

Scottish Affairs Committee Inquiry into the Crown Estate in Scotland

Response from Andy Wightman - 8 June 2011

EXECUTIVE SUMMARY

1. This inquiry provides the opportunity to improve the governance of the Crown rights in Scotland that comprise the Crown Estate. I argue that the nature of these property rights, the limited role played by the Crown Estate Commissioners (CEC) in the management of these rights, the new responsibilities of Marine Scotland, the ongoing debate about further powers for the Scottish Parliament, and straightforward logic all suggest that the CEC should no longer have any role in the administration of the Crown Estate. My preferred option in order to do this is to amend the Crown Estate Act 1961 to the effect that it does not apply to Scotland. Alternatively, straightforward amendments could be made to the Scotland Bill.

INTRODUCTION

2. I am independent self-employed researcher on land rights in Scotland and elsewhere. I am the author of a recent book on land rights in Scotland, *The Poor Had No Lawyers* (1). In recent years I have taken a growing interest in the question of Crown property rights in Scotland and how they are defined and administered. In 2010 I submitted written evidence to the House of Commons Treasury Committee's inquiry into the management of the Crown Estate, to the Scotland Bill committee of the Scottish Parliament and to your own committee earlier in 2011.

BACKGROUND

3. Crown property rights in Scotland comprise a wide range of property rights and interests (2). The property rights themselves are defined by Scotland's law of property. They are thus distinct and separate from those of the English Crown. Responsibility for the property rights themselves is devolved and it is within the competence of the Scottish Parliament to legislate to amend or abolish any of them (3).

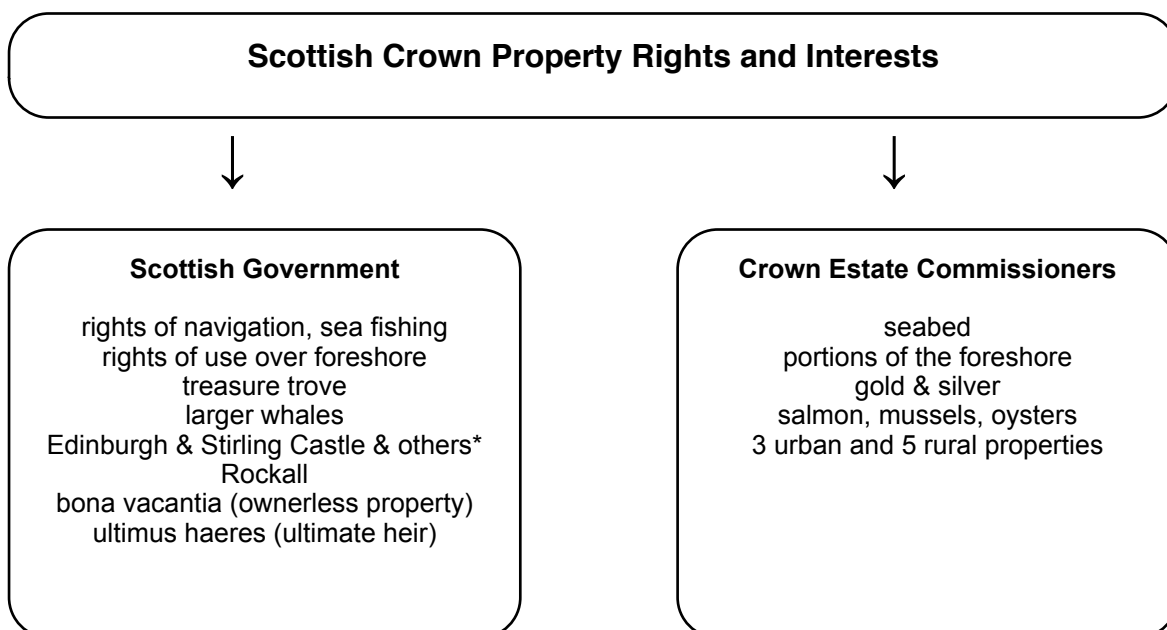


Fig 1. Administration of Scottish Crown Property Rights

* title to 26 ancient possessions was transferred from the Crown in Scotland to the Secretary of State for Scotland and subsequently Scottish Ministers in 1999

4. Scottish Crown property rights are managed and administered by the Scottish Government, with the exception of the rights which make up the "Crown Estate", which have been administered by the CEC and its predecessors in London since the responsibility was transferred in 1832 (See Fig 1).

5. Thus a key question over the future of the property rights that comprise the Crown Estate relates to the logic and desirability of the current distribution of authority over these rights and accountability for their stewardship. In particular, given the extensive powers of the Scottish Parliament over, for example, the management of the marine environment through Marine Scotland in terms of planning and strategic management, does it any longer make sense for the property rights to be administered by a separate body in London?
6. In response to your first question "*do the CEC serve a useful purpose in Scotland*", I would answer that they merely administer some of the totality of Crown property rights in Scotland. These rights are Scottish public rights in law and the Scottish Parliament has legislative authority over them. It is unclear to me what useful role is played by the CEC in such circumstances.
7. I submit to the Committee that the powers of administration that were transferred south in 1832 should return to Scotland. This will mean that the property rights which make up the Crown Estate in Scotland can be administered and managed as part of an integrated and holistic approach to natural resource management and can deliver enhanced public benefits (for example, by providing trust ports and harbours with full control of the seabed within the harbour - something they currently lack).
8. "*What should be the role of the CEC investing in Scotland?*" I don't have any problem with any organisation investing in Scotland and the CEC are welcome to do so if they wish. I do not agree, however, that they should at the same time be administering the Crown property rights that comprise the Crown Estate.
9. "*What is the legacy of the CEC in Scotland?*" The CEC merely administers property rights, manages some land and extracts rents. It will be remembered as an absentee landlord acting as a private landlord over Scottish public land with no accountability to the Scottish people.
10. "*Are the current management, administration and accountability arrangements of the CEC appropriate?*" No is the short answer. All other public land (Scottish Water, Forestry Commission, Agricultural and Crofting Estates etc.) is administered by public bodies that are accountable to the Scottish Parliament and under the democratic control of the Scottish Parliament. Times have changed since 1832 and since 1999. For proper accountability and administration, ALL crown rights should be brought together under the full control of the Scottish Parliament. This is a straightforward question of good governance.
11. "*How could the CEC best act in the public interest in Scotland?*" It could do so by no longer having any role in the administration of the Scottish public Crown rights that comprise the Crown Estate in Scotland.

RECOMMENDATIONS

13. For decades there has been discontent over the unaccountable and distant powers of the CEC over Scotland's Crown lands. A decade into the Scottish Parliament, there is no conceivable logic in continuing with an arrangement that splits the administration of Scotland's Crown rights between two separate bodies in two separate legal jurisdictions. There is nothing to be gained and many opportunities to be lost by having the CEC as a power broker and deal-maker over the development of marine renewable energy, the ability of harbours to plan their future and other matters within the competence of the Scottish Parliament.
14. The sensible thing to do with this anomalous position is to use this historic opportunity to bring the responsibility for the management and revenues of all Scotland's Crown property rights together in one place in Scotland under the full jurisdiction of the Scottish Parliament. Further discussion can then take place about what part of the Scottish Government and/or local government should administer the various rights.

REFERENCES

- (1) *The Poor Had No Lawyers*, Birlinn, Edinburgh 2010
- (2) See *The Crown Estate in Scotland - New Opportunities for Public Benefits*. Report of the Crown Estate Review Working Group, Highland Council, 2007 for a full and detailed analysis of the Crown Estate in Scotland. Available at www.andywightman.com/docs/CERWG-FinalReport12.06.pdf
- (3) Scotland Act 1998, Schedule 5, section 3(1). See also Report on Law of the Foreshore and Sea Bed, Scottish Law Commission No. 190, 2003 para 1.14 (where footnote 34 is incorrect and should read Sch 5, para 3(1))