



Scottish Crown Estate Bill

**Evidence to Scottish Parliament Environment, Climate Change and
Land Reform Committee**

March 2018

Authors:

Rebecca Bell, Policy and Research Officer

Dr Peter Brownsort, Scientific Research Officer

Professor Stuart Haszeldine, SCCS Director

Dr Philippa Parmiter, SCCS Project Manager

Scottish Carbon Capture & Storage

Scottish Crown Estate Bill

1 SCCS's interest in the Scottish Crown Estate

Carbon capture and storage (CCS) is a set of technologies that tackles emissions of carbon dioxide (CO₂) at source to prevent increased atmospheric concentration of the gas, which causes climate change. It is being used in a number of sites all over the world and other projects are under development, including in the UK. CCS prevents the CO₂ emitted by industrial processes (including fossil fuel-based electricity generation) reaching the atmosphere; it can also be combined with heat or power generation from biomass to achieve “negative emissions”.

CCS is a key component of the Scottish Energy Strategy¹, the Scottish Climate Change Plan² and the UK Clean Growth Strategy³. It has been shown to be the lowest cost means of decarbonising the economy and thus meeting the unanimously-agreed Scottish climate change targets.

The CCS process has three distinct parts: capture, transport and storage. Once captured from an industrial process, cleaned and compressed, the CO₂ is transported to a site where it can be permanently stored deep below ground in geological formations. The UK has a sizeable asset of suitable geological storage offshore, in the pore space of depleted oil and gas fields or saline aquifers; Scotland itself has 35% of Europe's storage resources – with the rights to these being part of the Scottish Crown Estate. CCS also needs pipelines on the seabed to transport the gas from the shore to the storage site, or shipping from suitable ports and harbours.

The Scottish Crown Estate includes just under half the foreshore in Scotland, the seabed out to the 12-nautical-mile (nmi) territorial sea limit, and rights for subsurface CO₂ storage out to 200 nmi. These assets are crucial to the development of CO₂ storage, and of CO₂ transport by ship or pipeline. Crown Estate Scotland (CES)'s interest in the foreshore, including ports and harbours, is also relevant to the development of CCS infrastructure. There is significant future revenue for CES from licensing CO₂ storage and leasing the territorial seabed and foreshore for related infrastructure, over several decades.

It is possible that additional uses for offshore geological resources may emerge, such that holistic management and control of leasing will be advantageous. For example, as well as CO₂ storage, there is consideration of geothermal heat extraction, compressed air energy storage, hydrogen storage and methane gas storage.

2 Comments on the draft Bill

We recognise that there may be some benefit in some Scottish Crown Estate assets being managed by local authorities or other bodies specified in the Bill. However, we consider that offshore energy and energy-related assets and investments, including CO₂ storage rights and leasing rights for oil and gas pipelines, should be managed by CES as a single integrated portfolio and not have their management further devolved. We consider that the current Bill does not provide adequate safeguards against the break-up of offshore and coastal assets, and we suggest here some ways that the Bill could be improved.

¹ <http://www.gov.scot/Publications/2017/12/5661>

² <http://www.gov.scot/Publications/2018/02/8867>

³ <https://www.gov.uk/government/publications/clean-growth-strategy>

2.1 Benefits of integrated management

Management of these nationally significant assets by CES provides the following benefits, which would be lost if it was further devolved:

- provides a single contact point for project proposers and developers, with harmonised standards and systems reducing complexity for project development;
- enables a single point of crossover with the Oil and Gas Authority, who will continue to manage offshore hydrocarbon assets around the entire UK;
- enables cross-subsidy from CES revenues and Scottish Government into multi-year development of offshore CO₂ storage, followed by recovery of substantial profits
- enables sector-specific expertise to be maintained within CES;
- can facilitate efficient whole-system planning collaboration on energy and CCS project development between CES and the Crown Estate in the rest of the UK;
- allows for more strategic alignment with Scotland's national objectives on fishing, marine conservation, hydrocarbon extraction, offshore renewable energy and sustainable development;

The Crown Estate⁴ has actively supported development of the CCS industry – including key strands, such as defining the market, addressing policy, market failures and risks, and characterising business opportunities and values – in order to understand the resource potential of the Estate. In doing so, it has made a sizeable investment over several years through projects and collaborations, leading to a broad range of publications and public resources, such as the CO₂ Stored storage evaluation database⁵, which alone represents some £0.5 million investment.

It is important to continue to take a long-term view, managing assets in ways that enable investments that support innovative technologies and industries as they progress to full commercial readiness. It is, therefore, critically important to maintain stability and continuity of service delivery, with adequate resourcing and a single organisation managing seabed and subsurface resources for the whole of Scotland. It is also important to recognise the significant experience and expertise within the existing Crown Estate Scotland staff team.

2.2 Safeguards against sale

We are concerned that the draft Bill gives Ministers the power to transfer the management of these strategic assets of offshore pore space and geological resources, and to authorise their sale. Although we understand that there is a presumption against selling the seabed⁶, which we fully support, we consider that requiring Ministerial consent for such a disposal (Section 10) is not a sufficient safeguard against this happening. Furthermore, this provision only applies to the seabed within 12 nmi, leaving the potential to sell the rights in the Exclusive Economic Zone to 200nmi⁷ without the requirement even for ministerial consent.

The Bill should be amended to prohibit the sale of the seabed and associated subsurface geological rights, including rights out to 200 nmi.

⁴ And, since devolution, Crown Estate Scotland

⁵ www.co2stored.co.uk

⁶ *Scottish Crown Estate Bill: Policy Memorandum*

<http://www.parliament.scot/Scottish%20Crown%20Estate%20Bill/SPBill24PMS052018.pdf>

⁷ These rights in the Exclusive Economic Zone are established by Part V of the UN Convention on the Law of the Sea, but the convention does not appear to prevent the sale or transfer of these rights.

2.3 Criteria for long-term stewardship

The Crown Estate has a unique history in government management, with its specific focus on inter-generational stewardship, and management for multi-decade improvement of asset values, not simply for short-term financial profit. Should any break-up or devolved management of the offshore assets of the Scottish Crown Estate be considered, we advise that this should be assessed in relation to a robust and transparent set of criteria, which aim to ensure that the approach taken to management is best for the long term.

These criteria should take into account the nature of the asset and its development to eventually maximise public good from its potential uses. Any organisation intending to assume responsibility for the management must be able to demonstrate a clear competence to develop the asset and to manage it appropriately for long-term public benefit. We would also expect to see adequate impact assessments and public consultation of stakeholders before any application for the devolution of management was decided.

We welcome the proposed power that enables managers to manage the assets in a way which is likely to contribute to the promotion or the improvement of socio-economic and environmental factors, including making transactions for less than the market value. CCS is likely to have enormous socio-economic and environmental benefits, as could the other potential uses for offshore pore space listed above. This power of discretionary management would enable these outcomes to be taken into account and a lower price potentially applied to leases in order to encourage the initial development of CO₂ storage.

3 Response to Committee's questions

3.1 Does the Bill allow Crown Estate Scotland, or a delegated manager, to appropriately manage the Scottish assets?

We agree that the Bill allows Crown Estate Scotland, or a delegated manager, to appropriately manage the Scottish assets. We support the ability for Ministers to restrict the activities that a manager (other than Crown Estate Scotland) can undertake.

However, the Bill does not ensure that assets are managed at the appropriate level or by the appropriate body. We wish to see safeguards to ensure that strategically important assets, such as seabed geography, seabed sediments and subsurface geology that we identify above, do not have their management devolved from Crown Estate Scotland. We would also wish to see strong, onerous and transparent criteria, which ensure that management is only taken on by bodies that are competent to do so.

Crown Estate Scotland has significant experience and expertise in managing offshore assets and successfully balancing competing demands on them – such as offshore wind, wave and tidal energy, which all have interests in the seabed. We are concerned that fragmentation of the management of offshore Scottish Crown Estate assets would lead to the loss of this strategic overview and increase the risks and challenges associated with project development, whether for renewable energy or CCS.

3.2 Are the powers to allow the transfer of the management function appropriate?

We are concerned that the Ministerial powers as they are proposed in the Bill would not require sufficient scrutiny of proposals to transfer management functions and could accidentally allow the further devolution of management that would be best retained at the national (Scottish) strategic level.

SCCS would not support the transfer of the management of seabed rights away from Crown Estate Scotland. This includes rights over pipelines, pore space, and gas storage. Although we understand that Ministers have indicated that there is limited scope for further devolution of these assets⁸, we would prefer to see an amendment to the Bill that prevents the transfer of the management of such strategic assets and encourages management to maximise their value in multi-decade or longer timescales.

The Bill does not set out any criteria to be used when considering transfer of management of an asset. We would expect such criteria to be developed, consulted on and published to ensure that management transfer decisions align with Scotland's strategic interests: as a minimum this should include ensuring that the transfer would align with Scotland's national objectives, and that the body taking on the management function can demonstrate the capability to provide appropriate management, to maintain service delivery and to deliver increased benefits.

There should be public consultation on the transfer of management functions; at the very least, consultation on transfer should extend to parties with an interest in the use of the asset, including potential lessees.

We support the further devolution of the management of non-strategic assets, on a case-by-case basis. This further devolution of the management of some Scottish Crown Estate assets has many similarities with the asset transfer requests introduced in the Community Empowerment (Scotland) Act, so there may be scope for aligning the procedures in the Scottish Crown Estate Bill with that Act.

3.3 Are the manager's powers and duties as listed in the Bill appropriate?

In general, we consider these duties and powers to be appropriate, subject to our comments on the delegation of the management of assets that we consider to be most appropriately managed at the national level.

We welcome the provision in Section 11 to allow managers of the Scottish Crown Estate to make transactions for less than the market value if it is likely to contribute to the promotion or improvement of environmental wellbeing or sustainable development: an example of this would be leases to enable CO₂ transport and storage, to contribute to climate change targets. Guidance should be given to managers to enable them to assess and demonstrate the contribution that a transaction is likely to make to these wider objectives.

⁸ *Scottish Crown Estate Bill: Financial Memorandum*
<http://www.parliament.scot/Scottish%20Crown%20Estate%20Bill/SPBill24FMS052018.pdf>

3.4 Should any additional power or function of the Scottish Crown Estate not currently provided for in the Bill be included?

We would welcome an amendment, which gave Crown Estate Scotland the ability to borrow money (other than from the Scottish Government) to develop assets. Being able to raise bonds against projects could aid in co-funding of new facilities.

4 Comments by section

4.1 Section 3: Transfer of management function

As stated above, we recommend a legislative restriction on transferring the management of seabed rights away from Crown Estate Scotland.

We note that the list of potential transferees does not include commercial management organisations; we support this exclusion, believing that Scottish Crown Estate assets should remain under public or community management.

4.2 Section 6: Meaning of “community organisation”

The definition of “community organisation” in this Bill is similar to the definition of “community-controlled body” in section 19 of the Community Empowerment (Scotland) Act. However, the Scottish Crown Estate Bill lacks the requirement for the body’s constitution to include “provision that any surplus funds or assets of the body are to be applied for the benefit of that community.” For consistency, we would suggest that the Scottish Crown Estate Bill adopt the term “community controlled-body”, and the definition set out in the Community Empowerment (Scotland) Act.

We suggest that the definition of “community” in this Bill should be restricted to geographic communities, rather than including communities of interest.

4.3 Section 7: Duty to maintain and enhance value

We welcome the provision to allow the manager of a Scottish Crown Estate asset to take into account economic development, regeneration, social wellbeing, environmental wellbeing and sustainable development.

This echoes the existing duties of Crown Estate Scotland under the Climate Change (Scotland) Act⁹. We would expect these climate change duties to be passed on to any organisation to which the management of assets is transferred, in relation to the management of those assets.

Community organisations will not previously have been subject to the public bodies’ climate change duties, so are likely to require support and guidance to help them understand and meet their obligations.

⁹ By virtue of its inclusion in Schedule 1 of the Freedom of Information (Scotland) Act, Crown Estate Scotland is subject to the public bodies’ climate change duties under Section 44 of the Climate Change (Scotland) Act.

4.4 Section 10: Disposals requiring Ministerial consent

We very strongly recommend that the Bill be amended to prevent the sale of the seabed or any part of the geological subsurface, in order to maintain the strategic value of the seabed and subsurface assets for the long term.

4.5 Section 20: Strategic management plan; Section 23: Preparation and revision of management plans; Section 36: Ministerial guidance

Management plans and ministerial guidance should be subject to public consultation. At the very least, consultation should extend to parties with an interest in the use of Scottish Crown Estate assets, including potential lessees.

Since management plans would relate to matters of a public character, it is likely that they would be considered “qualifying plans” under Section 5 of the Environmental Assessment (Scotland) Act 2015. The Scottish Government may need to provide training and capacity building on strategic environmental assessment to organisations who do not have experience of producing plans, programmes and strategies of a public nature, to help them understand and fulfil their responsibilities under this Act.

4.6 Schedule 1

Crown Estate Scotland should be considered a “major player”¹⁰ with regard to its potential role in climate change mitigation, so should be subject to public bodies’ climate change reporting requirements. Schedule 1 should include the addition of Crown Estate Scotland to Schedule 1 of the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015.

5 Further information

We are happy to provide further evidence to support this submission, and to provide oral evidence to Committee.

Please contact Rebecca Bell, SCCS Policy and Research Officer on rebecca.bell@sccs.org.uk or 0131 514647.

¹⁰ Scottish Government Guidance (<http://www.gov.scot/Resource/Doc/340746/0113071.pdf>) on public bodies’ climate change duties defines major players as “bodies with large estates and/or staff numbers, high impact and influence, large expenditure, or an auditing or regulatory function, and suggests that these bodies should be ambitious in their action on climate change and seek to do more than others.”