

Annex 6

SCOTLAND'S CASTLES, PALACES, ABBEYS & OTHER HISTORIC NATIONAL PROPERTIES

Introduction

1. This paper reports on a major transfer of property from the Crown Estate in Scotland to Scottish Ministers at the time of devolution. The paper examines two issues associated with the transfer:
 - the apparent lack of information available about the extent and purpose of the transfer;
 - the unusual nature of the reservations retained in favour of the Crown in the transfer;

Historic Transfer

2. The CERWG learnt during the course of its investigations that the Crown Estate Commission (CEC) had conveyed the ownership of Edinburgh and Stirling Castles and a number of Scotland's other castles, palaces, abbeys and other historic properties to the Secretary of State for Scotland at the time of devolution.
3. These properties were conveyed by the CEC on behalf of the Crown to the Secretary of State one by one during 1999¹. The ownership of the properties then passed from the Secretary of State to Scottish Ministers as a result of devolution and the terms of the Scotland Act 1998.
4. The CERWG was not aware of a publicly available list of all the properties involved in the transfer and enquiries to the CEC and Scottish Executive initially produced no results. A brief search of the Land Register and Register of Sasines showed that the properties involved in addition to Edinburgh and Stirling Castles, were in a number of different counties and also of considerable individual national significance (for example, Blackness Castle, Linlithgow Palace, Dunfermline Abbey).
5. The CEC has subsequently supplied a list of the properties involved (July 2006) and the full range of the twenty-six properties is shown in the attached table.
6. Holyrood Palace was not part of the 1999 transfer. It has been managed as government property since 1851 and its ownership and management became vested in Scottish Ministers under the Scotland Act 1998.
7. The CEC also supplied an explanation of the transfers registered in 1999:

"The purpose of the transfers that took place in or around 1998 was to remove any possible doubt surrounding the Secretary of State's title to ancient possession properties that had been administered by Historic Scotland for many years but in which The Crown Estate may have had a nominal historic interest." (13th March 2006)

¹ While some of the properties may have been conveyed in 1998, they were recorded in the Land Registers of Scotland during 1999.

8. It appears that the issue of Historic Scotland's responsibilities and those of the CEC had come into sharper focus earlier in the 1990s when Edinburgh and Stirling Castles ceased to be military garrisons and a body had to take over responsibility from the military authorities¹.
9. This reflects that the issue was not the ownership of the properties. They were ancient possessions of the Crown in Scotland and Scotland did not gain anything new from the 1999 transfers. The transfer was from property held by the Crown in Scotland to property held by the devolved government in Scotland. The significance was thus more about management than ownership.
10. The 1999 transfers may have been a "tidying up exercise", but the transfer to the new Scottish administration when the new Scottish Parliament was being established, also had a much wider national significance for Scotland. However, despite this, there was no mention of the transfer in the CEC's Annual Reports. Also, while the transfer was not secret, no other information appears to have been made public about it at the time.

Unusual Reservations

11. During the 1999 transfers, each conveyancing was entered in either the Land Register or Register of Sasines depending on its location. The transfer of Edinburgh Castle was unusual however, as the conveyancing (25th February 1999) was recorded in the Land Register for Midlothian two years before the Register became operational (1st April 2001). The Castle is thus registered as title number MID 1.
12. Since the transfers, the CEC has maintained on a number of occasions that:-
"The Crown Estate has no continuing property or other interest in Edinburgh Castle, Stirling Castle, Holyrood Palace or any other castles, palaces, abbeys cathedrals, gardens or parks (except where they are part of one of our five rural estates and within our direct and specific ownership)" (November 2005)²
13. However, the dispositions recorded in the Registers show that the CEC has reserved rights over the properties conveyed in 1999. The mineral rights are reserved by the CEC over all the properties and the most prominent properties at least, including Edinburgh and Stirling Castles, are also subject to a second very unusual reservation. The reservations are expressed in each title in the following terms:-
*under exception of and reserving to Her Majesty and her Successors
the whole mines, minerals and fossils insofar as belonging to Her and Them within or under
the subjects hereby disposed and
free right to exercise all rights to which She or They may be presently entitled and all
privileges which She or They may presently enjoy over the subjects hereby disposed;*
14. Mineral rights are a distinct property right in Scots law and the CEC therefore does, contrary to its statements, have a "continuing interest" in these properties. It is a profound anomaly that the CEC should retain the mineral rights over this iconic group of Scotland's national buildings.
15. The conveyancing is even more of an anomaly when it is not clear that the CEC was responsible for any property interest in all or most of the properties in the first place and therefore entitled to convey them. The conveyancing of these properties by the CEC reflects a judgement that they all formed part of the Crown Estate. The Crown Estate Act 1961

¹ Edinburgh and Stirling Castles briefly featured during the 1990s in CEC reports and public relations activities

² The CEC does not "own" any of the properties which it manages in Scotland on behalf of the Crown in Scotland

defines the Crown Estate as lands and other property rights and interests managed by the CEC, yet the CEC acknowledges that the properties “*had been administered by Historic Scotland for many years*” (para 7 above)¹.

16. Also, none of the properties are identified in the lists of properties making up the Crown Estate in Scotland produced by the CEC over the last 50 years, while there are specific references in the CEC’s Annual Reports to the fact that the CEC was not responsible for a number of the buildings subsequently conveyed in 1999².
17. The second reservation in the 1999 transfers after the mineral rights, is very curious and does not appear to be legally competent in Scots law. A reservation must be clearly specified and any right reserved must be of property or rights which are recognised in Scots law.
18. The fact that the same wording was used for a number of properties further undermines the notion that, for example, it was some rights that might form part of the regalia rights which were being reserved. Also, the lack of any part of the Crown Estate remaining as an adjoining property to most of the disposed properties, rules out the possibility that servitudes are being reserved. Before 2003, servitudes also had to be clearly specified from a restricted list of possibilities.
19. The CEC have recently acknowledged that these reservations exist (July 2006), but to date have given no indication whether it is the CEC’s intention to convey the mineral rights and second reservation to Scottish Ministers.
20. When the transfers of all these ancient possessions of Scotland were going through in 1999, the CEC was in the process of concluding a very major ‘landmark’ commercial property investment in Edinburgh. The CEC decided to name the development “The Prince’s Exchange”.

¹ It is also not clear how the “free gift” of these properties to the Secretary of State for Scotland fits with the requirement of the Crown Estate Act 1961 3(1) for the CEC to obtain “the best consideration in money or money’s worth which in their opinion can reasonably be obtained” or the limited circumstances to give away property under section 4 of the Act.

² for example, CEC Annual Report 1979

Table 5

**List of Twenty-Six Historic Properties in Scotland
conveyed by the Crown Estate Commissioners
on behalf of the Crown
to the Secretary of State for Scotland in 1998/9**

Edinburgh Castle

Stirling Castle

Blackness Castle

Dumbarton Castle

St. Andrews Castle

Broughty Castle

Fort Charlotte

Linlithgow Palace and Loch

Dunfermline Palace, Chapel and Grounds

Glasgow Cathedral

Elgin Cathedral and Burial Ground

Dunkeld Cathedral and Grounds

St Andrews Cathedral and Precincts

Dunblane Cathedral

Fortrose Cathedral and Precincts

St.Machars Cathedral, Aberdeen

Brechin Cathedral Round Tower

Arbroath Abbey and Precincts

Dundrennan Abbey

Beaulieu Priory

St.Mary's Kirk, St.Andrews

Blackfriars Chapel, St. Andrews

Brechin Maison Dieu Chapel

Holyrood Park

Kings Knott, Stirling

Argyll Lodging Stirling

Source: List supplied by CEC 6th July 2006