Devolution (Further Powers) Committee Inquiry – Implementing the Smith Agreement and the UK Government’s Draft Legislative Clauses

Response from the Royal Yachting Association Scotland

March 2015

Introduction

The Royal Yachting Association (RYA) Scotland welcomes this opportunity to respond to the Devolution (Further Powers) Committee inquiry.

RYA Scotland is established to promote the sport of sailing, windsurfing and powerboating in Scotland. RYA Scotland is consulted by a range of public bodies including the Scottish Government, the Crown Estate, Scotland’s 32 local authorities and other non-governmental bodies on a range of issues affecting recreational boating. There are approximately 150 RYA affiliated sailing clubs, 120 RYA recognised training centres and over 6,000 individual RYA members in Scotland.

RYA Scotland operates as an integral part of RYA, the national governing body for all forms of recreational and competitive boating in the UK. The RYA currently has over 100,000 personal members, the majority of whom choose to go afloat for purely recreational non-competitive pleasure on coastal and inland waters.

In responding to this consultation RYA Scotland has limited its response to proposals included in the Smith Commission report and the UK government’s Command Paper which have the potential to directly impact on our members’ interests, namely the devolution of responsibility for the Crown Estate to Scottish Ministers and changes in the administration of maritime bodies.

Background

Recreational boating and marine tourism in Scotland is recognised as a significant contributor to the leisure economy of Scotland. RYA Scotland has a very constructive working relationship with the Crown Estate in Scotland. We have worked with the Crown Estate over many years to ensure that the interest of recreational users of the Scottish coast and the seabed belonging to the Crown is understood and taken into account when possible developments have been under consideration. In particular we have developed excellent relationships with the Crown Estate’s Marine Officers whose expertise and knowledge, backed up by the Crown Estate’s cartography systems, have been critical to the efficient management of the seabed.
Devolution and decentralisation of the Crown Estate

Paragraphs 32 to 35 of the Smith Commission report and section 5.5 of the Command Paper make recommendations on the future management of the Crown Estate's economic assets, including the seabed owned by the Crown Estate north of the border. Both the Smith Commission and the Command Paper agree on the policy intention to devolve responsibility for the Crown Estate's work in Scotland to Scottish Ministers. The Smith Commission goes further, arguing that:

"Following this transfer, responsibility for the management of those assets will be further devolved to local authority areas such as Orkney, Shetland, Na h-Eilean Siar or other areas who seek such responsibilities."

RYA Scotland has no particular view on this proposed devolution of powers if, and provided that, any agency or body controlling the seabed continues to uphold and vindicate the public right of navigation (including anchoring). However, we do have concerns about the proposed further devolution or decentralisation of the exercise of these powers to local authority level.

RYA Scotland believes that the current model for seabed management in Scotland has been efficient and cost effective and that current proposals to decentralise the work of the Crown Estate could lead to a fragmented, inefficient and inconsistent approach to seabed management which may be detrimental to maritime users, public rights of navigation and to the affected coastal communities.

We believe that the Crown Estate's economic assets would best be managed by a single organisation with the expectation that a national, consistent approach would continue. This is particularly important in terms of the application of charges for moorings, launching and berthing of recreational craft and the potential impact of changes to these on the wider economic contribution of the recreational marine sector.

**Issues which need further consideration are:**

- The patrimonial rights of the Crown in the seabed are subject to the limitation or burden placed on the Crown by the public rights of navigation (including anchoring) and fishing. We believe there needs to be a mechanism to ensure that – if the functions and responsibilities of the Crown Estate are decentralised to local authorities – the responsible organisation(s) are aware of these obligations, including the impact of Udal Law on the foreshore in the Northern Isles. Further information is set out in the *Scottish Law Commission Discussion Paper on the Law of the Foreshore and Seabed* (Discussion Paper No 113) and the Report (Scot. Law Comm. No 190) on that Paper.

- There is a need to maintain a national coherence and overview on seabed activity with a consistent set of rules, conditions and processes. Charges and conditions for moorings are an example of this. The obligation to maintain the seabed and remove derelict equipment needs to be seen as the corollary of obtaining income from it. The proposals outlined in the Smith Commission create uncertainty for maritime users and it is possible that the decentralisation of powers to local authorities will lead to significant divergence in the management of the seabed and foreshore.

- There is a need to engage in a detailed and comprehensive consultation with marine industry and recreational stakeholders before making any substantive changes to the powers, functions and duties of the Crown Estate. The Scottish Government needs to provide confidence that changes to the Crown Estate (including the decentralisation of its responsibilities to local bodies) will not affect maintenance currently undertaken by the Crown Estate, and provide safeguards to ensure local bodies make the proper level of investment in maintaining and improving maritime assets under their control.
• RYA Scotland is a non-statutory consultee of Marine Scotland. We have a long-standing and positive relationship with the Crown Estate in relation to marine developments. The Crown Estate acting as a single point of contact has enabled both organisations to address issues in advance of leasing rounds before they become contentious. We are concerned that future arrangements risk becoming unwieldy, requiring multiple approaches to a number of bodies which would be beyond our capacity to support.

• The decentralisation of powers from a single expert body to multiple local bodies is likely to result in a loss of institutional knowledge and expertise. Further we are concerned that the bodies receiving these new powers may not have the financial or staff resource to properly discharge their duties in respect to marine seabed and foreshore management.

• The Command Paper makes no comment about the further devolution of powers over the Crown Estate to local authorities or other bodies, which would be a matter for Scottish Ministers. However at this stage there is a lack of clarity about what model of decentralisation is likely to be pursued by Scottish Ministers and what this would mean for maritime users.

• There is a need for clarity on transition and grandfathering arrangements. Agreements reached between the Crown Estate and its existing customers, such as moorings holders, should be honoured for a reasonable period, of at least five years, post-transition to minimise detriment to marine users.

• RYA Scotland is acutely aware that, with the possible exception of the island councils, bodies of water are unlikely to be coterminous with local authority boundaries. With interest and responsibility vested in multiple local authorities there is an obvious potential for disagreement delaying or preventing necessary works to the seabed or foreshore.

• In addition, some key maritime users may fall outwith the responsible or lead local authority and we would seek assurances that key stakeholders are not excluded from consultation mechanisms.

• If management responsibilities are further devolved from the Crown Estate to multiple local bodies, the relationship between the resultant responsible bodies and the relevant Marine Planning Partnership will need to be clarified.

**Relationship between the Crown Estate and the recreational boating sector**

**Moorings and anchorages**

The Crown Estate currently leases areas of the seabed for laying recreational vessel moorings at an affordable rent. This encourages the formation of mooring associations, which reduces the administrative cost, protects the rights of mooring holders and removes unlicensed moorings. It also removes derelict equipment which might compromise safe anchoring. For example, the Crown Estate facilitated and financially supported the re-organisation of moorings in Tobermory Harbour which has led to the impressive development of Tobermory Harbour Association and its facilities. Old ground chains which sterilised a useful safe anchorage in Loch Shieldaig, Gareloch were removed as was fish farm debris and an abandoned raft which were a hazard to navigation in the approach to North Loch Moidart. Abandoned equipment, chain, and general debris were removed from the very popular anchorage at Puilladobhrain.

**Planning and licensing**

Many stakeholders, including RYA Scotland, have entered into a non-disclosure agreement with the Crown Estate that allows them to comment on a range of marine developments so that key issues can be identified in advance of a leasing round. These issues tend to be those that are not well captured in the Marine Resource System Geographical Information System. As a result

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several sites have been removed from leasing rounds and clearer information has been made available to developers for others. The Crown Estate has also encouraged the formation of developers groups, such as the Forth and Tay Developers Group, which has minimised duplication of effort. There may be opportunities under the new arrangements to simplify the consenting process without compromising the ability of stakeholders to identify problems at an early stage, with a saving of time and cost for all involved.

Coastal management

The Crown Estate has entered into Local Management Agreements (LMAs) with several coastal communities to allow them to manage areas of foreshore and seabed while benefiting from wider Crown Estate support including training in project management and business planning. Most of these LMAs are focussed on marine leisure facilities. In addition the Crown Estate has commissioned research to help manage the marine environment better. The Crown Estate facilitated discussions between Dunstaffnage Marina, Dunstaffnage Moorings Association and the Scottish Association for Marine Science which opened the way to the expansion of the marina. Support was also provided for the new community run marina at Lochaline and the reorganisation and expansion of the Gigha moorings and jetty.

Funding

The value of the Coastal Communities Fund is linked to the income from the Crown Estate while the Crown Estate in Scotland provides funding for local community projects from the Marine Stewardship Fund. The Crown Estate also makes direct investments into projects such as Rhu Marina with a long pay-back time. The Crown Estate provided financial support from the Marine Stewardship Fund that permitted Craignish Sailing Club to relocate and construct new, improved facilities after the landowner withdrew access to their old facility. The Green Blue, an initiative of the Royal Yachting Association and the British Marine Federation aimed at reducing the environmental impact of recreational boating, has also benefited from Crown Estate funding.

Maritime Bodies

Paragraphs 39 to 40 of the Smith Commission report and section 5.3 of the Command Paper deal with maritime bodies which are not currently the responsibility of Scottish Ministers: namely the Maritime and Coastguard Agency (part of the Department for Transport) and the Northern Lighthouse Board. Both organisations play a crucial role in maintaining the safety of recreational boaters in Scottish and UK waters.

RYA Scotland welcomes the recommendation in the Smith Report that Scottish Ministers should play a more active role in setting the strategic priorities of both the MCA and the NLB’s activities in Scotland, and for these organisations to have greater accountability to the Scottish Parliament. We support the proposal outlined in the Command Paper which provides a legal footing for the current practice of Scottish Ministers and the Secretary of State for Scotland nominating a commissioner each to the NLB.

Conclusion

RYA Scotland has no particular view on the Smith Commission proposal to devolve legislative responsibility for the Crown Estate to the Scottish Government, if, and provided that, any agency or body controlling the seabed continues to uphold and vindicate the public right of navigation (including anchoring).

Although local involvement with developments is essential and there is a case for more benefits to accrue to local communities, we have concerns regarding the suggestion of devolving powers beyond the level of a single national body. With a few specific exceptions of island authorities, we
believe the case for decentralising the powers and functions of the Crown Estate to local authorities has yet to be soundly made.

We believe the Crown Estate is an effective and efficient partner and we are concerned that the changes suggested by the Smith Commission would make it more difficult for key stakeholders to identify and engage with multiple local bodies and vice versa. We would be concerned that the devolution of power to local authorities would lead to inconsistencies in the stewardship of the marine seabed and associated infrastructure which would prove detrimental to the interests of our members and the wider boating community.

We support proposals for Scottish Ministers to have greater strategic oversight over the MCA and NLB and believe that this will lead to an increased awareness of Scottish-specific issues.

RYA Scotland is grateful for the opportunity to respond to this inquiry and we would welcome the opportunity to discuss these issues in more detail.

For further information on any of the points raised in this submission, please contact James Allan, RYA Scotland Chief Executive on 0131 317 4616 or james.allan@ryascotland.org.uk.