

Community Land Scotland

The Crown Estate – Policy Briefing

Community Land Scotland is the representative organisation of Scotland's community land owners. Together, the members of Community Land Scotland own some 500,000 acres and use that land ownership as the basis for social and economic development, the regeneration of their respective communities, and in growing more sustainable and resilient communities.

In the context of current debate about the future of the Crown Estate, Community Land Scotland's members own substantial areas of coastline, and have ambition for the greater and sustainable utilisation of the marine assets adjoining their land, and to see it managed in tandem with the management of their land based assets.

Policy Summary

The Crown Estate is in need of radical reform.

The current arrangements for the operation and management of the Crown Estate in Scotland are not the best structure for proper governance, accountability, openness and transparency.

The Crown Estate requires to be scrutinised and to be accountable to the Scottish parliament in relation to its activities in Scotland which are of relevance to devolved functions and responsibilities.

Scottish Ministers should have powers in relation to any ongoing appointment of Commissioners and to direct the activities of the Crown Estate in Scotland. If a Commissioner from Scotland is to remain within a UK Commission, they should be called the 'Scottish Commissioner' and the post be vested through the office of the First Minister.

Whatever the outcome of the current debate about where control of the Crown Estate should lie, significant reforms are required to the operations of the Crown Estate.

That reform should embrace the principle of subsidiarity (see note). Such an approach will contribute to government policy on the economic development of communities, supporting the development of community resilience and community empowerment.

The devolution of the powers of the Crown Estate should be to the level most appropriate to that function's administration and to bodies which can be held accountable locally for decisions. Depending on the function and the level of responsibility, this might be at the Scottish, local authority, or community owned land level or, in some instances, jointly between any of the parties.

Where land is held by local communities and controlled and managed through a local democratic mandate (under the Terms of the Land Reform (Scotland) Act, or otherwise as agreed by Ministers), those communities should have the right to take over appropriate local responsibilities of the Crown Estate where that can be shown to be consistent with policies designed to promote local economic development, local community resilience and community empowerment, and where the community has the capacity to manage such responsibilities adequately. Other communities, which may not own their land, but which have an interest, and can be properly constituted and locally accountable, might also wish to take control of Crown Estate assets. Income derived locally from any such assets would stay local and for local decision making.

The Crown Estate should have its statutory duties amended , potentially by means of creating new duties, and certainly by way of suitable powers, to contribute to the promotion of economic and social development and the empowering of any community which exists on any land held by the Crown Estate or of any coastal community immediately adjoining its shoreline and seabed interests.

The Crown Estate should have powers to dispose of any of its interests (including at nominal or at nil value) to other public or properly constituted and non profit distributing community bodies, for the purpose of the ownership and/or management of any assets held (with a potential power to regain such assets were they ever proposed for subsequent disposal by the public or community body concerned).

The Crown Estate should have suitable powers to make grants and loans in pursuit of its new statutory purposes and to enter into joint ventures with others.

The Crown Estate should be placed under a duty to show that they have had regard to local community interest when assigning offshore leases, and should account to parliament on how this duty has been delivered.

Revenue accruing from the marine assets should flow to coastal communities as a matter of right.

With greater community control of local Crown Estate assets, consistent with UK and Scottish government policies, greater consideration of local needs and more integrated local resource management can be achieved, and significant economic and social impacts secured, to assist the development of sustainable, resilient communities.

Appendix 1

Supporting Discussion to Policy Summary

1. Criticism of the Crown Estate

1.1 Community Land Scotland's members have specific concerns that:

Revenues raised in local communities are mostly transferred out with the areas where those funds are generated. This would particularly appear to be the case with regard to the aquaculture industry, where significant income has been levied in remote rural and island communities, but, re-investment has been modest in comparison.

The limited re-investment in local communities appears to be largely targeted at promoting the Crown Estate's own public relations, or promoting future revenue streams, rather than sustainable investment in local communities.

Communities feel that they do not have a say in how the Crown Estate manages its resources. There appears to be a lack of transparency and openness in the operation of the Crown Estate, and little interaction or consultation with local communities on development issues.

The Crown Estate has negotiated leases for marine renewable energy projects, when the adjacent community landowner has been unaware of any of these discussions. As these developments require land based access, the community landowners have then been faced with a *fait accompli*, when a more consultative and inclusive approach would have led to a better outcome for all parties.

Crown Estate charges can inhibit development in some of the most remote and fragile communities. Scottish HQ after devolution did not help.

1.2 The Crown Estate has, however, been the subject of wider and enduring criticism for many, many years in the Highlands and Islands in particular. They have been seen as an organisation with significant influence over the life and development of the region, yet remote from the area, not well connected to or in tune with the regions aspirations and, in particular, an organisation which has taken revenue from activities within the area, without putting a great deal back. The Crown Estate charges have been seen as a disincentive to important local economic development ambitions.

1.3 Over time, and particularly since devolution, the constitutional and governance arrangements for the Crown Estate have come under increased scrutiny. The Crown Estate has been seen as largely unaccountable in a Scottish context and the fact that it appeared to remove its

1.4 More importantly, given the political devolution of many policy areas to which the Crown Estate's activities relate, there has been a growing sense that they are not as well aligned as they might be to Scottish rural and marine policy.

1.5 This sense of discontent with the Crown Estate has found expression in a number of formal ways in recent years. The local authorities in the Highlands and Islands joined together to commission the work of the Crown Estate Review Working Group (CERWG) and that group concluded: *"The Secretary of State and Scottish Ministers should, given the changed circumstances of devolution, implement an appropriately constituted review to ensure that the property, rights and interests which make up the Crown estate in Scotland contribute more fully to the delivery of Scottish Executive (Government) policies and well being of the people of Scotland."*

1.6 The Rural Affairs and Environment Committee of the Scottish Parliament undertook some scrutiny of the Crown Estate's activities. In response to criticisms and interest being shown by the Committee, the Crown Estate agreed to publish a separate annual report for Scottish interests; to establish a Scottish Liaison Committee; to respond positively to requests to account to Scottish Parliament Committees on their activities in Scotland; to meet with Scottish Ministers regularly; to seek to work closely with the grain of Scottish rural and marine policy.

1.7 The House of Commons Treasury Select Committee reported in March 2010 on the Crown Estate that it was essential there should be a close and constructive working relationship between the Crown Estate and the Scottish Government.

1.8 The Calman Commission on Scottish devolution, while not constituting a central part of their report, also referred to the Crown Estate and made recommendations about the appointment of the Scottish Crown Estate Commissioner, and about consultation with Scottish Ministers about powers of direction the Secretary of State for Scotland has over the Crown Estate.

1.9 The special Scotland Bill Committee of the last session of the Scottish Parliament, established to consider the UK government's Scotland Bill which is designed to extend new powers to the Scottish Parliament, heard trenchant criticism of the Crown Estate from a number of witnesses. In its conclusions, which were endorsed by the Parliament, the Committee recognised the significant dissatisfaction with the operations of the Crown Estate and encouraged early dialogue between the UK and Scottish Governments about the future of the Crown Estates activities in Scotland "*with all options on the table*" for consideration. In addition they made specific recommendations on particular matters to do with appointment of the Crown Estate Commissioner for Scotland and powers of direction, among other things.

1.10 In its consideration of the Scotland Bill, the House of Commons Select Committee on Scottish Affairs also heard criticisms of the Crown Estate and in consequence of which they are now holding an inquiry into the Crown Estate in Scotland.

1.11 In addition, commentators, such as Andy Wightman, have written extensively and critically about the Crown Estate in Scotland.

1.12 The Scottish Government recently published a position paper sent to the UK government as part of the series of recommendations they are making regarding amendments on how they would like to see to the Scotland Bill amended. That position paper argues for the complete devolution of the Crown Estate to Scotland. It argues this on the basis of securing better policy alignment between the wide interests of the Scottish government and the Crown Estate's interests, but also to secure the revenues from the Crown Estates. The paper argues for the creation of a Future Generations Fund to be created using part of the Crown Estates revenues, consistent with an earlier consultation paper by the Scottish Government. These papers also allude to the use of funds to benefit local communities; to land ownership as a potential beneficiary; and to the future "involve (ment)" of local authorities and communities in decisions about marine resources. The paper argues for an amendment to the Scotland Bill to achieve the devolution sought.

1.13 From the above it can be seen that there has been a growing tide of formal criticism about the Crown Estate and its operations, but all rooted in the criticism that has been coming from local communities, local authorities and particular types of business, for many years.

2. The statutory role of Crown Estate

2.1 In response to criticism of its money generating activities dominating any other aspect of its activities, the Crown Estate has highlighted that it is constrained in what it can do, given the statutory role it has been given in the 1961 Act.

2.2 One question, therefore, in thinking through future policy toward the Crown Estate, is (whether or not it continues to be administered at a UK level) what should be the statutory purpose, powers and duties of the Crown Estate?

2.3 Community Land Scotland would argue that, to meet the aspirations of communities, a much broader economic and social development purpose should be considered, with powers and duties to match. Further, given the agenda of both the UK and Scottish governments to promote community empowerment, to pursue economic and population growth, community resilience and the like, then such policy objectives should feature in the future purposes of the Crown Estate, again with powers and duties to match.

2.4 Given the Crown Estate is essentially an income generator for UK government purposes, which includes funding devolved functions, it can be argued by them that any income generated is used to fund public spending in all parts of the UK. Income therefore finds its way back to Scotland and to local communities for economic and social development purposes through government policies, but the use of the income is a matter for Ministers, not the Crown Estate.

2.5 Community Land Scotland believes that greater potential exists through local and community control of Crown Estate assets, consistent with UK and Scottish government's policies on the 'big society' and community empowerment. Greater consideration of local needs can be gained, and stronger economic and social impacts can be achieved, than by simply holding to a model which extracts local income and recycles that through public expenditure support.

2.6 Examination of the Crown Estates policies and approach to communities reveals a significant emphasis on meaningful community engagement. However, this is largely confined to emphasising strong consultation and engagement in design features of projects like new buildings. It does not reveal any deeper understanding of, or commitment to, sharing power, or handing over management of assets, or real community empowerment.

2.7 Community Land Scotland believes that the policy set out at the start of this document represents the kind of radical reform of the Crown Estate that is necessary.

Community Land Scotland
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Note 1: The term Crown Estate has been used in a generic sense throughout this paper when in some instances it may properly have referred to the Crown Estate Commissioners.

Note 2: **Subsidiarity** is an organising principle that matters ought to be handled by the smallest, lowest or least centralized competent authority. The Oxford English dictionary defines subsidiarity as the idea that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level.

Appendix 2

Community Land Scotland

Supplementary paper on the Crown Estate in response to the announcement of a Coastal Communities Fund, and in response to specific questions raised by the Scottish Affairs Committee.

1. The Coastal Communities Fund

1.1 The UK Government recently announced the creation of a Coastal Communities Fund, to be administered by the Big Lottery. A part of that fund is designated for use and administration in Scotland with, in turn, a portion of those funds being available in the Highlands and Islands and another portion for the remainder of Scotland.

1.2 Community Land Scotland's response to that announcement is that:

- a) We welcome the announcement as an important first step in addressing calls for coastal communities to benefit from the income generated through the marine estate of the Crown Estate.
- b) We welcome the principle that we consider is established, that at least 50% of income from the marine estate will go to coastal communities.
- c) The announcement, however, does not fully answer the calls for coastal communities most affected by marine developments to be the principal beneficiaries.
- d) Community Land Scotland has concerns about the fund being competitive between local authority areas, and of it being administered by the lottery. There is a case for the lottery to devolve the administration of the fund to HIE for the Highlands and Islands fund, potentially in conjunction with the local authorities, or for the local authorities to administer the fund, possibly in association with HIE and SE. Alternatively, the fund could be administered at the local authority level by a community Trust established for the purpose.
- e) There is a need for consultation on the precise purposes and priorities to which the fund should be put, and how it should be administered. Community Land Scotland would like to see the fund being applied to purposes set out in the remainder of this paper and the Land Fund policy paper.

2. Answers to questions raised by Scottish Affairs Committee

2.1 Do the Crown Estate serve a useful purpose in Scotland?

2.1.1 To the extent that the land and interests managed by the Crown Estate in Scotland require to be managed and they are the statutory body responsible, then they have a useful purpose. However, that is not to suggest that those interests are optimally managed in the interests of the local communities subject to their management, or that it could not be undertaken by other organisations.

2.1.2 There can be little doubt that in recent years the Crown Estate has devoted resources and built expertise in putting together the framework to bring about the delivery of large scale offshore renewables. As an organisation of scale and operating across all of the UK where it is envisaged offshore renewable potential exists, the Crown Estate has been able to secure that expertise and make it available to the whole of the UK. It is beyond our detailed experience to know whether that could have been effectively delivered at any other level of organisation within the UK.

2.1.3 In relation to the marine estate more generally, the Crown Estate has clearly amassed considerable experience in issues to do with marine aquaculture, and in the leisure and commercial use of piers, harbours, jetties, and the like. In the experience of members it is believed that, perhaps unlike large scale marine renewables, it would have been perfectly possible to have managed such resources more locally, as, for example, is now the case in relation to planning and development control in aquaculture.

2.2 What is/should be the role of the CEC in investing in Scotland?

2.2.1 The Crown Estate (or its successors) should have a wider role in promoting the economic and social development of the communities in which they have interests, and in aligning their policy to that of the Scottish government in that regard. (This is covered in more detail in the wider policy paper on the Crown Estate and need not be duplicated here.)

2.2.2 Investment in Scotland should not just be managed by purely commercial considerations. Indeed, were the only consideration of the Crown Estate to secure a return on investment, their investments should, no doubt, simply follow where the best returns could be obtained, and that may not be in Scotland at all at any given time. However, given that many Crown Estates interests in Scotland are inherited and are linked back through time to when the interests of the Monarchy and government were indistinguishable, the Crown Estate manage many of the Scottish assets as a given part of their portfolio, and not purely on the basis of chosen investments for the best rate of return. As such, the need to take account of the long term economic and social development interests of those most closely affected by how the assets are managed need to be much more firmly taken into account.

2.3 What is the legacy of the Crown Estate in Scotland?

2.3.1 Stated at its most positive, its legacy is to have retained in its portfolio of assets, principally marine assets, which are of real significance to many coastal communities. Further, its legacy is to have generated income which has been largely transferred to the Treasury to support public expenditure at the UK level and which it can be argued has fed back through to Scotland and local communities through public spending of various kinds.

2.3.2 Stated less positively, the legacy could be said to be one of resentment by many local interests that the Crown Estate has taken a lot, and given back little by comparison. Further, their legacy might be characterised as one of lost opportunity and lost potential at the local level as many regard their fee and charge structure to have been a disincentive to local economic development. Further still, their legacy will be seen by some to be as an organisation quite remote from local interests, not sufficiently attuned to those interests and concerns, and often quite difficult to engage with.

2.4 Are the current management, administration and accountability arrangements of the CEC appropriate?

2.4.1 No. At a time when devolution of power and responsibility has been taking place, the Crown Estate has, if anything, been centralising power. While the Crown Estate have been open about their willingness to account for their actions in Scotland which relate to devolved powers and responsibilities of the Scottish government, the accountabilities in legal terms are through the UK Treasury to the UK Parliament.

2.4.2 The welcome steps by the Crown Estate to strengthen their relationships in Scotland through the creation of their Scottish Liaison Committee and their separate Scottish annual report are not sufficient in themselves.

2.4.3 New accountability mechanisms, established in law, would ultimately strengthen legitimate accountability for issues that align with devolved responsibilities in Scotland.

2.4.4 However, within the constitutional arrangements that pertain, and given some of the Crown Estate's areas of responsibility overlap UK and Scottish responsibilities, strengthening arrangements for accountability to Ministers, and through them to Parliaments, could be done on a shared basis, possibly, for example, through some form of joint ministerial arrangements.

2.5 How could the CEC best act in the public interest in Scotland?

2.5.1 By reforming and widening its duties and powers to serve the sustainable development of Scotland by managing its assets in such a way as to serve social, economic and environmental objectives, particularly in those communities which are directly affected by the management of those interests.

2.5.2 By devolving control of its assets to a more local, accountable, level, consistent with principles of subsidiarity.

2.6 How revenues raised by the Crown Estate Commissioners in Scotland could be best used for the benefit of local communities in Scotland?

2.6.1 For local communities which are managing all the land assets up to and adjoining the Crown Estate interests (from the fore-shore into the wider marine estate, in particular), it is not only the use of receipts that is important, it is the proposed uses of the assets and the level of charges that give rise to receipts that can be as important. So, for example, a community that wishes to drive economic improvement and release new opportunities for local economic development might be in a better position to manage the assets of the Crown Estate than the Crown Estate itself, in order to do so in a way that is more enterprising. That may, in part, be to construct charges which are driven by the objective of increasing local economic activity, not principally generating income at a rate the local market is felt able to bear. So, part of the equation in determining benefit requires to embrace the idea that, for example, deferring income, to benefit local economic activity, is a legitimate part of considering the potential economic benefits to local communities. Crown Estate duties, powers and operating principles need to account for those possibilities.

2.6.2 In terms of the use of income itself, there is enormous scope for arrangements to support a wide range of local community economic, social and environmental objectives. There is a near insatiable demand from communities for funding from a wide range of EU, UK and Scottish government, lottery and charitable programmes. Income from the Crown Estate being available to assist communities achieve worthwhile outcomes, and/or to help match other sources of funding, would find many worthwhile initiatives to support. Community Land Scotland would argue that the principal purpose of such funds should be to support community and social enterprises to improve economic opportunities through control of land and assets, long term sustainability and resilience of communities, and bring direct improvements to employment, as well as achieving priority social objectives like community based social housing, for example. The fund should support the ability of communities to trade in a variety of ways as a basis for improvement.

2.6.3 In all of this, the amount of revenue potentially available is material. There is a danger that a relatively small fund that disburses small grants can become seen as little more than a fund of a scale consistent with maintaining good public relations with local interests – the giving of 'beads to the natives', as it has been called. If this is to be avoided, then funds of scale require to be available. This is particularly so when considering the income potential of some of the offshore renewable projects being contemplated, and the potential impacts of some of those projects on particular communities. In this context it has become commonplace in relation to land based wind developments for local communities to benefit by way of considerable community benefit funds, or

through direct ownership of the wind farm assets. In such a context it is generally straightforward to identify which community or adjacent communities are affected by any land based development, but the challenge offshore, particularly the further offshore one goes, is to determine exactly who is most affected. This issue is unresolved by the announcement of the Coastal Communities Fund.

2.6.4 More recent policy developments are showing that thinking around land based community benefit is moving on. Within Highland Council, for example, policy is now moving to share the large scale resources becoming available on a wider basis than only for the benefit of the local community, even if some local community fund is also available. In Fife, a recent wind farm arrangement has, in principle, funded support for apprenticeships at a local college, benefiting a wide area and a particular group of otherwise excluded young people, rather than a geographically located, very local, fund. These developments recognise that impacts from development can be felt more widely than just the local community and a growing sense that while some communities can benefit enormously, others can remain relatively impoverished.

2.7 At what level might those revenues be best administered: UK Treasury, Scottish Government, or local authority level? And: What processes might be put in place for the distribution and allocation of those revenues, in order to secure maximum benefit for the people of Scotland?

2.7.1 Community Land Scotland believes that the principle of subsidiarity in administration ought to apply. That is, funds ought to be administered at the most local level realistically achievable. Administering a fund at the UK level has the potential for it to feel and actually be, remote from local community interests. There are very few significant funds designed to support local communities administered at the UK level alone.

2.7.2 There are many funds administered at a Scottish level, not least by the lottery, and the Scottish government. A case can undoubtedly be made for any new fund to be administered at a Scottish level. The Scottish government have made that case in arguing for the creation of a Fund for Future Generations, albeit they have also indicated they will bring forward proposals on ways 'to involve local authorities and communities in decisions about marine resources'.

2.7.3 Consistent with the principle of subsidiarity, Community Land Scotland believe a case can also be made for any new funds to be administered more locally, even if that was within criteria agreed at the UK and/or Scottish level. There are many good examples of significant funds being administered sympathetically to local needs and interests by local authorities, by the LEADER programme, and by government agencies such as HIE, for example.

2.7.4 At a more local level, there is now experience at the community level of funds being administered, funds generated by land based wind projects. While this brings challenges to a local community, there is no evidence this cannot be made to work.

2.7.5 A key question is whether, in relation to the marine environment and offshore renewable projects of considerable scale, there is a legitimate and fair way to clearly determine those affected, and the boundary of local interests.

2.7.6 The precedent that is obvious is the oil funds negotiated by Shetland and to a lesser extent by Orkney, through the then local authorities. These funds exist at the local authority level and exist for the benefit of the whole of the respective island groups. So, for example, while it might be said that the community at Sullom Voe is most affected by the offshore oil developments as they affect Shetland, there is no question of them getting all the funds from the oil that flows through Sullom, as they might with a more localised land based wind project, for example.

2.7.7 There has to be a case for local authority administration of funds, or through an agency operating at that level, such as can be seen in the case of the LEADER programme. While there may still be significant complications regarding how to determine what sums a local authority area would get to administer, they would be small by comparison with determining what incomes should flow to a particular and very local community. For example, in the case of Tiree, which stands to be significantly affected by offshore developments, others may argue they too are, to at least some extent, affected, or their interests affected (eg, other islands, fishing or leisure interests). In any event, would it be right and proper that a very small community could be the sole beneficiary of a share of potential very, very large income streams, with other communities in the vicinity getting nothing? This would seem a difficult proposition to sustain. Spreading benefits at the local authority level would be administratively simpler and would have the ability to spread the benefits more widely and for more people. Similar arguments could, of course, be made for funds to be held at a Scottish level.

2.7.8 The arguments above are predicated on the basis that there would be some hypothecation of revenues flowing from particular developments to particular localities or local authorities. Determining shares to be administered would not be without its difficulties.

2.7.9 In terms of pure policy and administrative ease, a fund into which income was paid at the Scottish level would be the most straightforward, provided that then found its way for more local decision making. It is not clear this could be a Scottish government fund because of complexity in annual accounting rules and end year flexibility with the UK Treasury. Funds, as in the case of Shetland, may have to transfer into a separate arrangement or charity and that, in turn, raises questions about accountability and decision making. The Scottish government recognise these challenges in their paper on securing the benefits from Scotland's next energy revolution.

2.7.10 In all of this, it is perhaps the criteria for use of the funds, and not only the level at which they are administered that become most critical. Community Land Scotland believes that funds deriving from the marine estate and, in particular, from future renewable projects, should find their way to coastal communities most affected by the developments. Community Land Scotland believes it would be possible to map those communities most affected, in somewhat the same way as HIE map their 'fragile areas'. The communities identified would get priority in funding applications.

2.7.11 Funds should be applied to first promote sustainable communities through their economic and social development and through empowering communities through greater long term control of their land, assets and environment. This is consistent with the Scottish government's view of the use of such funds, as set out in their recent policy statement on the Crown Estate, and their earlier consultation on securing the benefits of the next energy revolution.

2.7.12 Decisions on the use of funds for such purposes would be best taken at the level of the area of the local authority.

2.7.13 Depending on the scale of the funds that may become available, some funds retained and administered at the Scottish level would be appropriate to meet Scottish wide objectives for major projects of national importance.

2.7.14 In order to secure the interests of local communities, the merits of any fund having statutory underpinning could be considered.

2.7.15 On balance, and consistent with the principle of subsidiarity, community land Scotland believes that the bulk of any funds would, in this instance, be best administered at the local authority level.