

## Crown Estate Scotland's policy on Less than Market Value

### Introduction

This policy sets out Crown Estate Scotland's position on the value provisions set out in the Scottish Crown Estate Act 2019<sup>1</sup> and the Scottish Government's Strategic Management Plan for the Scottish Crown Estate<sup>2</sup>.

The policy outlines Crown Estate Scotland's approach to Less than Market Value (LMV) and to those interested in requesting a LMV transaction. It sets out the sort of information and evidence that will be useful to Crown Estate Scotland in considering LMV requests and provides details on the assessment process and how to make a LMV request<sup>3</sup>.

### The Scottish Crown Estate Act 2019

Section 11 of the 2019 Act places a duty on managers of Scottish Crown Estate assets to secure market value for the use of the assets.

Section 11 (2) of the Act states, however, that a manager may make a relevant transaction for consideration of less than market value if they are satisfied that the transaction is likely to contribute to the promotion or the improvement in Scotland of:

- a) economic development;
- b) regeneration;
- c) social wellbeing;
- d) environmental wellbeing; or
- e) sustainable development.

For the purposes of this policy, these are referred to as the **LMV outcomes**.

In deciding whether to make a relevant transaction for consideration of less than market value, Section 11 (3) of the 2019 Act states that managers must have regard to the likely effect of the transaction on the **value of the Scottish Crown Estate as a whole**.

### Scottish Crown Estate Strategic Management Plan

As required by the 2019 Act, Scottish Ministers published the Scottish Crown Estate Strategic Management Plan (the Plan) in March 2020, setting out their vision, objectives, priorities and policies for the management of the land and property that makes up the Scottish Crown Estate. The 2019 Act states that managers of the Scottish Crown Estate must have regard to the Plan in exercising their functions.

The Plan includes the following provisions on LMV:

Paragraph 42 - *When considering opportunities to charge less than market value for a lease, sale or other agreement, a manager must:*

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<sup>1</sup> [The Scottish Crown Estate Act 2019](#)

<sup>2</sup> [Scottish Crown Estate Strategic Management Plan](#)

<sup>3</sup> This paper may be subject to intermittent review and revision.

- Ensure the benefits will be **delivered for Scotland**, either at a national level, for a sector of the economy or at the local community level in line with the relevant state aid rules;
- Be able to demonstrate why they have decided this course of action and keep a record of the **evidence used** to support decisions, including the predicted type and scale of wider benefits.

Paragraph 43 - For leases granted a manager should also **monitor and evaluate regularly** the delivery of the expected wider benefits that the assets are delivering as a result of agreeing to a less than market value transaction.

Paragraph 44 - The powers contained in Section 7 and 11 of the Act must not be used to the benefit of an **individual person, family, or company**.

Paragraph 51- Scottish Crown Estate assets should be managed for the benefit of Scotland and communities, with market value being charged for sales or leases, unless the manager of the asset can demonstrate that **wider benefits of equivalent scale** will be delivered

Paragraph 52 - The principle of equivalent scale is intended to recognise that it is possible to charge less than market value, but that it is important that any return to the Scottish Crown Estate being foregone by a manager should be complemented, or balanced, by wider **additional benefits** of an equivalent scale or net gain as a result of any sale or use of the asset for less than market value. Managers should consider – and demonstrate – that the non-monetary benefits which will accrue as result of a transaction for less than market value are **equal to or greater than the income or capital foregone** by the transaction. The prospect of achieving these wider benefits should be equally as **certain** as the financial benefits foregone to realise these benefits.

Paragraph 54 - Scottish Ministers consider it important that managers favour the delivery of **long-term benefits and projects that can be self-sustaining** when agreeing to charge less than market value to derive wider benefits, and also those which **will not require future financial support** from other managers of the Scottish Crown Estate.

**Crown Estate Scotland's approach to LMV is based on the above provisions of the 2019 Act and the Strategic Management Plan.**

### Relevant Transactions

For clarity, a relevant transaction for the purposes of LMV is defined in the 2019 Act as any of the following:

- (a) a transfer of ownership of the asset,
- (b) a grant of a lease of the asset,
- (c) a grant of any other right in or over the asset.

### Existing agreements

For existing agreements, request for LMV will normally be considered at certain points in the life cycle of the relevant agreement, in compliance with the terms of the agreement. These are:

- A lease event that triggers a rent review (e.g. change of use); and
- Periodic rent reviews.

## Exemptions

There are no exemptions to the duty to obtain market value and there are no restrictions on who can request a LMV agreement.

## Requests for LMV - Information and assessment

As part of our enabling role, we aim to empower others by supporting local plans and projects. As such and in alignment with our aim to deliver wider benefits for Scotland, Crown Estate Scotland is open to requests for LMV where they align with our position on LMV.

The Strategic Management Plan is clear that when agreeing to charge less than market value for a transaction, Crown Estate Scotland should be able to demonstrate why they have decided this course of action and keep a record of the evidence used to support decisions. Any party requesting a less than market value transaction will be asked to provide Crown Estate Scotland with relevant information and evidence to support their request. Proposals for a LMV transaction will be assessed against this information.

Requests for LMV will be considered on a case by case basis. The type and amount of evidence and information needed to support a request will vary depending on the nature of the request. Crown Estate Scotland will seek detail appropriate and proportionate to the request.

It is the responsibility of the party requesting LMV (the 'requesting party') to provide information and evidence to support their LMV request.

### Information and assessment

The following information from requesting parties will help to support Crown Estate Scotland's consideration of requests for LMV:

- a) Details of the proposed tenant or purchaser and agent (if relevant). This should include contact name(s) and address(es) and where relevant, brief governance arrangements of the party, type of body, and constitution, as appropriate.
- b) Type of transaction being requested e.g. purchase, lease or granting of any other right/s in or over the asset.
- c) Which Crown Estate Scotland asset (e.g. area of seabed, coast, forest, farm etc) the LMV request relates to with location details (address, maps, co-ordinates).
- d) The proposed use of the asset that an agreement is required for.
- e) A view on **market value** for the transaction. This will determine what reduction in market value may be appropriate. Market value should be agreed with Crown Estate Scotland. The requesting party should provide their view on market value with any reasoning, information and evidence to support that.<sup>4</sup>
- f) The LMV reduction proposed with reasoning for that reduction<sup>5</sup>.
- g) What **additional benefits** will be delivered specifically as a result of the LMV reduction. Additional benefits must contribute to the promotion or the improvement of one or more of the *LMV outcomes* outlined above.

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<sup>4</sup> Where market value cannot be agreed between the requesting party and Crown Estate Scotland it may have to go to an external party for independent evaluation.

<sup>5</sup> The reduction proposed may be different to the reduction that may be agreed.

The Annex to this paper provides examples of additional benefits that requests for LMV might contribute to. Requesting parties may find this useful in formulating their proposals.

Requesting parties should demonstrate the following in relation to additional benefits:

1. That the benefits proposed are **additional** to what would have been expected under a market agreement and relate specifically to the cost reduction. Agreements made for *market value* already deliver a range of benefits and Crown Estate Scotland expects such benefits to continue to be delivered. It is not the purpose of LMV to offer discounts for activities that have and would take place as part of market value agreements, including corporate social responsibility initiatives.
2. That additional benefits will be **delivered for Scotland**, either at a national level, for a sector of the economy or at the local community level and **must not be used to the benefit of an individual person, family, or company**.
3. That the monetary value of additional benefits will be **equal to, or greater than**, the income that would be foregone by Crown Estate Scotland by a LMV agreement. Requesting parties should provide information and evidence on what that value is, what it is based on and how it has been calculated.
4. **Certainty** on delivery of additional benefits - requesting parties should provide information and evidence to demonstrate that additional benefits will be delivered and when. Crown Estate Scotland needs to be confident that what is proposed will actually be delivered.
5. That additional benefits will be **long term and self-sustaining**. Requesting parties should demonstrate the timescale over which they expect additional benefits to be delivered and that they have the resources in place to ensure their long-term delivery, and without the need for any further support from Crown Estate Scotland or other managers of the Scottish Crown Estate.

h) Crown Estate Scotland will focus on LMV transactions where requesting parties can clearly demonstrate that they **do not have the resources** to deliver additional benefits without an LMV agreement. Information and evidence to demonstrate why and in what way a requesting party does not have the resources should be provided.

i) Delivery and reporting - the Plan states that a manager should **regularly monitor and evaluate** the expected additional benefits of any LMV agreement. Requesting parties should indicate how they propose to monitor and report on the delivery of additional benefits. Reporting requirements will be set out as part of any LMV agreement.

If additional benefits are not delivered as expected, the LMV rent will be reviewed. For LMV sales, Crown Estate Scotland reserves the right to include provisions to recoup foregone capital if anticipated additional benefits are not realised.

#### Impact on value of the estate

The Act is clear that Crown Estate Scotland must maintain and seek to enhance the capital value of the Scottish Crown Estate assets and the income arising from them. The capital value of the Estate is directly related to the revenue generated from agreements so a LMV transaction will impact the capital value of the Estate.

As part of its consideration of requests for LMV Crown Estate Scotland will assess whether proposals are likely to impact on the value of the Scottish Crown Estate as a whole, either directly or indirectly.

In carrying out this assessment, Crown Estate Scotland may seek information and evidence from requesting parties.

#### State aid and competition law

Crown Estate Scotland will assess requests for LMV against state aid regulations and competition law requirements<sup>6</sup>. Crown Estate Scotland may seek information and evidence from requesting parties to support this consideration.

*State aid and value of estate assessment will be made at an appropriate point within the assessment process.*

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<sup>6</sup> Competition law (Competition Act 1988) will require an assessment of any appreciable impact on markets caused by an LMV transaction. Subsidy Control regulations will require an assessment of whether LMV would potentially distort competition and affect trade.

## LMV Process

Initial enquiries on LMV should be made to [enquiries@crownestatescotland.com](mailto:enquiries@crownestatescotland.com). Crown Estate Scotland will respond to arrange an initial discussion and / or outline fuller information requirements, as appropriate. We recognise that some requests will emerge from more general discussions with Crown Estate Scotland. Informal enquiries and discussions on LMV are welcome. LMV decisions will be made by Crown Estate Scotland's Chief Executive Officer as the accountable officer. Approvals may be subject to terms and conditions.

A decision letter setting out reasons for a decision will be sent to the requesting party. All decisions will be recorded by Crown Estate Scotland detailing reasons for the decision.

Crown Estate Scotland aims to be transparent, accountable, and consistent in all its transactions, whilst respecting commercial confidentiality. Crown Estate Scotland will follow a fair procedure and carry out a proper and timeous evaluation of proposals.

For complex proposals, Crown Estate Scotland may want to consult with other parties potentially affected by the proposal. Crown Estate Scotland will discuss any proposed external consultation or engagement with the requesting party before conducting any such discussions.

Should requesting parties consider that they have been treated unfairly as part of an LMV assessment they have recourse to Crown Estate Scotland's complaints policy found at <https://www.crownestatescotland.com/complaints>.

## Annex - Additional Benefit Indicators

This Annex outlines examples of additional benefits, related to each of the *LMV outcomes*, that a request for LMV might seek to deliver. These are based on Crown Estate Scotland's [Value Project](#) which helps Crown Estate Scotland to understand the wider value created by Scottish Crown Estate assets, beyond purely financial returns. Five categories of wider value (value categories) have been identified - economic, social, environmental, climate change and regeneration, in alignment with the LMV outcomes set out in the 2019 Act.

Each value category has a set of three or four indicators, as set out below. These categories and their indicators may be helpful to requesting parties in considering the sort of additional benefits they might wish to promote through any request for LMV. The indicators below are not intended to be comprehensive but are illustrative of the sort of areas that additional benefits might align to through any request for LMV.

### **Value category indicators:**

#### **Economic**

Employment – jobs created or safeguarded

Local economy – local businesses are active in the supply chain and provide local employment

National interests – benefiting Scotland's national economy / showing leadership

Circular economy – increasing efficiency / reducing waste in processes and products

#### **Social**

Health – reflects / promotes good health at local or national level

Skills – stakeholders gain valuable skills

Community participation – community is an active stakeholder and participant

#### **Environmental**

Natural resources – resources used / maintained in a sustainable way

Biodiversity – biodiversity is protected/strengthened

Pollution prevention – pollution is decreased / not increased

#### **Climate change**

Mitigation – low or zero emissions

Adaptation – actions increase resilience / reduce risk

New opportunities – new, low or net zero emissions activities/ businesses/products pursued

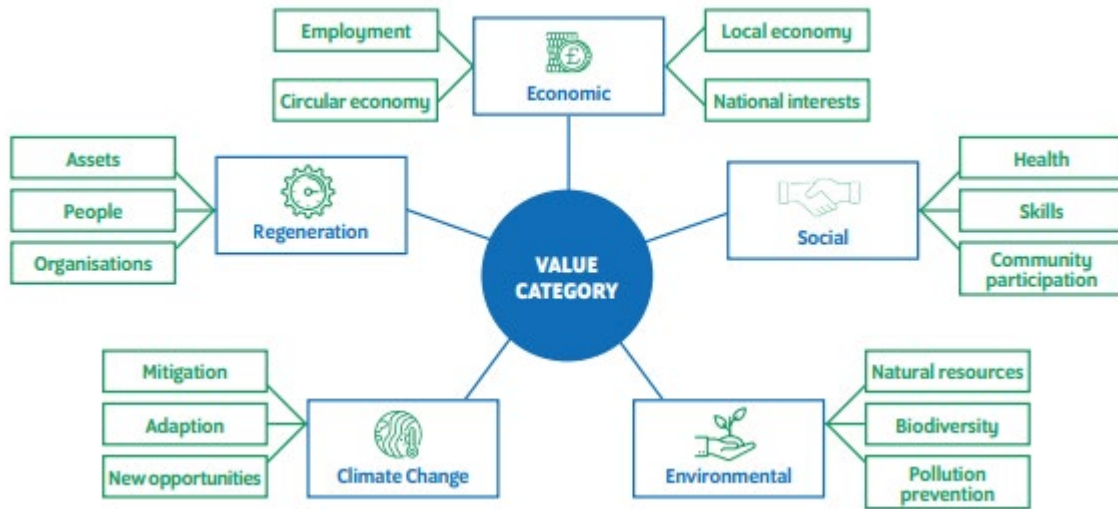
#### **Regeneration**

Assets – positive impacts on associated assets

People – people are enabled or empowered

Organisations – activities involve collaboration with other organisations





While the LMV outcomes set out in the 2019 Act do not make specific reference to climate change, Crown Estate Scotland would consider these under the Environmental Wellbeing outcome. Sustainable development as an LMV outcome, would include a balance of the different value categories outlined above.

The Value Project includes a number of [Asset Profiles](#) for different Scottish Crown Estate Assets. These profiles consider value in more detail and may also be useful to requesting parties in their consideration of additional benefits as part of a request for LMV.