



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Rural Economy and Connectivity Committee

Monday 2 October 2017

Session 5



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**Monday 2 October 2017**

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**RURAL ECONOMY AND CONNECTIVITY COMMITTEE**  
**27<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Gail Ross (Caithness, Sutherland and Ross) (SNP)

**COMMITTEE MEMBERS**

\*Peter Chapman (North East Scotland) (Con)  
\*John Finnie (Highlands and Islands) (Green)  
\*Rhoda Grant (Highlands and Islands) (Lab)  
\*Jamie Greene (West Scotland) (Con)  
\*Richard Lyle (Uddingston and Bellshill) (SNP)  
Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*John Mason (Glasgow Shettleston) (SNP)  
\*Mike Rumbles (North East Scotland) (LD)  
\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Councillor Malcolm Bell (Shetland Islands Council)  
Mark Boden (Shetland Islands Council)  
Councillor Steven Heddle (Orkney Islands Council)  
Paul Maxton (Orkney Islands Council)  
Liam McArthur (Orkney Islands) (LD)  
Councillor James Stockan (Orkney Islands Council)

**CLERK TO THE COMMITTEE**

Steve Farrell

**LOCATION**

Orkney Theatre, Kirkwall



# Scottish Parliament

## Rural Economy and Connectivity Committee

*Monday 2 October 2017*

*[The Convener opened the meeting at 18:30]*

### Islands (Scotland) Bill: Stage 1

**The Convener (Edward Mountain):** Good evening and welcome to the Rural Economy and Connectivity Committee's 27th meeting in 2017. I remind people to ensure that mobile phones are set to silent.

We have received apologies from Fulton MacGregor, and we welcome Liam McArthur, the local MSP, to the meeting.

I am told that I have to make a housekeeping announcement at the outset. If the fire alarms sound, people should wait and follow me out of the door or follow Gail Ross out of the other door—seriously, you are to go out of the doors and back out through the main entrance to the school.

The committee is pleased to be in Orkney to discuss the Islands (Scotland) Bill. We have had a series of meetings today on the bill and we will have further meetings tomorrow. We are delighted to welcome the members of the public who are attending this evening. I urge you to stay to the end of the formal part of the meeting, as we will then have a question-and-answer session with a roving microphone to allow you to ask questions.

This is our fourth evidence-taking session on the bill. We have heard evidence from the Local Government Boundary Commission for Scotland and from other local authorities that are affected by the bill: Argyll and Bute Council, Highland Council, North Ayrshire Council and Western Isles Council.

Today, we welcome representatives from Orkney Islands Council and Shetland Islands Council. From Orkney, we have Paul Maxton, the project manager for the our islands, our future campaign; Councillor James Stockan, the leader of the council; and Councillor Steven Heddle. From Shetland, we have Malcolm Bell, the convener of the council, and Mark Boden, the chief executive.

Rhoda Grant has the first question.

**Rhoda Grant (Highlands and Islands) (Lab):** The two councils that are represented today are two of the three that set up the our islands, our future project. Does the bill's overall intention fit

with the expectations that you had when you started that process?

**Councillor James Stockan (Orkney Islands Council):** We are delighted to see the bill coming through Parliament. On whether it is meeting our expectations, I would say that it is a start but that it could be much more ambitious. We think that the Government could give us a lot more powers and create more opportunities for us to take things much further. We do not want the opportunity to be missed, so we are keen to engage with you at this stage to see how far the bill can go. It could be truly transformational, if it is given the opportunity.

**Councillor Malcolm Bell (Shetland Islands Council):** I agree. The bill is a start, but it is only a start. It could contain more, and there are certainly things in it that I would like to be developed further. Things such as the national islands plan will be key, and how that develops will be important. The bill is part of a suite of legislation that we hope will result in the empowerment of island communities.

**Councillor Steven Heddle (Orkney Islands Council):** As Malcolm Bell said, the bill is part of the jigsaw for us. We are developing the islands deal, and we realise that the application of island proofing to other legislation, such as the local governance bill and the Crown estate bill, will be important, too. That is key to our aspiration of achieving sustainable economic development for our islands, and we hope that one way in which we will do that is through community benefit. That is one of our key asks, and one of the disappointments is that it is not dialled into the Islands (Scotland) Bill as it stands.

When the programme for government was announced, it spoke specifically about additional powers for islands councils as one of the five bullet points for the bill, but that has not come through in the bill as it is framed. There is a reference to additional marine licensing powers, but the bill adds nothing to what Shetland Islands Council has already, and it does not add substantially to what we in Orkney have already.

James Stockan mentioned the idea of having enabling powers, so that things that might come up through the island-proofing process could be achieved through secondary legislation rather than through primary legislation. We recognise that the Scottish Government might have difficulty in making such enabling legislation, so we have moved quite a bit in the way in which we have been discussing the issue.

We started by asking for complete implementation of the European Charter of Local Self-Government, which has been genuinely transformational for us. We moved to considering a general power of competence, and now we have

moved to the idea of enabling legislation that would be enacted in a progressive form through application to the Scottish Government, to reassure the Scottish Government that it is not giving the islands a blank chequebook. We think that that is a not unreasonable ask.

Another thing that we have been looking for in the bill is the concept of community benefit for all major developments in the area. It would be transformational if that was understood. We recognise that major developments might not be able to deliver community benefit on day 1 but, when they are successful, it is not unreasonable to expect a community benefit. That is one of the things that we would be looking for through the devolution of the Crown estate, so that revenues from Crown estate activities in our area came back to our area to enable us to develop the economy.

I go back to our starting position when we were considering our campaign to the Government, which was in the spirit of the Montgomery committee, which viewed the development of the powers of the islands councils as an evolutionary process that should be supported. We stated up front that the council wanted the bill to explicitly express that the council

“as presently constituted, shall continue to enjoy all such special powers as they have at present; and that no legislation shall be passed which derogates from our powers or varies our territorial jurisdiction”.

That is an expression of the status quo. The bill is meant to take things to the next level, so we feel that, if it is seen as going too far to include the enabling powers in the bill, at least the retention of the powers of islands councils and support for community benefit should be forthcoming.

**The Convener:** That was a full answer, which I ask Rhoda Grant to come back in on. I clarify that the Crown estate will be raised in later questions, so we can park that at the moment.

**Rhoda Grant:** Does the bill as it stands sufficiently empower island councils to deliver what you ask under secondary legislation, or does something have to be in the bill to allow the powers to come afterwards in secondary legislation? Is there enough to empower you, or are you looking for something more in the primary legislation?

**Paul Maxton (Orkney Islands Council):** We definitely feel that more empowerment is needed and that primary legislation is perhaps not sufficient in that regard. There is not sufficient flexibility, and we suggested in our submission a mechanism for providing flexibility through secondary legislation. We are moving into uncertain and changing circumstances with Brexit, and none of us knows what the future holds. Being

able to adapt to future circumstances will be important.

Our submission is about improving outcomes for our communities; it is not just about having a power for the islands councils. The process might be by way of application. The application would be evidential—it would show support from communities, but we would also produce a business case. It is very much in our interest to demonstrate, not just to the Government but to ourselves, that we have the right case, financial or otherwise. There is potential for a flexible approach; the application could be made under a range of competences. There is scope for an application process in the marine licensing provisions, and we envisage something similar.

How would we use the power? We could use it for fuel poverty schemes. The committee will see from our submission and our consultation response that we have experience of having to rectify Scottish Government schemes. We would like to be proactive, take the initiative and go to the Government with our own ideas for local solutions that would benefit our communities.

Our proposal is very much in keeping with the Community Empowerment (Scotland) Act 2015—particularly section 22, which deals with participation requests. We suggest something that follows the same principle. Section 22 allows a community body to enter dialogue with public authorities about local issues, and even potentially to take over and deliver local services. What we propose involves a very similar principle. I do not think that this is a case of seeking power for power's sake; we would have to be able to demonstrate, through the process that I have suggested, that a proposal was workable and that we had local community support.

**The Convener:** John Finnie wants to ask a small follow-on question.

**John Finnie (Highlands and Islands) (Green):** Councillor Heddle mentioned the European Charter of Local Self-Government. Will you outline the difference between what that charter commends and what is proposed, and in particular whether a single-purpose authority would be in line with the charter?

**Councillor Heddle:** It is difficult to answer that question concisely, because the charter is a large document. We have focused on the provisions in article 9, which suggest that subsidiarity—in effect, the general power of competence—should be assumed and should be accompanied by adequate financing for the local authority to carry out its functions. Those are the two things that I highlight from the charter. It made sense to frame our proposal in terms of the charter because both the Scottish Government and the United Kingdom

Government have signed up to it and it is consistent with the direction of travel of democracies across the continent.

**The Convener:** Does James Stockan want to speak? I see that Malcolm Bell is ready to go, too.

**Councillor Stockan:** That is the point that I was going to make. The charter is behind much of what we are doing. When we look at the autonomy that is afforded to island groups across Europe, we see that we are light years behind them. We want all the levers to make our economy work—we want to make the best use of the public pound that comes here, so that we get the best service level and can stimulate the economy to the greatest degree.

When he was the First Minister, Alex Salmond made it clear in the Lerwick declaration that his party supported subsidiary and wanted local decision making. In fact, he went on to say that there should be the maximum degree of local decision making. That is what we want—the maximum. We do not want the bill not to work for the Government, for the people or for anyone in between; it has to tick the box for everyone.

On the European charter, I would almost say that island proofing should mean that we do not have to do things. It should apply only to things about which the Parliament says, “No, you can’t have a change to that.” We should look at it from the other perspective and do things the other way around. That would really transform how we operate, and we would get the best results for the community and for the nation as a whole.

18:45

**Councillor Bell:** The short answer to the question is no—the bill as it is written does not empower. If it were to be taken in isolation, it certainly would not provide any empowerment, although it might provide for it—particularly through the national islands plan, which is critical. We expect to see measures in that plan that will help and provide empowerment. As the bill stands, it provides for empowerment, and we would not necessarily want it to be too prescriptive about that.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I request a quickie—a short answer. When we visited Birsay this morning, we heard that the community there is also looking to be empowered from the centralised decisions that are made in Kirkwall. Is such an approach part of the aspiration of the respective councils?

**The Convener:** Who wants to answer?

**Councillor Stockan:** We have started a new term of local government, but that is definitely our decision. We take that approach already for some of our islands, as we have an empowering

communities agenda and are actively supporting community councils on these islands in a way that has never been done before. We are also looking to roll that out across the mainland areas, and that will involve a lot of things that councils have always done and seen as their right, but which communities can do for us and for themselves.

We want to pioneer a new way, because we think that we will have far better buy-in and will get far better results and that, as budgets get squeezed, there will need to be different ways of doing things. That is our modus operandi. In the same way as the Scottish Government wants to get powers from Westminster, we are looking to get them from Holyrood and pass them on to our smallest communities.

**The Convener:** I will let Rhoda Grant come back with a follow-up question and then see where the answers go.

**Rhoda Grant:** If the islands plan is the vehicle, people will deliver the aspirations that you talked about through it, rather than through the bill. There will be an islands plan that covers everyone, but are you talking about having individual plans that cover each area and give the powers that you are looking for? Steven Heddle and James Stockan seemed to say that each island community might be looking for something quite different.

**The Convener:** You can answer yes or no to that—that is, yes, you want your own plan for each island, or no—

**Councillor Stockan:** We want a chapter for each island. We are unique and different, and the islands that are outside the island authorities are different too. The plan needs to fit the bill so that it benefits everybody in the way that makes most sense.

**The Convener:** Would one of Malcolm Bell and Mark Boden like to answer that?

**Mark Boden (Shetland Islands Council):** A national islands plan is most welcome and will be enormously helpful in advancing the aspirations of the island communities of Shetland. Just because it is one plan does not mean that it has to have only one-size-fits-all provisions. The Scottish Government is far more sophisticated than that. There will be many things that affect all the islands of Scotland that people live on—in which case we could have one section that dealt with everything—and there will be others that are unique to particular islands or, in our case, groups of islands.

We see the islands plan as a splendid development because it is not a once-and-for-all measure like the bill, which has happened once in my career and will not happen again. We cannot possibly deal with everything in the bill. However,

the plan will be renewed every five years and will be reported on and discussed every year. It will be a document that can be added to as we learn, change and adapt as the world changes. It is a very public document, so there will be a public dialogue between the Government and the communities on the islands, which is a powerful thing in the world of politics. We are confident that we will be able to get into that plan—or at least have a public dialogue with the Government about it—and raise the issues that are relevant. There will be enormous pressure on all of us who sign up to things in the plan to deliver them. We do not need bureaucracy around that. We talk about secondary legislation, but there often does not have to be secondary legislation.

What we want with the sea bed and the Crown estate—

**The Convener:** We will park the sea bed for the moment, if you do not mind.

**Mark Boden:** Okay—I was just going to use that as an example.

**The Convener:** We will come back to it.

**Mark Boden:** Okay.

I will pick up on Mr Stevenson's point about communities and centralisation. We do not recognise the concept of centralisation in Shetland. It is important to recognise the uniqueness of the three island councils and the three archipelagos that they represent. They are different from everywhere else, for a variety of reasons. One is the challenges that they face. In our case, the remoteness, rurality and insularity are extreme. It is a 14-hour ferry ride to our port of entry, where our businesses can come on to the same terms as everybody else. All the costs, delay and difficulty come before that, but nobody else shares those. There are also problems with isolation and rural poverty. The problems are quite distinctive, although, of course, so are the matching benefits and opportunities.

I emphasise the unique position of the three island councils. I will use Shetland as an example, as it is the one with which I am most familiar. I have pushing 40 years' experience of councils of different types and sizes, and I can tell you that I have never worked anywhere else where the unity and the common identity between the community and the council are so strong. The council serves only 23,000 people, and the main settlement, Lerwick, has a population of only 7,000, so it does not even count as a town in national planning policy. There is no centre to centralise on. We are a dispersed group of islands with people living in very rural circumstances. There is great homogeneity in the islands. The communities are very tight, and there is a close relationship

between the electors and the councillors who represent them.

That means that, in Shetland and the other two island groups, Scotland and its Government and Parliament have an opportunity to deliver community empowerment in a way that they do not have elsewhere. There is an entity—the council—that has huge commonality with its population and which represents them really well. It has community leadership, democratic legitimacy and operational capacity. The council can do things, so you do not have to create vehicles for that. There is a superb opportunity for community empowerment in the three island groups through the councils, which have a wide range of powers, the operational capacity and the democratic legitimacy all there ready and waiting to be used.

**The Convener:** This is the perfect time to bring in the deputy convener, Gail Ross, with the next question, as that will help us to focus on the issue.

**Gail Ross (Caithness, Sutherland and Ross) (SNP):** Good evening, panel, and thank you for joining us. The catalyst for the bill came from the formation of the our islands, our future campaign, which as we have heard was led by the three island authorities in 2013. How well does the bill reflect the aspirations of that campaign?

**Mark Boden:** It reflects them very well. We are very pleased with the bill, as it will deliver two key enabling pieces of legislation, on island proofing and the islands plan. The proofing will lead to a significant change in the approach of national bodies, including the Scottish Parliament, to the islands and to fine tuning of legislation and policy to best suit them. We have every hope and intention that the plan will lead to an on-going dialogue whereby more and more responsibilities are delegated to the island communities and the councils that represent them as time goes by.

However, as has been said, the bill is only part of the jigsaw. It has to be taken in conjunction with things that we will come on to, such as the sea bed, the forthcoming bill on local government reform and the current education agenda. All those things play in, but the bill is central.

**Councillor Heddle:** As Mark Boden has said, island proofing is a key plank of what we were advocating in the our islands, our future campaign, and clearly the national islands plan is very much to be welcomed as something that could be a vehicle for empowerment.

On the issue of empowerment, I do not want to be negative about the bill at all—I think that it is fantastic, and we welcome provisions such as those on the national islands plan, island proofing, constituencies and marine licensing—but we are very keen for it to be something of substance that



will be welcomed by us, the Government and the people whom we represent. The bill's initial premise was to improve outcomes for people in island communities, and we believe that empowering local authorities and, in turn, the communities we serve is the best way of doing that.

We very much buy into the whole onward devolution concept, because devolution should not stop at Edinburgh—and, indeed, should not stop at Lerwick, Kirkwall or Stornoway. The work of the our islands, our future campaign was embodied in “Empowering Scotland’s Island Communities”, which is a very important document that we still go back to and which we see as part of the jigsaw of ensuring the delivery of everything that was discussed in the process through the bill, through the deal or in on-going work with the Government that does not require legislation. All those things are hugely important, and the “Empowering Scotland’s Island Communities” document recognises the role of the community planning partnership as central to our aspirations and, indeed, to the disbursement of community benefit.

**Gail Ross:** The three island authorities led the process in 2013, but the bill covers all inhabited islands. That will bring in Highland Council, North Ayrshire Council and Argyll and Bute Council, all of which face their own unique challenges in being mainland authorities as well as having responsibility for inhabited islands. Why were they not included in the original our islands, our future campaign?

**Paul Maxton:** They came in quite late in the process, when the joint position statement negotiated by the three island councils had been completed, engagement had already begun and the campaign had gained momentum. I believe that the Scottish Government itself decided that, because things had gone so far down the line, only the three island councils should continue to be part of the island areas ministerial working group process. However, that was subsequently altered still further down the line with the establishment of the islands strategic group.

With your indulgence, convener, I want to make a point about empowerment. The bill is very welcome, particularly given that we have had no island-centric legislation for 40 years—it has been quite some time. However, there is no additionality when it comes to empowerment. One of the key questions in the consultation was about the additional powers that consultees thought were necessary, and, from recollection, I believe that 73 per cent of respondents confirmed that the bill should contain additional powers. If we leave aside the issue of marine licensing, which relates to a separate question about the extension of powers in the local acts, and look at additionality in

isolation, we see that there is really no additionality, unless you include the national islands plan. In a sense, that could be described as empowerment, but such a view places huge importance on the plan.

You will see from Orkney Islands Council’s submission that we have some concerns in that respect, and we think it imperative for the council—and, indeed, the other five authorities—to have a large say in the matter. As has been said, there are unique circumstances in every authority area, and it is imperative that that is manifested in the plan. That provision could be stronger. One of the recommendations from Orkney Islands Council is that the council, along with its community planning partners, should be a statutory consultee. That is reasonable.

19:00

**Liam McArthur (Orkney Islands) (LD):** I do not know whether my point cuts across what others were saying, but I want to pick up what Steven Heddle was saying about island proofing. One of the messages that we heard in previous evidence sessions and which I have picked up locally is that there are high expectations for the bill. I am not sure that there is necessarily a wide awareness of the enabling nature of the legislation, which means that the island proofing relates to policy to come, rather than applying retrospectively to problems that exist due to what might be construed as a one-size-fits-all approach.

I was interested in the specific reference to that in the Orkney Islands Council submission:

“It is also disappointing that there is no distinct mechanism to deal with retrospective island proofing. The Council gave numerous examples in its consultative response where its islands have suffered detriment through failure to island proof legislation.”

That becomes a recommendation in response to the first question of the consultation. Do you have any firm views about how that might be achieved, whether it be through the islands plan or through a commitment from the Government to look at some of the specific examples and retrospectively apply the island proofing to give some confidence about what it might mean in future?

**The Convener:** We will come to island proofing as a separate topic, and the question at that point will absolutely focus people’s minds on the area. I want to put that on hold for a moment—I am not putting it completely to one side—and offer Malcolm Bell a chance to come in before we move to the next topic.

I am mindful that we have quite a few themes and that the committee would like to hear from the audience. The first theme has taken half an hour and I would hate the members of the public to be

sat here thinking that they will not get a look in before 11 o'clock. We will have to speed it up a wee bit. Liam McArthur, I will bring your question in at the appropriate moment.

**Councillor Bell:** I will be brief and go back to the deputy convener's question about the difference between island authorities and authorities with islands. The beginning of the campaign came out of the early days of the independence campaign, when a very tight constitutional situation—constitutions tend to be frozen and are not easy to change—slackened off. We saw an opportunity and seized it and we make no apology for that. It made perfect sense to work together with our fellow island authority partners, with which we have so much in common. Although there are also differences between us, we have a lot in common, and we are very different from authorities that have islands. We provide services for islanders: 100 per cent of the people for whom we provide services are islanders. In the case of Highland Council, the figure is something like 5 per cent. We are very different from those authorities, but we are always very clear that any benefits that resulted from the campaign should apply equally to islands across Scotland. In the initial stages, it was clear that the three island groups would work together.

**The Convener:** We need to move on.

**Councillor Stockan:** I have one point on that. Please do not dilute this to try to make it a one-size-fits-all bill. It must maximise the benefit for the people who initiated the idea.

**The Convener:** I am getting the impression that people want it to be stronger, rather than for it to be diluted.

**John Mason (Glasgow Shettleston) (SNP):** Our next theme is the national islands plan, which John Finnie and I will ask about. I realise that we have already touched on the plan; I just have a couple of specific questions.

I really enjoyed reading Orkney Islands Council's submission, and I picked out one or two things from it. It says that the national islands plan was discussed by the islands strategic group and a comparison was made with the Gaelic language plan, which it was felt was quite a good model. Could you expand on what is good about it, which you would like to be replicated in the islands plan? I am not that familiar with the Gaelic language plan, and I assume a few other members are not, either.

**Councillor Stockan:** It has definite commitments and it holds both sides to account, which is what we want to see. It contains definite commitments from the Government and from us, as well as timescales in which they will be

delivered. That is essential in ensuring that things do not drag on for years.

**John Mason:** In relation to the Gaelic language plan, your submission uses words such as "proportionate". I took that to mean that Gaelic has a different significance in different areas of Scotland, so councils would treat it differently. In relation to the Islands (Scotland) Bill, I assume that that means that, because every council is different—even the three island authorities—you would want flexibility to be built into the plan or the bill.

**Councillor Stockan:** Your assumption is correct.

**John Mason:** Okay. I am getting very short answers.

**The Convener:** You are to be congratulated.

**John Mason:** Some people have suggested that the bill should include a specific overarching objective; I confess that, as a city person, I had wondered about that. The objective that occurred to me was that of stabilising and strengthening the population of every island in Scotland. Such an objective would apply to the Orkney Islands, the Shetland Islands, the Western Isles and other islands.

Is there a need for that? The Government's feeling seems to be that it is better to leave any such objectives for the plan, because they might change. However, I would have thought that some objectives would be permanent for the next 100 years.

**Councillor Stockan:** The community planning partnerships on each of the islands would say that anyway, so it is a given in what we do. We are strengthening and sustaining islands and hoping that they have a more active role in the life of the nation. We must secure each and every island, because some are particularly vulnerable and need support from authorities or from the councils that look after them.

**The Convener:** I will bring in Malcolm Bell and then Steven Heddle.

**Councillor Bell:** James Stockan has said what I was going to say; I do not have much more to add. As I said, we do not want the bill to be prescriptive. Outcomes such as those that Mr Mason mentioned would clearly be desirable in any event, but the plan needs to be built on and renewed regularly. It will have to be reported on annually, and it should be outcome focused. The outcomes should be clear and easily measurable, but we certainly would not want such specific objectives to be prescribed in the bill.

**The Convener:** I do not want to put words into your mouth, so could you clarify that? You do not

believe that there needs to be a description of what the bill is trying to achieve in the bill, as that can be covered in the plan. Is that what you are saying? Do you think that the bill should include an overarching description? I think that that is what John Mason was suggesting.

**Councillor Bell:** As James Stockan said, the things that Mr Mason talked about are part of the day job—they are what we do every day. The plan needs to be as flexible as possible, to allow us to meet changing and on-going needs.

**Councillor Heddle:** The bill should have high-level aspirations, so if it were to include an objective, it would need to be a high-level objective. As it is currently framed, the bill talks about

“improving outcomes for island communities”,

which is an objective that we could support. The objective of retaining population that Mr Mason mentioned is linked to jobs and opportunities. That is a high-level aspiration that I do not think that any of us would disagree with, if it were to be proposed.

The question was about the plan. The plan will be very important in setting out the detailed and specific objectives that the local authorities put forward. In previous evidence sessions, the word “co-production” was used a lot. We certainly agree that the islands plan should be co-produced by the local authorities and the Scottish Government, and that there should be specific chapters based on each local authority area—perhaps, indeed, within each local authority area for the specific smaller groupings.

**Mark Boden:** I understand why people, particularly those who are not lawyers, might have the aspiration for something rather more specific. However, “improving outcomes” is included as an objective, as Steven Heddle said; that is a good phrase. It would be very difficult to become more specific without leaving things out, and whatever is left out cannot be done—people will use its absence as a reason to say, “You can’t put that in.” It would be very dangerous to become specific in section 3, on the national islands plan, especially as the plan will last for many years and we cannot predict now what will come up in five or 10 years’ time.

When we become specific, we tend to focus on the negative and on correcting what is going wrong—for example, what we might want to do on islands with very small populations, where the whole community is fragile—and we tend to miss out the aspirational positive stuff. There are huge opportunities in our island communities to contribute not just to the wellbeing of the islands, but to the wellbeing of Scotland—to extract enormous social and economic benefit. That tends

to be missed out when we put in specific objectives, because we tend to go with correcting the current ills rather than grasping that future.

**John Mason:** That was a very helpful answer.

**John Finnie:** The committee that is scrutinising a bill always gets lobbied to put specific information on the face of the bill. We know that transport, digital infrastructure, access to health and social care and education will be addressed in the plan. Should they be specifically mentioned in the bill?

**The Convener:** Who would like to answer that? One or two people have put their heads down when they would usually be quite happy to put them up. Mark Boden’s head is still up—would he like to start?

**Mark Boden:** I made the mistake of making eye contact.

It would do no harm to put in specific instructions from Parliament to the Government to do certain things for us. Please feel free, as long as it is not that alone that is required.

**John Finnie:** I used the phrase “access to health and social care”. We have already seen integration of those taking place. I return to the phrase “single purpose authority”, which I used earlier. I got no biters the first time round. Can you comment on whether that fits in with that general philosophy?

**Councillor Stockan:** Absolutely. We would love to investigate that, because we joined up our council social services with the health board long before the integration joint board became a Government prescription. We have been held back since it became a prescription, because that has added another layer of governance and effort for us, and we were already doing it.

We would love the opportunity to be a real microcosm test-bed or proving place for things that could be applied elsewhere in the country, as we are in energy and many other things. With the single purpose authority—we would not want to miss out the third sector, because we believe that it is important—we could do something quite transformational for our people and make sure that every pound note that comes into the community was used to its best effect to provide better services.

**John Finnie:** That is very helpful. May I ask about consultation? I just want a brief answer, because you have alluded to it already. What level of consultation would you anticipate there being on the development of the islands plan and how you would go about it? I will bolt on another question, which is about the timeframe. Is it realistic for the Government to talk about the plan being laid

before the Scottish Parliament within a year of the act coming into force?

**The Convener:** Mark Boden indicated that he would like to give an answer to an earlier question. Maybe he could slip that in with an answer to this one.

**Mark Boden:** Thank you. I think that a year is realistic. We must not accept bureaucratic slowness; we must get on with things—if we get on with it, a year is more than long enough. We obviously want the island authorities and the key industry, public and voluntary sector groupings to be consulted directly by the Government, but we could use our well-established systems of consulting the communities in our island group, so it should not be a problem.

19:15

Let me return to your earlier question, if I may. The answer is yes; the agenda of a single public authority fits really well with this. I think that there are two reasons for that. One is that, as public services develop in the way in which they are developing—not just in Scotland but in other places—in geographically remote areas there start to be big disadvantages as one goes for economies of scale. Services start to become remote; they move to Aberdeen and what have you.

However, there is scope for economies of scale through the merging of different public functions in the island group, and such an approach fits really well with autonomy. We need only look at some of the most successful island groups in Europe, which are of benefit not just to themselves but to the nations of which they are part—Åland and Faroe leap to mind. Faroe is a very successful place; it is a good place to live, with a very content population, and it draws virtually nothing from the Danish public sector spend. Åland is similarly successful.

I am familiar with a very successful council in rural Finnish Lapland. The area has a small population of 50,000, and the council does everything that a Scottish unitary authority would do, plus secondary health, plus water, plus sewerage—plus, plus, plus—and all that works really well. It is an ideal solution for the more remote, more sparsely populated areas.

**The Convener:** I want to push someone from Orkney to answer the question about whether the islands plan can be drawn up in a year.

**Paul Maxton:** The answer is yes, unequivocally. It is so important to us, as the input and commitment from Orkney—indeed, from all three island councils—in the our islands, our future campaign demonstrated, that I do not hesitate in

saying, certainly from our perspective, that that is achievable. Of course, it will depend on other parties, but the commitment from the three island councils will be 100 per cent, I am sure.

**The Convener:** You are saying yes. I see that Steven Heddle is holding his hand up—I do not know whether you want to say no; I hope that there is no dissent. John Finnie might have had an answer to his question, so please be brief in whatever you are going to say.

**Councillor Heddle:** I will keep it brief. Two questions were being asked, I think. First, can we consult in time? The answer to that is unequivocally yes, because we have a good relationship with the third sector, which does consultation exercises for us, we have a good community planning partnership, whose consultation guidelines we use, and we have energetic and empowered community councils—we will be establishing 20 new community councils in short order.

Secondly, do we have ideas for the plan? The answer to that is unequivocally yes, too. Malcolm Burr offered to go away and write the plan for you, and we echo that. We have plenty of ideas that we could put into the plan, so the answer is very much a yes.

**The Convener:** We would want you to write that part of the plan. Let us move to the next issue.

**Mike Rumbles (North East Scotland) (LD):** I want to drill down into the specifics of island proofing, which has proved a little problematic in the evidence sessions—formal and informal—that the committee has had. Part 3 of the bill places a duty on the Scottish ministers and the 60 or so public authorities that are listed in the schedule, which of course include the councils, to “have regard to island communities in carrying out” their functions.

We have been wrestling with what the phrase “island proofing” actually means. How do we do it? We want to avoid a situation in which someone in Glasgow, Edinburgh or anywhere else outwith the islands sits down with an organisation such as Scottish Water and says, “We’ve got an initiative, and we’ve got to think about Orkney or Shetland. Great. I’ve thought about that, so I’ve ticked the box and island proofed the initiative.”

What does island proofing mean, and how best do we go about it? Do we need to consult the people who live on the islands, for example?

**Mark Boden:** In thinking about this, we need to draw a distinction between island proofing in section 7 and impact assessments in the later sections. I am talking only about section 7.

It is an attitude of mind. A civil servant in a department or Government agency who is coming up with an idea for improving something thinks about communities in Scotland and how the idea might help them. All they have to do is have in their mind the fact that there is a variety of communities in Scotland and that one extreme of the spectrum is the three island groups—in the case of Shetland, the most remote northern area—with their particular issues. It is not complicated.

The failsafe that makes it a simple process is communication. At an early stage in developing their policy, such people should just speak to the relevant organisation—in our case, the council—for the relevant island and ask whether what they are thinking of doing sounds sensible to them. It is not a complicated process.

**Mike Rumbles:** You are saying that whoever is in charge of that initiative needs to go to, or speak to people who live on, the islands.

**Mark Boden:** Yes. I will give you a recent example. Later in the day than was ideal but not too late, Skills Development Scotland came out with a proposal to change the funding for modern apprenticeship training so that it would not be where people lived and they would have to go to it. SDS changed the funding of travel in a way that meant that nobody from Shetland would ever take part in a modern apprenticeship. We picked up the phone, I had a chat with the chief executive of SDS, other people chatted, the proposal was changed and the appropriate payments were put back in. The problem went away. It was dealt with. It was not complicated because SDS published the proposal before it was set in stone.

The initiative is on us as well. We have to keep our eyes open to what is going on and say to people, “Excuse me a sec. You are proposing that but hold on.” It was not difficult in that case.

**Mike Rumbles:** Does the bill need to be stronger? We have to interrogate the Scottish Government’s bill to improve it if we can. Do you think that the simple phrase “have regard to” is strong enough?

**Mark Boden:** Yes, I do. We would want to do island proofing by dialogue and partnership working, as we do with all the agencies and the Government. However, the bottom line is that I am not afraid of judicial review. If somebody cannot prove to me that they had sufficient regard to Shetland’s particular circumstances, off we will go.

**The Convener:** Mark, I am concerned because that is twice you have mentioned legal matters. It must be your background.

**Councillor Stockan:** The last thing that we want is judicial review. We can co-produce things

and work forward from the beginning. We would want to have a really good chance to engage with any major pieces of primary legislation. Secondary legislation is another matter in which people identify knowledge of what is coming through. However, there is a lot of ministerial discretion. That is one of the things that we have the biggest problem with. People could make a change for us but they do not have the confidence to do it. If we set island proofing properly in place, people will have far more confidence to help us with the small things that may be an irritant to some but are fundamental to our life in other ways.

For instance, the money for the home energy efficiency programmes for Scotland area-based schemes—HEEPS ABS—that came through the Scottish Government used to come to our council and we had really good outcomes. More recently, the money came through in a far more prescribed way but we did not have the people trained in Orkney, so we missed the first £1.4 million of benefit to the place with the greatest degree of fuel poverty in the country because we had to tick a lot of boxes that were inappropriate and had probably been devised only for the central belt or further away. At the same time, the public money was not being put to the best use.

If island proofing comes through Parliament, we want to ensure that everybody is aware that there are opportunities to do things differently in the islands at every level.

**The Convener:** I rather rudely parked Liam McArthur’s question earlier and, if I do not bring him back in, he might make my life rather difficult.

**Liam McArthur:** I know that you are on my home turf, convener, but I think that you overstated my powers in these parts.

What I was trying to do was get the panel, in particular the Orkney delegation, to demonstrate what island proofing might be by applying it to cases from the past. Mark Boden made a suggestion about apprenticeships. I would like to hear from the panel a description of situations in which legislation or policy has been to the detriment of the islands but could be remedied without necessarily requiring that additional resources be spent. There is a risk—Mark Boden put it well—that what we are doing will be seen as simply putting in additional resources in order to island proof policy.

However, as the Orkney submission shows, the approach is often not about additional resources but about tailoring legislation or policy so that we get a better fit and better delivery of the public policy objectives for no more—or potentially for less—resource than is being spent at the moment. Would that be a fair characterisation? Could you help me with a few examples of that?

**Councillor Bell:** I could probably give many examples. We deliver public services on the edge—by that I mean the geographic edge of the United Kingdom as well as the edge of sustainability. It is probably never good to define something by a negative, but I will say that island proofing is not about giving advantages to the islands; rather, it is about not disadvantaging the islands by applying things that are detrimental to us. Liam McArthur is correct to say that, sometimes, island proofing does not require that money be spent. Often, money can be saved if island proofing is put in with the bricks, right at the beginning.

A recent example of informal island proofing concerns the involvement at an early stage of the islands councils' heads of planning in the national review of Scottish planning policy. That resulted in flexibility being built in for the islands' situation. That did cost not a penny, but it probably saved a lot of grief and a lot of money.

**Mark Boden:** I would like briefly to address Mr Rumbles's point. A detailed amendment would make the bill slightly better. The idea that legislation should "have regard to" island communities would be strengthened if, in section 9(b), the words "the authority considers" were deleted and the word "are" was inserted. That is a specific suggestion for a drafting change.

A recent example of what Liam McArthur is asking about is the islands screening assessment that was carried out by the Minister for Social Security on the implications of the Social Security (Scotland) Bill. That led to no extra costs for anybody. It picked up in particular the issues of fuel poverty and disability assistance in the islands. In due course it will lead, at the next level, to specific addressing of cold-weather payments, because of how the weather works in the islands. That did not cost anything, but it is really good.

On the other hand—I want to mention it to this audience, because Parliament is the guilty party—there has been a failure to sufficiently island proof the recent requirement for qualifications for headteachers, which will seriously put at risk small island communities' small schools. We are extremely worried about what has happened. It would have cost nothing to have island proofed that policy properly.

**Councillor Stockan:** You asked for a retrospective, so I will go a long way back—to Scottish housing policy. If the intention of the bill is to retain island populations and so on, I have no problem with the system whereby different categories of people have different awarding schemes, and I have no problem with the movement of people across the country.

However, if the need of people on a small island is not first met in housing policy, there can be the crazy situation in which they have to move to another island or to the mainland to get a house. We hear that that is the situation at the moment on Arran. Young people in particular need to know that they will get a house in their own area. Some things could be island proofed in a way that could give a much better result than we could imagine.

19:30

**Councillor Heddle:** In the interests of brevity, I will refer to our consultation response, which goes into some detail on lots of issues, including the early years, self-directed support and the bedroom tax, which have been mentioned. Those issues give us problems, as do recycling, affordable warmth and the lack of support for green electricity.

On the ferries plan, we supplied a chapter—and some verse—for it, but that was not incorporated in the plan. That, too, is now causing us problems.

On Mr Rumbles's question, there is a spectrum of things that we can "have regard to". The policy memorandums that accompany bills are meant to include consideration of the islands, but that is clearly not working for us. What we are moving towards with the suggestion on impact assessments is something akin to an equalities issue. We can see that equalities considerations work, so that gives us more confidence.

Do you need to consult island communities? Yes, you probably do. Again, the important word is "co-production". The islands' councils, as the democratic representatives of the communities, would like to be consulted, in the first instance.

I will make the point that in our areas there is not the distinction between the council and the community that might be found in larger local authority areas: we are a community of 20,000 people and the council is in no way distant from its community. Any of you can accompany me any time to the supermarket and experience how close we are to the community and its representations.

**The Convener:** Paul—are you happy that sufficient examples have been given? For fairness, I will give you the opportunity to give an example.

**Paul Maxton:** Thank you, convener. The very building that we are seated in today is an example that is referred to in the submission. Under current building regulations, the most carbon-efficient way of heating this kind of building—according to the standard methods that are used for the energy modelling of buildings to achieve compliance with the regulatory regime—is to install liquid petroleum gas as a secondary heat source. For this building

in Kirkwall and for Stromness primary school and the halls of residence, the council has to import LPG at great cost, but for no apparent reason. We have had quite a number of cases under the building regulations, which I understand are the subject of review by the Scottish Government.

Forgive me if I am pre-empting anyone, but I want to point out the importance of guidance. Am I allowed to speak about that?

**The Convener:** We will cover that, so maybe we can come back to your point later.

**Paul Maxton:** Absolutely.

**The Convener:** Your point about LPG was made and was picked up by the committee in one of the places that we went to today, as was the fact that islands can be disadvantaged by using renewable energy, which we saw being generated this morning. I do not think that there is a member of the committee who does not have a green tint to their eye when they look at this lovely building and the facilities here. It is something to be extremely proud of.

**Jamie Greene (West Scotland) (Con):** Good evening, panel. This is probably an appropriate time to talk about the island communities impact assessments so that we can develop the concept of so-called island proofing. The bill will affect 66 public authorities from, at one end of the scale, Scottish ministers to, at the other, NHS Orkney, which is a very local public authority, as well as everything in the middle, including national bodies that cover all Scotland. The bill will require them to develop an impact assessment for

“the development, delivery and redevelopment of ... policy, strategy or service”.

That is quite wide-ranging. What happens if the impact assessment identifies that changes to a policy, service or strategy could have a negative effect on island communities? The bill thereafter only states that the council has to report that it has produced an impact assessment. There is no reference to what happens next. How would you deal with a scenario in which an impact assessment by the council or another body that is listed points to a potentially negative outcome? For example, there is no finance provision in the bill to mitigate the negative effects of policy decisions. What are your views on the impact assessments and how you might deal with them?

**Paul Maxton:** There is no provision in the bill for any form of review of any impact assessment. That is a failing: there should be something. We do not want a cumbersome process or anything that would be work intensive, but there has to be something.

There is always the fail-safe of judicial review, but nobody wants to go down that route. By the

same token, we need a fair and transparent review process. There is no provision in the bill for publication of impact assessments. Orkney Islands Council’s submission states that assessments should be published. I do not think that there is any problem with that: publication is fairly routine in governmental issues, as we talk about transparency, nowadays.

I have thought long and hard about what would be a proportionate way of reviewing decisions, but I have not come up with anything yet. I do not doubt that there are various examples that the bill manager might look at; I feel that there should be something.

**The Convener:** I am going to let Mark Boden in, because I fear that there will be a judicial review if I do not. Do you have an answer?

**Mark Boden:** We need to be aware that the “have regard to” provision means that, as long as an authority can show that it has had “regard to”, that will be sufficient and it will be very public, which is good.

In respect of the impact assessments, we have to be careful not to create an expensive bureaucratic process that will slow everything down. The assessments need to be proportionate, and that will be important when we come on to talk about the guidance.

We also have to bear in mind the fact that this is not about anybody telling the decision-making bodies, especially the Government, what to do. The decision, as determined by Parliament, will rest with whomever it rests with. The point of the impact assessment, as in section 12(3), is to oblige ministers to consider the likely effects on the islands and, if there will be particular effects, to describe how they might be overcome, or not. Action has to be proportionate; we cannot put everything right every time. As long as the process is open—as I read the bill, the impact assessments that are to be published under section 12(3) would be public—and as long as the decision-making body can show that it has identified and thought about the issue, and has said what it is going to do, that will be fine. It is an open process. The political process will take place: there will be a public debate and so on.

One of the things that underlies what I am saying is that we are not seeking equality, because that is impossible. We are seeking equity. It is reasonable that people should have thought about things and can articulate that they have taken them into account. From my perspective, section 12(3) is fine.

**Jamie Greene:** I appreciate your view on that. It is fair to say that in much of the evidence that we have taken—perhaps not from local authorities, but from other stakeholders, down to community

and individual level—the fear is that impact assessments and island proofing as a concept will really just be box-ticking exercises, and that if an assessment report identifies a negative outcome, there is no real meat on the bones of the bill to make anything change. There will just have been identification of a negative outcome.

It will therefore be down to the authority to decide whether to do anything about the negative outcome. It is quite possible that rectifying it would have financial implication, so it would require funding, from whatever source. The bill is not backed up in any way with promises of financial assistance or support. How do you feel about organisations being unable to mitigate the negative effect of policy decisions?

**Mark Boden:** My view is that the citizens of the islands are as important as the citizens of anywhere else. There does not need to be separate funding for or separate consideration of them. They should be thought about, and legislation and policy decisions should have regard to the quality of their life and their future as much as it has for any other citizens, so I do not think that any special—

**The Convener:** Does James Stockan want to add to that?

**Councillor Stockan:** We have to operate based on a degree of trust. However, if problems are clearly identified, people will not be able to stand in the way if really important issues arise where things need to be changed.

**The Convener:** I will move on to the next question, which is from Mike Rumbles.

**Mike Rumbles:** My question was covered earlier.

**The Convener:** In that case I will move on to Stewart Stevenson.

**Stewart Stevenson:** I take a slightly different view from my colleague, Jamie Greene: I think that an impact assessment might identify positive as well as negative outcomes. However, there might be a negative aspect to identifying a positive outcome, in the sense that somewhere that is remote but not an island—Campbeltown, for example—might be better informed about how it would be disadvantaged by a something that would have a positive outcome for islands. That is just a comment and I will move on, although I think that that is a big issue that perhaps we need to think about.

Mark Boden said on several occasions “have regard to” and Malcolm Bell mentioned “not disadvantaging”. The outcomes of island proofing are going to be determined by ministerial guidance, to some extent. How light touch should the ministerial guidance be? Indeed, should there

be any at all? In particular, should it be very flexible, so that it allows different authorities—there is a large number of them—to develop and publish their own ideas on how they would implement a policy, so that they can do so in the context of their responsibilities, rather than implementation being centrally directed? That is a very big question that might have a short answer.

**Councillor Bell:** I think that the guidance needs to be clear and concise. It is important, too, that it sets out clearly the process that is to be followed.

**Stewart Stevenson:** The thrust of some of the evidence that we have heard this evening is that a process that works in Milngavie will not necessarily work in Millport, so I challenge Councillor Bell: do you really want one process to apply throughout the system and in all circumstances? Is that what you are saying to us?

**Councillor Bell:** It is possible to set out the outcomes and the standards that are expected. The detail of the process may well vary, but the standards could be the same anywhere.

**Stewart Stevenson:** Right—so we want to work to the same standard, but we want to work to a process that is appropriate to the context. Is that a fair representation of what you are saying?

**Councillor Bell:** Yes.

**Mark Boden:** Yes.

**The Convener:** I will bring in Steven Heddle, and then I would like to get back to Mike Rumbles so that he can ask about a little point on detail.

19:45

**Councillor Heddle:** I will take the chance to mention co-production again. Co-production will ensure that standards are to a degree led by the local authorities that engage in the work.

I would also like to touch on Mr Stevenson’s comment about Campbeltown. When we set out on the campaign, we were always clear that although we may be pathfinders for islands in general, we would be delighted if the benefits of what we are doing could be applied to other communities. Indeed, that is what has happened.

On the subject of adverse effects being identified for rural communities, I do not think that the Government would wantonly prejudice rural communities while giving the islands an advantageous situation. It is supporting the islands through the bill, but I think that rural communities will also benefit to a substantial degree.

**Mike Rumbles:** I appreciate that today we are speaking to representatives from Orkney and Shetland. When we were on Mull, the people who gave us informal evidence certainly felt that it was



not just the councils that needed to be consulted on island proofing; we needed to go further down the line. We heard that, for people on the island of Mull, it would not be sufficient for Argyll and Bute Council to be the consultee. Similarly, should we not ensure for your island groups that when we are island proofing, we consult not just the councils but go further and consult people who live on the individual islands, so that it is effective?

**The Convener:** Paul, you were nodding. Do you want to comment on that?

**Paul Maxton:** Absolutely—we have to do that, in the same way that, if Orkney Islands Council was looking at any of its policies or considering something under the process of island proofing, it would consult community planning partners and community groups.

That brings me back to the importance of the guidance. The Minister for Transport and the Islands, Humza Yousaf, has made strong and vocal representations to the effect that he anticipates that the islands strategic group, which the six islands authorities take part in, will have an important part to play in producing the guidance.

You will see from our submission that Orkney Islands Council has put forward a number of distinct issues that we believe should be incorporated in the guidance, including articles 170 and 174 of the Lisbon treaty. We are talking not about seeking to transpose European legislation into the guidance, but about looking at the principles themselves. Why reinvent the wheel when there is a template there, to a certain degree? Principles that have been established at a very high level can be referred to when the guidance is drawn up.

**The Convener:** I see that both Steven Heddle and James Stockan want to come in. I am afraid that I am only going to let one of you in. Who will it be? Steven?

**Councillor Heddle:** The democratic mandates of the local authority and the community councils should not be missed out here. Consultation with other communities of interest and other islands should be done through them. Let us face it: the bill places a duty on the local authority to have regard to island communities, so that should happen anyway; there is a kind of logical cascade here.

**The Convener:** Malcolm, do you want to come in very briefly?

**Councillor Bell:** I will be very brief. Certainly where Shetland is concerned, no other body on the island has the democratic legitimacy that the council has, and it is clear that we would consult further. I do not think that there is a single community councillor in Shetland who has been

elected in a competitive election. The council undoubtedly has a democratic mandate to carry out the consultation.

**The Convener:** I am sorry, but I am not going to let James Stockan in at this point. Before we move on to Richard Lyle's questions, I want to mention for the sake of completeness that, in the Scotland Act 1998, Orkney and Shetland were fixed as two of the 73 constituencies for the Scottish Parliament, but for some reason the Western Isles were ignored. I am assuming that you absolutely believe that they should have the same protections as your islands have. Unless you are going to say that you are not ready for that, I will take the answer as yes. Do you agree?

**Councillor Heddle:** Yes.

**Councillor Stockan:** Yes.

**Mark Boden:** Yes.

**The Convener:** Right, let us move on to the next set of questions.

**Richard Lyle (Uddingston and Bellshill) (SNP):** Mark Boden said that he had been 40 years in local government. Very boringly, I was a councillor in Lanarkshire from 1976 to 2012—a sum of 36 years—before I moved on to the Scottish Parliament, so he beats me by a number of years.

**Mark Boden:** By four years.

**Richard Lyle:** You will remember the many boundary changes, as I do. The 2004 changes brought in the three or four-member wards, which means that populated islands must be placed in an electoral ward that also contains a significant proportion, or a majority, of people from the mainland—I know that Orkney and Shetland might be only slightly affected, but I would suggest that you are affected nonetheless. That has led to concerns that the distinct interests of island communities might not be fully represented in council discussions. The bill proposes to make an exception to that rule about local government electoral wards to allow areas with inhabited islands to return one or two members instead of three or four. What do you think of those proposals?

**Mark Boden:** We are not the only people who are making them, but those are very much our proposals. We see the reason for three or four-member wards and we do not have a problem with that; and we do not think that there needs to be any change to the equality of representation or to the rules about who can stand as a candidate.

The proposal is simple. We have lots of islands that are part of Mainland—as in Shetland's Mainland—and they have to be part of a larger ward because they are too small and too far from

anywhere else. Our most obvious example is a ward that we call the North Isles, which is a three-member ward, although the three northernmost islands, Yell, Unst and Fetlar, could justify two on their own, and the eastern islands, Whalsay and Skerries could justify one on their own. In the previous council, we had a councillor on Unst who, with his colleagues, represented Skerries; there was no councillor living on Skerries. To go to an evening meeting in Skerries, he had to drive to the ferry, take the ferry to Yell, drive across Yell, take the ferry to Mainland, drive across Mainland, take the ferry to Skerries or Whalsay, and then try to get home again. Well, that did not happen. We want the ability to split up wards such as that, because the geography justifies their having a councillor of their own, and it would make it so much easier for the councillor to represent them, so we support that proposal.

**The Convener:** Is that a problem on Orkney?

**Councillor Stockan:** It is not something that we have discussed yet, even as a council, but we are interested in the concept. We were not keen on moving to the situation that we have at present, but we have better representation for our islands with the number of councillors who represent them, because we have six island councillors for people outside the Mainland, which is quite a strong lobby. We would need to think about it carefully. We are keen not to be forced in the direction of having a one-size-fits-all arrangement without careful consideration of the situation.

**Richard Lyle:** I assume that you would consult your local areas and councillors. As Mark Boden said, somebody who stays away up on a northerly island might have difficulty travelling to other areas. My view is that someone who is representing an island should stay on an island. There will not be a one-size-fits-all solution, but all the councils affected would consult on the issue and would have to be happy about the number of councillors. In North Lanarkshire, we went from 70 to 77 councillors, and I was opposed to that, but if the number of councillors in the islands were to increase, would you be quite happy about that, overall?

**Mark Boden:** We would be happy with the principle of it being possible but, at the moment, we do not have a particular need for that. With the ability to have one and two rather than three and four, the current ratio would work for us but, if it did not work, the principle of being able to change it would be a good one.

**Jamie Greene:** One of the pieces of feedback we got was that you are looking for flexibility, in that what works for Orkney might not work for Shetland, and what works for Shetland might not work for both Arran and the adjacent mainland. Do you agree with the concept that the bill should

empower you to have more flexibility in how you structure your councils?

**Councillor Bell:** Yes, absolutely. It could be argued that it should perhaps have gone further, to allow 5-member wards in some cases. There might be some areas where that would have been a fix. However, the principle is definitely welcomed. I agree with Mark Boden that it will be of limited benefit for Shetland, apart from in the example that he gave, but it is good to have the flexibility.

**Councillor Stockan:** The system of multimember wards was devised for party-political reasons and I do not know what would happen if party politics became more of a thing on the islands; it is not particularly at the moment. I do not know how that would work.

Having the opportunity to explore the options and to see how best to get representation allows discussion at a future date. If you leave us with as much opportunity as possible, the local solution will come through.

**The Convener:** Before I move to Steven Heddle, I think that John Finnie has a question.

**John Finnie:** Yes, indeed. This morning, concerns were expressed about powers being given to the councils because people do not know what independent councillors stand for and there is "no accountability". Will the panel comment on that?

**Mark Boden:** Speaking as a constitutional lawyer, I believe that the accountability of every councillor, however they are elected, is through the ballot box and directly to their electors.

**John Finnie:** Don't shoot the messenger, but there is a question about the direction of travel. Certainly with party politics, regardless of what party someone belongs to, people will know their position on a broad slate of issues. How is that addressed? A number of people this morning were expressing genuine concern about that. *[Interruption.]*

**Councillor Bell:** I will repeat my answer, which is that it is up to the electorate whether it wants a party-political council. In Orkney, party politics have never really taken off in local government. When it has been attempted, almost invariably, the people who stand as independents win through, so clearly the electorate want an independent council—wards and all, if that is their view of it; that is what they vote for.

**The Convener:** I will let James Stockan in and then we will move on. Steven Heddle—you will feature in the next line of questioning.

**Councillor Stockan:** We have an election every five years, when people go door to door, to

every house—no one is untouched by the process that we go through. In our mostly independent council, every division in the chamber that I have been in for the past 14 years has reflected in a real sense the views of our community. If there is a very tight vote, we know perfectly well that that reflects the position in the community. It is truly representational: when you take the amalgamation of the 21 of us, with our different views, you get a clear idea of the position of the community. That has been really useful. That is why I think that we can be of use to the Government in doing something different.

**John Finnie:** Thank you for that. The issue having been raised this morning, it would be passing strange if we did not, in turn, raise it with the panel. You will understand that.

**The Convener:** Peter Chapman is leading on the next line of questioning. I put Steven Heddle on a warning that he will be the first to answer.

20:00

**Peter Chapman (North East Scotland) (Con):** Good evening, gentlemen. I am going to ask about marine development, which you were keen to talk about earlier, but I first want to say that I have been impressed by the whole panel's great enthusiasm for the bill and your vision for how the bill could make a difference to your communities.

The bill provides a regulation-making power for Scottish ministers to establish a marine licensing scheme for development activities within the Scottish island marine area. There are differences on the issue, because Orkney and Shetland already have many of those powers, and I assume that you wish to continue with them. What is your experience of the marine development powers? What learning can you share with other areas that do not already have them?

**The Convener:** Steven Heddle does not have to go first but if he would like to do so, I will of course let him, as he mentioned the issue earlier.

**Councillor Heddle:** I think that Orkney and Shetland would say that the experience has been very positive and has been to the benefit of our communities. Through the marine licensing and works licensing powers that we have, we have managed the sustainable development of potentially controversial developments such as oil ports in a way that has maintained the environment and benefited our communities over a period of more than 40 years. It has been a very positive experience and one that I commend to the rest of Scotland.

The island councils have demonstrable expertise that could be shared. We have a sophisticated harbour operation that monitors the

waters around our islands 24/7. We always joke that we have our navy in the form of tugs and ferries, we have our early warning system and we also have an air force, because we operate the internal air service here, so we are more like a small state than most local authorities.

On what the provisions in the bill would mean for us, we have powers over our harbour area, which is Scapa Flow and the Kirkwall bay area, but we would like to enjoy those powers out to the 12-mile limit. That would be an incremental move, and it would certainly fit well with the idea of an integrated process for developers. If we controlled marine licensing throughout the Orkney Islands area and we controlled the Crown estate revenues and management powers, the consenting, licensing and planning process could in effect be done through a one-stop shop in the local authority.

**Paul Maxton:** When the Scottish Government wanted to transfer responsibility for aquaculture to the planning system, it engaged with Orkney Islands Council extensively on our knowledge and experience of works licences. We have quite a pedigree, which has been acknowledged through the engagement that we have had to date with Marine Scotland and the Crown Estate Scotland on the further devolution of powers relating to the marine environment. In particular, we recently had very good engagement with the Crown Estate Scotland with a view to moving forward on pilot schemes.

It is about joining everything up and looking at the big picture. As Steven Heddle said, we can maximise efficiency and make the consent process a one-stop shop. Certainly, the pilot scheme in respect of the Crown estate will give us further experience in that regard and will potentially help the Scottish Government with framing the Crown estate legislation.

**Peter Chapman:** Is there an expectation that the new powers under the bill will be different from those that you already have? I am not sure how far out you can go under your current powers, but under the proposal in the bill, you will be able to go out 12 nautical miles. Is that as far as you can go at the moment, or will the bill increase your powers with regard to control of the sea bed?

**Councillor Stockan:** Shetland can go out to the edge, but Orkney's limit is a bit of Kirkwall bay and part of Scapa Flow. We must ensure that we can go out to the full extent.

In the same way that Scottish Natural Heritage was moved to Inverness, there is a chance to move management of the Crown estate to the periphery, which would be a better result for all of us. Indeed, we are keen to share any expertise that we have with other coastal areas.

**Mark Boden:** There is a particular answer to the question, and then there is a general answer that goes to the heart of what we are talking about tonight.

The particular answer is that the Zetland County Council Act 1974 has been an enormous success for Shetland, and we will stick with it. We do not need the powers that are in the bill, because they are based on the 1974 act.

One tiny amendment that we would suggest to the bill relates to paragraphs (c) and (d) of subsection 19(3). We think that not only grants pre-dating the new legislation but variations of any such grants should be allowed to survive. However, that is a small matter that can be dealt with in paperwork.

The 1974 act has been central to the good management of the marine environment in Shetland in the face of substantial exploitation of oil and gas, fishing and aquaculture, all of which pose risks although they also deliver benefits. It has been central to the delivery of those benefits, and to the economic benefit that all of those things have brought to Shetland. It has been a huge success.

The 1974 act has also been very straightforward for the council to implement. There has been no problem in that respect, and we think that delivering that sort of thing is well within the capacity of any primary authority or council in Scotland. In short, we think that the act is great.

The more general answer is that this is just the start, and that brings us back to the islands plan that is proposed in the bill. In the coming years, we will want to explore things in ways that we cannot be firm about today—although I should say that we can be firm in relation to the Crown Estate. Two things are running here: first, for the island authorities—and by that, I refer to the archipelagos that are just islands—the sea is everything. We are not about land; our wealth, our economy and our communities are based on the sea. As a result, it is vital for the benefit of the community, for Scotland and for proper exploitation that an authority with the capacity to focus on the sea has as much power and autonomy as possible over the sea and the sea bed in order to extract the maximum benefit with the greatest security with regard to environmental sustainability.

We are starting with the Crown Estate—we want management of it in our area. However, we are not going to stop there. There is duplication with Marine Scotland, and we want that to be delegated so that we can deliver a one-stop shop to developers and industry in relation to exploiting the sea. We have a very successful shellfish management scheme that is not replicated

elsewhere; it provides a good example of what can be done, and we want to do more of that.

I will not go into great detail about this now, but I want to say that our vision is the Faroes. You should do some research into the control that the Faroese have over fishing. That might well be where we go in years to come.

**The Convener:** Before I bring in Liam McArthur, I want to clarify something. Then I will come back to Peter Chapman.

I have no view on the proposal to take all the income from the Crown estate, but with that will come liabilities. Some people have asked whether some of the smaller islands—not necessarily those that are represented here—would be able to carry out the required enforcement and licensing with what, in some cases, would be quite minimal income. It appears that one size does not fit all. Do you agree? How can you make sure that the bill reflects the needs of the other islands around Scotland when it comes to the Crown estate?

**Mark Boden:** Such things should be powers, not duties. People for whom it is appropriate and useful to take on that level of autonomy should be empowered to do so, but where duties and responsibilities outweigh the benefits and practicalities, they should not be forced on people.

**The Convener:** That was my first question. My next question is rather like one that was raised earlier. It was put to us at one of our meetings today that planning feels remote from the fishermen who are trying to operate things and make them work. If aquaculture were imposed on coastal fishing, would there be no impact on the trade of local fishermen?

**Mark Boden:** If we are talking about town and country planning, that is already done.

**The Convener:** No. I think that the fishermen were suggesting that marine development and aquaculture may impede what they are trying to do around the coast when they are fishing.

**Mark Boden:** You are absolutely right. That is why we want a one-stop shop, in our case based in Shetland. A proposal was recently made for an offshore wind generation site that would have been right slap bang on top of the best fishing ground west of Shetland. We knew that, and we would never have proposed that site. We would not even have needed to ask the fishermen the question, although we would of course have done so. We need a local one-stop shop, with local knowledge and an intimate connection with local bodies. We work very closely with the fishermen's association and the shellfish association. We are ideally suited to avoiding that sort of inadvertent conflict.

**The Convener:** I will bring in Liam McArthur before I let James Stockan come in.

**Liam McArthur:** I will perhaps tee James Stockan up. With characteristic warmth of hospitality, he threw in an offer to host Crown Estate Scotland. That got me thinking that, not so long ago, there were concerns about where Wave Energy Scotland would be located. Disappointingly, it did not have a real presence in Orkney, notwithstanding Orkney's lead in wave energy. Does the bill need not just to address where decision-making powers rest but to include some form of relocation policy for civil service jobs, which we have not really seen for a number of years?

**Councillor Stockan:** Certainly, yes. When it comes to the social services stuff, I would have loved to see a cohort of those jobs go to the Western Isles, because they would have fitted well there. We do not always want to divide everything up into thirds; we want to do what is right for each community.

We have spoken about marine planning. Marine and terrestrial planning must join up somewhere. I do not think that, for a local area, they should join up in Edinburgh; they should join up in the local area so that there can be the necessary engagement with all stakeholders. A joint project between Highland Council and Orkney Islands Council on the Pentland Firth and Orkney waters recently won not only a Scottish planning award but a national planning award. We are really quite far ahead on some of these things, and it would be unforgivable if we dropped the ball at this stage. We must ensure that we bring that ashore so that we actually get something happening locally in these areas.

We must also watch where Crown estate revenues go. Revenues must follow activity. If they do not, this will become a farce. Not getting the revenue for the energy and work that it puts in might disbenefit a community. The sea bed—the marine environment—is our future. There is an awful lot of it around here, and we must ensure that we capture the full benefits.

**The Convener:** I will bring Peter Chapman back in. I would like to get a brief answer to his question and then move on to the next question.

**Peter Chapman:** It is more of a statement. Panel members are very enthusiastic about the powers in the bill, but you obviously want more powers than are proposed—you want powers over aquaculture, which are not in the bill, and you want the Crown estate money, too. You would like the bill to go much further.

**The Convener:** Steven Heddle can come in on that, and then we will move on to the next section.

I am mindful of the audience, and I would like to get them involved.

20:15

**Councillor Heddle:** I would certainly emphasise our enthusiasm. As a panel, we are enthusiastic and passionate about this whole subject, and we are keen for the islands to be empowered.

You mentioned that we want the Crown estate revenues as if we had not already been promised them. We have spoken about that and negotiated at length with the Scottish Government through the process that resulted in “Empowering Scotland’s Islands Communities”. I refer you to pages 37 and 38 of that august document, which notes the central role of local authorities as managers and disbursers of community benefit in their areas and the fact that Crown estate revenues—explicitly, the revenues that are accrued in each local authority area—are an adjunct to that process.

**The Convener:** We will leave that point there and move on to the final questions.

**John Mason:** Last but not least, we come to finances—an issue that is dear to my heart. We have already clarified that the bill does not deal with where the money would come from for a new school, hospital or ferry, but finances are relevant to the administrative side of things. The financial memorandum mentions various figures. Shetland Islands Council’s submission asks whether £5,000 is sufficient for the annual progress update that will be carried out by the Scottish Government. Another figure that jumped out at me was the £30,000 that each local authority would spend on consultation, representing island communities and so on. Do you have any comments on those two figures or on the financial memorandum in general?

**Councillor Stockan:** That is one of the things that I am interested in. People look at the costs, but they do not look at what the Government would get back. If you invest in the periphery, the amount in tax take and VAT receipts that the Government gets as it goes from pocket to purse all the way back to the centre is far greater than you would get from investment elsewhere. I want to ensure that people understand that. Investing in a strong periphery secures the centre of the country and brings revenue back in. I suggest that the figures in the financial memorandum are a trifle compared with the benefit that could come.

**John Mason:** Just to clarify, the committee is happy to accept that the sums are triflingly small. The question is whether they should be bigger. Is it realistic for the Government to expect your council to do all that work for £30,000?

**Councillor Stockan:** Thank you for giving us the opportunity to comment on that. We have already spent a lot of money on the our islands, our future campaign. We have joined with the other two islands authorities to put money into a joint pot—on more than one occasion—because we believe that it is so important to our future. Our commitment, as you can see, is whole-hearted. However, if the centre could support that more, it would get the value back in spades.

**Councillor Bell:** Shetland is already a net contributor to the UK public purse. Our comment on the £5,000 was about giving that work sufficient promotion. In general, the memorandum is pretty reasonable, although we felt that £5,000 was probably a bit too low to give that work sufficient drive and focus. The £30,000 is money that we already spend as part of our day job; we already carry out consultation—it is one of our budget lines.

**The Convener:** I will let Jamie Greene in for a final question, but I am then going to ask James Stockan and Malcolm Bell whether there is a key fact that we have not got to during the meeting and, if so, whether they can drill down on it now. Be ready to give us that key fact at the end.

**Jamie Greene:** My question is very relevant to the convener's request. If there were one thing that you could change about the bill, what would it be? You can be brief, but now is the time to get it out there. If you could tell us what you would change, that would be immensely helpful.

**The Convener:** Our questions are the same. Is there anything that you would change or add?

**Councillor Stockan:** We covered the enabling powers at the beginning, but we want them to be secure because that is fundamental to the benefit of the bill to us. Secondly, giving the status of the island groups permanence in the bill—so that they are there in perpetuity—is really important for us. Finally, it is important that we can do something of community benefit to enable our communities to excel and be more than they are today. If those three things are enshrined in the bill, it will work for us.

**The Convener:** To be entirely fair, I must give Malcolm Bell the opportunity to mention three things and not just one as I suggested.

**Councillor Bell:** As I have said, we are generally happy with the bill. To answer the question directly, if we were to add something to it, it would be that we would wish to be a statutory consultee on the national islands plan. We also ought to be consulted on the guidelines. Those are the two must-haves that we would like to see.

**The Convener:** That concludes our consideration of agenda item 1.

We will take the next agenda item straight away, and then I will close the meeting. We will then move to questions and answers from the audience—I will explain how that will work. However, first I thank the panel for coming. It is quite clear that you are completely committed to achieving the best that you can from the process.

**Councillor Stockan:** We also thank committee members very much for coming here. It has been a joy to have you, and the meeting has been very useful for us.

**The Convener:** It is very kind of you to say so. We are enjoying our trip—that much is sure.

## **Decision on Taking Business in Private**

*Meeting closed at 20:22.*

20:22

**The Convener:** Item 2 is a decision on taking business in private.

The Scottish Government has asked the committee for a comment on parliamentary timescales for future scrutiny of the Government's draft climate change plans. It is proposed that the committee consider its response to the Government in private, at its next meeting on 4 October 2017. Are members agreed?

**Members** *indicated agreement.*





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