Comhairle nan Eilean Siar, Orkney Islands Council and Shetland Islands Council have been working together since 2013 to take forward the *Our Islands: Our Future* campaign, seeking recognition firstly of the potential of Scotland’s islands as a place to live and work and to contribute to the national economy by taking advantage of their natural resources. However, the campaign identified that steps required to be taken by Government at all levels to address some of the challenges facing islands, and to create a level playing field and the environment necessary for islands to realise their true potential. The Comhairle welcomes this legislative commitment from Scottish Government which contributes significantly towards achieving key aims of the campaign.

The principal role of Islands Councils is to be the democratically elected representatives of the diverse communities they serve; to provide necessary services, to act as community leaders and to be effective advocates for our communities. The Islands Bill is seen as a natural development of the Community Empowerment (Scotland) Act 2015 and its focus on improving outcomes for communities. An Islands Act has the potential to ensure that all public agencies consider formally and rigorously the particular nature of island communities in their decision making process and to consider the most effective service delivery model both to meet communities’ needs and to deliver agreed outcomes in an effective and island-sensitive way.

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?**

It is noted that the Bill is introduced as “an Act of the Scottish Parliament to make provision about islands, inhabited islands and communities who live on islands; and for connected purposes”. The focus therefore remains on communities. This is considered to be entirely appropriate particularly in light of the demographic challenges facing areas such as the Western Isles. It is essential that a level playing field is created to enable island communities to enjoy the same access to opportunities and services as communities on the Scottish mainland, at similar cost. It is noted that this Plan would cover both outcomes as a direct result of public functions and services and also those where public services and functions can contribute to outcomes for islands communities. The Outer Hebrides Community Planning Partnership has agreed to place the retention and attraction of people to the area at the centre of its Local Outcome Improvement Plan. It has been identified that to achieve a sustainable population going forward the Outer Hebrides will require to attract or create 1700 additional jobs over a ten year period. In addition to this it will be necessary to retain as many young people as possible by offering attractive opportunities to work and study. An effective National Islands Plan could be a key element in realising these aspirations.
Section 3 currently provides that Scottish Ministers require to consult such persons as they consider “represent the interests of islands communities” in producing the plan. It is suggested that a specific provision be included that Islands Councils will be consulted, recognising their role both as a tier of government and the elected representatives of their communities.

The Committee is asked to extend this duty to other public authorities, following the model for Gaelic Language Plans under the Gaelic Language (Scotland) Act 2005. One of the key benefits of that legislation is its ability to apply solutions which are proportionate and which allow the purpose of the legislation to be achieved without placing an unduly onerous burden on authorities where it is of limited applicability.

It is suggested that, notwithstanding the proposed requirement that the Plan be reviewed every five years and there being a power to do so at other times, that the Bill be amended to the effect 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. This would allow the Plan to contain longer term targets and be more meaningful. It is suggested that this should not present a difficulty if the aspirations of the Bill retain cross party support. If there were to be a change of Government the provision to review at any time could be triggered.

In relation to the Annual Report providing information on how outcomes have been improved and also how island proofing has been implemented, it is suggested that a time limit for submission of the Report after conclusion of the reporting year be included.

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?

This “island proofing” principle is a key means of achieving the level playing field referred to above and is strongly supported by the Comhairle. It is suggested that the list of bodies covered should be inclusive as the process should be very straightforward for bodies with limited islands ‘reach’.

The key section provides that “a relevant authority may demonstrate compliance with the duty to have regard to island communities by preparing an Islands Communities Impact Assessment in relation to a policy, strategy or service which in the authority’s opinion is likely to have a significantly different effect on an island community from its effect on other communities in Scotland.”

For the Comhairle, this is probably the principal provision of the Act. The language reflects that of the Community Empowerment (Scotland) Act 2015 (the 2015 Act) which, in Section 9, identifies localities experiencing “significantly poorer outcomes which result from socio-economic disadvantage”. There is also a commonality of provision in the duty to have regard to island communities which reflects Section 5 of the 2015 Act in imposing a duty to act with a view to reducing inequalities resulting from socio-economic disadvantage.
The Comhairle supports the proposal that the duty apply to the development, delivery and redevelopment of policy, strategy and service. While there is a separate provision covering Scottish Government’s duties in relation to primary and secondary legislation it is noted that Scottish Government Guidance is not referred to and the Comhairle would seek clarification of how it is intended that such Guidance be “island proofed” given the important role of such Guidance; not least the Guidance to be prepared under this Bill when enacted.

There is an obligation, again similar to that in the 2015 Act, to have regard to any Guidance and a statement that such Guidance will follow consultation. Comhairle nan Eilean Siar, together with Orkney and Shetland Islands Councils, has made representations to Scottish Government to be involved in the drafting of such Guidance.

The obligation imposed on both relevant authorities and Scottish Ministers to consider whether legislation, or policy or strategy, can be framed in such a manner as to improve or mitigate the outcomes is considered appropriate. The reporting provisions have been kept relatively open provided that all relevant authorities report every twelve months.

The Comhairle would raise the following questions and points for clarification:

How is it intended to address Government Guidance which does not appear to follow within “policy, strategy or service” referred to in Section 7, or a Bill or subordinate legislation referred to in Section 10? An understanding of the matters to be covered in the Guidance would be appreciated and a commitment sought that islands councils would be actively involved in the preparation of such Guidance.

“In the authority’s opinion” introduces a risk of there being no objective standard. The Committee may wish to consider whether wording such as that in Section 1 of the Equality Act 2010 would go some way towards addressing this risk. This states “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”.

Clarity is also sought as to how the term “significantly different” is anticipated to be interpreted in practice.

There are no enforcement provisions listed either in relation to a decision not to conduct an assessment nor in relation to a Report not being published or being inadequate. The Comhairle would ask the Committee to include provision for review of decisions not to conduct such assessments and to challenge the conclusions of published assessments to allow communities to call public bodies to account.

It may be that these are matters that will be covered in Guidance and it is therefore important that the relevant Councils are involved in the formulation of such Guidance. Initial indications are that Scottish Government would be open to establishing a group or groups to feed in directly to the various iterations of any
Guidance in a similar manner to that adopted for the Community Empowerment (Scotland) Act 2015 on asset transfer and participation requests. The Committee is asked to encourage a similar approach.

3. **The Bill proposes to protect the Scottish Parliamentary constituency boundary of Na h-Eileanan an Iar (the Western Isles) from change. Do you agree with this?**

Yes. The Comhairle is pleased that the opportunity is being taken to address this anomaly.

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 the proposal?**

The Comhairle strongly supports this provision, which provides an opportunity to address concerns in many island areas of a councillor being too remote from the island community served. It is quite possible within the current system that an island of substantial relative population may not have a resident councillor, or for councillors to be based within geographic areas of more than two hours driving distance from other areas within the ward. This is considered to be contrary to principles of empowering communities and places an enormous burden on councillors whose attendance at a community council meeting may require an overnight stay. Although difficult to establish, it is often noted as a potential disincentive to candidates standing for election in these wards.

The Comhairle seeks clarification of the words “an electoral ward consisting mainly of one or more inhabited islands”. 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 is 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”. This would have the effect of “island proofing” the provision and give the Local Government Boundary Commission for Scotland maximum flexibility.

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 is should be used?**

The Comhairle agrees that such a power should be included in the Bill and that giving Scottish Ministers the right to address the matter in Regulations is the appropriate way to proceed. The power is consistent with the empowerment of communities and parallel work being conducted on further devolution of powers from Crown Estate Scotland. This provision will allow Scottish Ministers to recognise that “one size does not fit all” and to reflect the asymmetry of coastal communities in considering individual business plans from Councils setting how they will engage with communities to deliver bespoke arrangements in approving such schemes.
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?

The Comhairle is supportive of the aims of the Bill which go far towards addressing a number of issues raised by the Our Islands: Our Future campaign. However, there is considered to be an opportunity, at a time of reform of the delivery of public services and commitment to the empowerment of communities, to include an element of “permissive powers”. In the consultation during Autumn 2015 a specific question was asked in relation to whether islands areas required “additional powers” to enable them to serve their communities effectively. This provision was expressly separate from that relating to the marine licensing powers under the Zetland (ZCC) and Orkney (OCC) County Council Acts. However, it is suggested that the two cannot be divorced as the provisions currently in the OCC/ZCC Acts to apply monies “in the best interests of the County or its inhabitants” could be as relevant to, for example, Crown Estate income, income from renewable energy developments or a Hebrides Spaceport as an oil or harbour Reserve Fund. Further discussion of this policy intent could allow the proposal to be developed. It is acknowledged that any specific example would require to be demonstrably incapable of delivery under existing legislation.

The Scottish Government’s Programme for Government announced a comprehensive review over the next year of how local decisions are made and how local democracy is working. The Islands Bill provides an opportunity to pilot bespoke arrangements beyond those currently permitted by the Community Empowerment (Scotland) Act 2015 to enhance local accountability for all public services, to use the resources of the local public sector more efficiently and effectively, and to encourage innovation and skills to develop the workforce to meet islands’ needs.

7. Do you have any comments on the Bill in relation to human rights or equalities?

It is considered that existing legislation is adequate to address these two areas as narrowly defined in law. The Comhairle would submit that successful implementation of the Bill would make a substantial contribution towards addressing inequality in islands as more generally understood.

Comhairle nan Eilean Siar
September 2017