ISLANDS (SCOTLAND) BILL

SUBMISSION FROM SHETLAND ISLANDS COUNCIL

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?

Shetland Islands Council (also referred to in this paper as ‘we’) indicated its support for a National Islands Plan in our response to the Consultation on Provisions for a Future Islands Bill (referred to as the ‘September 2015 consultation’). The response, which was developed with input from partners and local stakeholders, is available on the Scottish Government’s website, and we would ask that it is read along with this paper. (Shetland Islands Council submission)

It was interesting to note that 85% of respondents to the September 2015 consultation agreed that the Scottish Government should introduce a National Islands Plan. The stated purpose of the Plan is to “set out the main objectives and strategy of the Scottish Ministers in relation to improving outcomes for island communities”, which would provide a welcome way to capture and measure the impact Government activity is having on islands. Through our submission to the September 2015 consultation, we made the point that a Plan would represent a strong message from Government that it means to sustain its commitment to the islands into the future. As the Bill requires Government to produce a progress report on the Plan, it would also provide a way to demonstrate how islands proofing is making a meaningful difference to the lives of islanders.

We welcome the proposed timespan of the Plan as it could bridge Parliamentary terms. We feel that Government recognition of the cultural, economic and social contributions islands make to Scotland and the UK should be non-political. That was demonstrated in a positive way during the 24 November 2016 Parliamentary debate on ‘Supporting and Strengthening Scotland’s Island Communities’. The fact the motion received cross-party support would suggest an initiative like a National Islands Plan, and indeed, the Islands Bill itself, would be welcomed by all political parties.

Through our recent response to the Finance and Constitution Committee’s call for evidence on the financial aspects of the Bill, we observed that the amount being allocated for publication and promotion of the Plan, £5000, seemed, in our opinion, to be low.

Although supportive of the Plan concept, we are cognisant of the fact that much work will be required to develop the detail. In line with the spirit of the Our Islands: Our Future campaign, we have expressed our willingness to assist Government in that respect.
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?

Shetland Islands Council strongly supports the principle of ‘islands proofing’. We see it as a key component of the Islands Bill and a way to achieve the Government’s stated priorities regarding community empowerment, regional cohesion and meaningful inclusive growth across island communities. As outlined in our response to the September 2015 consultation exercise, an assessment such as this has the potential to deliver positive benefits not just for island communities, but also Government and public authorities.

The identification of potential unintended negative impacts at an early stage in a process would allow for mitigation measures to be developed which could avoid expensive work-around arrangements at a later date. However, we feel that the Guidelines which are mentioned in the Bill will play an important role in ensuring public authorities and communities have a clear understanding of the impact assessment process and thereby maximise the likelihood of consistent application. A straightforward methodology must be developed and appropriate resources invested in promotion and training across Government and the public authorities affected. It will be particularly important that Guidelines provide a clear definition of the wording in Part 3, Section 7 (1) “regard to”, Section 8 (1) “in the authority’s opinion” and “significantly different” and Subsection 9 (b) “in any other case, by making such an assessment or taking such other steps as the authority considers appropriate”.

It would appear from the Independent Review of Rural Proofing, led by Lord Cameron of Dillington, that failure to win hearts and minds would have the potential to significantly undermine any islands impact assessment process. That report highlighted a “‘Tick Box’ mentality” evident in some UK Government Departments, with rural proofing guidance being ignored and poor attendance at awareness-raising workshops. It is hoped that the learning points from Lord Cameron’s report and the UK Government’s response, can be taken into account as these Guidelines are developed.

The Bill includes a welcome provision for annual reporting, which we consider to be important in terms of transparency and accountability, showing how the duty is making a positive difference to island communities. In order to streamline reporting, and in support of Part 3, Section 8 (3), public authorities could perhaps maintain a log throughout the year of examples where activity was adjusted to take account of islands’ circumstances.

We have had a very positive experience from the Government’s Islands Liaison function and would observe that islands proofing may stand a better chance of success if a specific Department could be identified as lead ‘sponsor’. It would also be a useful agenda item for the Islands Strategic Group to consider, a group which is chaired by the Transport & Islands Minister.

Through our detailed response to the September 2015 consultation, we put forward examples where we felt meaningful islands proofing could make a difference. That was not an exhaustive list, but included Transport, Crofting, Waste, Social Security, Funding allocations, Economic Development and Education.
Although an impact assessment is an essential procedural aspect of the duty, we feel that islands proofing is as much about mindset. As part of explaining and generating support for the principle, it may be helpful to highlight examples where an islands proofing mindset is already being applied. We would wish to highlight three such examples:

- Informal islands proofing was successfully undertaken during the development of the new National Planning Framework and Scottish Planning Policy in 2013. Islands Councils’ Heads of Planning were also actively involved in the independent review of the Scottish planning system, which resulted in a specific recommendation that island authorities be given “more flexibility where this would better reflect the distinctive local context for planning in an island setting”. And we have recently been asked to provide an islands perspective on Planning Bill proposals, another example of Government officials seeing benefit in seeking out, and listening to, island views at an early stage in the process.

- In early 2017, Shetland Islands Council was involved in a process of engagement with Skills Development Scotland (SDS) regarding changes to their Travel & Lodgings Policy. The Policy provides funds for Modern Apprentices to travel off-island for required training as part of their apprenticeship programme. This is a crucial aspect of apprenticeship funding, given high transport costs, the lack of Air Discount Scheme provision for business travel, and the necessity to travel off-island to access certain training, and is critical for local employers to develop their workforce. We engaged very positively with SDS and were pleased when our points were given serious consideration, and an effective islands solution was found.

- The Minister for Social Security visited Shetland in March 2017 as part of the Government’s approach to developing the Social Security Bill. We were heartened that the Minister actively engaged with communities and partners and listened to the points being put across. From the resulting Island Screening Assessment of the draft Bill, it is clear that island circumstances are being considered and, although the conclusion was reached that the Bill was “not expected to have a disproportionate effect on island communities”, practical measures were outlined relating to fuel poverty and disability assistance. In particular, we noted Government’s intention to consider the approach to Cold Weather Payments in developing secondary regulations. These do not currently consider windchill, which we feel is a contributor to the markedly higher incidence of Fuel Poverty in the Islands (53% in Shetland).

We are encouraged by these examples and feel they show that taking into account islands circumstances need not be bureaucratic or expensive, and reinforces the view that it can have benefits beyond island communities.

At Ministerial level, the principle of islands proofing is being championed by the Transport & Islands Minister. We’re also aware that the Local Government & Housing Minister has indicated firm commitment to islands proofing during discussions on planning reform and the social enterprise strategy. The case has
also been made to the Deputy First Minister that national education governance proposals require to be islands proofed and we would trust that will be the case.

Empowering Scotland’s Islands Communities (the Prospectus) and the September 2015 consultation paper, state, “As part of island-proofing the Scottish Government would consider:

- when legislating whether particular functions and responsibilities could be given to island communities;
- when legislating, whether there was a particular need for differential application of legislation for island communities;
- the applicability of the principles contained within the Reference Framework on Regional Democracy of the Congress of Local and Regional Authorities of the Council of Europe; and
- when developing, formulating and implementing policy, the needs and circumstances of island communities”.

The Guidance would require to clearly demonstrate how these commitments are to be delivered.

As a Council, we recognise the need for islands proofing to be proportionate as we seek to make the most efficient use of reducing resources. As an initial step, we intend to adjust our integrated impact assessments to include impact on all inhabited islands within the Shetland Islands area. Our Committee report template already requires officers to outline any potential impacts on service users, patients and communities when preparing recommendations to Members. And we would anticipate meeting the reporting requirement through our established Public Performance Reporting arrangements. At this stage we do not anticipate a significant or insurmountable burden on our officers, but realise this will require to be monitored going forward.

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?**

As was noted in our September 2015 consultation response, this was a proposal put forward by Comhairle nan Eilean Siar, through the Our Islands: Our Future campaign. As a partner member in that campaign, we support their request.

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 expressed our support for this through our response to the September 2015 consultation exercise.
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?

In its Prospectus, Scottish Government committed to “progress as required any proposals from Comhairle nan Eilean Siar regarding which provisions from the 1974 Acts would also be relevant and appropriate for the Western Isles to have”. As a member of OIOF, we supported CnES’ desire for local marine licensing powers, but as our existing powers under the ZCC Act meet our current requirements, we would not expect our Council to seek Islands Licensing Area (ILA) status. Therefore, we feel it would be for others to comment on whether the provisions meet their needs.

We can see merit in the fact Councils would be required to make an application to Ministers for ILA designation. That would ensure Councils are able to construct an appropriate and robust business case for doing so. As Government would assess each application, it would also allow them to take into account local circumstances, a way to avoid a “one size fits all” approach.

The inclusion of a requirement on Ministers to consult with parties who may be affected is another useful check in the process and may help reassure industry and communities that their views would be taken into account before any changes were introduced.

Were Shetland Islands Council to make a decision to apply to Ministers for such a scheme, our reading of Part 5, Section 18.3.(b)(i) leads us to conclude that there would be provision for Ministers, when defining the “area and boundaries” of the island marine area, to exclude areas that are outwith the ZCC Act, for instance, Lerwick Port Authority (LPA) harbour area. We would envisage there to be no benefit gained from interfering with that proper statutory authority’s works licensing powers through any potential move to ILA status.

We also consider it helpful that Sections 19.3.(c) and (d) provide clear exclusions in terms of application processes under the Marine (Scotland) / ZCC Acts which pre-date an area being designated an ILA. However, the Bill appears to be silent on whether applications to vary works licenses - which were granted under the ZCC Act and pre-ILA status - would be exempt from the Scheme if they were made after the area had been designated an ILA. We feel it would be useful to provide clarification on that point, for the benefit of existing licence-holders and potential developers.

We welcome the inclusion, through Section 18.4 of a provision that would allow a Council to recover reasonable costs in processing an application.

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 welcome the introduction of this Bill and acknowledge that it should be viewed as part of a suite of legislation and policy that could help empower Scotland’s island communities. In addition to the Islands Bill, we also recognise the potential of the existing Community Empowerment (Scotland) Act, the Crown Estate Bill and Local Democracy Bill and will therefore continue to engage with Government in a positive way to ensure these deliver meaningful improvements for our island communities.
7. Do you have any comments on the bill in relation to human rights or equalities?

No.

Shetland Island Council
September 2017