Introduction

On 26 June 2017 the Rural Economy and Connectivity Committee launched a call for views on the Islands (Scotland) Bill, in both English and Gaelic. This included, as well as a traditional call for views inviting written submissions, the option for individuals to provide answers using an online survey.

The Committee received 41 submissions*, broken down as follows—

- 5 submissions and 1 supplementary submission from local government bodies,
- 6 submissions from public sector bodies;
- 6 submissions from third-sector organisations;
- 5 submissions from professional bodies and other bodies;
- 3 submissions from academic and research specialists;
- 1 submission from a private business; and,
- 14 submissions from individuals, including 6 anonymous survey submissions.

14 submissions were received through the online survey, and a number of submissions were received in Gaelic.

This paper provides a summary of the main points from submissions, and is structured around questions asked in the call for views.

*Any submissions received after 6 October are not included in this summary. This summary is not designed to repeat submissions in detail – all submissions can be read in full on the inquiry webpage.

Further background reading on the Islands (Scotland) Bill can be found in the SPICe briefing, published in both English and Gaelic.

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SPICe Research
03 November 2017

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.
Question 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?

Submissions in general reflected support for the introduction of a National Islands Plan, however there was an emphasis on the need for clarity about what form both the plan and guidance might take.

Shetland Islands Council suggested that a lot of work would be needed to flesh out the detail of the plan, and Orkney Islands Council suggested that the Gaelic Language Plan might form a good template for the National Islands Plan. Voluntary Action Scotland expressed that the plan should be a ‘living’ document.

Highlands and Islands Enterprise suggested that the plan should have a clear link to the National Performance Framework, and both it and Highlands and Islands Transport Partnership highlighted that Local Outcome Improvement Plans would be useful in informing the plan.

Argyll and Bute Council suggested that there should be follow-on plans for relevant local authorities, as a “living document which replicates themes in the National Plan but provides support/solutions specific to local islands”. It also suggested that the plan was viewed as a way to safeguard services on islands. Comhairle nan Eilean Siar echoed this, suggesting that a National Islands Plan should help to create a level playing field “to enable island communities to enjoy the same access to opportunities and services as communities on the Scottish mainland, at a similar cost. The FSB suggested that the plan should enable and not be prescriptive.

Contents

Submissions highlighted areas which the plan could cover, including—

- transport, including ferry and air services for both freight and passengers, and island infrastructure
- fuel poverty
- housing, particularly social housing
- health and social care provision
- natural resources and environmental protection
- community benefit schemes
- digital connectivity
- local workforce
- grid connections
- Gaelic

The Highland Council welcomed the requirement for the distinctive geographical and cultural characteristics of islands to be taken into account in developing the plan, but felt that there should not be a limited description of characteristics. Orkney Fisheries Association felt that the settled permanent population should take priority with regards to decisions made about development or non-development of islands.
**Guidance and monitoring**

A number of submissions emphasised the need for statutory guidance on the plan, and the Highland Council noted the omission of draft statutory guidance from the Bill.

Raasay Community Council suggested that a position statement of key information for each island should be compiled in advance of the provisions of the Act coming into force to allow changes to be tracked over coming years. Orkney Islands Council supported an annual reporting approach, but highlighted the importance of building in a structure for monitoring longer term strategic aims.

**Engagement**

Highlands and Islands Transport Partnership and Raasay Community Council emphasised the importance of engagement on the draft plan at a community level. LGiU suggested that the plan should be developed from a community level upwards, with a joint working approach to coordination from the six relevant local authorities. They felt that this would improve a sense of ownership of the plan amongst island communities, and reduce the possibility that the plan may in time become purely an administrative task.

**Timelines**

Whilst there was general support for the proposed five year timescale for a National Islands Plan, there were mixed views on how this might be applied. Argyll and Bute Council and the Law Society of Scotland gave support for a five year plan, and Highlands and Islands Enterprise agreed, adding that the plan should be subject to review at three year intervals. Comhairle nan Eilean Siar suggested that this should, when introduced, cover the remainder of the current parliamentary term, and the entirety of the next, with future plans then covering five year periods. Shetland Islands Council suggested that the timescale for the plan should bridge parliamentary sessions to ensure that it remains non-party political.

**Suggested amendments**

The following changes/additions were suggested—

- The Islands Strategic Group should be specifically referred to in the Bill (Orkney Islands Council).
- Islands councils and councils with islands should be statutory consultees (Orkney Islands Council, Comhairle nan Eilean Siar, The Highland Council and CoSLA). CoSLA suggested that this should extend to community planning partners.
- The Islands Plan approach should be a duty that extends to other public bodies, using the same model as Gaelic Language Plans under the Gaelic Language (Scotland) Act 2005 (Comhairle nan Eilean Siar).
- Retrospective ‘island-proofing’ should be a part of the National Islands Plan (Orkney Islands Council).
- A time limit for producing the annual report following the conclusion of the reporting year should be included (Comhairle nan Eilean Siar).
• Part 2, Section 3 (2) of the Bill could be clearer about the sort of benefits the Act envisages (Bòrd na Gàidhlig).
• It would be useful to develop a mission statement or a set of high level objectives that are identified in the Bill that would sit above the National Islands Plan and shape it. (Highlands and Islands Transport Partnership, RSPB)
• Consideration should be given to defining the intended extent of island input to decision making (Raasay Community Council).
• “Lifeline services”, defined through consultation, should be listed on the face of the Bill (Raasay Community Council).
• The drafting of Part 2, Section 4 (3) could be made clearer by stating that “the Scottish Ministers must allow the Scottish Parliament 40 [working] days, excluding any time which the Parliament is dissolved or in recess for 5 or more days, to scrutinise the plan” (Law Society of Scotland).
• The interrelationship of the National Islands Plan with other plans such as the National Planning Framework, Scotland’s Marine Plan, Land Use Strategy, Local Development Plans and Regional Marine Plans should be made clearer in the Bill (Law Society of Scotland).

Question 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?

Much like the proposals around the introduction of a National Islands Plan, there was for the most part strong support for duties in relation to island communities, however there were concerns raised about how this would work in practice. The FSB, among others, noted concerns about islands impact assessments becoming a ‘tick-box’ exercise.

The understanding of this provision was that the aim was to provide greater parity of service for island communities. Argyll and Bute Council acknowledged that a solution to mitigate the impacts of policy on island communities may not always lead to equality of service with mainland communities. Bòrd na Gàidhlig suggested that the aims of carrying out island impact assessments should be made clear by Scottish Ministers.

Shetlands Islands Council suggested that it might be useful if a specific government department was named as a ‘sponsor’ for island impact assessments. It detailed how the Council would be adjusting its integrated impact assessments to take cognisance of inhabited islands, and noted that it did not expect the new duties to be overly burdensome.

Approach

CoSLA, along with others, suggested that a two-stage approach similar to that used for Equalities Impact Assessments would be appropriate. In this approach, a screening process would establish whether an island impact assessment was needed. Highlands and Islands Enterprise stated that impact assessments should not delay implementation of a service and should be carried out as early as is practicable.
Argyll and Bute Council, Raasay Community Council, and Raasay Development Trust suggested that impact assessments themselves should be consultative. LGiU suggested that local communities should be able to inform public authorities what island proofing they require, and that those authorities should demonstrate that their impact assessment was developed in conjunction with other authorities and island communities. It added “It is hard to believe that, if island communities were asked how they wish to be informed about the progress of island proofing, they would request 66 annual reports”, and suggested that as an alternative authorities should coordinate their island-proofing activity and submit one less frequent report.

VisitScotland felt that key areas for inclusion in impact assessments were investment, jobs, infrastructure, accommodation and skills, and that impact assessments should aim to tackle wage disparities between islands and the mainland. The Islands Gaelic Research Project suggested that a Gaelic impact assessment should be incorporated into the wider islands impact assessment approach. Scottish Natural Heritage felt that integrating islands impact assessments with other duties would be an effective approach.

The Orkney Greens suggest that in order for Orkney to fully control its future, a single purpose islands authority should be acknowledged within the Islands Bill.

Guidance

A number of submissions stated that without draft guidance it was unclear how provisions would work in practice. CoSLA sought clarification on whether this would be statutory or non-statutory. Orkney Islands Council felt that guidance should be non-statutory to allow it to evolve.

Shetland Islands Council highlighted the importance of guidance to the success of island impact assessments. They suggested that it might be useful for public authorities to keep a log of examples where activity was adjusted to take account of island circumstances to support the annual reporting process. Comhairle nan Eilean Siar emphasised the need for clarification on how guidance itself would be ‘island-proofed’ and consulted on.

Comhairle nan Eilean Siar called for the Scottish Government to use a similar consultation model for developing guidance as that used for the Community Empowerment (Scotland) Act 2015.

Orkney Islands council suggested that the principles enshrined in Articles 170 and 174 of the Lisbon Treaty should be adopted in the guidance. It also suggested that the limitations of the Scottish Index of Multiple Deprivation and its adverse impact on island areas be acknowledged in guidance.

Assessment and appeals

Comhairle nan Eilean Siar noted that there is no provision within the Bill for review of decisions or enforcement. CoSLA felt that independent screening of impact assessments
may be necessary to ensure that the process is “transparent, fair and equitable”, and sought clarity on whether the route for dispute resolution would be detailed in guidance. Highlands and Islands Enterprise suggested that the establishment of a Scottish Parliament committee with responsibility for islands would ensure that public bodies could be called to account.

Suggested amendments

The following changes/additions were suggested—

- Certain terms in the Bill were unclear or subjective, and there were calls to revise these—
  - Part 3, Section 7 (1) “regard to” (some submissions suggested this be changed to read “due regard to”)
  - Part 3, Section 8 (1) “in the authority’s opinion” and “significantly different”
  - Part 3, Section 9 (b) “in any other case, by making such an assessment or taking such other steps as the authority considers appropriate”. (Shetland Island Council, Orkney Islands Council, Comhairle nan Eilean Siar, The Highland Council, CoSLA

- The Bill should include provisions for a review of decisions not to conduct island impact assessments or in relation to the conclusions of published assessments to allow communities to call public bodies to account (Comhairle nan Eilean Siar, Orkney Islands Council).

- There should be a formal mechanism that ensures consultation with all six relevant councils on the guidance accompanying the new duties (Orkney Islands Council).

- A number of other public bodies to be covered by legislation were suggested—
  - Scottish Futures Trust
  - the forthcoming Social Security Agency
  - the Scottish Human Rights Commission
  - Skills Development Scotland

- A consultation should be held on the bodies that are to be included. This is due to a lack of clarity – relevant authorities listed under the Scottish Administration part of the Schedules tie in with references to office-holders in the Scottish Administration under Section 126(7) and (8) of the Scotland Act 1998. However, under Section 126(8)(b) the definition includes “any other office of a description specified in an Order in Council made by Her Majesty under this subsection”. In addition, further bodies are listed in Part 2 of Schedule 1 of the Freedom of Information (Scotland) Act 2002. (Law Society of Scotland).

- As an alternative to having a provision allowing Ministers to update the list of public bodies with duties under the Act, only excluded bodies could be listed which would protect against frequent updates to the schedule (The Highland Council).

**Question 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?

Submissions expressed almost universal support for this provision, largely on the basis that if residents of Na h-Eileanan an Iar wanted this it should not be blocked.
The only objections came from individuals responding to the online survey, one of whom was in objection to the Bill as a whole, and the others noting that protection of constituency boundaries could prove restrictive in the future.

The Highland Council suggested that this provision should be extended to large rural areas with low populations in other parts of Scotland, including the Mainland. One respondent to Argyll and Bute Council’s consultation work had felt that this provision should apply specifically to the constituency of Argyll and Bute.

**Suggested amendments**

The following changes were suggested—

- The Provision in Part 4, Section 13 (1)(c)(ii) should read “Na h-Eileanan an Iar” as opposed to “Comhairle nan Eilean Siar” (Comhairle nan Eilean Siar).

**Question 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?**

There was general support for this provision. In submissions which did not express support, this was in many cases because the respondents viewed that this provision would lead to a reduction in councillors representing island communities.

Argyll and Bute Council noted that there could be advantages to having councillors who represented both mainland and island interests, and highlighted instances where the change could lead to some smaller island communities having fewer councillors representing them. CoSLA suggested that this approach was unlikely to resolve all of the issues around representation of island communities, and that unintended consequences of making changes would need to be considered.

Highlands and Islands Transport Partnership stated that it was important that both island communities and local authorities were consulted on any proposed changes.

The Local Government Boundary Commission for Scotland (LGBCS) confirmed that it was not possible to predict the outcome of making changes to ward sizes, and that there could be wider ramifications for councillor numbers and the electoral system, particularly where single member wards were concerned. Many smaller islands would be too small for a single member ward, so groupings of islands would have to be made and it would be important that these reflected both local ties and transport links. It suggested that greater flexibility on ward sizes would be beneficial for all of Scotland. Finally, the LGBCS suggested that in order to have changes in place for the next local government election then a review of ward sizes would have to begin in Summer 2018.

Professor Denis Mollison suggested that some flexibility in parity would be useful, and made further suggestions for reform within the local government electoral system. Janet
MacDonald suggested that the islands of Argyll and Bute would be better represented if they had their own sub-authority within the local authority.

**Suggested amendments**

The following changes were suggested—

- At Part 4, Section 14 it was suggested that the line “an electoral ward consisting wholly or mainly of one or more inhabited islands” be updated to read “an electoral ward in an islands area or consisting wholly or mainly of one or more inhabited islands” to avoid any confusion about the island status of the larger inhabited islands like Orkney Mainland or Lewis. (Comhairle nan Eilean Siar).

### Question 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?

As with other sections of the Bill, the majority of submissions expressed support for this provision, though as with other areas there was a call for clarity on how this might work in practice.

Argyll and Bute Council, detailing the responses to its consultation, said there was a general disappointment that these provisions in the Bill did not go further, and that provisions would bring limited opportunities to island communities. In addition, there was a concern that the provisions could bring about increased bureaucracy. The RSPB, Scottish Natural Heritage and Law Society of Scotland suggested that there could be confusion around the Bill's interaction with existing legislation, and Scottish Natural Heritage provided a list of risks that should be taken into account within the development of the scheme.

### Approach

Shetland Islands Council suggested 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. It also noted that there was little benefit to allowing the new licensing scheme to interfere with the existing jurisdiction of port authorities. On this matter, Lerwick Port Authority confirmed that it would wish its harbour area to be excluded from any new Island Licensing Area on account of there being an existing works licensing scheme.

Both the Law Society for Scotland and the Community of Arran Seabed Trust noted that clarity was needed around what might happen where a marine area in question is within either or both 12 nautical miles of another island (which may or may not have its own designated marina area) or the mainland (where licensing powers are granted by Marine Scotland). It also noted that it is unclear why the regulations should only apply to inhabited islands.
The Community of Arran Seabed Trust noted that the National Marine Plan might be the appropriate vehicle for managing culminative environmental impacts.

Consultation

Scottish Natural Heritage emphasised the importance of consultation. 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.

Guidance

The Highland Council expressed the importance of guidance, and noted that the approach in the Bill should not disadvantage mainland communities. Orkney Islands Council noted that “Scheme” is not defined in the Bill, but that guidance may cover this. Bòrd na Gàidhlig felt it would be useful for there to be more clarity of benefits to communities in terms of development. One survey response suggested that national planning and guidance would ensure parity and equity.

Marine (Scotland) Act

Whilst not set out in the Bill as drafted, the policy memorandum makes reference to Marine Planning Partnerships under the Marine (Scotland) Act. Orkney Islands Council set out the results of its own consultation on this with public and local bodies, detailing which would expect to be involved directly in licensing as a partner, and which would take on an advisory role. It expressed concerns about what would happen should a local authority be unable to find a public authority to partner with, and suggested that this measure would add little value to legislation, and on the back of this suggested an amendment (detailed below) to the Islands (Scotland) Bill.

Suggested amendments

The following changes were suggested—

- Part 5, Section 19 (3)(c) and (d) provide clear exclusions in terms of application processes under the Marine (Scotland) and Zetland County Acts which predate an area being designated an Islands Licensing Area. However, it is not clear whether applications to vary works licenses (granted under the previous acts) would be exempt from the scheme if they were made after the area had been designated an Islands Licensing Area. (Shetland County Council).
- An amendment to the Bill should be made which would enable Councils to carry out functions for marine planning on behalf of Scottish Ministers to do so as a single public authority (Orkney Islands Council).
- The Bill should clarify, in relation to Part 5, Section 16 (1)(b), 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 (Law Society of Scotland).
- Part 5, Section 16 (1)(b) should include scallop dredging and demersal trawling as these are common and widespread activities which damage the seabed environment. (Community of Arran Seabed Trust).
In Part 5, Section 16 (2)(d) fish farming licensing should be included, with licensing decisions being made at a community council level (Community of Arran Seabed Trust).

In Part 5, Section 19, a clause should be added that states that a development activity is exempt only if there is no application to expand the development activity with regard to geographic area and/or volume of production, or if the local community have scientific evidence that the activity has become harmful to them or the environment (Community of Arran Seabed Trust).

**Question 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?**

Submissions showed a majority in favour of the Bill, with only one survey response showing disapproval for the introduction of the Bill, on the grounds that such legislation would lead to other rural areas seeking similar protection and would ultimately disadvantage cities.

**Further powers**

Some submissions suggested that the legislation could have gone further. Orkney Islands Council wanted to ensure protection for the area from becoming part of a larger local authority, more enabling powers for councils, and provisions for community benefit. Community Land Scotland also felt that the Bill could have led to further devolution for island authorities, and the Orkney Greens felt that there would have been merit in the Bill paving the way for single-purpose island authorities.

Community Land Scotland felt that “Ministers should be given powers to enact secondary legislation to devolve specific functions or responsibilities to islands councils or councils with islands, as appropriate”.

One anonymous submission suggested that the Bill should include provisions for budgets to be passed on to community councils.

**The Bill in action**

Argyll and Bute Council said there was strong support for each relevant local authority to develop its own islands plan, and for individual plans for each island, with a strong emphasis on young people. It suggested that an Islands Ombudsman could oversee the implementation of these plans.

Highlands and Islands Transport Partnership felt that the Bill should include a mission statement, and Bòrd na Gàidhlig felt that a set of high-level outcomes would be useful. Highlands and Islands Transport Partnership also felt the Bill should have been clearer on the responsibilities for contractors engaged by public bodies to provide services, and questioned whether duties should be included in procurement activities in a similar model to the living wage pledge.

Voluntary Action Scotland felt that further detail on monitoring and community engagement was needed.
Financial memorandum

CoSLA suggested that the proposed costs were based on implementation within the island authorities, and that costs might be higher for the local authorities covering both mainland and island geographies.

Suggested amendments

The following changes were suggested—

- Paragraph 6 of the policy memorandum should be amended to read “increasing sustainable economic growth and encouraging the development of resilient communities, confidently rooted in their heritage and cultural resources” (Islands Gaelic Research Project).

Suggested amendments

The following changes were suggested—

- The Scottish Human Rights Commission should have statutory duties under the terms of the Bill (CoSLA).

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

No strong concerns in terms of the Bill as drafted were raised. Comments on human rights and equalities were varied, key points included—

- Insularity and remoteness should be considered an equalities issue within the guidance accompanying the Act, and island-proofing should help to protect against this (Orkney Islands Council).
- Digital exclusion is a key issue (Orkney Islands Council).
- The Bill focuses on the Western and Northern Island groups, and the outcomes may not be as positive for other island groups as a result. (Argyll and Bute Council).
- Argyll and Bute misses out on the special assistance provided to other islands because the bulk of its population is on the mainland which means services can be poorer than in the other island groups (Anonymous survey response).
- The Bill, and the duties placed on public bodies, should not disadvantage people in other remote and rural locations in Scotland, or indeed in more populous areas (Argyll and Bute Council).
- Mainland coastal communities shouldn’t be disadvantaged (The Highland Council).
- Lack of services should be considered a human rights issue (Voluntary Action Scotland).
- Road Equivalent Tariffs should also be applied to commercial vehicles (Anonymous survey response)
• Gaelic should be mentioned more explicitly in the Bill (Islands Gaelic Research Project).
• Access to justice should an explicit part of the Bill (Law Society of Scotland).
Submissions included in summary

Local Government bodies
Argyll and Bute Council
Comhairle nan Eilean Siar
CoSLA
The Highland Council
Orkney Islands Council (including a supplementary submission)
Shetland Islands Council

Public bodies
Bòrd na Gàidhlig
Highlands and Islands Enterprise
The Highlands and Islands Transport Partnership
Local Government Boundary Commission for Scotland
Scottish Natural Heritage
VisitScotland

Third Sector bodies
Community Land Scotland
Community of Arran Seabed Trust
Raasay Development Trust/Raasay Community
Raasay Community Council
RSPB Scotland
Voluntary Action Scotland

Professional bodies and other bodies
Federation of Small Businesses Scotland
The Law Society of Scotland
Lerwick Port Authority
Orkney Greens
Orkney Fisheries Association

Academics and research specialists
Islands Gaelic Research Project Team
LGiU Scotland
Professor Denis Mollison

Private businesses
Hoolan Energy Ltd

Individuals
Bernie Bell
Malcolm Cinnamond
Arthur Cormack
Deirdre Forsyth
Kieron Green
John Hunter
Janet MacDonald
Francesco Sindico