

Scottish Parliament Scotland Bill Committee

Scotland Bill 2011

Response from Andy Wightman
12 September 2011

INTRODUCTION

I am an independent writer and researcher on land rights in Scotland and the author of a number of publications and books on the subject. For many years I have taken a particular interest in the topic of Crown property rights in Scotland and the role of the Crown Estate Commissioners (CEC) in Scotland.

I welcome the opportunity to submit evidence to the Scotland Bill Committee. My evidence relates to the property, rights and interests that comprise the Crown Estate in Scotland and that are currently administered by the Crown Estate Commissioners (CEC).

There has now been a sequence of Parliamentary inquiries over the past few years. All have accumulated valuable evidence and I would hope that the Committee takes account of all of this material in its current deliberations rather than just the written and oral evidence submitted for the purpose of the current hearings.

I do not intend to rehearse the evidence I myself submitted in January 2011 to the Session 3 Scotland Bill Committee but ask that the Committee note what I said then as it remains relevant today and forms the background and basis for this submission.¹

THE EVIDENCE TO DATE

In 2007 the Crown Estate Review Working Group (CERWG) published an authoritative and detailed analysis of the Crown Estate in Scotland. Since then, the topic has been examined by Committees of the House of Commons and of the Scottish Parliament as well as by the Calman Commission. More recently the Scottish Government has published a case for devolving the administration and revenues of the Crown Estate in Scotland.

The Scottish Parliament has full legislative power over all Crown property rights in Scotland with the sole exception of the administration and revenues of the Crown Estate which are currently the responsibility of the CEC. All of these rights (including those comprising the Crown Estate) are governed by Scots law. All form part of the Scottish publicly owned estate. The Scottish Consolidated Fund already receives much of the revenue from these rights through the Crown Office.² And the Scottish Parliament has full authority over planning and regulation of how the rights comprising the Crown Estate are managed.

However, the administration of these rights and the associated revenues are reserved. So too is the statutory corporation that administers them - the Crown Estate Commissioners. This organisation is accountable to the Treasury and a power of direction is granted to the Secretary of State for Scotland. The Scottish Government, local authorities, civic

¹ Available at www.scottish.parliament.uk/s3/committees/scotBill/ScotlandBill.htm

² The office of the Queen's and Lord Treasurer's Remembrancer is part of the Crown Office and administers the Crown's interest in bona vacantia, ultimus haeres and Treasure Trove.

organisations and many individuals have all set out in the evidence to date the issues and problems with this anomalous situation.

THE CASE FOR CHANGE

The topic has therefore been the subject of a growing volume of evidence and debate but in the midst of all this, there is a danger that the rationale and logic for reform (in the interests of good governance and the public interest) gets lost in the wider debate between the Scottish and UK Governments over the future of Scotland's constitution.

The Committee is in an ideal position to move matters forward. There is a broad consensus from this evidence that the current role of the CEC in Scotland is an anomaly and that the time has come for this committee to put forward a straightforward and detailed recommendation to end the role of the CEC in Scotland.

Such a move will involve no change in the ownership of these rights which will remain in the ownership of the Crown in Scotland. The revenues involved are modest and the UK Treasury will most likely save money. Removal of the CEC's role would also benefit the renewables sector by simplifying the process of obtaining generating consents. There is a broad consensus that this should all be done as part of a two stage process whereby:-

1. The CEC ceases to have any role or locus in Scotland and its powers are devolved to the Scottish Parliament by removing paras 2(3) and 3(3)(a) in Schedule 5 from the Scotland Act 1998
2. The Scottish Parliament and Scottish government instigate a review of all of these diverse rights and puts in place more appropriate arrangements for the management of all the property, rights and interests of the Crown Estate in Scotland.³

In making this case, the Committee, drawing on all of the available evidence, might like to evaluate it against the three tests laid down by the Secretary of State for Scotland.

THE SECRETARY OF SCOTLAND'S THREE TESTS

In evidence to the Committee on 7 September, Michael Moore set three tests for any proposed changes to the Scotland Bill.

*"We have made clear that any further proposals for consideration must be based on three key tests, if I may put it that way. They must be based on detailed proposals and be capable of establishing a broad consensus, and they should, while clearly benefiting Scotland, not be detrimental to the rest of the United Kingdom."*⁴

I will address these three tests and demonstrate how, in relation to ending the CEC's role in Scotland, all are met.

³ These include royal parks, ports and harbours, wildlife, the seabed and foreshore, gold and silver, salmon rights and agricultural estates. It is also worth noting that the Aquaculture and Fisheries Bill contained in the Scottish Government's legislative programme for 2011-2012 will include measures to improve management of wild salmon - a crown property right that forms part of the Crown Estate in Scotland. Thus the question of how these rights are administered will be an ongoing source of confusion and debate unless the situation is resolved.

⁴ Scottish Parliament Scotland Bill Committee, 8 September 2011, Col. 54.

Detailed Proposals

The detailed proposal presented here is to end the role of the Crown Estate Commissioners in Scotland. A seamless transition can then lead to Stage Two of the process where the property, rights and interests that comprise the Crown Estate in Scotland can be reviewed and the most appropriate future decided by the Scottish Parliament and Scottish government.⁵

The administration of these rights by the CEC is a historic and anomalous relic in a situation today where the Scottish Parliament already has full legislative authority over all crown property rights, administers a number of them through the Scotland's Crown Office and has full devolved authority over the planning and regulation over the use of the Crown Estate in Scotland.

Broad Consensus

From the written and oral evidence to date there is a broad consensus that change is necessary. The Scottish Government, local authorities, civic organisations and many individuals who have been raising this issue for many years are all agreed that now is the time to end this historic anomaly through the two stage process outlined above

Clearly benefiting Scotland & not detrimental to the rest of the UK

Scotland will benefit from having control of the administration of the property, rights and interests comprising the Crown Estate in a number of ways:-

- All Crown rights can be drawn together under the control of the Scottish Parliament;
- Each set of property rights can then be administered in the most appropriate manner;
- Existing responsibilities for planning and regulation can be integrated with the administration of the property rights;
- Proper accountability can be introduced in place of the current situation where the CEC is accountable to the Treasury and Scottish Ministers have no role in how their powers are exercised.

With regard to the impact on the rest of the United Kingdom, it should be noted that the rest of the UK will also benefit from the CEC no longer having any locus in Scotland.

First of all, the UK Treasury will save money. The Crown Estate in Scotland accounts for only around 4% of UK Crown Estate revenues, remitting around £10 million of the circa. £250 million UK-wide income per year to the Treasury. However, Scotland receives rather more than this 4% through the territorial allocation of Scotland's block grant. On top of this, the Treasury is now proposing providing £3.9 million to Scotland through the Coastal Communities Fund (a fund to be financed by the Treasury through a sum equivalent to 50% of the gross revenues from the Crown's marine estate).⁶

Thus it is the retention of the status quo that stands to disadvantage the UK. Eliminating the role of the CEC in Scotland would, by contrast, both benefit the UK and make financial matters more straightforward for Scotland.

⁵ It may, for example, be thought appropriate simply to abolish some (mussels and oysters), transfer others to local authorities (foreshore and seabed), allow tenant farmers to acquire their farms and rationalise the arrangements for ports and harbours by vesting the rights in the Trusts and Authorities that manage them.

⁶ "Coastal Communities to receive a multi-million pound boost". HM Treasury Press release 22 July 2011

Secondly, it is frequently claimed that having the Crown Estate in Scotland administered on a UK basis is to the advantage of Scotland by providing a source of external investment. Indeed, the CEC Chief Executive, Roger Bright, went so far as to claim that

*“The Crown Estate is an investor in Scotland. Its UK-wide remit enables us to use capital generated from outside Scotland to invest in Scotland. So capital released from our assets in central London, for example, has enabled us to support and invest in the Scottish Government’s ambitions for renewable energy in Scotland - an advantage acknowledged by the Calman Commission.”*⁷

The Secretary of State for Scotland made a similar claim on 8 September.

*“On the other hand, it should also be recognised that the Crown Estate’s (sic) investment in Scotland has been disproportionate to the income and the assets that it already has in the country.”*⁸

Similar claims were also made by the Calman Commission.⁹ I respectfully submit that all statements are misleading.

Over last 5 years, a total capital investment of £16m has been made by the CEC in Scotland and over the next 5 years £20m of investment has been committed.¹⁰ During this same period, over £70 million of capital receipts were realised by the CEC from Scottish assets.¹¹ Over the four years where accounts were available, the CERWG noted that 80-90% of gross revenues left Scotland.¹² This general pattern has persisted in the years since then.

The CEC has indeed invested in Scotland and plans to do so in future but its investment is has been a small proportion of the capital and revenues raised in Scotland and there no record of any net investment in Scotland in recent years or previously. Whether this is what Michael Moore meant when he stated that the CEC’s investment in Scotland has been “disproportionate to the income and assets” remains unclear and perhaps the Committee might wish to satisfy itself on this point given the way in which this argument has been deployed.

⁷ Written Evidence submitted to the House of Commons Scottish Affairs Committee’s Inquiry into the Crown Estate in Scotland, para. 4.2 page 4.

⁸ Scottish Parliament Scotland Bill Committee, 8 September 2011, Col. 84

⁹ See Calman Commission Final report paras 5.111 and 5.115. The claims made in 5.116 that “The Crown Estate has the flexibility to make investments in Scotland using capital raised from assets outside Scotland” is true in theory but it has never happened in practice since there has always been more than enough revenue raised in Scotland to meet all the investments that have been made.

¹⁰ See Q.89 - Q.91 Uncorrected transcript of evidence by Roger Bright to Scottish Affairs Committee Inquiry into the Crown Estate, 8 June 2011 and CEC Supplementary Evidence to the Scottish Parliament’s Scotland Bill Committee, 7 February 2011.

¹¹ Q.93 Uncorrected transcript of evidence by Roger Bright to Scottish Affairs Committee Inquiry into the Crown Estate in Scotland, 8 June 2011

¹² Crown Estate Review Working Group, Table 3, page 26.

There is no investment benefit gained by the Crown Estate in Scotland being administered as part of a wider UK operation. Indeed it is a disadvantage and similar (or higher) levels of investment could be made if the Scottish revenues were under the control of the Scottish Parliament.

All three tests, therefore, are readily met and there is thus a compelling case for reform and for removing the CEC from any future role in the administration of the property, rights and interests that comprise Scotland's Crown Estate.

In short, the CEC is unnecessary and removing the CEC from any role in the administration of the Crown Estate in Scotland would result in:-

- savings for the UK Treasury;
- better governance arrangements;
- proper long term strategic planning;
- the orderly and integrated development of marine renewables;
- the wider goals of Scottish Government policy such as land reform;
- transparency and accountability over the exploitation of the rights;
- appropriate management of ports and harbours.

CONCLUSIONS

The clear consensus from all the evidence collated to date is that there is a compelling case to remove the CEC from any future role in the administration and management of the property, rights and interests that comprise the Crown Estate in Scotland. Other important Scottish public estates such as the national forest estate and Scottish Water holdings are not administered by a property company based in London accountable to the Treasury. There is no logic in continuing with such an arrangement for the Crown Estate. Removing the CEC's locus in Scotland involve no change in the ownership of the Crown Estate, would save the UK Treasury money, and would allow for the more efficient administration of the diverse property, rights and interests that comprise the Crown Estate in Scotland.

Following the Scottish Parliamentary election in May 2011, the Scottish Government has made the question of control of the Crown Estate one of its demands for increased powers for the Scottish Parliament. Their proposals have focussed quite narrowly on the marine estate and on revenues. The Scotland Bill Committee has the opportunity to make a much broader case for reform focussing on:-

- the opportunities for better governance of all Crown property rights in Scotland;
- the benefits of improved transparency and accountability in Scotland;
- the benefits to the UK that would arise from removing the CEC from Scotland.

The UK Government has already conceded that revenues should return to Scotland but in choosing to do so partially through the clumsy mechanism of the Coastal Communities Fund, it has further complicated matters when a simple and elegant solution exists - the removal of Scotland from the territorial responsibilities of the CEC.

It is time for this issue to be resolved one way or another. The Scotland Bill Committee has a unique opportunity to move this debate on. There is no need for any further delay or obfuscation of the clear case for bringing all of Scotland's Crown property rights under the full control of the Scottish Parliament with a view to subsequent review of their administration and management.