



# Scottish Crown Estate Act 2019

2019 asp 1

## PART 2

### CHANGES IN MANAGEMENT OF SCOTTISH CROWN ESTATE ASSETS

#### 2 Meaning of “Scottish Crown Estate”, “asset” and “manager”

In this Act—

“Scottish Crown Estate” means the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies,

“asset”, in relation to the Scottish Crown Estate, means any property, right or interest forming part of the Scottish Crown Estate, other than money or investments,

“manager” means a person who, for the time being, has the function of managing one or more Scottish Crown Estate assets on behalf of the Crown.

#### 3 Transfer of management function

(1) The Scottish Ministers may by regulations make provision for or in connection with the transfer of—

- (a) the function of managing a Scottish Crown Estate asset from the manager of the asset to another person mentioned in subsection (2) (“the transferee”),
- (b) any right or liability the manager has in relation to the asset to—
  - (i) the transferee,
  - (ii) another person mentioned in subsection (2).

(2) The persons referred to in subsection (1)(a) and (b)(ii) are—

- (a) the Scottish Ministers,
- (b) Crown Estate Scotland,
- (c) a local authority,
- (d) another Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998),
- (e) a Scottish harbour authority,
- (f) a community organisation.

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- (3) Regulations under—
- (a) subsection (1)(a) may include provision—
    - (i) restricting the exercise of the function by the transferee,
    - (ii) about the management of records relating to the exercise of the transferee’s functions as a manager,
  - (b) subsection (1)(b) may transfer different rights or liabilities to different persons.
- (4) Where the transferee is a community organisation, regulations under subsection (1) may—
- (a) provide that, if the transferee ceases to exist, the function of managing a Scottish Crown Estate asset, and any rights or liabilities the transferee has in relation to such an asset or former asset, are to transfer to another person mentioned in subsection (2),
  - (b) require the transferee to notify the Scottish Ministers of any proposed change to its constitution which would result in the transferee ceasing to be a community organisation,
  - (c) require a court or a person specified in the regulations to notify the Scottish Ministers of any application made to the court or person which, if granted, would result in the transferee—
    - (i) ceasing to exist, or
    - (ii) ceasing to be a community organisation,
  - (d) make such other provision in connection with the transferee ceasing to exist or to be a community organisation as the Scottish Ministers consider appropriate.
- (5) Where the transferee is a Scottish harbour authority, regulations under subsection (1) may—
- (a) provide that, if the transferee ceases to exist, the function of managing a Scottish Crown Estate asset, and any rights or liabilities the transferee has in relation to such an asset or former asset, are to transfer to another person mentioned in subsection (2),
  - (b) require a court or a person specified in the regulations to notify the Scottish Ministers of any application made to the court or person which, if granted, would result in the transferee ceasing to exist,
  - (c) make such other provision in connection with the transferee ceasing to exist as the Scottish Ministers consider appropriate.
- (6) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) each person from or to whom the regulations would (if made) transfer a function, right or liability,
  - (b) such other persons as the Scottish Ministers consider appropriate.
- (7) Regulations under subsection (1) may modify any enactment.
- (8) In subsection (3)(a)(ii), “management” includes keeping, storage, securing, archiving, preservation, destruction or other disposal.

#### **4 Directions requiring delegation of management function**

- (1) The Scottish Ministers may direct the manager of a Scottish Crown Estate asset to delegate the function of managing the asset to another person mentioned in section 3(2) (c), (d), (e) or (f).
- (2) Subsection (1) does not apply where the manager is—
  - (a) the Scottish Ministers,
  - (b) a Scottish harbour authority,
  - (c) a community organisation.
- (3) A direction under subsection (1) must—
  - (a) be in writing,
  - (b) set out—
    - (i) the person to whom the function is to be delegated,
    - (ii) any terms and conditions on which the function must be delegated.
- (4) Before giving a direction under subsection (1), the Scottish Ministers must consult—
  - (a) the manager to whom the direction is to be given,
  - (b) the person to whom the function is to be delegated,
  - (c) such other persons as the Scottish Ministers consider appropriate.
- (5) A direction under subsection (1) may—
  - (a) be given only with the consent of the person to whom the function is to be delegated,
  - (b) be revised or revoked by the Scottish Ministers at any time before they consent to the terms and conditions on which the function is to be delegated under section 5(6)(b).
- (6) Subsections (4) and (5)(a) apply to the revision or revocation of a direction under subsection (1) as they apply to such a direction.
- (7) The Scottish Ministers must publish, in such manner as they consider appropriate—
  - (a) any direction given under subsection (1), or revised under subsection (5)(b),
  - (b) notice of any revocation of such a direction under subsection (5)(b).
- (8) A direction or revised direction may be published in whole or in part, but the following information must not be withheld from publication—
  - (a) the manager to whom it was given,
  - (b) the asset to which it relates,
  - (c) the person to whom the function is to be delegated.

#### **5 Delegation agreements**

- (1) The manager of a Scottish Crown Estate asset (other than the Scottish Ministers) may delegate the function of managing the asset only if directed to do so by the Scottish Ministers under section 4(1).
- (2) Where the Scottish Ministers are the manager of a Scottish Crown Estate asset, they may delegate the function of managing the asset to—
  - (a) Crown Estate Scotland,
  - (b) a local authority,

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- (c) another Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998),
  - (d) a Scottish harbour authority,
  - (e) a community organisation.
- (3) Delegation of the function of managing a Scottish Crown Estate asset is to be given effect to by an agreement in writing between the manager of the asset and the person to whom the function is to be delegated.
- (4) That agreement must set out the period for which, and other terms and conditions on which, the function is delegated.
- (5) The terms and conditions may, in particular, provide for—
- (a) restrictions on the exercise of the function by the person to whom it is delegated,
  - (b) circumstances in which the agreement may, or is to, be terminated.
- (6) Where the manager is not the Scottish Ministers—
- (a) the terms and conditions of a delegation agreement must include any terms and conditions set out in the direction in pursuance of which the agreement is made,
  - (b) the Scottish Ministers must consent to the terms and conditions (and a purported delegation without that consent has no effect).
- (7) Except to the extent that the delegation agreement provides otherwise—
- (a) the person to whom the function of managing the asset is delegated is to be treated as, and has all of the powers and duties from time to time applying to, the manager of the asset for all purposes (other than those of this Part),
  - (b) the function is not exercisable by the manager of the asset (and the manager is not responsible for its exercise).

## **6 Meaning of “community organisation” and “Scottish harbour authority”**

- (1) In this Part, a “community organisation” is—
- (a) a body corporate (other than a Scottish public authority) which—
    - (i) relates to a community, and
    - (ii) has a written constitution which includes the matters mentioned in subsection (2), or
  - (b) a body corporate designated as a community organisation, or falling within a class of bodies designated as community organisations, for the purposes of this Act by the Scottish Ministers by regulations.
- (2) The matters referred to in subsection (1)(a)(ii) are—
- (a) provision that the body must have no fewer than 20 members,
  - (b) a definition of the community to which the body relates,
  - (c) provision that the majority of the members of the body is to consist of members of that community,
  - (d) provision that the members of the body who consist of members of that community have control of the body,
  - (e) provision that membership of the body is open to any member of that community, and

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- (f) a statement of the body’s aims and purposes, including the promotion of a benefit for that community.
- (3) In this Part, “Scottish harbour authority” means a harbour authority in relation to a harbour in Scotland.
- (4) In subsection (3), “harbour authority” and “harbour” have the meanings given in section 57(1) of the Harbours Act 1964 (interpretation).