

CROWN ESTATE BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Crown Estate Bill [HL] as introduced in the House of Lords on 25 July 2024 (HL Bill 5).

- These Explanatory Notes have been prepared by HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill makes provision to amend the Crown Estate Act 1961 to enable The Crown Estate to continue to fulfil its core duty of maintaining and enhancing the value of The Crown Estate and the return obtained from it while maintaining The Crown Estate as an estate in land. Specifically, it broadens The Crown Estate's investment powers and confers a broader power to borrow, subject to Treasury consent. It also makes minor changes to the governance of The Crown Estate to bring it into line with best practice for modern corporate governance.

Policy background

- 2 Today, The Crown Estate is a multi-billion pound business under the stewardship of the Crown Estate Commissioners operating in England, Wales and Northern Ireland. The property, rights and interests which comprise The Crown Estate belong to His Majesty in right of the Crown but its profits are paid into the Consolidated Fund and so available for Government expenditure. Over £3 billion has been paid into the Consolidated Fund in the last decade. It is a statutory corporation established by The Crown Estate Act 1961 and classified by the Office for National Statistics for the purposes of national accounts as a public corporation, reflecting the fact that its revenues are generated through commercial activities.
- 3 The Crown Estate's portfolio is diverse and includes a range of holdings across urban centres, rural land, the coastline and seabed as well as Windsor Great Park. Under its strategy, The Crown Estate focuses on activities which closely align with wider national needs, including energy security and sustainable economic growth. For example, as owner and manager of the seabed around England, Wales and Northern Ireland, the Crown Estate plays a critical role in the delivery of offshore wind power generation.
- 4 At present, The Crown Estate is limited to making its investments in certain types of real property and certain restricted types of security held on The Crown Estate's behalf by the National Debt Commissioners. The Crown Estate's powers to borrow are also limited to for the purpose of discharging or redeeming incumbrances affecting The Estate. The Bill seeks to modernise The Crown Estate by removing these limitations which would otherwise restrict its long-term viability. It also aims to ensure that The Crown Estate remains resilient and is better equipped to fulfil its statutory function and, in doing so, is able to assist in the delivery towards wider national policy objectives, across energy security, regeneration and growth..

Legal background

- 5 The Bill makes provision to amend The Crown Estate Act 1961. That Act will continue to be the main legislation governing The Crown Estate.

Territorial extent and application

- 6 Clause 3(1) provides that the Bill extends to England and Wales, Scotland and Northern Ireland.
- 7 The Crown Estate is reserved in relation to Scotland and Wales and excepted or reserved in relation to Northern Ireland.
- 8 With certain exceptions, the Scotland Act 2016 provided for the devolution in relation to Scotland of the management of property of the Crown Estate which at that time was situated wholly in Scotland. That property is now managed separately by Crown Estate Scotland

under the Scottish Crown Estate Act 2019. It does not form part of the Crown Estate as currently managed by the Commissioners and the Bill does not affect the management of that property.

Commentary on provisions of Bill

Clause 1: Power of Crown Estate Commissioners to borrow etc

- 9 Clause 1 amends the Crown Estate Act 1961 in respect of the powers of the Commissioners of the Crown Estate. It removes certain statutory restrictions on the Commissioners' powers and clarifies and expands those powers in certain respects as set out in paragraph 10. These changes seek to modernise The Crown Estate and intend to facilitate the generation of further revenue for the government as well as enhance the value of the Estate.
- 10 Specifically, subsection (2) amends section 1 of the Crown Estate Act 1961 by inserting a new subsection (4A). The new subsection expressly confers powers which are currently implicit in the Crown Estate Act 1961: the Commissioners have the power to do anything that is calculated to facilitate, or is conducive or incidental to, the discharge of their functions under the Act, including the discharge of their core duty in section 1(3) of the Act. That means the Commissioners may undertake activities that are not expressly mentioned in the Crown Estate Act 1961. For example:
 - a. investing in the infrastructure of a port owned by a third party to facilitate the development of part of the seabed that forms part of the Crown Estate, or investing in digital technologies to improve mapping of that seabed;
 - b. carrying out, or permitting the carrying out of, commercial activities on land which forms part of The Crown Estate
 - c. funding or contributing to the funding of research and development.
- 11 Subsection (3) amends section 3 of the 1961 Act by omitting subsection (4) and amending subsection (5). The former amendment removes the limitations on investment which are currently in section 3(4). The effect is that the Commissioners' powers to invest are exercisable free from those limitations. The latter amendment enables the Commissioners to borrow either from the Treasury or otherwise with Treasury consent. The intention behind the power to borrow is to enable The Crown Estate to invest to maintain and modernise its Estate to ensure it can continue to operate successfully in the modern commercial environment, and in doing so sustain and enhance the revenues it generates for the government. It also seeks to enable the Commissioners to assist with investment in public infrastructure for the benefit of the nation, including further seabed leases for offshore wind.
- 12 Subsection (4) inserts a new section 3A into the Crown Estate Act 1961 (power of the Commissioners to borrow etc). Under new section 3A:
 - a. The Treasury is authorised to lend to The Crown Estate via the National Loans Fund or from money provided by Parliament, and is also authorised to provide financial assistance to the Crown Estate Commissioners from money provided by Parliament. Financial assistance includes, for these purposes, loans, guarantees and any other form of financial assistance of an actual or contingent nature. This power enables the Treasury to provide financial assistance to the Commissioners in order to assist with the discharge of their functions under the Crown Estate Act 1961.
 - b. The Treasury may determine the rate of interest on a loan issued out of the National Loans Fund. Consequently, the provisions in section 5 of the National Loans Act 1968

concerning the rate of interest on the loan will apply. This seeks to ensure that any lending provides value for money for the public finances as a whole, and that it is consistent with wider public finance controls. The Treasury has implied powers to determine the terms and conditions on which any financial assistance is provided and those powers will also be exercised to ensure value for money for the public finances as a whole.

- c. Where the Treasury arranges a loan from the National Loans Fund to The Crown Estate, it must pay any repayments or interest received back into the National Loans Fund. This is consistent with the way loans from the National Loans Fund operate elsewhere.

Clause 2: Number of Crown Estate Commissioners and their salaries and expenses

- 13 Clause 2 (1) amends Schedule 1 to The Crown Estate Act 1961 (constitution etc. of crown estate commissioners). The amendments are intended to bring The Crown Estate's constitution in line with best practice for modern corporate governance.
- 14 Subsection (2) provides for the maximum number of Crown Estate Commissioners to be increased from eight to twelve. This seeks to provide the flexibility required to satisfy best practice standards for modern corporate governance, allowing The Crown Estate's Board to include an appropriate combination of executive and non-executive directors reflective of its increasingly diverse activities, and adopt associated relevant committee structures.
- 15 The exact number, and respective roles, of Commissioners within this new maximum will remain subject to the Public Appointments process. All Commissioners of The Crown Estate are appointed by The King, on the recommendation of the Prime Minister.
- 16 Subsection (2) removes the requirement for the Second Crown Estate Commissioner (a post currently held by the Chief Executive) to be Deputy Chair. This seeks to satisfy best practice standards for modern corporate governance, whereby the roles of chair and chief executive should not be exercised by the same individual.
- 17 Subsection (3) will require the salaries and expenses of the Commissioners to be paid out of the return obtained from The Crown Estate instead of out of money provided by Parliament. This amendment is intended to reflect The Crown Estate's commercial functions and to place the Commissioners in a position more consistent with general commercial practice. It will show more directly the relationship between the relevant expenditure and Crown Estate income.

Clause 3: Extent, commencement and short title

- 18 Subsection (1) provides that the Bill extends to England and Wales, Scotland and Northern Ireland. As explained above, it does not apply to property the management of which was devolved to Scotland under the Scotland Act 2016 and which is currently managed by Crown Estate Scotland under the Scottish Crown Estate Act 2019.
- 19 Subsection (2) provides that the Act will come into force at the end of the period of two months beginning with the day on which it is passed.
- 20 Subsection (3) provides that the Act may be cited as The Crown Estate Act 2024.

Commencement

- 21 This Bill will come into force at the end of the period of two months beginning with the day on which it is passed.

Financial implications of the Bill

- 22 The Bill authorises the Treasury to lend to the Crown Estate Commissioners from the National Loans Fund, and to provide financial assistance to the Commissioners from money provided by Parliament. However, the government does not anticipate The Crown Estate borrowing in the short-term. Any borrowing will either be from, or subject to the consent of, the Treasury.
- 23 Further details on the arrangements for lending from government to The Crown Estate will be set out in an updated Framework Document between the Treasury (the sponsor department) and The Crown Estate.

Parliamentary approval for financial costs or for charges imposed

- 24 The Bill will be introduced in the House of Lords. This section will be completed when the Bill transfers to the House of Commons.

Compatibility with the European Convention on Human Rights

- 25 The Government considers that the Bill is compatible with the European Convention on Human Rights (“ECHR”). Accordingly, Lord Livermore, the Financial Secretary to the Treasury, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

Duty under section 20 of the Environment Act 2021

- 26 Lord Livermore, Financial Secretary to the Treasury, is of the view that the Bill as introduced into the House of Lords does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Duty under section 13C of the European Union (Withdrawal) Act 2018

- 27 Lord Livermore, Financial Secretary to the Treasury, is of the view that the Bill as introduced in the House of Lords does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (withdrawal) Act 2018 has been made.

Related documents

28 The following document is relevant to the Bill and can be read at the stated locations:

- a. The Crown Estate Framework Agreement

<https://assets.ctfassets.net/nv65su7t80y5/1kWSpZOV6LfpAG0kLVROqE/a2fba5e4723f51fa5a173baf58304acd/hm-treasury-and-the-crown-estate-framework-document-june-2023.pdf>

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No

Subject matter and legislative competence of devolved legislatures

29 The Crown Estate is reserved in relation to Scotland and Wales, and excepted or reserved in relation to Northern Ireland.

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