RURAL ECONOMY AND CONNECTIVITY COMMITTEE

ISLANDS (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

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?

We support the development of a National Islands Plan that responds to and provides the necessary flexibility for the challenges facing island communities and their supporting environments. This should be a high-level plan that works alongside other national-level policy frameworks (e.g. National Marine Plan, Land Use Strategy, National Planning Framework, Inshore Fisheries Strategy). It should help regulators and managers reach decisions in the context of islands (i.e. how some national policies will be implemented in an island context), while also guiding and informing more detailed regional/local plans (e.g. Local Outcome Improvement Plans, Locality Plans, Local Development Plans, Regional Marine Plans, Regional Inshore Fisheries Plans).

A National Islands Plan provides a great opportunity to reflect on the special qualities of the nature and landscapes of islands, and the reliance of their communities and economies on the health of island and marine ecosystems. The plan should (a) bolster the protection of the most important and sensitive natural assets, (b) seek opportunities to recover or enhance natural assets and the benefits they provide (within the bounds of sustainability), and (c) drive investment in nature-based solutions for sustainable growth and reduced conflicts between different interests.

The National Islands Plan should provide decision-makers with a consistent approach to addressing issues common to all islands, but also provide local planners and communities with the flexibility and impetus to address more specific issues within or across their island communities. As a national organisation delivering locally, we will be able to contribute to a national islands plan that is locally relevant, and which encompasses the many differences between and within island groups. Overall, this should help the Plan to safeguard and improve the assets that make island life viable, sustainable and appealing.

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?

We fully agree that public authorities should give due consideration to how decisions will affect island communities. The island authorities identified this as a key issue for their communities and we welcome the intent of this provision.

There are existing duties and codes with purposes overlapping this proposed provision. The Scottish Regulators Strategic Code of Practice and the Public Sector Equality Duty help ensure proportionate and equitable policies, plans and strategies. The details of a new duty should ensure that (a) it only applies where needed to ensure fair and sustainable decision-making for island communities (i.e. there should be a screening process), (b) it does not duplicate other duties without adding value, and (c) the procedures are integrated with similar duties, and are simple and quick to
apply (including any consultation requirements). Given the resource implications for public bodies, it should be clarified whether any retrospective ‘island-proofing’ of policies, strategies and services will be required, and the extent of this. Regarding who is responsible for determining satisfaction of an ‘island-proofing’ test, our preference is for a transparent process within the organisation responsible for a given policy, strategy or service.

SNH have a ‘Balancing Duty’, through the Natural Heritage (Scotland) Act 1991, requiring us to take account of the interests of local communities. Rather than an additional process, we would prefer to adapt our internal approach to this duty to meet any new requirements. We would need to clarify the interplay with this and other existing duties, including any exceptions to its application.

The needs and vulnerabilities of island communities differ considerably, so the assessment requirements need to accommodate this. For example, Islay differs greatly from the Western Isles or Orkney, but there will also be variation within Orkney (i.e. between mainland Orkney and its northern isles). The National Islands Plan could determine the characteristics and vulnerabilities of islands to consider in applying this duty, but will be limited in its capacity to identify the variability between or within islands. The national plan could, however, drive the preparation of local/regional marine and land-use plans more responsive to specific needs, which in turn could provide additional context for island impact assessments.

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?
We welcome the intent of this proposal but have no specific comments.

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?
We welcome the intent of this proposal but have no specific comments.

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?
We agree that island and coastal communities and authorities should have a stronger role in determining the use and protection of adjacent marine areas. Existing legislative provisions that provide an opportunity to achieve this are:

- The Marine (Scotland) Act 2010, including the partnership approach to regional marine planning and the requirement to adopt Statements of Public Participation.
- The Community Empowerment (Scotland) Act 2015, particularly for Community Planning (Part 2), Participation Requests (Part 3) and Participation in Public Decision-Making (Part 10).
Fuller use of these existing provisions would improve planning and licensing mechanisms, particularly the co-production and implementation of robust plans (land and marine) in partnership with communities and local authorities.

The input of local stakeholders and authorities is invaluable for good decisions at the licensing-end of the development process, particularly for complex or large marine infrastructure proposals. An additional layer of devolved licensing power could provide added impetus for local engagement and good joint-working between national and local licensing authorities. However, we query whether this requires a dual-licensing approach, considering it could be achieved through adoption of joint working arrangements. In addition, as regional Marine Planning Partnerships are rolled out around Scotland, their role as statutory consultees on marine licence applications could provide a formal mechanism for more effective local consultation and greater local control over the marine area.

The Bill and associated memoranda indicate that the devolved powers would operate within both national and regional/local policies, and in addition to marine licensing by Marine Scotland. The Marine (Scotland) Act 2010 streamlined marine licensing, simplifying the process and reducing the burden on developers, statutory advisers and stakeholders. We suggest that the following risks are taken into account within the terms of a scheme for designating an ‘island licensing area’:

- Additional regulatory burden on developers beyond the requirements of the Marine (Scotland) Act 2010 and any potential delays to consenting processes.
- The potential for confusing differences in the licensing requirements between regions, and between regions and national processes.
- The potential to confuse stakeholders, including the public, with multiple licensing regimes for individual proposals.
- The capacity of local authorities to operate new licensing schemes, in terms of personnel and technical knowledge of marine operations and marine environmental issues, including monitoring and enforcement requirements.
- Loss of consistency in approach to novel technologies like tidal stream and wave energy development.
- Duplication of consultee input, including SNH. The process, requirements and timing could be integrated with licensing under the Marine (Scotland) Act 2010.
- Legal uncertainty over which licensing system takes precedence in the event of disagreement between licensing authorities.
- Potential inconsistency with the recommendations from the recent aquaculture Independent Consents Review and ongoing work to streamline the consenting process.

Any progression of this provision could be informed by a review of the existing and previous dual licensing processes, including how the risks above have been or could be overcome. Clarity would also be required on any additional fees for developers and what the benefits of this would be (i.e. how would the revenue be spent?), whether compliance work is the responsibility of local authorities or Marine Scotland, and who would be responsible for decommissioning costs. The
outcome of arrangements for the long-term management of Crown Estate assets in Scotland will also be an important consideration in the design of this provision.

Regarding the definition of ‘development activity’ under 16(1)(b) of the Bill, we suggest it is 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.

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?

We support the principle of greater accountability of decision-making to island communities. We welcome the intent of the Bill to help island communities achieve their aims for the future, but highlight the need to account for variation in the issues and dependencies both between and within island groups. It is also important that duplication or confusion is avoided in the adoption of new plans, duties and powers.

We note that provisions under the Community Empowerment (Scotland) Act 2015 and the Marine (Scotland) Act 2010 also bring opportunities to achieve some of the same outcomes. The engagement of island communities and their authorities in the emerging system of regional marine planning presents a particular opportunity to shape the use, enjoyment and protection of their local marine area. Marine planning, if embraced from plan-making to decision-making, could drive long-term positive change for businesses, communities and nature alike – see our Marine Planning Position Statement.

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

The Bill should improve treatment of island communities relative to communities that are more urban or better connected with the economic and social infrastructure of Scotland. However, we note that this Bill does not seek to address where similar issues occur for some isolated mainland communities.

Scottish Natural Heritage
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