

# Guide to Community Management of the Scottish Crown Estate through Transfer or Delegation



**Independent Framework for Transfer and Delegation**

## **Background**

In 2014, the Smith Commission, established to discuss devolution of powers, recommended that the management of Crown Estate assets in Scotland should be devolved from UK level. The Scotland Act 2016 provided for the devolution to Scotland of the functions of managing the Crown Estate's current wholly owned assets in Scotland. The Crown Estate Transfer Scheme 2017 enabled the smooth transition of the management of those assets to the newly formed Crown Estate Scotland (Interim Management), now known as [Crown Estate Scotland](#).

On 24 January 2018, the Scottish Crown Estate Bill was introduced to the Scottish Parliament and received Royal Assent on 15 January 2019. This [Scottish Crown Estate Act 2019](#) (the Act) creates a national framework setting out the powers and duties of managers of Scottish Crown Estate assets, and also includes statutory provisions for the transfer or delegation of the function of management of assets.

## **Independent Framework for Transfer and Delegation**

The Act sets out the legal and regulatory framework for managing Scottish Crown Estate assets, and the [Scottish Crown Estate Strategic Management Plan](#) (the Plan) lay out the vision and objectives, which together provide the basis upon which the **Independent Framework for Transfer and Delegation (IFTD)** has been developed.

The IFTD describes and supports the detailed processes of transferring or delegating the function of management of assets, from initial enquiry and application through to ministerial decision making, which, for transfers, will include parliamentary scrutiny before any approval is given. The framework was developed through independent consultation, and launched in Autumn 2021.

## **Is transfer or delegation right for me?**

There are various ways in which communities and organisations can play a greater role in the management of Scottish Crown Estate assets. All managers have a duty to maintain and enhance the value of the assets that they manage and the income

arising from them. In complying with that duty, managers must act in the way best calculated to further the achievement of sustainable development in Scotland and must seek to manage the assets in a way that is likely to contribute to the promotion or improvement in Scotland of economic development, regeneration, social wellbeing and environmental wellbeing.

As such, the management approach for **each asset is decided individually and applications will be addressed on a case-by-case basis**. For many, this will involve working flexibly with Crown Estate Scotland to explore the various options for local management, before agreeing the most suitable approach for achieving the aims. Transfer and delegation are new options beyond those currently available through negotiation with Crown Estate Scotland.

Although both transfer and delegation are covered by the same application process, the outcome of each process is different for the applying organisation.

When the function of managing an asset is **transferred** to a new manager e.g. a community body, the new manager takes on all management responsibility for that asset going forward and Crown Estate Scotland cease to be involved in the management of the asset.

A **delegation** is when the function of managing an asset is delegated to a new manager who then takes on agreed aspects of management. Crown Estate Scotland will provide support and advice to the new manager; the extent of their continued involvement in the management of the asset will be as set out in the terms and conditions of the delegation agreement.

Both transfer and delegation of management entail taking on the statutory duties and administration responsibilities of managing the asset, and so may not be appropriate for all organisations who are aiming to have greater involvement in local decision-making. Please visit [Crown Estate Scotland](#) for further information on other options. If you wish to discuss management of a specific asset and which route is best suited to your aims, please use the [Enquiry Form](#).

## **CASE STUDY**

### **Leisure Mooring Agreements**

Scotland is a popular destination for sailors, with the West coast in particular being renowned as some of the best waters in Europe.

While sailing itself is a public right, permanent seabed moorings require consent from the landowner. As Crown Estate Scotland manages the majority of the seabed around Scotland, granting the rights to lay moorings is a key part of the work of the Crown Estate Scotland coastal team.

Crown Estate Scotland issues licences for both private individuals and a wide range of commercial operators. However, leisure moorings account for the majority of Crown Estate Scotland seabed agreements and managing these on an individual basis would be extremely difficult and time consuming.



In order to facilitate the efficient use of the seabed, areas with more than 10 moorings are encouraged to establish a locally managed mooring association. Each Mooring Association has a seabed agreement that enables them to manage the moorings

within a specific area. In order to encourage formation of Mooring Associations, the annual mooring charge is currently 50% of the cost of an individual mooring licence.

The Mooring Associations also often represent their members' interests in wider developments. For example, Dunstaffnage Bay Mooring Owners Association in Argyll has held a seabed agreement for the moorings in their area for more than 30 years and was intensively engaged in representing mooring owners' interests as Dunstaffnage Marina developed. With positive input from the local Community Marine Officer, a strategic rearrangement of the moorings was agreed which allowed for the expansion of the marina whilst also preserving the interests of the mooring holders.



Tony Bennett, Crown Estate Scotland Community Marine Officer, explains: *“At present there are some 120 mooring associations and clubs around the Scottish coast who manage more than 3,500 moorings between them; this represents more than half the total number of moorings in Scotland. In enabling local coastal communities to manage their own affairs, this also allows my colleagues and I to spend*

*more time working with those who require assistance or support.”*

One approach to managing multiple interests in a complex space is the Clyde Moorings Committee. Established in 1981 under a Deed of Appointment to administer applications for moorings, the group encompasses key stakeholders such as Peelports, Bidwells (as managing agents for Crown Estate Scotland), the Queen's Harbour Master, RYAS, Clyde Yacht Clubs Association, Clyde Fishermen's Association, British Marine and Marine Scotland who meet regularly to discuss and

agree issues associated with moorings and navigation in the area. Decisions taken by the Committee are enacted by Crown Estate Scotland, who retain the legal responsibility for the seabed.

### Transfer and delegation duties

Transfer or delegation enables greater control over decision-making in relation to an asset by an eligible authority or community organisation. However, the asset is still part of the Scottish Crown Estate, and there are therefore still a range of restrictions and duties that have to be met by the new managers. If you are looking to successfully take on management, it is important you are aware of the associated duties and powers.

These duties include conditions on how assets can be managed, reporting requirements, financial restrictions, and governance requirements. Each of these is explored in more detail in the following sections.

The vision for the Scottish Crown Estate is that it is “managed sustainably, responsibly and fairly, and in a transparent and inclusive manner, to deliver long-term financial and wider social, economic and environmental wellbeing benefits for Scotland and its communities.”

### Principles of asset management

Taking on management of an asset means making fundamental decisions about how it can be used or accessed. These decisions may vary between assets, but all management decisions have to be based on whether or not they contribute to the vision for Scotland’s assets. The primary duty of all managers is therefore to **seek to maintain and enhance the value of the asset, and the income arising from it.**

It is recognised that the value of an asset is not necessarily measured solely or partly by the economic value. The financial benefits of an asset sit alongside the broader aspirations of a fair and sustainable Scotland.

The overarching principle is that the asset must be managed in a way that is sustainable, defined as “meeting the needs of the present without compromising the ability of future generations to meet their own needs”. *Bruntland Report 1987.*

In complying with the primary duty, you must act in the way best calculated to further the achievement of sustainable development in Scotland. You therefore have a responsibility to manage the asset in a **sustainable way** that contributes to the promotion or improvement of:

- **Economic development.** This can include job creation, new sustainable uses for land or sea, or green tourism.
- **Regeneration.** This can include regeneration of derelict land or property, or improving services and facilities for the community.
- **Social wellbeing.** This can include improving community cohesion, providing local services, or encouraging access to the environment.
- **Environmental wellbeing.** This can include improving land use, developing green energy opportunities, or managing biodiversity.

Adding value around mitigating or adapting to climate change is also a priority for asset management.

Each of the four forms of sustainability noted above are **considered of equivalent importance**. In practice, the relative importance of these principles will vary between assets depending on the environment, location and use patterns.

These key principles are at the heart of the Independent Framework for Transfer and Delegation. For example, in many cases community organisations may be best placed to make informed decisions about the management of an asset for social and environmental wellbeing in the local area. Alternatively, some assets have been identified as being more effectively managed at national level in order to achieve these aims.

## SCOTTISH CROWN ESTATE ACT 2019

### 7. Duty to maintain and enhance value.

(1) The manager of one or more Scottish Crown Estate assets must maintain and seek to enhance—

- (a) the value of the assets, and
- (b) the income arising from them.

(2) In complying with the duty under subsection (1), the manager must—

- (a) act in the way best calculated to further the achievement of sustainable development in Scotland, and
- (b) seek to manage the assets in a way that is likely to contribute to the promotion or the improvement in Scotland of—
  - (i) economic development,
  - (ii) regeneration,
  - (iii) social wellbeing,
  - (iv) environmental wellbeing

## CASE STUDY

### National management for social and environmental wellbeing

Crown Estate Scotland currently manages assets under the key principles of sustainable development, including economic development, regeneration, and social and environmental wellbeing. In some assets such as the Glenlivet Estate, they aim to find a balance between these priorities through engaging with users, tenants and local communities.



The rural estate of Glenlivet has been an asset of the Scottish Estate since 1937. Today there are more than 30 tenanted farms on the Estate and investment in the last 25 years has focused on these and developing the leisure and recreation opportunities at Glenlivet. The most recent of these developments is the new mountain bike trail and cafe, which sits alongside watersports activities and opportunities for off road driving as visitor attractions.

Away from the adrenaline sports areas, the wildlife and natural environment of Glenlivet is also managed for easy access for visitors with many miles of paths waymarked for walkers. In 2018 Glenlivet was the focus of a trial to assess the use of the natural capital protocol to assist with managing the assets in a way that is more in harmony with nature. This has led to a number of trials aiming to improve soil fertility, water quality, woodland diversity and peatland integrity across the estate.

## **CASE STUDY**

### **Community management for economic development and social wellbeing**

Community management can be an exciting mechanism to promote ownership and regeneration of assets. By empowering communities to lead on decisions of an asset, local management agreements are useful tools to improve the economic and societal value.

One local management success is Portgordon Harbour. Portgordon is a village in Moray, which held the principal port in the area in the 1800s. Over the last century, the harbour began to silt up and other nearby ports expanded, resulting in the harbour being closed and any remaining fishing fleets relocated in 1947. Despite being used by a few recreational and small-scale fishing boats, the infrastructure was starting to become dilapidated and in need of significant investment.

The Portgordon Community Harbour Group was formed in 2003 to take on the challenge of creating a management plan to make the most of the harbour. A

“Planning for Real” exercise in 2017 unearthed the potential of the harbour as a driver for development in the region.

After many years of close working partnership, Crown Estate Scotland and Portgordon Community Harbour Group Ltd signed a Memorandum of Understanding in 2021, which includes working towards the transfer of ownership of a number of local assets, including the harbour. The new agreement with Crown Estate Scotland has supported the community in making progress towards their aims and helped to drive the harbour regeneration project forwards.

Scott Sliter, Chairperson of the Portgordon Harbour Group, explains, “*With a new, collaborative 'team' approach between Crown Estate Scotland and Portgordon Harbour Group, open dialogue, acknowledgements of shared risks and understandings of our collective responsibilities, we have, I feel, progressed the project to the point of a 'win-win' scenario for all parties. Portgordon residents are empowered now to promote their own vision of the village that they aspire to create.*”

### **Management Planning**

As the manager of an asset, you have to **prepare a Management Plan** when you take over and then every subsequent three years. In preparing a management plan, the manager needs to have regard to the current [Scottish Crown Estate Strategic Management Plan](#) which sets out the Scottish Ministers’ objectives, priorities and policies in relation to the management of the Scottish Crown Estate. These currently include, but are not limited to, the National Marine Plan, the Climate Change Plan, and the Energy Strategy.

Any management plan has to set out the manager’s objectives during the 3 year period, the activities you propose to undertake to achieve those objectives, any risks associated with those activities, and how achievement of those objectives will be evaluated. You also have to clearly demonstrate how you propose to maintain and

seek to enhance the value of the asset and the income arising from it and if you intend to dispose of (sell) an asset – see the related extract from the Act below.

All management plans are subject to the approval of Scottish Ministers.

## SCOTTISH CROWN ESTATE ACT 2019

### 24. Management Plans

(1) A manager of one or more Scottish Crown Estate assets must prepare plans for the management of the assets.

(2) Each plan is to cover a period of 3 years.

(3) Each plan must set out—

(a) the manager’s objectives for the period to which the plan relates,

(b) the activities that the manager proposes to undertake during that period in pursuit of the objectives,

(c) any risks associated with those activities,

(d) outcomes against which the achievement of the objectives may be assessed,

(e) how the manager proposes to maintain, and seek to enhance the value of, Scottish Crown Estate assets and the income arising from them during that period.

(f) 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.

## **Financial Management**

### **Financial Standards**

When taking on transfer of an asset, you will have to deal with the financial responsibilities, including all liabilities relating to the asset, and meet the financial standards expected by the Scottish Government and laid out by the [Scottish Public Finance Manual](#) (SPFM). You must comply with all the financial duties and responsibilities set out in the Act. You also need to have the resources to manage

these, including provision of separate capital and income bank accounts, and the capacity to prepare annual budgets and reports.

## SCOTTISH CROWN ESTATE ACT 2019

### 26. Annual Report

(1) A manager of one or more Scottish Crown Estate assets must prepare in respect of each financial year a report on its management of the assets during that year.

(2) The report must, in particular, include an assessment of how the manager's activities during the financial year have contributed to the meeting of its objectives for that year.

(3) For the purposes of subsection (2), a manager's objectives for the financial year are its objectives as set out in a plan prepared under section 24(1) for a period which includes all or part of that year.

(4) The report must include a list of any directions given to the manager, or revised or revoked, during the financial year by—

(a) the Scottish Ministers under section 37(1),

(b) the Secretary of State under the Crown Estate Transfer Scheme.

(5) But a direction given, revised or revoked by the Secretary of State is not to be included in the list, or otherwise mentioned in the report, if the Secretary of State so notifies the manager.

(6) Otherwise, it is for the manager to determine the form and content of the report.

(7) A manager (other than the Scottish Ministers) must send a copy of its report to the Scottish Ministers no later than 3 months after the end of the financial year to which the report relates.

In the case of a delegation, asset(s) remain under the auspices of Crown Estate Scotland's Accountable Officer (AO) and managers will be required to ensure their processes support the AO in the discharge their duties.

## Leasing

As the manager of a transferred asset, it is **your responsibility to meet any financial liabilities, and to collect any income from the asset**. Any income is likely to come from leasing, in that money is received in exchange for allowing certain activities within the asset, such as mooring or farming. In the case of a delegation the nature and extent of these duties will be agreed as part of the process.

Under the Act, a manager has a duty not to grant any leases or other rights over the asset (a relevant transaction) for consideration of less than market value. The Act sets out in detail the meaning of market value. More information is available on the [Crown Estate Scotland website](#).

A manager can exercise discretion and make a relevant transaction for consideration of less than market value if the manager is satisfied that it is likely to contribute to the promotion or improvement in Scotland of: economic development, regeneration, social wellbeing, environmental wellbeing, or sustainable development, but the manager must always have regard to the likely effect of the transaction on the value of the Scottish Crown Estate as a whole.

There may also be maximum and minimum charging levels set by Scottish Ministers.

## Revenue, Capital and Borrowing.

As part of the Scottish Crown Estate, **any revenue from an asset following transfer or delegation remains the property of the estate**. This means that all profits from leasing or other activities will be transferred to the Scottish Consolidated Fund, which is controlled by the Scottish Parliament and forms part of public spending.

It is possible to use revenue to generate capital which can be invested back into the asset or used to purchase new assets for the Scottish Crown Estate. The percentage of revenue that can be used for this purpose will be determined as part of the process. The rate set for the current manager, Crown Estate Scotland, is detailed in the

[Framework Document](#). Other sums can be transferred from the income account to the capital account subject to the repayment rules set out in the Act

It is possible to have loans from the Scottish Government to support management costs. Scottish Ministers may make grants available for the purpose of making preparations for a transfer or delegation. However, you **cannot borrow money** in relation to the asset except from Scottish Ministers and in accordance with the terms of the Act.

### **Community Engagement**

Involving the wider community is an integral part of managing the asset. The power to transfer or delegate aspects of management of the Crown Estate in Scotland exists to support community aspiration and enable more local impact on decision making. The process of applying to take on transfer or delegation of management functions therefore **requires significant community input** to the design of proposals, as well as a commitment to real and ongoing partnership with affected organisations and communities.

The [guiding principles](#) are that community engagement should be **effective, fair and efficient**, for both the participant and the organisation undertaking the work. This means engagement must meet the needs and expectations of the people involved, be well informed and properly planned, and give people who may face additional barriers to getting involved an equal opportunity to participate.

Once your application has progressed beyond an expression of interest, it will be important for you to engage meaningfully with the affected communities including tenants and stakeholders. Further advice about suggested approaches to engagement will be provided during the process.

## **Best Practice**

There is a responsibility to manage the asset in a fair and equitable way, in line with the principles of good governance. This includes a requirement to ensure that all your actions are transparent and accountable, and within the spirit of best practice. All management should also encourage equal opportunities, and any associated legal requirements.

### SCOTTISH CROWN ESTATE ACT 2019

#### **20. Transparency and accountability**

(1) A manager must, so far as reasonably practicable, exercise its functions in a way which—

- (a) is transparent and accountable, and
- (b) is consistent with any other principle of good governance which appears to the manager to constitute best practice.

(2) Subsection (1) does not apply to Crown Estate Scotland (but see article 4 of the Crown Estate Scotland Order).

#### **21. Equalities**

(1) A manager must exercise its functions in a way which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.

(2) In subsection (1), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part 2 of schedule 5 of the Scotland Act 1998.

## **Next steps**

Applying for the transfer or delegation of management of an asset is an **intense process** and, in particular, transfers can take two to three years, and will be subject to Parliamentary scrutiny. The level of scrutiny will depend on the nature of the asset involved. If you're still unsure whether it is the right route for you, you can submit the [Enquiry Form](#) to the Crown Estate Strategy Unit: [CESU@gov.scot](mailto:CESU@gov.scot) who can discuss with you the best options to achieve your aims.

If you're interested in going ahead with an application, you can find all you need in the [Guide to a Successful Application](#).