

Memorandum of Understanding (MoU) between the Maritime and Coastguard Agency and the Scottish Government

This Memorandum of Understanding (MoU) has been made between the following parties (the "Parties"):

- (1) The Maritime and Coastguard Agency ("MCA"); and
- (2) The Scottish Government ("Transport Scotland")

The agreement operates in accordance with the principles outlined in the Memorandum of Understanding on Devolution and Supplementary Agreements between the UK Government, Scottish Government, Welsh Government and the Northern Ireland Executive Committee, and is consistent with and complemented by other guidance on common working arrangements.

1. Purpose

1.1 The Smith Commission reported on its recommendations for further devolution of powers to the Scottish Parliament in November 2014. The UK Government set out in January 2015 in its response (*Scotland in the United Kingdom: An enduring settlement*) how it would deliver the agreed recommendations.

1.2 The agreement was - *There will be a formal consultative role for the Scottish Government and the Scottish Parliament in setting the strategic priorities for the Maritime and Coastguard Agency (MCA) with respect to its activities in Scotland. Scottish Ministers will have the power to appoint a Scottish member to the MCA's Advisory Board who is capable of representing the interests of Scotland. The MCA will lay its annual report and accounts before the Scottish Parliament and submit reports to, and appear before committees of the Scottish Parliament.*

1.3 This MoU sets out the principles of consultation for relevant parties on the setting of the strategic priorities in respect of the MCA's activities in Scotland relating to the Coastguard and the safety of ships and seafarers.

1.4 It also sets out other arrangements which implement the Smith Commission recommendations in so far as they relate to the activities of the MCA in Scotland. This includes those which were not possible or appropriate to set out in the Scotland Act 2016.

1.5 The overriding principle guiding this MoU is one of positive, constructive and collaborative engagement building on existing forums and channels of communication.

1.6 Both parties are committed to a 'no surprises' policy based on mutual trust and transparency, consulting each other on areas where there are significant announcements or developments that could impact on common areas of interest.

2. Roles and functions of the parties

2.1 The MCA is an Executive Agency of the UK Government Department for Transport (DfT, or “the Department”). The MCA promotes economic growth, facilitates the safety of shipping and seafarers, saves lives and protects the maritime environment.

2.2 As the national transport agency for Scotland, Transport Scotland is responsible for delivering a safe, efficient, cost-effective and sustainable transport system for the benefit of the people of Scotland. It also plays a key role in helping to achieve sustainable economic growth with opportunities for all of Scotland.

2.3 This document describes the way that both parties will work together in practice, to effect the recommendations made by the Smith Commission.

3. Scope of the MoU

3.1 This MoU provides a framework under which the Scottish Government will be consulted on strategic priorities with respect to the exercise of relevant MCA functions in Scotland.

3.2 “Scotland” shall have the meaning set out in section 126(1) of the Scotland Act 1998 as further delineated by the Scottish Adjacent Waters Boundaries Order 1999.

3.3 In broad terms, the requirement to consult on ‘strategic priorities’ means the overarching strategic policies affecting the planning and prioritisation of the delivery of those coastguard functions delivered in the United Kingdom (and specifically in Scotland) by Her Majesty’s Coastguard, and safety standards affecting ships and seafarers in Scotland. These functions are exercised on behalf of the Secretary of State for Transport by the MCA.

3.4 Example of matters on which Scottish Government Ministers would be consulted, and included within the scope of the MoU include:

- Strategic outcomes from the 2015 Maritime Growth Study affecting the MCA, e.g. its future structure, status, governance or responsibilities.
- Changes in the MCA’s governance
- Major efficiency or reform initiatives
- Major structural changes
- Strategic changes to the MCA’s remit e.g. proposals to take on additional activities

3.5 Matters relating to the financing of the MCA and its day-to-day operational and incident response activities are not covered by the scope of this MoU and are therefore not intended to be the subject of consultation with Scottish Government Ministers. These include:

- Search and rescue operations (including the tasking of helicopters)
- Pollution response operations
- Ship survey and inspection operations
- Seafarer training and certification
- Financial management decisions affecting the MCA's budget

3.6 Nothing in this MoU can or will prejudice the rights, duties and obligations of the United Kingdom in respect of her Status as a party to: the United Nations Convention on the Law of the Sea 1982; relevant International Maritime Organization Conventions; relevant International Labour Organisation Conventions; European Law or any matter that is reserved to the UK Government relating to such rights, duties and obligations.

3.7 This MoU is not intended to override or conflict existing international, regional or national statutory requirements relating to MCA activities in the United Kingdom or relating to British ships and seafarers wherever they operate or foreign Ships and seafarers operating in the maritime jurisdiction of the United Kingdom of Great Britain and Northern Ireland.

4. Operation of the MoU

4.1 Scottish Government Ministers may appoint a named individual to the MCA Advisory Board capable of representing the interests of Scotland. That person may appoint a deputy to attend meetings of the Board where necessary. The appointment will be reflected in the Terms of Reference of the MCA Advisory Board and in the MCA Framework Document. The latter document sets out Governance arrangements between the DfT and the MCA.

4.2 Membership of the MCA Advisory Board will be one of the principle mechanisms whereby the Scottish Government is consulted on the strategic priorities relating to the exercise of functions by the MCA in Scotland relating to the coastguard and ship and seafarer safety. This includes scrutiny and agreement of the MCA's annual Business Plan which encompasses its strategic objectives and performance indicators for the following year.

4.3 The UK Government Minister with responsibility for maritime matters will also engage directly with the relevant Scottish Government Minister (usually by exchange of correspondence) when necessary and particularly on matters of strategic importance, and/or sensitivity.

4.4 MCA, DfT and Transport Scotland officials will identify and agree on a case by case basis through day-to-day discussion, and via discussion at the MCA Advisory Board those matters necessitating Ministerial-level consultation. Ministers may also meet in person from time to time to discuss matters pertaining to this MoU.

4.5 The MCA will share its annual report and accounts with Transport Scotland each year, enabling them to be laid before the Scottish Parliament. The MCA will provide additional information highlighting any Scottish-specific activity, such as number of incidents in Scotland, to accompany its annual report and accounts. It is noted and agreed that this MOU should not place unreasonable administrative burdens on the MCA or a requirement to disaggregate expenditure out with its existing practices. However, where appropriate and reasonably practicable it may also highlight income and expenditure that reflects activity in Scotland (for example should there be Scottish-specific contracts for improvements or upgrades).

4.6 If required to do so, the MCA would submit relevant reports to, and appropriate officials would appear before, the Committees of the Scottish Parliament regarding the exercise of functions relating to the coastguard and the safety of ships and seafarers in Scotland.

4.7 Where practicable and proportionate, relevant reports will highlight Scottish-specific information pertaining to the delivery of the MCA's relevant functions in Scotland.

5. Duration and review

5.1 This memorandum is jointly owned and shall commence on 1 January 2017. It will be subject to periodic review after its commencement, and if necessary, following any pertinent changes, including to relevant legislation.

5.2 Where problems in the operation of this Memorandum are identified by either party they will seek to resolve such issues quickly and informally. If this is not possible the following will take responsibility for achieving a mutually acceptable resolution:

- Director for Transport Scotland
- Maritime Director, Department for Transport

6. Legal Status

6.1 This Memorandum is not a contract and is not legally enforceable. It does not create legal obligations between the Parties. However, the Parties have decided to adhere to the principles within the Memorandum and to show proper regard for each other's activities.

6.2 This Memorandum does not affect existing statutory functions or amend any other policies or agreements relating to activities of the Parties to the Memorandum of Understanding.

7. Signatories

(Signatures are subject to ratification by an exchange of letters between Ministers)

7.1 The Parties accept the terms set out in this MoU.

Signed on behalf of MCA

Signed on behalf of the Scottish Government

Signature

Signature

Name SIR ALAN MASSEY.....

Name ROY BRANNEJ.....

Position CEO MCA.....

Position CEO TRANSPORT SCOTLAND.....

Date 29 November 2016.....

Date 29 NOVEMBER 2016.....