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# **Islands (Scotland) Bill: Consideration prior to Stage 3**

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This briefing provides a summary of the parliamentary scrutiny of the Islands (Scotland) Bill prior to the Stage 3 proceedings, which are scheduled to take place on 30 May 2018. It is designed to provide a summary of the main issues associated with the Bill during its passage through the Scottish Parliament so far, and the amendments made at Stage 2. It does not provide a comprehensive discussion of all the issues raised in relation to the Bill. SPICe Briefing 17/61 Islands (Scotland) Bill, available on the SPICe digital hub, provides information on the Bill as introduced.



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# Executive Summary

The [Islands \(Scotland\) Bill](#), introduced to the Scottish Parliament on 9 June 2017, focuses on provisions designed to strengthen and protect Scotland's island communities. Key provisions include-

1. The development of a National Islands Plan, which would set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities. Rather than set out a proposed plan, the Bill provides that, following further consultation, the first National Island Plan would be laid before the Scottish Parliament within 12 months from the date on which the Act comes into force.
2. The introduction of duties, placed upon Scottish Ministers and other relevant public bodies, to have regard to island communities in exercising their functions. Under the Bill public authorities, when introducing a new or revised policy, strategy or service, would have to prepare an island communities impact assessment when the impact on island communities is likely to be different from the effect on other communities.
3. The protection of the Scottish parliamentary constituency boundary of Na h-Eileanan an Iar from variation.
4. The allowance of exceptions, for inhabited islands, to the standard three or four member ward rule for local government electoral wards.
5. The introduction of a regulation-making power for the Scottish Government to create a licensing scheme, following a request from a local authority, in relation to works in or under the sea in the coastal waters surrounding islands for up to 12 nautical miles.

The Rural Economy and Connectivity Committee scrutinised the Bill at Stage 1. Following widespread engagement and evidence taking both in the Parliament and on the islands themselves, it published its [Stage 1 report](#) <sup>1</sup> on Monday 22 January 2018.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 1 November 2017.

The [Stage 1 debate](#) on the Islands(Scotland) Bill took place on 8 February 2018.

The Rural Economy and Connectivity Committee considered Stage 2 amendments on 21 and 28 March 2018, and an [amended version of the Bill](#) was published on 29 March 2018.

Key changes included-

- The inclusion of uninhabited islands in the definition of an 'island community'.
- The inclusion of an explicit definition of what is meant by an 'island authority'.
- The inclusion of a high-level objective for a National Islands Plan.
- The inclusion of a clause that means a National Islands Plan must list those public authorities which will have duties under the new legislation.

- The specification that, when reporting on the National Islands Plan, Ministers must set out the steps that will be taken when an identified outcome has not improved within the reporting year.
- The inclusion of a three month time frame (after the end of the reporting year) for the laying of annual reports on the National Islands Plan before the Parliament.
- The addition of the Local Government Boundary Commission for Scotland, all NHS boards, and integration joint boards to the list of public bodies with duties under the Act.
- The inclusion of the requirement for public bodies to explain their reasoning in the event of an island communities impact assessment not being carried out.
- The inclusion of the requirement that Scottish Ministers preparing an island communities impact assessment in respect of legislation should set out the financial implications of steps taken to mitigate outcomes of the relevant legislation.
- A revision meaning that an electoral ward which may be eligible to become a one or two member ward could be formed 'wholly or partly' of one or more inhabited islands (previously 'wholly or mainly').
- Revisions to the definition of dredging activity.
- The removal of the requirement for an island to fall wholly within a marine licensing area.

A number of amendments which sought to add further provisions or definitions to the Bill, along with a series of technical amendments, were not agreed to.

Stage 3 scrutiny of the Bill is scheduled to take place on 30 May 2018.

# Introduction

The Islands (Scotland) Bill <sup>2</sup> was introduced to the Scottish Parliament on 9 June 2017. The Rural Economy and Connectivity Committee was assigned as the lead committee for scrutiny of the Bill.

According to the Scottish Government, 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 public sector to meet the needs of island communities both now and in the future.”

Scottish Government, 2017<sup>3</sup>

The Bill focuses on provisions designed to strengthen and protect Scotland's island communities. Key provisions include-

1. The development of a National Islands Plan, which would set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities. Rather than set out a proposed plan, the Bill provides that, following further consultation, the first National Island Plan would be laid before the Scottish Parliament within 12 months from the date on which the Act comes into force.
2. The introduction of duties, placed upon Scottish Ministers and other relevant public bodies, to have regard to island communities in exercising their functions. Under the Bill public authorities, when introducing a new or revised policy, strategy or service, would have to prepare an island communities impact assessment when the impact on island communities is likely to be different from the effect on other communities.
3. The protection of the Scottish parliamentary constituency boundary of Na h-Eileanan an Iar from variation.
4. The allowance of exceptions, for inhabited islands, to the standard three or four member ward rule for local government electoral wards.
5. The introduction of a regulation-making power for the Scottish Government to create a licensing scheme, following a request from a local authority, in relation to works in or under the sea in the coastal waters surrounding islands for up to 12 nautical miles.

# Stage 1

## Rural Economy and Connectivity Committee

The Rural Economy and Connectivity Committee launched its call for views on the Islands (Scotland) Bill on 26 June 2017, and carried out a series of fact-finding visits and video conferences between August and November 2017. This included-

- A community engagement event on Mull. <sup>4</sup>
- A video conference with the University of Highlands and Islands students from various islands. <sup>5</sup>
- A series of meetings with local community members and businesses in Orkney. <sup>6</sup>
- Meetings with community groups, local organisations and public bodies in the Western Isles. <sup>7</sup>
- A video conference with community representatives on Arran. <sup>8</sup>

The Committee held the following evidence sessions-

- an initial evidence session from the Bill team on 13 September 2017 <sup>9</sup> ;
- formal evidence from local authorities on 20 September <sup>10</sup> ;
- evidence focusing on local government electoral wards and constituency boundaries on 27 September <sup>11</sup> ;
- evidence from Orkney and Shetland Island Councils, taken at a formal meeting on Orkney, on 2 October <sup>12</sup> ;
- evidence focused on the National Islands Plan and 'island-proofing' on 25 October <sup>13</sup> ;
- evidence focused on marine development on 1 November <sup>14</sup> ; and
- evidence from the Minister for Transport and the Islands on 8 November 2017 <sup>15</sup> .

The Committee went on to consider the draft Stage 1 Report, in private session, on 10 and 17 January 2018.

## Stage 1 report

The Committee published its [Stage 1 report](#) <sup>1</sup> on Monday 22 January 2018. Although the Bill itself is short, the 'framework' nature of the Bill, coupled with the level of engagement and consultation carried out by the Committee, led to a large number of recommendations being made. These cover both the Bill itself, and the mechanisms the Bill seeks to introduce.

The Committee supported the overall principles of the Bill, and all sections of the Bill, including the protection of the Scottish Parliamentary constituency boundary of Na h-Eileanan an Iar, and the principle of allowing the Boundary Commission for Scotland more flexibility in ward sizes in island communities.

Full detail of the conclusions and recommendations made can be found in the [Committee's report](#).<sup>1</sup>

### **Key points made in recommendations**

Key points included-

- The need for the purpose of the Bill and National Islands Plan to be set out clearly, with measurable outcomes and targets.
- The opportunities the Bill could create for passing decisions to a more local level, the importance of island representation in decision-making, and the need for effective and wide-spread consultation.
- The need for clarity on the impact of the Bill on uninhabited islands.
- The need for clarity on definitions and terms used, as well the need for effective guidance.
- The need for the six island authorities to become statutory consultees.
- The suggestion that there should be local authority level islands plans.
- The need for effective reporting on both the progress of the National Islands Plan and on island communities impact assessments.
- The need for good practice to be shared between public bodies, including the Scottish Government.
- The importance of evidence-based decision making, and a robust appeals process.
- The need for caution to be taken by the Boundary Commission when considering revisions to existing local electoral wards.
- The need for clarity on how new marine licensing provisions will interact with existing legislation, and on the 12 nautical mile limit specified in the Bill.
- The suggestion that there should be amendments to clarify what is meant by 'dredging activity'.
- The need for greater acknowledgement of the needs of the Gaelic-speaking community in the Bill and subsequent policies.
- The need for the costs of implementing the provisions of the Bill to be made clear, and for those public bodies affected to be made aware of the funding available to mitigate any negative impacts which become apparent through the 'island-proofing' process.
- The notion that some of the lessons learned from implementing the Islands Bill could be useful in supporting remote rural mainland areas.

## Scottish Government response

The Minister for Transport and the Islands [responded](#)<sup>16</sup> to the Committee on 2 February 2018.

Responses are summarised below in line with key points from recommendations-

- The Minister expressed concerns about the creation of high-level objectives for the Bill, but conceded that there was a demand for these, and that placing objectives within the provisions for the National Islands Plan may be most appropriate.
- Reassurance was given on the level of consultation to be carried out.
- On definitions, the Minister argued against a number of changes suggested by the Law Society of Scotland.
- The Minister confirmed that there was nothing in the Bill to prevent uninhabited islands being part of the National Islands Plan.
- The Minister agreed, pending consultation with the relevant councils, that amendments making the six island local authorities statutory consultees would be appropriate.
- The Minister suggested that the Scottish Government was not adverse to local-level islands plans, but noted that this could add a further level of bureaucracy, and that much of the proposed aims of these plans were already met through Community Planning Partnerships, local outcome improvement plans, Local Area Committees, and Locality Plans.
- The Minister welcomed recommendations on setting clear outcomes, targets and measurable indicators by which to establish performance, and confirmed that it was envisaged that the National Islands Plan would include these. He confirmed that the Scottish Government would consider including a time limit for the publication of annual reports on the National Islands Plan.
- The Minister suggested that the consultation on statutory guidance would pick up on how the need for public bodies to share best practice could be best reflected in statutory guidance.
- The Minister considered the language around island communities impact assessments to be appropriate, and gave some reassurances that the guidance would make it clear that how decisions were reached should be a key part of the reporting process.
- The Minister confirmed that the Scottish Government did not agree with the inclusion of an appeals process in the Bill in relation to island communities impact assessments.
- The Minister reiterated that any changes to local government ward boundaries were a matter for the Local Government Boundary Commission for Scotland, but that the legislation was written to provide the appropriate flexibility needed to do this. The Minister agreed to bringing forth amendments to wording on provisions on ward sizes.



- The Minister gave some clarity on how marine licensing provisions would interact with existing works licenses granted under the Orkney and Zetland County Council Acts. He also noted that the Scottish Government would consider how best to give effect to the Committee's recommendation on guidance on involving communities in the marine licensing process.
- The Minister clarified that detail on how the 12 nautical mile limit for marine licensing would work would be subject to both consultation and the affirmative procedure.
- The Minister agreed to bring forward amendments at Stage 2 to clarify the definition of dredging activities.
- The Minister committed to looking at how the National Islands Plan could build on the support available to Gaelic speaking communities.
- The Minister stated that it would not be possible to reasonably estimate the resources required to implement the National Islands Plan, or other aspects of the Bill, but that the Scottish Government would continue to have discussions with local authorities on the implementation of the Bill.
- The Minister suggested that, following a review of the implementation and progress of island-proofing, this could allow the Scottish Government and stakeholders to reflect on how a similar approach might be useful for remote rural areas on the mainland.

## Delegated Powers and Law Reform Committee

At its meeting on Tuesday 19 September 2017, the Delegated Powers and Law Reform Committee considered the delegated powers in the Bill.

The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:

- Section 10(1) (guidance about section 7 duty)
- Section 18(1) (Scottish island marine area development licence)
- Section 22(1) (ancillary provision)
- Section 23(2) (commencement).

At the same meeting, the Committee agreed to write to the Scottish Government to raise questions in relation to the remaining delegated powers in the Bill, in section 7(3) and section 21.

Section 7(3) provides that the Scottish ministers may, by regulations, amend the schedule that lists the bodies, office-holders and other persons who are subject to the duty to have regard to island communities in carrying out their functions. The Committee noted that other legislation, for instance the British Sign Language (Scotland) Act 2015, includes not only the power to add or remove an entry to the Schedule, but to modify an entry. The Committee sought an explanation from the Scottish Government, who argued that the ability to remove and add entries would in effect allow entries to be modified.

The Committee also sought further explanation in correspondence with the Scottish Government on the ancillary powers in section 21 to add supplementary, incidental or consequential provisions to the regulations under sections 7(3) or 18, as the documents accompanying the legislation did not provide an explanation why those additional ancillary powers are necessary or appropriate.

The Scottish Government explained in correspondence <sup>17</sup> that the power to make provision for supplementary purposes has (generally) been considered necessary to ensure that any unexpected issues which arise and which require further changes, when the principal powers in sections 7(3) and 18(1) are exercised, can be dealt with effectively. The Committee, in its report, accepted these ancillary powers in principle.

The Committee made the following recommendations in its [Stage 1 report](#) <sup>18</sup>, which was published on 1 November 2017.

“ The Committee is not persuaded by the Government's explanation for why the powers in section 7(3) do not include a power to amend the schedule by modifying an entry. The Committee considers that to include this power would be consistent with the approach taken in earlier provisions, such as in section 6(2) of the British Sign Language (Scotland) Act 2015. The Committee therefore recommends that a consistent approach should be taken to the drafting of this power, unless there is a good reason not to include the power to modify an entry. The Committee accepts that the exercise of the power is subject to scrutiny by the affirmative procedure. ”

## Debate

The Stage 1 debate on the Islands(Scotland) Bill took place on 8 February 2018 <sup>19</sup>.

In the debate, Rural Economy and Connectivity Committee members spoke about the Committee's recommendations, and the Minister for Transport and the Islands responded to these points, reiterating the detail in the Scottish Government's response to the Stage 1 report. As well as a discussion on provisions in the Bill, points were made in areas as diverse as fuel poverty, inter-island ferries, devolution of powers to islands, the needs of remote and rural mainland areas, economic growth in the islands, procurement, farming, broadband, tourism, depopulation and healthcare.

## Stage 2

Stage 2 offers an opportunity for any MSP to propose amendments to a Bill, although only members of the lead committee can vote on any amendments that are lodged. Humza Yousaf MSP (Minister for Transport and the Islands) ('the Minister') took forward the Scottish Government amendments at Stage 2.

The Rural Economy and Connectivity Committee (hereafter 'the Committee') considered the Bill at Stage 2 in March 2018.

- Stage 2 consideration of the Islands (Scotland) Bill - Day 1
  - [Marshalled list of amendments for Stage 2](#)
  - [Groupings of amendments for Stage 2](#)
  - [Minute of proceedings](#)
  - [Official Report](#) <sup>20</sup>
- Stage 2 consideration of the Islands (Scotland) Bill - Day 2
  - [2nd Marshalled list of amendments for Stage 2](#)
  - [2nd Groupings of amendments for Stage 2](#)
  - [Minute of proceedings](#)
  - [Official Report](#) <sup>21</sup>

A total of 89 amendments were laid.

As well as a large number of technical amendments, some amendments related to provisions which were not present in the Bill as drafted, which reflected the wide scope of the evidence heard. Certain amendments were on issues not raised during scrutiny of the Bill to date.

Rather than review all amendments, the following sections will focus on the changes made to the Bill at Stage 2, and to some of the other amendments which were lodged but either not moved, or not agreed to.

## Changes to the Bill

The Bill, as amended at Stage 2, was published on 29 March 2018 <sup>22</sup>. A summary of changes made to the Bill at Stage 2 follows. Technical drafting amendments have not been included in this summary.

### Definitions

- Amendment 10, in the name of Liam McArthur, expanded the definition of "island community" to include uninhabited islands whose natural environment and terrestrial,

marine and other associated ecosystems contribute to the natural or cultural heritage of an inhabited island. The amendment was agreed to without division.

- Amendment 29, in the name of Colin Smyth, defined the six island authorities, and set out a provision for this definition to be amended by Scottish Ministers. The amendment was agreed to by division (For 6, Against 5, Abstentions 0).

## **National Islands Plan**

- Amendments 1 and 2, in the name of Humza Yousaf, and 2A, in the name of Colin Smyth, added an overarching objective for the National Islands Plan, in line with Committee recommendations. All three amendments were agreed to without division.
- Amendment 32, in the name of Jamie Greene, specified that the National Islands Plan must list the public authorities that have duties under the Act, and was agreed to without division.
- Amendment 40, in the name of Jamie Greene, specified that when reporting on the National Islands Plan, Scottish Ministers should detail the steps being taken where an identified outcome has not improved within the reporting year. The amendment was agreed to without division.
- Amendment 4 in the name of Fulton MacGregor specified a timescale of three months beginning with the last day of the reporting year for reporting on the National Islands Plan, and was agreed to without division.

## **Duties in relation to island communities**

- Amendments 49-59, all in the name of Colin Smyth, added the Local Government Boundary Commission for Scotland and all of Scotland's NHS boards and integration joint boards to the public bodies with duties under the Act. Amendment 49, which added the Local Government Boundary Commission for Scotland, was agreed to by division (For 7, Against 4, Abstentions 0). All other amendments adding public bodies to the Schedule were agreed to without division.
- Amendment 69, in the name of Colin Smyth, stipulated that public bodies would have a responsibility to explain their reasoning in the event of an island communities impact assessment not being carried out. The amendment was agreed to by division 69 (For 8, Against 2, Abstentions 1).
- Amendment 78, in the name of Jamie Greene, added the clause that Scottish Ministers preparing an island communities impact assessment in respect of legislation should set out the financial implications of steps taken to mitigate outcomes of the relevant legislation. The amendment was agreed to by division 78 (For 5, Against 5, Abstentions 0; amendment agreed to on casting vote).

## Representation of island communities

- Amendment 6, in the name of Humza Yousaf, amended the terms under which an electoral ward may be eligible to become a one or two member ward from consisting 'wholly or mainly' to 'wholly or partly' of one or more inhabited islands. The amendment was agreed to without division

## Marine development

- Amendments 7, 8 and 9, all in the name of Humza Yousaf, clarify the meaning of dredging and development activity, in line with the Committee's Stage 1 recommendations. All three amendments were agreed to without division.
- Amendment 83, in the name of Stewart Stevenson, makes a technical change to the drafting of the Bill, removing the requirement for an island to fall wholly within a licensing area. The amendment was agreed to without division.

## Other Amendments discussed

A number of amendments which were not moved or not agreed to related to technical changes, which in some instances were covered by the accepted amendments to the Bill. There were, however, a number of amendments which sought to add further provisions or definitions to the Bill, which were not agreed to. These are summarised below.

### Additional powers for islands

Amendment 80, in the name of Colin Smyth, focused on developing mechanisms through which specific powers could be devolved to island local authorities. Amendments 26 and 27 had the same aim, but with a differing approach. The Committee debated these points and the general suggestion was that local authorities are not, at present, unable to make requests of the Scottish Government, so the very formal approach of Amendment 80, with set timescales, may not be appropriate. The Minister suggested that, with discussion, there may be scope for revised amendments at Stage 3 which could take inspiration from Amendments 26 and 27. The amendment was moved, and was disagreed to by division (For 2, Against 8, Abstentions 0).

Amendment 81, also in the name of Colin Smyth, sought to create a similar process for retrospectively improving or mitigating legislation where there has been a negative impact on island communities. The Amendment was disagreed to by division 81 (For 1, Against 9, Abstentions 0).

### National Islands Plan

Amendments 11 to 16 all focussed on adding detail on issues and areas which a National Islands Plan must cover, including the Crown Estate, ferry services, fuel poverty, broadband provision, an 'islands deal', and biosecurity. Amendments 11 (Crown Estate), 14 (broadband) and 15 (islands deal) were in the name of Tavish Scott; Amendments 12

(ferries) and 13 (fuel poverty) were in the name of Liam McArthur, and Amendment 16 (biosecurity) was in the name of John Finnie.

In discussion, the Minister gave some reassurance on other work being done to address these issues, and that these matters would be included in the National Islands Plan. Once again, he agreed to discuss with members ways in which alternative amendments to those proposed could be tabled at Stage 3.

Committee members noted that the level of detail was, in some cases, too much for the Bill itself. The three members tabling this group of amendments chose to not move the amendments.

## **Island communities impact assessments**

Amendment 24, in the name of Liam McArthur, sought to make provisions for retrospective island communities impact assessments to be carried out in relation to existing legislation.

Committee members and the Minister noted the massive scale of carrying out this work were it to take place as drafted in the amendment. The Minister committed to considering an amendment at Stage 3 which might achieve some of the aims of this amendment, and the amendment was withdrawn and not moved.

## **Shetland mapping**

Amendment 20, in the name of Tavish Scott, sought to include a new provision in the Bill which would specify that all Scottish public authorities, when publishing maps and associated documents, must show Shetland in its correct geographical location in relation to the rest of Scotland.

Though Committee members expressed sympathy for the amendment, there were concerns about both the drafting and implications. The amendment was withdrawn and a the Member suggested that a redrafted version would be submitted at Stage 3.

## **Boundaries**

Amendment 25, in the name of Liam McArthur, would prevent future changes to health board boundaries covering island authorities.

The Minister and other members expressed concerns about the unintended consequences of making this provision. The amendment was disagreed to by division 25 (For 2, Against 8, Abstentions 0).

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