POLICY NOTE

THE SCOTTISH CROWN ESTATE ACT 2019 (COMMENCEMENT NO. 1) REGULATIONS 2019

SSI 2019/170 (C. 4)

The above instrument was made in exercise of the powers conferred by section 46(2) of the Scottish Crown Estate Act 2019. The instrument is laid with no procedure.

Purpose of the instrument.
The instrument commences sections 2, 22, 23, 37, 38, 40 and 41 of the Scottish Crown Estate Act 2019.

It forms part of a series of instruments that are required to support the commencement of the Scottish Crown Estate Act 2019.

Policy Objectives

The Scottish Crown Estate Act 2019 ("the Act") received Royal Assent on 15 January 2019. Sections 42, 43, 45, 46 and 47 came into force the following day and all other provisions will be commenced by regulations to be made under section 46(2) of the Act. The purpose of this instrument is to implement those sections which enable the Scottish Ministers to perform a number of activities in respect of management of the Scottish Crown Estate.

The instrument brings into force the duty for the Scottish Ministers to prepare a strategic management plan for the Scottish Crown Estate under section 22 of the Act, which also sets out the requirements of that plan. The plan must set out the objectives, priorities and policies in relation to the management of the estate and must include an assessment of how those align with the Scottish Ministers' other objectives, priorities and policies. It can also include such other information about the Scottish Crown Estate and its management as the Scottish Ministers consider appropriate. The Scottish Ministers must consult with managers and other persons they consider appropriate in preparing the plan and lay a copy of the plan before the Scottish Parliament, with the Scottish Ministers then publishing the plan as soon as reasonably practicable after it has been laid. A manager of one or more Scottish Crown Estate assets is to have regard to the strategic management plan when preparing a management plan and when exercising management functions.

A 5-yearly review of the plan is to take place in accordance with section 23 of the Act. A review may either result in a revised plan being prepared (subject to the same consultation, laying and publication requirements) or in the Scottish Ministers laying a statement before the Scottish Parliament that they consider the plan should not be revised.

The instrument also brings into force a general power of direction on the Scottish Ministers in relation to the exercise of managers' functions under section 37 of the Act, which also specifies that directions must be in writing and be published, as must any revocation of such a direction. The instrument also brings into force managers' duty to have regard to written guidance given by the Scottish Minsters (which will be published) under section 38 of the Act, as it is expected that several matters may be more appropriately set out in guidance than through directions.

It is expected that, from time to time, the Scottish Ministers may wish to obtain information from, or take the advice of, managers of Scottish Crown Estate assets in respect of the asset or its management. The instrument brings into force the obligation for managers to provide that information or advice if it is required by the Scottish Ministers under section 40 of the Act.

Scottish Ministers may wish to undertake research and provide resources to managers (actions which are currently undertaken by Crown Estate Scotland, and which Crown Estate Scotland may continue to undertake) and the instrument provides for this through commencement of section 41 of the Act.

The instrument is the first in a series of upcoming instruments implementing the Scottish Crown Estate Act 2019.

Consultation
No public consultation was carried out on the specific provisions in this instrument, as commencement regulations are largely technical. No concerns were raised on these sections during the Act's progress through the Scottish Parliament. Scottish Ministers have engaged with Crown Estate Scotland (Interim Management) over the proposed content of the strategic management plan.

The Scottish Ministers are required to consult on the strategic management plan, before laying and publishing the final version.

Impact Assessments
No additional impact assessments were carried out on the specific provisions in this instrument, as commencement regulations are largely technical.

However, as the strategic management plan will be setting wider policies on the management of the Scottish Crown Estate, work to complete all relevant impact assessments will therefore be performed as a matter of course, and published accordingly in advance of final publication of the plan.

Financial Effects
The financial impacts contained within this instrument have been considered in relation to the Financial Memorandum developed for the Scottish Crown Estate Bill in January 2018 and a Business and Regulatory Impact Assessment (BRIA) was completed for the consultation paper on the proposals for the long term framework for managing the Scottish Crown Estate. A new BRIA is not required, as the instrument has no financial effects on the Scottish Government, local government, business or the third sector.

A partial BRIA is being produced as part of the development of the strategic management plan, and will be finalised and published accordingly in advance of final publication of the plan.

Scottish Government
DIRECTORATE FOR MARINE SCOTLAND

15th May 2019