

Reputational / PR implications

1. There is the risk of damage to Crown Estate Scotland's reputation, should a site be awarded to developer who is subsequently accused of acting illegally in some way.
2. Assessment of an applicant's reputation as part of the application process has been considered. There are essentially 3 potential approaches:
 - i) Do nothing specific (per current practice);
 - ii) Commission a reputational report (a number of companies offer such reports);
 - iii) Request developer confirmation that do not/ will not represent a reputational risk (by certifying they are not in contravention of the 'public sector exclusions' contained in the 'The Public Contracts (Scotland) Regulations 2015').
3. Approach iii) will be followed, on the grounds that it provides a robust statutory basis for assessment and will lead to developers 'self-excluding' (if they cannot provide the declaration).
4. In addition, agreements will contain wording allowing CES to terminate them should contravention of the regulations occur or come to light after the original declaration.
5. The 'public sector exclusions' contained in the 2015 regulations are:
 - i) Conspiracy relating to participation in a criminal organisation
 - ii) Corruption (Public Bodies Corrupt Practices Act 1889)
 - iii) Bribery or corruption (Criminal Justice (Scotland) Act 2003)
 - iv) Bribery (Bribery Act 2010)
 - v) Cheating the Revenue
 - vi) Common law fraud
 - vii) Common law theft/ fraud
 - viii) Fraudulent trading (Companies Act 1985/ 2006)
 - ix) Fraudulent evasion of VAT
 - x) Taxation (Criminal Justice Act 1993)
 - xi) Common law uttering (Scots law term for fraud)
 - xii) Common law attempting to pervert the course of justice
 - xiii) Offences under Counter-Terrorism Act 2008
 - xiv) Money laundering
 - xv) Proceeds of criminal conduct (Criminal Justice Act 1988)
 - xvi) Human trafficking
 - xvii) Drugs trafficking
 - xviii) Breach of procurement regulations