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Rural Economy and Connectivity Committee Comataidh Eaconomaidh Dùthchail is Co- cheangailteachd

Stage 1 Report on the Islands (Scotland) Bill



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Contents

Summary of recommendations	1
Introduction	13
Background	17
Purpose of the Bill	19
Definition of island and island community	23
National Islands Plan	26
Priority areas	26
Strategy and focus	28
Community capacity and resources	30
Measurement and outcomes	31
Consultation	32
Timing and review	34
Island impact assessments ('island-proofing')	37
Guidance, process and consultation	38
Private sector	41
Island local authorities and local authorities which have islands	42
Evidence base for decision making	43
Reviews, appeals and enforcement	45
Retrospective island impact assessments	45
Na h-Eileanan an Iar - Scottish parliamentary constituency boundary	48
Local government electoral wards for inhabited islands	49
Marine licensing power	53
Local authority views	53
Interaction with existing legislation	54
Dual licensing	55
Consultation and community input	56
12 nautical miles limit	58
Jurisdiction of port authorities	58
Definition of inhabited island for marine area licence	59
Proposals for extensions to provisions	60
Human Rights and Equalities	62
Equalities issues	62
Human Rights issues	63
Finance	64

Remote and rural mainland areas	67
Conclusion	69
Annex A: Consideration by other Committees	70
Annex B: Extract of minutes	71
Annex C: Written evidence	73
Annex D: Engagement Visits and Events	75
Bibliography	76

Rural Economy and Connectivity Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Economy and Connectivity.



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Summary of recommendations

1. This section includes a summary of the recommendations and conclusions made throughout the report by the Rural Economy and Connectivity Committee in its consideration of the Islands (Scotland) Bill.

Purpose of the Bill

The Committee heard from islanders and other stakeholders that they would like the Bill to contain objectives that set the overall ambition. A wide variety of objectives were suggested, but there was no consensus about what these should be. Notwithstanding this the Committee supports the general aspiration and agrees that one or two high level objectives be put on the face of the Bill to give it greater purpose and focus. It welcomes the Scottish Government's willingness to consider this proposal.

While it is for the Scottish Government to reflect on any drafting changes, the Committee suggests that setting out in clear and easily understood terms how the Bill aims to deliver equity and sustainability for islands and island communities should be an objective.

Local empowerment and devolution of powers

The Committee supports the empowerment of island communities and the devolution of appropriate powers by the Scottish Government. It invites the Scottish Government to consider the feasibility of including an amendment to the Bill which would give Scottish Ministers the power to enact secondary legislation to devolve specific functions to an appropriate level where a specific case can be demonstrated.

Definition of island and island community

The Committee calls on the Scottish Government to review the definitions of "island", "inhabited island" and "island community" as well as "high and low tide" used in the Bill in light of the comments made by the Law Society of Scotland.

The Committee recommends that the Scottish Government reflect on the importance that uninhabited islands can have in terms of cultural, environmental and economic significance. It seeks reassurance that these islands will not be left out of any National Islands Plan activity.

National Islands Plan

The Committee expects the National Islands Plan to set out both a clear strategic direction and practical approaches to delivery. This should apply to the priority policy areas as identified in the report and in any other areas highlighted by island communities and other stakeholders following comprehensive consultation. When the Committee scrutinises the draft Plan laid before the Parliament, it will wish to be assured that the priority areas featured in the Plan reflect the actual priorities of islanders.

Strategy and focus

The Committee acknowledges that the Bill is one part of a range of existing plans and frameworks which impact on Scotland's islands. It calls on the Scottish Government to provide additional clarity about the existing plans and frameworks that the Bill will work alongside and recommends this detail should be given prominence in the National Islands Plan.

Local level plans

The Committee believes that, due to the individual nature of each island and island group, an overarching and strategic National Islands Plan is desirable. However, the success of the Bill will be determined by the practical difference that it makes to individual communities. The Committee believes that this can best be achieved through local knowledge and decision making structures. As such, it recommends that the Scottish Government amend the Bill to make the creation of local authority level island plans a statutory requirement.

The Committee also encourages local authorities and other relevant bodies to consider designating an official to be responsible for the implementation of the local authority level plan.

Community capacity and resources

The Committee expects the National Islands Plan to set out how the Scottish Government plans to provide a framework of support for communities to build capacity where required. In particular, the links to the Community Empowerment Act 2015, so that all islands will be able to take full advantage of the opportunities which the Bill and the resulting National Islands Plan offers.

Community benefit clause

The Committee understands that Orkney Islands Council advocated for the inclusion of a community benefit clause in the Bill. It calls on the Scottish Government to explain why it decided not to include such a provision in the Bill.

Measurement and outcomes

The Committee recommends that the National Islands Plan be developed with clear outcomes, targets and measurable indicators by which to establish performance. In order to assist the regular tracking of progress on outcomes, the Committee suggests that a time limit for submission of the annual report, which tracks outcomes and the implementation of island impact assessments, be included in the Bill.

Consultation

The Committee notes that the Bill allows the Scottish Government to have discretion on who should be consulted in the preparation of the National Islands Plan. The Committee recommends that this consultation should be undertaken as widely as possible and that the National Islands Plan contain a list of who was consulted in its preparation. There should also be a method by which any body or group which felt that it should have been consulted, but wasn't, could address its concerns to the Scottish Government.

The Committee welcomes the Scottish Government's willingness to consider strengthening the language in the Bill, in a non-prescriptive way, to provide reassurance that island communities will be included in the consultation to the National Islands Plan.

It looks forward to being advised of the outcome of this consideration.

The Committee believes that a focus on young people and measures which would allow them to lead fulfilling lives and remain on the islands is an essential part of any successful islands plan. It recommends that young people should be a particular focus of any National Islands Plan consultation.

The Committee understands the Scottish Government's desire not to be overly prescriptive in the statutory consultees to the National Islands Plan. However, it does not believe that including the six local authorities with island interests would be in danger of over prescription as they are clearly essential to the process. It recommends that the Scottish Government amend the Bill to include these authorities as statutory consultees.

Timing and review

The Committee recognises that the one year deadline for the creation of the first National Islands Plan is ambitious if it is to include full consultation with all parties. The Committee seeks reassurance from the Scottish Government that the deadline will not inhibit a comprehensive and meaningful consultation with the wider community.

The Committee welcomes the five year refresh period for the National Islands Plan and the requirement to submit an annual report on progress before the Parliament. The Committee recommends that the annual report is not simply a statement of progress. It must contain detail on any mitigating action the Scottish Government will take in the eventuality that a lack of progress is identified in any aspect of the plan. The Committee recommends that the Bill be amended to reflect this requirement.

The Committee believes that it is essential to allow islanders and their representatives an opportunity to voice their views on progress. The Committee recognises the role that it can play in this process and will commit itself to undertaking regular scrutiny of the National Islands Plan and its annual reports once laid in Parliament and provide stakeholders with appropriate opportunities to present their views.

Islands Impact Assessments ('island-proofing')

The Committee notes that the terms 'island impact assessment' and 'island-proofing' have often been used interchangeably throughout the Bill's supporting documentation and the scrutiny process. The Committee gave further reflection to the distinction between the two terms and it would caution the Scottish Government that they may give rise to different levels of expectation. For example, the term 'island-proofing' may give stakeholders the expectation that action will be taken as a matter of course on each occasion when a new policy or service is introduced. Whereas, 'island impact assessment' simply suggests that issues will be assessed and any identified consequences considered. It calls on the Scottish Government to provide clarity and consistency on the use of terminology and to consider addressing this issue as part of its consultation on the impact assessment process.

The Committee invites the Scottish Government to consider bringing forward an amendment to the Bill which would have the effect of requiring a relevant authority to have 'due regard' and not just 'regard' to island communities in carrying out its functions.

Consultation

The Committee recognises the need to fully consult on draft statutory guidance on how to conduct an islands impact assessment. However, it is disappointed not to be able to scrutinise this guidance alongside the Bill. The Committee therefore calls on the Scottish Government, as an example of good practice, to set out the process that it undertook to 'island-proof' the guidance when it publishes the document.

As noted above in relation to the National Islands Plan, the Committee does not believe that including the six local authorities with island interests as statutory consultees to the creation of impact assessments would be in danger of over prescription. The Committee

therefore recommends that the Scottish Government amends the Bill to include these authorities as statutory consultees.

Content

The Committee recommends that the Scottish Government reflect on the positive lessons which may be learned from the equalities impact assessment process and apply that to the islands impact assessments.

The Committee agrees that the process of 'island-proofing' must involve a change in mindset and culture shift if it is to be more than simply a 'tick-box exercise'. It recommends that the guidance include suggestions for how public bodies and the Scottish Government itself may achieve this culture change.

The Committee believes that the Scottish Government must strike the right balance in the impact assessments. The process must be agile and fit for purpose and not become overly burdensome to the creation and implementation of policy or legislation. However, at the same time the guidance must make it clear that comprehensive and meaningful consultation with island communities and stakeholders is essential if islanders are to have confidence that the impact assessments will be effective.

The Committee recommends that the guidance must require those conducting an impact assessment to make it clear the ways in which the views of local people and their representatives will be incorporated into the decision making process.

The Committee believes that impact assessments can also have the potential to highlight any positive impact on island areas which may arise from a new or revised piece of policy or legislation. It calls on the Scottish Government to make this clear in the guidance.

Results of an impact assessment

The Committee recommends that the Scottish Government makes it clear in guidance that any organisation undertaking an island impact assessment that anticipates a negative consequence -and decides not to fully mitigate it- must fully explain and justify its decision and its related consequences. This document should be publicly available.

The private sector

The Committee accepts that the Scottish Government will not be able to require public or private companies to 'island-proof' their activities. However, it calls on the Scottish

Government to explain what measures could be taken to ensure that significant contracts or procurement activity, undertaken using public money, are subject to an islands impact assessment where appropriate.

Island local authorities and local authorities which have islands

The Committee recommends that the Scottish Government consider the differences that may be present between island local authorities and local authorities that contain islands. It should reflect on how these differences may impact on the process of island impact assessments and whether this should be addressed in the guidance.

The Committee further recommends that the Scottish Government develop a means to identify and share standards and good practice amongst those public bodies who will be required to conduct impact assessments.

Evidence base for decision making

The Committee considers that the terms 'significant impact' and 'in the authority's opinion' in relation to island impact assessments are too subjective and run the risk of being inconsistently applied across the islands. It recommends that the Scottish Government give further consideration to what exactly 'significant' means in terms of the requirement to impact assess, and amend the Bill to provide suitable clarification. It also recommends that the Scottish Government reconsider the use of the term 'in the authority's opinion' to ensure there is a more objective standard used in decision making.

The Committee cautions the Scottish Government that policy impacts that may seem minor in isolation may have a significant cumulative impact on the islands. It recommends that, to avoid potential unintended consequences, the impact assessment guidance covers how public bodies are expected to be aware of the possible direct and indirect effect of any policy decisions.

The Committee believes that a robust evidence base will be essential to allow fair and comprehensive island impact assessments to be undertaken. It notes that some data sources do not accurately reflect island life. It looks to the Scottish Government to provide reassurance to the Committee that the Scottish Government and the public bodies identified in the Bill will have the appropriate evidence upon which to base their decision making.

It recommends that the Scottish Government reflect on the evidence base that it expects public bodies to use to inform their impact assessments and include this in the guidance

where appropriate. If it is found that a public body has an insubstantial evidence base upon which to draw the Committee recommends that the Scottish Government work with the public bodies concerned to help them address any gaps.

Reviews, appeals and enforcement

The Committee believes that it is essential that islanders have confidence in the islands impact assessments process. A fair and reasonable mechanism which provides the ability to appeal or object to the process is essential. It recommends that the Scottish Government considers amending the Bill to provide for such a mechanism and ensure that further detail will be contained in the guidance.

Retrospective island impact assessments

The Committee recognises that it would be unrealistic to retrospectively impact assess all current legislation (primary and secondary) in relation to the islands. However, it does not believe that retrospective action should be ruled out entirely. It believes that the Bill should make provision to allow a retrospective impact assessment to be carried out if it can be demonstrated that a specific piece of current legislation or policy has a significantly detrimental impact on island communities. The Committee believes that such a step would demonstrate to Scotland's islanders that the Bill will have a concrete and tangible impact on improving outcomes for island communities.

The Committee is encouraged that the Scottish Government acknowledges that redevelopment of policy would need to be 'island-proofed'. It calls on the Scottish Government, as part of its consultation, to identify the areas of legislation or policy which can be problematic for the islands. These areas should be prioritised and the Scottish Government should commit to re-developing the most urgent with an island impact assessment. It also calls on the Scottish Government to provide broad timescales within which the prioritised impact assessments will be undertaken.

The Committee is aware that there are sections in the Local Government in Scotland Act 2003 and the Public Services Reform (Scotland) Act 2010 which allow Ministers to alter legislation by statutory order if the primary legislation is an obstacle to local government fulfilling certain duties. The Committee recommends that the Scottish Government consider whether these powers can be applied more readily to islands as a result of impact assessments.

Na h-Eileanan an Iar - Scottish parliamentary constituency boundary

The Committee welcomes this provision in the Bill which protects Na h-Eileanan an Iar as a Scottish parliamentary constituency.

Local government electoral wards for inhabited islands

The Committee acknowledges that it is within the Local Government Boundary Commission's power to conduct a review of the electoral ward arrangements. While welcoming the principle of increased flexibility that the Bill will provide, the Committee is concerned that this provision may not fulfil the policy intention of the Bill and that use of these powers may have a number of unintended consequences.

The Committee suggests that the Local Government Boundary Commission carefully review the evidence received by the Committee when it makes its decisions. In particular, in regard to the unintended consequences that such a change may cause.

For example, ratios for individual islands that are different from those applying to the mainland of an authority.

The Committee recommends that the Scottish Government follow the suggestion of the Boundary Commission and amend the Bill so that the definition of "wholly or mainly" consisting of an inhabited island be changed to "wholly or partly" to provide greater flexibility to better balance a ward.

Island representation in decision making

The Committee recommends that, as part of its 'island-proofing' guidance, the Scottish Government highlights the inclusion of island representatives in the key decision making committees in local authority areas which contain islands as good practice.

Marine licensing power

The Committee notes that local authorities support the principle of increased powers for marine licensing that the Bill offers. It looks forward to scrutinising the detail of the marine licensing regulations when they are laid before the Parliament.

The Committee calls for clarification from the Scottish Government on whether applications to vary works licenses, which were granted under the previous Zetland legislation, would be exempt if they were made after the area had been designated as an Island Licensing Area.

Interaction with existing legislation

The Committee does not object in principle to the inclusion of the marine licensing provisions in the Bill. However, it believes that consistency and clarity is important when

dealing with legislation. The Committee notes that there is confusion amongst stakeholders regarding the practical implementation of the marine licensing provisions in the Bill and how they will relate to existing marine legislation. It is also concerned about the potential for duplication and adding an extra layer of bureaucracy to the existing marine licensing regime.

The Committee acknowledges that consultation will be carried out on the related regulations. However, it calls on the Scottish Government to provide further information to the Committee on the practical relationship and interaction between the marine licensing provisions in both this Bill and the Marine Scotland Act 2010.

Consultation and community input

The Committee welcomes the Scottish Government's acknowledgement of the need to include local communities in decision making regarding marine development activities. It suggests that the Scottish Government may wish to issue guidance or best practice suggestions to support this.

12 nautical mile limit

The Committee notes that the confusion around responsibilities and boundaries in relation to the 12 nautical mile limit (which may intrude into another island's marine area or the mainland) will be dealt with as part of the consultation on the regulations. It calls on the Scottish Government to provide clarification to the Committee once the findings of the consultation have been considered.

Jurisdiction port authorities

The Committee seeks reassurance from the Scottish Government that the jurisdiction of existing port authorities would not be impacted by the Bill.

Definition of inhabited island for marine area licence

The Committee welcomes the Scottish Government's willingness to reconsider the provision regarding inhabited islands in relation to marine licensing.

Proposals for extensions to provisions

The Committee notes the argument from COAST that fish farming should be included in the definition of development activity in the Bill. It also notes the Scottish Government's argument that fish farming is already addressed through planning legislation and that to

include fish farming in this Bill could lead to duplication. It has not received any further evidence on this issue.

The Committee acknowledges stakeholder's concerns about the damage that scallop dredging and some demersal trawling can have on the environment. It notes the response from the Scottish Government that these activities are already licensed. It welcomes the Scottish Government's willingness to bring forward an amendment at Stage 2 to clarify that dredging, as referred to in the Bill, is focused on excavation activity and not fishing.

Human rights and equalities

The Committee welcomes the potential of the Bill to make further strides in improving equality and supporting human rights. The Committee fully expects equality and human rights to be considered as part of the implementation of the Bill and in particular as part of any duties under Part 3 of the Bill related to 'island-proofing'.

The Committee welcomes the focus that the Islands (Scotland) Bill will bring for islands and anticipates that this will help measures to address equality issues specific to certain communities.

The Committee supports the view of Orkney Islands Council that insularity and remoteness should be considered as an equalities issue and that these should be addressed in guidance concerning the duty in section 7 of the Bill – the duty to have regard to island communities or 'island-proofing'.

The Committee supports the potential of the Bill to address human right issues through the National Islands Plan and 'island-proofing'. It calls on the Scottish Government to advise the Committee whether the Scottish Human Rights Commission was considered for inclusion, and any reasoning behind its exclusion from the Schedule to the Bill, which lists the relevant authorities that will have duties in relation to island communities.

The Committee notes the request of some within Gaelic speaking communities for the Bill to recognise Gaelic and linguistic rights. The Scottish Government states that Gaelic is an integral part of Scotland's heritage, national identity and current cultural life. The Committee calls on the Scottish Government to consider an extension to the provisions in the Bill so that, in addition to having regard to the distinctive geographical and cultural characteristics of the islands, it could also have regard to their linguistic heritage.

The Committee expects that the Scottish Government will consider how the National Islands Plan can build on the support available to Gaelic speaking communities. It also recommends that the Scottish Government include consideration of the Gaelic language in its guidance on 'island-proofing'.

Finance

The Committee notes that the costs outlined in the Financial Memorandum relate solely to the delivery of the duties in the Bill. They do not cover the resources required to implement the National Islands Plan once it is created or mitigate any negative consequences as identified by an islands impact assessment.

The Committee notes the concerns that some local authorities have in relation to the financial costs associated with the practical implementation of the Bill.

The Committee calls on the Scottish Government to confirm whether the National Islands Plan, when published, will contain detail on the financial and other resources which will be available, from across the Scottish Government, to ensure the achievement of the Plan.

The Committee recommends that the Scottish Government require in the impact assessment guidance that all impact assessments should include a cost / benefit analysis in addition to an estimate of the costs associated with any proposed mitigation.

The Committee also invites the Scottish Government to consider how it can make public bodies and other organisations aware of the existing funding streams or other sources of support which may be available to island communities to mitigate any negative impacts which become apparent through the 'island-proofing' process.

The Committee calls on the Scottish Government to clarify to the Committee how the overall figure for publication costs was calculated. This should include detail on the methods the Scottish Government will use to publicise the development and refresh of the National Islands Plan every 5 years and the publication of the annual progress report.

Remote and rural mainland areas

The Committee believes that many of the issues which affect islands can also impact on remote and rural mainland areas. While acknowledging that this is outwith the scope of

the Bill the Committee welcomes the Scottish Government's willingness to reflect on whether a similar approach to 'island-proofing' may be considered for remote rural areas.

Introduction

2. The Islands (Scotland) Bill ("the Bill") was introduced in the Scottish Parliament by Fergus Ewing, Cabinet Secretary for Rural Economy and Connectivity on 9 June 2017. It was supported by Humza Yousaf, the Minister for Transport and the Islands. The Rural Economy and Connectivity Committee was designated by the Parliamentary Bureau as the lead committee for Stage 1 consideration of the Bill.
3. The membership of the Committee changed during the consideration of this report. Rhoda Grant MSP was replaced by Colin Smyth MSP on 9 January 2018.
4. The Committee launched a call for views on 26 June which ran to October 2017 and resulted in 51 written submissions. It took oral evidence on the Bill from September to November 2017 from a range of local authorities, national bodies, businesses and communities groups.
5. As part of its evidence gathering the Committee spent 3 days in Orkney for a formal external Committee meeting and visits. It also undertook visits to Mull and Comhairle nan Eilean Siar as well as video conferences with islanders on Arran and with students in multiple locations who attend the University of the Highlands and Islands or Heriot Watt University.

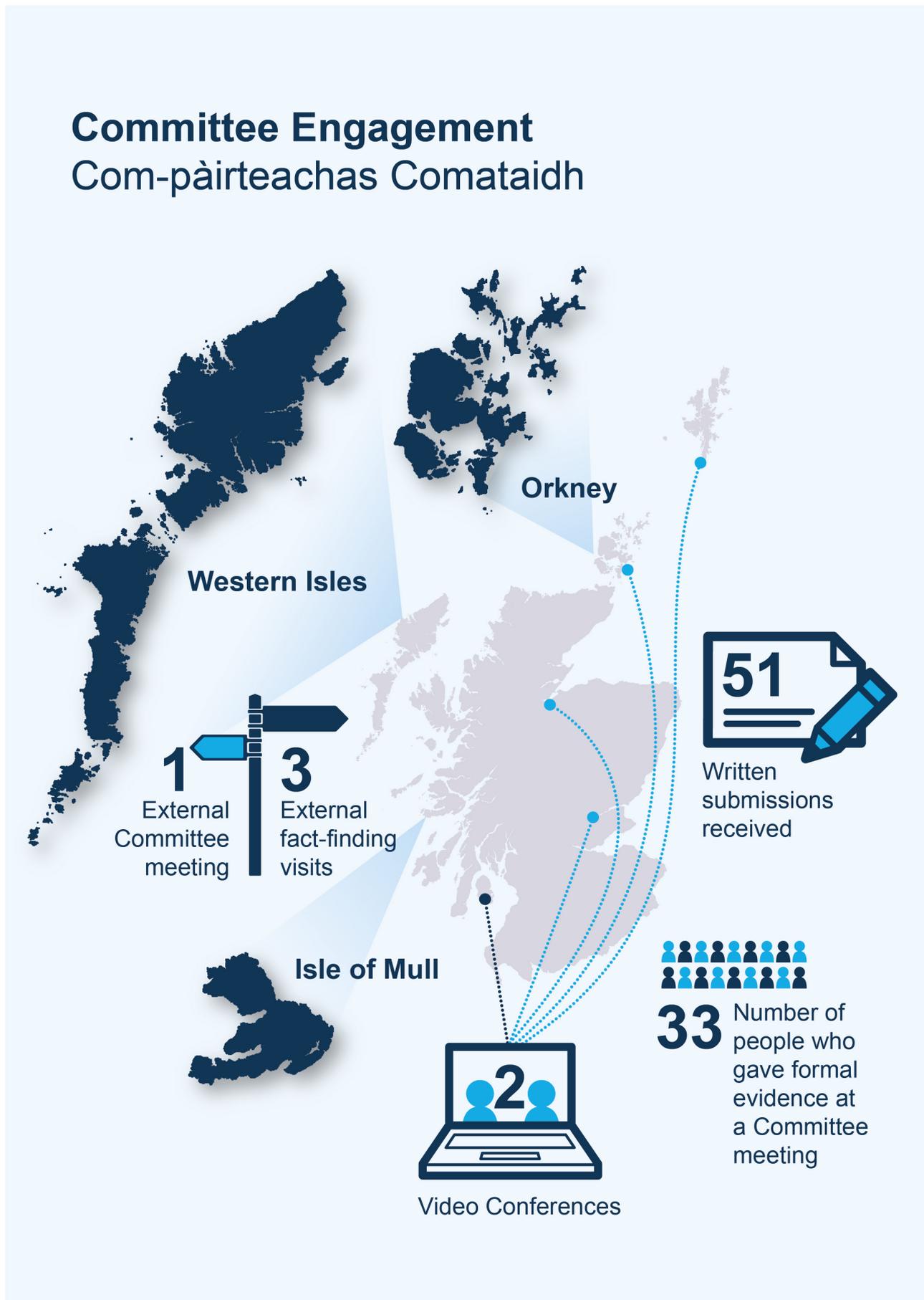
Committee hosting a video conference with islanders on Arran



6. The Committee expresses its sincere appreciation to those islanders who took the time to meet members when they visited islands to hear their views. Travelling to island locations provided the Committee with the ability to experience, first hand, the everyday challenges that islanders face in terms of transport and digital connectivity.
7. The evidence of the lived experience of the islanders that was gathered during the visits, meetings and video conferences was extensively used by the Committee to inform its questioning of witnesses and the Minister. The external committee meeting and the range of informal visits also gave islanders, who may not have had the opportunity to travel to Edinburgh the chance to engage with the Committee face to face.
8. A full list of oral and written evidence received is available in Annexes B and C.

Committee Engagement Infographic

A map of Scotland which highlights the visits, meetings and discussions that the Committee undertook during its scrutiny of the Islands (Scotland) Bill.



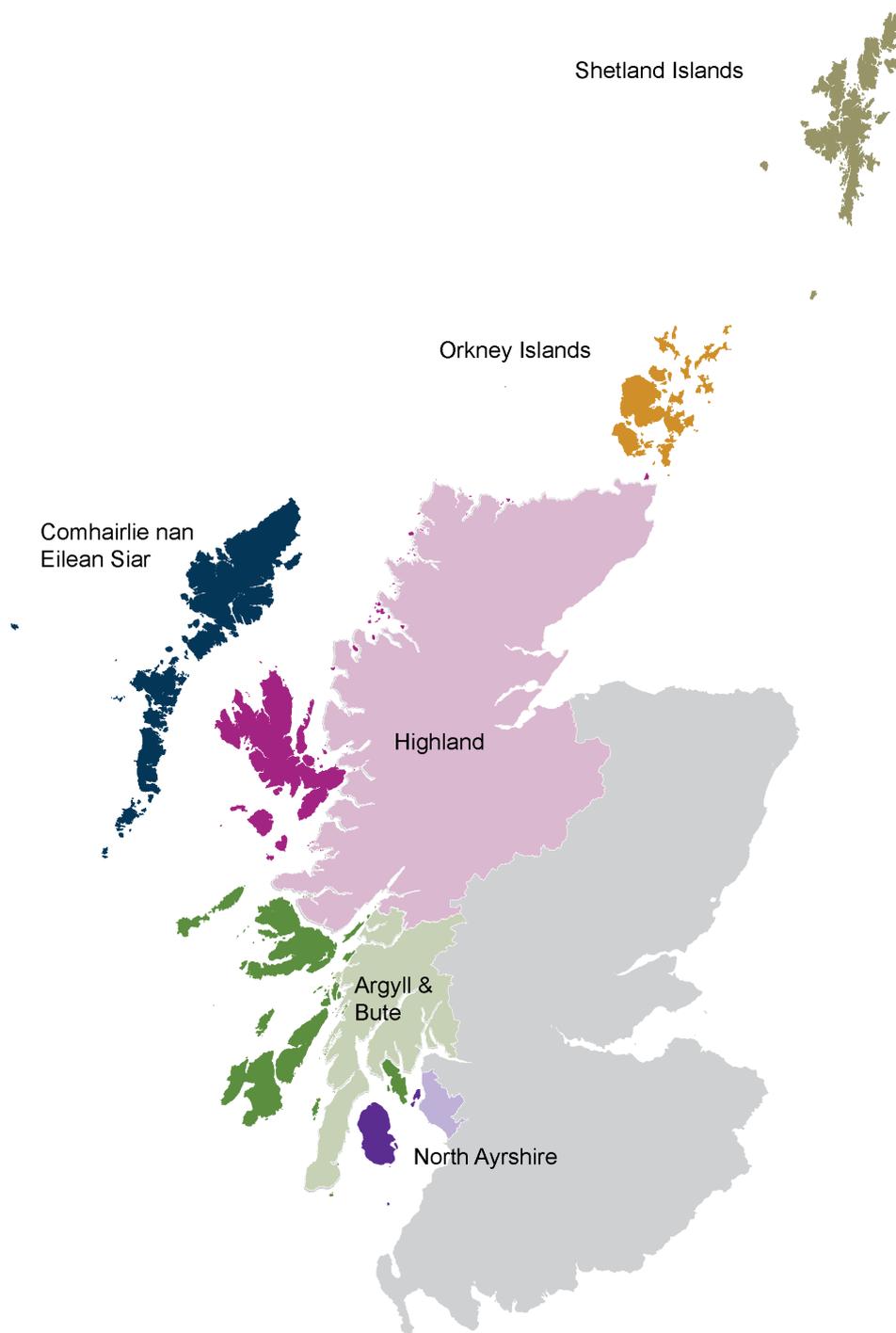
Source: Rural Economy and Connectivity Committee

Background

9. At the time of the 2011 Census, there were 93 inhabited islands in Scotland, with a combined population of 103,700 - 2% of Scotland's population¹. Of these islands, only five are connected to the Scottish mainland by bridge or causeway². Residents of more remote islands rely on ferry crossings and air travel to reach the larger islands in their island group, or the mainland, to access key services such as secondary and higher education, social care, and medical services.
10. Scotland has three island local authorities - Orkney, Shetland and Comhairle nan Eilean Siar (Western Isles). In addition, the Highland, Argyll and Bute and North Ayrshire local authorities contain island as well as mainland areas.
11. The stated intention of the Bill is to introduce 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.
12. The Bill contains the following provisions—
 1. The creation of a statutory duty to develop a National Islands Plan, which will set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities.
 2. The introduction of duties, placed upon Scottish Ministers and other relevant public bodies, to have regard to island communities in exercising their functions.
 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 marine licensing scheme.

Scotland's islands

A map highlighting the local authorities in Scotland which are based on islands or have islands within their geography. This includes Shetland, Orkney, Comhairle nan Eilean Siar, Highland, Argyll & Bute and North Ayrshire Councils.



Source: Scottish Parliament Information Centre (SPICe 2017)

Purpose of the Bill

13. The purpose of the Bill is to create a sustained focus on islands by the Scottish Government and to improve outcomes for island communities. It was acknowledged by the Committee that this Bill is enabling and provides for future action by the Scottish Government. However, it noted that due to the Bill's enabling nature it would be necessary for the Scottish Government to manage the expectations of islanders who may expect more immediate, tangible outcomes to be delivered. As was noted by Dr Audrey Sutton from North Ayrshire Council—

” ...the devil will be in the detail, and the islanders would very much have liked to explore more of the detail than is available to us all at this stage.

Source: Rural Economy and Connectivity Committee 20 September 2017, Dr Audrey Sutton (North Ayrshire Council), contrib. 9³

14. The Committee questioned whether the Bill as drafted was too strategic in nature and whether it should include some additional high-level objectives to provide clarity and assurance to islanders. It asked, for example, whether certain overarching objectives such as population retention, achieving a mixed population demographic or economic development should be included on the face of the Bill to provide a greater focus.

15. The Highlands and Islands Transport Partnership (HITRANS) said in written evidence that—

” There would be value in developing a Mission Statement or set of high level objectives that are identified in the Islands (Scotland) Act that sit above the National Islands Plan and help shape it. Key challenges include sustainable economic development, sustainable population and connectivity. ⁴

16. However, when the question was raised at its external Committee meeting in Orkney, Mark Boden of Shetland Islands Council disagreed with the proposal for an additional overarching objective being included in the Bill. He said—

” I understand why people, particularly those who are not lawyers, might have the aspiration for something rather more specific. However, “improving outcomes” is included as an objective, as Steven Heddle said; that is a good phrase. It would be very difficult to become more specific without leaving things out

Source: Rural Economy and Connectivity Committee 02 October 2017, Mark Boden, contrib. 53⁵

Committee's external meeting in October 2017 at Orkney Theatre, Kirkwall.



17. The Scottish Government Bill Team argued that things change over time and that there would be a risk in including a specific objective in the Bill that is relevant now when it might not be relevant in 10 or 15 years' time. Officials stated that rather than prioritise one issue over others, the National Islands Plan needs to cover the issues across the board.
18. When asked about including a high level objective in relation to increasing population and economic development the Minister acknowledged its importance and said that he would consider it. However, he cautioned that—

” You and I understand that all those things would have to be included in the islands plan in some shape or form because otherwise the document would not be meaningful, but I would be wary of putting that in the Bill. I am not saying that my mind is closed on it entirely—I am willing to hear the committee's view. However, I would not want to be so prescriptive as to tie future Governments into those issues because that might be counterproductive.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 7⁶

19. The Committee heard from islanders and other stakeholders that they would like the Bill to contain objectives to set the overall ambition for the Bill. A wide variety of objectives were suggested, but there was no consensus about what these should be. Notwithstanding this the Committee supports the general aspiration and agrees that one or two high level objectives be put on the face of the Bill to give it greater purpose and focus. It welcomes the Scottish Government's willingness to consider this proposal.
20. While it is for the Scottish Government to reflect on any drafting changes, the Committee would suggest that setting out in clear and easily understood terms how the Bill aims to deliver equity and sustainability for islands and island communities should be an objective.

Local empowerment and devolution of powers

21. Community Land Scotland argued that in order to empower island communities a key question should be asked when any new policy or law is being considered or reviewed - would the devolution of more power to the islands councils or councils with islands would be potentially advantageous to the governance and sustainability of those areas?

22. The theme of increased devolution was apparent throughout many of the Committee's visits and meetings with island communities. In particular, in Mull where some members of the community hoped that the Bill would lead to further devolution to councils and also down as far as community councils. Also in Comhairle nan Eilean Siar where it was felt that some policy areas, like fishing, would be better run on a local level than a national level (the issue of capacity building for local communities is dealt with later in the report).

Community engagement meeting in Craignure Village Hall, Mull in August 2017.



23. Community Land Scotland also argued that the Bill should provide Scottish Ministers with the power to enact secondary legislation to devolve specific functions or responsibilities to Councils as appropriate, and without the need for specific amendments to primary legislation. It argued that this would facilitate an ongoing ability to enhance islands' powers, as necessary and appropriate.
24. The Committee is aware that the argument for increased devolution has been made consistently by the island local authorities and that this principle was one of the foundations of the 'Our Islands Our Future' campaign which was championed by Shetland and Orkney Islands Councils as well as Comhairle nan Eilean Siar.
25. The 'Our Island Our Future' campaign highlighted 'The Report of the Committee of Enquiry and Functions and Powers of the Island Councils of Scotland' chaired by Sir David Montgomery (the Montgomery Committee) which was submitted to the UK Parliament by the Secretary of State for Scotland in April 1984. In its written submission Orkney Islands Council stated—

” In 1984, the Montgomery Committee clearly considered the Islands Councils unique and deserving of special status. The key principles established by the Montgomery Committee were:

(a) Opportunities should be taken whenever possible to consolidate, develop and extend the powers of Island Councils in a continuing process of development in the local government of the islands; and

(b) Acts of Parliament should include a position to vary the application to the Islands areas.

The Council considers that the Bill has taken a very cautious step in the right direction in acknowledging Montgomery’s principles. There is much still to be done.⁷

26. The Minister for Transport and the Islands said that—

” Our aim is to create the right statutory environment to underpin the economic and social wellbeing of our islands, to enable sustainable economic growth, and to empower island communities.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], The Minister for Transport and the Islands (Humza Yousaf), contrib. 3⁸

27. The Committee supports the empowerment of island communities and the devolution of appropriate powers by the Scottish Government. It invites the Scottish Government to consider the feasibility of including an amendment to the Bill which would give Scottish Ministers the power to enact secondary legislation to devolve specific functions to an appropriate level where a specific case can be demonstrated.

Definition of island and island community

28. Part 1 of the Bill sets out the definitions that are used regarding islands and island communities. The Law Society raised a number of issues with these definitions which are set out below.

Meaning of 'island' and 'inhabited island'

29. The Law Society said the definitions of 'island' and 'inhabited island' require further clarification. It questioned whether an area of land would fall within the category of 'island' if it is only surrounded on all sides by the sea at high tide, but a natural causeway connects it to the mainland at low tide and argued that the definition may benefit from clarification. It also recommended that the terms used between Section 1(1) and Section 17(b) with reference to high/low water marks be standardised in the interests of consistency.
30. The Law Society also raised issues with the term 'permanently inhabited'. It stated that—
- ” The phrase “permanently inhabited” is not recognised in Scots law and is likely to prove confusing and impractical, or possibly even unworkable.⁹
31. The Law Society argued that the current drafting would suggest that someone must be inhabiting an island at all times to meet the requirements of the definition. It noted that this would not be a problem on a larger island as it would be unlikely for everyone to leave at the same time. However, it could be problematic on smaller islands with only a handful of residents.
32. It also noted that this definition failed to take account of seasonal occupation. The Law Society argued that those inhabitants who only lived or worked on certain islands in summer would not benefit from consideration or rights to consultation in the same way as those on islands with year-round residents. The Law Society suggested that a solution to this problem would be to refer to the "existing and widely recognised concept of 'ordinary residence'"¹⁰.

Meaning of island community

33. The Law Society also raised concerns about the definition of 'island community'. It noted the Bill states that a community can be formed from 'two or more persons'. It argued that it would be difficult to see why two people living on an island should be given rights as 'island community' but that a single person on an adjacent island would not merit those same rights. It also questioned what would happen if one person were to leave and time elapsed before another resident arrived. It felt that this could create practical problems if a particular island were to fluctuate between one where an 'island community' could be established and one where it could not.
34. The Law Society also raised a further question in regard to when a person does not fulfil the requirement of permanent habitation or residence but has a clear interest through land ownership. It gave the example that a person could own island property and live there for only part of the year – for example operating wildlife tours during the summer months. It argued that they might be regarded as a member of

the community (in a general sense) by those living on the island on a year-round basis but even while owning land and contributing to the life of the community could not be considered as part of the 'island community' in terms of the Bill.

35. With this in mind the Law Society argued that there appears to be a disconnect between the interest which is generally recognised as flowing from ownership of property and the interest recognised in the Bill. It stated that there could potentially even be human rights implications under Protocol 1 of the European Convention on Human rights if this leads to a situation where a person who owns an island or part of an island, but is not permanently resident there, cannot form part of an 'island community' and may have lesser or no rights as a result.
36. The Law Society also raised the example of the island of St Kilda where the National Trust for Scotland, Scottish Natural Heritage (SNH) and the Ministry of Defence work in partnership to facilitate research and conservation. It argued that the three bodies do not meet the test set out for establishing an 'island community' under section 2 and while under section 4(1)(a)(ii) it appears that there might be a duty to consult them in drawing up the islands plan, it cautioned that the lack of relevant island community would seem to negate the duty to have regard to the particular characteristics of St Kilda in preparing the National Islands Plan.
37. The Royal Society for the Protection of Birds (RSPB) also noted that uninhabited islands, such as the St Kilda group, can have a deep cultural significance, particularly if they have been previously inhabited, and can be important eco-tourism destinations. They can also be important refuges for sensitive and threatened species and larger uninhabited islands are often important grazing areas for land managers.
38. During the Convener's Group meeting with the First Minister on 25 October 2017 the Convener asked whether the Islands (Scotland) Bill should also cover uninhabited islands. The First Minister responded that—

” The repopulation of our island communities should be a core part of the policy. As far as the position on uninhabited islands is concerned, I will certainly take that away and see whether there is more that we can do in the bill to give greater recognition to that as a policy priority.¹¹

39. When asked about uninhabited islands in relation to the Bill the Minister said—

” I would not be close minded about how to cover uninhabited islands such as St Kilda. I do not think that many more uninhabited islands would necessarily be within the scope of the National Islands Plan that would not be covered by other pieces of legislation, such as those on heritage and forestry, but I am happy to look at the issue.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 26¹²

40. The Committee calls on the Scottish Government to review the definitions of "island", "inhabited island" and "island community" as well as "high and low tide" used in the Bill in light of the comments made by the Law Society of Scotland.

41. The Committee recommends that the Scottish Government reflect on the importance that uninhabited islands can have in terms of cultural, environmental and economic significance. It seeks reassurance that these islands will not be left out of any National Islands Plan activity.

National Islands Plan

42. 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'. This plan is expected to set out the main objectives and strategy of the Scottish Government in relation to improving outcomes for island communities. One of the intended aims of this plan would be to link together the various policies, strategies and services which support outcomes for island communities. The Policy Memorandum says that the plan will "provide an agreed strategic direction, not only for the Scottish Government, but for all public authorities that have an interest in providing outcomes for island communities" ¹³.
43. Rather than set out a proposed plan within legislation, 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. Although the Policy Memorandum notes that the plan would span multiple policy areas, these policy areas are not explicitly described in the Bill or accompanying documents.
44. It is expected that the plan would provide a structure for reporting on the work of the Scottish Government and its agencies in sustaining and supporting island communities. A National Islands Plan Progress Report would be laid before the Scottish Parliament and published annually following the publication of a new or revised plan.
45. Overall, stakeholders strongly welcomed the creation of a National Islands Plan as a means of focusing the Scottish Government's attention on the islands, holding it to account and improving the outcomes for islanders. This was apparent in formal oral evidence as well as during the Committee's visits to Mull, Western Isles and Orkney as well as its various video conferences with islanders.
46. In terms of a model for the delivery of the plan, the Committee heard positive comments regarding the structure of the Gaelic Language Plan; how it cascaded to other bodies; and the scalability it provided. Orkney Islands Council's submission said that—

 ... the structure of Gaelic Language Plan would be a good model to follow when developing the National Islands Plan, thus ensuring that policy aspirations are achieved in a proportionate manner and that communities are truly empowered.
47. With the acknowledgement that the principle of a plan was welcome, the Committee focused its attention on the level of detail the plan should contain, the priority policy areas for the islands which should be included and the process for consultation, timing and review of the plan.

Priority areas

48. When visiting community representatives and individuals on the islands it quickly became apparent to the Committee that there were various priority areas which

would be fundamental to the successful implementation of an effective National Islands Plan.

49. The importance of transport in order to access services was emphasised to the Committee during its various visits and external meeting. It heard about people living on Orkney's outlying islands who were prevented from working full time by the timing of the internal ferries. It listened to views from across island areas on how some teenagers need to spend weeks away from their families in order to attend secondary school. It considered the ways in which health boards could better arrange their services to stop sick and disabled people being forced to pay to spend nights away from home in order to travel to the mainland to attend early hospital appointments.
50. During its visits the Committee was also made aware of the young adults who want to have families of their own but are unable to access affordable housing. It heard about some companies that are unable to expand as they cannot secure skilled staff and the people who are forced to leave the islands to access certain types of employment or training. It listened to the concerns of local businesses about the difficulties in moving freight on and off the islands and the unreasonably high cost of deliveries. It also heard about the universal difficulties islanders experience in accessing internet and mobile services and the multiple disadvantages this causes throughout many aspects of their lives.

Meeting with young people in Kirkwall Town Hall during the Committee's visit to Orkney in October 2017.



51. These are a few key examples of the varied experiences that islanders shared with the Committee when they visited the islands in order to demonstrate the important challenges that island life can bring. With this in mind, when the Committee comes

to scrutinise the National Islands Plan it will expect the Scottish Government to have set out its proposed strategic direction in the following priority areas which have been identified by islanders and their representatives:

- Transport - cost, frequency, capacity
- Digital connectivity - mobile coverage and broadband internet
- Access to education
- Access to health and social care
- Housing
- Availability of workforce and employment opportunities
- Freight and deliveries

The Scottish Government should note that this list is non-exhaustive.

52. The Committee expects the National Islands Plan to set out both a clear strategic direction and practical approaches to delivery. This should apply to the priority policy areas highlighted above and in any other areas highlighted by island communities and other stakeholders following comprehensive consultation. When the Committee scrutinises the draft Plan laid before the Parliament, it will wish to be assured that the priority areas featured in the Plan reflect the actual priorities of islanders.

Strategy and focus

53. Evidence received on Committee visits and in oral evidence also made it clear that a one size fits all approach would not work in relation to the proposed National Islands Plan. The Federation of Small Businesses argued that local needs and aspirations must be met with local solutions and the plan should therefore be viewed as an enabler and not be prescriptive. It said—

” Scotland's 93 inhabited islands vary enormously, not least in their degree of remoteness from mainland populations, sizes, population densities, demographics, histories, cultures and, very importantly, the nature, size and diversity of their economies. ¹⁴

54. Organisations such as Scottish Natural Heritage and Highlands and Islands Enterprise noted that the plan should be developed in consultation with key public sector partners, and draw upon on existing community planning documents. This sentiment was supported by the Law Society and RSPB who stated that the plan needs to be aligned with other plans such as the National Planning and Performance Frameworks, Scotland's Marine Plan and the Land Use and

i More information on the views obtained on the Committee visits and external meetings is available in the links contained in the Annexes to the report and the Committee website.

Biodiversity Strategies, Local Development Plans and Regional Marine Plans. The Law Society argued that the interrelationship between the Islands Plan and these other plans should be made clearer in the Bill.

55. The Minister acknowledged that the National Islands Plan would have to work alongside other local and national plans.

56. The Committee acknowledges that the Bill is one part of a range of existing plans and frameworks which impact on Scotland's islands. It calls on the Scottish Government to provide additional clarity about the existing plans and frameworks that the Bill will work alongside and recommends this detail should be given prominence in the National Islands Plan.

Local level plans

57. Argyll and Bute Council stated that there was universal agreement in their area that the creation of a National Islands Plan should lead to the creation of a local Argyll and Bute Islands Plan as a realistic method of helping island communities overcome the challenges they face. It argued that each local authority should be resourced to develop and deliver its own plan, and that further devolution to create plans for individual islands, linking to existing processes, community and local action plans for Community Planning Partnerships should be in place. It also suggested that each authority should identify a person responsible for delivery of the local islands plan(s).
58. The Scottish Islands Federation supported this principle stating that the plan should include a strong commitment to subsidiarity, recognising the potential merits of devolving local decision making beyond local authorities to island communities themselves.
59. North Ayrshire Council also highlighted the importance of islanders being involved in the process and emphasised that the National Islands Plan should interact with single outcome agreements and local improvement plans. It said—

” ...locality planning is particularly important to us in North Ayrshire. We have co-produced the plan with our communities as part of our scheme of decentralisation, and we have reached a powerful place in terms of our sense of locality planning. We need to make sure that all the elements respect each other.

Source: Rural Economy and Connectivity Committee 20 September 2017, Dr Sutton, contrib. 11¹⁵

60. The Minister for Transport and the Islands said that he accepted that one size does not fit all and that there would be nothing to stop local authorities developing their own individual island plans with the National Islands Plan providing overall direction. He said—

” ... it might be more sensible to have an overarching National Islands Plan and for local authorities perhaps to delve into the issues that are important to their island communities.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 24¹⁶

61. The Committee believes that, due to the individual nature of each island and island group, an overarching and strategic National Islands Plan is desirable. However, the success of the Bill will be determined by the practical difference that it makes to individual communities. The Committee believes that this can best be achieved through local knowledge and decision making structures. As such, it recommends that the Scottish Government amend the Bill to make the creation of local authority level island plans a statutory requirement.
62. The Committee also encourages local authorities and other relevant bodies to consider designating an official to be responsible for the implementation of the local authority level plan.

Community capacity and resources

63. One of the main issues highlighted to the Committee by islanders during its programme of visits was the potential for increased power and devolution to the islands. The Committee acknowledges the importance of community empowerment in remote and isolated areas. However, if there were to be devolution of responsibilities in certain circumstances, it would be necessary to ensure that island communities had the skills and resources to effectively manage that devolution. The significant variations in community demographics, needs and capacity across the islands would need to be taken into account. Highlighting this issue, Argyll and Bute Council said—

” Given the range and size of our islands—some have very few people on them, some are more isolated than others and some have relationships—it is essential that there are some safeguards to help to empower communities and give them the experience and skills to take full advantage of the bill.

Source: Rural Economy and Connectivity Committee 20 September 2017, Fergus Murray, contrib. 43¹⁷

64. The Committee expects the National Islands Plan to set out how the Scottish Government plans to provide a framework of support for communities to build capacity where required. In particular, the links to the Community Empowerment Act 2015, so that all islands will be able to take full advantage of the opportunities which the Bill and the resulting National Islands Plan offers.

Community benefit clause

65. Orkney Island Council highlighted in its submission that the Orkney and Zetland County Council Acts allows these councils to apply reserve funds “for any other purpose which in the opinion of the Council is solely in the interests of the county or its inhabitants”¹⁸. The Council argued that both Orkney and Shetland have demonstrated that this power can be used responsibly to best serve local interests and capitalise on the use of the islands' own resources. With this in mind it argued that there should be provision made in the Bill specifically to allow the creation of a community benefit fund. For example, there may be development opportunities which would require major infrastructure and other investment from councils and that those councils, in appropriate circumstances, should be able to apply any

surplus income for the benefit of their communities without impacting on Grant Aided Expenditure (GAE).

66. At its external Committee meeting, Councillor Heddle from Orkney said in relation to the inclusion of a community benefit clause in the Bill that it—

” ... is one of our key asks, and one of the disappointments is that it is not dialled into the Islands (Scotland) Bill as it stands.

Source: Rural Economy and Connectivity Committee 02 October 2017, Councillor Steven Heddle (Orkney Islands Council), contrib. 5¹⁹

Orkney and Shetland Islands Council at the Committee's external meeting in October 2017 at Orkney Theatre, Kirkwall.



67. The Committee understands that Orkney Islands Council advocated for the inclusion of a community benefit clause in the Bill. It calls on the Scottish Government to explain why it decided not to include such a provision in the Bill..

Measurement and outcomes

68. While noting the importance of a shift in attitude and culture to effect change the Committee also heard that it is essential that the National Islands Plan contains clear outcomes, SMART targets and specific indicators and criteria by which to measure progress. The Law Society noted that the concept of 'improvement' as currently drafted in the Bill is very subjective and lacks certainty. It argued that for a law to be meaningful it must be enforceable.
69. HITRANS stated that the outcomes set out in the National Islands Plan would be critically important to shaping action that the Scottish Government and accountable public bodies take to support island communities. It argued that outcomes should be measurable so that the impact of the National Islands Plan can be understood. It suggested that it would also be useful to capture details of the measures taken by accountable bodies to support delivery of the outcomes.

70. Highlands and Islands Enterprise agreed and said that the plan should focus on outcomes rather than activities and should essentially be a sub-set of the outcomes in the National Performance Framework. It argued that the plan should be clear in terms of what future success would look like. It also emphasised the importance of tracking performance indicators such as population, demographic balance, connectivity, economic diversification, education provision and transport services.
71. The Scottish Islands Federation stated that a programme to identify key indicators for sustainable islands is required to gather baseline data in order to monitor change over time for each island. It cautioned that island statistics are currently patchy and inconsistent.
72. In relation to tracking of outcomes Comhairle nan Eilean Siar suggested that a time limit for submission of the annual report, which will provide information on how outcomes have been improved and how 'island-proofing' has been implemented, should be included in the Bill.

73. The Committee recommends that the National Islands Plan be developed with clear outcomes, targets and measurable indicators by which to establish performance. In order to assist the regular tracking of progress on outcomes the Committee suggests that a time limit for submission of the Annual Report, which tracks progress on outcomes and the implementation of island impact assessments, should be included in the Bill.

Consultation

74. Section 3 of the Bill provides that Scottish Ministers require to consult such persons as they consider 'represent the interests of islands communities' in producing the plan.
75. Francesco Sindico, the Co-Director of the Strathclyde Centre for Environmental Law and Governance (SCELG), noted that determining who has an interest would be at the discretion of the Scottish Government. He questioned whether those who believe they should have been consulted, but weren't, would have the ability to raise an objection to the plan or the way the consultation process was carried out. He emphasised the need to base the National Islands Plan on the widest possible consultation with island communities which would be paramount to the success of the Bill.

76. The Committee notes that the Bill allows the Scottish Government to have discretion on who should be consulted in the preparation of the National Islands Plan. It recommends that this consultation should be undertaken as widely as possible and that the National Islands Plan contain a list of who was consulted in its preparation. There should also be a method by which any body or group which felt that it should have been consulted, but wasn't, could address its concerns to the Scottish Government.

Consulting local representative groups and individuals

77. The Committee heard during its visits and external meeting that some people on islands can feel as distant from their local authority as they would from Edinburgh or London and that in some places it may be difficult to determine which groups to consult - individual islanders, councillors, community councils or the local authorities directly.
78. Raasay Community Council welcomed the duty to publish a National Islands Plan. However, it argued that to be effective, people living and working on islands must be given the opportunity to contribute and their views must be respected and included throughout the plan preparation and implementation phases. It noted that this is particularly important in relation to mainland local authorities which have islands.
79. LGIU Scotland went further, suggesting that creating the plan at a national level could lead to a lack of ownership by island communities and risks making the plan something that is being 'done to them'. It said—

” The Minister could end up defending the consequences of the plan to stakeholders who have more knowledge, interest and political capital invested in the outcomes.

80. The Minister for Transport and the Islands acknowledged these concerns but noted that if the Bill were too prescriptive and required that all islanders were consulted it could cause difficulties if individuals were missed out and potentially slow down the legislative or policy creation process. He said—

” It is not just about consulting local authorities and having a good relationship with them; it has to go much deeper than that. We can reflect on strengthening the language in the bill in a way that is non-prescriptive, and which gives the committee confidence that we are talking about island communities, as opposed to just local authorities...

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 38²⁰

81. The Committee welcomes the Scottish Government's willingness to consider strengthening the language in the Bill, in a non-prescriptive way, to provide reassurance that island communities will be included in the consultation to the National Islands Plan. It looks forward to being advised of the outcome of this consideration.

82. Argyll and Bute Council stated that there was universal emphasis from its residents on the need for young people to be proactively targeted and included in the process of developing the National Islands Plan so that their views can inform proposals to ensure the long term sustainability of island communities.

83. The Committee believes that a focus on young people and measures which would allow them to lead fulfilling lives and remain on the islands is an essential part of any successful islands plan. It recommends that young people should be a particular focus of any National Islands Plan consultation.

Consulting local authorities

84. Orkney Islands Council stated that it is of fundamental importance that local authorities have direct input into the drafting of the National Islands Plan at an early stage. It argued that whilst the Islands Strategic Group can facilitate this process, consulting local authorities should be explicitly referred to in the Bill.
85. Comhairle nan Eilean Siar and Highland Councils agreed, suggesting that a specific provision be included in the Bill to ensure that Islands Councils will be consulted, recognising their role both as a tier of government and the elected representatives of their communities. This view was also echoed by COSLA who argued that all relevant local authorities and community planning partners should be made statutory consultees in the process of drafting the National Islands Plan.
86. When asked about making the island local authorities and local authorities with islands statutory consultees in the Bill the Minister for Transport and the Islands said—

” I would probably prefer to keep the obligation to consult in the guidance, as it is now (...) There is no doubt that local authorities will be part of that, as will others. If we start being prescriptive in the bill about who should be consulted, we will inevitably end up being non-exhaustive and the chances of excluding someone could be fairly high. I do not want to be too prescriptive.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 36²¹

87. The Committee understands the Scottish Government's desire not to be overly prescriptive in the statutory consultees to the National Islands Plan. However, it does not believe that including the six local authorities with island interests would be in danger of over prescription as they are clearly essential to the process. It recommends that the Scottish Government amend the Bill to include these authorities as statutory consultees.

Timing and review

One year deadline for creation of the plan

88. The Bill requires the Scottish Government to produce the first National Islands Plan one year after the Bill comes into force. The majority of stakeholders felt that this was an ambitious but achievable goal.
89. HITRANS noted that the one year target is achievable but will require early action particularly on establishing meaningful engagement with communities and stakeholders. It noted that it will be important that this engagement reaches the wider community as existing forums including community councils are not guaranteed to include representation from all demographics e.g. young people. This point was also raised by islanders during the Committee's visits.

90. The Committee recognises that the one year deadline for the creation of the first National Islands Plan is ambitious if it is to include full consultation with all parties. The Committee seeks reassurance from the Scottish Government that the deadline will not inhibit a comprehensive and meaningful consultation with the wider community.

Review of the plan

91. The Bill states that the Scottish Ministers must review the National Islands Plan every 5 years. They will also have the power to review the plan from time to time. It also states that 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
92. The time frame for review was generally felt by stakeholders to be sensible and achievable. Comhairle nan Eilean Siar agreed with this. However, it suggested that the Bill be amended so that the first Plan cover the remainder of the term of this Parliament and the next. Future plans could then be for a five year period. It argued that this would allow the Plan to contain longer term targets and be more meaningful.
93. Francesco Sindico Co-Director of the Strathclyde Centre for Environmental Law and Governance (SCELG) questioned whether any other interested parties could recommend an early review of the plan if there were concerns that it was not meeting the needs of island communities. He emphasised the importance for stakeholders to have an opportunity to be part of the monitoring and review.
94. Highland Council commented that it supports a refresh of the plan every five years. However, it argued that in terms of planning five years can pass extremely quickly and the plan should require a progress review within that time. It said—
- ” Things can happen very quickly in economic developments and around decision making, and it will be important to review the plan during the five years so that it is not a done-and-dusted document that is looked at only five years down the line. Some review of progress during the course of the plan will be important...

Source: Rural Economy and Connectivity Committee 20 September 2017, Stuart Black, contrib. 180²²

95. The Committee welcomes the five year refresh period for the National Islands Plan and the requirement to submit an annual report on progress before the Parliament. The Committee recommends that the annual report is not simply a statement of progress. It must contain detail on any mitigating action the Scottish Government will take in the eventuality that a lack in progress is identified in any aspect of the plan. The Committee recommends that the Bill be amended to reflect this requirement.
96. The Committee believes that it is essential to allow islanders and their representatives an opportunity to voice their views on progress. The Committee recognises the role that it can play in this process and will commit itself to

undertake regular scrutiny of the National Islands Plan and its annual reports once laid in Parliament and provide stakeholders with appropriate opportunities to present their views.

Island impact assessments ('island-proofing')

97. Part 3 of the Bill makes provision for 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, the 66 public authorities included in the schedule, would need to prepare an impact assessment when they introduce a new or revised policy strategy or service that they consider to have a significant impact on island communities. This has been known informally throughout the Committee's scrutiny as 'island-proofing'.
98. The Policy Memorandum states—
- ” 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.
99. Overall, stakeholders and the Committee were positive about the principle of 'island-proofing'. However, although it was acknowledged that guidance would be produced following further consultation, concerns were expressed in evidence and during the Committee's island visits that island impact assessments could run the risk of being just a 'tick-box' exercise. Points were raised regarding:
- the process and consultation;
 - the strength of the evidence base for any decision making;
 - the lack of any appeals or objections process;
 - the lack of financial resource being provided to support any mitigating activities if an impact assessment reports a negative outcome (to be considered in this report in the section on finance); and
 - the lack of powers to apply 'island-proofing' retrospectively.
100. The Committee notes that the terms 'island impact assessment' and 'island-proofing' have often been used interchangeably throughout the Bill supporting documentation and the scrutiny process. The Committee gave further reflection to the distinction between the two terms and it would caution the Scottish Government that they may give rise to different levels of expectation. For

example, the term 'island-proofing' may give stakeholders the expectation that action will be taken as a matter of course on each occasion when a new policy or service is introduced. Whereas, 'island impact assessment' simply suggests that issues will be assessed and any identified consequences considered. It calls on the Scottish Government to provide clarity and consistency on the use of terminology and to consider addressing this issue as part of its consultation on the impact assessment process.

Guidance, process and consultation

101. Further consultation will take place prior to the publication of guidelines on 'island-proofing'. Once this part of the Act comes into force, public bodies covered by the legislation will report annually on the impact of 'island-proofing' on their functions and activities. Scottish Ministers would also report annually, as part of reporting on progress against the National Islands Plan.
102. COSLA and Highland Council believe that the provision should be strengthened so that public authorities would have to have 'due regard' and not just 'regard' to island communities. It was argued that this is relevant given that the current Scottish Government consultation on the socio-economic duty focuses on 'due regard', and it would put the duty to 'island-proof' on a par with this forthcoming duty.

103. The Committee invites the Scottish Government to consider bringing forward an amendment to the Bill which would have the effect of requiring a relevant authority to have 'due regard' and not just 'regard' to island communities in carrying out its functions.

Creation of guidance

104. Comhairle nan Eilean Siar called for clarity on how the Scottish Government plans to 'island-proof' its own island impact assessment guidance and Highland Council was critical of the lack of draft statutory Guidance to accompany the Bill overall. Highland Council said—
 - ” The Highland Council reserves final judgement on the legislation as drafted because of the absence of draft Statutory Guidance to accompany the Bill. It is this that will set out how the legislation is to be applied and how public authorities, including how the Scottish Government, are to execute the new duties to have regard to island communities and undertake impact assessments.²³

105. The Committee recognises the need to fully consult on draft statutory guidance on how to conduct an islands impact assessment. However, it is disappointed not to be able to scrutinise this guidance alongside the Bill. The Committee therefore calls on the Scottish Government, as an example of good practice, to set out the process that it undertook to 'island-proof' the guidance when it publishes the document.

Who should be consulted in the creation of the guidance?

106. Currently the Bill states that 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.
107. Local authority representatives argued strongly that the six relevant local authorities should be identified explicitly in the Bill as consultees.
108. When asked whether he would consider having more detail regarding statutory consultees on the face of the Bill the Minister for Transport and the Islands said that being prescriptive would increase the chances of excluding someone—

” Those six authorities are obvious consultees—I do not have the exact wording to hand, but the guidance says clearly that we should consult those who have an interest in island communities. There is no doubt that local authorities will be part of that, as will others.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 36²¹

109. As noted above in relation to the National Islands Plan, the Committee does not believe that including the six local authorities with island interests would be in danger of over prescription. The Committee therefore recommends that the Scottish Government amends the Bill to include these authorities as statutory consultees.

Content of the guidance

110. The Committee explored the level of detail which should be contained in the impact assessment guidance and whether it should be detailed or left more flexible. North Ayrshire Council said—

” Subsidiarity is the key principle, and we should empower islands and communities, but clearly there have to be certain minimum standards to ensure that all public agencies have regard to the needs of islands. I would address the issue using those principles.

Source: Rural Economy and Connectivity Committee 20 September 2017, Andrew Fraser, contrib. 87²⁴

111. The Committee noted that there is currently no formal requirement for public bodies to consult when conducting an island impact assessment and questioned whether that should be included in the Bill.
112. The Minister for Transport and the Islands assured the Committee that the need to include communities in the process of 'island-proofing' will be a necessary part of the guidance. However, he noted that he was not closed to the suggestion that the Bill should go further. He said—

” It is essential that communities are not engaged after a decision has been made, which is too late. Rather, they must be genuinely engaged as early as possible in the process. That is what the Government wants, but we also want to avoid additional unnecessary bureaucratic procedures that would hamper the legislative process..

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 46²⁵

113. The Committee heard that it would be helpful for 'islands- proofing' to follow a similar model to equalities impact assessments. North Ayrshire Council said—

” I suppose that the model is equalities legislation, which forces people to have regard to the needs of people with protected characteristics. The bill should do the same for islands. That has worked for equalities, so I have no reason to believe that it will not work for islands.

Source: Rural Economy and Connectivity Committee 20 September 2017, Andrew Fraser, contrib. 96²⁶

114. However, Highland Council cautioned that the guidance should make clear that to ensure island issues are fully taken into consideration, screening must happen at the beginning and throughout the development of a policy or legislative development, and not just at the end. This was echoed by Highland and Islands Enterprise which said that island impact assessments should not unreasonably delay implementation or impact on the delivery of a service. Therefore, assessments should be undertaken as early as practicably possible.

115. Shetland Islands Council argued that although an impact assessment is an essential procedural aspect of the duty an important aspect of 'islands-proofing' is about mindset and cultural change.

116. The Committee recommends that the Scottish Government reflect on the positive lessons which may be learned from the equalities impact assessment process and apply that to the islands impact assessments.

117. The Committee agrees that the process of 'island-proofing' must involve a change in mindset and culture shift if it is to be more than simply a tick-box exercise. It recommends that the guidance include suggestions for how public bodies and the Scottish Government itself may achieve this culture change.

118. The Committee believes that the Scottish Government must strike the right balance in the impact assessment guidance. The process must be agile and fit for purpose and not become overly burdensome to the creation and implementation of policy or legislation. However, at the same time the guidance must make it clear that comprehensive and meaningful consultation with island communities and stakeholders is essential if islanders are to have confidence that the impact assessments will be effective.

119. The Committee recommends that the guidance must require those conducting an impact assessment to make it clear the ways in which the views of local people and their representatives will be incorporated into the decision making process.

120. The Scottish Islands Federation and Shetland Islands Council noted that island impact assessments can do more than simply focus on the negatives. They argued that they should also be used to take account of possible positive impacts to enable and drive opportunity for the islands and deliver positive benefits not just for island communities, but also Government and other public authorities.

121. The Committee believes that impact assessments can have the potential to also highlight any positive impact on island areas which may arise from a new or revised piece of policy or legislation. It calls on the Scottish Government to make this clear in the guidance.

Results of an impact assessment

122. There was a level of concern from some members of the Committee that the Scottish Government and public bodies who are undertaking the impact assessments currently would be able to make a decision to take no action following the process - even if this resulted in a negative consequence. This concern was also expressed by islanders during the Committee's island visits and video conferences.

123. The Committee recommends that the Scottish Government makes it clear in guidance that, any organisation undertaking an island impact assessment that anticipates a negative consequence -and decides not to fully mitigate it- must fully explain and justify its decision and its related consequences. This document should be publicly available.

Private sector

124. The Committee is aware that, in addition to public sector service provision, some private sector businesses have a significant impact on the transport, connectivity and infrastructure of island economies. This was a particular issue that was brought to the Committee's attention by islanders when it visited Mull, Orkney and the Western Isles.

125. Highland and Island Enterprise argued that consideration should be given to extending the duty to undertake island impact assessments to private sector bodies whose activities have a significant impact on island and remote rural economies. This was echoed by the Scottish Islands Federation which argued that proofing and impact assessments should ideally be extended to all bodies with island functions and services, for example, utilities companies, communications providers, fuel, postage, transport and regulatory bodies. It also noted that charities, social enterprise and development bodies may also be funded to provide a Scotland-wide service but in reality islands are often excluded due to the additional costs.

126. HITRANS argued that there might be value in requiring services that are procured by bodies accountable under the National Islands Plan to be subject to some sort of sustainable islands pledge or the National Islands Plan outcomes. It suggested that this could be similar to actions on the national living wage pledge by Government contractors. For example, David MacBrayne Group Limited as owner of Calmac Ferries Limited and Argyll Ferries Limited are listed as accountable bodies while Serco Northlink Ferries who deliver the Northern Isles Ferry Service contract are not accountable under the Bill beyond the provision made for Transport Scotland as the contracting agency.
127. The Minister for Transport and the Islands gave the assurance that if a contract is being awarded by the Government it would have to be 'island-proofed'. He also accepted that private sector businesses can have a big impact on connectivity in the islands but said that he had concerns about the competence of including such a measure in the Bill. Scottish Government officials said —

” We would have some concerns about legislative competence, particularly in respect of utility companies, company law and similar issues, which are reserved matters. It might be difficult to impose 'island-proofing' on such companies directly, rather than through contracts with public bodies. We would have to look at the matter more closely, but it is likely that there would be competence issues.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Ian Turner (Scottish Government), contrib. 64²⁷

128. The Committee accepts that the Scottish Government will not be able to require public or private companies to 'island-proof' their activities. However, it calls on the Scottish Government to explain what measures could be taken to ensure that significant contracts or procurement activity, undertaken using public money, are subject to an islands impact assessment where appropriate.

Island local authorities and local authorities which have islands

129. Throughout its evidence gathering the Committee could see a clear distinction between the island local authorities (Orkney, Shetland and Comhairle nan Eilean Siar) and mainland local authorities, which also contain islands, (Highland, North Ayrshire and Argyll and Bute).
130. It became apparent through the evidence taking process that island authorities, due to their very nature, will always have an islands focus in everything that they do. However, due to their geography mainland local authorities, that contain islands, may have to split their focus over a wider set of issues. Councillor Bell from Orkney said—

” ...100 per cent of the people for whom we provide services are islanders. In the case of Highland Council, the figure is something like 5 per cent.

Source: Rural Economy and Connectivity Committee 02 October 2017, Councillor Bell, contrib. 36²⁸

131. Argyll and Bute Council said—

- ” It could be argued that an authority that is solely made up of islands will already be automatically undertaking island-proofing in a way that an authority with a mixture of islands and mainland currently may not. It will also depend on how those authorities are organised...

132. North Ayrshire Council said—

- ” On the point about the local authorities, there is perhaps a sense that we are less experienced in the process of considering island-proofing and the political agenda around the islands, although that has always been central to some of our thinking. We potentially feel less experienced in considering the issues.

Source: Rural Economy and Connectivity Committee 20 September 2017, Dr Sutton, contrib. 15²⁹

133. The Committee recommends that the Scottish Government consider the differences that may be present between island local authorities and local authorities that contain islands. It should reflect on how these differences may impact on the process of island impact assessments and whether this should be addressed in the guidance.

134. The Committee further recommends that the Scottish Government develop a means to identify and share standards and good practice amongst those public bodies who will be required to conduct impact assessments.

Evidence base for decision making

135. The Bill sets out that there must be an impact assessment if, in the authority's opinion, a policy, service or strategy 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. The Committee considered the terms 'in the authority's opinion' and 'significant' and the practical effects that they may have in terms of implementation of the legislation.
136. Orkney Islands Council considered these terms too subjective. It argued that it is essential that the measure of significance be agreed by all interested parties and not just the authority or body proposing the actions to be 'island-proofed'. Comhairle nan Eilean Siar agreed and argued that "...in the authority's opinion" introduces a risk of there being no objective standard across Scotland's islands.
137. Shetland Island Council stated that the definitions of these terms would need to be clearly set out in the guidance. Comhairle nan Eilean Siar suggested that wording similar to that used in Section 1 of the Equality Act 2010 would go some way towards addressing the issue. This stated "an authority to which this Section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that it is

designed to reduce the inequalities of outcome which result from socio economic disadvantage”³⁰ .

138. Argyll and Bute Council suggested that what would constitute a 'significant' impact under the legislation could be measured on a statistical basis. For example, there could provision within the Bill that if the 'significant' effect reached a particular point on a scale (e.g. 50% of service recipients on an island would be negatively impacted), there could be a requirement to tailor services to avoid this. Other stakeholders felt that such a measure could be overly simplistic.
139. It is understood that it is likely that organisations will be expected to undertake an initial screening to determine whether there might be an impact and only undertake a full impact assessment if a negative differential impact appears. However, the Committee is aware of the close, interconnected nature of our island communities. It noted that a small change in one policy area may not be deemed to be 'significant'. However, when considered in a wider context, that small change may have a domino effect that can impact on the whole community. For example, one less house being built on an island may mean that there is no housing for a teacher, which could impact on the viability of a school.

140. The Committee considers that the terms 'significant impact' and 'in the authority's opinion' in relation to island impact assessments are too subjective and run the risk of being inconsistently applied across the islands. It recommends that the Scottish Government give further consideration to what exactly 'significant' means in terms of the requirement to impact assess and amend the Bill to provide suitable clarification. It also recommends that the Scottish Government reconsider the use of the term 'in the authority's opinion' to ensure there is a more objective standard used in decision making.
141. The Committee cautions the Scottish Government that policy impacts that may seem minor in isolation may have a significant cumulative impact on the islands. It recommends that, to avoid potential unintended consequences, the impact assessment guidance covers how public bodies are expected to be aware of the possible direct and indirect effect of any policy decisions.

Data, evidence and statistics

142. The Committee heard from stakeholders, in particular on its trip to Mull, that data and statistical information in relation to the islands can be patchy and fails to address the realities of island life. For example, the Scottish Index of Multiple Deprivation (SIMD) may fail to accurately capture deprivation in rural, remote and island communities. The Committee noted that the demographic profile may be very different from the urban communities which the SIMD is designed to identify.

143. The Committee believes that a robust evidence base will be essential to allow fair and comprehensive island impact assessments to be undertaken. It notes that some data sources do not accurately reflect island life. It looks to the Scottish Government to provide reassurance to the Committee that the Scottish

Government and the public bodies identified in the Bill will have the appropriate evidence upon which to base their decision making.

144. It recommends that the Scottish Government reflect on the evidence base that it expects public bodies to use to inform their impact assessments and include this in the guidance where appropriate. If it is found that a public body has an insubstantial evidence base upon which to draw the Committee recommends that the Scottish Government work with the public bodies concerned to help them address any gaps.

Reviews, appeals and enforcement

145. The Committee noted that there are no provisions contained within the Bill to allow for a review to take place regarding the conduct or outcome of an impact assessment. It also does not contain any provision to allow members of the public or other bodies to appeal any result in event of a dispute.
146. COSLA would welcome clarity as to whether the route for dispute resolution will be included in any guidance accompanying the Act once it is in force or whether it is intended that a Judicial Review process will be used as a last resort.
147. Comhairle nan Eilean Siar called for the inclusion of a provision for review of decisions not to conduct a full impact assessment and to challenge the conclusions of published assessments to allow communities to call public bodies to account.

148. The Committee believes that it is essential that islanders have confidence in the islands impact assessments process. A fair and reasonable mechanism which provides the ability to appeal or object to the process is essential. It recommends that the Scottish Government considers amending the Bill to provide for such a mechanism and ensure that further detail will be contained in the guidance.

Retrospective island impact assessments

149. When meeting with islanders during its series of island visits the Committee heard about a range of current policies and regulations which they feel have a detrimental impact on the islands. It was suggested that some existing legislation, policies and practice might be effectively 'island-proofed' through retrospective assessments.
150. For example, it was felt that some national health and safety regulations and training requirements for emergency services can be restrictive or impractical in an island setting. The Committee heard that some island firemen on Orkney need to leave the island for training for eventualities that are unlikely or unable to occur in an island setting e.g. ladder rescue for high rise flats or motorway / train crashes. Emergency responders on the island often do more than one job and leaving, for

what is viewed as potentially unnecessary training, means that they lose some of their additional income.

151. Examples were also given in Western Isles and Mull and by Shetland Islands Council relating to business, procurement and planning regulations, which can require dual fuel when there is no mainline gas supply on many of the islands.
152. Orkney Island Council argued that retrospective 'island-proofing' should be an explicit function of the National Islands Plan. This was seconded by Highland Council which has previously sought dispensations from certain policy directives which were unsuited to an island context. Scottish Islands' Federation also supported retrospective 'island-proofing'.
153. The Committee sought clarification from the Minister for Transport and the Islands that if one of the 66 organisations set out in the Bill redevelops a policy, there must be an impact assessment. The Minister said—

” I will simply say yes—redevelopment of policy would certainly have to be island proofed.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 56³¹

154. The Bill Team acknowledged that the Bill had raised the profile of many issues which are important to the quality of life for islanders. They said that even though the Bill is not designed to be retrospective that does not mean that when policies are being redesigned or revised that issues can't be reconsidered through an appropriate route—

” The Government is willing and open to look at whatever we may do to bring forward the issue of what might be the appropriate route to make those changes. For example, if a health issue on a particular island needs to be looked at because the regulations do not quite work for the island, ministers are more willing than ever to look at how to adapt and change what is there.

Source: Rural Economy and Connectivity Committee 13 September 2017, Ian Turner, contrib. 36³²

155. The Committee recognises that it would be unrealistic to retrospectively impact assess all current legislation (primary and secondary) in relation to the islands. However, it does not believe that retrospective action should be ruled out entirely.
156. It believes that the Bill should make provision to allow a retrospective impact assessment to be carried out if it can be demonstrated that a specific piece of current legislation or policy has a significantly detrimental impact on island communities. The Committee is of the view that such a step would demonstrate to Scotland's islanders that the Bill will have a concrete and tangible impact on improving outcomes for island communities.
157. The Committee is encouraged that the Scottish Government acknowledges that redevelopment of policy would need to be 'island-proofed'. It calls on the Scottish Government, as part of its consultation, to identify the areas of legislation or policy which can be problematic for the islands. These areas should be prioritised and the Scottish Government should commit to re-developing the most urgent

with an island impact assessment. It also calls on the Scottish Government to provide broad timescales within which the prioritised impact assessments will be undertaken.

158. The Committee is aware that there are sections in the Local Government in Scotland Act 2003 and the Public Services Reform (Scotland) Act 2010 which allow Ministers to alter legislation by statutory order if the primary legislation is an obstacle to local government fulfilling certain duties. The Committee recommends that the Scottish Government consider whether these powers can be applied more readily to islands as a result of impact assessments.

Na h-Eileanan an Iar - Scottish parliamentary constituency boundary

159. Section 13 of the Bill protects Na h-Eileanan an Iar as a Scottish parliamentary constituency. It prevents the constituency from being altered by the constituency boundary reviews which are carried out by the Local Government Boundary Commission for Scotland. Similar protections already exist for Orkney and Shetland constituencies and all three constituencies are already protected for Westminster elections.
160. There was clear support for this provision across all sources of evidence— in the written submissions received and also in the evidence the Committee heard during its island visits and external meeting.
161. Comhairle nan Eilean Siar welcomed the provision as it created an even footing with Orkney and Shetland—

” The council is pleased that the opportunity has been presented to address the anomaly. That will allow the Western Isles to be treated consistently with the other island areas.

Source: Rural Economy and Connectivity Committee 27 September 2017, Roddie Mackay (Comhairle nan Eilean Siar), contrib. 127³³

162. Equally the Local Government Boundary Commission for Scotland identified that there were no major practical issues involved with its implementation—

” I see no implications of an adverse nature from the proposal for the Western Isles to become a single constituency. It should be straightforward.

Source: Rural Economy and Connectivity Committee 27 September 2017, Ronnie Hinds, contrib. 139³⁴

163. A number of submissions recognised the special nature of Na h-Eileanan an Iar with its Gaelic-speaking culture and felt that this section would help preserve its cultural distinctiveness.
164. In the written evidence some individuals did not support the proposal. Reasons varied from creating possible issues for future boundary changes, to suggesting that the existing island constituency protection was a mistake.

165. The Committee welcomes this provision in the Bill which protects Na h-Eileanan an Iar as a Scottish parliamentary constituency.

Local government electoral wards for inhabited islands

166. Under section 1 of the Local Government (Scotland) Act 2004 (the 2004 Act) each electoral ward in Scotland has to return three or four councillors. When designing wards, the Local Government Boundary Commission for Scotland 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 closely as possible, the same. This is called the parity principle.
167. In practice, this means that some island communities will find themselves part of a ward which also includes part of the mainland, and may be represented by a councillor who is not resident on an island. The Bill provides the flexibility for the Local Government Boundary for Scotland to recommend to Scottish Ministers electoral wards of only one or two members where this would lead to island communities being better represented.
168. Generally, stakeholders across the board, including the Local Government Boundary Commission for Scotland, welcomed the principle of increased flexibility that the Bill would offer. However, there were questions raised about the practicalities of how this would be implemented and any unintended consequences.
169. Stakeholders across all six local authorities concerned stated that island communities need strong representation, and that, generally, representatives who live on islands have a better understanding of the issues. However, it was also acknowledged that it can be advantageous to have a representative who covered both a mainland and an islands area as it could smooth any friction between islands and mainland communities.
170. Comhairle nan Eilean Siar expressed its strong support for this provision as it felt that it would provide an opportunity to address concerns in many island areas of a councillor being too remote from the island community served. It noted that for many councillors travel to reach a particular island may involve an overnight stay and that this is contrary to principles of empowering communities and could dissuade people from acting as councillors. This was a concern expressed by all six authorities.
171. Highland Council expressed support but considered that the flexibility should not be applied below a certain population level. COSLA also welcomed the provision. However, it felt that it would be unlikely to resolve all issues and concerns that local authorities currently have in relation to ward sizes and variations in geography and population across the country. It also cautioned against any unintended consequences, particularly any resulting impact on the size of mainland wards within the relevant local authorities. It cautioned that any proposed changes must be suitable for the specific local circumstances and that a one size fits all approach wouldn't work.

172. Another potential unintended consequence was highlighted by Argyll and Bute Council which suggested that where matters are decided on a majority basis the reduced number of members representing islands could result in some decisions being lost on a purely political basis, which would be against the spirit of the Bill.
173. North Ayrshire pointed out that although the Bill allows for one or two member wards, it does not amend the provision in local government legislation that provides that there has to be a certain ratio of electorate to councillors across the entire local authority area. In practice, it was concerned this would mean that Arran could end up with one less councillor than it currently has.
174. In a written submission, Kieron Green stated in written evidence that there may be a disbenefit to proportionality involved in reducing ward sizes. He noted that to have a lower quota for island than mainland areas within the same council area could lead to perceptions of unfairness. He argued that this could be particularly important when neighbouring mainland areas may face similar issues with being remote and isolated. He suggested that clear evidence would need to be provided for individual wards showing that there has been a lack of island representation and balancing this with the possible effect on the political balance within a Council.
175. Comhairle nan Eilean Siar also expressed a need for clarification in relation to the words “an electoral ward consisting mainly of one or more inhabited islands”. It cautioned that this may give rise to confusion in relation to areas such as the Orkney mainland and Lewis which, while the ward is undoubtedly wholly on an inhabited island, it may be argued not to “consist” of an island. It suggested that this point could be addressed by making the provision read “an electoral ward in an islands area or consisting wholly or mainly of one or more inhabited islands”.
176. Professor Mollison stated that the use of 1 member wards should only be used in exceptional circumstances. He argued that it is socially healthier for a small community to be represented by more than a single voice. He also suggested that the strongest case for a single member ward would be where a community with at most a single councillor is completely different in its circumstances from the rest of the council area.

View of the Local Government Boundary Commission

177. The Local Government Boundary Commission would be the body responsible for reviewing the electoral arrangements in the six local authorities concerned. The Commission highlighted the elements it must take into account when making its decisions—

” The number of electors per councillor in each ward shall be, as nearly as may be, the same (this is known as parity); subject to this, the Commission shall have regard to:

- local ties that would be broken by fixing a particular boundary; and
- the desirability of fixing boundaries that are easily identifiable with the first of these taking precedence over the second;

The Commission may depart from the strict application of electoral parity to reflect special geographical considerations. ³⁵

178. The Boundary Commission said that there is nothing in the Bill that alters this hierarchy of requirements. It pointed out that, although the Bill will provide additional flexibility, it is not possible to predict whether it will deliver the policy intention. Namely, whether it will deliver more islands comprising whole wards or an increased number of one or two member wards.
179. The Commission wanted the Committee to be aware that the change could also lead to wider ramifications in terms of councillor numbers within a council. It explained that it is the number of councillors that determines the parity benchmark – increasing the number of councillors will result in a lower number of electorate required to achieve parity and may therefore help smaller island communities. However, this in turn would have implications for the overall number of councillors in Scotland.
180. The Commission highlighted that in previous reviews there had been debate between proponents of 1 member wards to better reflect community ties as opposed to those who supported 4 member wards to maximise the effect of the STV voting system. It suggested that the change proposed in the Bill could intensify this debate. It cautioned that the use of a single member ward in particular would appear to have a potentially significant impact on the electoral system which may not be seen as in the interests of effective and convenient local government.
181. It advised that total electorate and overall councillor numbers for any council area determine parity and theoretical councillor entitlement for a ward. The number of electors on an island does not in itself, therefore, determine entitlement to a councillor or councillors. An initial analysis of islands' electorates by the Commission suggested that many of Scotland's inhabited islands have so few electors that any workable minimum threshold would exclude them from even a single member ward unless significant departure from parity were considered acceptable.
182. The Boundary Commission drew a distinction between the island local authorities and local authorities which have islands. It found that one or two member wards could in theory be used throughout the island council areas as the situation of an island population being outnumbered by the mainland part of any ward would not arise. However, in the local authorities which contain islands restricting the power to use one or two member wards only to circumstances where the ward is "wholly or mainly" comprised of an inhabited island may result in greater disruption across the council areas as a whole as well as under-representation of mainland areas.
183. It suggested that the additional power to use one or two member wards on the mainland as a consequence of creating an island ward would offer greater flexibility. It also suggested that in this respect the definition of "wholly or mainly" consisting of an inhabited island or islands may be restrictive and that greater flexibility to better balance a ward containing a small inhabited island could be offered if the definition was "wholly or partly".
184. The Committee acknowledges that it is within the Local Government Boundary Commission's power to conduct a review of the electoral ward arrangements. While welcoming the principle of increased flexibility that the Bill will provide, the Committee is concerned that this provision may not fulfil the policy intention of the

Bill and that use of these powers may have a number of unintended consequences.

185. The Committee suggests that the Local Government Boundary Commission carefully review the evidence received by the Committee when it makes its decisions. In particular, in regard to the unintended consequences that such a change may cause. For example, ratios for individual islands that are different from those applying to the mainland of an authority.
186. The Committee recommends that the Scottish Government follow the suggestion of the Boundary Commission and amend the Bill so that the definition of “wholly or mainly” consisting of an inhabited island be changed to “wholly or partly” to provide greater flexibility to better balance a ward.

Island representation in decision making

187. In discussion with community members from Arran it was suggested that there should be a requirement for island councillors to be part of the key decision-making fora on the Council. Concern was expressed that if island representatives are not part of the core governance of the local authority they would lack influence. It was argued that an elected member should always be present on the Economic Development Group of the council, regardless of any political changes.

188. The Committee recommends that, as part of its 'island-proofing' guidance, the Scottish Government highlights the inclusion of island representatives in the key decision making committees in local authority areas which contain islands as good practice.

Marine licensing power

189. Part 5 of the Bill provides a regulation-making power for the Scottish Ministers to establish a marine licensing scheme within the Scottish island marine area. This would require a person to obtain a licence granted by a local authority if they want to undertake any development activities. 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.
190. The Bill states that Scottish Ministers must consult on the draft regulations which will make particular provision for the different aspects that a scheme can cover including:
- the types of development activity covered by or exempted from the marine licensing 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.
191. The intended aim of this power is to provide island local authorities with the opportunity to have more control in the development of the seas around their island communities.
192. Section 16 of the Bill sets out what “development activity” includes:
- sea-based construction,
 - alteration or improvement works (either in or over the sea, or on or under the seabed), and
 - any form of dredging (whether or not involving the removal of any material from the sea or seabed).

The Scottish Government clarified that "The regulations can provide for exemptions within that..."

193. Activities related to the reserved areas of oil, gas, defence and pollution are excluded, as is fish farming.

Local authority views

194. In general, local authorities told the Committee that they supported the scheme, but with the caveat that they would have to see the detail in the proposed regulations to understand the full implications of how they might use the new powers.

195. The resource capacity of local authorities to administer and monitor a licensing scheme was also raised. North Ayrshire Council suggested that for small local authorities like theirs, with relatively few licensing applications and a proportionally smaller budget for administration and enforcement, a more proportional response could be a regional approach, as opposed to a single authority approach.³⁶
 196. Shetland Islands Council and Orkney Islands Council said in their written submissions that they already have many of the powers via previous Orkney and Zetland specific legislation, but that the Bill will create welcome additions. For example, they specifically mentioned extension of existing licensing powers to a 12 nautical miles limit. Both Councils spoke positively of their experience of having marine licensing powers, particularly in terms of sustainable development and the benefits to local communities.
 197. However, Shetland Islands Council highlighted that the Bill does not appear to cover the scenario where applications to vary works licenses - which were granted under the previous Zetland legislation - would be exempt if they were made after the area had been designated as an Island Licensing Area. The council asked for clarification on this point, for the benefit of existing licence-holders and potential developers.
 198. Both councils highlighted that forthcoming legislation on the Crown Estate would also support the aspirations of island authorities and communities. They also proposed that having a “one-stop shop” for all marine development issues would ensure that local knowledge and a connection with local bodies was needed.
 199. Shetland Islands Council suggested that all variations of existing grants made under the Orkney and Zetland acts should survive following the implementation of the Bill. Finally, it was noted that the National Islands Plan would be an opportunity to bring all of the relevant pieces of legislation together and to identify areas of overlap and duplication.
200. The Committee notes that local authorities support of the principle of increased powers for marine licensing that the Bill offers. It looks forward to scrutinising the detail of the marine licensing regulations when they are laid before the Parliament.
 201. The Committee calls for clarification from the Scottish Government on whether applications to vary works licenses, which were granted under the previous Zetland legislation, would be exempt if they were made after the area had been designated as an Island Licensing Area.

Interaction with existing legislation

202. The Committee heard evidence that stakeholders were not entirely clear how the marine development provisions of the Bill would interact with existing legislation on marine licensing. It also received mixed views on the need for another marine licensing scheme in addition to the Marine (Scotland) Act 2010 (“2010 Act”).

203. RSPB argued in their written submission that having two different definitions for activities in a marine area is both inconsistent and confusing (there will be definitions in both this Bill and the Marine (Scotland) Act 2010). It recommended that the definition of licensable marine activities as set out in the 2010 Act (section 21) should be the definitive definition, rather than creating a new meaning of development activity in section 16 of the Bill.
204. SNH proposed that licensing decisions should follow the strategic lead of the 2010 Act regional plans (as they were rolled out across all relevant areas), with the regional plans being developed by a group of local stakeholders with community input³⁷. The Community of Arran Seabed Trust (COAST) similarly suggested in their written submission that the national marine plan in the 2010 Act may be the best vehicle to assist local communities to manage cumulative environmental impacts together, as “an overarching plan will avoid local decisions being taken in isolation without regard for their cumulative effect upon the environment”.
205. RSPB similarly stated that the opportunity for island authorities to exercise greater strategic control over development and activity in the marine area out to 12 nautical miles already exists through provisions in Part 3 of the Marine (Scotland) Act 2010 for the preparation of a Regional Marine Plan. It said—
- ” ...we would recommend that Island Marine Areas, if established, should align as far as possible with the existing marine regions...³⁸

Dual licensing

206. The Law Society of Scotland highlighted in their written submission that marine licences in Scotland are currently issued by Marine Scotland, providing a single port of call for all marine licence applications, and allowing coordination of licences in the issuing process. It queried whether introducing separate schemes to be administered by individual local authorities could create fragmentation and negate the simplicity of application to a single body, particularly where a licence applies to an area in more than one local authority district.
207. Scottish Natural Heritage also queried whether a dual-licensing approach was required. It suggested that “rather than creating an extra layer of marine licensing powers, local influence on marine decision-making could be improved through existing provisions within the Marine (Scotland) Act 2010 and the Community Empowerment (Scotland) Act 2015. The devolution of the management of Crown Estate assets may also enable community influence.”³⁹
208. Alternatively, Shetland Islands Council suggested in their written submission that the approach of requiring individual applications to ministers would encourage councils to construct robust business cases, and would help to avoid there being a ‘one-size-fits-all’ approach.
209. British Marine Scotland (BMS) argued that changes to the current marine licensing regime were needed on the basis that it “does not provide adequate business security”. In particular, BMS wish to see existing licenses regimes transferred under the Bill extended significantly. They gave the specific example of businesses deploying floating structures such as pontoons which can only be issued with a 6

year licence from Marine Scotland, although these structures are intended to provide a return over and in excess of 20 years.

40

210. However, SNH and the RSPB said that there was potential confusion in that the activities that can be licensed under the Bill are slightly different from the activities that can be licensed under the Marine (Scotland) Act 2010. SNH gave the example of the placing of materials such as pontoons, which it highlighted are not covered in the Bill.

211. The Committee asked why marine licensing was being addressed in this Bill rather than in amendments to the Marine (Scotland) Act 2010 or the Community Empowerment (Scotland) Act 2015. The Minister for Transport and Islands responded that—

” I think that the bill is the correct place to deal with marine licensing because of its historic nature and because it takes cognisance of the need to work alongside the existing frameworks, such as the marine regions orders.

Source: Rural Economy and Connectivity Committee 08 November 2017, Humza Yousaf, contrib. 111⁴¹

212. He also stated that this would be the kind of issue that would be consulted on before Scottish Ministers laid the draft regulations in the Parliament for scrutiny.

213. The Committee does not object in principle to the inclusion of the marine licensing provisions in the Bill. However, it believes that consistency and clarity is important when dealing with legislation. The Committee notes that there is confusion amongst stakeholders regarding the practical implementation of the marine licensing provisions in the Bill and how they will relate to existing marine legislation. It is also concerned about the potential for duplication and adding an extra layer of bureaucracy to the existing marine licensing regime.

214. The Committee acknowledges that consultation will be carried out on the related regulations. However, it calls on the Scottish Government to provide further information to the Committee on the practical relationship and interaction between the marine licensing provisions in both this Bill and the Marine Scotland Act 2010.

Consultation and community input

215. The Committee heard from several organisations and individuals such as Scottish Natural Heritage and communities from the Western Isles, which emphasised the importance of consultation. It also heard some concerns, particularly during its visit to the Western Isles, regarding how the marine licensing scheme would work, and how local communities and other interested parties would contribute to the decision making process.

216. The Committee asked for views on whether local authorities should have the decision making power for marine licensing and whether there should be more community input.
217. During its visit to the Western Isles, the Committee also heard that the provisions should bring development control over a local asset as close to community level as possible. It was also argued that the local authority should be obliged to consult with communities when considering the granting of licenses. These communities also said that land trusts and community trusts are ideally placed to have responsibility. It was suggested that if control is at a local level, there is more chance of locally based initiatives taking over from large national companies, and that local people have more opportunities to invest locally. This was supported by Bòrd na Gàidhlig which felt it would be useful for there to be more clarity of benefits to communities in terms of development.
218. Scottish Environment LINK stated in response that they did not have a view on who held the power, but emphasized that—

” The critical thing will be that the decision-making body has access to the specialist advice that is required, and that it is adequately resourced to deal with that.

Source: Rural Economy and Connectivity Committee 01 November 2017, Aedán Smith, contrib. 67⁴²

219. Highlands and Islands Enterprise suggested that where there were development applications that were of national or strategic interest, there should be input from all levels of government.
220. When the issue of community involvement in development activities was put to the Scottish Government the Minister for Transport and Islands said that he believed that the correct approach was having the licensing power at local authority level and that he recognised the need for engagement with local communities. He said—

” ...there is no doubt that there is a desire for engagement on the part of local communities. Local authorities that I have spoken to understand that and are willing to work closely with them on the issue of development that could benefit their islands. I do not see that that will be restricted or limited at all by the provisions in the marine development part of the bill.

Source: Rural Economy and Connectivity Committee 08 November 2017, Humza Yousaf, contrib. 82⁴³

221. The Committee welcomes the Scottish Government's acknowledgement of the need to include local communities in decision making regarding development activities. It suggests that the Scottish Government may wish to issue guidance or best practice suggestions to support this.

12 nautical miles limit

222. There was some confusion about what might happen where a marine area is within 12 nautical miles of another island's marine area, or 12 nautical miles of the mainland, or both of these possibilities together.
223. COAST queried whether a median line should be drawn, and perhaps use of similar rules to the UN Convention on the Law of the Sea to define boundaries between overlapping areas.⁴⁴ The Law Society of Scotland also commented on this point, whilst acknowledging that the details will be provided through regulations.⁴⁵
224. The Scottish Government Bill team noted that—
- ” A boundary might stretch to the coast or between different local authorities, and there are different ways that that can be done. Last year's regional marine planning order had a particular way approach—there are different mechanisms or different boundaries that can be used. That is what the consultation, the regulations and the process would do.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Ian Turner, contrib. 97⁴⁶

225. The Committee notes that the confusion around responsibilities and boundaries in relation to the 12 nautical mile limit (which may intrude into another island's marine area or the mainland) will be dealt with as part of the consultation on the regulations. It calls on the Scottish Government to provide clarification to the Committee once the findings of the consultation have been considered.

Jurisdiction of port authorities

226. Various Port Authorities expressed the wish that there would be no impact on their existing jurisdiction. Lerwick Port Authority said—
- ” ..if an Island Licensing Area (ILA) was to be established in Shetland, Lerwick Port Authority would wish for its harbour area to be excluded from any such ILA on account of the works licensing regime currently operated.⁴⁷
227. Shetland Islands Council said that their reading of the Bill “leads us to conclude that there would be provision for Ministers to exclude areas that are outwith the ZCC Act, for instance, Lerwick Port Authority (LPA) harbour area. We would envisage there to be no benefit gained from interfering with that proper statutory authority's works licensing powers through any potential move to ILA status”.⁴⁸

228. The Committee seeks reassurance from the Scottish Government that the jurisdiction of existing port authorities would not be impacted by the Bill.

Meeting with Stornoway Port Authority, Outer Hebrides Tourism & local Fisheries Association during a Committee visit to the Western Isles in October 2017.



Definition of inhabited island for marine area licence

229. Section 18(2) of the Bill sets out the conditions for an area to be designated as an 'island licensing area'. First, a local authority would have to apply to Ministers for a designation to be made by scheme regulations; and secondly, before making those regulations, Ministers would have to be satisfied that the area which is to be designated included at least one inhabited island.
230. The Law Society of Scotland questioned why these conditions should apply only to inhabited islands. The Scottish Government responded in supplementary written evidence that the intention is that the area, as described, is the relevant local authority's area.⁴⁵
231. The Committee also asked the Scottish Government for more clarity around the definition of 'inhabited island', as the area designated for licensing, as part of the 'Scottish island marine area', is sea rather than land. That raises the technical question for section 18(2)(b) of whether an 'island licensing area' can be said to include an island.

232. The Scottish Government responded that the intention of the Bill as drafted was that the definition did include an island, but that it would consider whether further clarification might be necessary—

” ... we are grateful for the point being raised and are reconsidering if that approach is appropriate and allows sufficient flexibility for the to-be-decided boundaries between local authorities for the purposes. Greater flexibility might require a small change to section 18(2)(b) to clarify that the “the area includes, or is adjacent to, an inhabited island”.⁴⁹

233. The Committee welcomes the Scottish Government's willingness to reconsider the provision regarding inhabited islands in relation to marine licensing.

Proposals for extensions to provisions

Fish farming

234. COAST argued in its written submission that fish farming should be included in the definition of development activity, and that decisions on such licences should include community councils. It stated that fish farm companies have continued to be awarded local authority and SEPA licenses to expand existing open pen farms and create new farms despite local community council opposition.

235. The Scottish Government responded that—

” ...fish farming is...already included in the planning regime...also excluded as a development activity in the Zetland and Orkney acts. Under planning legislation, communities and local authorities can be involved. That is therefore where we see fish farming sitting, rather than having another regime on top for the local authority to have to deal with. There would be quite a lot of issues with the same thing being done in two different ways—under marine licensing and under planning—and we did not think that that was appropriate.

Source: Rural Economy and Connectivity Committee 08 November 2017, Ian Turner, contrib. 118⁵⁰

236. The Committee notes the argument from COAST that fish farming should be included in the definition of development activity in the Bill. It also notes the Scottish Government's argument that fish farming is already addressed through planning legislation and that to include fish farming in this Bill could lead to duplication. It has not received any further evidence on this issue.

Other types of fishing

237. The Committee heard a proposal that the dredging definition should include certain types of fishing, such as scallop dredging and demersal trawling.

238. COAST called for scallop dredging and demersal trawling to be included under this definition of dredging “as these are currently the most common and widespread

activities, which damage the physical quality of our island seabed habitats as well as damaging their biodiversity and abundance”.⁴⁴ This would have the effect of requiring a licence to be granted for these activities.

239. The Committee asked the Scottish Government to provide more clarity around the definition of dredging, and whether it should include fishing activities. In supplementary written evidence, the Scottish Government said that the fishing activities discussed in evidence were already licensed —

” The inclusion of dredging under Section 16(1)(b) of the Bill was intended to include dredging as a works excavation activity only and is not targeted at licenced fishing activity. Scallop dredging and demersal trawling fishing activities are already licenced under UK fishery regulations. The Scottish Government recognises that all fishing activity impacts on the marine environment and as responsible managers the Government takes steps to manage this. For example, fishing by dredge is prohibited in 11% of Scotland’s coastal waters (0 to 6 nautical miles) with further temporal restrictions also in place.⁴⁹

240. SNH suggested that it should be clarified for stakeholders that any form of dredging (whether or not involving the removal of any material from the sea or seabed) does not include any form of fishing activity.⁵¹

241. The Scottish Government also stated that whilst the definition of dredging as referred to in the Bill is similarly described in other legislation (such as section 21 of the Marine (Scotland) Act 2010), it is considering bringing forward an amendment to clarify this element of the Bill.⁴⁹

242. The Committee acknowledges stakeholders concerns about the damage that scallop dredging and some demersal trawling can have on the environment. It notes the response from the Scottish Government that these activities are already licensed. It welcomes the Scottish Government's willingness to bring forward an amendment at Stage 2 to clarify that dredging, as referred to in the Bill, is focused on excavation activity and not fishing.

Human Rights and Equalities

243. The Scottish Government anticipates that the Bill will be positive for human rights and equalities, given its objective is to 'improve outcomes for island communities' ⁵²

244. The Committee received a number of representations to its written call for evidence supporting this view, arguing the Bill could help equalities or would at least not impact negatively. For example, Highland and Island Enterprise said—

” The Islands (Scotland) Bill should be ... key in driving new and innovative ways of promoting enterprise, delivering services and tackling inequalities. ⁵³

245. The Bill's potential impact on human rights or equalities is likely to be most significant in respect of Part 3 and the duty to 'island-proof'. And indeed, many of the submissions received pointed to inequalities where 'island-proofing' might assist, such as access to services and access to justice.

246. The Committee welcomes the potential of the Bill to make further strides in improving equality and supporting human rights. The Committee fully expects equality and human rights to be considered as part of the implementation of the Bill and in particular as part of any duties under Part 3 of the Bill related to 'island-proofing'.

Equalities issues

247. On every island visit the Committee undertook it heard that a number of inequalities exist between protected characteristic groups on the islands. For example, inequalities resulting from occupational segregation amongst men and women and between age groups as a result of ageing population. LGBT rights were also raised across the islands.

248. Recognising the challenges faced by remote islands, Orkney Islands Council called for insularity and remoteness to be recognised as an equality issue as part of any Scottish Government guidance issued on 'island-proofing'.

249. The Committee welcomes the focus that the Islands (Scotland) Bill will bring for islands and anticipates that this will help measures to address equality issues specific to certain communities.

250. The Committee supports the view of Orkney Islands Council that insularity and remoteness should be considered as an equalities issue and that these should be addressed in guidance concerning the duty in section 7 of the Bill – the duty to have regard to island communities or 'island-proofing'.

Human Rights issues

251. CoSLA suggested that other organisations including the Scottish Human Rights Commission could be added to the list of relevant authorities that have duties in relation to island communities. The Committee notes that whilst this would give a clear signal that the Bill will assist in promoting human rights, it may possibly interfere with the Commission's independence.
252. The Scottish Islands Federation argued that the "right to family life is effectively denied to many young islanders who are expected to board out to attend secondary school"⁵⁴. Residents on the Isle of Mull also raised an issue with the right to family life for older people, as there are no nursing homes on the island.
253. The Law Society of Scotland raised the rights of individuals in relation to the peaceful enjoyment of their property. It argued that there could be an issue if plans are created giving island property owners (not normally resident on the island) weaker rights than other property owners.
254. Calls were also made by several individuals as well as the Island Gaelic Research Project for linguistic rights to be treated as human rights and/or for Gaelic to be mentioned within the Bill in view of the importance of the language in some island communities.

255. The Committee supports the potential of the Bill to address human right issues through the National Islands Plan and 'island-proofing'. It calls on the Scottish Government to advise the Committee whether the Scottish Human Rights Commission was considered for inclusion, and any reasoning behind its exclusion from the Schedule to the Bill, which lists the relevant authorities that will have duties in relation to island communities.

256. The Committee notes the request of some within Gaelic speaking communities for the Bill to recognise Gaelic and linguistic rights. The Scottish Government states that Gaelic is an integral part of Scotland's heritage, national identity and current cultural life. The Committee calls on Scottish Government to consider an extension to the provisions in the Bill so that, in addition to having regard to the distinctive geographical and cultural characteristics of the islands, it could also have regard to their linguistic heritage.

257. The Committee expects that the Scottish Government will consider how the National Islands Plan can build on the support available to Gaelic speaking communities. It also recommends that the Scottish Government include consideration of the Gaelic language in its guidance on 'island-proofing'.

Finance

258. As required under Rule 9.3.2 of the Parliament's Standing Orders, a Financial Memorandum (FM) has been published to accompany the Bill. The FM suggests that the majority of expenditure in implementing the provisions set out within the Bill would be administrative.
259. An overall costing range is not set out. SPICe highlighted in its Bill briefing that Parts 4 and 5 of the Bill may have varying costs depending on the level of consultation and demand for services. In addition to the interaction of anticipated reviews to ward boundaries with the existing work of the Local Government Boundary Commission for Scotland.
260. As the National Islands Plan is expected to cover a five year period, SPICe estimated in its Bill briefing, as far as possible, the costs of the Bill over implementation and the first five years of operation. Part 2 of the Bill has a fixed estimated cost of £142,000 over the first five years. Part 3 of the Bill, for the same time period, has a fixed estimated cost of £329,931. These figures cover the total costs to the Scottish Government, local authorities and other public bodies, and in both cases the cost of implementation has been added to the ongoing costs for a five year period.
261. The review and adjustment of wards, and the establishment of a marine licensing scheme, under the terms of the Bill, are demand driven. As a result, SPICe has advised that the costs of implementing these parts of the Bill cannot be accurately estimated. It suggested that these sections of the Bill represent the highest potential for increasing the costs of the legislation should demand prove high.⁵⁵
262. The Finance Committee received 4 submissions in relation to the financial memorandum of the Bill from North Ayrshire, Orkney, Shetland and Argyll and Bute Councils.
263. North Ayrshire Council stated that the officer time required to implement the policy is significantly lower than it would anticipate needing to implement the Bill. It also stated that the raised expectations in island communities as a result of the Bill have been underestimated leading to increased margins of uncertainty.
264. Orkney Islands Council stated that additional devolved responsibility may bring with it additional costs along with the requirement for additional expertise. It also stated that while recognising the duty is on Scottish Ministers to produce the Plan, the Financial Memorandum did not appear to take cognisance of the work the Council and other local authorities would have in inputting into the Plan and holding Scottish Government to account through the monitoring and review process.
265. Shetland Islands Council stated that the lack of detail about the costs that might be incurred on consultation by local authorities to inform the National Islands Plan make it difficult to offer a view on a value of £75,000 as set out in the FM. It cautioned that the publication costs of £5,000 do not suggest much activity beyond online publication. It cautioned that with broadband speeds and mobile signal coverage being poor in the island communities getting the plan to those that it

affects should ensure that more suitable publication methods are used and costed as part of the FM.

266. Shetland Islands Council also suggested that if the annual progress update is going to capture the evidence throughout the islands that supports improving outcome for island communities it would question whether the costs as set out were realistic. It argued that there would be an expectation that the Scottish Government should support local authorities to take on the additional costs that the Bill will create, particularly in a climate where funding is generally being reduced.
267. Argyll and Bute Council questioned what resources would be required should an island impact assessment require mitigation. While it acknowledged that this is difficult to quantify it argued mitigation costs should be recognised by the Scottish Government in the FM and a commitment should be made by the Scottish Government to offer potential resources if the case can be demonstrated.
268. When asked about concerns regarding the local resourcing of the National Islands Plan Argyll and Bute Council continued—

” We are very much concerned about that. If there is a meaningful plan that addresses the issues that islanders want to see addressed, it must have resource implications. The authority and even the island constituents have concerns about where those resources will come from and whether that will impact on other aspects of our communities.

Source: Rural Economy and Connectivity Committee 20 September 2017, Fergus Murray, contrib. 135⁵⁶

269. Argyll and Bute Council also argued that the costs to a local authority should not be calculated on the same basis as the other public bodies listed. As an example, Argyll and Bute noted that it would have a greater workload arising from the legislation than a body like Bord na Gàidhlig. However, it highlighted that the Financial Memorandum seems to suggest the costs would work out the same.
270. North Ayrshire acknowledged that the main issues around the work that it does with island communities is to do with resources. It said—

” That is to do with proportionality and access to specialist services, which are expensive. It is to do with things that cost money so, in order for us to make the greatest difference to our island communities, resources have to be considered.

Source: Rural Economy and Connectivity Committee 20 September 2017, Dr Sutton, contrib. 137⁵⁷

271. When questions regarding the Financial Memorandum and resources were put to the Scottish Government, the Minister for Transport and the Islands argued that the process and consequences of carrying out an island impact assessment must be separated. He highlighted that, for example, if a local authority conducts an impact assessment, it would have the option of continuing with the status quo, despite the fact that doing so might have a negative impact. He argued that whatever option it took would potentially have financial consequences, but it would be for the local authority—or another listed public body or the Government—to consider that as part of the decision making process. He said if the Government were to provide funding—

” If we went down that route, ...there would have to be a blank cheque.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 125⁵⁸

272. The Minister also highlighted the range of other policy areas in which the Scottish Government is working to tackle the challenges that islands face. For example housing and ferry services, the funding for which will still continue.

273. The Committee notes that the costs outlined in the Financial Memorandum relate solely to the delivery of the duties in the Bill. They do not cover the resources required to implement the National Islands Plan once it is created or mitigate any negative consequences as identified by an islands impact assessment.

274. The Committee notes the concerns that some local authorities have in relation to the financial costs associated with the practical implementation of the Bill.

275. The Committee calls on the Scottish Government to confirm whether the National Islands Plan, when published, will contain detail on the financial and other resources which will be available, from across the Scottish Government, to ensure the achievement of the Plan.

276. The Committee recommends that the Scottish Government require in the impact assessment guidance that all impact assessments should include a cost / benefit analysis in addition to an estimate of the costs associated with any proposed mitigation.

277. The Committee also invites the Scottish Government to consider how it can make public bodies and other organisations aware of the existing funding streams or other sources of support which may be available to island communities to mitigate any negative impacts which become apparent through the 'island-proofing' process.

278. The Committee calls on the Scottish Government to clarify to the Committee how the overall figure for publication costs was arrived. This should include detail on the methods the Scottish Government will use to publicise the development and refresh of the National Islands Plan every 5 years and the publication of the annual progress report.

Remote and rural mainland areas

279. During the course of its evidence taking the Committee became increasingly aware that some of the issues affecting island communities may also be experienced by those living in remote, rural mainland areas.

280. Highlands and Islands Enterprise argued that these areas require similar attention to the islands—

” It is important to recognise that many of the challenges faced by island communities: demographic change; transport links; access to services and employment opportunities; and higher costs of living are also faced by remote and rural mainland communities who require a similar degree of attention and focus.⁵⁹

281. North Ayrshire Council said—

” People are concerned that whatever happens in relation to additional powers or delegation of control for the islands—which is welcomed—does not somehow disadvantage the remote rural areas that lie next to them.

Source: Rural Economy and Connectivity Committee 20 September 2017, Fergus Murray, contrib. 29⁶⁰

282. The Committee asked whether the Scottish Government could envisage any knock on benefits from the Bill for people living in remote and rural areas. The Minister said that, if 'island-proofing' is successful in its implementation, there is no reason why the Government should not consider whether that approach can be used for rural Scotland as well. He said—

” The point is not lost on me by any stretch of the imagination and I have a great deal of sympathy for that view. There is a very good argument to be made around some areas of the periphery of the mainland that face many of the same challenges as island communities.

Source: Rural Economy and Connectivity Committee 08 November 2017 [Draft], Humza Yousaf, contrib. 14⁶¹

Parliamentary constituency boundaries

283. Two submissions proposed extending the provision preserving the constituency of Na h-Eileanan an Iar on to other Scottish parliamentary constituencies. Highland Council called for protection for rural constituencies with low population on the mainland to prevent these increasing in size—

” We would also like similar protection to be afforded to large rural areas with low population levels to ensure that rurality remains a weighting factor and protect against constituencies becoming even larger than is currently the case.⁶²

284. One respondent to Argyll and Bute Council's consultation, felt the provision should also apply to the Argyll and Bute constituency area.

285. The Committee believes that many of the issues which affect islands can also impact on remote and rural mainland areas. While acknowledging that this is outwith the scope of the Bill the Committee welcomes the Scottish Government's willingness to reflect on whether a similar approach to 'island-proofing' may be considered for remote rural areas.
286. It also invites the Scottish Government and the Local Government Boundary Commission to consider whether further protection should be given to prevent constituencies in large rural areas from expanding any further.

Conclusion

287. Under rule 9.6.1 of Standing Order, the lead committee is required to report to the Parliament on the general principles of the Bill. In doing so, the Rural Economy and Connectivity Committee has taken into consideration the evidence from a wide range of stakeholders.
288. The Committee has made a number of recommendations for improvement and calls for clarification in relation to the Islands (Scotland) Bill. It looks forward to receiving the Scottish Government's response on these points.
289. The Committee recommends that the Parliament agrees the general principles of the Bill.

Annex A: Consideration by other Committees

290. The Delegated Powers and Law Reform Committee produced a report on the Islands (Scotland) Bill:

<https://digitalpublications.parliament.scot/Committees/Report/DPLR/2017/11/1/Islands--Scotland--Bill-at-Stage-1#Introduction>

291. The Environment, Climate Change and Land Reform (ECCLR) Committee sent the following correspondence to the Committee in relation to the Bill:

- [Letter from the Environment, Climate Change and Land Reform Committee to Committee regarding ECCLR Committee interested in the Part 5 provisions of the Bill that relate to Scotland islands marine development licences, 29 June 2017 \(96KB pdf\)](#)
- [Letter from the Committee to the Environment, Climate Change and Land Reform Committee regarding the Committee's plans to scrutinise the Bill in response to their letter received on 29 June 2017, 2 August 2017 \(174KB pdf\)](#)
- [Letter from the Committee to the Environment, Climate Change and Land Reform Committee regarding an update on the Committee's consideration of the Islands \(Scotland\) Bill, in particular the Scottish Government's response on marine licensing, 16 November 2017 \(101KB pdf\)](#)

292. The Finance and Constitution Committee issued a call for views and four submissions were received:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/105758.aspx>

Annex B: Extract of minutes

293. 20th Meeting, 2017 (Session 5) Wednesday 14 June

3. Islands (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1. It also agreed to consider any further approach papers and draft reports in relation to the Bill in private.

24th Meeting, 2017 (Session 5), Wednesday 13 September

2. Islands (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Ian Turner, Darren Dickson, Islands Bill Team, and Kirsten Simonnet-Lefevre, Solicitor, Scottish Government.

25th Meeting, 2017 (Session 5), Wednesday 20 September

2. Islands (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Fergus Murray, Head of Economic Development and Strategic Transportation, Argyll and Bute Council; Andrew Fraser, Head of Democratic Services, and Dr Audrey Sutton, Head of Connected Communities, North Ayrshire Council; Norman A MacDonald, Convener, and Malcolm Burr, Chief Executive, Comhairle nan Eilean Siar; Stuart Black, Director of Development and Strategic Transportation, Highlands Council.

26th Meeting, 2017 (Session 5), Wednesday 27 September

4. Islands (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Ronnie Hinds, Chair, and Isabel Drummond-Murray, Secretary, Local Government Boundary Commission Scotland; Roddie Mackay, Leader, and Derek Mackay, Depute Returning Officer and Democratic Services Manager, Comhairle nan Eilean Siar.

27th Meeting, 2017 (Session 5), Monday 2 October

1. Islands (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Paul Maxton, Project Manager for Our Islands Our Future for Orkney Islands Council, James Stockan, Leader, and Steven Heddle, Councillor, Orkney Islands Council; Malcolm Bell, Convener, and Mark Boden, Chief Executive, Shetland Islands Council.

29th Meeting, 2017 (Session 5), Wednesday 25 October

1. Islands (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Camille Dressler, Chair, Scottish Islands Federation; Rachel Hunter, Area Manager, Shetland, Highlands and Islands Enterprise; David Richardson, Development Manager, Highlands and Islands, Federation of Small Businesses; Fraser Grieve, Regional Director for Highlands and Islands, Scottish Council for Development and Industry; Shona MacLennan, Chief Executive, and Daibhidh Boag, Director of Language Planning and Community Developments, Bòrd na Gàidhlig; Ranald Robertson, Partnership Director, Hi-Trans; Iain MacMillan, Principal of Lews Castle College, University of Highlands and Islands; Stephen

Whiston, Head of Strategic Planning and Performance, Argyll and Bute integrated Joint Board.

30th Meeting, 2017 (Session 5), Wednesday 1 November

1. Islands (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Aeadan Smith, Head of Planning and Development, Scottish Environment Link; Cathy Tilbrook, Head of Coastal and Marine Ecosystems, Scottish Natural Heritage.

Edward Mountain declared an interest as a farmer.

31st Meeting, 2017 (Session 5), Wednesday 8 November

2. Islands (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—Humza Yousaf, Minister for Transport and the Islands, Ian Turner, Darren Dickson, Islands Bill Team, and Heike Gading, Solicitor, Scottish Government.

Annex C: Written evidence

Written evidence was received from the following individuals and organisations:

- [Anonymous 1 \(7KB pdf\)](#)
- [Anonymous 2 \(10 KB pdf\)](#)
- [Anonymous 3 \(8KB pdf\)](#)
- [Anonymous 4 \(66KB pdf\)](#)
- [Anonymous 5 \(9KB pdf\)](#)
- [Anonymous 6 \(9 KB pdf\)](#)
- [Argyll and Bute Council \(82KB pdf\)](#)
- [Argyll and Bute Health and Social Care Partnership \(280KB pdf\)](#)
- [Arthur Cormack \(72KB pdf\)](#)
- [Bernie Bell \(66KB pdf\)](#)
- [Bòrd na Gàidhlig \(128KB pdf\)](#)
- [British Marine Scotland \(64KB pdf\)](#)
- [Comhairle nan Eilean Siar \(147KB pdf\)](#)
- [Community Land Scotland \(91KB pdf\)](#)
- [Community of Arran Seabed Trust \(Coast\) \(149KB pdf\)](#)
- [COSLA \(98KB pdf\)](#)
- [Deirdre Forsyth \(8KB pdf\)](#)
- [Denis Mollison \(483KB pdf\)](#)
- [Federation of Small Businesses \(374KB pdf\)](#)
- [Francesco Sindico \(94KB pdf\)](#)
- [Highland Council \(76KB pdf\)](#)
- [Highlands and Islands Enterprise \(79KB pdf\)](#)
- [HITRANS \(75KB pdf\)](#)
- [Hoolan Energy \(66KB pdf\)](#)
- [Islands Gaelic Research Project \(IGRP\) team \(74KB pdf\)](#)
- [Janet MacDonald \(69KB pdf\)](#)

- [Johanna NicLeòid \(137KB pdf\)](#)
- [John Hunter \(10 KB pdf\)](#)
- [Kieron Green \(9KB pdf\)](#)
- [Law Society of Scotland \(89KB pdf\)](#)
- [Lerwick Port Authority \(74KB pdf\)](#)
- [LGIU Scotland \(92KB pdf\)](#)
- [Liam Alastair Crouse \(206KB pdf\)](#)
- [Local Government Boundary Commission for Scotland \(210KB pdf\)](#)
- [Malcolm Cinnamond \(9KB pdf\)](#)
- [Màrtain Mac a' Bhàilidh \(136KB pdf\)](#)
- [Mira Byrne \(146KB pdf\)](#)
- [Misneachd \(221KB pdf\)](#)
- [Orkney Fisheries Association \(88KB pdf\)](#)
- [Orkney Greens \(20KB pdf\)](#)
- [Orkney Islands Council \(114KB pdf\)](#)
- [Orkney Islands Council supplementary \(224KB pdf\)](#)
- [Raasay Community Council \(127KB pdf\)](#)
- [Raasay Development Trust / Raasay Community Association \(82KB pdf\)](#)
- [RSPB Scotland \(161KB pdf\)](#)
- [Scottish Islands Federation \(107KB pdf\)](#)
- [Scottish Natural Heritage \(83KB pdf\)](#)
- [Scottish Natural Heritage supplementary \(88KB pdf\)](#)
- [Shetland Islands Council \(102KB pdf\)](#)
- [Visit Scotland \(137KB pdf\)](#)
- [Voluntary Action Scotland \(245KB pdf\)](#)

The following correspondence was received from the Scottish Government:

- [Letter from the Minister for Transport and the Islands to the Committee regarding the Islands Bill, 23 August 2016 \(105KB pdf\)](#)
- [Letter from the Islands Bill Team to the Committee regarding follow up response from 8 November meeting, 5 December 2017 \(39KB pdf\)](#)

Annex D: Engagement Visits and Events

The Committee carried out a number of visits and events to hear from islanders and stakeholders about their views on the Bill:

- Isle of Mull (24 to 25 August 2017) - [Community Engagement Event](#)
- [Students from the University of the Highlands and Islands \(UHI\) \(25 September 2017\)](#) - videoconference
- [Orkney \(2-3 October 2017\)](#)
- [Western Isles \(19-20 October 2017\)](#)
- [Arran - community representatives \(14 November 2017\)](#) - videoconference

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