

ISLANDS STRATEGIC GROUP MEETING – 11 JULY 2017

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to provide an update from the meeting of the National Islands Strategic Group held in Stornoway, Isle of Lewis on 11th July 2017 attended by Cllr Robin Currie, Policy Lead for Communities, Housing, Islands and Gaelic and Cleland Sneddon, Chief Executive.
- 1.2 The National Group is chaired by Humza Yousaf, Minister for Transport and the Islands and attended by Kevin Stewart, Minister for Local Government and Housing. The Group has representation from Shetland Council, Orkney Council, North Ayrshire Council, Highland Council, Comhairle nan Eilean Siar and Argyll and Bute Council which comprise the Scottish island authorities and authorities with islands.
- 1.3 It is recommended that the Argyll Islands Strategic Group:
 - 1.3.1 Note and provide feedback on the update from the meeting of the National Islands Strategic Group held in Stornoway on 11th July 2017.

ISLANDS STRATEGIC GROUP MEETING – 11 JULY 2017

2.0 INTRODUCTION

- 2.1 The purpose of this report is to provide a brief update from the meeting of the National Islands Strategic Group held in Stornoway, Isle of Lewis on 11th July 2017 attended by Cllr Robin Currie, Policy Lead for Communities, Housing, Islands and Gaelic and Cleland Sneddon, Chief Executive.
- 2.2 The National Group is chaired by Humza Yousaf, Minister for Transport and the Islands and attended by Kevin Stewart, Minister for Local Government and Housing. The Group has representation from Shetland Council, Orkney Council, North Ayrshire Council, Highland Council, Comhairle nan Eilean Siar and Argyll and Bute Council which comprise the Scottish island authorities and authorities with islands.

3.0 RECOMMENDATIONS

It is recommended that the Argyll Islands Strategic Group:

- 3.3.1 Note and provide feedback on the update from the meeting of the National Islands Strategic Group held in Stornoway on 11th July 2017.

4.0 DETAIL

- 4.1 The Scottish Government convened a National Islands Strategic Group in 2016 with the third meeting of the Group held in Stornoway, Isle of Lewis on 11th July 2017. The Group was convened to build on the work of the previous Island Areas Ministerial Working Group and the Empowering Scotland's Island Communities prospectus. The remit of the group includes consideration of strategic issues affecting the inhabited island communities of Scotland and to ensure greater involvement of the relevant Councils in helping identify and design solutions to the unique needs and challenges these communities face.
- 4.2 The Group's work has broadly focused on the following areas:
- Assisting with the development of provisions for the forthcoming Islands Bill announced as part of the 2016 Programme for Government, and the supporting statutory guidance that will underpin it;

- Assisting with the development and implementation of a National Islands Plan;
- Considering how the Islands Councils, and Councils with responsibilities for Island Communities, are and can be supported to make the most of existing powers available to them. Helping them to engage and empower their communities so that they can deliver efficient, improved and more responsive public services, leading to better outcomes; and
- Considering strategic policy issues/challenges to ensure proper solutions, fit for purpose are being considered to allow greater sustainable economic growth and community development within island communities.

4.3 The Agenda for the meeting of the 11th July 2017 included consideration of the following agenda items:

4.3.1 The Draft Islands (Scotland) Bill

The Group considered the draft Bill and key provisions relating to Crown Estate; National Islands Plan; Duties in relation to Island Communities; Representation of Island Communities including flexibility in electoral ward design for islands; and the Development in the Scottish island marine area including the licensing of marine development activities.

The Bill is anticipated to reach its first evidence stage between September to December 2017 – Argyll and Bute Council has been asked to present evidence to the Rural Economy and Connectivity Parliamentary Committee as part of this process and this will be discussed on today's meeting agenda. The anticipated subsequent timeline would see it reach stage 3 of the parliamentary process in April 2018, Royal Assent in May/June 2018 and commencement at the earliest in July 2018.

Early drafts of the Bill's accompanying Policy Memorandum; Delegated Powers Memorandum; Explanatory Notes and Financial Memorandum were also circulated. Key themes from the discussion noted that the legislation should be viewed as "enabling" and not a "defining" piece of legislation – that means that it will be broad enough in its terms to allow for future proposals to come from local authorities or island communities in terms of public sector reforms that may provide a positive impact for islands. The concerns regarding boundary reviews on Argyll and Bute wards as a result of the legislation was raised and also that many of the issues faced were also faced by remote rural and peninsula communities.

A presentation on the Islands Bill will be delivered to the Argyll Islands Strategic Group by Ian Turner, Scottish Government's Head of the Islands Bill Team at today's meeting, and the Bill, a summary document, the Policy Memorandum, the Financial memorandum are attached as appendices 1 to 4 of this report.

4.3.2 The National Islands Plan

The draft legislation provides for the duty on Scottish Ministers to prepare a National Islands Plan which will provide a strategic direction for Government and

all public bodies. The Plan will seek to focus resources and where appropriate set targets for key areas of activity. There will also be a duty on Ministers to report on progress on the plan.

The meeting considered a proposed structure and content of the Plan and through discussion a preference for the model as adopted for the National Gaelic Plan was expressed.

The first Plan would realistically be introduced in 2019 for an initial 7 year period thereafter falling in line with the 5 year parliamentary cycle.

The discussion also endorsed the view that the Plan should maintain its longer term focus and not be drawn into short termism by the need for annual progress reporting.

4.3.3 Forward Work Programme

The Group gave consideration to the future work programme set out under the three broad themes of “promoting Islands Voice”; “Harnessing Islands Resources” and “Enhancing Islands Wellbeing”. A wide range of topics are under consideration and will be timetabled in to the future meeting agendas. These include:

- Energy – Renewables/ Fuel Poverty/ De-carbonisation
- Crown Estate
- Environment (Waste; Designations; Crofting; Agriculture & Fisheries)
- Tourism (Including Culture)
- Regional Skills (Construction)/ FE & HE Provision/ Apprenticeships
- Depopulation/ Migration
- Education/ Health Recruitment
- EU/ BREXIT
- Digital (Mobile/ Broadband)
- Housing/ Empty Homes Initiatives
- Economy
- Planning
- Transport
- Social Security Reforms

5.0 CONCLUSION

- 5.1 The National Islands Strategic Group has already progressed new legislation in support of island communities to draft Bill stage ensuring that authorities with islands now enjoy the same focus and influence as wholly island authorities. The national Group provides a mechanism for Argyll and Bute to engage directly with the Scottish Government on this agenda and the opportunities that may arise from it. The Argyll Islands Strategic Group provides a forum for discussion on these developing opportunities and to consider how best the authority influences the agenda and to recommend and any required actions to council for consideration.

6.0 IMPLICATIONS

6.1 Policy	The Islands Bill is directly aligned to the Scottish Governments Policy Programme issued in 2016. .
6.2 Financial	None at this stage.
6.3 Legal	The Bill if enacted will introduce new statutory duties on local authorities
6.4 HR	None.
6.5 Equalities	None
6.6 Risk	None at this stage.
6.7 Customer Service	None

**Cleland Sneddon
Chief Executive**

Councillor Robin Currie, Policy Lead for Communities, Housing, Islands and Gaelic

27 July 2017

For further information contact: Cleland Sneddon, Chief Executive, Tel 01546 604350

**Islands Strategic Group
Breasclete Community Centre, Breasclete, Lewis, Western Isles
Tuesday, 11 July 2017 (10:00-12:00)**

ISLANDS (SCOTLAND) BILL

The Islands (Scotland) Bill was introduced to Parliament on 9 June and launched by the Minister for Transport and Islands on 12 June. Copies of the Bill and the accompanying documents are attached separately.

SUMMARY OF BILL CONTENTS

Purpose of the Bill

The purpose of the Bill is to ensure that there is a sustained focus in Government and the wider public sector on improving outcomes for our island communities.

The Government has a good record in working in partnership with island communities, local authorities and other organisations in tackling many of the challenges that our island communities face. This can be seen across the whole of Government in matters such as the £5 million Island Housing Fund, investment in transport infrastructure and services, through our commitments on digital connectivity and our mobile action plan and on the Crown Estate where we are committed to devolving 100% of net revenues to island communities and considering the longer-term management arrangements as part of the forthcoming Crown Estate Bill.

National Islands Plan

This Part of the Bill places a duty on the Scottish Ministers to prepare, lay before the Scottish Parliament and publish a 'National Islands Plan'. The Plan must set out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities.

The Plan will provide a framework for reporting on the work the Scottish Government and its agencies is taking forward across a wide range of key policy areas to help sustain and support all of Scotland's island communities.

Duties in relation to island communities

This Part of the Bill places a duty on the Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions. Under the Bill an island communities' impact assessment would need to be prepared when a new or revised policy, strategy or service is likely to have a significantly different effect on island communities from its effect on other communities. For the Scottish Ministers this also includes the development of legislation.

The duty created under the Bill is often referred to as ‘island-proofing’. The importance of island-proofing was recognised in *Empowering Scotland’s Island Communities*:

“The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector. Island-proofing consists of considering the particular needs and circumstances of island communities when the Scottish Government and other relevant public authorities are exercising their functions and making decisions.”

Na h-Eileanan an Iar Scottish parliamentary constituency

Currently under Schedule 1 to the Scotland Act 1998, Orkney and Shetland are named as two of the 73 constituencies for the purposes of the Scotland Act 1998. This ensures that there must be distinct Orkney and Shetland constituencies for elections to the Scottish Parliament, protected from variation after any boundary review. The Bill includes provision to provide this statutory protection for the Na h-Eileanan an Iar Scottish parliamentary constituency.

Greater Flexibility in electoral ward design for islands

Under section 1 of the Local Government (Scotland) Act 2004 each electoral ward in Scotland has to return 3 or 4 councillors. This can mean that that populated islands may be placed in an electoral ward which also contains a significant proportion, and often a majority, of mainland population. This had led to concerns that the distinct interests of island communities might not be fully represented in council discussions.

The Bill provides the Local Government Boundary Commission for Scotland the flexibility to recommend to Scottish Ministers electoral wards of 1 or 2 councillors be created covering populated islands, if they deem this appropriate. It would be anticipated that any changes would be implemented in time for the 2022 Scottish Local Government Elections.

Development in the Scottish island marine development area

A commitment was given in the ‘Empowering Scotland’s Island Communities’ prospectus that the Scottish Government would not seek to legislate to diminish the powers of the Zetland and Orkney County Council Acts of 1974, and would progress as required any proposals from Comhairle nan Eilean Siar regarding which provisions from these Acts that would also be relevant and appropriate for the Western Isles to have. The 2015 consultation therefore asked if the Zetland and Orkney County Council Acts should be extended to cover other island authorities.

The Government is keen to provide all island local authorities have the opportunity to have more control in the development of the seas around their island communities. The Bill provides a regulation-making power so that should a local authority with inhabited islands wish to become a licensing authority then a licensing scheme can be established by Ministers through secondary legislation to enable them to do that.

Any regulations will require full and proper consultation and the agreement of Parliament.

The delegated power within the Bill provides what any regulations would cover in the set-up of any scheme including the application procedure to be followed, fees chargeable, appeals, inquiries, enforcement and remediation, penalties and consultation.

BILL TIMETABLE AND PROCESS

The timetable for the passage of the Islands Bill through parliament is for the parliament itself to decide. The expected timings are:

Introduction Date	9 June 2017
Publication/Launch Date	12 June 2017
Stage 1 Evidence Period	September to December 2017
Stage 1 Debate	February 2018
Stage 2	March 2018
Stage 3	April 2018
Royal Assent	May/June 2018
Commencement	July 2018 (earliest realistic date)

The lead committee in the parliament is the Rural Economy and Connectivity Committee. They issued a call for written evidence on 30 June 2017 with a deadline for responses of 25 September 2017.

<http://www.parliament.scot/newsandmediacentre/105516.aspx>

During the autumn of 2017 we would expect the Committee to take further evidence from island stakeholders on the Bill which will culminate in questions to the Minister for Transport and Islands based on the evidence received. The Finance Committee and the Delegated Powers and Law Reform Committee will also scrutinise the Bill and report to the lead committee.

The Rural Economy and Connectivity Committee will then produce a report and make recommendations to Parliament. A debate will be held in the chamber where the Parliament will be asked whether they agree to the general principles of the Bill and pass to Stage 2.

Stage 2 is the first amending stage. Amendments can be brought forward by the Government and MSPs to be scrutinised by the lead committee who then vote on whether to accept the amendments.

Stage 3 is the final amending stage. Stage 3 is held in the chamber and is the last opportunity to amend the Bill. The Parliament will then vote on whether to pass the Bill.

Once a Bill is passed it must wait a statutory period of 4 weeks to allow for any issues of competence to be raised by Scots and UK Law Officers before it is passed to the Queen for signature. There is usually a gap between Royal Assent and commencement but certain provisions may come into force upon Royal Assent.

Next Steps

As can be seen from the timetable above there is still plenty of opportunities for discussion about the Islands Bill and the potential for changes to be made. The Group has previously discussed potential additions and the Government will continue to engage over the coming months in tandem with the Parliamentary process. The Group may want to consider:

- The potential impact of the Bill and how it could lead to changes in outcomes for island communities
- Any improvements that they believe could be made to the current provisions
- Any new proposals and suggestions for amendments

Islands Bill Team
July 2017

Islands (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 15-EN), a Financial Memorandum (SP Bill 15-FM), a Policy
Memorandum (SP Bill 15-PM) and statements on legislative competence (SP Bill 15-LC).**

Islands (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for a national islands plan; to impose duties in relation to island communities on certain public authorities; to make provision about the electoral representation of island communities; and to establish a licensing scheme in respect of marine development adjacent to islands.

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PART 1

KEY DEFINITIONS

1 Meaning of “island” and of “inhabited island”

- (1) In this Act, “island” means a naturally formed area of land which is—
- (a) surrounded on all sides by the sea (ignoring artificial structures such as bridges),
10 and
 - (b) above water at high tide.
- (2) In this Act, “inhabited island” means an island permanently inhabited by at least one individual.

2 Meaning of “island community”

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In this Act—

“island community” means a community which—

- (a) consists of two or more individuals, all of whom permanently inhabit an island (whether or not the same island), and
- (b) is based on common interest, identity or geography.

PART 2

NATIONAL ISLANDS PLAN

*Duty to prepare national islands plan***3 National islands plan**

- 5 (1) The Scottish Ministers must prepare a national islands plan.
- (2) In this Part, a “national islands plan” is a plan setting out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities that result from, or are contributed to by, the carrying out of functions of a public nature.

4 Preparation and scrutiny of plan

- 10 (1) In preparing the national islands plan, the Scottish Ministers must—
- (a) consult—
- 15 (i) such persons as they consider represent the interests of island communities, and
- (ii) such persons as they consider likely to be affected by the proposals contained in the plan, and
- (b) have regard to the distinctive geographical and cultural characteristics of each of the areas inhabited by island communities.
- (2) The Scottish Ministers must lay the proposed national islands plan before the Scottish Parliament—
- 20 (a) in the case of the first plan, before the end of the period of one year beginning with the day on which this section comes into force,
- (b) in any other case, following a review under section 6(1).
- (3) The Scottish Ministers must complete their preparation of the national islands plan after the expiry of the period of 40 days beginning with the day on which the plan is laid before the Scottish Parliament (taking no account of any time during which the Parliament is dissolved or in recess for more than 4 days).
- 25 (4) As soon as reasonably practicable after the end of the period mentioned in subsection (3), the Scottish Ministers must publish the plan.

*Reporting on and review of plan***5 Report on plan**

- 30 (1) The Scottish Ministers must prepare a report for each reporting year, containing information—
- 35 (a) about the extent to which the outcomes identified in the national islands plan have improved in the reporting year,
- (b) about the steps which the Scottish Ministers have taken to comply with the duties in relation to island communities imposed by—
- (i) section 7 (including any island communities impact assessment prepared under section 8), and

(ii) section 12, and

(c) about any other matters which the Scottish Ministers consider appropriate.

(2) In this section, “reporting year” means the period of one year beginning—

(a) in the case of the first report following each publication of a national islands plan under section 4(4), with the day on which the national islands plan is published,

(b) in any other case, with the day of the expiry of the last period of one year.

(3) As soon as reasonably practicable after preparing a report under subsection (1), the Scottish Ministers must—

(a) lay the report before the Scottish Parliament, and

(b) publish the report.

6 Review of plan

(1) The Scottish Ministers—

(a) must review the national islands plan before the end of the period of 5 years beginning with the day on which the plan was last published, and

(b) may from time to time review the plan.

(2) Following a review under subsection (1), the Scottish Ministers may revise the plan as they consider appropriate.

(3) Subsections (1), (3) and (4) of section 4 apply to a review of the plan under subsection (1) as they apply to the preparation of the plan under that section.

PART 3

DUTIES IN RELATION TO ISLAND COMMUNITIES

Duty of certain authorities in respect of policies and services

7 Duty to have regard to island communities

(1) A relevant authority must have regard to island communities in carrying out its functions.

(2) In this Part, a “relevant authority” means a body, office-holder or other person listed in the schedule.

(3) The Scottish Ministers may by regulations amend the schedule by—

(a) adding an entry for any person, body or office-holder, or

(b) removing an entry.

8 Island communities impact assessment

(1) A relevant authority must prepare an island communities impact assessment in relation to a—

(a) policy,

(b) strategy, or

(c) service,

which, in the authority's opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the authority exercises its functions.

- 5 (2) Subsection (1) applies to the development, delivery and redevelopment of the policy, strategy or service (as the case may be).
- (3) An island communities impact assessment prepared under subsection (1) must—
- (a) describe the likely significantly different effect of the policy, strategy or service (as the case may be), and
- 10 (b) assess the extent to which the authority considers that the policy, strategy or service (as the case may be) can be developed or delivered in such a manner as to improve or mitigate, for island communities, the outcomes resulting from it.

9 Compliance with section 7 duty

A relevant authority demonstrates compliance with the duty imposed by section 7—

- 15 (a) in the case where the authority must prepare an island communities impact assessment under section 8(1), by preparing that assessment, or
- (b) in any other case, by making such an assessment or taking such other steps as the authority considers appropriate.

Guidance and reporting

10 Guidance about section 7 duty

- 20 (1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the duty imposed by section 7.
- (2) Before issuing guidance under subsection (1), the Scottish Ministers must consult—
- (a) such persons as they consider represent the interests of island communities, and
- (b) such persons as they consider likely to be affected by the guidance.

11 Reporting regarding section 7 duty

- 25 (1) A relevant authority to which the duty imposed by section 7 applies in a reporting period must publish information about the steps which the authority has taken to comply with that duty during that reporting period.
- (2) A “reporting period” is any period determined by the authority of up to a maximum of one year.
- 30 (3) The relevant authority may publish the information in such manner as the authority considers appropriate (for example in an annual or other report prepared by the authority).
- (4) Subsection (1) does not apply to the Scottish Ministers (see section 5).

Duty of the Scottish Ministers in respect of legislation

12 Preparation of island communities impact assessment by Ministers

- 5 (1) The Scottish Ministers must prepare an island communities impact assessment in relation to legislation which, in their opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in Scotland.
- (2) In subsection (1), “legislation” means—
- 10 (a) a Bill for an Act of the Scottish Parliament which the Scottish Ministers intend to introduce in the Parliament, and
- (b) subordinate legislation which is—
- (i) to be made by the Scottish Ministers and is subject to the negative procedure, or
- (ii) to be laid in draft before the Scottish Parliament and, subject to the affirmative procedure, to be made by the Scottish Ministers.
- 15 (3) An island communities impact assessment prepared under subsection (1) must—
- (a) describe the likely significantly different effect of the legislation, and
- (b) assess the extent to which the Scottish Ministers consider that the legislation can be developed in such a manner as to improve or mitigate, for island communities, the outcomes resulting from the legislation.

20 **PART 4**

REPRESENTATION OF ISLAND COMMUNITIES

Elections to the Scottish Parliament

13 Constituency of Na h-Eileanan an Iar

- 25 (1) In schedule 1 of the Scotland Act 1998 (constituencies, regions and regional members)—
- (a) in paragraph 1(2), before paragraph (a) insert—
- “(za) the existing constituency of Na h-Eileanan an Iar,”
- (b) in paragraph 3(1), for “1(2)(a)” substitute “1(2)(za), (a)”, and
- (c) in paragraph 12, in Rule 2—
- 30 (i) in paragraph (3), for “71” substitute “70”, and
- (ii) in paragraph (7), after “areas of” insert “Comhairle nan Eilean Siar,”.
- (2) In the Scottish Parliament (Constituencies and Regions) Order 2014 (S.I. 2014/501)—
- (a) article 2 is to be read as if Na h-Eileanan an Iar were not included in the “deposited data” within the meaning of article 2(2), and
- 35 (b) in schedule 1—
- (i) in the introductory words before the table, after “than” insert “Na h-Eileanan an Iar,” and

- (ii) in the table, the entry for the constituency of Na h-Eileanan an Iar is revoked.
- (3) In article 42(10) of the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425), after “article” insert “the constituency of Na h-Eileanan an Iar,”.

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Local government elections

14 Number of councillors in wards with inhabited islands

In section 1 of the Local Governance (Scotland) Act 2004 (electoral wards), after subsection (2), insert—

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“(2A) But, in relation to an electoral ward consisting wholly or mainly of one or more inhabited islands (within the meaning of section 1(2) of the Islands (Scotland) Act 2018), an order made under section 17 of the 1973 Act may determine that the number of councillors to be returned is either one or two.”.

15 Review of wards in certain local government areas

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- (1) As soon as practicable after the commencement of this section, the Local Government Boundary Commission for Scotland (“Boundary Commission”) must—
- (a) review the electoral arrangements for each local government area mentioned in subsection (2), for the purpose of considering future electoral arrangements for those areas, and
 - (b) formulate proposals for those arrangements.
- (2) The local government areas are the areas of—
- (a) Argyll and Bute Council,
 - (b) Comhairle nan Eilean Siar,
 - (c) Highland Council,
 - (d) North Ayrshire Council,
 - (e) Orkney Islands Council,
 - (f) Shetland Islands Council.
- (3) Part 2 of the 1973 Act applies to a review under subsection (1) as it applies to a review under section 16 of that Act except that section 17 of that Act has effect as if it required the Boundary Commission to submit a report on the review before such date as the Scottish Ministers may direct.
- (4) The review under subsection (1) is to be disregarded for the purposes of calculating the intervals between the Boundary Commission reviews of electoral arrangements under section 16(2) of the 1973 Act (duty to review electoral arrangements).
- (5) In this section, “1973 Act” means the Local Government (Scotland) Act 1973.

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PART 5

DEVELOPMENT IN THE SCOTTISH ISLAND MARINE AREA

Key definitions

16 Meaning of “development activity”

- 5 (1) In this Part, “development activity” means—
- (a) construction, alteration or improvement works of any description (either in or over the sea, or on or under the seabed),
 - (b) any form of dredging (whether or not involving the removal of any material from the sea or seabed).
- 10 (2) But the following are not development activities—
- (a) any activity relating to a matter which is a reserved matter by virtue of Section D2 (oil and gas) in Part II of schedule 5 of the Scotland Act 1998 and which is an activity outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974),
 - 15 (b) any activity relating to a matter which is a reserved matter by virtue of paragraph 9 (defence) in Part 1 of that schedule,
 - (c) any activity falling within the subject matter of Part 6 (pollution) of the Merchant Shipping Act 1995,
 - 20 (d) any activity involving the placing, assembly or operation of any equipment within the Scottish island marine area for the purpose of fish farming (within the meaning given by section 26(6) of the Town and Country Planning (Scotland) Act 1997).

17 Meaning of “Scottish island marine area”

- 25 In this Part, “Scottish island marine area” means such part of the Scottish marine area (within the meaning of Part 1 of the Marine (Scotland) Act 2010) which is—
- (a) adjacent to an island, and
 - (b) up to 12 nautical miles from that island, measured from the low water mark of the ordinary spring tide.

Licensing of development activities

18 Scottish island marine area licence

- 30 (1) The Scottish Ministers may by regulations establish a scheme by virtue of which a person must not, except in accordance with a licence granted by a local authority, carry on a development activity within such part of the Scottish island marine area as is designated in the regulations as a part in which such a licence is required to carry on a development activity (in this Part an “island licensing area”).
- 35 (2) Regulations under subsection (1) may designate an area as an island licensing area only if—
- (a) a local authority has applied to the Scottish Ministers for such a designation to be made, and
 - 40 (b) the Scottish Ministers are satisfied that the area includes an inhabited island.

- (3) Regulations under subsection (1) may make provision about (in particular)—
- (a) the types of development activity covered by, and exempted from, the scheme,
 - (b) the area and boundaries of the Scottish island marine area—
 - (i) which are covered by, or exempted from, the scheme,
 - 5 (ii) which are allocated to a particular local authority for the purposes of the scheme,
 - (iii) which are designated as an island licensing area,
 - (c) the procedure to be followed in relation to an application to a local authority for a licence, including about—
 - 10 (i) the steps to be taken before a person may apply for a licence (for example consultation and notification of affected persons),
 - (ii) the issue, renewal, variation, transfer, suspension and revocation of a licence,
 - (iii) an appeal of a decision relating to a licence,
 - 15 (iv) the fees chargeable by a local authority,
 - (v) the holding of an inquiry in connection with the determination of an application,
 - (d) the effect of an application and of a grant of a licence to carry on a development activity on—
 - 20 (i) an application for, or a grant of, a marine licence under Part 4 of the Marine (Scotland) Act 2010,
 - (ii) an application for, or a grant of, consent under section 36 of the Electricity Act 1989 (consent for construction etc. of generating stations) in relation to the activity or other works to be undertaken in connection with the activity,
 - 25 (e) the enforcement of the regulations, including about the issuing of the following kinds of notice in relation to works not carried out in accordance with a licence—
 - (i) a compliance notice, requiring a person to take such steps as are specified in the notice in relation to such works,
 - 30 (ii) a remediation notice, requiring a person to take such steps as are specified in the notice in relation to such works, or to compensate a local authority or other person for remedial steps taken, or to be taken, in relation to such works (or both),
 - (f) a power to carry out remedial works where a development activity has been carried on otherwise than in accordance with a licence,
 - 35 (g) offences and penalties in relation to a contravention of—
 - (i) a prohibition on a development activity within the Scottish island marine area,
 - (ii) a restriction contained in a licence,
 - (h) exceptions and defences to such offences,
 - 40 (i) the imposition of fixed monetary penalties in relation to a contravention that is criminalised by virtue of paragraph (g) and (h),

(j) the publication of information in a public register maintained by a local authority, including about—

(i) what information is to be published in the register (and in what manner and form),

(ii) the circumstances in which information must not be published (for example if its publication would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest),

(iii) the circumstances in which a local authority must provide copies of entries in the register to members of the public (whether on payment of a fee or otherwise).

(4) A fee provided for in regulations under subsection (1) in relation to an application to a local authority for a licence must represent the reasonable costs of an authority in deciding an application.

(5) The maximum penalties that may be provided for in regulations under subsection (1) for offences under the regulations are—

(a) on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000 (or both),

(b) on conviction on indictment, imprisonment for a term not exceeding 2 years or a fine (or both).

(6) Regulations under subsection (1) for the imposition of fixed monetary penalties may make provision similar to that which is enabled by sections 46 and 47 of the Marine (Scotland) Act 2010, but must provide that such penalties—

(a) may only be imposed where a local authority is satisfied beyond reasonable doubt that a person has committed an offence under the regulations,

(b) are to be imposed by notice, and

(c) cannot exceed £50,000 in relation to a particular contravention.

(7) Before laying a draft of the regulations under subsection (1) before the Scottish Parliament, the Scottish Ministers must consult—

(a) such persons as they consider represent the interests of island communities, and

(b) such persons as they consider likely to be affected by the regulations.

19 Exception from requirement for licence

(1) A scheme established under section 18(1) does not apply to a person if—

(a) the person is carrying on a development activity in an island licensing area, and

(b) any of the conditions in subsection (2) applies.

(2) The conditions are—

(a) the development activity commenced before the area was designated as an island licensing area,

(b) the development activity is in a part of the island licensing area for which a person has a lease, or an agreement to lease, entered into before the area was designated as an island licensing area,

- (c) the person, before the area was designated as an island licensing area—
- (i) commenced the pre-application consultation as required under sections 22 to 24 of the Marine (Scotland) Act 2010 for the development activity,
 - (ii) made an application for, or was granted, a marine licence under Part 4 of that Act for the development activity, or
- (d) the person, before the area was designated as an island licensing area, applied for, or was granted, a works licence under the Orkney County Council Act 1974 or the Zetland County Council Act 1974 for the development activity.

20 Crown application

- (1) Nothing in this Part makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

PART 6

FINAL PROVISIONS

Regulations

21 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
- (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) different provision for different purposes.
- (2) Regulations—
- (a) under section 7(3),
 - (b) under section 18(1),
- are subject to the affirmative procedure.
- (3) This section does not apply to regulations under section 22(1) or 23(2).

22 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
 - (b) make different provision for different purposes.

- (3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

5

Commencement and short title

23 Commencement

- (1) This section and sections 1, 2, 22 and 24 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

10

- (3) Regulations under subsection (2) may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

24 Short title

The short title of this Act is the Islands (Scotland) Act 2018.

SCHEDULE

(introduced by section 7(2))

DUTIES IN RELATION TO ISLAND COMMUNITIES: RELEVANT AUTHORITIES

Scottish Administration

- 5 1 Scottish Ministers
 2 Keeper of the Records of Scotland
 3 Keeper of the Registers of Scotland
 4 Registrar General of Births, Deaths and Marriages for Scotland

Scottish public authorities with mixed functions or no reserved functions

- 10 5 Accounts Commission for Scotland
 6 Audit Scotland
 7 Bòrd na Gàidhlig
 8 Caledonian Maritime Assets Limited (company number SC001854)
 9 Children's Hearings Scotland
 15 10 Creative Scotland
 11 Crofting Commission
 12 Crown Estate Scotland (Interim Management)
 13 David MacBrayne Limited (company number SC015304)
 14 Highlands and Islands Airports Limited (company number SC097647)
 20 15 Highlands and Islands Enterprise
 16 Historic Environment Scotland
 17 Mental Welfare Commission for Scotland
 18 Mobility and Access Committee for Scotland
 19 Scottish Children's Reporter Administration
 25 20 Scottish Courts and Tribunals Service
 21 Scottish Enterprise
 22 Scottish Environment Protection Agency
 23 Scottish Fire and Rescue Service
 24 Scottish Further and Higher Education Funding Council
 30 25 Scottish Housing Regulator
 26 Scottish Land Commission
 27 Scottish Legal Aid Board
 28 Scottish Natural Heritage
 29 Scottish Police Authority
 35 30 Scottish Qualifications Authority

- 31 Scottish Social Services Council
- 32 Scottish Sports Council
- 33 Scottish Water
- 34 Skills Development Scotland Co. Ltd (company number SC202659)
- 5 35 Social Care and Social Work Improvement Scotland
- 36 VisitScotland

Health Boards (including Special Health Boards)

- 37 Common Services Agency for the Scottish Health Service
- 38 Healthcare Improvement Scotland
- 10 39 NHS 24
- 40 NHS Ayrshire and Arran
- 41 NHS Education for Scotland
- 42 NHS Health Scotland
- 43 NHS Highland
- 15 44 NHS National Waiting Times Centre
- 45 NHS Orkney
- 46 NHS Shetland
- 47 NHS Western Isles
- 48 Scottish Ambulance Service
- 20 49 State Hospitals Board for Scotland

Integration Joint Boards

- 50 Argyll and Bute
- 51 Highland
- 52 North Ayrshire
- 25 53 Orkney Islands
- 54 Shetland Islands
- 55 Western Isles

Local Government

- 56 Argyll and Bute Council
- 30 57 Comhairle nan Eilean Siar
- 58 Highland Council
- 59 North Ayrshire Council
- 60 Orkney Council
- 61 Shetland Council

Regional Colleges

- 62 Ayrshire Regional College
- 63 University of the Highlands and Islands

Regional Transport Partnerships

- 5 64 Highlands and Islands Regional Transport Partnership
- 65 Shetland Regional Transport Partnership
- 66 Strathclyde Regional Transport Partnership

Islands (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for a national islands plan; to impose duties in relation to island communities on certain public authorities; to make provision about the electoral representation of island communities; and to establish a licensing scheme in respect of marine development adjacent to islands.

Introduced by: Fergus Ewing
Supported by: Humza Yousaf
On: 9 June 2017
Bill type: Government Bill

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ISLANDS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Islands (Scotland) Bill introduced in the Scottish Parliament on 9 June 2017.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 15–EN);
 - a Financial Memorandum (SP Bill 15–FM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 15–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVE OF THE BILL

4. Scotland's islands are renowned across the world for their proud traditions and vibrant cultures. They are wonderful places to live, work, study and visit, and contribute much to the fabric of Scotland as a nation. Some of the most resilient and supportive communities in Scotland are within the islands. The inclusive and respectful nature of these communities provides a better quality of life for everyone who lives and works there as demonstrated frequently in quality of life surveys.
5. However, island communities face challenges around geographic remoteness, declining populations, transport and digital connections, and other issues. Working in partnership with island communities, local authorities and other organisations the Scottish Government is already tackling many of these challenges through a range of policy initiatives and investment in housing, ferry services, air travel, digital and mobile programmes and our commitment to providing the net revenue from Crown Estate marine assets out to 12 nautical miles to coastal and island councils.
6. This Bill introduces a number of measures to underpin the Government's objective of ensuring that there is a sustained focus across Government and the public sector to meet the needs of island communities both now and in the future. The Government is committed to

supporting these communities and improving outcomes by creating the right environment for investment, empowerment and increasing sustainable economic growth. It is expected that the measures in this Bill, in conjunction with existing Government, local authority and public body actions in meeting the needs of island communities, will contribute to creating the right conditions for growth.

BACKGROUND

7. In August 2013 in response to the *Our Islands Our Future*¹ campaign, launched by Orkney and Shetland Islands Councils and Comhairle nan Eilean Siar, the Scottish Government established the Island Areas Ministerial Working Group. The Group was chaired by the then Minister for Local Government and Planning, Derek Mackay MSP; and other members included Paul Wheelhouse MSP, the then Minister for Environment and Climate Change, as well as the Leaders and Chief Executives of the three Island Councils. Over the course of six meetings the Group's discussions covered a range of issues including the Crown Estate, social and economic matters, energy, renewables, transport and governance.

8. In June 2014 on conclusion of the Group's work the Scottish Government published the *'Empowering Scotland's Island Communities'* prospectus.² This confirmed a commitment to the principle of subsidiarity and local decision making. The prospectus was a package of measures recommended by all members of the Island Areas Ministerial Working Group. It was predicated on the transfer of all powers to the Scottish Parliament that independence would deliver, to ensure decisions best determined by island communities are made by island communities. Proposals were developed based on three underpinning objectives:

- promoting islands voice;
- harnessing island resources;
- enhancing islands wellbeing.

9. The package of proposals were also applicable to other comparable parts of Scotland – and, especially, nearly all were applicable to the other island communities within Highland, Argyll and Bute and North Ayrshire local authority areas. These proposals included plans to bring forward an Islands Bill, which would have, amongst other things, placed a duty on the Scottish Government and other relevant public authorities to 'island-proof' their functions and decisions, where those functions and decisions had an islands impact.

10. The Ministerial Working Group was re-convened in February 2015 and was tasked with taking forward the implementation of recommendations from the prospectus that could be delivered under the existing powers of the Scottish Parliament. The Group oversaw plans for a consultation on proposals for an Islands Bill. A Progress Update on Empowering Scotland's Island Communities was published in March 2016 along with the Independent Analysis of responses received to the Consultation on Provisions for a Future Islands Bill.³

¹ <http://www.shetland.gov.uk/OIOF/documents/ourislands-ourfuture-JointPositionStatement-17june2013.pdf>

² <http://www.gov.scot/Resource/0045/00452796.pdf>

³ <http://www.gov.scot/Resource/0049/00496547.pdf>

CONSULTATION

11. As part of the 2014-15 Programme for Government, the Scottish Government made a commitment to undertake a consultation on provisions for a future Islands Bill, building on the work undertaken by the Island Areas Ministerial Working Group.⁴ The consultation ran from 30 September 2015 until 23 December 2015 and sought respondents' views on the following areas:

- Island-proofing;
- Empowering Island Communities;
- A National Islands Plan;
- Statutory Protection to the Na h-Eileanan an Iar Scottish parliamentary constituency;
- Local Government Electoral Wards – populated islands.

12. A total of 192 responses were received from a range of individuals; community councils; third sector organisations; public bodies; representative bodies; trade bodies; trade unions; local authorities; private sector organisations and trusts; politicians; and political parties. The Scottish Government commissioned Reid-Howie Associates Ltd to undertake the independent, formal analysis of the consultation responses received and their report was published on 14 March 2016 along with all the non-confidential responses to the consultation.⁵

13. Further detail on the responses to the consultation is provided in relation to each Part of the Bill.

PART 1 – KEY DEFINITIONS

14. Part 1 of the Bill sets out the important definitions regarding islands and island communities that are used throughout the Bill.

PART 2 – NATIONAL ISLANDS PLAN

Policy objectives

15. Part 2 of the Bill places a duty on the Scottish Ministers to prepare, lay before the Scottish Parliament and publish a 'National Islands Plan'. The purpose of the Plan is to set out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities. Activity to improve outcomes takes place across the whole range of policies, strategies and services provided by the Scottish Government and the wider public sector and the national plan will link these aspects together. The national plan will provide an agreed strategic direction, not only for the Scottish Government, but for all Scottish public authorities that have an interest in improving outcomes for island communities. The plan will seek to focus resources and, where necessary, provide targets for key areas of activity.

16. The Plan will also provide the structure for reporting on the work the Scottish Government and its agencies are taking forward across a wide range of key policy areas to help

⁴ <http://www.gov.scot/Resource/0048/00486539.pdf>

⁵ <http://www.gov.scot/Resource/0049/00496550.pdf>

sustain and support all of Scotland's island communities. It will help ensure that the momentum and focus that has been generated by the Our Islands Our Future campaign, the work of the Islands Strategic Group, and the passage of the Islands Bill itself, is maintained going forward.

17. The Bill provides that the first Plan must be laid before the Scottish Parliament within 12 months from the date on which the Act comes into force. The Scottish Ministers would then be able to review the Plan at any time but they must begin a review of the Plan before the end of five years from the date the last Plan was published.

18. In preparing the new or any revised plan the Scottish Ministers must consult people and communities in the islands and those who will likely be affected by the proposals in the plan. The Scottish Ministers must lay a proposed Plan before the Parliament and then publish it after parliamentary consideration.

19. In addition, the Scottish Ministers must prepare and publish a National Islands Plan Progress Report on an annual basis following the publication of a new or revised plan. The Progress Report must provide an update on the progress towards achieving improved outcomes for island communities and any other information the Scottish Ministers consider appropriate. The progress report must also provide information on island-proofing activity that has occurred over the previous year. The progress report must be laid before the Parliament by the Scottish Ministers and then published.

Consultation

20. Over 85% of those who expressed views as part of the consultation highlighted their support for the Scottish Government to introduce a National Islands Plan. Perceived benefits of such a plan included:

- Potential to address issues facing island communities, as well as to keep a focus on these, and tackle changing needs;
- An accountable framework for identifying objectives, actions and responsibilities.

21. Many respondents to the consultation commented on what they saw as additional requirements for a National Islands Plan, e.g. that it should recognise the overall context and existing work; that local communities and relevant organisations should be involved and that there should be mechanisms for accountability, reporting and review.

22. The most commonly suggested lifespan for a National Islands Plan was five years, although other suggestions were made. Among the perceived benefits of a five-year period were that it would align with the timescales for parliamentary and political cycles. It would also allow time for longer term strategies to be put in place.

Alternative approaches

23. It would be possible for the Scottish Government to report on their overarching strategic approach to supporting island communities without placing a legal requirement in legislation. In March 2016, the Scottish Government published *Empowering Scotland's Island Communities - A Progress Update*, which set out a range of activity being undertaken across Government to

support island communities following the publication of the original prospectus in June 2014. Whilst this was a helpful update, and brought up to date the collaborative work of the Island Areas Ministerial Working Group, there was no formal requirement on the Government to provide such an update.

24. The commitment to place a legal duty on the Scottish Ministers to produce and report on progress with a National Islands Plan is one that has been welcomed by key stakeholders. The process of commissioning, drafting, consulting and reporting on a National Islands Plan will introduce a high level of rigour, transparency, scrutiny and parliamentary accountability to the work being undertaken by the Scottish Government to support island communities.

PART 3 – DUTIES IN RELATION TO ISLAND COMMUNITIES

Policy objectives

25. Part 3 of the Bill places a duty on the Scottish Ministers and other relevant public bodies to have regard to island communities in exercising their functions. Under the Bill an island communities impact assessment would need to be prepared when a new or revised policy, strategy or service is likely to have a significantly different effect on island communities from its effect on other communities (including other island communities). For the Scottish Ministers this also includes the development of legislation.

26. The duty created under the Bill is often referred to as ‘island-proofing’. The importance of island-proofing was recognised in *Empowering Scotland’s Island Communities*:

“The principle of island-proofing is one of building a broad-based islands awareness into the decision making process of all parts of the public sector. Island-proofing consists of considering the particular needs and circumstances of island communities when the Scottish Government and other relevant public authorities are exercising their functions and making decisions.”⁶

27. The Bill seeks to ensure that island communities are not unreasonably disadvantaged due to their location. Island-proofing raises awareness of the needs and circumstances of island communities and the process will cover:

- identifying the potential direct or indirect consequences that new or revised legislation, policies, strategies or services might have on the inhabited islands of Scotland;
- ensuring a proper assessment of those consequences, if likely to be significant, is undertaken;
- adjusting legislative, policy and service proposals where appropriate to help ensure they address the needs of island communities.

⁶ <http://www.gov.scot/Resource/0045/00452796.pdf> (page 24)

28. This duty is a cornerstone of the Bill. It will ensure the interests of island communities are placed firmly and squarely at the centre of future legislative, policy and service considerations.

29. The duty will apply to all public bodies in Scotland whose functions and activities can impact on island communities. The public authorities must have regard to any guidance from the Scottish Ministers about the carrying out of the island-proofing duty. Before publishing any guidance the Scottish Ministers must consult those who appear to them to represent the interests of island communities and anyone else they consider appropriate. Public authorities will be expected to include information in their annual report on the impact of island-proofing on their functions and activities.

30. The Scottish Ministers will be expected to report on the impact of island-proofing as part of the annual update setting out progress with the Scottish Government's National Islands Plan. The progress report will be laid before the Parliament by the Scottish Ministers and as soon as reasonably practicable thereafter will be published.

Consultation

31. In responses received to the consultation, there was a high level of support for the placing of a duty to island-proof within legislation. Almost all (91%) of those who expressed views believed that this should be done with the perceived benefits for doing so covering three common themes:

- Existence of specific issues impacting on islands (e.g. isolation; remoteness; environment and climate issues; and population issues);
- Need for a tailored approach to legislation, policy and services (rather than “one size fits all”);
- Other benefits of island-proofing (e.g. more: joint working; equality; understanding of island issues; sustainability, accountability; empowerment; efficient use of resources; and economic benefits).

32. A small number of respondents mentioned drawbacks of island-proofing, which focused on a perceived lack of need for this, disagreement with the overall principle and concerns about potential negative consequences.

33. There was also a high level of support for the Scottish Ministers to have the power to issue guidance to other relevant public bodies related to island-proofing with almost 98% of those who expressed views believing this should be the case.

Alternative approaches

34. It would be possible to adopt an island-proofing approach without a formal legislative duty. The Parliament's Standing Orders already require the government to set an assessment of the effects of a Bill, if any, on island communities.⁷ However, stakeholders have expressed the view that there are aspects of previous legislation (including in secondary legislation which the

⁷ <http://www.parliament.scot/Parliamentaryprocedureandguidance/SOEd05Rev04201703.pdf>

Standing Orders do not cover) which would have benefitted from a more formal assessment on their impact on island communities.

35. Further, the Scottish Government could require and provide non-statutory guidance that Government Directorates should island-proof prospective legislation and policies. There would be a question on the extent to which this non-statutory commitment would be able to effectively influence decision making. The objective of the new island-proofing duty would ensure a more robust application and better consideration and integration of island issues at the outset of any policy-making process. The duty will also apply across a wide range of public sector organisations which engage and work with island communities, bringing more transparency and consistency to the consideration of island issues.

PART 4 – REPRESENTATION OF ISLAND COMMUNITIES

Constituency of Na h-Eileanan an Iar

Policy objectives

36. Currently, under Schedule 1 to the Scotland Act 1998, Orkney and Shetland are fixed as two of the 73 constituencies for the purposes of elections to the Scottish Parliament: this ensures that their boundaries cannot be varied. The Na h-Eileanan an Iar Scottish parliamentary constituency does not have this statutory protection at present but section 13 of the Bill will provide this, using the powers transferred to the Scottish Parliament by the Scotland Act 2016.

37. Given this statutory protection from variation already extends to both Orkney and Shetland, it is appropriate that the only other all island constituency in Scotland, Na h-Eileanan an Iar, should benefit from the same protection.

Consultation

38. In consulting on this provision a large majority (86%) who expressed views signalled their support for giving statutory protection to the Na h-Eileanan an Iar Scottish parliamentary constituency. Reasons for this support included a need for fairness and equity, and parity with Orkney and Shetland. A further theme was the distinctive nature of the Western Isles and the need for provision of a distinctive islands “voice”.

Alternative approaches

39. The alternative approach would be to maintain the status quo so that the statutory protection provided under Schedule 1 to the Scotland Act 1998 for both Orkney and Shetland constituencies would not be extended to Na h-Eileanan an Iar. This would mean that the Scottish parliamentary constituency boundary for Na h-Eileanan an Iar could be changed following a review undertaken by the Local Government Boundary Commission for Scotland, which take place approximately every 10 years. Exempting the Na h-Eileanan an Iar Scottish parliamentary constituency boundary from the possibility of boundary review will mean that primary legislation would in future be required to vary its boundaries.

Greater flexibility in electoral ward design for islands

Policy objectives

40. The policy objective is to provide more flexibility to the Local Government Boundary Commission for Scotland (LGBCS) when looking at the representation of islands within a local authority and making recommendations.

41. Under section 1 of the Local Governance (Scotland) Act 2004 (the 2004 Act) each electoral ward in Scotland has to return three or four councillors. When designing wards, the LGBCS is required to make recommendations in accordance with that section and apply the rules set out in Schedule 6 to the Local Government (Scotland) Act 1973 (the 1973 Act), which include the requirement that the ratio of electors to councillors in each ward in a council area shall be, as nearly as may be, the same.

42. Para 2 of Schedule 6 to the 1973 Act provides that the LGBCS can depart from the rule about the ratio where there are special geographical considerations:

“The strict application of the rule stated in paragraph 1(2)...above may be departed from in any area where special geographical considerations appear to render a departure desirable.”

43. In practice the combination of the requirements of the 2004 Act and 1973 Act that there must be three or four member wards means that populated islands may be placed in an electoral ward which also contains a significant proportion, and often a majority, of mainland population. This had led to concerns that the distinct interests of island communities may not be fully represented in council discussions.

44. The Bill provides the LGBCS the flexibility to recommend to the Scottish Ministers to propose electoral wards of one or two councillors to be created covering populated islands, if they deem this appropriate. It would be anticipated that any changes would be implemented in time for the 2022 Scottish local government elections.

Consultation

45. Views on this proposal highlighted a high level of support for the Scottish Government to consider amending the Local Governance (Scotland) Act 2004 to allow the LGBCS the power to make an exception to the usual three or four member ward rule for use with respect to populated islands. A large majority (86%) of those who expressed their views of this were in favour of such an amendment.

46. Many respondents to the consultation identified perceived benefits of, or reasons for amending the Act, and a number of common themes emerged:

- Provision of an “island voice” and representation of the diversity of Scottish islands;
- The need for “local” representation and understanding of local issues;
- Promotion of fairness and democracy (e.g. to address an existing “democratic deficit” and strengthen local democracy and accountability).

47. A small number of respondents identified drawbacks with the amendment of the Act, focusing on: a lack of need; potential unfairness; cost; the impact on governance; and the potential for the same issues to affect other communities.

Alternative approaches

48. In order to provide for the opportunity for one or two member wards to be created covering populated islands section 1 of the Local Governance (Scotland) Act 2004 must be amended. The alternative would be to continue to rely on the existing law. However, a clear majority of respondents to the consultation were of the view that changes to the existing law was the preferred choice.

PART 5 – SCOTLAND ISLAND AREA MARINE DEVELOPMENT LICENCES

Policy objectives

49. A commitment was given in the ‘Empowering Scotland’s Island Communities’ prospectus that the Scottish Government would not seek to legislate to diminish the powers of the Zetland and Orkney County Council Acts 1974, and would progress as required any proposals from Comhairle nan Eilean Siar regarding which provisions from these Acts that would also be relevant and appropriate for the Western Isles to have. The 2015 consultation, therefore, asked if the Zetland and Orkney County Council Acts should be extended to cover other island authorities.

50. At the time of their enactment, the Zetland and Orkney County Council Acts provided certain regulatory powers, over the seas around their coast lines. These powers allowed the councils to exercise some degree of control on development during the oil era over much of the territorial sea around their coast lines (for Shetland then three nautical miles, now 12 nautical miles; and for Orkney around Scapa Flow and various harbour areas); granted certain financial powers to borrow, invest and participate in business; and in the case of Shetland, powers of compulsory purchase relating to Sullom Voe.

51. In exploring the legal aspects of the 1974 Acts it has become clear there are a number of difficulties in trying to directly amend or extend them to other island authorities. The age of the original Acts, the fact they were Private Acts, and the considerable changes to the legal landscape over a 40-year period means it would not be viable to amend or extend them.

52. Whilst the provisions of the Acts were extensive, due to the passage of time and subsequent legislation, current use of the Zetland Act by Shetland Islands Council is primarily focussed on the granting of works licences. Shetland Islands Council believes that the ability to issue marine works licences provides a degree of necessary local control over the waters around Shetland.

53. The Government is keen to provide other island local authorities with the opportunity to have more control in the development of the seas around their island communities. The Bill therefore provides a regulation-making power for the Scottish Ministers to establish a marine licensing scheme for development activities within the Scottish island marine area, whereby a person may not lawfully carry out those development activities in that area without obtaining a

licence granted by a local authority. Should local authorities with inhabited islands wish to become a licensing authority for these purposes then they will be able to apply to Ministers in order to exercise these new licensing powers.

54. The regulations may make particular provision for the different aspects that a scheme can cover including:

- the types of development activity covered by or exempted from the scheme;
- the area and boundaries of the Scottish island marine area covered by the scheme;
- the procedure for application and issuing of licences;
- the charging of any fees for reasonable administrative costs in relation to licence applications;
- the enforcement of the regulations and penalties that may apply.

55. In passing the Marine (Scotland) Act 2010 and creating Marine Scotland, the Scottish Government was keen to create an open and transparent licensing process throughout Scotland. The Scottish Government believes this has been a success. Any new licensing regime for the islands would work alongside this national framework. Importantly the Bill requires that the Scottish Ministers must consult before laying a draft of regulations before the Parliament and any issues and concerns of stakeholders will be able to inform the development of regulations.

Consultation

56. In consulting on additions to the existing Zetland and Orkney County Council Acts of 1974 views were evenly split on whether or not additions should be made. Some respondents indicated that additions should be made to “modernise” or “update” the Acts, and that the powers available to Shetland Islands Council should be mirrored for Orkney Islands Council. A few respondents stated that the only amendment required to the Orkney County Council Act 1974 was an extension of territorial jurisdiction similar to that in the Zetland County Council Act 1974.

57. Other comments made reference to the need for greater, local control of the seabed, coastal waters, harbours and the Crown Estate. A small number of respondents also highlighted impact on economic development; planning; and taxation.

58. On the question of the extension of powers to the Comhairle nan Eilean Siar and other relevant councils, over three quarters (77%) of those who expressed their views believed that they should be extended. The consultation on the Bill did not look specifically at how this would be done or particular issues, such as, marine licensing schemes. The Scottish Government would, therefore, want to carry out a full consultation with all those who might be impacted on by the creation of a new licensing scheme, and for that consultation to inform the development of any new scheme (and so this is provided for in section 18(7) of the Bill).

Alternative approaches

59. As demonstrated by the consultation responses, there is clear support for the extension of similar powers granted under the Zetland and Orkney County Council Acts of 1974 to Comhairle

Eilean nan Siar and other councils with responsibilities for island communities. There are however legal challenges to simply extending or amending the existing Acts, as outlined above. Based on the experiences of Shetland Islands Council with the Zetland Act the inclusion within the Bill of a provision to allow the granting of licences for any works in or under the sea, in the coastal waters surrounding islands in their area for up to twelve nautical miles, would seem the optimal approach to meeting the desire of the relevant local authorities. It should however be noted that this provision, whilst increasing local control, does pose a potential risk of increasing the regulatory burden on those who might wish to undertake developments in the coastal areas around islands.

OTHER ISSUES RAISED IN CONSULTATION

60. In the consultation responses on the question of devolving further powers to island councils and communities, a majority (73%) of respondents who expressed their views stated that the current powers of island councils, and councils with island responsibilities, were not sufficient to deliver positive outcomes for their local island communities.

61. The main reasons given by respondents for this view focused on:

- Issues with the nature of current powers and the approach to these (e.g. remote and “top-down” decision-making and some policy areas with a major impact on islands being outwith local authority functions);
- The need for equality between areas;
- The potential positive impact of additional powers (e.g. on inshore fisheries; coastal zone; on and offshore energy; transport; land ownership; responsiveness to island needs; and service delivery).

62. A small number of respondents indicated that, in their view, existing powers were sufficient and there was no need for additional powers.

63. A number of issues were raised for the Scottish Government to consider in the extension of powers. Small numbers of respondents, for example, raised concerns about local decision-making and democracy, or the potential extension of powers. Some identified further points for consideration (e.g. the potential impact on other organisations or key sectors; the potential costs; and the means of implementation).

64. In the context of providing greater local control and further devolution of powers to local authorities and communities, a number of specific areas highlighted in consultation responses, whilst not directly addressed in the Islands Bill, are being taken forward by the Scottish Government through other means. For example, the Marine Scotland Act 2010 provides scope for more local ownership and decision making through the ability to delegate regional marine planning to marine planning partnerships. The Scottish Government has already delegated to the first two partnerships in the Shetland Isles and Clyde marine regions, and they will each develop a regional marine plan for their area.⁸ The Scottish Government intends to continue with this

⁸ <http://www.gov.scot/Topics/marine/seamanagement/regional/partnerships/Clyde;>
<http://www.gov.scot/Topics/marine/seamanagement/regional/partnerships/Shetland>

work and delegate to the remaining nine marine regions (including the Outer Hebrides and Orkney Islands) over the coming years.

65. In addition, the future management of the Crown Estate, something island authorities and communities are keen to be involved in, will be taken forward through a separate Crown Estate Bill. Terrestrial planning and a desire for a planning system which can respond to local distinctiveness will also be addressed through a separate Planning Bill. Over the last two years the Scottish Government has worked closely with local authority representatives of island communities to better understand the unique challenges faced in terrestrial planning within an islands context. This work, together with the responses received to the recent planning consultation, will help inform the development of the provisions of the forthcoming Bill and the wider programme of planning reform to ensure that island challenges and opportunities are taken into account within changes to the planning system and future policy as appropriate. The recent Community Empowerment Act is another example of the Scottish Government's commitment to supporting subsidiarity and local decision making.

66. Further local control and influence can also be achieved through non-legislative routes and there are a number of different strands of work currently being taken forward by the Scottish Government to improve the role and influence of local authorities, and island communities in decision making. For example, the Islands Strategic Group provides a quarterly forum through which local authority representatives of island communities can raise issues of strategic importance with Scottish Ministers.⁹ Alongside this, the Islands Transport Forum provides a mechanism for political leaders and other key stakeholders to discuss with Scottish Ministers specific strategic matters relating to ferry and air service provision and other transport issues across Scotland's island communities.¹⁰

67. The Scottish Government's Programme for Government 2016-17 set out plans to review local authority roles and responsibilities, and to decentralise local authority functions, budgets and democratic oversight to local communities.¹¹ The Scottish Government will work closely with local government and wider public service partners to put in place decision-making arrangements which strengthen local democracy, protect and renew public services and refresh the relationship between citizens, communities and councils. This will further support and empower, not just island communities, but all communities across Scotland.

68. Supporting all of these strands of work will be ongoing policy work to address the unique challenges presented in an islands context by issues relating to depopulation; energy; housing; transport; digital connections; and sustainable economic development.

⁹ <http://www.gov.scot/Topics/Government/local-government/Islands/IslandsStrategicGroup>

¹⁰ <https://www.transport.gov.scot/our-approach/strategy/islands-transport-forum/>

¹¹ <http://www.gov.scot/Resource/0050/00505210.pdf>

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

69. The Scottish Government has assessed the potential impacts of the Bill on equal opportunities. The Bill does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly. The Bill's objective is to improve outcomes for island communities by ensuring that there is a sustained focus across Government and the wider public sector on meeting the needs of island communities. It is anticipated that such a focus will be positive but impacts may not be specific to any one protected characteristic, but to island communities more broadly.

Human rights

70. The Scottish Government considers that the Bill does not give rise to any human rights concerns and complies with the European Convention on Human Rights (ECHR). It is anticipated that the focus of the Bill on improving outcomes for island communities will be positive with respect to human rights.

Island communities

71. The Bill introduces a number of measures to underpin the Government's objective of ensuring that there is a sustained focus across Government and the wider public sector to meet the needs of island communities both now and in the future.

Local government

72. The Bill impacts on local government in a number of ways described throughout this memorandum.

- **National islands plan:** the Scottish Government would expect local government to be a key partner in the creation of the National Islands Plan.
- **Duties in relation to island communities:** local authorities with inhabited islands in their area will have to have regard to the new duties in relation to island communities and will need to produce an island communities impact assessment should this be required.
- **Representation of island communities:** the relevant local authorities may wish to respond to the proposed review by the Local Government Boundary Commission for Scotland on the electoral arrangements in their area.
- **Scotland island area marine development licences:** local authorities with inhabited islands in their area will be able to make an application to the Scottish Ministers to designate an area as one in which a licence is required from the local authority to carry on a development activity (an "island licensing area").

Sustainable development

73. The potential environmental impact of the Bill has been considered. A pre-screening report confirmed that the Bill has no impact on the environment and consequently that a full Strategic Environmental Assessment does not need to be undertaken. It is, therefore, exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005.

74. Sustainable development is integral to the Scottish Government's efforts to improve outcomes for all communities across Scotland. The Government Economic Strategy, which has Inclusive Growth at its heart, sets out the Scottish Government's dual ambition to tackle inequality and boost competitiveness, so that the benefits of a flourishing Scotland can be shared by all, including island communities.

75. The key objectives of the strategy are:

- to ensure Scotland's government and the whole of the public sector are aligned toward one Purpose;
- to ensure Scotland's public sector - central and local government, the enterprise bodies and other key agencies - work collaboratively with the private, academic and third sectors, in pursuit of the Purpose and economic recovery;
- to inform the outcome-based framework which enables the people of Scotland to judge us on the results that we achieve; results which reflect real and meaningful improvements in public services and quality of life; and
- to provide leadership to support Scotland's transformation to a low carbon economy.

76. It is recognised that, after the Bill has been passed, the various Parts will need to be considered carefully in relation to sustainable development and any regulatory and environmental impacts. Scotland's National Marine Plan¹² provides a comprehensive overarching framework for all marine activity in Scotland's waters. The Plan is designed to enable sustainable development and use of Scotland's marine area in a way which will protect and enhance the marine environment whilst promoting both existing and emerging industries. Therefore any decision which may arise from the development of regulations in relation to island marine development licences will need to be consistent with the National Marine Plan.

77. The Scottish Government is committed to continuing to engage with stakeholders on the detail of this work as it develops and the Bill already provides that before laying a draft of the regulations the Scottish Ministers must consult with those effected by the regulations. The Scottish Government is also committed to undertaking full Strategic Environmental Assessments if and when necessary.

78. Sustainable development and the Government's Economic Strategy will also inform the development of the National Islands Plan provided for in Part 2 of the Bill which will set out the main objectives and strategies in relation to improving outcomes for island communities and will be developed through consultation with stakeholders.

¹² <http://www.gov.scot/Publications/2015/03/6517>

79. The new duties in relation to island communities outlined in Part 3 of the Bill will ensure that the interests of island communities are at the centre of future legislative, policy and service considerations. For the public sector organisations who engage and work with island communities this will help ensure that their decision making processes will better and more consistently consider the issues that impact on island communities. The Scottish Government would anticipate that the duty would have a positive impact on sustainable development but that will ultimately depend on the new or revised legislation, policies and services that are proposed in future and the response of both public sector organisations and the island communities themselves.

This document relates to the Islands (Scotland) Bill (SP Bill 15) as introduced in the Scottish Parliament on 9 June 2017

ISLANDS (SCOTLAND) BILL

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ISLANDS (SCOTLAND) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Islands (Scotland) Bill, introduced in the Scottish Parliament on 9 June 2017.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 15-EN);
- a Policy Memorandum (SP Bill 15-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 15-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

4. The purpose of the Bill is to ensure that there is a sustained focus across Government and the wider public sector to meet the needs of island communities both now and in the future. It is expected that the measures in this Bill, in conjunction with existing Government, local authority and public body actions in meeting the needs of island communities, will contribute to creating the right conditions for sustainable economic growth.

5. This Financial Memorandum sets out the costs and savings associated with the Bill under the following headings, corresponding to Parts 2-5 of the Bill:

- National Islands Plan;
- Duties in relation to island communities;
- Representation of island communities;
- Development in the Scottish island marine area.

6. Under each of these headings substantive costs are then reported against the different bodies involved. The various estimates have been collated in consultation with other organisations including local authorities and the Local Government Boundary Commission for Scotland.

PART 2 – NATIONAL ISLANDS PLAN

7. Part 2 of the Bill places a duty on the Scottish Ministers to prepare, lay before the Scottish Parliament and publish a ‘National Islands Plan’. The Plan must set out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities.

Costs on the Scottish Administration

8. Based on the preparation of other plans and the expected consultation activity in the creation of the Plan it is expected that the following costs will reasonably be incurred every five years when developing the Plan:

- Staffing costs of approximately £20,000 as 0.4 Full-Time-Equivalent;
- Consultation costs of approximately £75,000;
- Publication costs of approximately £5,000.

This amounts to an approximate cost of £100,000 every five years.

9. The Bill also requires that the Scottish Ministers must provide an annual update on the progress towards achieving improved outcomes for island communities and any other information the Scottish Ministers consider appropriate. As part of the progress report the Scottish Ministers must also provide information on any activity under the section 7 duty to have regard to island communities and island communities impact assessments that have been undertaken over the previous year. Based on the preparation of other annual reports it is expected that the following costs might reasonably be incurred each year:

- Staffing costs of approximately £3,400 as 0.4 Full-Time-Equivalent over the two months before publication;
- Publication costs of approximately £5,000.

This amounts to a cost of £8,400 every year and will be subsumed within current budgets.

Costs on local authorities, other bodies, individuals and businesses

10. The duty in relation to the National Islands Plan will apply solely to the Scottish Ministers. There will be no cost beyond that incurred by the Scottish Administration.

PART 3 – DUTIES IN RELATION TO ISLAND COMMUNITIES

11. Part 3 of the Bill places a duty on the Scottish Ministers and other relevant public bodies to have regard to island communities in exercising their functions. Under the Bill an island communities impact assessment would need to be prepared when a new or revised policy, strategy or service is likely to have a significantly different effect on island communities from its effect on other communities. For the Scottish Ministers the duty also applies to the development of legislation. The duty created under the Bill is often referred to as ‘island-proofing’.

12. The new duty will apply to the relevant public bodies and should operate within their existing systems and frameworks. In carrying out their processes and functions – such as the creation of new plans, policies and legislation and in the design and delivery of services – the relevant public bodies covered by the duty will need to identify and address, as they consider appropriate, the differential impact the new policy or service might have on island communities.

13. For those public authorities who are already taking the impact of their policies and functions on island communities into account within their strategic planning process the duty is likely to have minimal additional impact. However, across other public authorities the duty will help them to build on existing processes and embed an island communities impact assessment into their work.

Cost assumptions

14. The creation of this duty to ‘island-proof’ and the requirement to undertake an island communities impact assessment under certain circumstances is similar to the need to undertake an Equality Impact Assessment under equalities legislation and the duty to take account of socio-economic disadvantage when public authorities are making strategic decisions. Therefore, for the estimate of the costs in relation to island communities impact assessment we use a similar approach to that used by the Government Equality Office in assessing the potential impact of the socio-economic duty in the Equality Act 2010¹. Using that approach the main cost of the legislation is taken to be the time required for authorities to familiarise themselves with the legislative requirements and the time taken on an ongoing basis to ensure that appropriate information and data feeds into the relevant decision-making process. The Government Equality Office assumed that familiarisation and integration would be done by an official in each public sector organisation and costs were calculated on that basis including a 21% uplift for non-labour costs.

15. For the ‘island-proofing’ duty it is assumed that familiarisation will take a senior official (or equivalent) one day to familiarise themselves with the duty and a further three days to integrate ‘island-proofing’ into the policy process within their organisation where this is not already the case and then one day’s work each year on an ongoing basis. Guidance will be developed for public authorities in relation to the new ‘island-proofing’ duty following the passage of the Bill and this will help authorities in the understanding, implementation and integration of the new duty.

16. The assumption that compliance will take five days is a limitation on the accuracy of this cost assessment. It is not known how long it will take authorities to familiarise themselves with the duty and to adjust their policy processes to accord with it. This will depend to some extent on the degree to which authorities are already taking island issues into account when formulating policies. If the time required is less, then the overall cost of the duty will be correspondingly less. Further, the efficiency of existing processes for feeding appropriate information and data that may arise as a result of an island communities impact assessment will affect the need for and extent of ongoing costs.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243602/9780108508677.pdf

17. As the approach to island-proofing represents good practice, any costs over and above familiarisation with, and integration of, the new legislation is judged to be ‘business as usual’ and is not costed.

Costs on the Scottish Administration

18. As the ‘island-proofing’ duty will have an impact across the Scottish Government we can assume that rather than treating the Government as a single institution as was done under the approach of the Government Equality Office we should look at the organisational structure and apply the calculation at a Directorate level to provide a more reasonable estimate of the costs across the Government. There are 36 Directorates across the Scottish Government and eight Executive agencies. It is unlikely that the Bill would impact on all Directorates and Agencies equally as their policies will differ in their potential impact on island communities. However, in order to estimate the potential costs we have applied the approach described above equally to all the Directorates and Executive agencies. The cost is calculated for the four days of familiarisation and integration and one day for ongoing costs for a senior officials time uprated by 21% to cover non-labour costs.

For familiarisation and integration

The cost per Directorate/Agency is:

Number of days X senior official daily cost = Cost per Directorate/Agency

4 days x £317 = £1,268

The total cost for familiarisation with the new duty is:

Cost per Directorate/Agency X number of Directorates/Agencies = Total Cost

£1,268 x 44 = £55,792

Ongoing costs

The cost per Directorate/Agency is:

Number of days X senior official daily cost = Cost per Directorate/Agency

1 days x £317 = £317

The total ongoing cost with the new duty is:

Cost per Directorate/Agency X number of Directorates/Agencies = Total Cost

£317 x 44 = £13,948

Costs on local authorities

19. Using the same approach for the six local authorities who are listed as relevant authorities in the Bill and using an equivalent senior salary and an additional 21% for non-staff costs we can calculate the costs as:

For familiarisation and integration

The cost per local authority is:

Number of days X senior official daily cost = Cost per local authority

4 days x £351 = £1,372

The total cost for familiarisation with the new duty is:

Cost per local authority X number of local authorities = Total Cost

£1,268 x 6 = £8,424

Ongoing costs

The cost per local authority is:

Number of days X senior official daily cost = Cost per local authority

1 days x £351 = £351

The total ongoing cost with the new duty is:

Cost per local authority X number of local authority = Total Cost

£343 x 6 = £2,106

Costs on other bodies, individuals and businesses

20. There are 65 other public authorities listed as relevant authorities in the schedule to the Bill. As with the Scottish Government, it is unlikely that the Bill would impact on all bodies equally as their functions will differ in their potential impact on island communities. However, in order to estimate the potential costs we apply the approach described above equally to all the other public bodies. We use the Scottish Government senior official average cost as a proxy to cover the range of public bodies in the schedule, again uprated by 21% to cover non-pay costs.

For familiarisation and integration

The cost per public body is:

Number of days X senior official daily cost = Cost per public body

4 days x £317 = £1,268

The total cost for familiarisation with the new duty is:

Cost per public body X number of public body = Total Cost

£1,268 x 65 = £82,420

Ongoing costs

The cost per public body is:

Number of days X daily rate = Cost per public body

1 days x £317 = £317

The total ongoing cost with the new duty is:

Cost per public body X number of public body = Total Cost

£317 x 65 = £20,605

21. The duty in relation to the ‘island-proofing’ duty will apply solely to the relevant authorities listed in the schedule. There will, therefore, be no cost to other individuals or businesses.

PART 4 – REPRESENTATION OF ISLAND COMMUNITIES

22. Part 4 of the Bill contains two distinct elements relating to the Scottish parliamentary constituency of Na h-Eileanan an Iar and the review of wards in local authority areas that contain inhabited islands.

Constituency of Na h-Eileanan an Iar

23. Section 11 ensures that the Na h-Eileanan an Iar Scottish parliamentary constituency will continue to be a distinct constituency for elections to the Scottish Parliament.

Costs on the Scottish Administration, local authorities, other bodies, individuals and businesses

24. The impact of the Bill is to protect the current constituency of Na h-Eileanan an Iar as a distinct constituency under law: no other changes are necessary and no costs will arise.

Review of wards in local authority areas that contain inhabited islands

25. Sections 12 and 13 of the Bill provide more flexibility to the Local Government Boundary Commission for Scotland (LGBCS) when looking at the representation of inhabited islands within a local authority and making recommendations. This is to help allay concerns that island communities are not being fully represented in council discussions.

Costs on the Scottish Administration

26. These sections of the Bill will apply to the LGBCS. There will be no additional costs as a result of the Bill to the Scottish Administration.

Costs on local authorities

27. The Bill does not place any new duties on local authorities. However, during discussions with local authorities they indicated that should they wish to respond to the review by the Local Government Boundary Commission for Scotland on the electoral arrangements in their area then there could be additional costs. The range of additional costs for the review of wards could total a maximum of £30,000 for each local authority. Taking the high end of that range then the total cost for the six local authorities could be up to £180,000.

Costs on other bodies, individuals and businesses

28. The Bill requires the LGBCS to conduct a review of electoral arrangements for the six local authorities listed “as soon as practicable”. The LGBCS completed the 5th Reviews of Electoral arrangements in May 2016 and in the normal course of events would have commenced the 6th Reviews in 2023. Until that time, work would be anticipated to be low level and generally the Commission would budget for up to four meetings per year and one or two administrative reviews per year, conducted as necessary. However, transfer of responsibility for Scottish Parliament boundaries, expected in Spring 2017, as well as a commitment to consider the report of the Scottish Parliament Local Government and Communities Committee into the 5th Electoral Reviews, mean that additional work for the LGBCS is already likely to take place. It is important to remember that the LGBCS is independent of Scottish Ministers and decisions around the conduct of reviews are for them. It is harder, therefore, to estimate exactly the additional work required for the proposed review of islands authorities. However, the LGBCS has indicated that these costs generally fall in three areas: staffing costs; costs of Commission meetings; and review costs.

Staffing costs

29. Staffing to support the review will be provided by the secretariat to the LGBCS. The secretariat is staffed by civil servants employed by the Scottish Government and paid according to Scottish Government salary scales. The secretariat also support the Boundary Commission for Scotland (BCS), sponsored by the Scotland Office, which pays a proportion of overall staff costs, accommodation and IT costs. Conducting the review during 2018 may result in some overlap of review work being conducted by both the BCS and the LGBCS. One or two additional staff members may be required at a cost between £35,000 and £70,000 p.a. Any new staff would also require IT and accommodation provision which would be in the region of £2,300 per member of staff.

Commission meetings

30. Costs per meeting of the Commission are estimated at £2,200 per meeting. It is expected that two additional meetings will be required in 2017-18 with further meetings in subsequent financial years. It is anticipated that the review of all six authorities would take between two and three years.

Review costs

31. Non-staff review costs are principally comprised of the costs of consultation and the cost of final report publication. At this stage it is not possible to pre-empt Commission decisions about these, but best estimates include:

- Travel to visit the islands local authorities and possible other visits to islands areas - £10,000;
- Public notices in newspapers circulating in the areas - £20,000;
- Consultation portal – costs from earlier reviews conducted by the LGBCS and the BCS, where a portal has been commissioned from external contractors, suggest these could be as high as £100,000. LGBCS is considering the cost effectiveness of consultation options and the secretariat is exploring cheaper, in-house solutions which would still allow the public access to online mapping and comment submission;
- Other publicity and consultation including social media, direct mailing, public meetings and local inquiries - £30,000.

32. These costs can be considered as the best estimate until the Commission itself considers its approach to the review, makes decisions about consultation and publicity arrangements and responds to views from local authorities and others during the review itself.

ISLANDS DEVELOPMENT LICENCES

33. There was broad support in the 2015 consultation to extend the powers that Councils could use in the Zetland and Orkney County Council Acts of 1974 to cover other island authorities. As outlined in the Policy Memorandum it has become clear that it would not be viable to directly amend or extend them to other island authorities.

34. Building on the current use of the Zetland Act by Shetland Islands Council, where they have a power to grant marine works licences, the Scottish Government is keen to provide other island local authorities with the opportunity to have more control in the development of the seas around their island communities. The Bill gives the Scottish Ministers a delegated power to create a works licensing scheme in respect of marine development in island areas. Should a local authority with inhabited islands wish to become a licensing authority for these purposes then it can apply to the Scottish Ministers to exercise the new works licensing powers.

Costs on the Scottish Administration

35. Part 5 of the Bill provides that, before laying any draft regulations before the Scottish Parliament, the Scottish Ministers must consult those representing the interests of island communities and any person who are likely to be affected by the regulations. Based on previous consultations for regulations this could cost up to £25,000 for each consultation.

36. Regulations made under section 18 may make provision for penalties if a person has committed an offence or a contravention under the regulations. Under section 18(5) this could include a fine of up to £50,000 on summary conviction or any fine on indictment. At this stage it

is difficult to estimate the administrative cost to the Scottish Ministers in relation to the payment of penalties or fines should a case be taken through the courts. Similarly for the costs of any fixed monetary penalties imposed under the regulations, which are limited to £50,000 under section 18(6). Fines and fixed penalties are dependent on the content of the regulations and the compliance rate with the licensing regime, specifically the number and type of offences and contraventions that may be committed in the future. Given the estimated number of licence applications, the total number of fines and monetary penalties imposed is not expected to be significant, meaning that the related cost to the Scottish Ministers should not prove significant.

Costs on local authorities

37. Should a local authority ask to be designated as an authority in whose area an island marine development licence is required after the regulations are drafted and approved by the Parliament following a consultation, then the main cost that would fall on local authorities would be the set up and ongoing staffing costs. Shetland Islands Council had a budget in 2016-17 of approx. £150,000 to cover 'marine development'. This includes two officers who work on marine development consents, the bulk of which relates to aquaculture development (under the terrestrial planning system) but also includes works licensing under the Zetland County Council Act. It is difficult to disentangle the work solely on marine licences from the other work undertaken in Shetland and produce an accurate assessment of cost. As a reasonable assumption, erring on the high cost side, we estimate that ongoing costs could be in the region of £75,000 per authority. This will vary between authorities.

38. Shetland Islands Council estimate that it receive between six or seven licence applications on an annual basis. While the degree of work required to be undertaken for each licence will be dependent on the actual application it is adequately covered by the current staffing and budgeting arrangements.

39. Should a local authority wish to establish an island marine licensing scheme it would need to consider how it would integrate into its current functions, including its planning functions, and how efficiently and effectively it could be delivered. The detailed terms of the scheme as established by the Scottish Ministers in the regulations under section 18 would also have to be considered. This creates a large degree of uncertainty in estimating the costs of a local authority opting into such a marine licensing regime and operating it for six or seven applications a year. The number is quite small in the context of the number of terrestrial planning applications an authority might receive. The ongoing cost for Shetland Islands Council as described in paragraph 37 for marine development might serve as a reasonable proxy and best estimate for the set up and running of an island marine development scheme.

40. The Bill also allows that the scheme which is set up can include charging fees for the reasonable administrative costs involved in processing an application for a marine development licence. This will mitigate the ongoing costs for local authorities.

Costs on other bodies, individuals and businesses

41. The main cost that might fall on individuals or businesses is the cost of a licence application. Currently Shetlands Islands Council does not charge for the application and

processing of marine works licences as there is no power to charge a fee under the Zetland County Council Act 1974.

42. The clearest precedent for a fee regime is that operated by Marine Scotland. Fees for Marine Licence applications are set on 1st April each year in accordance with the Marine Licensing (Fees) (Scotland) Regulations 2011 (as amended)² and are linked to the Consumer Price Index for February of the previous financial year. This is set out on the Marine Scotland website.³

43. For general licensable activity, where the likely cost of carrying out a project or activity (as the case may be)—

- (a) is no greater than £2,500, the fee is £57;
- (b) is greater than £2,500 but no greater than £5,000, the fee is £169;
- (c) is greater than £5,000 but no greater than £50,000, the fee is £667;
- (d) is greater than £50,000 but no greater than £2 million, the fee is £2,225;
- (e) is greater than £2 million but no greater than £5 million, the fee is £4,445;
- (f) is greater than £5 million but no greater than £20 million, the fee is £13,325;
- (g) is greater than £20 million but no greater than £50 million, the fee is £22,200;
- (h) is greater than £50 million, the fee is £33,295.

44. There are other fees associated with generating stations and dredging. In providing for reasonable administrative costs the local authority would have to assess an application for its impact on the costs to the authority. As an applicant for an island marine development licence would also have to apply for a Marine Scotland licence we would expect that the local authority and Marine Scotland would work closely together to reduce the administrative impact and cost on the applicant as the information required for each organisation will no doubt overlap. At this stage it is difficult to quantify what the costs to individuals and businesses might be as it would depend on the scheme established and also the costs of the specific projects. In order to estimate what those costs might be we use the Marine Scotland fees as a proxy and estimate a possible range for each local authority area.

45. If we assume the current demand in Shetland as seven licence applications a year is applicable across a new licencing scheme. If these are all applications for projects with a cost of no greater than £2,500 then the total costs would be 7 x £57 leading to a total cost of £399. Should the applications be for projects with a cost of greater than £50 million then the total cost would be 7 x £33,295 leading to a total cost of £233,065. This would be subject to variation in the number of licence requests which would shift the range up or down depending on demand.

² http://www.legislation.gov.uk/ssi/2011/78/pdfs/ssi_20110078_en.pdf

³ <http://www.gov.scot/Topics/marine/Licensing/marine/feestructure>

SUMMARY OF COSTS

46. Table 1 provides a summary of the additional costs expected as a result of the Bill provisions being introduced.

Table 1: Summary Table of additional costs expected as a result of provisions being introduced

Topic	Financial Memo Paras	Costs on Scottish Administration	Costs on local authorities	Costs on other bodies, individuals or businesses
National Islands Plan	Paragraphs 7 – 10	Development of the Plan: £100,000 every five years Annual progress update: £8,400 each year	Nil	Nil
Duties in relation to island communities	Paragraphs 11 – 21	Familiarisation and integration: £55,792 Ongoing: £13,948 each year	Familiarisation and integration: £8,424 Ongoing: £2,106 each year	Familiarisation and integration: £82,420 Ongoing: £20,605 each year
Representation of island communities	Paragraphs 25 – 32	Nil	Local authorities estimated costs up to £30,000 for each local authority.	Cost to the Local Government Boundary Commission for Scotland: <i>Staffing:</i> Additional staff: £35,000 to £70,000 per annum Non-labour costs: £2,300 per additional member of staff

				<p><i>Commission meetings:</i> £2,200 per meeting</p> <p><i>Review costs:</i> Costs for travel, promotion and consultation £160,000.</p>
Development in the Scottish island marine area	Paragraphs 33 – 45	Consultation costs: £25,000 for each consultation.	Additional costs to establish and run a marine licensing scheme: £75,000 per authority.	<p>Demand driven costs dependent on the number and type of applications within each authority area:</p> <p>Between £399 and £233,065 per annum.</p>

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ISLANDS (SCOTLAND) BILL

FINANCIAL MEMORANDUM

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