COSLA welcomes the opportunity to submit written evidence on the Islands (Scotland) Bill. COSLA previously responded to the consultation for provisions for a future Islands Bill in 2015. At that point in time COSLA’s consultation response focussed on:

- Strong support for subsidiarity as a matter of right rather than because powers are devolved at the decision of a higher authority
- Strong support for islands proofing to secure the principle of asymmetry and variation in the way policy is applied in different parts of Scotland and that this would sit alongside proposals for local government proofing
- Recognition that community empowerment is best achieved to the greatest end when the partnership between community activism (participation) and democratic institutions (representation) is the most developed. Also, that councils should have the power to operate autonomously and free from central direction and that community empowerment does not imply any reduction in the responsibility or autonomy of the council or other local democratic institutions
- Strong support for Crown Estate operations and associated revenues to be devolved to local government.

Furthermore, COSLA’s response emphasised our agenda of empowering local democracy and that the Our Islands Our Futures Campaign has been complementary to the work of COSLA’s Commission on Strengthening Local Democracy. In addition, and specifically in relation to subsidiarity, we also said that local government can be asymmetric, with no one size fits all model universally applied, since different groups of councils may need different arrangements to best serve their communities.

Many of the points raised in our previous consultation response, still stand in terms of the Bill that is now before Parliament, and we also believe that the Bill should emphasise COSLA’s 5 key principles:

- Strengthening local democracy
- Working together locally
- Delivering outcomes
- Focussing on communities
- Defending local choices

COSLA has drafted this evidence with input from the three Island Councils (Orkney, Shetland, Comhairle nan Eilean Siar), as well as the three Councils in Scotland with Islands (North Ayrshire, Argyll and Bute and Highland). As such the views represented here encompass those of the councils covered by the Bill and have also been endorsed by the wider COSLA membership.
Key points

COSLA welcomes the Scottish Government’s commitment to island communities as is currently expressed through the provisions of the draft Islands (Scotland) Bill

COSLA also welcomes the recognition by Scottish Government of the differential needs of islands communities and that these should be taken into account in decision making. This links to the direction of travel with other areas of policy such as Enterprise and Skills and the Crown Estate where the effect of a policy may be asymmetric in relation to how such policies and interventions are delivered and implemented throughout the country.

COSLA also considers that this Bill represents a move towards wider recognition that policy and decision making may apply differently in different parts of the country in order to suit local needs and circumstances. In this regard COSLA would again highlight its support for the European Charter of Local Self Government and that its provisions must be adopted into law in Scotland in order to enshrine subsidiarity and strengthen democracy. Furthermore, while recognising the inability to bind future Parliaments, COSLA wishes to highlight that our members consider that the progress made by the Island (Scotland) Bill should not be weakened as a result of the process of the UK leaving the European Union.

1. The Bill creates a duty to publish a national islands plan and lay it before the Scottish Parliament. What are your views on this provision?

COSLA welcomes the proposition in the Bill to place a duty on Scottish Ministers to prepare and lay before the Scottish Parliament a national islands plan. This will help set the overarching strategy of Scottish Ministers for improving the outcomes of island communities across Scotland.

COSLA consider that the relevant local authorities concerned should be involved in the process of drafting the national islands plan, in order that it can truly improve outcomes for island communities. We would consider that in terms of section 4, preparation and scrutiny of the plan and the obligation upon Scottish Ministers to consult persons representing the interests of island communities and those likely to be affected by any proposals contained in the plan, that such consultation would include the 6 councils affected by the plan. Furthermore, COSLA would wish to see all relevant local authorities and community planning partners made statutory consultees in the process of drafting the national islands plan. COSLA considers that this would be a good outcome and is more explicit than is currently set out in section 4 of the draft Bill and would allow for significant input of relevant stakeholders into the process for drafting the national islands plan.

In terms of the reference to distinctive characteristics of island communities must be taken into account when developing the plan, COSLA welcomes this proposition and would argue that there should not be a limited description of such characteristics given the uniqueness of many island communities across Scotland.

2. The Bill will require Scottish Ministers and certain Scottish public authorities, to prepare island impact assessments. Do you agree with this provision? How do you think it should work in practice?

Yes, COSLA is supportive of the concept of ‘island proofing’ which has long been called for by our members. We are supportive of the introduction of duties being placed upon relevant authorities to have regard to island communities when exercising their functions
and to prepare impact assessments in relation to island communities in certain circumstances.

COSLA believes that consideration should be given to strengthening these duties so that public authorities would have to have ‘due regard’ and not just ‘regard’ to island communities. This would strengthen this provision, and is relevant given that the current Scottish Government consultation on the socio-economic duty focuses on ‘due regard’, this would put the duty to island proof on a par with this forthcoming duty as well.

While welcoming the duty to have regard to island communities, COSLA would also urge that the island impact assessment process is not overly burdensome on local authorities, which is a general COSLA approach adopted across a variety of policy areas. For this reason COSLA considers that the process should begin start with a screening exercise and then only progress to a full island assessment if the need is demonstrated. This reflects similar screening process used for equalities impact assessments. This would help to ensure that the process is fair and proportionate, while also not being overly bureaucratic. In addition to screening stages, COSLA also considers that independent scrutiny of the impact assessments may be necessary to ensure the process is transparent, fair and equitable and for other public authorities to engage with local authorities when they are undertaking their own impact assessments.

COSLA also consider that several other public authorities could be included as relevant authorities in schedule 5 of the draft Bill and therefore subject to the duty to have regard to island communities. These include: the Scottish Futures Trust; the forthcoming Social Security Agency (as this will be covered by the forthcoming socio-economic duty); the Scottish Human Rights Commission; and Skills Development Scotland. Therefore, COSLA would agree with the inclusion of a power for Scottish Ministers to amend the list of relevant authorities in the schedule by regulations.

COSLA would welcome the issuing of guidance from Scottish Ministers on the duty to have regard to island communities, and would be keen to be involved in the drafting of any such guidance to help ensure that it is appropriate to the needs of local authorities. Again, as per the comment above in relation to consultation on the national islands plan COSLA believes that this would require consultation with the 6 councils covered by the draft Bill and that relevant authorities and community planning partners should be statutory consultees during the production of the plan.

COSLA would also seek clarity on whether such guidance would be statutory or non-statutory in nature and whether the guidance would provide further detail on some of the terminology such as ‘in the authority’s opinion’ and ‘significantly different effect’ which is referred to in section 8 of the draft Bill.

It is noted that there is no mention of an appeal process in the event of dispute over an impact assessment. 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. However, we understand that this would not be necessary if any dispute issues were being routed through the Judicial Review process and COSLA recognises that the supervisory jurisdiction of the courts, via the Judicial Review process would obviously be an avenue of last resort available in this regard.

In terms of section 12 preparation of island communities impact assessment by Ministers COSLA welcomes the fact that this will apply to proposed legislation which is both primary and secondary in nature which it is anticipated will have a significantly different effect on an island community from its effect on other communities in Scotland.
3. The Bill proposes to protect the Scottish Parliamentary constituency boundary of Na h-Eileanan an lár (the Western Isles) from change. Do you agree with this? COSLA would support the opinion of the specific local authority concerned in this respect.

4. The Bill proposes to make an exception to the rules for local government electoral wards to allow areas with inhabited islands to return 1 or 2 members (instead of the usual 3 or 4). What are your views on this proposal? COSLA would welcome this exception as a useful tool to help address issues related to electoral representation for areas with inhabited islands and would therefore welcome its inclusion in the Bill to allow for this consideration to take place. However, COSLA would also highlight that this is 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 and that unintended consequences of such changes should also be considered, particularly with regard to the resulting impact on the size of mainland wards within the relevant local authorities.

COSLA would emphasise that it is crucial that any proposed changes must be suitable for the specific local circumstances that exist throughout the country in relation to the size of wards and the number of members that are returned from areas with inhabited islands.

Therefore, a one size fits all approach is unlikely to be sustainable, and considerations such as this would provide for asymmetry to suit local circumstances and local communities. As such if this exception would prove beneficial to specific island communities in Scotland then it should be considered, although unintended consequences of such changes should also be considered.

5. The Bill will provide a regulation-making power for the Scottish Ministers to create a marine licensing scheme for coastal waters. Do you agree with this power? Do you have any comments on how it should be used? COSLA would be supportive of this approach and the enabling provisions that it would allow for.

6. Does the Bill achieve its aims and are you in favour overall? Is there anything else that you feel should be included or excluded from the Bill? COSLA is generally in favour overall of the scope of the Bill and its intentions. However, there are some concerns over the financial memorandum given that some of the examples in the memorandum have been based on costs relating an island authority as opposed to an authority with islands. As authorities with islands features a significant geographical area, an extensive coastline and a large number of islands, therefore the cost would be expected to be far greater in undertaking many of the requirements within the Bill. As such it may be that the financial memorandum does not presently adequately reflect where resources are required in relation to the differences between the 6 local authorities covered by the draft Bill.

7. Do you have any comments on the bill in relation to human rights or equalities? In relation to creation of the national islands plan could this be imbedded in the process for Scotland’s National Action Plan for Human Rights (SNAP). It would be helpful in terms of other assessment processes that in relation to this Bill that the impact assessment process is embedded from the start. As highlighted above COSLA considers that it may be appropriate that the proposed legislation also covers the Scottish Human Rights Commission.