POLICY NOTE

THE SCOTTISH CROWN ESTATE ACT 2019 (COMMENCEMENT NO. 3) REGULATIONS 2021

SSI 2021/308 (C. 19)

The above instrument is 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 3, 4, 5, 6, 16(2)&(3), 20, 24, 25, 26, 27(4)&(5)(a), 29(6), 30(4), 31, 32, 33, 34(2)&(5), 35(1)(b), 36 and 39 of the Scottish Crown Estate Act 2019.

It forms the final 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. Sections 2, 22, 23, 37, 38, 40 and 41 were commenced by the Scottish Crown Estate Act 2019 (Commencement No.1) Regulations S.S.I 2019/170 and came into force on 1 June 2019. Sections 1, 7 ,8 ,9 ,10, 11, 12, 13, 14, 15, 16(1) and (4), 17, 18, 19, 21, 27(1), (2),(3) and (5)(b), 28, 29(1),(2),(3),(4) and(5), 30(1),(2),(3) and(5), 34(1),(3) and (4), 35(1)(a) and (2), 44 and schedule 1 and schedule 2 were commenced by the Scottish Crown Estate Act 2019 (Commencement No.2) Regulations S.S.I 2020/77 and came into force on 1 April 2020, with the exception of Section 15 which came into force on 1 October 2020.

The purpose of this instrument is to bring into force sections 3, 4, 5, 6, 16(2)&(3), 20, 24, 25, 26, 27(4)&(5)(a), 29(6), 30(4), 31, 32, 33, 34(2)&(5), 35(1)(b), 36 and 39 of the Act 27 September 2021. These sections make provision for the transfer and/or delegation of the management of Scottish Crown Estate assets to other eligible bodies, duties of managers of crown estate assets for reporting and accounting and the provision of grants and loans for new managers.

Section 3 makes provision for the transfer of the function of management of Scottish Crown Estate assets by regulations. Section 4 makes provision for Scottish Ministers to direct a manager to delegate the function of managing a Scottish Crown Estate asset. Section 5 sets out the requirements for a delegation agreement to give effect to the delegation of a function.. Section 6 contains definitions of "community organisation" and "Scottish harbour authority" and sets out the requirements for a written constitution for the community organisation. Section 16(2) and 16(3) makes provision for Scottish Ministers by regulations, to make provision for the transfer of a right or liability from one manager to another. Section 20 makes provision for a requirement for managers (with the exception of CES who have their own requirement under Article 4 of the Crown Estate Scotland Order 2017) to exercise its functions in a transparent and accountable way. Sections 24 and 25 set out the requirements for management plans to be created and submitted by managers of Scottish Crown Estate assets. These plans cover a 3-year

period and should be created and submitted to Scottish Ministers for approval as soon as reasonably possible after a new manager is in place. Sections 26 sets out the requirements for managers to prepare annual reports for each financial year. This should clearly assess how the manager's activities during that financial year have contributed to the meeting of its objectives. Section 27(4) requires that managers do not publish the annual report until a copy has been laid before Parliament, while Section 27(5)(a) defines "annual report" as that required under Section 26. Section 29(6) makes provision for where Scottish Ministers are the manager, they may transfer sums of money either from their income account to their capital account or vice-versa. Section 30(4) makes provision for Scottish Ministers, where they are the manager, to carry income, and charge expenses, to their income account and capital account in such proportions as they determine.

Section 31 makes provision for the transfer of funds between managers. Sections 32 makes provision for Scottish Ministers to make loans and grants available to managers in connection with the exercise of the manager's functions. Managers may not otherwise borrow money in connection with their functions. Section 33 makes provision for Scottish Ministers to make grants available to such persons as they consider appropriate for the purpose of making preparations for the transfer or delegation of the function of managing a Scottish Crown Estate asset. Section 34(2)&(5) requires that a manager of one or more Scottish Crown Estate assets must keep proper accounts and prepare a financial statement each year of those accounts, and these must be kept or prepared separately from any other accounts or records that the manager may have. Section 35(1)(b) requires Scottish Ministers, when preparing a consolidated statement of accounts, to include each statement of accounts prepared by managers of Scottish Crown Estate assets.

Section 36 contains provision for processes and requirements for preparing reports and accounts when a manager ceases management of Scottish Crown Estate assets. Section 39 makes provision for Scottish Ministers to delegate certain functions to Crown Estate Scotland in respect of Sections 22, 23, 27 (with regards to the Strategic Management Plan) and section 35 (Auditing requirements).

The instrument is the third and final in a series of instruments implementing the Scottish Crown Estate Act 2019.

Consultation

No separate public consultation was carried out on the specific provisions in this instrument, as commencement regulations are largely technical. The sections of the 2019 Act mentioned within the instrument were debated during the Act's progress through the Scottish Parliament and based on a previous Scottish Government consultation on the long term management of the Scottish Crown Estate in 2018.

Impact Assessments

No additional impact assessments were carried out on the commencement of the various sections of the Scottish Crown Estate Act 2019 being brought into force by this instrument.

Financial Effects

The financial impacts contained within this instrument have been considered in the context of the published Financial Memorandum developed for the Scottish Crown Estate Bill in January

2018; the supplementary Financial Memorandum prepared for the Bill following Stage 2; the Business and Regulatory Impact Assessment (BRIA) completed for the consultation paper on the proposals for the long term framework for managing the Scottish Crown Estate; and the partial BRIA produced as part of the development of the Scottish Crown Estate Strategic Management Plan.

The arrangements and the sections within this instrument have no additional financial effects on the Scottish Government, local government, business or the third sector from those identified in the earlier BRIAs and Financial Memoranda. A new BRIA is not therefore deemed to be required for commencement.

Scottish Government
DIRECTORATE FOR MARINE SCOTLAND

September 2021