there is a precedent; the committee has to take the possibility seriously

because of the implications for devolution of the Crown Estate.

Gareth Baird: I accept that.

Alan Laidlaw: We are just completing our business plan for the next financial year and nothing that looks like what Mark McDonald is suggesting might happen is in that business plan for Ronnie Quinn's or my sectors. We shared our business plan with Scottish Government colleagues last year and we have agreed to do the same this year.

I hear exactly what Mark McDonald is saying about the potential for that to happen, but in my part of the business there are no plans for that sort of structure. Indeed, all the preparations that Vivienne King mentioned, including the discussions with the Scottish Government, assume that all our assets will transfer as one package into whatever vehicle or body is identified. As manager of those portfolio assets, that is all I can say at the moment. There is no intention to muddy any water. We just want to deliver the assets that we look after today—Ronnie Quinn is nodding—to the new body, as they are at the moment. That is as much as we, as members of the team, are able to say.

Mark McDonald: Can I ask just one final question?

The Convener: I am sorry Mark, but you cannot in the time that we have left. We will write to the Crown Estate because we need some clarity around Fort Kinnaird. One thing that has become clear is that we need as much transparency as possible as powers are transferred to the Scottish Parliament. We are responsible for making sure that we scrutinise all this properly. We will write to ask more questions about Fort Kinnaird and how the funding arrangements and mechanisms will work in the future so that we have more information. It will be written, which will mean that there can be no misunderstandings. It will be fair to everyone to do that.

Lewis Macdonald will ask about energy.

Lewis Macdonald: Am I right to assume that there will, in the devolution agreement, be no unintended consequences for the oil and gas industry and that the scheme can be designed to avoid any unintended consequences? I am thinking about pipelines and other access within Crown Estate responsibilities for the foreshore and so on.

On a related point, there is an exciting project based at Peterhead power station for turning pipelines for extracting oil and gas into pipelines for depositing and storing carbon offshore. How will the process that we are discussing impact on that change of use?

Ronnie Quinn: Consistent with what has been said before, I believe that we are trying to transfer everything that is currently managed by the Crown Estate in Scotland to the Scottish ministers. That includes renewable energy assets and control over the cables and pipelines within 12 nautical miles. Partly, it goes back to what Mr Scott said earlier about the interaction between oil and gas and renewable energy and the work that we do in respect of crossing agreements for cables and pipelines and managing the flow of those things onshore.

You make a good point about carbon capture and storage. In particular, the Goldeneye field—which, I think, is the one to which you referred—is intended for transfer. You are right about use of the pipeline and the site itself being intended to be part of the transfer scheme. I am quite clear on that.

Lewis Macdonald: It is envisaged that the transfer will be to the Scottish Government. Would there be any implications arising from further devolution of such projects from Scottish Government level to local authority level? I am thinking of offshore renewable projects that are located between local authority areas—for example, in the Moray Firth.

Ronnie Quinn: Dan Finch gave his view on the difficulties and issues that would arise from that, and similar concerns have been expressed to me—particularly by members of the renewables industry. The carbon capture and storage will take place well beyond 12 nautical miles, so you will need to consider carefully how that will be dealt with. The project is very strategic and has huge implications not just for Scotland but for the UK and the world because it is a world-leading project. I am keen for us not to put in the way anything that would make what is already a substantial project more difficult to deliver.

Lewis Macdonald: Let us go beyond the 12-mile limit and into the exclusive economic zone—the Scottish territorial zone. The draft clauses refer to

“rights in relation to the Scottish zone”.

That is, as we describe it, the UK continental shelf up to 200 nautical miles from the shore, as defined by the Scottish Adjacent Waters Boundary Order 1999.

Ronnie Quinn: I bow to your legislative knowledge.

Lewis Macdonald: That was more of a question. Does that apply to the sea that is covered by devolved powers currently?

Ronnie Quinn: Yes. I am in no doubt that all the renewable energy projects that we manage, both within and outwith 12 nautical miles, within

the renewable energy zone out to 200 nautical miles, are included. That is my clear understanding of the matter.

Lewis Macdonald: Are they covered by the wording of the draft clauses?

Ronnie Quinn: Indeed they are.

Lewis Macdonald: Thank you very much.

The Convener: I want to end by going back to the beginning.

Duncan McNeil: Convener, I have a wee processy question on the Crown Estate’s engagement with UK ministers and officials and with Scottish Government ministers and officials. What is the scope of those meetings? Are minutes of, or agendas for, that engagement available publicly or to the committee?

Vivienne King: We have met the Treasury on a number of occasions to talk about the process of devolution. I am afraid that we do not have any minutes, but the sort of things that we cover have largely included information about our business and—as I mentioned previously—definitions that might be helpful. It is fair to say that a lot of the questions have come from our side and have been about how the process will run. We have been very much in an informing mode in our meetings with the Treasury. I have also met officials at the Scotland Office to talk about how we are managing the process of getting the business ready for devolution.

That has also been very much the focus of the discussions that have taken place with Scottish Government officials, with whom a number of meetings have taken place—I have certainly had one such meeting.

11:15

There have been some very focused meetings on the process of preparing for transfer. On Friday, we supplied Scottish Government officials with a number of documents that we feel will help us to work together to that common end, and a project meeting has been set up for next Friday, which will include all the specialists from the Crown Estate and the Scottish Government who have been assigned to managing the process. It will be pretty much an all-day event.

I know that colleagues of mine have had other discussions, which they might like to talk about.

Duncan McNeil: Has there been any ministerial engagement, either at UK or Scottish Government level? Has all the contact been between officials?

Vivienne King: I have not had involvement with ministers. I do not know whether colleagues have.

Alan Laidlaw: We have been discussing the transfer at executive level. I might have missed it, but I am not certain that a minister has been assigned to the transfer, because different parts of the business relate to different ministerial portfolios.

As Vivienne King has said, the initial discussions are very much about getting an understanding of what the transfer means. The meeting that Vivienne talked about, which was held a few days after Smith, was with people whom we have dealt with for many years. They understand what we do, but there was a need for them to understand how we do it and what that means in the context of a transfer, with a view to achieving as seamless a transfer as possible. Those are the sort of discussions that we are having.

Duncan McNeil: You have a paper in which you have presented a number of challenges. Can you share that with the committee or the public at this stage?

Alan Laidlaw: We have drafted a paper for the Scottish Government about the sort of things that we think need to be covered. I do not think that there would be a problem with sharing that with the committee, unless there are any problems with it anywhere else.

The Convener: That is helpful.

I want to go back to the beginning—I return to clause 23. Section 1 of the Scotland Act 1998 states:

“There shall be a Scottish Parliament.”

Donald Dewar liked that; indeed, I think we all liked that. If it is good enough for the creation of the Scottish Parliament, why is it not good enough for the draft clauses to say, “The Treasury shall make a scheme,” rather than

“The Treasury may make a scheme”?

Linda Fabiani: In other words, why cannot we transfer everything right now?

The Convener: No—that is not what I am saying. Why cannot “shall” be the terminology that is used?

Vivienne King: That is a question that I would want to direct to parliamentary counsel. I was not involved in the drafting. My understanding is that clause 23 empowers the Treasury, but that question is very much the draftsman’s territory.

The Convener: Would the Crown Estate have any objection to use of the word “shall”?

Vivienne King: I would not like to pass comment on an area that is beyond my territory. That is very much parliamentary counsel’s territory.

The Convener: I will ask Alistair Carmichael when he comes before us; I will not let that one go.

Thank you very much for giving evidence; it has been quite illuminating.

Is there a point that you want to end on, Gareth?

Gareth Baird: I understand the committee’s concerns about the proposed legislation. I stress that the Crown Estate is doing everything that it can to inform the Scottish ministers and the UK Government about our activity and what activity needs to be taken on to maintain the good work that this team has done in Scotland.

Because the discussion has been about the draft clauses, there is one issue that we have not covered today—the people. We are giving 100 per cent to get the process completed quickly, clearly and openly. For our stakeholders, this is a time of real uncertainty and huge concern. We have talked about the aquaculture industry. We have communities out there with whom we have entered into local management agreements who have taken real ownership of economic activity in their area. They are concerned about the uncertainty.

As far as my perspective is concerned, I am a tenant farmer down in Kelso, and our agricultural tenants are very concerned about how the proposals will progress. Those businesses are multigenerational, and we are talking about not just people’s businesses but their homes.

It is also a time of enormous uncertainty for our team down in Bell’s Brae, who are obviously concerned. I am absolutely determined to get that team, whose members have enormous intellectual capacity, resource and experience, passed across to the Scottish ministers for the benefit of Scotland.

The Convener: I am sorry, but we have to conclude now. I say on behalf of the committee that we share those concerns and we value your coming along to share your evidence with us. We realise that, at the end of the day, it is politicians who will make the decisions, but you have helped to throw light on some important areas, so I am very grateful.

11:20

Meeting continued in private until 11:38.

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Revised e-format available
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