

## Less Than Market Value Policy

This policy sets out how Crown Estate Scotland proposes to respond to requests to sell or lease property at less than market value in certain circumstances. This follows the enactment of new provisions in the Scottish Crown Estate Act 2019.<sup>1</sup>

We will review this policy in early 2021 and welcome feedback, sent by email to [corporate@crownestatescotland.com](mailto:corporate@crownestatescotland.com). Please limit your response to 1000 words and include your contact details and who you are responding on behalf of.

We would especially value feedback on the following:

1. Does the policy provide clarity as to what type of request *may* qualify for less than market value in a sale or a lease?
2. Do you have any comments on the principles in Section 4 below?
3. Is the policy useful, logical and clear?
4. What additions to this policy may help interested parties considering a request for less than market value?

In summer 2020 we will publish guidance covering process, timescales and the type of information that will enable Crown Estate Scotland to assess a request for a less than market value transaction.

### Less than Market Value Policy

#### 1. Introduction

Crown Estate Scotland was established in 2017 and manages land and property on behalf of the Scottish Ministers. Our purpose is to invest in property, natural resources, and people to deliver lasting value for Scotland.

The assets we manage include four rural estates, just under half the foreshore, virtually all the seabed out to 12 nautical miles, seabed out to 200 nautical miles, salmon fishing rights, retail and office units and rights to naturally occurring gold and silver across most of Scotland.

Our strategic objectives set out in our [2020-23 Corporate Plan](#) include supporting the growth of the blue economy, investing in creating great places, and involving people in how seabed, land and coastline are managed.

This policy sets out Crown Estate Scotland's approach in relation to the less than market value provisions. These provisions are contained in the Scottish Crown Estate Act 2019 ('2019 Act' or 'the Act') and were implemented in April 2020.

#### 2. The Scottish Crown Estate Act 2019

The 2019 Act places a duty on managers of Scottish Crown Estate assets to secure market value for the use of the assets. It states that managers must not make a relevant transaction for consideration of less than market value.

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<sup>1</sup> The Act can be founds at <http://www.legislation.gov.uk/asp/2019/1/contents/enacted>

However, Section 11 (2) also states 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 one or more 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 'five outcomes'.

In deciding whether to make a relevant transaction for consideration of less than market value, 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.

### **3. Scottish Crown Estate Strategic Management Plan**

As required by the 2019 Act, Scottish Ministers published the [Scottish Crown Estate Strategic Management Plan](#) (hereafter referred to as '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 Estate. The 2019 Act states that managers must have regard to the Plan in exercising their functions.

The Plan states that:

'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...

'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.

'A manager must also consider the impact on the overall capital value of the estate when making the decision to charge less than market value.'<sup>2</sup>

### **4. Principles**

Based on the 2019 Act and the Strategic Management Plan, Crown Estate Scotland will therefore apply the following principles in assessing a request for a less than market value transaction.

#### **a. Delivering additional benefits**

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<sup>2</sup> Paragraphs 50 to 53 of the [Scottish Crown Estate Strategic Management Plan](#)

Crown Estate Scotland must secure market value for the use of the assets. Market value is the starting point for any discussion on the use of Crown Estate Scotland assets. Only once market value has been established can we enter a discussion on less than market value – this usually happens through discussion between Crown Estate Scotland and the potential tenant / purchaser.

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 this Less Than Market Value Policy to offer discounts for activities that have and would take place as part of market value agreements, including corporate social responsibility initiatives.

The 2019 Act states that a transaction for less than market value ‘may’ be considered where Crown Estate Scotland is satisfied that the transaction is likely to contribute to the promotion or the improvement in Scotland of one or more of the five outcomes listed in Section 2 above.

**Less than market value will only be considered where benefits will result from the transaction (e.g. lease or sale) that are over and above those that would reasonably be expected from a market value agreement.** These ‘additional benefits’ must arise as a result of the transaction being less than market value and must contribute to the promotion or the improvement of one or more of these five outcomes.

The Strategic Management Plan states that non-monetary benefits which result from a transaction for less than market value must be equal to or greater than the income or capital foregone by the transaction.

Any consideration of less than market value will be carried out by Crown Estate Scotland on a case-by-case basis based on information available and that provided by the requester.

#### **b. Impact on the value of the Estate**

Crown Estate Scotland must maintain and seek to enhance the capital value of the assets and the income arising from them.<sup>3</sup>

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

The capital value of the Estate is directly related to the revenue generated from agreements so a less than market value transaction will also impact the capital value of the Estate.<sup>4</sup>

There is a need therefore to consider if less than market value for a particular transaction – be it a lease or a sale – will impact the value of the Estate as a whole.

#### **c. Evidence-based approach**

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<sup>3</sup> Section 7 of the 2019 Act

<sup>4</sup> Net revenue is passed to Scottish Government who currently distribute a substantial part of this net revenue to coastal local authorities.

The Plan states that the prospect of achieving the wider benefits referred to above should be equally as certain as the financial benefits foregone to realise these benefits.

The 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 so that we can assess if the proposed contribution to the promotion or improvement in Scotland of one or more of the five outcomes through additional benefits, is sufficiently certain.

It is the responsibility of the other party to seek its own legal or other professional advice to support any consideration of less than market value. The other party will also be required to meet Crown Estate Scotland's additional cash costs (i.e. not including staff time) regarding the processing and assessing of a rental or sales negotiation under this policy.

## **5. Relevant Transactions**

A relevant transaction 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 tenants**

For existing tenants, application of the provisions in Section 11 (2) will normally be considered at certain points in the life cycle of the relevant agreement in compliance with the terms of the agreement. Those 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 less than market value agreement.

## **6. Competition, state aid, and other considerations**

All transactions carried out by Crown Estate Scotland must comply with relevant competition and state aid law, procurement regulations and the requirements of the Scottish Public Finance Manual. In any consideration of a less than market value transaction, Crown Estate Scotland will be expected to demonstrate compliance with these requirements. This may require us to seek further evidence, for example on the potential impact of the request on competition.

## **7. Monitoring and Evaluation**

The Plan states that a manager should monitor and evaluate the delivery of the contribution to the five outcomes and the expected additional benefits of any less than market value agreement.

For less than market value leases, this should be demonstrated by the tenant / potential tenant through monitoring and evaluation requirements, according to the agreed contractual terms. If benefits are not delivered as expected, the less than market value rent will be reviewed.

For less than market value sales, contracts will enable Crown Estate Scotland to recoup foregone capital if anticipated additional benefits are not fully realised.

Crown Estate Scotland will review this policy in early 2021.