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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes Crown Estate Scotland (Interim Management) (“CES(IM)”). It is intended that CES(IM) is to be the person nominated by the Scottish Ministers for the purposes of section 90B(1) of the Scotland Act 1998 (“the 1998 Act”) to receive the transfer of the existing Scottish functions of the Crown Estate Commissioners under a scheme made by the Treasury under that section.

Article 3 establishes CES(IM) as a body corporate. CES(IM)’s Gaelic name (Oighreachd a’ Chrùin Alba (Stiùireadh Eadar-amail)) has equal legal status. Article 4 provides that CES(IM) must operate in a way which is transparent and accountable.

Articles 5 and 6 set out provisions for the membership of CES(IM). The Scottish Ministers must appoint a chair, and up to 8 other members. Members are appointed for such period as the Scottish Ministers may determine and members may be reappointed. A list is provided of public office holders who may not be appointed as a member. Article 7 makes provision for CES(IM) to pay its members remuneration, allowances and pensions, as determined by the Scottish Ministers.

Article 8 provides that the Scottish Ministers may remove a person if that member becomes insolvent; if that member has been absent without the permission of CES (IM) for a period of longer than three consecutive months; or if the Scottish Ministers consider that the member is unable to perform the functions required or is unsuitable to continue as a member. A person’s membership ends if that person resigns, or becomes a member of one of the listed offices.

Article 9 requires CES(IM) to employ a chief executive. The Scottish Ministers must appoint the first chief executive of CES(IM). Each subsequent chief executive of CES(IM) will be appointed by CES(IM), with approval of the Scottish Ministers. CES(IM) may also appoint other members of staff. Members of the staff of CES(IM) are not civil servants but are in Crown employment within the meaning of section 191(3) of the Employment Rights Act 1996.

Article 10 provides for CES(IM), with the approval of the Scottish Ministers, to make arrangements for payment of pensions, allowances and gratuities for its existing and former members of staff. Article 10 is subject to any provision in a transfer scheme made by the Treasury under section 90B(1) of the 1998 Act regarding a person whose contract of employment is transferred to CES(IM) under that scheme.

Article 11 makes provision for CES(IM) to establish and operate committees and sub-committees. Article 12 provides that CES(IM) may authorise any of its members, any committee established by it, its chief executive, or any other member of staff to perform its functions. Article 13 provides that CES(IM) may regulate its own procedure (including quorum) and that of any committee or sub-committee.

Article 14 provides that the validity of proceedings of CES(IM) will be unaffected by any vacancy in membership, or a defect in the appointment of a member.

Article 15 requires CES(IM) to comply with any direction made by the Scottish Ministers about the performance of its functions. Any direction must be in writing and published after it has been communicated to CES(IM). Article 16 requires CES(IM) to have regard to any written guidance given by the Scottish Ministers about the performance of its functions. Any such guidance must be published after it is communicated to CES(IM).

Article 17 allows the Scottish Ministers to make grants and loans to CES(IM), subject to any conditions the Scottish Ministers may determine, including repayment.

Article 18 requires CES(IM) to prepare and publish an annual report on its activities as soon as practicable after the end of each financial year. A copy of the report must be sent to the Scottish Ministers who must lay a copy of the report before the Scottish Parliament.

Article 19 requires CES(IM) to prepare a corporate plan setting out how it intends to exercise its functions. The plan must be prepared and submitted to the Scottish Ministers as soon as practicable after CES(IM) is established. Scottish Ministers may approve the plan, approve it with modifications agreed with CES(IM) or reject the plan. If the plan is rejected, CES(IM) must submit a revised plan within such period as Scottish Ministers direct. Following approval, a plan must be published by CES(IM). CES(IM) may revise a plan from time to time, submitting any revised plan to the Scottish Ministers for approval.

Article 20 modifies the application (by virtue of, and as modified by section 36(7) of the Scotland Act 2016) of the Crown Estate Act 1961 in relation to CES(IM). Article 20(2)(a) substitutes paragraph (b) of section 2(4) which enables Scottish Ministers to direct the apportionment of revenues from mining between capital and income accounts. Article 20(2)(b) inserts subsections (4A) to (4G) into section 2. Subsections (4A) to (4C) regulate the making of directions under section 2(4)(b). Subsections (4D) and (4E) enable CES(IM) to transfer sums from its income account to its capital account and to repay these from capital account to income account. Subsections (4F) and (4G) make accounting provision regarding the repayment of loans by CES(IM). As regards investments, article 20(3) inserts a new section 3(4)(aa) allowing CES(IM) to invest sums in interest-bearing accounts.

Article 21 inserts a reference to CES(IM) into the House of Commons Disqualification Act 1975 and the Scottish Parliament (Disqualification) Order 2015. This means that members of CES(IM) and members of the staff of CES(IM) will be disqualified from becoming MPs, MEPs and MSPs. Article 21 further applies certain legislation relating to public bodies to CES(IM), by inserting references to CES(IM) into the Ethical Standards in Public Life etc. (Scotland) Act 2000, the Scottish Public Services Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002, the Public Appointments and Public Bodies etc. (Scotland) Act 2003, the Public Services Reform (Scotland) Act 2010, and the Public Records (Scotland) Act 2011.

Article 22 modifies the Crown Suits (Scotland) Act 1857 to exclude CES(IM) from the meaning of “public department” for the purposes of that Act.