

EXPLANATORY NOTES

Scottish Crown Estate Act 2019 (asp 1)

£6.90

These notes relate to the Scottish Crown Estate Act 2019 (asp 1)
which received Royal Assent on 15 January 2019

SCOTTISH CROWN ESTATE ACT 2019

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Scottish Crown Estate Act 2019 ("the Act"). They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act makes provision for changes in the management of the Scottish Crown Estate (meaning the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies) including the duties on management and charging for the assets. The Act both provides the mechanism to change the manager of an asset (or part of an asset) and sets out the regulatory framework within which all managers, irrespective of the size of the asset managed, must operate.

4. The Act contains 47 sections in 4 Parts, and two schedules:

- Part 1 changes the name of Crown Estate Scotland (Interim Management).
- Part 2 sets out definitions and the mechanisms by which the management of the Scottish Crown Estate assets can be changed.
- Part 3 makes provision about the management of Scottish Crown Estate assets, including provision about managers' powers and duties in relation to the assets and provision about planning, reporting and accounting by managers.
- Part 4 makes general provision about regulations, ancillary provision, consequential and minor modifications, interpretation, commencement and the short title.
- Schedule 1 makes modification of certain enactments in light of the change in name of Crown Estate Scotland (Interim Management).
- Schedule 2 makes consequential and minor modifications of other legislation.

5. Explanatory Notes on the various sections of the Act are below.

Part 1 – Crown Estate Scotland

6. Crown Estate Scotland (Interim Management) was established by the Crown Estate Scotland (Interim Management) Order 2017 ("the Crown Estate Scotland Order"). Section 1 of the Act changes the name of Crown Estate Scotland (Interim Management) to "Crown Estate Scotland". Section 1 also introduces schedule 1, which amends references to the body in various enactments in consequence of this change in name. Section 45(1) of the Act defines the "Crown Estate Scotland Order" as meaning the Crown Estate Scotland Order 2017 (S.S.I. 2017/36). That instrument is currently entitled the "Crown Estate Scotland (Interim Management) Order 2017" but is renamed by paragraph 11(2) of schedule 1 of the Act in consequence of the change in the name of Crown Estate Scotland. These notes refer to the body as "Crown Estate Scotland" for consistency with the provisions of the Act.

Part 2 – Management of Scottish Crown Estate assets

7. Section 2 sets out the definitions of "Scottish Crown Estate", "asset" and "manager" for the purposes of the Act. Definitions of some other terms used in the Act are set out in section 45.

8. Section 3 confers on the Scottish Ministers the ability to transfer, by regulations, the function of managing a Scottish Crown Estate asset, and rights and liabilities in relation to the asset, to certain persons. The transfer will be effected by regulations, which will be subject to the negative procedure unless they add to, replace or omit any part of the text of an Act, in which case the regulations would be subject to the affirmative procedure. Transfers of the management of all or part of an asset, which is wholly or partly situated in, or relating to the Scottish marine area (apart from the foreshore) or the Scottish zone (as defined in section 42(3)) are also subject to the affirmative procedure. This means that there will be Parliamentary scrutiny in relation to any proposal to transfer the management of a Scottish Crown Estate asset.

9. The list of persons who are eligible to receive a transfer of the function of managing a Scottish Crown Estate asset (and thereby become a "manager") are set out in section 3(2) (with section 6(2) defining "community organisation" and section 6(3) defining "Scottish harbour authority").

10. As Crown Estate Scotland manages the whole Scottish Crown Estate at present, initial transfers will be from Crown Estate Scotland to other persons. However, in the future, transfers might be from other persons who have since become managers via prior transfers. This also means it will be possible for Crown Estate Scotland to receive a transfer in the future.

11. The list of eligible persons in section 3(2) includes both the Scottish Ministers and Crown Estate Scotland. This ensures that, in the event of poor performance by a transferee or a transferee ceasing to exist for whatever reason, the Scottish Ministers can transfer the management of the asset either to themselves or back to Crown Estate Scotland to ensure the continuing management of the asset.

12. Section 3(3) provides that transfer regulations made under subsection (1) may include provision restricting the exercise of the function by the new manager, for instance, restrictions on the transfer of ownership of an asset. It also provides that transfer regulations made under subsection (1) may make provision about the management of records relating to the exercise of the transferee's functions as a manager. Such provision might be made if the transferee is not subject to the requirements of the Public Records (Scotland) Act 2011.

13. Section 3(4) makes provision for securing the management of an asset which has been transferred to or acquired by a community organisation and any rights or liabilities they may have in relation to a Scottish Crown Estate asset or a former Scottish Crown Estate asset in the event that the organisation ceases to exist for any reason. The regulations may also require notification to the Scottish Ministers of any proposed change to the community organisation's constitution which would result in it no longer being a community organisation for the purposes of the Act. Section 3(4) also provides that regulations under subsection (1) may also require a court or a person specified in the regulations to notify the Scottish Ministers of any application which would result in the community organisation ceasing to exist or ceasing to be a community organisation (as defined in the Act – see section 6(1) and (2)). In addition, subsection (4) provides that regulations under subsection (1) may make other provision (as the Scottish Ministers consider appropriate) in connection with a community organisation ceasing to exist or ceasing to be a community organisation.

14. Section 3(5) makes similar provision in respect of Scottish harbour authorities but there is no equivalent of section 3(4)(b) providing that the regulations may require that notification be given to the Scottish Ministers in the event of a change in the constitution of the transferee as this is not necessary in the context of a Scottish harbour authority (because the authority's constitution is not relevant to whether it is a Scottish harbour authority).

15. The Scottish Ministers are required under section 3(6) to consult affected persons (and such other persons as they consider appropriate) before effecting transfers by making regulations under section 3(1).

16. Section 3(7) enables regulations under section 3(1) to include provision which modifies primary legislation. This may be necessary, for example, if other legislation requires a person to obtain consent to enter land forming part of the Scottish Crown Estate and it is necessary to modify an enactment to provide that a person other than the manager of a Scottish Crown Estate asset is to grant any necessary consent to access that Crown land.

17. Section 4 provides an alternative means of changing the arrangements for management of a Scottish Crown Estate asset, whereby the Scottish Ministers may direct the existing manager to delegate management to another person mentioned in section 3(2)(c), (d), (e) or (f). This provides for a direction to be given to the following persons as a manager: Crown Estate Scotland, a local authority or another Scottish public authority with mixed functions or no reserved functions (see section 4(2)). Community organisations and Scottish harbour authorities are unable to delegate their functions as managers. The persons to whom a manager can be directed to delegate the function of managing Scottish Crown Estate assets are a local authority, another Scottish public authority with mixed functions or no reserved functions, a Scottish harbour authority or a community organisation.

18. The direction must be set out in writing as required by section 4(3)(a). Before giving a direction, the Scottish Ministers are required under section 4(4) to consult the existing manager, the proposed delegate and such other persons as they consider appropriate. Additionally the Scottish Ministers must have obtained the consent of the person to whom the function is to be delegated (section 4(5)(a)). Before revising or revoking a direction, section 4(6) requires the Scottish Ministers to consult the existing manager, the proposed delegate and such other persons as they consider appropriate and to obtain the consent of the person to whom the function is to be delegated.

19. As it is necessary that third parties know the status of the person managing the asset and the extent of their powers, section 4(7) requires the Scottish Ministers to publish any such direction or any revision as well as publish notice of any revocation of such direction. Section 4(8) provides that a direction or a revision may be published in whole or in part but specifies what information must not be withheld from publication. As explained below, the delegation itself is effected by a delegation agreement under section 5. Part of the process of agreeing a delegation agreement is that the Scottish Ministers must agree to the terms and conditions of that agreement (see section 5(6)(b)) before the agreement can take effect. Until that consent is given, the Scottish Ministers can revise or revoke a direction given under section 4(1) (section 4(5)(b)).

20. Section 5(1) provides that a manager of a Scottish Crown Estate asset (other than the Scottish Ministers) may delegate the function of managing an asset only if directed to do so under section 4(1). This means that delegations can only take place if the Scottish Ministers so direct and the process for a delegation must follow the process set out in the Act. Section 5(2) provides that, where the Scottish Ministers are the manager of a Scottish Crown Estate asset, they may delegate the function of managing the asset to Crown Estate Scotland, a local authority, another Scottish public authority with mixed functions or no reserved functions, a Scottish harbour authority or a community organisation. Section 5(3) provides that a delegation by a manager is to be given effect to by way of an agreement, which must set out the terms and conditions under which the delegate would manage the asset and the period for which the management function is to be delegated (see section 5(4)). Section 5(5) clarifies that a delegation agreement may provide for restrictions on the delegate's exercise of the management function and also specify the circumstances in which a delegation agreement may be terminated. Section 5(6)(b) makes it clear that a delegation cannot take effect unless the Scottish Ministers consent to the terms of the delegation agreement.

21. Section 5(7) provides that a delegate is to be treated as a manager of a Scottish Crown Estate asset for all purposes and have all the powers and duties applying to the manager of the asset unless the delegation agreement provides otherwise (subject to the exception mentioned below). This means that a reference to a manager in, for example, section 7 is taken to be a reference to the delegate where a delegate is in place, meaning that the duty under section 7 applies to the delegate. The exception to this is that a delegate is not treated as the manager for the purposes of Part 2 of the Act i.e. they are not the "manager" for the purposes of sections 2 to 6 and the function of managing the asset cannot be further transferred or delegated from the delegate to another person. Under section 5(7)(b) the function of managing the asset is not exercisable by the manager where a delegate is in place unless the delegation makes provision for that. In a particular case the delegation agreement may, for instance, set out that the manager can still exercise elements of the management function in certain instances or that the manager remains responsible for some aspects of the exercise of the function.

22. Section 6(1)(a) provides a definition of "community organisation". A "community organisation" is a body corporate (other than a Scottish public authority) which relates to a community and has a written constitution, which includes the matters mentioned in subsection (2), which relate to the membership of the body and its aims and purposes. A community organisation can also be a body which is designated as a community organisation for the purposes of this Act by the Scottish Ministers by regulations. The power in section 6(1)(b) to designate a body as a community organisation for the purposes of this Act can be used to designate a body corporate which would not meet the test set out in subsection (1)(a), as a "community organisation" for the purposes of the Act. Such regulations are subject to the negative procedure (see section 42(5)).

23. Section 6(3) provides a definition of "Scottish harbour authority" by reference to the related terms "harbour authority" and "harbour" as defined in section 57(1) of the Harbours Act 1964.

Part 3 – Management of Scottish Crown Estate assets

Managers' powers and duties

24. Section 7(1) obliges a manager of a Scottish Crown Estate asset to maintain and seek to enhance the value of the asset and the revenue arising from it. Section 7(2)(a) provides that, in complying with the subsection (1) duty, a manager must act in the way best calculated to further the achievement of sustainable development in Scotland. Section 7(2)(b) also requires managers, in complying with the subsection (1) duty, to seek to manage the asset in a way that is likely to contribute to the promotion or improvement in Scotland of wider socio-economic and environmental benefits.

25. Section 8(1) provides that, within the constraint that ownership of the asset rests with the Crown, managers have the power to do anything the Crown could do as owner. Section 8(3) provides that managers are able to transfer ownership of Scottish Crown Estate assets under their management and to acquire land on behalf of the Crown in the course of management. Under section 8(4), where land is acquired, that land becomes a Scottish Crown Estate asset under the management of the manager that acquired it. ("Land" is defined in subsection (7) as including buildings and other structures, land covered with water, and any right or interest in or over land).

26. Section 8(5)(a) provides that the ability of a manager to do anything on behalf of the Crown in respect of the asset that the Crown could do as owner of the asset is subject to restrictions or limitations contained in the Act or in another enactment relating to Scottish Crown Estate assets. That includes transfer regulations made under section 3 of the Act which may contain provisions of the type mentioned in section 3(3)(a). Under section 8(5)(b), a manager is not to be subject to any restriction on its powers that would not restrict the powers of the Crown as owner, which is to disapply any limitation on the powers imposed on a person who is a manager if that person were acting in a capacity other than as a manager of a Scottish Crown Estate asset, such as a local authority. Subsection (6) provides that, where a provision of the Act, or any provision made under the Act, requires the consent of the Scottish Ministers for the transfer of ownership of an asset or for an acquisition, if such consent is not obtained the transaction is void. For instance, consent is required for the transfer of ownership of a portion of the seabed under section 10(3).

27. Section 9(1) provides that when entering into transactions the manager is not subject to any formalities that would apply if Her Majesty were transacting i.e. the manager may enter into a transaction as if the person were acting on behalf of a person other than the Queen. Subsection (2) provides that any document relating to such an asset that is executed by the manager is to be construed and registered as if the manager were acting on behalf of a person other than Her Majesty. Subsection (3) defines "registered" for these purposes, with subsection (4) enabling the Scottish Ministers to modify that definition.

28. Section 10 provides that the Scottish Ministers' consent is required for the transfer of ownership of a Scottish Crown Estate asset, if the transfer would result in the manager no longer managing any assets or if the transfer relates to a portion of the seabed.

29. Section 11 requires a manager to obtain market value when transferring the ownership of an asset or granting a lease or other right in or over a Scottish Crown Estate asset ("a relevant transaction"). Section 11(2) allows managers to exercise discretion to obtain less than market value when it is likely to contribute to the promotion or improvement of any of the socio-economic or environmental factors listed in subsection (2). In deciding whether to exercise this discretion, managers must have regard to the likely effect of making the relevant transaction for less than market value on the overall value of the Scottish Crown Estate (section 11(3)). Subsection (4) disapplies the subsection (1) duty where the transaction is made for the purpose of complying with an obligation enforceable against the Crown or against the manager, or in pursuance of Part 1 of schedule 4 of the Crown Estate Transfer Scheme 2017 (S.I. 2017/524) (the "Transfer Scheme"). Paragraph 3 of Part 1 of schedule 4 of the Transfer Scheme enables the Secretary of State for Defence to require a manager of an asset to renew a right held by the Secretary of State in the asset. Paragraph 4 of Part 1 of schedule 4 of the Transfer Scheme enables the Secretary of State for Defence to require a manager of an asset to grant the Secretary of State a new right in that asset where the Secretary of State is of the view that, for reasons of defence or national security, there is an overriding public interest in the right being granted to the Secretary of State.

30. Section 12(1) defines "market value" which accords with the definition of "market value" (and "market rent") adopted by the Royal Institution of Chartered Surveyors (RICS) in RICS Valuation - Global Standards 2017 ("the Red Book")[1] based on current International Valuation Standards. This contains mandatory rules, best practice guidance and related commentary for all members undertaking valuations. Section 12(4) enables the Scottish Ministers to modify this definition.

31. Section 12(2) provides that where an agreement is made to make a relevant transaction (or consider the making of a relevant transaction) in respect of an asset more than 10 years after the date of the agreement, the asset is to be valued at the time the transaction occurs and not at the time of the initial agreement. Subsection (3) provides that, where the transaction is made in pursuance of paragraph 15 of Part 3, or paragraph 25(1) of Part 4, of the Transfer Scheme (in relation to oil or gas pipelines or electricity cables etc.), "market value" has the meaning given in those paragraphs instead.

[1] https://www.rics.org/uk/knowledge/professional-guidance/red-book

32. Section 13 enables the Scottish Ministers to direct a manager (or managers) as to the amount that may be charged (or how that amount is to be calculated) by way of rents for the lease of an asset or in connection with any other agreement for the use of the assets. At present, the calculation of aquaculture rents, for example, is set by a standard formula. For finfish, charges depend on net gutted weight and species, and for shellfish, the calculation is based on species, length of rope and other types of equipment. The provisions in the Act could be used to enable similar arrangements to be followed in future whereby similar rates are charged for certain type of leases. Where a direction made in pursuance of section 13(1) applies to the lease, or other agreement for the use, of an asset, section 11 is disapplied (section 13(3)(a)). This is to avoid potential conflict between a manager's duty under sections 11 and 13. Where a direction is in place, a manager can depart from the direction only with the consent of the Scottish Ministers. If such consent is not obtained the lease or other agreement is void (section 13(3)(b)). Subsection 13(4) provides that the power of the Scottish Ministers in section 13(1)(a)(ii) to make a direction in relation to the amount that a manager may charge does not apply to the following agreements: an agreement under paragraph 64(1) of schedule 3A of the Communications Act 2003 (granting of rights relating to tidal waters); an agreement within the meaning of paragraph 15 of Part 3 of schedule 4 of the Transfer Scheme (the granting of rights in respect of pipelines); and an agreement within the meaning of paragraph 25(1) of Part 4 of schedule 4 of the Transfer Scheme (granting of rights in respect of transmission or distribution of electricity).

33. Section 14 prohibits managers from leasing or granting another right in or over an asset for more than 150 years unless the manager or the Crown is under an obligation to do so. A potential example is if the Secretary of State for Defence is exercising powers under Part 1 of schedule 4 of the Transfer Scheme such that a manager is required to enter into a lease of, or other right in or over, the asset for a period of more than 150 years.

34. Section 15 prevents a manager of a Scottish Crown Estate asset from granting a right to remove wild kelp from any area of the seabed they manage, if either of two cases apply. The first case (section 15(2)) is where such removal would inhibit the regrowth of the individual plant and the kelp is intended for commercial use. The second case (section 15(3)) is where the removal of kelp is a licensable marine activity (as construed in accordance with section 21 of the Marine (Scotland) Act 2010 and no marine licence has been granted by the Scottish Ministers under Part 4 of the Marine (Scotland) Act 2010). It is a licensable marine activity to use a vehicle or vessel etc. to remove any substance or object from the seabed with the Scottish marine area. Any right granted by a manager to remove sea kelp from the seabed where either of those two cases applies is void. Wild kelp means any of five types of sea kelp listed in the definition in subsection (5).

35. Section 16 requires a manager to meet its Scottish Crown Estate liabilities from the Scottish Crown Estate accounts it keeps. Subsection (2) provides that the Scottish Ministers may by regulations transfer a right or liability from one manager to another manager. The rights and liabilities which can be transferred in this way are those relating to a Scottish Crown Estate asset, a former Scottish Crown Estate asset or a historic Scottish asset (within the meaning of paragraph 1 of schedule 2 of the Crown Estate Transfer Scheme 2017 – meaning an asset in Scotland which once formed part of the Crown Estate but which did not form part of the Crown Estate in Scotland on 1 April 2017 when most of the Crown Estate Commissioners' functions relating to the management of the Crown Estate in Scotland transferred to Crown Estate Scotland).

36. Section 17 prohibits a manager from granting a heritable security over a Scottish Crown Estate asset. ("Heritable security" is defined in section 45(1) by reference to section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970, meaning a security which is capable of being constituted over any land or real right in land by disposition or assignation of that land or real right in security of any debt and which is capable of being registered in the Land Register of Scotland or recorded in the Register of Sasines).

37. Section 18 makes provision restricting the type of investment that may be made by managers. Managers may invest a sum of money from the manager's capital account if it is invested in a heritable security in Scotland or in a security over land in the rest of the United Kingdom, in an interest-bearing account or in an investment of such other description as the Scottish Ministers may specify in a direction. Managers may invest a sum of money from their income accounts in an interest-bearing account.

38. Section 19 allows a manager to make charitable donations out of the manager's income account (within the meaning of section 28(2)(a)). A "charitable donation" is defined as one made for a charitable purpose (within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005) and which provides public benefit in Scotland such as making a positive difference to the public in Scotland.

39. Section 20 requires managers to exercise their functions in a way that is transparent and accountable and consistent with good governance principles. Section 21 requires managers to exercise their functions in a way that encourages equal opportunities.

Planning and reporting

40. Section 22 requires the Scottish Ministers to prepare a strategic management plan in respect of the Scottish Crown Estate and sets out the requirements of that plan. The plan is to 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 (subsections (1) and (2)). It can also include such other information about the Scottish Crown Estate and its management as the Scottish Ministers consider appropriate (subsection (3)). The Scottish Ministers must consult with managers and other persons they consider appropriate in preparing the plan (subsection (4)). A copy of the plan is to be laid before the Scottish Parliament and the Scottish Ministers must publish the plan as soon as reasonably practicable after it has been laid (subsection (6)). Managers of one or more Scottish Crown Estate assets are to have regard to the strategic management plan when preparing their management plans (see below) and when exercising their management functions (subsection (5)). Section 23 requires 5-yearly reviews of the plan to take place. 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 Scottish Ministers' functions under sections 22 and 23 can be delegated to Crown Estate Scotland by virtue of section 39(1).

41. Section 24 requires all managers (other than Crown Estate Scotland) to prepare a management plan and specifies what it must cover. Management plans are prospective plans covering a 3 year period. Each plan is to set out the manager's objectives for the period, the activities the manager proposes to undertake during that period in pursuit of the objectives, any risks associated with those activities, outcomes against which the achievement of the objectives

may be assessed and how the manager proposes to maintain and seek to enhance the value of assets under their management. The plan must also set out whether the manager proposes to dispose of any Scottish Crown Estate assets during that period and, if so, how the manager proposes to use any proceeds of the disposal.

42. Crown Estate Scotland is separately required to prepare a corporate plan, which is similar to a management plan, under article 19 of the Crown Estate Scotland Order. Accordingly, to avoid Crown Estate Scotland having to prepare duplicate reports, subsection 24(4) provides that sections 24 and 25 do not apply to Crown Estate Scotland.

43. Section 25 makes provision for the Scottish Ministers to approve (with or without modifications agreed by the manager) or reject management plans. Where the Scottish Ministers reject a plan, subsection (3) requires a manager to submit a revised plan to the Scottish Ministers within such period as they direct. The approved management plans must be published by the manager as soon as reasonably practicable after it is approved (subsection (4)). In recognition that circumstances change, subsection (5) makes provision for revising plans and requires such revision in particular circumstances. Managers may revise plans from time to time at their discretion, and must do so if the function of managing an asset is transferred to or away from them under regulations made under section 3(1) or when the function is delegated to or by them under section 5. A revised plan must be sent to the Scottish Ministers (unless the manager is the Scottish Ministers), and the approval and publication process applies to revised plans as it applies to original plans (see subsection (7)).

44. Section 26 requires managers (other than Crown Estate Scotland) to prepare an annual report on their activities during the year, as managers are to be accountable for the way they exercise the function of managing Scottish Crown Estate assets. Crown Estate Scotland is separately required to prepare an annual report under article 18 of the Crown Estate Scotland Order. The matters to be included in the report are set out in subsections (2) to (6) and include an assessment of how the activities have contributed to meeting the manager's objectives as set out in its management plan. The report is also to include a list of any directions given to the manager by the Scottish Ministers or the Secretary of State under the Transfer Scheme during that financial year (subject to the exception set out in subsection (5) providing that a direction given, revised or revoked by the Secretary of State is not to be included if the Secretary of State notifies that it is not to be listed in the manager's annual report). Subsection (7) provides that a manager must complete and send a copy of its annual report to the Scottish Ministers by no later than 3 months after the end of the financial year to which it relates i.e. no later than 30 June each year.

45. Section 27 requires the Scottish Ministers to lay a copy of the annual reports prepared under section 26(1) or article 18(1)(a) of the Crown Estate Scotland Order before the Scottish Parliament. The Scottish Ministers are able to lay copies of individual reports or to lay copies of the reports as part of a consolidated report. As soon as possible after laying copies of the reports, whether individually or consolidated, the Scottish Ministers are required to publish the reports. Managers must not publish their own reports until a copy of it has been laid before the Scottish Parliament, either as an individual report or as part of a consolidated report. The duty contained in this section for the Scottish Ministers to lay a copy of each annual report before the Scottish Parliament (either individually or as part of a consolidated report) may be delegated to Crown Estate Scotland by virtue of section 39.

Financial matters

46. As Her Majesty retains ownership of the Scottish Crown Estate in right of the Crown (and the manager does not own the assets), but the revenue from the Scottish Crown Estate is to be paid into the Scottish Consolidated Fund (see section 1(2) of the Civil List Act 1952), section 28 requires separate accounts to be kept for income and capital. These accounts must also be kept separate from any other accounts kept by the manager, in any other capacity. In the context of managing the Scottish Crown Estate, the capital account represents those items transferred to the manager at the outset plus any amounts added in subsequent years; it is this amount that is preserved and ownership of which rests with the Crown. The income account represents the revenue that is generated by Scottish Crown Estate assets. The net revenue is paid into the Scottish Consolidated Fund. Keeping the separate accounts enables the manager of a Scottish Crown Estate asset to maintain appropriate segregation between income and capital and readily identify the value of those accounts at any given time.

47. Section 29 provides the Scottish Ministers with the power to direct other managers to carry money from the income account to the capital account, to be retained in the capital account. At present, the maximum sum that Crown Estate Scotland can carry is 9% of the gross revenue, and that sum is specified in an existing framework agreement between Crown Estate Scotland and the Scottish Ministers. Effectively, it enables the manager to invest in the asset(s) – for example, capital works which maintain and enhance the value of the asset, which is the duty of the manager under section 7 – or to acquire new assets, which become part of the Scottish Crown Estate. Subsections (4) and (5) allow managers other than the Scottish Ministers to make other transfers during the financial year. This is expected to be of most use early in a manager's management to smooth cash flow in-year. Transfers under subsection (4) must be repaid in full to the income account during the same financial year in which the sum was transferred from the manager's capital account(see subsection (5)). Subsection (6) permits the Scottish Ministers to transfer sums between their income and capital accounts as they consider appropriate.

48. Section 30 makes provision for the treatment of various sums, setting out whether the sum is to be carried to income or capital account. Subsection (1) recognises that some tenants pay a significant sum initially in exchange for an annual peppercorn rent and provides for different accounting for that sum, depending on the length of the underlying lease. Subsections (2) and (3) make provision for the allocation of income from mining interests (reflecting that mining works reduce the value of the mine, which is a capital asset) in accordance with any direction given by the Scottish Ministers about the allocation. Subsection (4) provides that, where the Scottish Ministers are themselves the manager, they can determine the proportions which apply to the allocation under subsections (3) and (4). Subsection (5) requires a manager to make repayments of any loan made by the Scottish Ministers from the account to which the manager carries the sums received under the loan i.e. loans carried to capital account are repaid from the capital account and loans carried to income account are repaid from the income account. The loans referred to here are loans made to managers by the Scottish Ministers under section 32 (see below), or to Crown Estate Scotland under article 17 of the Crown Estate Scotland Order.

49. Section 31 enables the existing ability of Crown Estate Scotland in the course of its management to cross-subsidise the Scottish Crown Estate to be extended to all managers. This is achieved by enabling a manager to transfer a sum from their income account to the income account of another manager, and likewise for the capital account. Managers may only make

such transfers if directed to do so by the Scottish Ministers. This recognises that not all Scottish Crown Estate assets are capable of generating sufficient revenue to cover the costs of, for example, maintenance. The Scottish Ministers can, therefore, direct a manager with sufficient revenue or capital to transfer sums to another manager where there is a shortfall.

50. Section 32(1) enables the Scottish Ministers to make grants and loans to a manager in connection with the exercise of the manager's functions. Subsections 3 and 4 make provision for the Scottish Ministers to impose conditions (including as to repayment) and to vary the conditions. Managers are not otherwise able to borrow in connection with their functions (subsection (2)), nor can they grant heritable securities (see section 17)). Section 32 does not apply to Crown Estate Scotland because article 17 of the Crown Estate Scotland Order makes equivalent provision.

51. Section 33 provides that the Scottish Ministers or, with the consent of the Scottish Ministers, another manager may make grants to such persons as the person making the grant considers appropriate for the purpose of covering outlays incurred in making preparations for a transfer or delegation of management of a Scottish Crown Estate asset. The Scottish Ministers or, as the case may be, another manager may impose conditions relating to the grant (or its repayment).

52. Section 34 requires managers to keep proper accounts and records and prepare a statement of accounts in relation to any Scottish Crown Estate asset(s) managed by them, and any money and investments forming part of the Scottish Crown Estate which the manager is holding, in respect of each financial year. Subsection (3) requires managers to prepare a statement of accounts in such form, to include such information, and to be prepared in accordance with such methods or principles as the Scottish Ministers may direct. Subsection (4) requires managers (other than the Scottish Ministers) to send their statements of accounts in respect of each financial year to the Scottish Ministers within 3 months of the end of the financial year to which their statement relates. As with the income and capital accounts (see section 28), subsection (5) requires such accounts and records to be kept and statements prepared separately from any other accounts and records of the manager.

53. Section 35 provides that the Scottish Ministers must prepare a consolidated statement of accounts prepared by each manager of one or more Crown Estate Scotland asset to submit to the Auditor General for Scotland. This function of the Scottish Ministers can be delegated to Crown Estate Scotland by virtue of section 39. This common approach takes account of local authorities' own accounts being audited by the Accounts Commission.

End of management

54. Section 36(1) makes provision for reports to be prepared and sent to the Scottish Ministers when a manager ceases to be a manager during a financial year. Subsection (3) provides that, where a manager holds only money or investments forming part of the Scottish Crown Estate, the manager is to be treated for the purpose of Part 3 of the Act as a manager of Scottish Crown Estate assets for as long as the manager holds that money or investments.

Ministerial directions

55. Section 37 confers a general power of direction on the Scottish Ministers in relation to the exercise of managers' functions and specifies that directions must be in writing and be published, as must any revocation of such a direction.

56. Section 38 requires managers to have regard to written guidance given by the Scottish Minsters (which will be published), as it is expected that several matters be more appropriately set out in guidance than in legislation. For example, the Scottish Ministers may choose to provide guidance to managers regarding the duty under section 11(1) to obtain market value for the transfer of ownership etc. of a Scottish Crown Estate asset, and the discretion to depart from that duty under subsection (2) of that section, which also requires managers to have regard to the likely effect of such a departure on the overall value of the Scottish Crown Estate as required under subsection (3) of that section.

57. Provision is made in section 39 for the Scottish Ministers to delegate their functions under certain sections of this Act to Crown Estate Scotland. Such delegation must be in writing. The sections are those relating to the preparation and review of strategic plans (under sections 22 and 23), the laying a publication of annual reports (under section 27) and the preparation and submission for audit of consolidated accounts (under section 35). Subsections (3) and (4) modify how certain sections of the Act operate when a delegation under section 39 is in place in respect of the Scottish Ministers' functions under section 27(1) and section 35(1). These ensure the legislation works as intended, for instance that annual reports are sent by managers to Crown Estate Scotland rather than to the Scottish Ministers.

58. 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. Section 40 obliges managers to provide that information or advice if it is required by the Scottish Ministers.

59. Section 41 allows the Scottish Ministers 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). "Resources" could include staff support, support services and capacity building.

Part 4 – General

60. Section 42 sets out how the Scottish Ministers can make regulations under the Act, including the procedure by which they are to be scrutinised by the Scottish Parliament. Section 43 gives the Scottish Ministers power to make ancillary provision that is necessary or expedient to make sure the provisions of the Act, or any regulations made under it, work properly.

61. Section 44 introduces schedule 2 which makes minor modifications and modifications in consequence of this Act.

62. Section 45 sets out definitions of terms used in the Act. Section 46 deals with the commencement of the Act and section 47 provides that the short title of the Act is the Scottish Crown Estate Act 2019.

SCHEDULE 1: CROWN ESTATE SCOTLAND: MODIFICATION OF ENACTMENTS

63. Schedule 1 amends each of the enactments referred to by changing references from "Crown Estate Scotland (Interim Management)" to "Crown Estate Scotland" in consequence of the renaming of that body by section 1(1) of the Act. Paragraph 11(2) of schedule 1 changes the name of the Crown Estate Scotland Order (see paragraph 6 of these Notes).

SCHEDULE 2: CONSEQUENTIAL AND MINOR MODIFICATIONS

64. Schedule 2, which is introduced by section 44, makes provision for the amendment of various enactments as a consequence of the provisions of the Act, and makes another minor amendment of the Crown Estate Scotland Order.

Paragraph 1 – Scotland Act 2016

65. This paragraph repeals section 36(7) of the Scotland Act 2016 ("the 2016 Act") which applies (with modifications) the Crown Estate Act 1961 ("the 1961 Act") to Crown Estate Scotland in the exercise of its functions which transferred from the Crown Estate Commissioners by virtue of the Transfer Scheme. In consequence of the Act, which makes provision relating to the management of the Scottish Crown Estate and the exercise of the Crown Estate Scotland's functions, the 1961 Act will not apply in relation to Crown Estate Scotland when this paragraph comes into force.

Paragraph 2 – The Crown Estate Scotland Order 2017

66. This paragraph amends various provisions of the Crown Estate Scotland Order, principally in consequence of the Act.

67. Article 8 of the Crown Estate Scotland Order sets out the circumstances in which the Scottish Ministers may remove a member of Crown Estate Scotland, one of which is when a member becomes insolvent. Paragraph 2(2) of this schedule replaces an incorrect reference to a person making a "composition order [with creditors]" with a reference to a person making a "composition or arrangement [with creditors]" (as being insolvent for these purposes).

68. Sub-paragraph (3) amends article 12(2)(b) of the Crown Estate Scotland Order which prevents Crown Estate Scotland from authorising another person from preparing its statements of account. The reference to these statements being prepared under section 2(5) of the 1961 Act is replaced with a reference to those statements being prepared under section 34(1)(b) of the Act in consequence of the repeal of section 36(7) of the 2016 Act discussed above (in relation to paragraph 1 of this schedule) and the provision in section 34(1)(b) of the Act requiring Crown Estate Scotland to prepare annual statements of accounts.

69. Sub-paragraph (4) adds a new paragraph (1A) to article 17 of the Crown Estate Scotland Order providing that Crown Estate Scotland may not borrow money other than from the Scottish Ministers for consistency with section 32(2) of the Act (which applies to other managers of Scottish Crown Estate assets, other than the Scottish Ministers themselves).

70. Sub-paragraph (5) amends article 18 of the Crown Estate Scotland Order so that, as amended, it will require Crown Estate Scotland to prepare and send to the Scottish Ministers its annual report no later than 3 months after the end of each financial year. The annual report must set out how its activities during the year have contributed to the objectives set out in its corporate plan which is prepared under article 19 of the Crown Estate Scotland Order (see sub-paragraph (5)(a), (b) and (f)). In addition, article 18(2) of the Crown Estate Order is revoked in consequence of section 27(1) of the Act, which requires the Scottish Ministers to lay a copy of Crown Estate Scotland's annual report before the Scottish Parliament (see sub-paragraph (5)(c)). Furthermore, article 18(3) of that Order is amended by sub-paragraph (5)(d) to provide that Crown Estate Scotland may publish its annual report but not until a copy of it has been laid before the Scottish Parliament, noting that under section 27(3) of the Act the Scottish

Ministers must in any event publish a copy of Crown Estate Scotland's annual report after laying it before the Scottish Parliament. Sub-paragraph (5)(e) amends article 18(4)(a) of the Crown Estate Scotland Order so that Crown Estate Scotland must additionally include a list of any directions given by the Scottish Ministers under section 37(1) of the Act in each of its annual reports, in consequence of that section of the Act.

71. Sub-paragraph (6) revokes article 20 of the Crown Estate Scotland Order. Article 20, which further modifies the 1961 Act as it applies to Crown Estate Scotland, is spent in consequence of the repeal of section 36(7) of the 2016 Act by paragraph 1 of this schedule.

PARLIAMENTARY HISTORY

72. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the Official Report of those proceedings. It also shows the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports and other papers.

Proceeding and Reports	*References*
Introduction	
Bill as introduced – 24 January 2018	SP Bill 24 - Session 5, 2018
Stage 1	
(a) Environment, Climate Change and Land Reform Committee	
5th Meeting 2018, 6 February 2018	In private
6th Meeting, 2018, 20 February 2018	Official Report Col 2 -24
9th Meeting 2018, 13 March 2018	Official Report Col 23 - 37
11th Meeting 2018, 27 March 2018	Official Report Col 30 - 45
12th Meeting 2018, 17 April 2018	Official Report Col 2 - 28
13th Meeting 2018, 24 April 2018	Official Report Col 25 - 50
16th Meeting 2018, 15 May 2018	In private
17th Meeting, 22 May 2018	In private
3rd Report, 2018 (Session 5) Stage 1 Report on the Scottish Crown Estate Bill – 29 May 2018	Report
(b) Delegated Powers and Law Reform Committee	
5th Meeting 2018, 20 February 2018	In private
8th Meeting 2018, 13 March 2018	In private
10th Meeting 2018, 20 March 2018	In private
14th Report, (Session 5) Scottish Crown Estate Bill at Stage 1 – 21 March 2018	Report
22nd Meeting 2018, 19 June 2018	Official Report Col 4
(c) Consideration by the Parliament	
Stage 1 Debate – 19 June 2018	Official Report Col 39 - 76
Stage 2	
Environment, Climate Change and Land Reform Committee	
25th Meeting, 2018, 18 September 2018	Official Report Col 1 - 46
Bill as amended at Stage 2	SP Bill 24A - Session 5, 2018

Proceeding and Reports	*References*
Stage 3	
(a) Delegated Powers and Law Reform Committee	
32nd Meeting 2018, 6 November 2018	In private
33rd Meeting 2018, 13 November 2018	In private
54th Report, 2018 (Session 5), Scottish Crown Estate Bill as amended at Stage 2 – 13 November 2018	Report
Consideration by the Parliament	
Stage 3 Debate – 21 November 2018	Official Report Col 20 - 100
Bill as passed – 21 November 2018	SP Bill 24B - Session 5, 2018
Royal Assent	
15 January 2019	http://www.legislation.gov.uk/asp/2019/1/contents/enacted

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