

ORKNEY MANIFESTO GROUP

Various forms of devolved self-government in the context of Orkney

A discussion paper

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This discussion paper reviews the constitutional arrangements of some relatively autonomous island territories and takes a view on the extent to which they could be adopted for implementation in Orkney.

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Introduction

Any discussion on the nature of a future autonomous Orkney will benefit from the study of those forms of regional autonomy at presently in force in the UK and elsewhere which would seem most appropriate as templates for governance in Orkney.

This paper therefore focuses on the UK's Crown Dependencies as well as the arrangements made in Denmark for the self-government of the Faroes. Arising from this examination, those arrangements that seem best for Orkney are discussed. Following this discussion some conclusions are drawn and presented.

Crown Dependencies

There are currently three self-governing dependencies of the Crown. These are the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man.

Guernsey includes the jurisdictions of Alderney and Sark (including Breckhou) and the islands of Herm, Jethou and Lithou.

Crown Dependencies have never been part of the United Kingdom, its colonies or its Overseas Territories.

History

Guernsey and Jersey were originally part of the Duchy of Normandy. They have been subject to the English Crown since 1066 through the accession of William 1 of England (Duke of Normandy) but never became part of England administratively or legally.

The Isle of Man first came under the English Crown in the fourteenth century following periods under the Kings of Norway and Scotland and the island and its regalities was granted to Sir John Stanley in 1405. From then until 1765 it was ruled by the Earls of Derby followed by the Dukes of Atholl styled as Kings or Lords of Man. The rights of the Lords of Man reverted to the Crown by Acts of Parliament in 1765 and 1825. It has since evolved as a parliamentary democracy.

Powers

Although making annual voluntary contributions towards the costs of their defence and international representation they do not receive subsidies from or make any other payments to the UK. The Dependencies raise their own public revenue.

The Crown Dependencies are not represented in the UK parliament but have their own directly elected legislative assemblies, fiscal, legal (including courts) and administrative systems. UK legislation does not normally extend to the Dependencies. Where it does it is by agreement with each Dependency and usually by an Order in

Council.

The Channel Islands Dependencies' legislatures make their own domestic legislation which requires Royal Assent from the Privy Council as does reserved legislation in the Isle of Man. The responsibility of Royal Assent for domestic legislation in the Isle of Man is delegated to the Lieutenant-Governor.

Relationship with the EU

The Crown Dependencies have a special relationship with the EU but are not members. Under Protocol 3 of the UK's Treaty of Accession, the islands are part of the customs territory of the Community, meaning that the common customs tariff, levies and agricultural import measures apply to trade between the islands and non-member countries. Other Community legislation does not apply and of course the Dependencies are not eligible for assistance from the structural funds or the agricultural support measures.

The Faroe Islands

The Faroe Islands is a self-governing community within the Kingdom of Denmark and returns two members to the Folketing (the Danish Parliament). Greenland occupies a similar position within Denmark.

Recent history

The transfer of additional autonomy and responsibilities to the Faroe Islands arose from the recognition of the special position of the islands relative to national, historical and geographical points of view within Denmark. Although there had been a strong feeling in the islands towards independence for centuries, the formal process only started in 1948 and was significantly expanded in 2005. The journey to Faroese self-government has never been entirely plain sailing and this final push arose from very special circumstances.

Early in the 2nd World War mainland Denmark was invaded and occupied by Germany. The logical extension of this occupation to the Faroe Islands (then a Danish county) would have given Germany the opportunity to establish a political and military base of the highest strategic importance in the North Atlantic. Instead a pre-emptive but friendly invasion by British forces setting up an airbase at Vagar took place. This British occupation was looked upon by the islanders as much preferable to a German one and the local economy benefited greatly from this and particularly from the supply of Faroese-caught fish to a much deprived Britain. The British Government at the time had given assurances that it would not interfere in the internal affairs of the Faroe Islands unless and until approved by a "free" Denmark so during this period of occupation the Faroese were allowed to make their own laws and run their own affairs short of actual legal independence.

It was only natural that at the end of the war, after the re-establishment of a liberated Danish state, the experience of self-government during wartime would encourage the

Faroese to press for the continuance of that situation. A referendum on independence was held in 1946 but the result (in favour) was rejected by the Danish government because only two thirds of the electorate had voted. After elections the Faroese Parliament was left with an anti-independence majority which pressed ahead with talks with Denmark which resulted in home rule short of independence being granted in 1948.

The powers

As a result of The Faroe Islands Home Rule Act, 1948 the Faroe Islands authority took over primary responsibility for administration, municipal affairs, building, including town planning, etc., pharmacies and environmental health, welfare services, direct and indirect taxes, various financial matters, including disposal of own income and expenditure, licensing and accounting arrangements etc., harbour duties, school system, local archives, libraries and museums, protected buildings and nature conservancy, harbours and coastal protection and transport, local post, telegraph and telephone services, electrical installations, rural and agricultural matters as well as a wide range of other matters ranging from trading rules to supplies, production and distribution. Responsibility for maintaining equal rights for men and women was also included. The range of responsibilities was expanded significantly with the Takeover Act of 2005.

There are currently certain responsibilities which remain jointly with the Danish Government but which under the Takeover Act will eventually rest with the Faroese Government. These are the Established Church, police, and aviation and whilst the Faroese Government has taken over legislative and administrative power in certain fields with block subsidies namely the health service inc. medical practice, midwifery and the hospital service as well as public assistance and national insurance these areas at present remain a joint responsibility.

Eventually the only areas of government which will remain entirely with the Danish state are: - the Constitution; nationality; the Supreme Court; foreign, defence and security policy; exchange rate and monetary policy.

The economy

In the 1980s the Faroes enjoyed one of the world's highest standards of living with low unemployment. Unfortunately this was almost entirely due to vastly increased output from fishing, its prime industry. Inevitably in the nineties there followed a dramatic slump in the fish stocks due to overfishing. This reverse coupled with years of massive public overspending saw unemployment rising sharply and the banking system almost wiped out. The situation was only saved by a massive bailout (1.8 billion DKK) from the Danish Government in addition to an annual grant of around 1 billion DKK. This action coupled with drastic austerity measures affecting the whole public sector gradually reversed the situation until in the early 21st century the weakness in the Faroese economy had been eliminated.

Relationship with the EU

In 1973, when Denmark joined the European Economic Community, as it was then known, the Faroe Islands were excluded as they did not wish to be governed by EEC fishing regulations. Thus the Faroes are not part of the present EU and its relationship with the EU is governed only by a Fisheries Agreement (1977) and a Free Trade Agreement (1991, revised 1998).

Prospect of independence from Denmark?

In the eighties when the Faroe Islands were booming there were strong rumblings for complete independence but these waned during the economic troubles of the nineties. When things got better again the independence issue was resuscitated but in 2001 a proposed referendum on progress towards independence was called off when it was made clear that the annual grants still being made from central Government would be phased out in the four years following a “yes” vote.

Orkney

Orkney is currently administered, and services provided, by means of a range of agencies. By far the biggest agency is Orkney Islands Council which operates as a unitary local authority providing a full range of local authority services, the most important of which are education, social services, planning, environmental services, infrastructure, transportation and harbour authority responsibilities (including Scapa Flow oil port).

History

The Earldom of Orkney was annexed by the Scottish Crown in 1471 and became part of Britain at the Union of Parliaments in 1707.

Prior to 1929 local government in Scotland consisted largely of Royal Burghs that organised basic services within communities. In 1929 local government was reorganised and left Orkney with the Royal Burgh of Kirkwall, the Burgh of Stromness and the Orkney County Council. This changed in 1975 when the powers and obligations of those councils were taken over by the new unitary Orkney Islands Council. A further reorganisation of Scottish councils took place in 1996 setting up twenty nine new unitary authorities in the rest of Scotland but leaving the islands councils including Orkney unchanged.

Mention must be made of the Orkney County Council Act 1974 which increases the powers of the local authority to adopt measures to give maximum financial benefits to the islands from the operation of the Flotta oil terminal and to provide protection from its adverse environmental effects. Shetland has similar special legislation applying to it.

Diminishing powers - the current state of affairs

In 1975 Orkney Islands Council (like the other islands councils) was in an enviable position as it directly provided a complete range of services for its area except fire and police (but was represented on the respective joint authorities for these). The only public services in which it had no direct involvement were medical services, power supply and post and communications.

Since then a further number of services have been removed or diluted and the islands councils' unique status has been lost as they are now each just another of Scotland's 32 unitary authorities and because of their relative smallness their influence has greatly diminished.

Orkney's attitude to devolution

Traditionally Orkney has never liked the powers affecting it to be devolved to any organisation other than itself. It has displayed strong unionist tendencies as far as preserving the UK goes. In 1932 in *A History of Orkney* J. Storer Clouston writes of the Union of Parliaments in 1707 that "the first advantage Orkney ever gained from becoming part of Scotland was the privilege of eventually becoming part of Great Britain".

This inclination was demonstrated in 1979 when only 15% of the electorate voted for the Scotland Bill and again in 1997 in the Devolution Referendum only 15% of the electorate voted for the measures (27.9% of those voting) with 72% of those voting actually saying "no".

Orkney – dependency or home rule?

On the face of it Orkney's repeated and fairly recently declared support for the UK expressed through its rejection of an independent Scotland suggests that if that state be set up the population would be most comfortable if Orkney was a Dependency of the British Crown. However it is absolutely clear that no existing Crown Dependency has ever been part of the UK whilst Orkney has been part of Britain since 1707. This fact alone would seem to rule out this path. The fact that none of the dependencies receive funds from the UK Government or are eligible for structural and agricultural support from any source might prove an even more effective argument against.

There is no doubt that the situation presently existing in the Faroes has attractions for many sitting in Orkney but it must be remembered that independence has been at the heart of the Faroese psyche for centuries. The wartime experience which gave the island authorities experience of running their own affairs separate from Denmark also exposed a fault line between the centre and the periphery in the most basic of ways which still exists. In other words an independent Faroes possibly makes as much sense in Copenhagen as it does in Torshavn. It is doubtful whether home rule for Orkney would evoke a similar response in either London or Edinburgh.

Discussion

Before drawing any conclusions from the information above it is important to bear in mind that the necessity for this debate has been prompted by the referendum on an independent Scotland which is to take place in September next year. It is also necessary to reflect on whether attempting to second guess the referendum result at this stage is of any help in the consideration of more autonomy for Orkney or whether it would be better to leave basic fundamental constitutional matters such as legislative and fiscal powers until the time when the nature of our future nationhood is clear?

Choosing from such as Crown Dependency or home rule models should be left for another day. There is no doubt, however, that now is the time for pressing for much more autonomy for Orkney in the provision and delivery of local services and in the support and improvement of community wellbeing.

It is pretty clear that, irrespective of the referendum result, considerably wider powers will be given to Holyrood. It is absolutely vital that in the general redrawing of responsibilities, Orkney demands to be returned at least to its 1975 position with the principal authority controlling all on-island services (including the return of water and other services lost), the provisions of the Orkney County Council Act 1974 must be preserved and the addition of power generation and transmission and health treatment services could be pressed for. The latter would require primary legislation no matter where the principal government resides.

Those who live and work in Orkney know that it is a unique place which requires special treatment and this was well recognised in the 1975 reorganisation of local government. This is true also of Shetland and the Western Isles. But our uniqueness does not lie solely in being islands. The greatest danger is assuming that the strategic needs of all three islands groups are the same. They may have some similarities but the disparity between their cultures, economies and needs is too great for them to be treated with a broad brush.

The great dilemma is that, whilst local governance is required for strategic decisions, great benefit would be derived from wider island cooperation on the development of technical and administrative expertise. "Island solutions for island problems" is a well worn cliché but is no less true for that. There is considerable merit in an over-arching "federation" of island authorities which would oversee the setting up of centres of expertise in developing the solutions required. One can think of the knowledge already present in Orkney alone in the fields of renewable energy and environmental matters. The argument to harness such knowledge throughout the island groups to inform and assist local strategies in a more formal and targeted way is compelling.

Conclusion

As we have argued elsewhere, we believe that the establishment of a Single Public Authority for Orkney is likely to emerge as the most appropriate candidate vehicle for delivering more autonomy for Orkney.

The powers of this Authority should include the restoration of those lost in 1996 with the addition of energy generation and transmission and all health services; the preservation of the provisions of the Orkney County Council Act 1974; and the ability to join formally with other island authorities into providing specialist resources to provide the expertise to enable island authorities to pursue each one's own strategic objectives.

The importance of reviewing the constitutional arrangements of island territories such as the Faroes, Isle of Man and Channel Islands is to provide a source of ideas for possible adoption (or exclusion!) in a framework for Orkney which will be designed from first principles.

Before making a final decision of the best constitutional framework for Orkney we need to further define and negotiate the devolution of a target list of powers, including those just mentioned. We also need to have a clear direction on our funding strategy. The latter will determine how much independence we seek and eventually acquire.

Existing constitutional examples have a role in showing us what is possible.