RURAL ECONOMY AND CONNECTIVITY COMMITTEE

ISLANDS (SCOTLAND) BILL

WRITTEN SUBMISSION FROM FRANCESCO SINDICO

Introduction

This submission is written both in my personal capacity, but also as Co-Director of the Strathclyde Centre for Environmental Law and Governance (SCELG). The latter is a centre of excellence based at the University of Strathclyde Law School with over 20 twenty researchers involved in policy relevant work across 12 areas of expertise. SCELG works closely with national and international partners and has already been collaborating both with the Scottish Government and the Scottish Parliament advising on the effects of BREXIT on environmental law in Scotland.

I would like to express my gratitude to the Rural Economy and Connectivity Committee for providing individuals and organisations the possibility to submit evidence on the Islands (Scotland) Bill introduced before the Scottish Parliament on 9 June 2017. This submission focuses on the two following questions asked by the Rural Economy and Connectivity Committee:

- 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?
- 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?

In order to prepare this submission I have carefully reviewed the Islands (Scotland) Bill (SP Bill 15), the Explanatory notes to the Bill, the Islands (Scotland) Bill Policy Memorandum and the SPICe Briefing, Islands (Scotland) Bill, 4 September 2017.

Scotland: a hub of island policy innovation

I would like to begin this submission by praising the Scottish Government for introducing the Islands (Scotland) Bill. If adopted, it will be a rather unique piece of legislation worldwide. It has the potential of setting a benchmark for island communities and governments around the world. While there are elements of the Islands (Scotland) Bill that can be scrutinised, it will still be a feat in itself to have a legally binding piece of legislation focusing its attention on improving the lives of island communities and aiming to “contribute to creating the right conditions for [sustainable economic] growth” (Policy Memorandum, para 6).

Coming myself from a country with plenty of islands (Italy), although very different in numbers and characteristics than what we have in Scotland, I am aware of the common challenges that island communities face: ie “geographic remoteness, declining populations, transport and digital connections and other issues” (Policy memorandum, para 5). By fine-tuning and properly implementing the Islands (Scotland) Bill the Scottish Government has the opportunity to position itself at the top of islands policy in Europe and globally.
Islands (Scotland) Bill and EU island policy

This last observation allows me to encourage the Scottish Government to continue to engage with its European counterparts, despite the Brexit process. Islands policy has come to age within the European institutions with the adoption in 2016 of the European Parliament resolution on the special situation of islands (2015/3014(RSP). While Scotland may not be able, despite voting against Brexit, to effectively engage in official intergovernmental European Union processes after the UK departs from the EU, it should consider highlighting the Islands (Scotland) Bill and challenges and opportunities throughout its implementation via other international channels.

The Network of Regions for Sustainable Development (NR4SD) is one of these possible international forums where Scotland can engage proactively to share good practices. The fact that NR4SD is supporting the second edition of the International Conference on Climate Change Adaptation entitled “Islands, land of innovative solutions for all territories” provides a concrete opportunity to showcase the innovation embedded in the Islands (Scotland) Bill.

National Islands Plan

Moving now to the Islands (Scotland) Bill the first issue that I wish to address is the duty to publish a national islands plan and lay it before the Scottish Parliament.

The Islands (Scotland) Bill places a duty upon the Scottish Ministers to prepare a national islands plan (Bill, Part 2). One element of the provisions related to such a duty that I wish to highlight in this submission is the discretion that Scottish Ministers appear to possess in the preparation of the Islands Plan (section 4) and in deciding to review it before the 5 year deadline (section 6).

Section 4 of the Bill deals with the consultation needed to prepare the national islands plan. Section 4.1 clarifies that the Scottish Ministers are to consult “such persons as they consider represent the interests of island communities,” and “such persons as they consider likely to be affected by the proposals contained in the plan” (emphasis added)

The wording of the Bill seems to imply that the Scottish Ministers have ultimate discretion as to whom to include in the consultation process leading to the national islands plan. The question that stems from such a consideration is whether persons who have not been consulted, and who believe that they should have been consulted, can raise an objection to the national islands plan. Rather than presenting such a question as one of standing and judicial review, which implies a confrontational nature of the relationship between persons to be consulted and Scottish Ministers, my comment here wishes to stress the need to base the national islands plan on the widest possible consultation with island communities. Finding ways to involve all “persons” involved in the sustainable economic growth will be paramount to the success of the Islands (Scotland) Bill.

Furthermore, section 4(1) b) emphasises another requirement at the moment of preparing the national island plan, according to which “Scottish Ministers must have regard to the distinctive geographical and cultural characteristics of each of the areas inhabited by island communities”. A similar question to the previous one arises here: what if the Scottish Ministers misrepresent the characteristics of the island? Can a person/community from the island raise objections against the national island plan? I deliberately did not frame this as a
question of legality of the national islands plan. Not only because the latter is not per se a legally binding piece of legislation subject to a review of legality, but rather a platform that sets out the “plan”, which will enable islands to further grow in a sustainable manner. The goal of this comment is more to facilitate a discussion aimed at finding ways to enable all persons with a stake on the Scottish islands to improve the national islands plan when they are prepared.

There are two further provisions where a discussion on how to secure the participation of all persons with a stake in the sustainable economic growth of Scottish Islands would be positive. Firstly, according to the wording of section 6 only Scottish Ministers would have the power to trigger an early review of the national islands plan. The question here then becomes whether any proportion of interested persons could, if not trigger, recommend to Scottish Ministers an early review of the plan, due to any particular concerns close to stakeholders close or linked to island communities. A second provision relates to the monitoring of the national islands plan (Bill, section 5). This is a much welcome element of the Islands (Scotland) Bill that merits to be commended. However, in this submission I wish to open a discussion surrounding the accountability of the monitoring and reporting process. Section 5 requires Scottish Ministers to prepare an annual report, but it is unclear whether island communities (or any interested member of the public) will be able to object to the report. It will be important for stakeholders to have an opportunity to be part of the monitoring and reporting process, especially once it is laid before the Parliament (Bill, section 5.3 a). Will interested parties have the opportunity to enrich the process via written submissions and/or oral presentations once the report has been presented before the Parliament?

Island impact assessments

The second question that this submission will address refers to the duties in relation to islands communities, as provided for in Part 3 of the Islands (Scotland) Bill and, in particular, the obligation upon relevant authorities and Scottish Ministers to undertake islands impact assessments.

Similar observations as the ones just made for islands national plans are repeated here and focus on the discretion of the public bodies and the role of interested stakeholders in improving the process leading to island proofing and to make the public bodies more accountable.

According to sections 8.1 and 12.1 it will be the relevant authority or the Scottish Ministers to decide which policies, strategies and/or services (in case of the relevant authority) and which legislation (in the case of the Scottish Ministers) should undergo an island impact assessment. Again, the question is whether the discretion that the public bodies possess in this regard could be tempered by enabling a member of the public with an interest in the sustainable economic growth of the Scottish islands to suggest the need to undertake an island impact assessment on policies, strategies, services and/or legislation for which an island impact assessment has not been considered necessary.

Conclusion

This submission has highlighted a number of questions that the Rural Economy and Connectivity Committee may wish to consider in order to further improve the Islands (Scotland) Bill. These questions have focuses both on Part 2 of the Bill (National Islands Plan) and Part 3 (the duties in relation to island communities (island impact assessment)).
The submission has also raised several issues regarding the possibility to flag the Islands (Scotland) Bill outside of its borders. Firstly, the Scottish Government should continue to engage with its European counterparts in the context of European islands policy, despite the unfolding of the BREXIT process. Secondly, and at the same time, it should also focus on forums such as the NR4SD where it can showcase its islands policy.

The international presence of the Scottish Government in the context of its islands policy and forthcoming legislation is important because, despite the observations made in this submission, the Islands (Scotland) Bill is to be commended as one of the few holistic pieces of legislation worldwide set to island proof the work of public bodies. I also believe that several of the observations made in this submission have possibly already been in the mind-set of the drafters of the Islands (Scotland) bill and will be dealt with effectively in its implementation.

I look forward to collaborating with the Rural Economy and Connectivity Committee and I would like to extend again my thanks for the possibility to submit this evidence.

Francesco Sindico
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